

# The Advertiser

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## Land rights rush likely

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Author: MICHAEL McKINNON in Canberra

A LANDMARK decision by the Canadian Supreme Court has handed mineral rights to indigenous people in a ruling with consequences for Australia.

The decision by the court which considered Australia's Mabo case in its deliberations will almost certainly be reviewed by Australia's own High Court.

Efforts to resolve the land rights issue in Canada has paralleled the Australian experience in many respects, prompting speculation the ruling could lead to a deluge of claims over mineral projects in Australia.

It is common practice for courts, particularly in British-law based jurisdictions, to review the decisions by equivalent courts. Australia's High Court is already deliberating on the Aboriginal-related Hindmarsh Island case and is likely to hear challenges to the Government's Wik legislation if passed.

But the crucial aspect of the Canadian judgment is its view that "Aboriginal title encompasses mineral rights" which could lead to a rash of claims by Australian Aboriginal interests over mineral projects. The judgment also states that native people have a constitutional right to own their ancestral lands and to use them almost entirely as they wish.

The Canadian Court decision applies to natives who have not signed away their lands in treaties and has already enraged the powerful logging and mining industries in Canada.

In a unanimous decision, the six judges of the Supreme Court overturned a ruling of a lower court that dismissed claims from the Gitksan and Wet'suwet'en First Nations to ownership of 58,000 square kilometres of land.

The Supreme Court decided that a new trial was necessary because the trial judge had erred by not taking into account oral histories of the natives presented to the court to establish their occupation and use of the land.

"Had the trial judge assessed the oral history correctly, his conclusions on these issues of fact might have been very different," Chief Justice Antonio Lamer stated in his decision. He also encouraged the indigenous claimants to negotiate with federal and provincial governments rather than embark on legal action.