Members of BC's Tsartlip Band Permitted to Hunt at Night

Two members of the Tsartlip Indian Band of the Saanich Nation were charged under the British Columbia Wildlife Act (Act) after shooting at a decoy deer set up by conservation officers. The charges included hunting at night, hunting with the aid of lights, shooting from a vehicle, and unsafe hunting. The two men argued that under the North Saanich Treaty of 1852 (the Douglas Treaty), they have a treaty right to hunt at night and that the Act cannot take away this treaty right. The province of BC took the position that the ban on night hunting applies to everyone, including Aboriginal people. The Crown argued that there are inherent and unavoidable dangers involved in night hunting and that these safety issues trump the Tsartlip Band's treaty right to hunt at night.

The minority of the Supreme Court of Canada (Chief Justice McLachlin, Justice Bastarache, and Justice Fish) sided with the lower courts saying that night hunting should be prohibited due to its inherent dangers. However, the majority of the Court (Justices Deschamps, Abella, Binnie, and Charon) concluded that the Act's ban on night hunting and hunting with lights is too broad and does not apply to Aboriginal peoples affected by the Douglas Treaty. The majority did not believe there were sufficient safety concerns to justify a complete ban on night hunting. They pointed out that the Tsartlip hunters have yet to cause an accident while hunting at night, and that vast areas of BC are uninhabited, thereby decreasing the danger involved in night hunting. The majority concluded that despite the BC Wildlife Act's general ban on night hunting, members of the Tsartlip Band have an established treaty right to hunt at night and that the potential danger is not great enough to limit this right.

Sources

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Further Reading

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- “BC Leadership Council Applauds Supreme Court Decision Affirming North Saanich Right to Hunt” UBCIC (21 December 2006)
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