

## Arguments in Site C dam court case represent 'cynical denial' of Indigenous rights: B.C. Indian Chiefs

Posted by Joan Russow  
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BC Hydro lawyers argue Treaty 8 never guaranteed any "practical, traditional, cultural, or spiritual connection to any land" for First Nations  
By Sarah Cox Aug 7, 2018

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Grand Chief Stewart Phillip with his wife Joan Phillip at the 2017 Paddle for the Peace.

The Union of B.C. Indian Chiefs has taken the unusual step of writing an open letter to Premier John Horgan denouncing legal arguments made last week by BC Hydro as a form of "neo-colonization" and demanding a formal apology from the provincial government.

BC Hydro's lawyers made the arguments during ongoing B.C. Supreme Court hearings for an injunction application by West Moberly First Nations to halt work on the Site C dam on B.C.'s Peace River, pending a full civil trial to determine if the \$10.7 billion project violates treaty rights.

"We call on you to publicly denounce these statements that diminish Indigenous rights in an open letter to the B.C. Supreme Court, and to apologize formally for the disrespect shown to the Treaty 8 First Nations," said the letter, signed by Grand Chief Stewart Phillip, president of the Union of B.C. Indian Chiefs (UBCIC), as well as vice-president Chief Robert Chamberlin and secretary treasurer Judy Wilson.

The UBCIC executive told Horgan and Eby there can be no lasting reconciliation while the rights of Indigenous peoples "are being trampled upon, diminished, and frozen in the past."

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“There can be no trust in your government while the words you say to the public ring false in the courtrooms where Crown corporation lawyers perpetuate neo-colonization.”

Grand Chief Stewart Phillip with his wife Joan Phillip at the 2017 Paddle for the Peace.

As an example of BC Hydro legal arguments the UBCIC said were “consistently diminishing the rights of First Nations,” the letter pointed to BC Hydro’s claim in court that Treaty 8 was never intended to protect First Nations “practical, traditional, cultural, or spiritual connection to any land.”

“This is an arbitrary, one-sided interpretation of the Treaty that runs contrary to the principles of Treaty interpretation already recognized by the courts, and contrary to the spirit of reconciliation,” wrote the executive.

Amnesty International spokesperson Craig Benjamin called the letter “a bit of a bombshell” and said as far as he knows it is unprecedented.

“I have never seen anything like it, to be honest,” he told The Narwhal.

“What really strikes me is they’re not just denouncing the negative and inappropriate arguments used by [BC] Hydro. They’re actually saying, ‘Look Premier Horgan and Attorney General Eby, you have a responsibility now. You have to correct the record. You have to apologize for the insult to Indigenous culture and history and you have to set the record right on how the province understands the rights of Indigenous Peoples.’ ”

Amnesty International Canada has called the rights of Indigenous peoples “our biggest challenge and our most serious responsibility when it comes to improving Canada’s human rights record.”

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The letter highlighted what the UBCIC called an “unacceptable and disconcerting gap” between the NDP government’s political commitments to reconciliation and Indigenous rights, and the stance taken by BC Hydro in the courtroom.

Horgan’s government has committed to fully implement the minimum human rights standards affirmed in the UN Declaration on the Rights of Indigenous Peoples, as well as the calls to action of Canada’s Truth and Reconciliation Commission.

The UBCIC executive also took aim at BC Hydro’s assertion that the “meaningful right” protected by Treaty 8 “can be reduced to the simple act of hunting, fishing or trapping devoid of the traditional knowledge, protocols and oral histories that make these acts so meaningful and essential to First Nations.”

“This cynical denial of Indigenous peoples’ own understanding of their rights is the basis for BC Hydro’s unscrupulous denial of the crucial importance of the Peace River Valley to Treaty 8 Nations,” said the letter.

It pointed out that B.C.’s Hydro’s oral arguments “also demonstrated disrespect for the wisdom of First Nations elders and tradition keepers, treating their oral evidence as little more than hearsay.”

Benjamin said commitments made by the federal and provincial governments to uphold the UN Declaration on the Rights of Indigenous Peoples and work towards reconciliation signaled an important shift for legal cases such as the West Moberly First Nations’ injunction application.

West Moberly First Nations and Prophet River First Nation filed a civil suit in January claiming that the Site C dam and two previous dams on the Peace River are an unjustified infringement on their constitutionally protected rights under Treaty 8.

Until now, it has been generally accepted that government lawyers can go into court and use every argument at their disposal “to fight against recognition and respect for Indigenous rights,”

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no matter what the same governments say in the public sphere, Benjamin said.

But now government lawyers are expected to be “accountable to the promises made by government in the kinds of arguments they make in court,” he said.

Amnesty International — which has singled out the Site C project for violating human rights — is “intensely following” the B.C. Supreme Court case, according to Benjamin, Amnesty Canada’s campaigner for the human rights of Indigenous peoples.

Site C would flood 128 kilometres of the Peace River and its tributaries, destroying dozens of recorded sites of cultural and spiritual significance for First Nations, including Indigenous burial grounds, and contaminating bull trout and other fish with highly toxic methylmercury.

Benjamin said the UBCIC letter makes “perfect sense.”

“If a government is genuinely committed to upholding the rights of Indigenous peoples it has to do that in a consistent way. It can’t say, ‘we’re going to uphold the rights when it’s convenient for us but if there’s an argument we want to win in court we will throw all that out the window.’ ”

Benjamin said a recess in the B.C. Supreme Court proceedings this week is an ideal opportunity for government lawyers to review their arguments.

If BC Hydro were to persuade the court to accept their interpretation of Indigenous rights, it would “turn the clock back,” Benjamin said.

“You really have to ask, does the Horgan government — having been elected in B.C. with all of these promises for Indigenous peoples — does it want to be the government that’s responsible for turning the clock back?”

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Horgan's office, when contacted for comment, referred questions to Eby's office because the premier is out of town. Eby's office said it could not respond by the time of publication.