

30 October 1990
Campbell River, B.C.

THE COURT: I'll just read the judgment.

The defendant, Thomas Russel Adams, is charged with two offences under the Fisheries Act involving the taking and possession of herring spawn on kelp. The case was argued largely on a number of technical and Charter issues, most of which have been dealt with. Some Charter issues remain, but it is not necessary to deal with them.

Following the completion of the evidence and argument in this case, His Honour Judge Warrenchuck (phonetic), who decided the case of The Queen v. Collin Richardson and Harold Wilson, Number 1793C, Masset Registry dated August 20th, 1990 -- Judge Warrenchuck had the benefit of evidence and argument based on the tests enunciated by the Supreme Court of Canada in Regina v. Sparrow (1990) 4 WWR 410.

The facts in that case involve herring roe on kelp taken by Haida Indians. The issue is whether the Indians should be required to possess an Indian Food Fish Permit before taking herring roe on kelp. After considering the evidence, Judge Warrenchuck found that the requirement to obtain an Indian Food Fish licence infringed the aboriginal rights protected in section 35 of the Constitutional Act, 1982.

But in this case there is some difference in how the defendant was apprehended. The facts and issues are reasonably similar. The defendant was in possession of a quantity of herring roe on kelp, harvested generally in the same area, and did not produce an Indian Food Fish Licence or a "J" Licence. The Crown has some concern in this case that there is no evidence that the defendant is a Haida Indian nor that the Haida or other Indians have traditionally used this resource.

The defendant, according to the evidence, was issued with a native fishing licence for his vessel the "Haida Carver." He was also driving a motor vehicle with the personalized licence, "Haida." I find that the defendant is a Native Indian, with a strong suspicion that he is a member of the Haida nation.

While the court is not bound by a decision of another judge of the same court, the courts make efforts towards uniformity and predictability in the law. Judge Warrenchuck's decision was a reasonable one based on

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1 evidence.

2 I have also had the advantage of reading the
3 decision of His Honour Judge Sarich in Regina v. Joseph
4 Andrew Jack et al, Number 15661C, Campbell River
5 Registry, October 22nd, 1990. That case again heard
6 evidence and argument on the tests set out in Regina v.
7 Sparrow and came to a similar conclusion regarding the
8 aboriginal rights of the defendant.

9 The persons affected by those decisions have the
10 right to expect that the law will be applied
11 consistently. In choosing to follow Judge Warrenchuck,
12 for the reasons stated, I have no option but to find that
13 the defendant was not required to hold an Indian Food
14 Fish Licence for the herring spawn on kelp in his
15 possession and he is therefor entitled to acquittal on
16 both charges.

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20 (EXCERPT CONCLUDED)

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23 I hereby certify the foregoing to be a
24 true and accurate transcript of the
25 evidence recorded on a sound recording
26 apparatus, transcribed to the best of my
27 skill and ability.

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31 Janice Perks
32 Court Transcriber
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