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High court rulings could impact major Ontario land claim

Experts say the Supreme Court's recent rulings on aboriginal title have implications for a case in Eastern Ontario – the Algonquin land claim.

By: Donovan Vincent News reporter, Published on Fri Jul 11 2014

The community behind the Ontario's only major land claim — the Algonquin — are carefully watching recent rulings at the Supreme Court of Canada to see what the impact will be on their case.

There are close to 100 ongoing land and self-government claims across the country. One of them relates to the Algonquin aboriginal group, which is asserting rights and title to land within a massive 36,000-square-kilometre area in eastern Ontario stretching from the Ottawa Valley to North Bay.

In Friday's Supreme Court ruling on the Keewatin case — which didn't deal with a land claim, but rather a treaty, and a jurisdictional argument between the Grassy Narrows First Nation and the province — the Supreme Court sided with Ontario's right to "take up" the treaty lands in question, and issue logging licences.

But the high court also noted that the province's right to take up lands is subject to its duty to consult, and, if appropriate, accommodate First Nations' interests beforehand.

That's a similar point driven home in the Supreme Court's ruling late last month awarding title to the Tsilhqot'in in British Columbia over a large swath of wilderness in that province. The decision marked the first time the Supreme Court has recognized a First Nations group's title to a specific tract of land.

The ruling is expected to have significant implications for future natural resource use and extraction in B.C. and across the country in areas that impact on native communities.

A major finding in that ruling is that native communities must be consulted when governments and

industry proceed on economic development where there is aboriginal title — though there are clauses that allow such development if a compelling and substantial public interest is shown.

In the Algonquin title claim, specific locations for the land parcels they'd receive in a final agreement are still up in the air, because there's only a draft agreement in principle now between the parties involved in talks. So it's unclear which specific resources in eastern Ontario could potentially be impacted.

The native organization, which comprises 10 Algonquin communities, has been in formal three-way talks with the province and Ottawa for decades in a bid to establish a treaty. Negotiators for all three parties last year reached an agreement in principle to recommend the transfer to Algonquin ownership of 230 parcels of Crown land totalling 47,550 hectares, along with $300 million in settlement capital provided by Canada and Ontario, and defined Algonquin rights related to lands and natural resources, including minerals and forestry.

"We're not at a point where we can say definitively this is the land base," says Robert Potts, principal negotiator and senior legal counsel for the Algonquins of Ontario.

As part of the draft agreement, no new reserves will be created, land won't be expropriated from private owners, and any handover would not include the Algonquin Park tourist attraction.

In the meantime, Potts and the Algonquin leaders say that the Tshilhqot'in decision bodes well for them because the 8-0 ruling "clarifies" that aboriginals who are "nomadic" or "semi-nomadic" can establish title to large tracts of land by using and occupying that land through traditional hunting, gathering and other harvesting activities.

Prior to that, precedent had established that nomadic groups could only have small areas — "specific sites of settlement" as aboriginal title.

The Supreme Court ruling makes it clear that aboriginal people, such as the Algonquins, can establish ownership of large tracts of land, Potts argues.

As a result, the Algonquins of Ontario leadership along with their legal counsel will be giving careful consideration to the Tsilhqot'in decision "and how it might strengthen the Algonquin legal claim for aboriginal title in the Ottawa Valley as well as our position in the ongoing treaty negotiations," Chief Kirby Whiteduck, one of the Algonquin leaders said in a statement.

And Friday's Supreme Court decision is a firm reminder to governments that consultation accommodation must be in the mix, especially when there's aboriginal title involved.

"It's very much the theme of the Supreme Court, to remind the governments of Canada they have an obligation to respect First Nations people, and there is a need for reconciliation, and that requires a balancing of powers," Potts added.

Algonquin petitions to the Crown, seeking recognition and protection for Algonquin land and other rights, date back to 1772, the Algonquins say.

But Potts and the Algonquins point out that Ottawa's chief negotiator has not signed off on the agreement in principle.

A spokesperson in Ottawa with Indian Affairs and Northern Development Canada, said Canada is negotiating a comprehensive land claim with Ontario and the Algonquins, and added "claim settlements balance the rights of all Canadians, reconcile relationships and unlock economic opportunities for the benefit of all Canadians.

It's unclear what impact, if any, the high court ruling will have on the land claims dispute happening since 2006 in Ontario at Caledonia, where a blockade was erected by Six Nations members at the former site of a housing development. That dispute is over 40 hectares.

Douglas Sanderson, a lawyer and assistant professor in the faculty of law at the University of Toronto and a member of the Opaskwayak Cree nation, a Manitoba-based community, believes that in the end, the precedents set in the recent Supreme Court rulings won't likely result in less development of resources in Ontario, or for the rest of Canada.

"First Nations will have the authority to shape the contours of that development. They'll have a stake in the development. The province and resource companies will have to respect First Nations ability to say no to development if that development isn't happening on terms they approve of," Sanderson added.