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Beaver Lake vs Canada

BRIONY PENN

A Victoria lawyer leads an international case that could eventually force the Canadian government to protect habitat—and stop expansion of the tar sands.

What is the most powerful environmental law in Canada that hasn't yet flexed its might? The first clue is that it is also the oldest law in Canada.

The second clue is that the challenge to flex the strength of this law is being taken up by the largest credit union in the world, based in a Manchester office tower 8,000 miles away.

The third clue is that the law office that has been appointed to argue for this law is in a modest building right in downtown Victoria.

Finally, the fourth clue is that the plaintiff challenging their constitutional right to meaningful habitat for fish, game and other wildlife are called the Beaver Lake Cree Nation from northern Alberta—which carries with it all the irony of the 21st century because, indeed, it is the very beavers that led to this law being enacted in the first place and those beavers have long abandoned the regions that have become an industrial wasteland of tar sands, sour gas, gravel pits and toxic settling ponds.

Beaver Lake Cree Nation vs Regina is testing laws dating back to the Royal Proclamation of 1763 which guarantee that Indian rights to hunt and fish would be protected by the Crown. Two hundred and fifty years later, we are getting to the point—in places like northern Alberta—

where you can travel for days and days and find no caribou, no moose, no wolf, no wolverine, no beaver, no ducks.

“If indeed Canada simply honoured its constitutional obligation of protecting native rights to hunt and fish, we would also protect our biodiversity, our forests, our grasslands, our carbon sinks, our cultural and natural heritage.” So says Jack Woodward of Woodward and Company, who has received funding from the Cooperative Bank in the UK to support the case.

Why Woodward? Why the Beaver Lake band? As Jack explains, “The Co-op members identified climate change as the single biggest issue of our time. They looked around the world for the single biggest new contributor to climate change and found the Alberta tar sands. Then they looked around for the most effective thing they could do to stop the tar sands and they found the legal struggle of the Beaver Lake Cree.”

According to Woodward, who has been fighting for aboriginal rights since his student days at UVic where we was part of the first graduating law class of '78, and authored the text book on the subject, “this case is about Canada's constitutional obligation to protect habitat.”



Tar sands excavation in Alberta.

Under Treaty 6 in 1876, First Nations gave up title to the land for an annual cash payment and a right to hunt and fish forever. The cash payment had no inflation clause, so the right to hunt and fish constitutes the main reimbursement for giving up ownership of Alberta. “Canada has always understood that there would come a time when taking up too much land for industry would impact habitat to such a degree that hunting and fishing rights were rendered meaningless. Now is that time.”

Under a 2005 Supreme Court decision, the Mikisew Cree nation established the principle that fishing and hunting rights had to be protected in a “meaningful” way. That meant not having to travel for three days to find viable moose habitat.

In other words, the Crown has a constitutional obligation not to destroy any more habitat under this ancient law.

As Woodward points out, this is also in line with what we should be doing globally anyway as part of our international obligation to protect nature and forests to slow climate change. “Canada is becoming a pariah state. While Europeans are making sacrifices to contain their emissions, we are flagrantly ripping up the forests and producing the dirtiest oil in the world.” The Co-op is supporting the Cree because they think it could get the biggest bang for their buck in stopping the further expansion of the tar sands.

Why Woodward to represent them? Because he has just successfully helped the Chilcotin people win their 18-year long challenge against Canada and British Columbia for much the same issue on their territorial lands. The Xenii

Gwetin fought successfully for a ruling that industry had to prove that wildlife wouldn’t be impacted before development can occur. That decision is currently being appealed by both Canada and the province. During that case and in many other cases over the last three decades, Woodward has mentored and launched the careers of dozens of aboriginal lawyers, some of whom will be on his team for the Cree/tar sands case.

Woodward doesn’t think that the trial will be a cakewalk. Currently it is under a case management judge in Alberta who has stated that he considers this to be a very important case. If the Cree are successful, Canada could once again become an international leader both for recognizing aboriginal rights and environmental protection.

The ability to win the case will lie in part with the legal prowess of Woodward and his team, the stamina of the Beaver Lake people, and the savings of UK residents. As Canadians we should lend our support too, by asking Canada to stand by its constitutional obligations.

For more info see www.raventrust.com, a charitable organization here in Victoria that supports the Beaver Lake Cree Nation.



Briony Penn PhD is a naturalist, journalist, artist and award-winning environmental educator. She is the author of *The Kids Book of Geography* (Kids Can Press) and *a Year on the Wild Side*.

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