

## **Nations Awarded Special Costs in Fishing Rights Case Canada Ordered to Pay 85% of Legal Costs**

VANCOUVER—A recent ruling from the B.C. Supreme Court orders Canada to pay “special costs” to the Nuu-chah-nulth Nations involved in an aboriginal fishing rights case. On November 3, 2010—one year after ruling that the nations had the aboriginal right to fish and sell fish commercially—Madam Justice Garson ordered Canada to pay 85% of the costs incurred by the nations during the litigation.

“The proper resolution of aboriginal fishing claims is of profound importance to all British Columbians...” Justice Garson wrote in her decision. “The principles established in this case may well be applicable to other aboriginal rights claims.”

Although some costs are normally awarded to the successful party in a case, these costs are usually based on a tariff set by the court. This tariff provides for only a relatively small portion of the actual legal costs (about 7-18% in this case).

“Special costs” are the actual legal fees reasonably incurred in pursuing or defending a case. The B.C. Court only awards special costs in extraordinary circumstances or where the matter is considered of significant public importance. In this case, Justice Garson agreed that resolving the question of Nuu-chah-nulth fishing rights is of considerable public importance.

“To hold that this case has no impact beyond the geographical boundaries of the plaintiffs’ territories is an overly narrow view of the principles at stake in this case,” Garson wrote. She later added, “I conclude that ordinary or increased costs would not sufficiently compensate the plaintiffs for litigation that is of public importance...”

Nuu-chah-nulth Nations are very pleased with the decision. “The financial undertaking in being a part of this case has been a huge commitment from the nations involved,” said Vice President of the Nuu-chah-nulth Tribal Council, Priscilla Sabbas-Watts.

The case originally began in 2003 when Nuu-chah-nulth Chiefs filed a Writ of Summons against Canada and British Columbia after years of frustrating and unproductive fisheries negotiations. The claims of the nations were based on aboriginal rights to harvest and sell sea resources, aboriginal title to fishing territories and fishing sites, and the unique obligations of the Crown arising through the reserve-creation process.

In this latest decision, Justice Garson found that Canada was the primary defendant and is obligated to pay 85% of the Nuu-chah-nulth special costs.

“This is another extraordinary decision that demonstrates the importance of the case and the position of the Nuu-chah-nulth nations involved.” Sabbas-Watts said. “For non-native fishermen and society at-large, this is an opportunity to see the negative effects that governmental policies have had on our societies and to realize that First Nations people are capable of developing sustainable fisheries within their territories.”

For more information on the Nuu-chah-nulth Fishing Rights Decision and Canada's appeal, please contact Don Hall, Uu-a-thluk Program Manager (1-877-677-1131 or [don.hall@nuuchahnulth.org](mailto:don.hall@nuuchahnulth.org)).