



SCC upholds aboriginal logging rights

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Natives must be permitted to cut down trees on Crown land for personal use, the Supreme Court of Canada ruled in a unanimous judgment on Thursday.



The top court judges ruled that three New Brunswick men who cut trees from Crown land were exercising their aboriginal and treaty right to harvest timber for their own use.

The ruling, which is a potentially far-reaching judgment on aboriginal rights, says harvesting wood for survival purposes was integral to the distinctive culture of the Mi'kmaq and Maliseet peoples.

"The nature of the right cannot be frozen in its pre-contact form but rather must be determined in light of present-day circumstances," the ruling says.

"The right to harvest wood for the construction of temporary shelters must be allowed to evolve into one to harvest wood by modern means to be used in the construction of a modern dwelling."

But the ruling emphasizes that harvest wood cannot be sold, traded or bartered for commercial gain.

The judgment also says that the right is geographically limited to Crown lands traditionally harvested by First Nations.

"An aboriginal right can be based on evidence showing the importance of a resource to the pre-contact culture of an aboriginal people," the ruling says.

"The evidence in these cases established that wood was critically important to the pre-contact Maliseet and Mi'kmaq, and it can be inferred from the evidence that the practice of harvesting wood for domestic uses was significant, though undertaken primarily for survival purposes."

The court had already ruled against aboriginal rights to log Crown lands for commercial purposes.

But the judges agreed to hear the Crown's appeal after the New Brunswick court of appeal upheld lower court rulings that absolved native men from taking timber for personal use.

Darrell Gray, of the Pabineau First Nation Mi'kmaq, was originally charged in 1999 after taking maple trees from Crown land near the reserve and two others from the Woodstock First Nation.

Gray argued that he cut down the trees to make furniture.

The trees were bird's-eye maple, an extremely valuable wood used for fine furniture, cabinetry and the dashboards of high-end automobiles.

Two others from the Woodstock First Nation were charged in 2001 after they harvested trees on Crown land without a licence.

Clark Polchias and Dale Sappier contended they were to use the trees for the construction of a house and the rest for community firewood.

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