

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140924

Docket: A-119-14

Citation: 2014 FCA 211

**CORAM: SHARLOW J.A.
PELLETIER J.A.
STRATAS J.A.**

BETWEEN:

MINISTER OF FISHERIES AND OCEANS

Appellant

And

**THE AHOUSAHT, EHATTESAHT,
HESQUIAHT, MOWACHAHT/MUCHALAHT,
AND TLA-O-QUI-AHT INDIAN BANDS AND
NATIONS**

Respondents

Heard at Vancouver, British Columbia, on September 24, 2014.

Judgment delivered from the Bench at Vancouver, British Columbia, on September 24, 2014.

REASONS FOR JUDGMENT BY:

PELLETIER J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT

PELLETIER J.A.

[1] The appellant Minister of Fisheries and Oceans (the Minister) appeals from the decision of Mr. Justice Mandamin of the Federal Court granting an interlocutory injunction restraining the Minister from opening a commercial herring roe fishery under the auspices of the *Pacific Region*

Integrated Fisheries Management Plan – Pacific Herring, November 7, 2013 – November 6, 2014 (the 2014 IFMP) on the west coast of Vancouver Island.

[2] The motion for the interlocutory injunction was heard on February 21, and the injunction was granted on February 28, 2014.

[3] The open dates for the commercial herring roe fishery in the 2014 IFMP were February 10 to April 30, 2014 (Appeal Book, vol. 1, p. 127). Thus the open season had passed even before the Minister requested an expedited hearing of this appeal in June 2014. As a result, there has not been a live issue between the parties with respect to the interlocutory injunction since April 30, 2014 since nothing this Court did after that date could revive the possibility commercial herring roe fishery within the open season. The First Nations agree that the injunction under appeal applies only to the 2014 fishing season and that any decision with respect to the 2015 season will have to be made pursuant to the 2015 IFMP.

[4] The parties are free to continue their litigation as to whether the Minister's decision to approve the 2014 IFMP should be set aside. In the meantime, the research and negotiations as to the 2015 IFMP will continue and if the Minister once again approves an IFMP over the objections of the First Nations, there will be another opportunity to litigate these issues. If the time frames in that case are no shorter than they were in this case, we are certain that any challenges to that decision could, with the assistance of the Federal Court and this Court, be heard and decided in sufficient time to permit a commercial fishery, if warranted.

[5] As a result, this is not a case where the factors listed in *Borowski v. Canada (Attorney General)*, [1980] 1 S.C.R. 342, at paragraphs 31-41, would favour the Court hearing this appeal notwithstanding its mootness.

[6] The appeal will therefore be dismissed with costs.

"J.D. Denis Pelletier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-119-14

**(APPEAL FROM THE ORDER OF THE HONOURABLE MR. JUSTICE MANDAMIN
OF THE FEDERAL COURT DATED FEBRUARY 21, 2014, NO. T-404-14.)**

STYLE OF CAUSE:

MINISTER OF FISHERIES AND
OCEANS v. THE AHOUSAHT,
EHATTESAHT, HESQUIAHT,
MOWACHAHT/MUCHALAHT,
AND TLA-O-QUI-AHT INDIAN
BANDS AND NATIONS

PLACE OF HEARING:

VANCOUVER, BRITISH
COLUMBIA

DATE OF HEARING:

SEPTEMBER 24, 2014

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.
PELLETIER J.A.
STRATA J.A.

DELIVERED FROM THE BENCH BY:

PELLETIER J.A.

APPEARANCES:

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MFO

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THE AHOUSAHT AND OTHERS

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THE AHOUSAHT AND OTHERS