

Nova Scotia

N.S. government must consult Mi'kmaq on financing of effluent plant, court rules



Duty to consult includes issue of whether funding should be provided at all: judge

The Canadian Press · Posted: Dec 03, 2018 7:46 PM AT | Last Updated: December 3, 2018



The Northern Pulp mill is seen in Abercrombie, N.S., on Wednesday, Oct. 11, 2017. (Andrew Vaughan/Canadian Press)

A Nova Scotia Supreme Court decision says the province must consult with a Mi'kmaw community about how public money is provided to a pulp mill that has sent its effluent into an estuary near the band for five decades.

Justice Timothy Gabriel ruled Friday that if the province becomes a financial backer of Northern Pulp's effluent treatment plant, that raises questions on whether the level of funding will mean "upgraded safeguards" in light of what the people of Pictou Landing First Nation have endured.

Gabriel said if the government consults on environmental aspects of the plant's construction, it should take a "holistic" approach and also consult on the financing it is willing to provide.

He said the two issues are linked, giving the example of how funding could be tied to a system of penalties based on whether emission and effluent discharge targets are reached by the new system.

Duty to consult

The judge concluded the Crown has a duty to consult with the First Nation, including on the issue of whether funding should be provided at all.

"The consultations between the parties must necessarily include ... whether the province should fund the construction and design of the effluent treatment plan and pipeline, and, if so, what form that financing will take," he wrote.

Provincial legislation requires the closure of effluent flowing to a facility at the heavily polluted Boat Harbour lagoon by Jan. 31, 2020.

The commitment was made by Stephen McNeil's government in 2015 to the Pictou Landing First Nation after five decades of the wastewater flowing into the estuary on the edge of the community.

Gov't reviewing decision

The province has also indicated it is in discussions with Northern Pulp regarding Crown funding for the treatment facility for effluent from the bleached kraft mill at Abercrombie Point, N.S., though the amount it may contribute remains unclear.

Brian Hebert, the lawyer for the Pictou Landing First Nation, said in an interview that the court decision means the band can demand information about how the money provided by the

province would extend the life of the plant — and what impact that might have in terms of potential air pollution.

A spokesman for the Office of Aboriginal Affairs said the province is reviewing the judge's decision and "considering the direction from the court as we look at next steps in the ongoing consultation with Pictou Landing First Nation."

"Justice Gabriel's decision did dismiss the First Nation's claims of procedural unfairness and noted the novel nature of the issue raised, and that both parties sought guidance from the court in good faith," wrote spokesman Gary Andrea.

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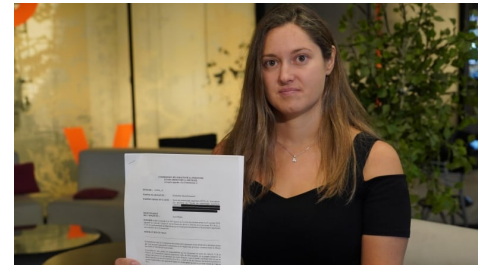
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