



BC TREATY COMMISSION

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Sparrow case moved BC government to negotiate treaties

VANCOUVER – The Sparrow decision from the Supreme Court of Canada 20 years ago today set the foundation for treaty negotiations in British Columbia.

“The Sparrow ruling was a major factor in moving the provincial government to negotiate with First Nations,” said Sophie Pierre, chief commissioner of the BC Treaty Commission. “It put an end to 130 years of denial of aboriginal rights by the BC Government.”

Musqueam Nation member Ronald Sparrow was charged with fishing for salmon with a net larger than legally allowed by the *Fisheries Act*. The case went all the way to the Supreme Court, which ruled on May 31, 1990 that aboriginal rights exist and were not extinguished by federal fisheries regulations.

The Sparrow case was also the genesis for the Aboriginal Fishing Strategy, which provides First Nations with special commercial salmon licences.

The Supreme Court decision has played a significant role in subsequent aboriginal rights cases. The Van der Peet ruling in 1996 set out the factors that determine when an aboriginal practice constitutes an aboriginal right. The Delgamuukw case in 1997 affirmed the Crown has a duty to consult with First Nations when the actions of the Crown infringe upon aboriginal title, and set out a test for proving title. The Haida and Taku River Tlingit cases in 2004 established that government has a duty to consult and possibly accommodate even when aboriginal title has not been determined.

Still, these legal decisions have not resolved all the issues of aboriginal rights and title in BC and First Nations continue to launch legal actions to preserve their aboriginal rights when a perceived threat exists.

“We recognize that litigation has informed treaty negotiations and continues to do so. But a government-to-government relationship, with all its complexities must be negotiated,” said Pierre “We understand that First Nations may feel forced to take legal action to protect interests they do not see being addressed at the treaty table. That’s a delicate balance. All governments must recognize that relationships cannot be built in court.”

The Treaty Commission has been encouraging all governments to make treaty completion a priority and First Nations to resolve their territorial issues and prepare for self government. Several First Nations are close to concluding final agreements, including In-SHUCK-ch Nation, Sliammon First Nation and Yekooche Nation. Yale First Nation is preparing for a ratification vote by its members.

Nine First Nations are moving to conclude agreements in principle including K’omoks First Nation, Namgis Nation, Nazko First Nation, Northern Shuswap Treaty Society, Oweekeno Nation, Te’Mewx First Nation, Tla-o-qui-aht First Nation, and two of the Tsimshian First Nations.

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About the BC Treaty Commission

The Treaty Commission is the independent body responsible for overseeing treaty negotiations among the governments of Canada, BC and First Nations in BC. It has three roles: facilitation, funding, and public information and education.

Established in 1992, the Treaty Commission and six-stage treaty process are designed to advance treaty negotiations. The Treaty Commission comprises a provincial appointee, a federal appointee, two First Nations Summit appointees and a chief commissioner chosen by agreement of all three parties. For more information about the BC Treaty Commission, please visit bctreaty.net.