

# Court case to test provincial authority over logging permits

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Special to Wawatay News

After nearly a decade of fighting to keep logging contractors from clear-cutting the forests on their traditional lands, Grassy Narrows is finally getting its day in court.

Underway in the Ontario Superior Court of Justice since Oct. 6, the outcome of the case is expected to determine whether Ontario's Ministry of Natural Resources has the legal authority to issue logging permits to contractors looking to operate on land that supports First Nations communities.

The northwestern Ontario community of about 800 has been blockading logging roads leading into its territory since December 2002.

"We wanted to bring Ontario to court for treaty rights violations and overharvesting of wood and we wanted to by way of judicial review," said J.B. Fobister, a Grassy Narrows trapper and spokesperson for the community.

Under the terms of Treaty 3, signed in 1873 between the Anishinaabe First Nations and the Government of Canada, the two sides would "share" the land and resources in the area, but the people of Grassy Narrows would retain rights to use the land in order to continue pursuing their culture and way of life.

That included traditional economic pursuits like fishing, hunting and trapping, Fobister said.

In court, the community is arguing by allowing contractors to clear-cut entire sections of the Whiskey Jack Forest – which is



Supporters of Grassy Narrows block part of the Trans-Canada Highway during a July 2007 rally against logging in the community.

Wawatay News file photo

forcing moose and pine marten populations out of the area – the government is violating the treaty by preventing the Grassy Narrows community from pursuing its traditional way of life.

Hunting and trapping the local wildlife represents the main source of livelihood for

Grassy Narrows residents; they argue its disappearance would effectively destroy their way of life.

"We're not totally against logging, we're against the way logging is done," said Fobister. "What we're after really is to limit the amount of harvesting

that can happen."

He suspects in taking the issue to trial, the province was trying to coerce the cash-strapped community into dropping its claim.

"We felt they did this just to prevent us from going any further because we didn't have any

money to fight this in a trial," Fobister said.

Based on a precedent set in British Columbia with the case of Okanagan Indian Band v. Minister of Forests, Justice Nancy J. Spies ordered the province to cover the community's court costs.

"Ontario would be paying a relatively small portion of the revenues it derives from forestry in the Whiskey Jack Forest to have tested, once and for all, the constitutionality of those activities, which are being carried out at the expense of Grassy Narrows," Spies wrote in explaining her decision to award costs in advance of trial.

"Ontario is committed to respecting treaty rights and upholding the honour of the Crown," reads the opening of an official statement from the Ministry of Natural Resources.

Unconvinced, Fobister believes Ontario's true commitment is to the significant revenue generated by issuing lucrative logging permits.

"When stuff like this happens the government makes lots of money as does the company that is doing all the cutting," said Fobister. "So it is all about the money and there is no consideration for animals and people."

In 2007, the report of the Ipperwash Inquiry recommended the establishment of a Treaty Commission of Ontario, the main purpose of which would have been to help mediate disputes just like this one. The millions this case is expected to cost the province in legal fees and expert testimony could conceivably have been used to fund such a commission.

The trial resumed Nov. 16. William Fobister, a Grassy Narrows Elder in his mid-60s and great-great-grandson of one of the original signatories of Treaty 3, was expected to testify.

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