

## Fishing Rights Appeal Hearing Takes Place in Vancouver

Youth from different Nuu-chah-nulth Nations attended the three-day appeal hearing in Vancouver.

Five Nuu-chah-nulth Nations were back in court last week over an appeal launched by Canada in the *Ahousaht et al vs Canada* court case. The nations originally won the landmark case against Canada and British Columbia in 2009 when the B.C. Supreme Court recognized their aboriginal rights to harvest and sell fish.

The appeal hearing, which took place from February 13-15 in Vancouver, was the second in the case. Canada previously appealed the judgment in 2010, but the BC Court of Appeal substantially upheld the trial decision. Soon after, Canada applied for leave

to appeal the decision to the Supreme Court of Canada. Canada's highest court rejected that request, sending the case back to the BC Court of Appeal for reconsideration in light of *Lax Kw'alaams vs. Canada*.

"Most aboriginal rights cases have gone by way of regulatory prosecutions, where someone is charged

with unlawful fishing and they raise aboriginal rights as a defense," said Matthew Kirchner, lawyer for Nuu-chah-nulth Nations. In contrast, *Lax Kw'alaams vs. Canada*, another aboriginal fishing rights case, was a civil action launched by a First Nation.

"Nuu-chah-nulth would have been the second case of this nature to go before the Supreme Court of Canada," Kirchner said. "And what the Court said was, 'we just decided this very issue, so rather than hear it, we'll send it back to the court of appeal so they can look at it again in light of *Lax Kw'alaams*.'"

In *Lax Kw'alaams vs. Canada*, the trial judge found that apart from oolichan grease, the Coast Tsimshian people did not trade in fish. If they did, that trade was sporadic and occasional. In *Ahousaht vs. Canada*, the trial judge found that trade in fish was a defining feature of Nuu-chah-nulth culture. This trade happened regularly, in substantial quantities,

and was integral to cultural practices.

In the recent appeal hearing, lawyers for Nuu-chah-nulth Nations argued that this key difference set the Nuu-chah-nulth case apart from the *Lax Kw'alaams* case. They also argued that the original 2009 decision and analysis followed the test set out by the Supreme Court of Canada in *Lax Kw'alaams*, which will apply to all subsequent aboriginal rights cases of this nature.

During the hearing, Nuu-chah-nulth supporters crowded into the courtroom to hear all parties' submissions. Those in attendance included Ha'wiih from all five Nuu-chah-nulth Nations, Chief Douglas White, Grand Chief Stewart Philip, Grand Chief Ed John, and members of the Saugeen and Chippewa First Nations of Ontario, who were intervening in the case on behalf of Nuu-chah-nulth Nations. "This case is about a decision to [recognize] the rights of people, something that the United Nations supported," said Vernon

Roote, former Grand Chief and current council member of the Saugeen Nation.

Members of the Nashuk Youth Council also attended the three-day hearing. The youth council is made up of Nuu-chah-nulth youth from a variety of nations. "I wanted to show my support for my people's case and our rights," said Keenan Jules. "My grandfather fished, my uncle

fished...so did a lot of my grandparents' siblings."

When asked if fishing was important to his family, Mitcholos Touchie, another youth council member, said, "eating is." He added that he wanted to keep up to date with the case because he didn't grow up hearing about aboriginal rights. His parents hadn't kept in touch. "I also find it interesting that BC would argue against our case," he said.

The hearing concluded with Canada's response to Nuu-chah-nulth submissions. The three-judge panel will consider all submissions and issue a decision in approximately four to six months.

In the meantime, Nuu-chah-nulth Nations have filed a Notice of Intention to Proceed with the next stage of the court case. This involves going back to the BC Supreme Court to address the question of whether Canada's infringement of Nuu-chah-nulth fishing rights can be justified for legitimate reasons (like conservation) by Canada. This question of "justification" was left unanswered at the conclusion of the original trial.

For a more detailed look at the court case and its developments, visit [www.uuathluk.ca](http://www.uuathluk.ca).

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—Vernon Roote, former Grand Chief and current council member of the Saugeen Nation

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NTC President Cliff Atleo leads Nuu-chah-nulth in a prayer and song prior to the appeal hearing.