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The case against the Nisga'a Nation

JOHN CARPAY

How long will Chief Mountain have to wait before he finally receives justice?

It was over five years ago that James Robinson Nisga'a Indian Chief Mountain challenged the Nisga'a Agreement in the Supreme Court of B.C. because it violates his constitutional rights as a Canadian.

The Nisga'a Agreement has created a new Nisga'a "nation" in northwestern B.C. The Nisga'a government has power to grant or withhold Nisga'a citizenship even from individuals of Nisga'a descent. This is important because only Nisga'a citizens are allowed to vote in this new, semisovereign country, so that the Nisga'a government can essentially select the voting population. Amazingly, Nisga'a law prevails over Canadian federal and provincial law. The Nisga'a government can pass laws creating offences that carry fines and imprisonment, and can create a police force which is not accountable to the Attorney General of B.C. In short, the Nisga'a Agreement creates a Third Order of government which does not fall under the jurisdiction of Ottawa or Victoria.

Chief Mountain rejects this racebased discrimination: "I have rights as a Canadian and a Nisga'a which are best protected under the Canadian constitution, not a constitution passed by a government controlled by family cliques."

If Chief Mountain's court action fails and similar Agreements are negotiated with other Indian Bands, Canada will soon find itself hosting over 600 semi-independent "nations" within its borders. Canadian taxpayers will be on the hook to finance these semisovereign countries, each with its own laws that will trump Canada's federal and provincial laws.

Canada's constitution allocates political power to only two levels of government: federal and provincial. One would think that the federal, B.C. and Nisga'a governments would be eager to know whether or not the Nisga'a Agreement is valid under Canada's constitution. But rather than seeking resolution to this central question, the three governments have used every conceivable delay tactic to prevent Chief Mountain's claim from reaching trial.

At one point the defendant governments filed an application demanding to know the addresses of Chief Mountain and other plaintiffs. This demand for addresses was unnecessary and unusual, and could only serve to intimidate the plaintiffs in a context where the aboriginal government has power to grant or deny benefits such as jobs, fishing licenses, housing, electricity, and funding for postsecondary education. To hold matters up further, the governments demanded to know whether and when Chief Mountain and other plaintiffs had voted in elections under the new Nisga'a Regime.

In yet another pretrial application, the defendant governments demanded to know when Chief Mountain and other plaintiffs had applied to be enrolled as "citizens" in the new Nisga'a "nation." This request is comparable to the Motor Vehicle Department asking you when you applied for your driver's licence. Would you remember the date? Even if you did, the Motor Vehicle Department itself would have that information on file; why would it ask?

On Oct. 31, the presiding judge granted the government's request to strike Chief Mountain's claim on purely procedural grounds. Appealing this decision to the B.C. Court of Appeal will add another

six to nine months to Chief Mountain's quest for justice.

After five years and seven months of stalling, the three defendant governments can still afford to continue delaying trial, as they draw on practically unlimited funds from taxpayers. But Chief Mountain, carpenter, husband, and father of two teenaged children has very limited resources. Starving the plaintiffs into submission appears to be one of the governments' strategies.

Perhaps the governments are hoping that, with the passage of time, a judge might feel reluctant to undo what has already existed for years, especially when millions of tax dollars have been spent to set up a Third Order of government. But a treaty or other law, if unconstitutional, is always unconstitutional, no matter how long it takes for the tainted law to come before the courts. If the courts are to comply with basic justice, the defendant governments' shameful delay tactics should not discourage a judge from declaring the Nisga'a Treaty unconstitutional.

The governments' concerted efforts to avoid trial speak to their lack of confidence in their own case. Thanks to the generosity of individuals across Canada, and thanks to the legal team's willingness to discount fees and postpone payment, Chief Mountain's legal challenge has survived thus far. Canadians can only hope that Chief Mountain's persistence and thirst for justice will prevail.