



## **Cheam Indian Band**

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### **PRESS RELEASE**

#### **CHARGES AGAINST ABORIGINAL FISHERMEN THROWN OUT OF COURT**

(January 10, 2007, Pilalt Territory) A set of over a dozen charges laid by the Department of Fisheries and Oceans (DFO) relating to incidents in 2002, 2004 and 2005 were stayed in Provincial Court in Chilliwack yesterday.

Rick Quipp, one of the vindicated Aboriginal Fishermen, stated:

“It has been a long time coming. These charges have been hanging over our heads for as much as five years and have had a very negative impact on our families and communities, by effectively limiting the way we fish and the way we live. We get treated like criminals for exercising our Aboriginal Rights, when all we are doing is serve our communities and meet our sacred obligations. We have spent many days in court, and now the courts have recognized that the way these proceedings have been drug out and run up to now has violated our rights. It sends a strong signal to the Department of Fisheries and Oceans and the Federal Crown that they cannot continue to treat us like that and impact every aspect of our lives, while they do not even have their tackle in order.”

All of the Aboriginal Fishermen charged are members of the longhouse and they are now able to return to their sacred obligations in the community rather than being tied up in the ongoing court proceedings.

The Aboriginal fishermen, Frederick Quipp Jr., Dwayne Malloway and Todd Wood were exercising their Aboriginal Right to fish in Pelho-lhxw (Pilalt) Temexw traditional territory, especially around Cheam Beach and the Cheam Fish Camp. They were fishing to supply their families and community with food and to meet their traditional and ceremonial obligations. The Department of Fisheries and Oceans claimed that they could not fish without a licence that was granted at the discretion of the Minister. The majority of the charges resulted from incidents in 2002 but were not laid until 2004. Although the respective investigations were completed the day they were undertaken, a protracted charge approval process followed. The Aboriginal Fishermen were then tied up in the courts regarding these charges since 2004 and in 2005 were even arrested and put under strict bail conditions, limiting their ability to exercise their Aboriginal Rights.

The trial on these charges was scheduled to start in January 2007, but the Aboriginal Fishermen brought a number of pre-trial motions seeking a remedy for a violation of their fundamental rights as protected by the Canadian Constitution, including the Canadian Charter on Rights and Freedoms. On January 9, Judge Skilnick, stayed the 2002 charges due to unreasonable delay, finding:

“I am required to balance those concerns with the court’s duty to protect the constitutional rights of those persons brought before it, accused of offences. When I contrast these competing values in this case, and especially the length of delay in this matter and the resulting inferred and actual prejudice, I am satisfied that the accused have met the onus of establishing a breach

of their rights under Section 11(b) of the Charter. I am satisfied that this is an appropriate case for a stay of proceedings.”

Dealing with the 2004 and 2005 charges, the question about lack of disclosure of relevant documents to do with consultation and accommodation of Aboriginal Rights were raised. The Crown had refused to provide relevant documentation until a later stage in the trial. Judge Skilnick: found a breach of the Crown’s constitutional obligations:

”I do not accept the Crown’s submission that the requested disclosure is irrelevant until the trial has reached the second stage. The authorities cited earlier make it clear that consultation is a lie issue once a defence of an Aboriginal rights has an air of reality, as it certainly does in this case. The Crown is aware of the existence of this issue from the beginning. It has knowledge, or at least the ability to acquire knowledge necessary to assess the evidence on consultation and accommodation. By putting the defence in a position where it cannot access this evidence until after the first stage of the trial, the playing field is not level. I am of the view that, the Crown has not met its disclosure obligation as set out in *Stinchcombe*. I am of the view that the only clear cause of action to address these circumstances is to remedy these breaches with a judicial stay of proceedings.”

This ruling finding a breach of the Aboriginal Fishermen’s rights and ordering a stay of proceedings effectively stops all these cases from proceeding to trial and removes all conditions that had been put on the Aboriginal Fishermen.

The Cheam Indian Band Council welcomed the ruling:

“This decision recognizes that these matters have not been dealt with properly. The strategy of the Crown in dealing with our Rights seems to change all the time. First they did not want to recognize our rights and then we won on that. Then they tried to criminalize our people and flood our community with charges. Often they would take years before they would even swear charges and then keep the cases in court for many years, rather than addressing issues head on, especially through political negotiations based on the recognition of our Aboriginal rights.”

Nicole Schabus, Tessmer Law Offices, Counsel for Rick Quipp pointed out:

“The ruling establishes a violation of our clients’ fundamental rights and freedoms and the only appropriate remedy was to not allow these charges to proceed. Due to the excessive duration of the proceedings from the incidents in 2002 to 2007 important elders holding traditional knowledge have passed away and the court has recognized this by finding actual and implied prejudice. The court also found other fundamental violations of our clients’ rights to a fair trial, ruling that there was not a level playing field because important information was not disclosed in a timely manner. Our clients are not criminals they are Aboriginal persons with Aboriginal Rights and fundamental rights and freedoms that have been protected by the court in this case. The ruling makes it clear that it is not in the interest of society as a whole to have these long protracted proceedings, when these issues should be dealt with in a fair and timely manner.”

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