

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE BRITISH COLUMBIA COURT OF APPEAL)

BETWEEN:

JOHN MICHAEL KAPP, ROBERT AGRICOLA, WILLIAM ANDERSON, ALBERT ARMSTRONG, DALE ARMSTRONG, LLOYD JAMES ARMSTRONG, PASHA BERLAK, KENNETH AXELSON, MICHAEL BEMI, LEONARD BOTKIN, JOHN BRODIE, DARRIN CHUNG, DONALD CONNORS, BRUCE CROSBY, BARRY DOLBY, WAYNE ELLIS, WILLIAM GAUNT, GEORGE HORNE, HON VAN LAM, WILLIAM LESLIE SR., BOB M. MCDONALD, et al

APPELLANTS

(Appellants in the British Columbia Court of Appeal)

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

RESPONDENT

(Respondent in the British Columbia Court of Appeal)

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(Rule 37)

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PART I: STATEMENT OF FACTS

Introduction

1. Among Canada's constitutionally-entrenched principles are the individual right of equality and the communal rights of aboriginal people in Canada. It is immediately apparent that these rights are in conflict. However, the framers of the *Constitution, 1982*¹ considered this apparent conflict and designed s. 25 of the Charter to allow both to continue to exist as rights, balanced against each other. Section 25 is not meant to give priority to aboriginal rights over Charter rights, but to provide a mechanism to reconcile the continued existence of communal aboriginal rights with the concept of equality of all Canadians. However, while ensuring that aboriginal rights are not denied by s. 15, every effort must be made to ensure that any impacts of government actions on the rights enshrined in s. 15 of the Charter are minimal, reasonable and justified. Therefore, the protection given to aboriginal rights by s. 25, in order that it does not become a veto over other Charter rights, must be subject to a s. 1 analysis.

The Atlantic Fishing Industry Alliance

2. The Atlantic Fishing Industry Alliance (the "AFIA") and its members operate within an industry which is potentially subject to the same impugned program at issue in this Appeal. The AFIA grew out of industry concern with how government was going to react to the *Marshall* decisions² regarding limited treaty rights in the commercial fishery. The AFIA is concerned that fisheries management policies, such as the impugned program in this appeal, will introduce a separate commercial fishery for aboriginal people in Atlantic Canada within the context of the Mi'kmaq and Maliseet treaty right, destroying the single commercial fishery approach under which the industry is managed in the Maritimes. Any such change could have significant economic, social, and cultural effects in Atlantic Canada.

Facts

3. The AFIA accepts and relies on the facts as laid out by the Appellant.

¹ *The Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11*

² *R. v. Marshall*, [1999] 3 S.C.R. 456 [*Marshall 1*] and *R. v. Marshall*, [1999] 3 S.C.R. 533 [*Marshall 2*].

4. The Federal Government has plans to overhaul the *Fisheries Act*, R.S.C. 1985, c. F-14. Bill C-45³ provides authority for the Minister to enter into Fisheries Management Agreements with an “organization”.⁴ This could arguably be used by the Minister to create programs on the East Coast similar to the special commercial fishery licence granted to the Musqueam, Tsawassen and Burrard under the Pilot Sales Program (the “MTB Commercial Fishery”), a program which is presently only on the West Coast. The second *Marshall* decision⁵ spoke to the AFIA’s position that the commercial fishery should be maintained as a single fishery with all fishing side by side: “The 1760-61 treaty rights were ... enjoyed alongside the commercial and recreational fishery of non-natives. ... treaty right to hunt and trade in game is not ... a commercial hunt that must be satisfied before non-natives have access to the same resources for recreational or commercial purposes.”⁶

PART II: QUESTION IN ISSUE

5. The AFIA supports the Appellant in this appeal.

PART III: ARGUMENT

6. The AFIA submits that a proper interpretation of s. 25 of the Charter in the context of the purpose of the individual rights guaranteed by the Charter, the purpose of s. 1, and the fundamental importance of aboriginal rights in Canada, leads to a recognition that the protection provided by s. 25 is not absolute, but must be applied through the prism of s. 1 – where reasonable limits are placed on the exercise of all rights. This recognition is reflected in a proposed analytical framework for the application of s. 25 which emerges from the following interpretation of the meaning of s. 25.

³ Bill C-45, *An Act respecting the sustainable development of Canada’s seacoast and inland fisheries*, 1st Session, 39th Parliament 55 Elizabeth II, 2006.

⁴ Bill C-45, s. 43.

⁵ *Marshall 2*.

⁶ *Marshall 2* at para. 38.

A. Interpreting Section 25

7. It is well established that when interpreting any part of the Charter, whether it be s. 15 or s. 25, the Court should take a generous and purposive approach⁷, interpreting those sections "in the light of the interests it was meant to protect".⁸

The Context of s. 15 and s. 25

8. Section 15 of the Charter provides a guarantee of equality - a fundamental tenet of our society. McIntyre J. in *Andrews v. Law Society of British Columbia*⁹ quoted: "Equality ... is one of those political symbols ... into which men have poured the deepest urgings of their heart." Similarly central to the Canadian identity is the protection of the rights of our aboriginal peoples.

9. The purpose of s. 25 is to protect those rights from denial based on the guarantee of rights in the Charter. In the debates over the Charter, former Minister of Justice Jean Chrétien clarified: "What we are trying to do in [s. 25] we want to protect all the rights of the natives ... the rights of all the native Canadians, either flowing from Treaties or the Royal Proclamation, ... not being changed by the adoption of this Charter of Rights".¹⁰ As this Court held in *Van der Peet*, an individual's "rights are general and universal; they are the way in which the "inherent dignity" of each individual in society is respected".¹¹ Aboriginal rights, are communal in nature and arise out of membership based on race and ethnicity - as this Court pointed out in *Van der Peet*, "[t]hey arise from the fact that aboriginal people are aboriginal."¹² The purpose of s. 25 is negative, that is to say that it provides a "shield" against the rights in the Charter.¹³

⁷ *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145 [*Hunter*] and *R v. Van der Peet*, [1996] 2 S.C.R. 507 [*Van der Peet*] at para 21.

⁸ *R v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 [*Big M Drug Mart*] at 344; re s.35, see *Van der Peet* at para. 3.

⁹ *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 [*Andrews*] at 164; see also *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497 [*Law*] at para. 2: "the quest for equality expresses some of humanity's highest ideals and aspirations".

¹⁰ Canada, *Minutes of Proceedings and Evidence of the Special Joint Committee of the senate and of the House of Commons on the Constitution of Canada*, [Minutes] No. 3 at 32, 84; see statements of Mr. Tassé at *Minutes*, No. 49 at 92-93: the provision "comes as a rule of construction for the charter ... to the rights of aboriginal peoples."

¹¹ *Van der Peet* at para 18; see also: *R. v. Oakes*, [1986] 1 S.C.R. 103 [*Oakes*] at 136; *Big M Drug Mart* at 336.

¹² *Van der Peet* at para 19.

¹³ *Shubenacadie Indian Band v. Canada (Human Rights Commission)* (2000), 187 D.L.R. (4th) 741 (F.C. C.A.) at para. 43; *Ermineskin Cree Nation v. Canada*, 2001 ABQB 760 at para. 47; Peter W. Hogg, *Constitutional Law of Canada*, 5th ed. Vol. 2 (Scarborough: Thomson Canada Ltd., 2007) at 28.9.

10. Aboriginal and treaty rights were also given positive effect in s. 35.¹⁴ In *Van der Peet*, this Court reviewed the purpose behind s. 35, holding that the: “doctrine of aboriginal rights exists ... because of one simple fact: when Europeans arrived in North America, aboriginal peoples were already here, living in communities on the land, and participating in distinctive cultures”.¹⁵ It must be remembered that aboriginal and treaty rights are immune from Charter review notwithstanding s. 25, as a result of their provision in s. 35 of the *Constitution Act, 1982*.

11. This Court in *Van der Peet*, as well as the framers of the Charter, recognized that there is an inherent tension between s. 15 and communal aboriginal rights.¹⁶ Section 25 of the Charter is meant to bridge the gap between what seem to be two solitudes. Section 1 provides a balance that respects both the individual and communal rights. Section 15 cannot be used to abrogate or derogate the rights and freedoms of aboriginal peoples, however, the embodiment of those rights must respect the sanctity of each individual’s s. 15 rights – analytically this is achieved through the application of s. 1 and the *Oakes* test. In the same way that any limitation on a s. 35 right must be justified to reflect the importance of the communal right,¹⁷ a breach of a s. 15 right must also be justified through s. 1 to reflect the importance of the individual right.

The Guarantee from Section 25 is Found in Section 1

12. Section 1 is entitled the “Guarantee of Rights and Freedom”, and so the opening words of s. 25 lead directly to s. 1 of the Charter: “The guarantee in this Charter of certain rights and freedoms”. The opening of ss. 25 and 26 are very different than the other sections which provide limitations on the Charter: s. 27 begins, “This Charter shall be interpreted”; s. 28 begins, “Notwithstanding anything in this Charter”; s. 29 begins, “Nothing in this Charter abrogates or derogates”. Each of these limitations is broader in focus than the wording in s. 25, which is limited to “the guarantee in this Charter”.

¹⁴ *R. v. Sparrow*, [1990] 1 S.C.R. 1075 [*Sparrow*] at para. 1083.

¹⁵ *Van der Peet* at para. 30

¹⁶ *Van der Peet* at para. 19.

¹⁷ *Sparrow*, at 1110: “The way in which a legislative objective is to be attained must uphold the honour of the Crown and must be in keeping with the unique contemporary relationship, grounded in history and policy, between the Crown and Canada’s aboriginal peoples. The extent of legislative or regulatory impact on an existing aboriginal right may be scrutinized so as to ensure recognition and affirmation.”

13. Section 25 then states that the guarantee “shall not be construed”. Section 25 is a guide on how to construe the guarantee of rights – how to construe s. 1. The purpose of s. 25 is to ensure that s. 1 is to be construed such that the rights listed in s. 25 are not abrogated or derogated. Section 25 does not create rights¹⁸ or define the scope of aboriginal rights constitutionally-entrenched outside the Charter (s. 35 rights). Its purpose is to ensure that in the process of construing the guarantee in s. 1 of the Charter, that the rights listed will be protected.

14. Section 1 applies to all of the rights in the Charter, including those protected by s. 25 (only to the extent that those rights are not otherwise protected by s. 35). To conclude otherwise would be giving non-constitutional rights unfettered supremacy over constitutional rights. Just as s. 1 must be construed so as not to abrogate or derogate from the rights protected by s. 25, so too are those rights protected by s. 25, subject to s. 1.

The Rights Protected by Section 25 – “Other Rights”

15. The rights protected by s. 25 can be grouped broadly into two categories: rights otherwise affirmed by s. 35 (aboriginal and treaty rights); and “other rights or freedoms that pertain to the aboriginal peoples of Canada”. There is much guidance regarding the meaning to be given to “aboriginal” and “treaty” rights.¹⁹ However, with respect to “other rights”, we have little guidance from this Court. The word “pertain” has two meanings: “to have some connection or relation to something”; or “to belong to something by inherent character”.²⁰ As commented in *Corbiere*, it is not sufficient to say a right merely “relates to Aboriginal people”²¹, so what does it mean to say that the right or freedom belongs to aboriginal people by their inherent character?

16. This Court in *Van der Peet* held that for something to have the character of “aboriginal” it must be “integral to its distinctive culture”.²² The purpose of s. 25 is to protect rights truly aboriginal in character, thereby ensuring the continued process of reconciliation.

¹⁸ Hogg, at s. 28.9.

¹⁹ *Constitutional Law of Canada* at 28.9; Jane M. Arbour, “The Protection of Aboriginal Rights Within a Human Rights Regime: In search of an Analytical Framework for Section 25 of the Canadian Charter of Rights and Freedoms” (2003), 21 S.C.L.R. (2d) at 29 re academic curiosity at the absence of the word “existing”.

²⁰ *Webster’s Third New International Dictionary*, s.v. “pertain”.

²¹ *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203 [*Corbiere*] at para 53.

²² *Van der Peet* at para 46.

Additional assistance in interpreting “other rights” can be found in the *ejusdem generis* rule.²³ The two items listed with “other rights” (aboriginal and treaty) arise directly from the Constitution and the two items included in “other rights” reflect the reconciliation of pre-existing aboriginal society with Crown sovereignty. Both the aboriginal nature of these rights and the link to reconciliation of pre-existing aboriginal peoples, leads to the conclusion that in order to be afforded the protection of s. 25, a right must be founded directly in the Constitution or be integral to the distinctive culture of an aboriginal people of Canada. The Federal Court of Appeal in *Corbiere* came to a similar conclusion regarding “other rights”, holding that what was then s.77(1) of the *Indian Act* was not an “other right” because it was not “aimed at protecting and affirming aboriginal difference ...[and] evidence adduced on this appeal has not established that a residency requirement in democratic elections is *integral* to the maintenance of a *distinctive* form of Aboriginal government.”²⁴ (emphasis added)

17. Section 25 protects “rights and freedoms”, not government regulations, which are not “rights”, and certainly not “freedoms”. A regulation’s purpose may be to manage a right, but the regulatory scheme is not a right in and of itself. The Crown is not given an unfettered discretion to regulate rights behind the shield of s. 25. Section 25 protects the underlying rights which are integral to the aboriginal people of Canada, leaving the Crown with the task of managing those rights, while still maintaining a respect for the Charter rights of all Canadians.

Abrogate and Derogate

18. Used together, as they are here, these words should be read to have their complimentary definitions. That is to say that “abrogate” is defined as “to abolish” and “derogate” essentially means to abrogate in part.²⁵ To abrogate or derogate is to significantly impair or abolish a right. This interpretation is consistent with the development of constitutional law in Canada, in which no rights, Charter or s. 35, are found to be absolute.²⁶ In the context of an analysis of a s. 35 right, this Court in *R v. Nikal* rejected the argument that anything that

²³ *Nanaimo (City) v. Rascal Trucking Ltd.*, [2000] 1 S.C.R. 341 at paras. 21-22.

²⁴ *The Queen v. Corbiere*, (1996), 142 D.L.R. (4th) 122 (F.C.A.) at 136.

²⁵ *Webster’s Third New International Dictionary*, s.v. “abrogate” and “derogate”

²⁶ See *R v. Crawford*, [1995] 1 S.C.R. 858 at para. 34 Sopinka J., for the majority: “... Charter rights are not absolute in the sense that they cannot be applied to their full extent regardless of the context. Application of

affected a right constituted an infringement.²⁷ Cory J. then looked to the Charter for analogy, holding that “[a]bsolute freedom in the exercise of even a Charter or constitutionally guaranteed aboriginal right has never been accepted, nor was it intended. Section 1 of the Canadian Charter of Rights and Freedoms is perhaps the prime example of this principle.”²⁸ Whether the affect of a s. 15 right on a s. 25 right amounts to abrogation or derogation requires, therefore, a full analysis of s. 15.

Section 25 as a Threshold

19. An analysis of s. 25 cannot, therefore, be a threshold issue as suggested by Kirkpatrick J.A. in the Court below²⁹, due to: the proper construction of s. 25 as a part of the s. 1 analysis; the fact that the impact on a right protected by s. 25 can only be determined in the context of an analysis of both the s. 15 and the s. 25; and the need for an analysis of both s. 15 and s. 25 to determine whether one abrogates or derogates the other.

B. An Analytical Framework for Section 25

20. The above interpretation leads to the following analytical framework:

- (a) What is being challenged (the “Challenged Right”)?
- (b) Does the Challenged Right breach a Charter right (the “Charter Right”)?
- (c) Is the Challenged Right protected by s. 25, by virtue of being: an aboriginal right; a treaty right; or an “other right” (meaning a right that is constitutional in nature and integral to the distinctive culture of an aboriginal people of Canada)?
- (d) Does the Charter Right abrogate or derogate from the Challenged Right?
- (e) If the Challenged Right is abrogated or derogated, then apply s. 1 of the Charter and the *Oakes* test in the context of s. 25.

C. Applying the Analytical Framework for Section 25 in this Appeal

21. The Challenged Right in this case is the MTB Commercial Fishery. The AFIA relies on the arguments in the Factum of the Appellant to show that the MTB Commercial

Charter values must take into account other interests and in particular other Charter values which may conflict with their unrestricted and literal enforcement.”

²⁷ *R v. Nikal*, [1996] 1 S.C.R. 1013 [*Nikal*] at para. 91.

²⁸ *Nikal* at para. 92.

²⁹ *R v. Kapp*, 2006 BCCA 277 at para. 139.

Fishery is a breach of s. 15 of the Charter. Similarly, the AFIA submits that if the design of a regulation regarding a commercial *treaty* right contemplated separate fisheries under different regulations from the rest of the commercial fishery, then that program would violate s. 15 of the Charter.

22. The MTB Commercial Fishery is not a right protected by s. 25 of the Charter. MTB Commercial Fishery is not a s. 35 right - there is no treaty right, and no aboriginal right to fish commercially.³⁰ The *Sparrow* case sidestepped the Musqueam claim for commercial rights, but their expert stated that there was no market for salmon.³¹

23. The question is, therefore, whether the MTB Commercial Fishery is an “other right” under s. 25 of the Charter. The AFIA relies on the arguments in the Factum of the Appellant to show that the MTB Commercial Fishery is not an “other right” pursuant to s. 25. Additionally, the MTB Commercial Fishery finds its authority in an agreement with the Crown which is expressly not a treaty.³² It is also important to recognize that the MTB Commercial Fishery is authorized by a licence that can be terminated upon six months’ notice.³³ The ability for the Crown to terminate the agreement without cause is indicative of the temporary nature of the rights under the agreement which is inconsistent with a conclusion that the Crown viewed the MTB Commercial Fishery was integral to aboriginal culture. Additionally, there is no evidence that the MTB Commercial Fishery arises out of any right which is integral to the distinctive culture of any of the Musqueam, Tsawassen, or Burrard. It is submitted that for all these reasons the MTB Commercial Fishery is not an “other right” pursuant to s. 25 of the Charter.

24. In the alternative, if the MTB Commercial Fishery is an “other right”, then not having found there to be a right protected by s. 25, an determination of the potential for the s. 15 right to “abrogate or derogate” is beyond the scope of this analysis.

³⁰ In *Van der Peet*, this Court held that a commercial right hadn’t been proved on the lower Fraser River. Two Pt. Alberni bands in the impugned program had their commercial claims rejected in *R v. N.T.C. Smokehouse*, [1996] 2 S.C.R. 672

³¹ Letter from Dr. Wayne Suttles, Opinion re *R. v. Ronald Sparrow* (27 November 1984), A.R. Vol. XI, Exh. 6, Tab 47 at 2040. He said: “. . . it is important to note that this was not a market system. There was no all-purpose money. It was not possible to take a surplus of food and simply peddle it.”

³² The Fisheries Agreement: Burrard/Musqueam/Tsawassen at 1490-1491 and Sections 1.(3) – 1.(6).

³³ Fisheries Agreement: Burrard/Musqueam/Tsawassen at 1493 and Section 13.(2)

25. In the further alternative, if the MTB Commercial Fishery is an “other right” that will be abrogated or derogated by a s. 15 right, then s. 1 must be applied in light of s. 25. The first stage of the *Oakes* test is an analysis of whether the MTB Commercial Fishery constitutes an “important objective”. Given that to reach this part of the analysis, it would have been established that the MTB Commercial Fishery was an “other right” protected by s. 25, the very fact that the right is protected by s. 25 of the Charter is conclusive proof that it is an important objective. However, the AFIA submits that the MTB Commercial Fishery would not pass the last three stages of the *Oakes* test. The AFIA relies on the findings of the trial judge at paras. 205-218 of the trial reasons, which demonstrate that the MTB Commercial Fishery does not satisfy the last three stages of the *Oakes* test.

26. The AFIA therefore respectfully submits that the MTB Commercial Fishery is a breach of s. 15 of the Charter and is not saved by s. 1, applied in light of s. 25.

D. Response to Anticipated Submissions by Other Interveners

27. Some of the other interveners in this appeal will be arguing that “other rights” include agreements in the context of the treaty making process (known sometimes as interim treaty measures), as well as agreements or regulatory regimes made in the context of obligations to consult pursuant to the *Haida Nation v. British Columbia (Minister of Forests)* decision of this Court. The AFIA respectfully submits that neither of these agreements are “other rights”. *Haida* consultation arises out of the Crown’s duty to act honourably when faced with claimed, but unproven, aboriginal rights.³⁴ The Crown, at this stage, is dealing not with an aboriginal right, but a *potential* aboriginal right, which cannot be said to be an “other right”. This Court in *Haida* held that the purpose of consultation was to: “maintain the honour of the Crown and to effect reconciliation ... Pending settlement, the Crown is bound by its honour to balance societal and Aboriginal interests ... Balance and compromise will then be necessary.”³⁵

28. Interim treaty measures are exactly what is described in the above statement from *Haida* – an agreement “[p]ending settlement” which is reflective of the honour of the Crown, as well as a practical response to the long process leading to a treaty. These agreements often

³⁴ *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511[*Haida*] at para. 27.

³⁵ *Haida*, para. 45

include language that the agreement will be without prejudice to any claims of aboriginal rights or title.³⁶ The intention of the parties to such an agreement is that it will not create any of the constitutional protections that might be afforded in a treaty. Additionally, both interim treaty measures and *Haida* related programs or agreements are transitory in nature - “pending” conclusion of a comprehensive treaty. Section 25 protects permanent rights at the core of aboriginal culture, not transitory agreements. Some may argue that this analysis unduly restricts the ability of the Crown and aboriginal groups to come up with innovative solutions. Section 1 will not preclude innovative and creative solutions, it just limits the Crown to what is reasonable.

29. Similarly, such regulatory programs as the Fisheries Management Agreements (Bill C-45)³⁷ are not “other rights” under s. 25 of the Charter. Even if the agreement dealt directly with a proven treaty right (like that described in *Marshall 1 & 2*), s. 25 would operate to protect the treaty right, and not the agreement attempting to regulate that treaty right.

PART V: NATURE OF ORDERS SOUGHT

30. The AFIA supports the Appellant’s submissions for declaratory relief.

31. The AFIA submits that its arguments regarding s. 25 of the Charter will bring a unique perspective and therefore submits that it be granted leave to make oral argument at the hearing of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Kevin O’Callaghan
Counsel for the Applicant, Atlantic Fishing Industry Alliance
Dated:

³⁶ Fisheries Agreement: Burrard/Musqueam/Tsawassen (May 15, 1995), Appeal Record Vol. IX, Exh. 1, Tab B [“[T]his Agreement shall not serve to define or to limit aboriginal or treaty rights and is not intended to be, and shall not be interpreted to be, an agreement or a treaty within the meaning of section 35”]

³⁷ Bill C-45, s. 43

PART VI
LIST OF AUTHORITIES

	PARA. #
Cases	
<i>Andrews v. Law Society of British Columbia</i> , [1989] 1 S.C.R. 143	9
<i>Corbiere v. Canada (Minister of Indian and Northern Affairs)</i> , [1999] 2 S.C.R. 203	14
<i>Ermineskin Cree Nation v. Canada</i> , 2001 ABQB 760	10
<i>Haida Nation v. British Columbia (Minister of Forests)</i> , [2004] 3 S.C.R. 511	17
<i>Hunter v. Southam Inc.</i> , [1984] 2 S.C.R. 145	8, 9
<i>Law v. Canada (Minister of Employment and Immigration)</i> , [1999] 1 S.C.R. 497	9
<i>Nanaimo (City) v. Rascal Trucking Ltd.</i> , [2000] 1 S.C.R. 341	15
<i>R v. Big M Drug Mart Ltd.</i> , [1985] 1 S.C.R. 295	8
<i>R v. Crawford</i> , [1995] 1 S.C.R. 858	13
<i>R v. Kapp</i> , 2006 BCCA 277	13
<i>R. v. Marshall</i> , [1999] 3 S.C.R. 456	2
<i>R. v. Marshall</i> , [1999] 3 S.C.R. 533	2, 5
<i>R v. Nikal</i> , [1996] 1 S.C.R. 1013	13
<i>R. v. N.T.C. Smokehouse Ltd.</i> , [1996] 2 S.C.R. 672	22
<i>R. v. Oakes</i> , [1986] 1 S.C.R. 103	9
<i>R. v. Sparrow</i> , [1990] 1 S.C.R. 1075	10, 11, 22
<i>R v. Van der Peet</i> , [1996] 2 S.C.R. 507	8-11, 15
<i>Shubenacadie Indian Band v. Canada (Human Rights Commission)</i> (2000), 187 D.L.R. (4th) 741 (F.C.C.A.)	10
<i>The Queen v. Corbiere</i> , (1996), 142 D.L.R. (4 th) 122 (F.C.A.)	15

Text and Publications

Jane M. Arbour, “The Protection of Aboriginal Rights Within a Human Rights Regime: In search of an Analytical Framework for Section 25 of the Canadian Charter of Rights and Freedoms” (2003), 21 S.C.L.R. (2d) at 29	14
Peter W. Hogg, <i>Constitutional Law of Canada</i> , 5th ed. Vol. 2 (Scarborough: Thomson Canada Ltd., 2007) at 28.9	10
<i>Minutes of Proceedings and Evidence of the Special Joint Committee of the senate and of the House of Commons on the Constitution of Canada</i> , No. 3	9
<i>Minutes of Proceedings and Evidence of the Special Joint Committee of the senate and of the House of Commons on the Constitution of Canada</i> , No. 49	9
<i>Webster’s Third New International Dictionary</i> , s.v. “abrogate”, “derogate”, and “pertain”	13, 14

PART VII

STATUTES AND REGULATIONS

Excerpt from:

Bill C-45, *An Act respecting the sustainable development of Canada's seacoast and inland fisheries*, 1st Session, 39th Parliament 55 Elizabeth II, 2006

Fisheries Management Agreements

Minister may enter into agreement

43. (1) The Minister may, to further the conservation or protection of fish, the sustainable development of a fishery or the participation of Canadians in fisheries management, enter into a fisheries management agreement with an organization that the Minister considers to be representative of a class of persons or holders.

The Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11

PART I

CANADIAN CHARTER OF RIGHTS AND FREEDOMS -- ss. 1 to 34

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms -- s. 1

Rights and freedoms in Canada -- s. 1

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

...

Equality Rights -- s. 15

Equality before and under law and equal protection and benefit of law -- s. 15(1)

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs -- s. 15(2)

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.. . .

...

General -- ss. 25 to 31

Aboriginal rights and freedoms not affected by Charter -- s. 25

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

Other rights and freedoms not affected by Charter -- s. 26

26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.

Multicultural heritage -- s. 27

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

Rights guaranteed equally to both sexes -- s. 28

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

Rights respecting certain schools preserved -- s. 29

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.. . .

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PART II

RIGHTS OF THE ABORIGINAL PEOPLES OF CANADA -- ss. 35 to 35.1

Recognition of existing aboriginal and treaty rights -- s. 35(1)

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Definition of "aboriginal peoples of Canada" -- s. 35(2)

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

Land claims agreements -- s. 35(3)

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

Aboriginal and treaty rights are guaranteed equally to both sexes -- s. 35(4)

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.