



Case in Brief: ***Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani-Utenam)***

Judgment of February 21, 2020 | On appeal from the Court of Appeal of Quebec
Neutral citation: 2020 SCC 4

Quebec courts can decide whether mining harmed an Indigenous people's traditional territory, even though part of the territory is in Newfoundland and Labrador, the Supreme Court has ruled.

The Innu are First Nations. They have lived in what is now Quebec and Newfoundland and Labrador since long before Europeans arrived. Around 1950, a large mining project started. It spanned both provinces. The Innu said it was on their traditional territory. They said the mining companies didn't ask permission to mine there. In 2013, the Innu sued the companies. They said the project prevented them from enjoying and moving around their territory. The Innu asked for three things. They asked for the companies to stop work on the project. They asked the companies to pay them for damages. And they asked the court to declare they had aboriginal title and other aboriginal rights over their traditional territory.

The Innu sued in Quebec. But they were asking Quebec courts to make a declaration about aboriginal title and rights over their whole traditional territory. Part of it is in Newfoundland and Labrador. The Government of Newfoundland and Labrador said Quebec courts weren't allowed to make a declaration affecting Newfoundland and Labrador.

The lower courts said Quebec courts could decide all the issues.

The majority of judges at the Supreme Court agreed with the lower courts. The judges looked at rules about how courts deal with issues that cross borders. They also looked at the nature of aboriginal title and rights.

Courts in a province generally can decide cases within their borders. But they have rules to deal with issues that cross provincial borders. Quebec courts have the power to decide cases where the person being sued (the defendant) lives in Quebec. This is true even if the lawsuit is related to something that happened outside Quebec. The rules are different if the lawsuit is about property outside Quebec, though. In this case, both mining companies were based in Montreal. This meant the Innu could ask Quebec courts to make them pay damages and to stop mining work.

The majority noted that having aboriginal rights and title to land isn't the same as owning property. The concept of property ownership comes from civil and common law (legal traditions that arrived with Europeans). Aboriginal title is different. It belongs to a group, not an individual. It's for the benefit of future generations, not just the current one. And it can't simply be sold. Aboriginal title is really about the relationship between "the Crown" (Canada) and Indigenous groups. The Crown has an obligation to act honourably within this relationship. This is called "the honour of the Crown." The majority said the honour of the Crown must always be interpreted in a way that brings us closer to reconciliation.

Section 35 of the Constitution specifically recognizes aboriginal and treaty rights. It acknowledges that Indigenous peoples lived in what we now call Canada before Europeans arrived. It also acknowledges that the Crown has sovereignty (the power to govern). Section 35 is meant to find a way to work within these two realities. Since aboriginal rights existed before Crown sovereignty, the majority said provincial borders shouldn't affect those rights. That means groups like the Innu shouldn't have to fight the same legal battle in courts in different provinces applying the same law. This would lead to more cost and confusion. It could even mean the Innu wouldn't be able to pursue their rights. This would go against the honour of the Crown.

This decision didn't say whether the Innu should get what they were asking for. It only said Quebec had the power to make a declaration about aboriginal rights and title over the Innu's traditional territory. Quebec courts could do this even though some of that territory was in Newfoundland and Labrador. (Quebec courts could still say it was more appropriate for courts in Newfoundland and Labrador to decide, though.) Even if the Quebec courts said the project violated the Innu's aboriginal rights and title, they couldn't force Newfoundland and Labrador to do anything. The Innu would still have to negotiate with the government or go to court in that province.

In this case, the Court looked at reconciliation and the honour of the Crown. It had to decide how to apply these concepts when deciding which court had power to decide on aboriginal rights and title. The Court previously dealt with the honour of the Crown in [*Mikisew Cree First Nation v. Canada \(Governor General in Council\)*](#).

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Breakdown of the decision: *Majority:* Chief Justice Richard [Wagner](#) and Justices Rosalie Silberman [Abella](#) and Andromache [Karakatsanis](#) dismissed the appeal (Justices [Gascon](#) and [Martin](#) agreed) | *Dissenting:* Justices Russell [Brown](#) and Malcolm [Rowe](#) said Quebec courts didn't have the power to decide aboriginal rights and title in Newfoundland and Labrador, and suggested courts in different provinces should hold joint hearings to deal with interprovincial claims (Justices [Moldaver](#) and [Côté](#) agreed)

More information (case # 37912): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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