SEE YOU IN COURT:

NATIVE INDIANS AND THE LAW IN BRITISH COLUMBIA, 1969-1985

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B.A., The University of Toronto, 1984

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A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF

THE REQUIREMENTS FOR THE DEGREE OF

MASTER OF ARTS

in

THE FACULTY OF GRADUATE STUDIES

(Department of Political Science)

We accept this thesis as conforming

to the required standard

THE UNIVERSITY OF BRITISH COLUMBIA

April 1987

in relation to a matter falling within Provincial legislative competence, not side effects in a particular case."[31] He suggested that if an official's acts were in fact ultra vires, an appeal might be made to the courts to overturn the official's decision, but that such an action did not serve to make the law itself inoperative. A further appeal to the B.C. Court of Appeal was unsuccessful, as this court ruled that grounds for appeal are limited to questions of law, while those advanced by the appellant were primarily questions of fact.

In the next case, R. v. Dick,[32] The defence introduced extensive evidence on the importance of hunting to the Indian way of life, and the effects of the Wildlife Act regulations on this way of life. The purpose of this evidence was to clearly establish that the Wildlife Act did impair the defendant's status as an Indian, and also that the policy of the provincial government had changed since the earlier cases. Notwithstanding this evidence, the County Court judge ruled that although the Wildlife Act now had a greater impact on the appellant, there was no substantial change in the policy of the provincial government in its application of the Wildlife Act and so, following the earlier cases, he could not find that the Act impaired Dick's status as an Indian. In making this ruling, the judge seemed to be assuming that it is the intent, rather than the effect of legislation which is important in determining its applicability. In this, he seemed to be following the reasoning of the County Court judge in

the Haines decision.[33]

In the B.C. Court of Appeal, two judges ruled that the issues in the case were not questions of law alone and therefore the appeal was dismissed. However, Mr. Justice Lambert dissented, and ruled that the conviction should be set aside. Lambert ruled that the Wildlife Act, given the evidence presented, did in this case impair the status and capacity of the defendant as an Indian. He said, "In my opinion it is impossible to read the evidence without realizing that killing fish and animals for food and other uses gives shape and meaning to the lives of the members of the Alkali Lake band. It is at the centre of what they do and who they are."[34] He also ruled, for the same reason, that the Wildlife Act was not a law of general application. In doing so, he relied on Dickson's judgement in R. v. Kruger and Manuel regarding such laws. He took this judgement to mean that if the evidence of a case showed that the effect of provincial legislation was to impair the status or capacity of a particular group, then it was not a law of general application. Lambert concluded that the Wildlife Act should be read down in this case, so that it did not apply to the defendant, in order to preserve the constitutionality of the Act. This line of reasoning restricted the effect of the judgement on other cases. Only when evidence could be led which would prove that the effect of the Wildlife Act was to impair Indian status would the Act be read