
Ottawa Pays \$25-Million to Settle Mackenzie Dispute

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CALGARY – Ottawa is paying a small first nation in northern Alberta \$25-million to settle a case in which the Federal Court ruled that Ottawa did not adequately consult the band about the proposed Mackenzie Valley natural gas pipeline that would terminate on their traditional land.

The federal government has been stung repeatedly over its mishandling of aboriginal consultations following two landmark 2004 Supreme Court decisions in cases from British Columbia that ruled the Crown had a moral and legal obligation to conduct meaningful consultations when industrial development is proposed for aboriginal land where the title is in dispute.

On Monday morning, Minister of Indian Affairs Jim Prentice described the settlement with the Dene Tha First Nation of northwestern Alberta as a clear demonstration Ottawa is fixing the situation, which has caused considerable uncertainty and added months of delays to the now 19-month old public review of the Mackenzie pipeline.

“With this agreement, we have demonstrated that Canada is committed to meaningfully consult with aboriginal groups and, where appropriate, to accommodate their concerns with respect to how the Mackenzie gas project may affect their communities,” Mr. Prentice said in a statement.

The larger issue of what constitutes meaningful consultation is still unsettled. After the Federal Court ruled against Ottawa and in favour of the Dene Tha last November, the government filed a notice of appeal the next month. The government on Monday said the appeal is ongoing, independent of the \$25-million settlement.

“[It] continues in the interests of seeking greater clarity of the law on aboriginal consultation,” the government said in background information on the settlement.

Ottawa's failure to properly consult has hurt several huge energy projects. A 1,150-kilometre oil sands pipeline called Gateway, proposed by Enbridge Inc.,

to connect Edmonton with the west coast of British Columbia for export to China, has been shelved for several years in part because of concerns over aboriginal rights along the route, which is land that consists of mostly unsettled land claims.

The 1,200 kilometre Mackenzie pipeline, which would carry gas from the Mackenzie Delta to northern Alberta, was dogged in 2004 and 2005 by two lawsuits against the government from the Dehcho First Nations of the southwestern NWT, who said they had been unfairly cut out of the review process.

Two years ago this month, Ottawa paid \$31.5-million to settle the legal cases, in which decisions hadn't been rendered.

Last Friday, the federal court again ruled against Ottawa in a case involved a small band called the Ka'a'Gee Tu First Nation, part of the Dehcho and based near the town of Hay River. The first nation filed two applications with Federal Court, alleging that Ottawa hadn't properly consulted over proposed natural gas drilling by Paramount Resources Ltd. The Ka'a'Gee Tu won, with the Federal Court ordering all sides back to the table to discuss the parameters of potential development.

The situation is improving under Mr. Prentice, according to Bob Freedman, the leading lawyer in this area of law, but change hasn't filtered through to the Department of Indian Affairs.

“My message is that the federal government does not seem to understand what the courts keep telling them. The Crown is not listening,” said Mr. Freedman, a lawyer at Cook Roberts LLP who is counsel to the Dene Tha, but is not involved in the Paramount case. He spoke with The Globe and Mail on Sunday.