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## Court of Appeal Reserves Judgment on Further Arguments in Haida Nation Case

June 5, 2002

The British Columbia Court of Appeal has heard further submissions on whether private companies are subject to a duty to consult with aboriginal groups about infringements of their aboriginal rights or title.

On February 27, 2002, the B.C. Court of Appeal released its decision in *Haida Nation v. British Columbia and Weyerhaeuser*, 2002 BCCA 147. The Haida Nation had challenged the Province of British Columbia's decision to approve the transfer of a Tree Farm Licence and to grant a replacement of that Licence to Weyerhaeuser Company Limited on the Queen Charlotte Islands. The Haida Nation argued that the Province had not consulted with the Haida about the transfer and replacement, and that the transfer and replacement therefore unjustifiably infringed on the Haida Nation's aboriginal rights and title.

The Haida Nation's judicial review application was dismissed at the trial level on the grounds that the Haida Nation had not established the existence of their aboriginal rights and title through a court decision, and therefore the Province was under no obligation to consult with them.

The Court of Appeal, in its February 27 decision, reversed that decision. The Court of Appeal held that the Province was obligated to consult with the Haida Nation about the transfer and replacement of the Licence, because there was a reasonable prospect that the Haida Nation had aboriginal rights or title which could be affected by the Province's decision. However, the Court of Appeal went on to say that Weyerhaeuser also has a legally enforceable duty to consult with the Haida Nation.

Weyerhaeuser applied to the Court of Appeal for a rehearing of this question. On April 5, 2002, Mr. Justice Lambert directed that the Court of Appeal would hear submissions on the following questions:

- ▶ As the question of Weyerhaeuser's duty was not raised in the pleadings or argued before the Supreme Court or the Court of Appeal, should the Court of Appeal have pronounced on Weyerhaeuser's duty?
- ▶ If that question was properly before the Court of Appeal, was the Court of Appeal correct in finding that Weyerhaeuser was subject to the duty to consult with the Haida Nation?



A hearing was held before the same Court of Appeal panel on Tuesday, June 4, 2002. The Court of Appeal heard submissions from Weyerhaeuser, the Province, the Haida Nation and three interveners.

The Court of Appeal reserved judgment at the conclusion of the hearing, but gave no indication of when it would render judgment. We will provide a further update on this important matter when the Court of Appeal releases its decision.

For more information on this important decision, or on other aboriginal law issues, please contact any of the members of Lawson Lundell's Aboriginal Law Group:

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