

T-2343-94

OTTAWA, ONTARIO, OCTOBER 4, 1996

PRESENT: THE HONOURABLE MR. JUSTICE J.E. DUBÉ

**BETWEEN:**

**CHARLES-AIMÉ DUGUAY,**

Applicant,

- and -

**THE DIRECTOR GENERAL, QUEBEC REGION,**  
Department of Fisheries and Oceans Canada,  
attention of Mr. Denis Martin,

Respondent,

- and -

**ATTORNEY GENERAL OF CANADA,**

Mis en cause.

**ORDER**

For the reasons set out in *Denis Duguay and The Director General, Quebec Region and Attorney General of Canada*, T-779-94 (copy attached hereto), this application for judicial review is allowed.

J.

Certified true translation

Christiane Delon

T-457-95

OTTAWA, ONTARIO, OCTOBER 4, 1996

PRESENT: THE HONOURABLE MR. JUSTICE J.E. DUBÉ

**BETWEEN:**

**CHARLES-AIMÉ DUGUAY,**

Applicant,

- and -

**THE DIRECTOR GENERAL, QUEBEC REGION,**  
Department of Fisheries and Oceans Canada,  
attention of Mr. Bernard A. Leblanc,

Respondent,

- and -

**ATTORNEY GENERAL OF CANADA,**

Mis en cause.

**ORDER**

For the reasons set out in *Denis Duguay and The Director General, Quebec Region and Attorney General of Canada*, T-779-94 (copy attached hereto), this application for judicial review is allowed.

J.

Certified true translation

Christiane Delon

OTTAWA, ONTARIO, OCTOBER 4, 1996

PRESENT: THE HONOURABLE MR. JUSTICE J.E. DUBÉ

**BETWEEN:**

**JACQUES COLLIN,**

Applicant,

- and -

**THE DIRECTOR GENERAL, QUEBEC REGION,**  
Department of Fisheries and Oceans Canada,  
attention of Mr. Bernard A. Leblanc,

Respondent,

- and -

**ATTORNEY GENERAL OF CANADA,**

Mis en cause.

**ORDER**

For the reasons set out in in *Denis Duguay and The Director General, Quebec Region and Attorney General of Canada*, T-779-94 (copy attached hereto), this application for judicial review is allowed.

J.

Certified true translation

Christiane Delon

T-781-94

OTTAWA, ONTARIO, OCTOBER 4, 1996

PRESENT: THE HONOURABLE MR. JUSTICE J.E. DUBÉ

**BETWEEN:**

**MARC COUTURE,**

Applicant,

- and -

**THE DIRECTOR GENERAL, QUEBEC REGION,**  
Department of Fisheries and Oceans Canada,  
attention of Mr. Denis Martin,

Respondent,

- and -

**ATTORNEY GENERAL OF CANADA,**

Mis en cause.

**ORDER**

For the reasons set out in *Denis Duguay and The Director General, Quebec Region and Attorney General of Canada*, T-779-94 (copy attached hereto), this application for judicial review is allowed.

J.

Certified true translation

Christiane Delon

T-378-95

OTTAWA, ONTARIO, OCTOBER 4, 1996

PRESENT: THE HONOURABLE MR. JUSTICE J.E. DUBÉ

BETWEEN

**GASTON CYR,**

Applicant,

- and -

**THE DIRECTOR GENERAL, QUEBEC REGION,**

Respondent,

- and -

**ATTORNEY GENERAL OF CANADA,**

Mis en cause.

**ORDER**

For the reasons set out in *Denis Duguay and The Director General, Quebec Region and Attorney General of Canada*, T-779-94 (copy attached hereto), this application for judicial review is allowed.

J.

Certified true translation

Christiane Delon

T-779-94

OTTAWA, ONTARIO, OCTOBER 4, 1996

PRESENT: THE HONOURABLE MR. JUSTICE J.E. DUBÉ

**BETWEEN:**

**DENIS DUGUAY,**

Applicant,

- and -

**THE DIRECTOR GENERAL, QUEBEC REGION,**  
Department of Fisheries and Oceans Canada,  
attention of Mr. Denis Martin,

Respondent,

- and -

**ATTORNEY GENERAL OF CANADA,**

Mis en cause.

**ORDER**

The application is allowed. The respondent's decision dated March 7, 1994 is quashed and declared void and of no effect.

J.

Certified true translation

Christiane Delon

T-986-95

OTTAWA, ONTARIO, OCTOBER 4, 1996

PRESENT: THE HONOURABLE MR. JUSTICE J.E. DUBÉ

**BETWEEN:**

**FÉLICIEN LEBLANC,**

Applicant,

- and -

**THE DIRECTOR GENERAL, QUEBEC REGION,**

Respondent,

- and -

**ATTORNEY GENERAL OF CANADA,**

Mis en cause.

**ORDER**

For the reasons set out in *Denis Duguay and The Director General, Quebec Region and Attorney General of Canada*, T-779-94 (copy attached hereto), this application for judicial review is allowed.

J.

Certified true translation

Christiane Delon

**BETWEEN:**

**DENIS DUGUAY,**

Applicant,

- and -

**THE DIRECTOR GENERAL, QUEBEC REGION,**  
Department of Fisheries and Oceans Canada,  
attention of Mr. Denis Martin,

Respondent,

- and -

**ATTORNEY GENERAL OF CANADA,**

Mis en cause.

**REASONS FOR ORDER**

**DUBÉ J.:**

Through this application for judicial review the applicant is asking that the decision of the respondent (“the director general”) dated March 7, 1994, issuing a crab fishing licence to the applicant with a decrease of two metric tonnes, be quashed and declared null and of no effect.

The applicant is a fisherman by profession and captain of the fishing boat “*Meltem*”. In 1993 he held a licence authorizing him to fish for snow crab. On June 18, 1993, while he was landing his cargo of crabs, an observer employed by the respondent contended that he and two of his employees had failed to weigh three trays of snow crabs weighing, she said, between 180 and 200 pounds. In the wake of this statement, an offence report was written up by an officer of the Department of Fisheries and



Oceans Canada (“the Department”) alleging that the applicant had failed to comply with the conditions of his fishing licence by concealing part of his catch, thereby contravening paragraphs 22(1)(n) and 22(1)(p) of the Fisheries Regulations (“the Regulations”).

On March 7, 1994 the applicant was notified of the aforesaid decision by a letter from the director general. He alleges that notwithstanding his consistent denials of the offences alleged against him, and his customary compliance with the Act and the regulations, he was never given a meaningful hearing or opportunity to call his own witnesses or cross-examine the respondent’s witnesses.

The applicant’s argument is based on five questions that he raises in relation to the Minister’s powers and the enforcement process established by the Department. The questions are the following:

1. Is the Minister of Fisheries and Oceans empowered under the *Fisheries Act* and the *Fisheries Regulations* (SOR/93-52) to impose penalties in relation to a fishing licence?
2. If the Minister of Fisheries and Oceans is empowered to exercise such authority in relation to a fishing licence, may this authority be exercised by officials under the Act and the Regulations?
3. Does the enforcement process established by the Department of Fisheries and Oceans infringe the applicant’s constitutional rights as guaranteed by section 7 of the *Canadian Charter of Rights and Freedoms*?
4. Is the enforcement process established by the Department of Fisheries and Oceans in breach of subsection 2(e) of the *Canadian Bill of Rights*?
5. Finally, if this enforcement process is based on some discretionary authority, is the exercise of such authority unreasonable in the case at bar?

In relation to the first question, which in my opinion is the fundamental basis of this application, the applicant submits that the *Fisheries Act* (“the Act”) and Regulations thereunder grant the Minister certain powers to issue, suspend or cancel fishing licences but do not assign him any authority to issue a penalty. The relevant provisions are sections 7 and 9 of the Act and sections 22 and 24 of the Regulations:

7. (1) Subject to subsection (2), the Minister may, in his absolute discretion, wherever the exclusive right of fishing does not already exist by law, issue or authorize to be issued leases and licences for fisheries or fishing, wherever situated or carried on.
- (2) Except as otherwise provided in this Act, leases or licences for any term exceeding nine years shall be issued only under the authority of the Governor in Council...
9. The Minister may suspend or cancel any lease or licence issued under the authority of this Act, if

(a) the Minister has ascertained that the operations under the lease or licence were not conducted in conformity with its provisions; and

(b) no proceedings under this Act have been commenced with respect to the operations under the lease or licence....

22. (1) For the proper management and control of fisheries and the conservation and protection of fish, the Minister may specify in a licence any condition that is not inconsistent with these Regulations or any of the Regulations listed in subsection 3(4) and in particular, but not restricting the generality of the foregoing, may specify conditions respecting any of the following matters:

(a) the species of fish and quantities thereof that are permitted to be taken or transported;...

(n) verification by an observer of the weight and species of any fish caught and retained;

24. (1) Where considering suspending or cancelling a lease or licence under section 9 of the Act, the Minister shall notify the holder thereof in writing by

(a) sending a notice by registered mail to the holder; or

(b) having a fishery officer personally deliver a notice to the holder or, if the holder cannot conveniently be found, leave a notice for the holder at the holder's last known place of abode with any person who resides therein who appears to be at least 16 years of age....

Under section 7 of the Act, the Minister may therefore, at his absolute discretion, issue leases. Under section 9 of the Act, he may suspend or cancel leases previously issued, but on two conditions: that he has ascertained a breach of their provisions and that no proceedings have been commenced in this regard. In the case at bar, no proceedings were commenced and the Minister ascertained a breach of the lease provisions.

It should be noted at the outset that the director general's decision that was sent to the applicant relies on "[TRANSLATION] the powers conferred on my by section 7 of the Act". But section 7 of the Act allows leases to be issued or not issued but does not authorize penalties. This means, therefore, that the Minister, in this instance, used the issuing of the licence for the 1994 season as a pretext for imposing a reduction in the catch. This reduction is characterized in the decision as a "sanction".

The respondent, for its part, replies that under section 7 of the Act the Minister has absolute discretion to issue licences and fishing permits and that this authority includes the power to attach conditions that the Minister considers appropriate. He also relies on section 9 of the Act, which allows the Minister to cancel leases, and section 43 of the Act, which authorizes the Governor in Council to make regulations under the Act, in particular with respect to the landing of fish and the conditions attached to leases. Section 22 of the Regulations allows the Minister to specify in a licence any conditions that are not inconsistent with the Regulations in respect to the quantities of fish that may be taken and the verification by an observer of the weight and species of any fish caught and retained. Section 10 of the Regulations provides that a licence ordinarily expires at the expiration of the year for which it was issued.

The respondent therefore urges the Court to find that these provisions as a whole authorize the Minister to issue or not issue a fishing licence on the conditions he considers appropriate, to alter the licence conditions to ensure the conservation of fish, and to suspend a licence where there has been a breach of a condition of the licence. Where a condition has been breached, the Minister may, at his discretion, commence criminal proceedings in the courts of criminal law, as provided by the Act, or issue a new licence on such conditions as he considers appropriate.

My colleague MacKay J., in a recent decision dated August 13, 1996, *Douglas Lloyd Matthews v. Attorney General of Canada*, T-945-95, discussed the Minister's authority under section 7 of the Act to impose a penalty for violating the conditions of a lease. The penalty in question was to refuse to issue a licence for the first three weeks of the 1995 fishing season and to reduce the quota for snow crab catches by 50 per cent. The judge held that the Minister had exceeded his jurisdiction under section 7 of the Act by imposing the penalty in question, given that the purpose of this

penalty was to punish the applicant for violations of the Act committed by him in 1994.

It is worth reproducing the highly relevant paragraph in his decision:

Aside from any question of procedural fairness, in my view, the Minister here exceeded the jurisdiction granted under s. 7 of the *Act* by refusing to grant the applicant a snow crab fishing licence for the first three weeks and reducing his quota by 50% for the 1995 season when the purpose of those limitations was to impose a penalty for violations of the *Act* committed by the applicant in 1994. There can be no doubt in this case that the purpose of the limitations was to impose a penalty.

If the Minister wished to impose a penalty for an offence by the applicant, he had an obligation to proceed in a Provincial Court under sections 78 *et seq.* of the Act. That is no doubt what Parliament intended by providing in section 9(b) of the Act that the Minister may not suspend or cancel any lease or licence if a proceeding under this Act has already been commenced. In other words, the Minister may issue a licence under section 7 of the Act and suspend it under section 9 of the Act. If he wants to impose a penalty, he must proceed in accordance with the precise code stipulated by Parliament.

It is true that the Governor in Council has provided in section 22 of the Regulations a range of conditions that the Minister may specify on a licence (from paragraph (a) to paragraph (z.1)). But it did not provide in that section penalties for breaches of these provisions. On the other hand, Parliament stipulated penalties for offences in sections 78 *et seq.* of the Act.

MacKay J. distinguished *Matthews* from the Federal Court of Appeal's decision in *Everett v. Canada (Minister of Fisheries and Oceans)*<sup>1</sup> in the following words:

In light of that stated purpose, in my view, this case is distinguishable from the circumstances in *Everett v. Canada (Minister of Fisheries and Oceans)* (1994), 169 N.R. 100 (F.C.A.), upon which the respondent here relies. In that case the Minister had refused to grant the applicant a fishing licence in 1993 because of violation of his licence, said to have occurred in 1990 when his actual landings, not properly reported, were found to have exceeded his quota by more than 100%. In *Everett*, the issue of whether the Minister had jurisdiction pursuant to s. 7 of the *Act* to refuse to issue a licence in order to impose a penalty was not directly before the Court, at least as I read the decisions of my colleague Mr. Justice Denault, the motions judge, at (1993), 63 F.T.R. 279, and of the Court of Appeal, *supra*. In that case the Minister's decision was said to be made in light of the record before him which indicated serious disregard for conservation principles, and for "the reason that the misreporting of catches and the exceeding of quotas were very serious conservation and control offenses."

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<sup>1</sup>(1994), 169 N.R. 100 (F.C.A.).

Madame Justice Desjardins, in *Everett*, stated (at 169 N.R. 104) that the proceedings before the Minister, i.e. considering a departmental recommendation that a license not be issued, were “not penal in character.” The Minister was entitled to decide the matter on a balance of probabilities and no evidence was there tendered by the applicant. In that case Mr. Justice MacGuigan pointed out that there was no argument before the Court contesting the DFO report of very substantial overfishing, well in excess of his quota, by the applicant, which the Minister was entitled to take into account in a licensing decision. In this case, however, while it may be argued that the decision on behalf of the Minister was similar in general effect, though somewhat less drastic than that in *Everett*, it is clear from the letter of April 12, 1995, that the decision on behalf of the Minister in this case was intended to be penal in nature.

In *Everett*, the Minister refused to issue a licence under section 7 of the Act. His jurisdiction to do so as a penalty was not raised. It is clear that in the case tried before MacKay J., as well as in the instant case, what the director general was pronouncing in his decision was a penal sanction. In his letter to the applicant Duguay he told him he had violated the Regulations by concealing from the observer part of his crab catch and that accordingly he would be penalized for the following season (1994) by a decrease in quota of two metric tonnes. It is common ground that such a penalty would inflict a financial loss of several thousand dollars on the applicant.

In a pamphlet entitled “[TRANSLATION] Change in the Fisheries Act”, the Department of Fisheries and Oceans offers a “modernization proposal”. The following passage, entitled “[TRANSLATION] Appeals pertaining to administrative sanctions and licences”, illustrates quite clearly the Department’s intentions:

[TRANSLATION] In the past, fishing offences (violations of the *Fisheries Act*, the regulations thereunder and the conditions governing licences) have always been penalized through the courts of criminal law. This is a slow and costly process that does not meet the needs of the DFO or the industry. In recent years, the Department has resorted increasingly to departmental sanctions in relation to licences. Although these sanctions are a strong disincentive to illegal fishing, some components of the industry have criticized this process because of the lack of hearings and the alleged inability of the Department to be completely impartial.

It should be noted that the applicant in the case at bar is specifically complaining that he was sentenced to the aforesaid penalty, a very expensive one for him, without having had an opportunity to confront his accusers, a right he would have been able to insist on in a court of criminal law.

It is clear on the face of the passage cited above that the Department is using ministerial sanctions to usurp the role of the courts of criminal law, in violation of the provisions of the Act. In doing so, it is relying on section 7 of the Act, which allows the Minister to issue leases but not to impose sanctions.

Accordingly, since I would follow my colleague’s decision that the Minister is not empowered under the Act to impose penal sanctions in relation to fishing licences, it is unnecessary to consider the other grounds in support of the application.

The application is allowed. The respondent's decision of March 7, 1994 is quashed and declared void and of no effect.

O T T A W A

October 4, 1996

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J.

Certified true translation

Christiane Delon

FEDERAL COURT OF CANADA  
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

FILE NO. T-779-94

STYLE:DENIS DUGUAY v.  
THE DIRECTOR GENERAL, QUEBEC REGION and ATTORNEY GENERAL OF CANADA

PLACE OF HEARING:Québec, Quebec

DATE OF HEARING:September 10, 1996

REASONS FOR JUDGMENT OF DUBÉ J.

DATED:October 4, 1996

APPEARANCES:

Jean-Paul Anglehart and  
Charles BrochuFOR THE APPLICANT

Rosemarie MillarFOR THE RESPONDENT

SOLICITORS OF RECORD:

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Deputy Attorney General of Canada FOR THE RESPONDENT