

# Top court upholds aboriginal logging rights on Crown land

**Last Updated: Thursday, December 7, 2006 | 11:25 AM ET**

CBC News

Native people have the right to log Crown lands for personal use, the Supreme Court ruled Thursday in a unanimous judgment on two New Brunswick cases.

The high court judges decided three New Brunswick men who took Crown wood to make furniture, build a home and burn as firewood were exercising their treaty rights, not stealing.

**'A practice undertaken for survival purposes can be considered integral to an aboriginal community's distinctive culture.'**

*-Supreme Court decision*

The ruling upholds the decision of the lower courts in New Brunswick, who also ruled in the men's favour.

"The respondents possessed an aboriginal right to harvest wood for domestic use," the judges wrote in their summary.

In 2005, the Supreme Court has ruled against aboriginal people's rights to log Crown lands for commercial purposes — but these men were clearly logging for personal use, the court said.

Darrell Gray, who is Mi'kmaq, was originally charged in 1999 for taking maple trees from Crown lands near three reserves. Clark Polchies and Dale Sappier, both Maliseet, were charged two years later for harvesting trees on Crown land without a licence.

The Supreme Court judges ruled that both Mi'kmaq and Maliseet people logged wood on those lands long before Europeans arrived in North America.

The judges said records show the wood was historically used for shelter, transportation, tools and fuel. It was key to native people's survival.

"A practice undertaken for survival purposes can be considered integral to an aboriginal community's distinctive culture," the judges wrote in their summary.

## Historic uses must be allowed to evolve: judges

The judges said the right to harvest the wood must be allowed to evolve with the times. Historically, natives used the wood to build temporary shelters, but now the right must be allowed to evolve to the construction of modern homes, they wrote.

They stressed that the wood cannot be sold, traded or bartered for money, even if the money is used to build another home.

The judges' decision follows a long legal battle.

After lower courts and the New Brunswick Court of Appeal ruled in the favour of the men, the Crown appealed to the Supreme Court.

Gray is a member of the Pabineau First Nation Mi'kmaq and Sappier and Polchies belong to the Woodstock First Nation.