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Still hooked by the fight for a race-free B.C. fishery

JOHN CARPAY Executive director of the Canadian Constitution Foundation The Japanese Canadian Fishermen's Association is once again asking the Supreme Court of Canada to rule against racist policies in British Columbia's commercial fishery.

This December, Canada's highest court will hear the appeal of John Michael Kapp and other commercial fishermen who were arrested in 1998 for fishing in protest against a private commercial fishery for members of two aboriginal bands. This race-based commercial fishery allows individuals with bloodline ties to the Musqueam and Tsawwassen bands to fish once in a commercial fishery for their individual benefit, and a second time in the public commercial fishery left over for other Canadians. Other fishermen - including aboriginal Canadians and Canadians of Croatian, Vietnamese, Norwegian and other ancestries - are excluded from the first commercial fishery because they lack a bloodline tie to these two bands.

Introduced by Brian Mulroney in 1992 and continued under Jean Chretien, Paul Martin and Stephen Harper, this race-based commercial fishery is radically different from the non-commercial aboriginal "food fishery." Traditionally, the "food fishery" allowed aboriginals to fish in limited quantities for food and social and ceremonial purposes, without imposing any barriers to participating in B.C.'s commercial fishery. Working under rules that apply equally to all Canadians, aboriginals have enjoyed great success in B.C.'s commercial fishery. More than a third of B.C.'s fishermen, licence holders and vessel owners are aboriginal, and aboriginals are among the 145 fishermen arrested in 1998 who are now asking the Supreme Court to strike down this policy of segregation by race.

For fishermen of Japanese ancestry, this race-based commercial fishery is especially painful, as their ancestors were subjected to anti-Asian fisheries policies during the 1920s. In 1920, the federal government limited the number of fishing licences issued to Japanese Canadians at 1919 levels, while increasing the number of licences issued to Caucasian and aboriginal fishermen. Further, Japanese Canadians were required to reside in the same coastal regions where they fished, while other fisherman could live anywhere they pleased. In 1924, a ban on using gas-powered boats on the Skeena River was lifted for all but Japanese-Canadian fishermen. As they rowed their boats against the tides, winds and currents, taunts of "Hurry up, Japs!" could be heard from fishermen speeding past in their motorized boats.

These federal policies were part of a publicly stated goal of driving the "yellow peril" out of B.C.'s commercial fishery. About half of the Japanese-Canadian fishermen were forced out of the industry during the 1920s, while those who remained suffered a significant loss of earnings, not to mention a loss of dignity and respect.

These discriminatory policies were challenged by the Japanese Canadian Fishermen's Association's predecessors: the Skeena River Fishermen's Association and the Amalgamated Association of Fishermen of B.C. As interveners before the Supreme Court in 1928, Japanese-Canadian fishermen argued that the fisheries minister at the time could not exercise his discretion so as to deny a fishing licence on the basis of race. The court agreed, ruling "any British subject residing in the province of British Columbia, who is not otherwise legally disqualified, has the right . . . to receive a licence." These same associations of Japanese-Canadian fishermen raised money for Jun Kisawa to buy a gas-powered boat to hold a fishing protest near Prince Rupert in 1929. The young bachelor, who was willing to risk jail by using a motorized boat to fish alongside Caucasian and aboriginal fishermen, was promptly arrested. In a Prince Rupert courtroom, he admitted breaking the law, and successfully asserted his right as a Canadian to be treated equally under the law.

During the Second World War, the federal government confiscated the homes and fishing vessels of these politically voiceless Japanese Canadians, then uprooted them from the B.C. coast and forced them to live in internment camps in the B.C. interior and east of the Rockies. It was not until 1949 that Japanese Canadians were permitted to return to the B.C. coast.

Putting the injustices of the past behind them, Japanese-Canadian fishermen returned to their former livelihood. But, this time, there was just one set of rules for all Canadians: equal opportunity regardless of a fisherman's ancestry, language, race or bloodline ties. For more than four decades, until 1992, B.C.'s commercial fishery was a diverse, colour-blind and racially integrated workplace.

This is the commercial fishery that Canadians of Japanese ancestry - and thousands of fishermen from a multitude of racial and cultural backgrounds - are fighting to get back. In *R. v. Kapp*, the Supreme Court has an opportunity to once again affirm racial equality in B.C.'s commercial fishery, as it did in 1928.

The Calgary-based Canadian Constitution Foundation, a non-profit registered charity, is representing the Japanese Canadian Fishermen's Association as it seeks to intervene before the Supreme Court of Canada in R. v. Kapp.