



Recent Examples Where the Supreme Court of Canada Found That the Crown Violated the Treaties

The Crown Violation	What the Supreme Court of Canada Did About it
<p>Ignored a First Nation's Right to Be Consulted About a Project that Would Interfere with Treaty Hunting Rights</p>	<ul style="list-style-type: none"> • Found that the Crown violated Treaty 8 by failing to consult with the Mikisew Cree about a road project that would interfere with Treaty rights. • Quashed the Minister's approval order and sent the winter road project back to the Minister to be dealt with fairly, in consultation with the First Nation. • "The principle of consultation in advance of interference with existing treaty rights is a matter of broad general importance to the relations between aboriginal and non-aboriginal peoples. ...In this case, the relationship was not properly managed. ...The government's approach did not advance the process of reconciliation but undermined it." • "It is not as though the Treaty 8 First Nations did not pay dearly for their entitlement to honourable conduct on the part of the Crown; surrender of the aboriginal interest in an area larger than France is a hefty purchase price." <p><i>Mikisew Cree v. Canada</i> [2005] 3 SCR 388 http://canlii.ca/t/1m1zn</p>
<p>Wrongfully Arrested and Prosecuted First Nations Fishermen in Nova Scotia</p>	<ul style="list-style-type: none"> • Found that the Crown violated the Mi'kmaq Treaties of 1760-61 • Ordered an acquittal on all charges and found that the prohibitions on fishing contained in the <i>Maritime Provinces Fishery Regulations</i> and the <i>Fishery (General) Regulations</i> were inconsistent with the treaty rights contained in the Mi'kmaq Treaties and therefore of no force or effect. <p><i>R. v. Marshall</i>, [1999] 3 SCR 533 http://canlii.ca/t/1fqkn</p>
<p>Wrongfully Prosecuted First Nation Hunters in British Columbia</p>	<ul style="list-style-type: none"> • Found that the prosecution was a violation of the Crown's obligations under the North Saanich Treaty of 1852. • Convictions were set aside and acquittals entered. • "These facts amply demonstrate how something less than an absolute prohibition on night hunting can address the concern for safety. We have no difficulty concluding, therefore, that the categorical ban on night hunting and hunting with illumination constitutes a <i>prima facie</i> infringement of a treaty right." <p><i>R. v. Morris</i>, 2006 SCC 59 http://canlii.ca/t/1q64k</p>
<p>Wrongfully Prosecuted a First Nations Person for Building a Cabin</p>	<ul style="list-style-type: none"> • Found that the prosecution of the First Nations trapper was a violation of Treaty 6, and upheld the decision of the court below to quash the conviction. • "A hunting cabin is, in these circumstances, reasonably incidental to this First Nation's right to hunt in their traditional expeditionary style. ...A reasonable person apprised of the traditional expeditionary method of hunting would conclude that for this First Nation the treaty right to hunt encompasses the right to build shelters as a reasonable incident to that right. The shelter was originally a moss-covered lean-to and then a tent. It has evolved to the small log cabin, which is an appropriate shelter for expeditionary hunting in today's society." <p><i>R. v. Sundown</i>, [1999] 1 SCR 393 http://canlii.ca/t/1fqp6</p>

And those are just the cases that made it to the Supreme Court. There are many, many more that only went to court below, or have never been to court because of the high cost of suing. Like these...

The Crown Violation	More About This
<p>Established the Chapleau Game Preserve, Evicted First Nations That Lived There and Started Arresting First Nations Hunters</p>	<ul style="list-style-type: none"> • The Chapleau Game Preserve in Ontario was set up in 1925, and resulted in the forced eviction of two First Nations communities. The Preserve still exists today. • The Preserve swallowed up 7,000 square kilometers of traditional First Nation hunting territories. Throughout most of the 20th century First Nations people were arrested and charged when they tried to hunt and trap there. • Without the ability to harvest, First Nations people could not feed their families. The damage done to their communities is incalculable. This happened despite the fact that the Game Preserve is entirely within the area covered by Treaty 9, and under Treaty 9 First Nations have constitutionally guaranteed rights to hunt, fish and trap. <p>Caverley, D., 'The Dispossession of the Northern Ojibwa and Cree: The Case of the Chapleau Game Preserve.' Ontario History 101, no. 1 (Spring 2009): 83–103</p>
<p>Refused to Pay Money Owed Under a Treaty</p>	<ul style="list-style-type: none"> • The Inuit of Nunavut signed a treaty with Canada in 1993, in which, among other things, the Inuit exchanged their Aboriginal title in return for promises in the Treaty. • The Treaty contained a promise by Canada to fund environmental and social data collection in the territory to help Nunavut gather reliable information on which to base its policies. • Canada violated the Treaty and refused to provide this money. In fact Canada didn't provide any money until 2009, after it was sued. The Inuit then sued for the delay in implementing this treaty promise, and the Court decided in their favour, penalizing Canada for its delay in paying what was owed. <p><i>NTI v. Canada (Attorney General)</i>, 2012 NUCJ 11 http://canlii.ca/t/fs2d9</p>
<p>Wrongfully Allowed Mineral Exploration Projects to Proceed Without Proper Consultation</p>	<ul style="list-style-type: none"> • The Ontario Superior Court found that allowing the project without consultation was a violation of Treaty 9, and ordered the project to stop. "Treaty 9...is not merely another commercial contract; it is a special form of agreement between sovereign states." <i>Platinex v. KIFN</i>, 2007 CanLII 20790 (ON SC) http://canlii.ca/t/1p1sj • "Despite repeated judicial messages delivered over the course of 16 years, the evidentiary record available in this case sadly reveals that the provincial Crown has not heard or comprehended this message and has failed in fulfilling this obligation [to consult First Nations]." <i>Platinex v. KIFN</i>, 2006 CanLII 26171 (ON SC) http://canlii.ca/t/1rqln • The same thing happened in the Northwest Territories, where the Crown lost again. <i>Yellowknives Dene First Nation v. Canada</i>, 2010 FC 1139 http://canlii.ca/t/2ddtq • And in the Yukon, where a treaty is still being negotiated, the Crown lost once again. <i>Ross River Dena Council v. Yukon</i>, 2012 YKCA 14 http://canlii.ca/t/fvfcw
<p>Shortchanged First Nations Schoolchildren</p>	<ul style="list-style-type: none"> • Many treaties oblige the Crown to provide education for First Nations children. The expectation was that First Nations kids would, at the very least, be treated equally. • But in reality the federal government funds First Nations education at a lower rate. Delivering education on reserves costs significantly more, which compounds this problem. Some First Nations have decided to sue over this Treaty violation. The case is ongoing. <p><i>First Nations sue Ottawa over right to education</i> (23 Nov 2011) http://cbc.sh/okMYk6e</p>