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HISTORIC COURT RULING ALSO RAISES QUESTIONS FOR FIRST NATIONS PURSUING ABORIGINAL TITLE

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In mid-October, as noted in a recent [study](#), the Supreme Court of Canada upheld an earlier B.C. Court of Appeal ruling that will allow the Nechako Nations (Saik'uz First Nation and Stellat'en First Nation) to bring forward a damages claim against Rio Tinto, an aluminum industry giant.

The First Nations claim that the Kenney Dam (pictured on next page), which has operated for more than 60 years on the Nechako River, is causing significant environmental harm to the river and thus negatively affecting their fishing resources. The Nechako Nations are claiming aboriginal title on the land, which houses the Kenney Dam, however they have yet to prove title to the land. This judgement allows the First Nation to move forward with

a damages claim without having proven aboriginal title. Allowing the Nechako Nations to do so could result in future aboriginal title litigation between First Nations and private parties—litigation that was previously only brought against governments.

These are important questions to ask because it could mean an additional 20 years of litigation.

In addition to exposing private parties to litigation that was previously only brought against governments, this judgment will also impact economic development opportunities in places like British Columbia where the number one impediment for mining investment is uncertainty over disputed lands.



Furthermore, for First Nations pursuing aboriginal title claims, this case raises several fundamental questions.

For example, if First Nations are now able to prove aboriginal title on land through litigation against private parties, will governments recognize that title? Or will governments require First Nations to re-litigate the case against the Crown?

These are important questions for First Nations, like the Nechako Nations, to ask because it could mean an additional 20 years of litigation.

For example, the [Tsilhqot'in title case](#)—the 2014 historic decision granting title for the first time on land outside a reserve—took more than 20 years to conclude. So if the provincial or federal governments do not recognize aboriginal title granted through litigation between a First Nation and private party that could mean First Nations would have to re-litigate their case against the Crown,

which is not only costly for the First Nation but could add another decade before they are granted title from governments.

Through this recent decision, the Nechako Nations now have the opportunity to pursue a damages claim against Rio Tinto and prove aboriginal title to their claimed territory in the process.

It remains to be seen if they will move forward with this claim; but before they do, the Nechako Nations ought to seek clarity on these important questions. [C](#)

Read the full study [»»](#)



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