

Alberta, Shell try to quash aboriginal challenge to oilsands leases

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Bob Weber, THE CANADIAN PRESS

EDMONTON - The Alberta government and Shell Canada (TSX:SHC) were in court Tuesday trying to quash an aboriginal band's attempt to halt oilsands development on traditional lands.

If successful, the band's challenge could force major changes in how the province handles resource development.

"It's very clear to us why Alberta is pulling out all the stops to keep our case from being heard," said Chief Allan Adam of the Athabasca Chipewyan First Nation.

"If we're successful, it will threaten the expansion of tar sands and fundamentally change how oil and gas is developed in Alberta."

In late 2006 and early 2007, the provincial government sold five oilsands exploration leases to Shell Canada that were all within 20 kilometres of the band's reserve. They are also on land band members have long used for ceremonial and subsistence purposes.

"In Alberta, government and industry are working as fast as they can behind closed doors to sell off the rights to develop the traditional homelands of First Nations without a word of consultation before these deals are done," band lawyer Robert Janes outside court.

Several courts, including the Supreme Court, have ruled the Crown has a duty to consult aboriginals regarding development on their land.

Last December, the Athabasca Chipewyan First Nation filed an application for a judicial review of the energy minister's decision to approve the sales. At the time, experts said that any ruling overturning the minister's decision would force Alberta to drastically revamp how it deals with all its resource industries.

On Tuesday, lawyers for the province and Shell argued that the application should be thrown out because the band didn't file its objections until well after the six-month period allowed under Alberta law. Shell lawyer Bruce Mellett said businesses need to know that once decisions are made, they can't be unmade.

"This speaks to the value of certainty and finality that is essential for administrative decision-makers," said Mellett. "The (time) limitation recognizes the need to be able to rely on a decision if it is not challenged within the time limit."

Both sides acknowledge that the band was never officially notified that the leases had been sold.

Government lawyer Stephanie Latimer pointed out that the information on lease sales is published on the Internet. She also said the band was told in June 2006 about an online link that detailed land about to come up for lease sale.

"The duty to consult cannot insulate First Nations from their own need for due diligence," she said.

The nature of the lease sales, however, oblige Alberta to consult with area aboriginals, the band argues in court filings.

It cites terms of the sales that oblige companies to carry out work within a certain time period. That means the lease necessarily leads to at least some activity on the land, creating a duty to consult before exploration bids are even considered.

The land in question is heavily used by aboriginals as a source for medicinal and sacred herbs and for subsistence hunting and gathering. It also contains burial sites, said Adam.

"The Richardson backcountry is dear to our very existence," he said outside court. "Whatever's left of it, we have to protect for future generations."

"This is our last stand, to come to the courts."