

B.C. court grapples with native rights

Eight rulings on issues with far-reaching implications to be handed down today

BY DEBORAH WILSON
and RUDY PLATIEL
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When the last of a series of high-profile constitutional talks to define aboriginal rights ended in failure and re-tributions in 1987, national Indian leaders said they would turn to the courts to determine those rights.

What followed was a series of court cases on hunting, fishing and other issues that have moved through the legal process and begun to give some form to native rights.

Today the B.C. Court of Appeal will deliver a package of decisions on eight cases that will sketch perhaps the clearest picture yet of those rights since they were incorporated, undefined, into Canada's Constitution in 1982.

Already the aboriginal-rights issue is volatile. Non-native commercial fishermen in B.C. are at odds with Indians over salmon fishing. In Ontario, an anglers and hunters association has placed radio commercials and magazine ads opposing provincial moves to negotiate hunting and

fishing agreements with Indians in the Central Ontario area covered by the Williams Treaty of 1923.

"The courts particularly in this country are grappling with the law as an underpinning of the relationship between the aboriginal peoples and the non-aboriginal peoples, exploring what is the nature of that relationship and what does it look like," said Tlaz'ten Nation Chief Edward John, a spokesman for the B.C. First Nations Summit. "Is it one based on extinguishment or is it one based on accommodation?"

The answer is crucial, because it will shape future relations of natives in Canadian society.

Some governments, such as Ontario's New Democratic Party, have begun moving to greater recognition of native collective rights, citing a Supreme Court of Canada decision in 1990 that called for a liberal interpretation of any rights in favour of natives.

But two years ago Chief Justice Allan McEachern of the B.C. Supreme Court rejected a claim by the

chiefs of the Gitksan and Wet'suweit' Nation to 58,000 square miles of land around the town of Hazelton in northwestern B.C.

That case, which was being attacked by some as having a "Eurocentric" bias, is one of the eight B.C. appeal court decisions scheduled for release today. The seven other cases involve fishing and hunting, and could have equally far-reaching implications.

Michael Hunter, president of the Fisheries Council of British Columbia, said the fishing industry is particularly interested in the outcome of the cases that concern the right to sell native-caught fish, the limits of by-laws passed by Indian bands on reserves, and the question of whether aboriginal rights exist in the area of hunting, a provincial concern, as they do for the federally regulated fisheries.

Of key concern to the industry are three cases in which natives have sought to establish whether the aboriginal right to fish — confirmed in the 1990 Supreme Court decision —

also includes the right to sell fish.

The fishing industry has been in an uproar for the past year over the federal Fisheries Department's moves, in anticipation of favourable court decisions, to allow the limited sale of native-caught fish. Last year, the first time selected native bands were allowed to sell their traditional catch, more than a million salmon disappeared in the Fraser River on the way to the spawning beds amid poor enforcement, poaching and chaos on the river.

Today's rulings could also raise the stakes in land-claims negotiations that are getting under way in British Columbia.

"Depending on the decision and what it has to say, it has major implications for us," Mr. John said.

"It will clarify some of the legal issues that are really serious bones of contention right now," he said, such as whether aboriginal title exists in relation to traditional lands, and whether any such title and aboriginal rights have been extinguished by colonial laws.