

White & Bob Case 1963-64

|                       | <u>Quebec</u> | <u>Appeal Court</u> | <u>Supr</u> |
|-----------------------|---------------|---------------------|-------------|
| 1. Douglas Treaty     | YES           | YES (3-2)           | Yes         |
| 2. Royal Proclamation | YES           | 2 NO 1 YES (Norris) | -           |
| 3. Aboriginal Title   | YES           | 1 YES (Norris)      | -           |

Won't stay except under the carpet

8. Move to another sequence of events 1963-64  
Nanaimo Indian Hunting Case. White & Bob.

- revival of legal issues
- court tests on land question which is now culminating in Nishga case

a) Cliff White & David Bob

6 deer out of season, for food

b. Magistrate Beaver-Potts - fined Same Act

c. Tom Berger appealed to Nanaimo County Court (Swencicky)

1. 1854 treaty confirmed the right to hunt

Indian Act - Sec. 87 "subject to the terms of any treaty - - Provincial laws apply to Indians

2. Royal Proclamation

confirmed hunting rights, applied, still in force

3. Aboriginal Title

incl. hunting rights, still in force

Swencicky Judgment - March 1964

1. Yes, a treaty - so exempts Nanaimo Inds from Game Act  
- conferred a right to hunt & fish

{ 2. Yes - Royal Procl in force

{ 3. Yes - Abor. Title still in force

implications  
for rest of BC  
non-treaty  
Indians

d) Appealed Court of Appeal  
Dec. 1964

5 judges

Davey (Chief)

Norris

52 pp. 3 months lat  
Only one to deal  
with all 3 issues  
All in favor of  
Indians

1. Treaty? 3 yes 2 no

2. Royal Proclamation?

2 no 1 yes (Norris) and he strengthened arguments

3. Aboriginal Title?

Only Norris dealt with it

Upheld Swencicky - have existed from time immem.  
never been extinguished

Case did not  
rest on these  
2 issues

e) Appealed to Supreme Court of Canada

1. Treaty - yes

That's all

didn't rule on - Royal Procl.

- Aboriginal Title

Left unanswered questions

This is why there had to be another test case  
Nohga case

no treaty

Royal Proclamation? no

Aboriginal title? no - extinguished