

School brawl appeals reach top court

By DAVID RODENHISER
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More than four years after racially driven brawls erupted at Cole Harbour District High School, the appeal of two black men convicted in the fights finally made its way to the province's top court.

The Nova Scotia Court of Appeal reserved decision yesterday in the appeal of Marvin Smith and John Thompson.

Defence lawyer Davies Bagambiire argued the convictions should be overturned because Smith and Thompson's right to equality under the law regardless of race, as guaranteed by Section 15 of the Charter of Rights, was violated by an incomplete RCMP investigation that had a "discriminatory effect" on his clients.

Bagambiire said most of the witnesses RCMP interviewed in their investigation were white, resulting in charges being laid against more blacks than whites involved in the Jan. 9 and 11, 1989, fights. Five whites and six blacks were charged as a result of the brawls. Only Smith and Thompson were convicted.

Bagambiire said that in incidents with racial overtones, police must investigate both sides equally. Bagambiire did not deny the evidence clearly showed Smith and Thompson were guilty of causing a disturbance by fighting, but his clients were "adversely affected" because a more thorough investigation would have resulted in the conviction of whites as well.

He said it was an adverse effect if "your enemy, and I use that term loosely," gets away without a trial.

"This is a warfare," Bagambiire said.

Crown attorney Robert Hagell said Dartmouth provincial court Judge Fran Potts and Justice Felix Cacchione, then of Halifax county court, stated in their rulings on the case that the RCMP investigation was poorly done. Cacchione, in an earlier appeal, upheld Potts' decision to convict Smith and Thompson.

"This doesn't look like great police work," Hagell admitted.

But he said the reason police interviewed more white witnesses than black witnesses was because more whites came forward. Hagell said RCMP also had trouble trying to track down potential black witnesses.

Whites were charged, but any number of things may have gone wrong with their prosecutions, Hagell added.