



TREATY RELATIONS
COMMISSION OF MANITOBA

LET'S EXPLORE

TREATY TURNING POINTS



WHAT
ABOUT..?



THE DELGAMUUK CASE

THE DELGAMUUK CASE, 1991

The Supreme Court of Canada's decision in the Delgamuukw (DEL-ga-mook) case was widely seen as a turning point for Treaty negotiations.

BACKGROUND

When British Columbia joined Canada in 1871, the province did not recognize Indigenous title over land and did not engage in a Treaty process with First Nations. As a result, most of the land in British Columbia was not guided by a Treaty relationship between First Nations and the Crown.

The Gitksan and Wet'suwet'en Nations tried to negotiate authority and ownership of their traditional territories in the 1970s with little success. The B.C. government began to allow logging operations in their traditional lands without consulting with hereditary chiefs.

SUPREME COURT OF BRITISH COLUMBIA

In 1984, after years of failed discussions with British Columbia the hereditary chiefs filed a land title action with the Supreme Court of British Columbia. The lawsuit claimed title to over 58,000 km² of land in northwestern B.C. They wanted to protect the land from logging and to have the province officially recognize their ownership as well as award compensation for any loss of land. The trial began in 1987.

During the trial, Gitksan and Wet'suwet'en Elders testified about their land using oral histories and in their own languages.

The B.C. government claimed that the Gitksan and Wet'suwet'en had no right to the territory. Among other things, the judge placed little value on the oral histories, totem poles, and crests as proof because he felt they were not reliable or site specific. He also felt that their legal system was too flexible and uncertain to be classified as "law" and dismissed the land claim.

On appeal, the British Columbia Court of Appeal mostly upheld the trial judge's ruling.

Indigenous title: the inherent Indigenous right to land or a territory.

Oral history: oral/spoken transmission of stories, histories, lessons and other knowledge.

Duty to consult: When governments make decisions that could affect Indigenous peoples or Treaty rights, they have a legal duty to discuss these with Indigenous communities that might be impacted.

THE DELGAMUUK CASE, 1997

DELGAMUUKW V. BRITISH COLUMBIA

In 1994, the Supreme Court of Canada ordered a new trial because the trial judge had failed to properly consider evidence that was given in the form of oral histories. The trial concluded in 1997.

COURT CASE BRITISH COLUMBIA, SUPREME COURT OF CANADA

The Delgamuukw case decision is an important one because:

- it provides information about the definition and content of **Indigenous title** to land.
- it clarifies the government's **duty to consult** with Indigenous peoples,
- and affirms the legal validity of **oral history**.

The outcome of this case defined the relationship between traditional Indigenous laws, oral histories, traditional leader's/chiefs' authority, and Western society's laws.

SHARE YOUR UNDERSTANDINGS

- Create a timeline capturing the key events of the Delgamuuk case.
- Why is the case considered a turning point in Treaty negotiations between Indigenous peoples and the Crown?

INDIGENOUS TITLE HAS THREE KEY FEATURES:

- 1.** It cannot be transferred or sold to anyone other than the Crown.
- 2.** It arises out of the fact that Indigenous peoples lived in Canada before European contact.
- 3.** It is held communally, meaning it is a right belonging to all members of an Indigenous nation.

