



June 17, 2003

## Absolute Discharges for Protesting Commercial Fishermen

**Ottawa** – “A British Columbia Judge does what Minister of Fisheries, Robert Thibault, won’t do,” said John Cummins, M.P. (Delta-South Richmond). “Forty commercial fishermen were given absolute discharges for protest fishing preferential management of fisheries.”

Today Judge Saunderson, P.C.J. wrote in his judgement:

“The Terms of Union by which British Columbia joined Canada in 1871 prescribe that “Canada will assume and defray the charges for the ... protection and encouragement of fisheries.” The Supreme Court of Canada unanimously decided in *Comeau's Sea Foods Ltd. v. Canada (Minister of Fisheries and Oceans)*, [1997] 1 S.C.R. 12, at p. 25, that:

Canada's fisheries are a "common property resource", belonging to all the people of Canada. Under the *Fisheries Act*, it is the Minister's duty to manage, conserve and develop the fishery on behalf of Canadians in the public interest.

The court did not say the Minister can manage the fishery so as to benefit one group at the expense of all others. Acknowledging the constitutional right of aboriginals to rank ahead of other Canadians when fishing for food, social and ceremonial purposes, nevertheless on the undisputed facts of this case an objective observer can reasonably conclude that the government of Canada, in the person of the Minister of Fisheries and Oceans, has intentionally refused to provide the means and instructions to enforce the rules relating to the Fraser River sockeye Indian food and pilot commercial fisheries. The political masters of the enforcement section of the DFO have prevented Fishery Officers from doing the very job for which they were hired and trained, destroying their morale in the process. The plea of budgetary constraints emerges from the evidence, but the objective observer might be forgiven a degree of scepticism in light of the fact that the DFO managed to muster men, equipment and aircraft to investigate and prosecute these non-aboriginal defendants who had the temerity to make their case publicly.”

Judge Saunderson’s Conclusion:

“The result of what some might describe as the DFO's policy of political correctness, but what I choose to call a lack of courage to carry out its mandate as defined by our highest court, is the loss of its moral authority. The issue here is whether acts of civil disobedience should be punished when the civil authority, through its own policies, action and inaction, has lost the right to demand the respect of the public. This is not a matter requiring proof of a direct causal link between the Aboriginal Fishing Strategy and the fishing closure in question. Nor is it a matter of people who fish illegally avoiding punishment if they can show, after the fact, that the DFO could have opened the fishery without harm to the fish stocks - such is not a proper decision for the court. At the end of the day, it comes down to a matter of fairness and the perception of fairness. Unquestionably on the facts of this case, the DFO has not acted in an even-handed way toward all commercial sockeye fishermen. It cannot now be heard to seek the punishment of these accused men. Nor would the public interest be served by doing so. Indeed, the administration of justice would be brought into disrepute by convicting the defendants, as that would make the court complicit with the DFO in benefiting Indians over others, and entitle the public to view the court as the handmaiden of the Minister of Fisheries. On the principles set out in the case of *R. v. Fallofield* (1973), 13 C.C.C. (2d) 450 (B.C.C.A.) and *R. v. Bigg* (unreported), January 7, 1994, (B.C.P.C., North Vancouver Registry no. 24993), I am satisfied that the defendants are entitled to absolute discharges, and there will be orders accordingly.”

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**Link to Judgement:** <http://www.provincialcourt.bc.ca/judgments/pc/2003/02/p03%5F0217.htm>