



## **Appeal Court backs Halalt First Nation; denies Chemainus wells pumping**

Chemainus water users will continue to get water from a surface supply after the B.C. Court of Appeal denied the District of North Cowichan's application to pump groundwater from its \$6 million Chemainus River wells on Tuesday (Oct. 11).

The municipality asked the appeal court to allow it to pump from the wells from October 15 to June 15 while the district's and province's Supreme Court appeals are being heard. In July, a judge of the B.C. Supreme Court ruled that the province had approved the wells project without proper consultation and accommodation with the Halalt First Nation. The Supreme Court suspended the district's right to pump groundwater until the province honours its constitutional responsibilities. .

In a Vancouver courtroom filled with Halalt community members, the First Nation's lawyer argued that if the court allowed the district to pump during the coming months, there would be no incentive for the province to consult and accommodate.

Appeal court judge Elizabeth Bennett ruled in Halalt's favour, concluding that allowing pumping to resume would cause greater harm to the First Nation than limiting the district to surface water supply would cause to the estimated 6,000 water users in Chemainus.

"If the evidence supported that there was a real health risk to members of the community, I would not hesitate granting an order," the judge said. But, she said, "Nothing (in the evidence) outweighs the constitutional rights of Halalt First Nation."

Earlier in the hearing, as the North Cowichan argued about a safe water supply for Chemainus residents, Judge Bennett said: "Inferior drinking water is supplied to people all over this country. The issue is, is it safe? Many communities in this country that have permanent boil water orders." She said, "Balancing fundamental constitutional rights with public health, the public health evidence from Chemainus is not terribly strong."

Halalt's lawyer William Andrews's argued that the issue before the court was not about water, but about reconciliation of the interests of First Nations and non-First Nations. He pointed to evidence from Halalt Chief James Thomas that noted since the Supreme Court ruling in July, neither the province nor the district had approached Halalt to start meaningful consultation.

Attending the hearing was the Union of BC Indian Chiefs vice-president Bob Chamberlain, the chief of Kwik'wasutinuxw Haxw'mis (Gilford Island) First Nation. The UBCIC was one of the earliest supporters of Halalt's campaign over the past eight years.

"I think that this is the first court proceeding on Aboriginal rights to water," Chamberlain said of Judge Wedge's landmark decision last summer. "This is huge. I am so happy.

Meanwhile, Halalt Chief James Thomas thanked his community members who travelled to attend the hearing.

"We will be back here for the appeal next year," he said. "But meanwhile, our river and the aquifer is safe."

**Note – Lawyer William Andrews can be contacted for media enquiries at 604-924-0921.**