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## News Release

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### Supreme Court to Render Decisions on “Marshall Treaties”

**OTTAWA** -- “The Supreme Court of Canada will be issuing decisions on the so-called “Marshall Treaties” on Wednesday, July 20<sup>th</sup> in the *Joshua Bernard* and *Stephen Marshall* appeals,” said John Cummins, M.P. Delta-Richmond East.

The *Bernard* appeal from New Brunswick and the *Stephen Marshall* appeal from Nova Scotia consider whether there is a treaty-right to timber, based on the 1760-61 treaties, the same treaties considered by the Supreme Court in the *Donald Marshall* decisions. The original *Marshall* decisions in 1999 involved a treaty right to eels.

In the November 17, 1999 decision the Supreme Court of Canada summarized its September 17, 1999 decision in the following manner:

“In its judgment of September 17, 1999, a majority of the Court concluded that Marshall had established the existence and infringement of a local treaty right to carry on [a] small scale commercial eel fishery.”

The Supreme Court concluded that the treaties were “local” in nature and the “reciprocal benefits were local.” “The exercise of the treaty rights,” it said, was “limited to the area traditionally used by the local community,” which had signed the treaty.

It was already clear in 1999 that there would be claims to treaty rights that extended beyond eels. The Supreme Court indicated that it would “be open to an accused in future cases to try to show that the treaty right was intended in 1760 by both sides to include access to resources other than fish, wildlife and traditionally gathered things such as fruits and berries.”

There have been cases involving claims to lobster in both Nova Scotia and New Brunswick, but the cases were never pursued by their aboriginal claimants to the Supreme Court of Canada.

“The upcoming decisions will be of interest to more than the governments of Nova Scotia and New Brunswick. The claim of a treaty right to timber on Crown land provides the Supreme Court of Canada its first opportunity since 1999 to address who are the beneficiaries of the treaties and what is the nature of the benefits. The decisions in *Bernard* and *Stephen Marshall* may well assist fishermen and the Department of Fisheries in better understanding the nature of the treaty right involving the fishery - who has access to the right and what the right applies to,” Cummins concluded.

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