

‘An indescribable moment’: Indigenous nation in US has right to lands in Canada, court rules

Canada’s supreme court decision on the Sinixt people could affirm hunting rights for tens of thousands



Canada’s highest court ruled that that Rick Desautel and the 4,000 other members of the Colville Confederated Tribes in Washington state were successors to the Sinixt.

Leyland Cecco *in Toronto*

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For decades the Rick Desautel had been told by courts and governments that his people no longer exist in Canada.

But Desautel and others in his community in Washington state have long argued that they are descendants of the Sinixt, an Indigenous people whose territory once spanned Canada and the United States.

On Friday, Canada’s highest court agreed, ruling that Desautel and the 4,000 other members of the Colville Confederated Tribes in Washington state were successors to the Sinixt – and as a result, that they enjoy constitutionally protected Indigenous rights to hunt their traditional lands in Canada.

The closely watched court decision settled longstanding questions over the status of the Sinixt, but it also has the potential to affirm hunting rights in Canada for tens of

thousands of Native Americans living in the US dispossessed of traditional territories by an international border drawn hundreds of years ago.

“I was so nervous before the decision. I don’t think I slept more than an hour the night before,” said Desautel. “When the decision came through I just let out a huge sigh of relief.”

In 1955, after the Sinixt were pushed down into Washington state, the Canadian government declared them extinct. Nearly 60 years later, Rick Desautel decided to challenge the idea that his people no longer existed.

In 2010, he crossed into British Columbia without a permit to hunt elk, arguing he had longstanding treaty rights to do so. The province of British Columbia disagreed, slapped him with a fine, and fought him all the way to the supreme court.

At issue for the court was how to interpret section 35.1 of the Canada’s charter, which recognizes the treaty rights of “Aboriginal peoples of Canada”.

The court concluded that “Aboriginal peoples of Canada” refers to the modern-day successors of Indigenous societies that occupied Canadian territory during European contact, even if those societies and their members, including the Sinixt, are now located outside Canada.

“Excluding Aboriginal peoples who moved or were forced to move, or whose territory was divided by a border, would add to the injustice of colonialism,” the court wrote on Friday.

“Today was an indescribable moment for us,” said Rodney Cawston, chairman of the Colville Confederated Tribes. Ahead of the judgment, he said, members had gathered at Kettle Falls, a historic Sinixt fishing site, for early morning prayers. “Everyone was just absolutely elated when we got the news ... It’s been a very long battle for our people. Many of our people and our ancestors have been working on it for a very long time.”

In addition to reaffirming Sinixt rights, legal experts have said, the ruling in Desautel’s favour could affect thousands of Indigenous peoples separated from ancestral territory in Canada when the border was drawn.

The decision could recognize Canadian hunting and fishing rights for peoples in the United States whose traditional territory was north of the border. The ruling also raises questions over whether the nations whose members live in the US but have treaty rights in Canada need to be consulted over resource projects.

Despite Desautel’s success, there are no comparable provisions in the US constitution that could apply to Indigenous peoples in Canada who pursue fishing or hunting rights south of the border.

But for Desautel, the decision serves as a powerful victory for further generations.

“My grandchildren and their children can look past that border crossing and say, ‘That’s what we began right there.’ And now they can cross that imaginary line and visit the territories of our ancestors,” he said.

“They can see all the adversities their ancestors faced – the logging, mining and smallpox – and know they’re the byproduct of that survivability.”