

November 13, 2009

Top court ruling could affect Yukon First Nations: lawyer

By CBC News

Government and First Nations leaders and lawyers from the Yukon and across Canada appeared before the Supreme Court of Canada on Thursday, in a case that could set a precedent in land-claims law.

Government and First Nations leaders and lawyers from the Yukon and across Canada appeared before the Supreme Court of Canada on Thursday, in a case that could set a precedent in land-claims law.

Half a dozen Yukon chiefs, as well as government bureaucrats and more than a dozen lawyers, packed the Supreme Court in Ottawa to present arguments in a five-year-old battle between the Yukon government and the Little Salmon Carmacks First Nation of Carmacks, Yukon.

At issue is the Yukon government's duty to consult with First Nations on development on the First Nation's traditional lands, and whether that duty should extend beyond what is laid out in their land claims.

The Little Salmon Carmacks First Nation says it was not properly consulted before the Yukon government approved an agricultural lease on its territory.

The government has argued it did what was required under the First Nation's finalized land claim.

The Yukon government is appealing two lower court rulings that say it has a duty to consult with First Nations about developments in their traditional lands.

"The position taken by Yukon that it has no duty to consult beyond that [which is] explicitly set out in the final agreement will have a serious adverse impact on the subsistence harvesting rights of CYFN members, which are treaty rights within the final agreements," Vancouver lawyer James Coady, who represented the Council of Yukon First Nations, told the court Thursday.

Given the potential impact the Supreme Court's decision could have nationwide, the court also heard from the federal government, several provincial governments and a number of aboriginal groups from across Canada on the Yukon case.

Should the court rule in favour of the Yukon government, Coady said First Nations that currently do not have a signed land claim may lose incentive to negotiate one in the future.

"The outcome of this appeal will affect all CYFN members who have signed a final agreement and may dissuade other CYFN members from signing a final agreement," Coady said.

The Supreme Court justices did not say when they will announce a decision.

While the court hearing was underway, a handful of people waved placards on the street outside the Whitehorse courthouse, hoping to draw attention to the legal fight.

"We've got now four provinces involved, and numerous First Nations from across Canada," said Susan Davis, who attended the Whitehorse protest.

"They need to redirect their focus and their efforts and our money, and they shouldn't be appealing this decision."