Court File No.: 31603

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, LEONA MCDONALD, STUART MCDONALD, RYAN MCEACHERN, WILLIAM MCISAAC, MELVIN (BUTCH) MITCHELL, RITCHIE MOORE, GALEN MURRAY, DENNIS NAKUTSURU, THEORDORE NEEF, DAVID LUKE NELSON, PHUOC NGUYEN, NUNG DUC GIA NGUYEN, RICHARD NOMURA, VUI PHAN, ROBERT POWROZNIK, BRUCE PROBERT, LARRY SALMI, ANDY SASIDIAK, COLIN R. SMITH, DONNA SONNENBERG, DEN VAN TA, CEDRIC TOWERS, THANH S. TRA, GEORGE TUDOR, MERVIN TUDOR, DIEU TO VE, ALBERT WHITE,, GARY WILLIAMSON, JERRY A. WILLIAMSON, SPENCER J. WILLIAMSON, KENNY YOSHIKAWA, DOROTHY ZILCOSKY AND ROBERT ZILCOSKY

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AND:

HER MAJESTY THE QUEEN

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PART I – STATEMENT OF FACTS

1. The Tseshaht First Nation ("Tseshaht") adopts the statement of facts as set out by the Respondent, Her Majesty the Queen, in its factum.

2. Tseshaht relies on the background information as set out in the Memorandum of Argument filed in support of its application for leave to intervene in this appeal.

PART II – ISSUES ON APPEAL

3. Tseshaht agrees that the issues on appeal are as characterized by the Respondent.

PART III – ARGUMENT

4. Tseshaht supports the position of the Respondent that the Pilot Sales Program ("PSP") does not discriminate against the Appellants under s. 15(1) of the *Charter*, but offers a different perspective to the legal analysis.

5. Tseshaht and the other Aboriginal interveners have had some opportunity to exchange summaries of their anticipated arguments. Tseshaht submits that its submissions are distinct from the other interveners and reflective of the fact that it is one of the few First Nations with a PSP (other than Musqueam/Burrard/Tsawwassen "M/T"). Tseshaht's members will be directly affected by the decision of this Court.

6. Tseshaht's interests in this appeal go to the heart of the s. 15 analysis and the extent to which the Court should look beyond the circumstances of M//T and the Area "E" protest fishery which gave rise to these proceedings. One of Tseshaht's paramount interests is as a First Nation engaged in treaty negotiations. The fishing agreement Tseshaht negotiates each year with the Crown, and specifically the sales component thereof, is at issue in this appeal. As can be seen from the language of Tseshaht's 1997-98 fishing agreement (see para. 19 herein), it was negotiated as an interim measures agreement, in the context of treaty negotiations.

7. It is respectfully submitted that the arguments of the Appellants with respect to section 15 of the *Charter* are an attack on the treaty making process itself. This Court has encouraged the Crown and Aboriginal people to negotiate treaties (see for example *Delgamuukw* at para. 186[1]). Interim measures fisheries agreements, as a precursor to treaties, are an important part of the reconciliation purpose of s. 35(1) of the *Constitution*. If agreements such as those giving rise to this appeal cannot be negotiated for fisheries, then arguably similar agreements cannot be negotiated for forestry, mining, trapping or any other resource. We respectfully submit that the result will be more litigation rather than negotiation.

a. No differential treatment under the law on the basis of an enumerated or analogous ground

8. The Appellants have alleged at each level of court, that they have suffered discrimination because they lack a bloodline connection to the M/T and that the PSP created a race-based commercial fishery.

9. This Intervener submits that there is nothing in the impugned law that requires a bloodline connection to M/T or any First Nation, nor is there even a requirement in the *Aboriginal Communal Fishing Licences Regulations* ("*ACFLR*") that persons who may benefit from PSP must be of Aboriginal ancestry.

10. According to s. 4 of the *ACFLR*, the Minister may designate the persons authorized to fish under the licence and if the Minister does not do so, then the Aboriginal organization may do so.[2] There is no prescription or criteria for designation within the *ACFLR*.

11. Chief Councillor Judith Sayers of Hupacasath First Nation testified at trial that eligibility for designation to participate in the fishery was determined by either band

[1] *Delgamuukw* v. *British Columbia*, [1997] 3 S.C.R. 1010.
[2] Respondent's Factum at Part VII.

membership, or marriage to a band member; non-Hupacasath spouses may be issued deckhand cards that authorize them to assist with fishing.[3]

12. Similarly, Tsawwassen First Nation's fisheries manager, Frederick Jacobs, testified that Tsawwassen issues cards for three types of designation to authorize participation in the fishery: for band members, for deckhands who are members of other Coast Salish First Nations, and for spouses of Tsawwassen band members who are not themselves members.[4]

13. Thus, on the face of it, Tseshaht submits that there is nothing in the purpose, effect or language of the *ACFLR* that makes any distinction on the basis of personal characteristics or that creates differential treatment on an enumerated or analogous ground; in other words, there is no denial of a benefit provided by the law.

b) No discriminatory purpose or effect

14. If this learned Court finds that there is differential treatment, then Tseshaht submits that in the alternative, that there is no discriminatory purpose or effect.

15. In this third stage of the *Law* analysis, the focus is on the impact that the differential treatment has on the people affected by it. This requires, *inter alia* examination of:

> a) …the legislation in the context in which it applies, with attention to the interests it affects, and the situation and history in Canadian society of those who are treated differentially by it;[5] and
>
> b) the reality of the situation and whether there has been discriminatory treatment, having regard to the purpose of s. 15(1), which is to prevent the perpetuation of pre-existing disadvantage through unequal treatment. [6]

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[3] J. Sayers, A.R. Vol. VIII, p. 1356, lines 14-47; p. 1357, lines 1-5.
[4] F. Jacobs, A.R. Vol. VII, p. 1263, lines 33-47; p. 1264, lines 1-5.
[5] *Corbiere* v. *Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203 at para. 63.
[6] *Auton (Guardian ad litem of)* v. *British Columbia (Attorney General)*, [2004] 3 S.C.R. 657 at para. 25.

16. The perspective to be applied is subjective and objective, as seen through the eyes of the reasonable person[7]. Thus the claimants must establish that as a result of the PSP, their human dignity has been violated, as assessed subjectively and objectively by the reasonable person and in consideration of the "reality of the situation" and the historical, social, political and legal context.[8]

- **The Context: Tseshaht's Agreement as an Interim Measure**

17. Firstly, Tseshaht submits that the relevant context must consider not only the circumstances of the M/T, but also that of Hupacasath and Tseshaht and the "broader Aboriginal community" (as noted by Brenner C.J. in his Reasons at paras. 23 and 81 and upheld by Low J.A. at paras.42 and 75).[9] Circumstances include the socio-economic situation of the affected communities, the beneficial effects of PSP, the stated purposes for entering into fishing agreements, and the potential detrimental impacts suffered as result of the cancellation of PSP.

18. The Tseshaht and Hupacasath fishing agreements entered as exhibits at trial were negotiated as a component of treaty negotiations.[10] Hupacasath/Tseshaht's and M/T's fishing agreements each stated that in future treaty negotiations, benefits flowing from the fishing agreements may be determined as partial fulfillment of the Crown's responsibilities under treaty.[11]

19. Further, the Hupacasath/Tseshaht Allocation Agreement states in its preamble that:

> …on or about August 20, 1992 the First Nations, DFO and the Nuu-chah-nulth Tribal Council for and on behalf of the Chiefs and First Nations that the Council represents signed an interim Fisheries Measures Agreement (hereinafter called the "IFM Agreement");

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[7] *supra,* note 5 at para. 64.
[8] *Law* v. *Canada,* [1999] 1 S.C.R. 497 at para. 83.
[9] Reasons of Brenner C.J.S.C., A.R. Vol. I, pp. 105, 127, 128; Reasons of Low J.A., A.R. Vol. I, pp. 177-178.
[10] Hupacasath & Tseshaht Allocation Agreement, R.R. , p. 200, 202.
[11] *ibid* , p. 202 at s. 2(3); Burrard, Musqueam and Tsawwassen Fisheries Agreement, A.R. Vol. IX, p. 1491 at s. 1(5).

> AND WHEREAS this Agreement is a subagreement to the IFM Agreement…[12]

20. The significance of interim measures agreements in the context of the British Columbia Treaty process is well-documented. For example, The Report of the British Columbia Claims Task Force noted at p. 23 that:

> In resource sectors, the uncertainty caused by unresolved issues affects the management of the resource and the stability of the industry. To protect the First Nations and all others having an interest in the resource, the parties should consider negotiation of sector wide interim measures agreements.
>
> The implementation of interim measures agreements may require changes in existing policies, legislation and regulations. Where existing legislation or regulations are a barrier to interim measures agreements, the provincial and federal governments are urged to enact enabling legislation or regulations which will give effect to such agreements including those authorizing resource management arrangements not contemplated in current legislative or regulatory schemes.
>
> The Task Force recommends that:
>
> 16. the parties negotiate interim measures agreements before or during the treaty negotiations when an interest is being affected which could undermine the process.[13]

21. In its 1997 Annual Report, the BC Treaty Commission (the “BCTC”) reported on the status of interim measures and described them as “…essential to balance conflicting interests, and where critical, to protect lands, waters, air and resources which might form part of a treaty settlement.”

22. In 2001, the BCTC stated that the purposes of interim measures include allowing the parties to test certain programs before incorporating them into constitutionally-protected documents and as a means to bring economic benefit to communities while negotiations are underway.[14] This was also noted by Low J.A. at para. 45 as one of the purposes of the PSP.

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[12] *supra,* note 10 at 200.
[13] June 28, 1991, The Report of the British Columbia Claims Task Force.
[14] “Looking Back, Looking Forward, A Review of the BC Treaty Process” at 10.

- **The Context: Consideration of the Circumstances of the Claimant and Comparator Groups**

23. Brenner C.J.S.C. in his Reasons, reviewed the purposes of the PSP during the "correspondence to needs, capacity and circumstances" part of the contextual analysis, noting that the court must consider both the claimant and comparator groups during the analysis.[15]

24. At para. 91, Brenner C.J.S.C. concluded that in his view:

> …the most fundamental correspondence between the A.F.S. and the needs, capacity and circumstances of aboriginal communities is that it facilitates a commercial component of aboriginal access to the fishery in a manner consistent with and respectful of the unique relationship between British Columbia aboriginal communities and the fishery.

And at para. 96:

> Also as noted above, one important purpose of P.S.P. is to test manage arrangements for possible inclusion in treaties…The resolution of treaty and self-government issues is unquestionably in the interests of Canadian society as a whole. In my view, the A.F.S., including the P.S.P. does correspond to the needs and circumstances of the claimant group as well as aboriginal communities.[16]

25. The Appellants attempt to define the comparator group as limited to M/T. As noted above, as part of the contextual analysis, one must examine the circumstances of the comparator group. The Appellants are aware that this Court has already found that **all** Aboriginal peoples are disadvantaged (see for example *Lovelace* v. *Ontario* at para. 69[17]), as was pointed out by the Appeal Judge at para. 52 of his Reasons.

26. By minimizing the comparator group, the Appellants effectively minimize the disadvantage of Aboriginal people. Further, by identifying individual members of the comparator group as not being disadvantaged (see para. 80 of the Appellants' factum),

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[15] *supra,* note 9 at para. 84
[16] *ibid.*
[17] [2000] 1 S.C.R. 950.

the Appellants misconstrue the analysis. The issue is not whether "all individual" members of the group are disadvantaged, but whether the group is disadvantaged. Otherwise the effect would be to minimize and discredit the long history of Aboriginal peoples' suffering as noted in the words of this Court in *Lovelace*.

27. Similarly, the Appellants state at paras. 81 and 83 of their factum that Aboriginals are not disadvantaged with respect to the commercial fishery. This is relevant to both the second part of the test in *Law* and the contextual analysis. With respect, this is again a misapplication of the analysis. The question here is whether the comparator group is disadvantaged and not whether an aspect of the group's experience is not. The Appellants' analysis again diminishes the suffering of Aboriginal people.

- **The Context: Treaty Negotiations**

28. It is well-established that the Crown is under a duty to negotiate in good faith within the context of treaty negotiations.[18]

29. Treaty-making reflects the unique position of Aboriginal people and to state the obvious, the Crown does not negotiate treaties with any other group within Canadian society.

30. It is respectfully submitted that a finding that the PSP offends the equality rights of the Appellants would be contrary to legal precedent and would undermine the spirit and intent of good faith negotiations between the parties.

31. Tseshaht further submits that negotiating agreements such as the fishing agreements at issue, is a component of the duty to consult and accommodate Aboriginal rights, not yet proven in court or confirmed by treaty.

[18] *Gitanyow First Nation* v. *Canada*, [1999] 3 C.N.L.R. 89 (B.C.S.C.).

32. It is respectfully submitted that interim measures agreements and treaties with First Nations are also in fulfillment of Canada's international obligations. As recently stated by Conteh C.J. in *Aurelio Cal et al.* v. *A.G. Belize et al* at para. 118:

> …these are domestic proceedings; but undoubtedly in the light of the issues raised they engage in my view, some of the obligations of the State in international law.[19]

33. At para. 131, Conteh C.J. correctly characterized the *Declaration on the Rights of Indigenous Peoples* adopted by the United Nations General Assembly on September 13, 2007 as "…not ordinarily binding on member states." The Court went on to note that even so where such "…Declarations contain principles of general international law, states are not expected to disregard them."

- **The Context: the Honour of the Crown**

34. Tseshaht submits that a critical aspect of the context is that because the fishing agreements at issue were negotiated between the Crown and First Nations within the larger context of treaty negotiations, the honour of the Crown is engaged and should inform the Court's examination of the purpose and intent of the PSP.

35. As this Court noted in *R.* v. *Van der Peet*:

> The Crown has a fiduciary obligation to aboriginal peoples with the result that in dealings between the government and aboriginals the honour of the Crown is at stake. Because of this fiduciary relationship, and its implication of the honour of the Crown, treaties, s. 35(1) and other statutory and constitutional provisions protecting the interests of aboriginal peoples must be given a generous and liberal interpretation…[20]

36. In *Mikisew Cree First Nation* v. *Canada (Minister of Canadian Heritage)* it was noted at para. 51 that:

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[19] October 18, 2007 unreported decision in the Supreme Court of Belize.
[20] [1996] 2 S.C.R. 507 at para. 24.

> [T]he honour of the Crown exists as a source of obligation independently of treaties" that has been invoked by this Court "…as a central principle in resolving aboriginal claims to consultation despite the absence of any treaty".[21]

37. This Court has also held that:

> The honour of the Crown also infuses the processes of treaty making and treaty interpretation. In making and applying treaties, the Crown must act with honour and integrity, avoiding even the appearance of "sharp dealing".[22]

38. If the PSP is found to be offensive to the equality provisions of the *Charter*, the net effect would be to render the phrase "honour of the Crown" meaningless.

c. Concluding comments

39. Different treatment of Aboriginals in respect of Aboriginal fishing rights has been a constant feature of Canada's legal landscape. For example, as noted by Dickson J. in *Jack* v. *the Queen*:

> …pre-Confederation policy gave the Indians a priority in the fishery. That priority is at its strongest when we speak of Indian fishing for food purposes, but somewhat weaker when we come to local commercial purposes.[23]

40. Tseshaht submits that AFS and the PSP are not unlike other government regulatory schemes that have been aimed at assisting Aboriginal participation in commercial fisheries as this Court noted in *R.* v. *Gladstone*:

> "…the government has, at various times, given preferences to aboriginal commercial fishing. For example, the government has provided for greatly reduced licencing fees for aboriginal fishers and has attempted to encourage aboriginal participation in the commercial fishery.[24]

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[21] [2005] 3 S.C.R. 388.
[22] *Haida Nation* v. *British Columbia (Minister of Forests), [2004] 3 S.C.R. 511* at para. 19.
[23] [1980] 1 S.C.R. 294 at 12 (Q.L.).
[24] [1996] 2 S.C.R. 723 at para. 37.

41. Tseshaht respectfully submits that the “different treatment” of Aboriginal people in this case does not amount to differential treatment under the law, as contemplated by s. 15 of the *Charter* and particularly when examined within the context of treaty negotiations and the overall objective of reconciliation between the Crown and Aboriginal people.

PART IV – SUBMISSIONS AS TO COSTS

42. This Intervener makes no submissions as to costs.

PART V – NATURE OF THE ORDER SOUGHT

43. It is submitted that the Appeal should be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated this 19th day of November, 2007

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Hugh M.G. Braker, Q.C.

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Anja P. Brown

Counsel for the Intervener Tseshaht First Nation

PART VI: TABLE OF AUTHORITIES

PART VII: STATUTORY PROVISIONS

Aboriginal Communal Fishing Licences Regulations, S.O.R./93-332

Aboriginal Communal Fishing Licences Regulations

SOR/93-332

FISHERIES ACT

His Excellency the Governor General in Council, on the recommendation of the Minister of Fisheries and Oceans, pursuant to section 43* of the *Fisheries Act*, is pleased hereby to revoke the *Aboriginal Fisheries Agreements Regulations*, made by Order in Council P.C. 1992-1456 of June 26, 1992**, and to make the annexed *Regulations respecting fishing carried on in accordance with aboriginal communal fishing licences*, in substitution therefor.

* S.C. 1991, c. 1, s. 12

** SOR/92-415, 1992 *Canada Gazette* Part II, p. 3077

Registration June 16, 1993

REGULATIONS RESPECTING FISHING CARRIED ON IN ACCORDANCE WITH ABORIGINAL COMMUNAL FISHING LICENCES

SHORT TITLE

1. These Regulations may be cited as the *Aboriginal Communal Fishing Licences Regulations*.

INTERPRETATION

2. In these Regulations,

“aboriginal organization” includes an Indian band, an Indian band council, a tribal council and an organization that represents a territorially based aboriginal community; (*organisation autochtone*)

“designated” [Repealed, SOR/2002-225, s. 11]

“licence” means a communal licence issued under subsection 4(1); (*permis*)

“Minister” means, in respect of

(*a*) fisheries for the fish and species of fish described in subsection 3(1) of the *Quebec Fishery Regulations*, 1990, in the waters referred to in that subsection, the Minister of Natural Resources, Wildlife and Parks of Quebec or the Associate Minister of Forests, Wildlife and Parks for Quebec,

(*a.1*) fisheries in the non-tidal waters of Ontario, the Minister of Natural Resources for Ontario; and

(*b*) any other fishery, the Minister of Fisheries and Oceans. (*ministre*)

SOR/94-390, s. 1; SOR/94-531, ss. 1, 2; SOR/95-106, s. 1; SOR/2002-225, s. 11; SOR/2003-176, s. 25; SOR/2005-269, s. 54.

APPLICATION

3. (1) These Regulations apply in respect of

(*a*) fisheries in Canadian fisheries waters in and adjacent to Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and the Northwest Territories;

(*b*) fisheries in the tidal waters in and adjacent to Manitoba;

(*c*) fisheries in tidal waters in and adjacent to the Yukon Territory and fisheries in the Yukon Territory for fish of an anadromous stock of chum salmon, coho salmon, chinook salmon, pink salmon, sockeye salmon, rainbow trout, the family *Coregonidae* (whitefish and cisco) or Arctic char; and

(*d*) fisheries in the waters of the Areas enumerated and described in Schedule II to the *Pacific Fishery Management Area Regulations* and salmon fisheries in British Columbia.

(2) These Regulations do not apply in respect of national parks.

SOR/94-390, s. 2; SOR/94-531, ss. 3, 4; SOR/95-106, s. 2.

COMMUNAL LICENCES

4. (1) The Minister may issue a communal licence to an aboriginal organization to carry on fishing and related activities.

(2) The Minister may designate, in the licence,

(*a*) the persons who may fish under the authority of the licence, and

(*b*) the vessels that may be used to fish under the authority of the licence.

(3) If the Minister does not designate the persons who may fish under the authority of the licence, the aboriginal organization may designate, in writing, those persons.

(4) If the Minister does not designate the vessels that may be used to fish under the authority of the licence, the aboriginal organization may designate, in writing, those vessels.

SOR/2002-225, s. 12.

5. (1) For the proper management and control of fisheries and the conservation and protection of fish, the Minister may specify in a licence any condition respecting any of the matters set out in paragraphs 22(1)(*b*) to (*z.1*) of the *Fishery (General) Regulations* and any condition respecting any of the following matters, without restricting the generality of the foregoing:

(*a*) the species and quantities of fish that are permitted to be taken or transported;

(*b*) the method by which and when the licence holder is to notify the Minister of designations, the documents that constitute proof of designation, when, under what circumstances and to whom proof of designation must be produced, the documents or information that designated persons and vessels must carry when carrying on fishing and related activities, and when, under what circumstances and to whom the documents or information must be produced;

(*c*) the method to be used to mark and identify vessels and fishing gear;

(*d*) the locations and times at which landing of fish is permitted;

(*e*) the method to be used for the landing of fish and the methods by which the quantity of the fish is to be determined;

(*f*) the information that a designated person or the master of a designated vessel is to report to the Minister or a person specified by the licence holder, prior to commencement of fishing, with respect to where and when fishing will be carried on, including the method by which, the times at which and the person to whom the report is to be made;

(*g*) the locations and times of inspections of the contents of the hold and the procedure to be used in conducting those inspections;

(*h*) the maximum number of persons or vessels that may be designated to carry on fishing and related activities;

(*i*) the maximum number of designated persons who may fish at any one time;

(*j*) the type, size and quantity of fishing gear that may be used by a designated person;

(*k*) the circumstances under which fish are to be marked for scientific or administrative purposes; and

(*l*) the disposition of fish caught under the authority of the licence.

SOR/94-390, s. 3; SOR/2002-225, s. 13.

(2) [Repealed, SOR/2002-225, s. 13]

6. [Repealed, SOR/2002-225, s. 14]

PROHIBITIONS

7. No person carrying on fishing or any related activity under the authority of a licence shall contravene or fail to comply with any condition of the licence.

8. No person other than a designated person may fish under the authority of a licence.

9. (1) No person who is authorized to fish under the authority of a licence shall fish for or catch and retain any species of fish in any area of the waters referred to in subsection 3(1) during the close time beginning on December 29 and ending on December 31.

(2) The close time established by subsection (1) is considered to be fixed separately and individually with respect to any species of fish found in any of the waters referred to in subsection 3(1).

SOR/94-390, s. 4.

10. [Revoked, SOR/94-390, s. 4]

Règlement sur les permis de pêche communautaires des Autochtones

DORS/93-332

LOI SUR LES PÊCHES

Sur recommandation du ministre des Pêches et des Océans et en vertu de l'article 43[*] de la *Loi sur les pêches*, il plaît à Son Excellence le Gouverneur général en conseil d'abroger le *Règlement sur les accords de pêche autochtones*, pris par le décret C.P. 1992-1456 du 26 juin 1992[**], et de prendre en remplacement le *Règlement concernant la pêche pratiquée conformément aux permis de pêche communautaires des Autochtones*, ci-après.

[*] L.C. 1991, ch. 1, art. 12

[**] DORS/92-415, *Gazette du Canada* Partie II, 1992, p. 3077

Enregistrement 16 juin 1993

RÈGLEMENT CONCERNANT LA PÊCHE PRATIQUÉE CONFORMÉMENT AUX PERMIS DE PÊCHE COMMUNAUTAIRES DES AUTOCHTONES

TITRE ABRÉGÉ

1. *Règlement sur les permis de pêche communautaires des Autochtones*.

DÉFINITIONS

2. Les définitions qui suivent s'appliquent au présent règlement.

« désigné » [Abrogée, DORS/2002-225, art. 11]

« ministre » En ce qui a trait :

a) à la pêche des poissons et des espèces de poissons mentionnés au paragraphe 3(1) du *Règlement de pêche du Québec (1990)* dans les eaux visées à ce paragraphe, le ministre des Ressources naturelles, de la Faune et des Parcs du Québec ou le ministre délégué à la Forêt, à la Faune et aux Parcs du Québec;

a.1) à la pêche dans les eaux sans marée de l'Ontario, le ministre des Richesses naturelles de l'Ontario;

b) à toute autre pêche, le ministre des Pêches et des Océans. (*Minister*)

« organisation autochtone » S'entend notamment d'une bande indienne, d'un conseil de bande indienne, d'un conseil de tribu et d'une association qui représente une collectivité territoriale autochtone. (*aboriginal organization*)

« permis » Permis communautaire délivré en vertu du paragraphe 4(1). (*licence*)

DORS/94-390, art. 1; DORS/94-531, art. 1 et 2; DORS/95-106, art. 1; DORS/2002-225, art. 11; DORS/2003-176, art. 25; DORS/2005-269, art. 54.

APPLICATION

3. (1) Le présent règlement s'applique :

a) à la pêche dans les eaux de pêche canadiennes situées dans les provinces d'Ontario, de Québec, de la Nouvelle-Écosse, du Nouveau-Brunswick, de l'Île-du-Prince-Édouard et de Terre-Neuve et les Territoires du Nord-Ouest, et dans celles adjacentes à ces provinces et territoires;

b) à la pêche dans les eaux à marée du Manitoba et dans celles adjacentes à cette province;

c) à la pêche dans les eaux à marée situées à l'intérieur du territoire du Yukon et dans celles adjacentes à ce territoire et à la pêche dans le territoire du Yukon de poissons appartenant à un stock de poisson anadrome de saumon kéta, de saumon coho, de saumon quinnat, de saumon rose, de saumon rouge, de truite arc-en-ciel, de la famille des *Coregonidae* (ménomini, corégone et cisco) ou d'omble chevalier;

d) à la pêche dans les eaux des secteurs visés à l'annexe II du *Règlement sur les secteurs d'exploitation des pêcheries du Pacifique* et à la pêche du saumon dans la province de la Colombie-Britannique.

(2) Le présent règlement ne s'applique pas aux parcs nationaux.

DORS/94-390, art. 2; DORS/94-531, art. 3 et 4; DORS/95-106, art. 2.

PERMIS COMMUNAUTAIRES

4. (1) Le ministre peut délivrer un permis communautaire à une organisation autochtone en vue de l'autoriser à pratiquer la pêche et toute activité connexe.

(2) Le ministre peut désigner dans le permis :

a) les personnes autorisées à pêcher au titre du permis;

b) les bateaux qui peuvent être utilisés au titre du permis.

(3) Dans le cas où le ministre ne désigne pas les personnes autorisées à pêcher au titre du permis, l'organisation autochtone peut les désigner par écrit.

(4) Dans le cas où le ministre ne désigne pas les bateaux qui peuvent être utilisés au titre du permis, l'organisation autochtone peut les désigner par écrit.

DORS/2002-225, art. 12.

5. (1) Afin d'assurer une gestion et une surveillance judicieuses des pêches et de voir à la conservation et à la protection du poisson, le ministre peut, sur un permis, indiquer notamment toute condition relative aux points visés aux alinéas 22(1)*b*) à *z.1*) du *Règlement de pêche (dispositions générales)* et toute condition concernant ce qui suit :

a) les espèces et quantités de poissons qui peuvent être prises ou transportées;

b) par quel moyen et à quel moment le titulaire du permis avise le ministre des désignations, les documents attestant la désignation, à quel moment, dans quelles circonstances et à qui les attestations de désignation doivent être produites, les documents ou les renseignements que les personnes ou les bateaux désignés doivent respectivement avoir sur elles ou à bord lorsqu'ils pratiquent la pêche et toute activité connexe et à quel moment, dans quelles circonstances et à qui les documents ou les renseignements doivent être produits;

c) la méthode de marquage et d'identification des bateaux et des engins de pêche;

d) les endroits et les moments où le poisson peut être débarqué ou amené à terre;

e) la méthode à utiliser pour débarquer le poisson et les méthodes pour en déterminer la quantité;

f) les renseignements que la personne désignée ou le capitaine du bateau désigné doit, avant le début de la pêche, transmettre au ministre ou à la personne indiquée par le titulaire du permis quant aux endroits et aux moments où la pêche sera pratiquée, ainsi que le mode et les moments de transmission et leur destinataire;

g) les endroits et les moments des inspections du contenu de la cale et la procédure à suivre lors de celles-ci;

h) le nombre maximal de personnes ou de bateaux qui peuvent être désignés pour pratiquer la pêche et toute activité connexe;

i) le nombre maximal de personnes désignées qui peuvent pêcher en même temps;

j) le type, la grosseur et la quantité des engins de pêche que toute personne désignée peut utiliser;

k) les circonstances dans lesquelles le poisson peut être marqué à des fins scientifiques ou administratives;

l) l'aliénation du poisson pris en vertu du permis.

DORS/94-390, art. 3; DORS/2002-225, art. 13.

(2) [Abrogé, DORS/2002-225, art. 13]

6. [Abrogé, DORS/2002-225, art. 14]

INTERDICTIONS

7. Il est interdit à quiconque pratique la pêche ou toute activité connexe autorisées en vertu d'un permis de contrevenir ou de déroger aux conditions de ce permis.

8. Il est interdit à quiconque n'est pas désigné de pêcher en vertu d'un permis.

9. (1) Il est interdit à quiconque est autorisé à pêcher en vertu d'un permis de pêcher, de prendre ou de garder toute espèce de poisson dans toute zone des eaux visées au paragraphe 3(1) pendant la période de fermeture commençant le 29 décembre et se terminant le 31 décembre.

(2) La période de fermeture établie au paragraphe (1) est réputée fixée séparément pour toute espèce de poisson qui se trouve dans toute zone des eaux visées au paragraphe 3(1).

DORS/94-390, art. 4.

10. [Abrogé, DORS/94-390, art. 4]