# REGINA v. JOSEPH

[Indexed as: **R. v. Joseph**]

Yukon Territorial Court, Lilles C.J. Terr. Ct., February 7, 1991

T. Dohm and W. Smart, for the Crown
A. Pape, for the defendant

The accused, a member and Chief of the Han Owitch'in people, was charged with fishing without a valid angling licence as required by s.4(1) of the *Yukon Territory Fishery Regulations,* C.R.C. 1978, c.854, thereby committing an offence contrary to s.79(1) of the *Fisheries Act,* R.S.C. 1985, c.F-14. The accused was fishing for food and was in possession of two grayling food fish. As a Native person she was entitled to a free angling licence, the terms of which applied equally to all holders of the licence, and which provided for a daily catch limit, possession limit and a limitation on the weight of canned and processed fish.

The Crown having admitted that the licensing requirement was an infringement of an Aboriginal right protected by s.35 of the *Constitution Act, 1982* was required to demonstrate that the regulation was justifiable.

**Held: Accused acquitted.**

1. Following the justification analysis prescribed by the Supreme Court of Canada in *R. v. Sparrow,* [1990] 3 C.N.L.R. 160, the Crown had to first establish a valid legislative objective. The legislation which interfered with the accused's Aboriginal right to fish was concerned with conservation of fish stocks and habitat. There was evidence that the angling licensing scheme was rationally connected to those objectives.

2. The Crown failed however is establishing that the legislation and its implementation were in keeping with the special trust relationship and the responsibility of the government towards Aboriginal people. The legislation was based on the premise that there existed no Aboriginal right to fish and that the issuance of a fishing licence was a privilege and not a right. There was no evidence to demonstrate Aboriginal participation in the formulation of the regulations or that the regulations were intended to accommodate Aboriginal rights. While angling licences could be obtained at no cost by Native people, the restrictive catch limits were inconsistent with the Aboriginal right to fish for food. Native cultural values of consultation and consensus decision-making were not reflected in the regulations.

3. The lack of consultation was apparent in the angling provisions of the Act in that there is no recognition that Native people have and continue to food fish for grayling using rod and reel. The angling licence's limitations on the catch and possession of grayling placed no priority on the Aboriginal right to fish for food, but instead treated non Native sports fishers and Native food fishers equally in the lowest priority, that of sports fishing.

4. There was no evidence to indicate that the conservation of grayling was a concern in the North Klondike region, or anywhere in the Yukon. There was no evidence to indicate that a restriction on catch limits for Native food fishing was necessary for conservation purposes.

5. The arbitrary methods of enforcing the regulations were not in keeping with the fiduciary principles established in *Sparrow*, thereby increasing mutual distrust between wildlife officers, and Native food fishers.

6. The restrictions imposed by the angling licence were unfair and unreasonable for Native people and infringed upon the Aboriginal right to fish for food as protected by s.35 of the *Constitution Act, 1982.* The Crown failed to justify the infringement, therefore pursuant to s.52 of the *Constitution Act,1982,* the regulations were of no force or effect in relation to Native people who angle for food fish pursuant to their Aboriginal right.

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**LILLES CJ.:** Agnes Joseph has been charged that "on or about the 6th day of May, 1989 at or near Dawson City, Yukon Territory did engage in fishing on the North Klondike River, Yukon Territory without being the holder of a valid Angling Licence contrary to section 4(1) of the *Yukon*

*Territory Fishery Regulations,* thereby committing an offence contrary to section 79(1) of the *Fisheries Act (Canada)."*

At the relevant time Agnes Joseph was both a member and duly elected chief of the Han Owitch'in Indian people. On May 6, 1989, she was angling for grayling in the North Klondike River, near Dawson City.

On this day, she caught two grayling. She often fishes in this area. She often brings her children there to fish in order to teach them about Indian culture, and the important interdependence between water, land and people. She did not have a licence as required by s.4(1) of the *Yukon Territory Fishery Regulations,* C.R.C. 1978, c.854 (as amended), made pursuant to the *Fisheries Act,* R.S.C. 1985, c.F-14, s.43. As a Native person, she was entitled to an angling licence without the payment of a fee, but otherwise the terms of the licence were the same for Native and non-Native people. The licence specified that the holder was bound by the regulations, including a daily catch limit of five fish, possession limit of ten fish and a limitation on the weight of canned and processed fish.

In *R. v. Joseph* (April 25, 1990), (Yukon Terr.Ct.) [unreported], this court applied the decision of the Supreme Court of Canada in *R. v. Sparrow,* [1990] 1 S.C.R. 1075, [1990] 3 C.N.L.R. 160, [1990] 4 W.W.R. 410, 70 D.L.R. (4th) 385, 46 B.C.L.R. (2d) 1, 56 C.C.C. (3d) 263, 111 N.R. 241, and held that Ms. Joseph would be allowed to call evidence with a view to establishing her Aboriginal rights. When the matter proceeded to trial, the Crown made the following admissions:

1 . There is in existence an Aboriginal right to fish for food,
2. Agnes Joseph is a member of a group of people who hold that right;
3. The requirements of having a licence to fish is an infringement of that Aboriginal right;
4.And in accordance with the decision of the Supreme Court of Canada in *Sparrow, supra,* the Crown must establish justification.

Under s.91(2) of the *Constitution Act,* 1967, the federal Parliament is given exclusive legislative jurisdiction over "seacoast and inland fisheries." The *Fisheries Act* was enacted pursuant to this power.

Section 7(1) of the *Fisheries Act* provides:

> 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 licenses for fisheries or fishing, wherever situated or carried on.

Section 43(*f*) and (*g*) gives the Governor in Council authority to make a wide range of regulations for the purpose of carrying out the provisions of the Act. In particular, the Governor in Council may make regulations respecting the issue, suspension and cancellation of licences and leases and respecting the terms and conditions under which a licence and lease may be issued.

The *Yukon Territory Fishery Regulations* provide:

> 4.(1) Subject to subsection (2), no person shall engage in fishing unless the person holds a licence.
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> …
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> (3) Subject to these Regulations, the Minister may, on request, issue any of the following licences, namely,
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> (a) a commercial fishing licence;
> (b) a domestic fishing licence;
> (c) an assistant licence;
> (d) an Indian food fish licence;
> (e) an angling licence; or
> (f) a Yukon River salmon licence;
>
> if the person pays the applicable fees set out in Schedule M.

The enforcement provisions of the regulations are contained in s.79 of the *Fisheries Act:*

> 79.(1) Except as otherwise provided in this Act, every person who contravenes any provision of this Act or the regulations is guilty of an offence and liable on summary

> conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both.

Section 5(1) of the Act authorizes the appointment of fishery officers to enforce the Act. The accused was charged by a fishery officer appointed under the Act with contravening Reg. 4(1), i.e. angling without a licence.

The *Constitution Act,* 1982, provides as follows:

> 35.(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
> …
>
> 52.(1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

The Law

The Supreme Court of Canada in *R. v. Sparrow* has set out a legal framework for the analysis of alleged infringements of Aboriginal rights. At pp. 1113-16 [S.C.R., pp. 183-85 C.N.L.R.] the court states:

> If a *prima facie* interference is found, the analysis moves to the issue of justification. This is the test that addresses the question of what constitutes legitimate regulation of a constitutional aboriginal right. The justification analysis would proceed as follows. First, is there a valid legislative objective? Here the court would inquire into whether the objective of Parliament in authorizing the department to enact regulations regarding fisheries is valid. The objective of the department in setting out the particular regulations would also be scrutinized. An objective aimed at preserving s.35(1) rights by conserving and j managing a natural resource, for example, would be valid. Also valid would be objectives purporting to prevent the exercise of s.35(1) rights that would cause harm to the general populace or to aboriginal peoples themselves, or other objectives found to be compelling and substantial.
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> ... We find the "public interest" justification to be so vague as to provide no meaningful guidance and so broad as to be unworkable as a test for the justification of a limitation on constitutional rights ...
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> If a valid legislative objective is found, the analysis proceeds to the second part of the justification issue ... That is, the honour of the Crown is at stake in dealings with aboriginal peoples. The special trust relationship and the responsibility of the government vis-a-vis aboriginals must be the first consideration in determining whether the legislation or action in question can be justified.
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> … The constitutional recognition and affirmation of aboriginal rights may give rise to conflict with the interests of others given the limited nature of the resource. There is a clear need for guidelines that will resolve the allocational problems that arise regarding the fisheries ...
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> ... That task requires *equally meaningful guidelines* responsive to the constitutional priority accorded aboriginal rights ...
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> The constitutional nature of the Musqueam food fishing rights means that any allocation of priorities after *valid conservation measures* have been implemented must give top priority to Indian food fishing. If the objective pertained to conservation, the conservation plan would be scrutinized to assess priorities. While the detailed allocation of maritime resources is a task that must be left to those having expertise in the area, the Indians' food requirements must be met first when that allocation is established. [Emphasis added]

The Supreme Court of Canada then referred to *R. v. Jack,* [1980] 1 S.C.R. 294, [1979] 2 C.N.L.R. 25, [1979] 5 W.W.R. 364, 100 D.L.R. (3d) 193, 48 C.C.C. (2d) 246, 28 N.R. 162, and quoted Clarke C.J.N.S. with approval [p. 185 C.N.L.R.]:

> I have no hesitation in concluding *that factual as well as legislative and policy recognition* must be given to the existence of an Indian food fishery in the waters of Indian Brook,

> adjacent to the Eskasoni Reserve, and the waters of the Afton River after the needs of conservation have been taken into account ...
>
> [Emphasis added]

At p. 1118 [pp. 186-87 C.N.L.R.] of *Sparrow* the Supreme Court of Canada noted:

> ... As we have pointed out, management and conservation of resources is indeed an important and valid legislative objective. *Yet, the fact that the objective is of a "reasonable" nature cannot suffice as constitutional recognition and affirmation of aboriginal rights.* Rather, the regulations enforced pursuant to a conservation or management objective may be scrutinized according to the justificatory standard outlined above.
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> Within the analysis of justification, there are further questions to be addressed, depending on the circumstances of the inquiry. These include the questions of whether there has been as little infringement as possible in order to effect the desired result; whether, in a situation of expropriation, fair compensation is available; and, whether the aboriginal group in question has been consulted with respect to the conservation measures being implemented. The aboriginal peoples, with their history of conservation-consciousness and interdependence with natural resources, would surely be expected, at the least, to be informed regarding the determination of an appropriate scheme for the regulation of the fisheries.
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> *We would not wish to set out an exhaustive list of factors to be considered in the assessment of justification.* Suffice it to say that recognition and affirmation requires sensitivity to and respect for the rights of aboriginal peoples on behalf of the government, courts and indeed all Canadians. (emphasis mine)

If an infringement of Aboriginal rights were established or, as in this case, admitted, the onus shifts to the Crown to demonstrate that the regulation is justifiable. As the infringement is also that of a constitutional right guaranteed under s.35(1) of the *Constitution Act,* the onus on the Crown would be a significant or heavy one.

Since the *Sparrow* decision, there have been several recent court decisions which have considered and applied the principles established by the Supreme Court of Canada. Judge Barnett rendered a decision in *R. v. Bones* on June 27, 1990 (B.C.Prov.Ct.) [now reported [1990] 4 C.N.L.R. 37]. In that case, the accused were charged with being in possession of salmon caught unlawfully and unlawfully fishing for salmon without a permit. He reviewed the licensing requirements, the closures imposed by the department and the sockeye quota established, as well as a number of relevant cases. He observed at p.8 [p. 43 C.N.L.R.]:

> In my opinion the licencing regime which DFO followed still in 1989 was obviously and utterly inconsistent with a proper recognition of aboriginal fishing rights. The fact that in 1989 DFO still did not take the *rights* of aboriginal peoples seriously is further evidenced by Ex.3, the letter which DFO sent to Indian bands in June 1989. That letter says that DFO licences grant Indian persons the *privilege* of fishing!

In that case, it was argued that while there might have been short-comings in the management and regulatory practices of the department, the accused should nevertheless be found guilty because they apparently made no effort to acquire licences or permissions to fish as they did. Judge Barnett observed [p.47 C.N.L.R.]:

> If the restrictions are not fair and reasonable, then I can see no good reason why an Indian person should submit to them by signing and accepting a permit.

In *Can. v. Nikal,* October 16, 1990 (B.C.S.C) [now reported [1991] 2 W.W.R. 359, 51 B.C.L.R. (2d) 247, [1991] 1 C.N.L.R. 162 *(sub nom. R. v. Nikal)*], the accused was charged with fishing without a food licence. These licences were provided free of charge and did not restrict the number of fish that could be caught. Mr. Justice Millward considered it necessary to consider the licensing scheme and its implementation as part of the first step in the justification analysis. At p.8 [p. 171 C.N.L.R.], he states:

> It is necessary to examine the particular licensing scheme in question to see if it is rationally connected to the valid objective which it is said to support. If this step is not taken the validity of the managing and conservation objective would be meaningless. A regulation regarding fisheries may generally support the valid objective of preserving s.35(1) rights by

> managing and conserving the resource, yet the application of that regulation in a particular instance may not be connected to that goal. It is important to note that we are dealing with a constitutional infringement and, therefore, there must be a stringent standard of justification.

The court went on to examine the licensing scheme in some detail and noted [p. 172 C.N.L.R.] that "it *could* be a tool to implement a conservation program ... should it be needed" (emphasis added). Should there be a need to conserve salmon because of low runs, the licences could be used to exert some control on the fishery. Mr. Justice Millward did not think that was sufficient to meet the legislative objective test and went on to find that using licences to ensure that only those with a right to fish actually participate in the fishery is not rationally connected to the goal of proper management and conservation. The licence would only indicate the number of fishers that are fishing with a licence and do not provide the department with information they need to properly manage the fishery. The licence does not specify how many fish may be caught nor will it tell the department what species of fish have been caught and when. He went on to conclude at p. 13 [p. 173 C.N.L.R.]:

> The D.F.O. while attempting to do the right thing, has imposed a licensing scheme which not only is not connected to the goal which it purports to pursue, but also disregards the Wet'suwet'en practices of fishery conservation ... The licensing scheme by its very nature is adversarial placing the DFO in a role of power over the Wet'suwet'en people.
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> ... In this case, there is evidence of attempts by the D.F.O. to consult with the Wet'suwet'en people. These attempts, however, have been spasmodic and appear simply to pay lip service to the process of consultation.

The court emphasized that it was necessary to look beyond the legislation and regulations at the actual practice of the department. Those actions must be scrutinized to determine if the Crown has acted appropriately with regard to the Native people. Not only was there an absence of meaningful dialogue with the Native people, the court noted that a negative attitude by the department was highlighted in the manner in which they pursued the enforcement function.

## Relevant Facts

Over the course of the two hearings, the court heard evidence from Mr. Knutson, the conservation officer that laid the charge against Apes Joseph, Mr. Johnston, a long-time employee of the Federal Department of Fisheries and Oceans, who is a senior biologist and area manager and whose job it is to provide biological rationale for changes in the regulations, and from Mr. Toews, who became an employee of the Yukon Territorial Government in September 1989 (after this alleged offence occurred) and who has responsibility for fresh water fishery management in the Yukon.

Mr. Knutson testified that in his view, fishing by rod and reel, even for food, fell within the category of sports fishing. This fact appeared to be contradicted by the other Crown witnesses who suggested that a food licence could be used for catching food fish by rod and reel. It is evident that Mr. Knutson, the enforcement officer in the field, did not know this. It is also evident that Agnes Joseph did not know this fact and, in her capacity as chief of the band, indicated that this was not known to the Native people. It is clear, however, that the angling licence does not accommodate Aboriginal food fishing because of the restrictions imposed.

The season for fishing for grayling is open all year.. As previously indicated, the licence provides for a limit of five fish per day with ten in possession, as well as restrictions on possession of canned or processed fish. These restrictions apply to all licence holders, regardless of whether they are Native or non-Native, or whether they are fishing for sport or for food. Mr. Knutson further testified that the rivers in the North Klondike area have never been closed for grayling fishing. I have concluded that grayling conservation has not been and was not at the relevant time an operating concern of the department. The other witnesses testified that there is no information available regarding the status of grayling stocks or the precise need for conservation. The department's conservation efforts with regard to grayling are focused primarily on the protection of fish habitat in general. Grayling, as a food fish, has never been monitored in the Klondike area. The department has proceeded on the basis that "food fish were caught by gill net and that in the Klondike area food fish is equated with salmon." There was limited evidence with regard to the reproductive cycle of the grayling fish, and that it is more productive and hardy than other northern species such as lake trout. The department has imposed restrictions on lake trout fishing.

The evidence indicated that the enforcement officers had different and personal policies in dealing with Natives. Some officers carried licences with them and issued them on the spot in the field to Native fishermen who were angling without a licence. As a result, no charges would be laid. Others, like Officer Knutson, had a personal policy of never carrying them and never issuing licences in the field and always charging. These policies were personal to the enforcement officers as there was apparently no uniform enforcement policy dictated by the department.

Both Mr. Johnston and Mr. Toews testified with regard to federal and territorial government policy with regard to conservation and preservation of the fishery. Mr. Johnston testified that the government policy with regard to priorities was as follows:

1. The well-being of fish stocks;
2. The Indian food fishery;
3. Commercial food fishing;
4. Sports fishing.

Since April 1989 (one month before this alleged offence) the federal government began the process of devolution of responsibility for the management of non-salmon fish stocks to the Yukon Territory. The territory is currently still in the process of developing a management plan for this fishery. This management plan would be based on historical catch information from various user groups, the number of people involved, the status of the stocks, and the expectation of user groups. A survey of licence holders, carried out every five years, is considered important in providing catch information. The survey is combined with an interview process which contributes additional detailed information. In addition, the territorial government, since May 1989, has committed itself to more consultation with user groups, including Native people. It was recognized that there was a significant amount of distrust between the Native people and the non-Native enforcement arm of the department. The process is far from effective at the current time, yet it is moving in the right direction. ne Yukon government appears committed to making consultation more meaningful.

Recent consultation and discussions with the people in the Dawson area have focused primarily on salmon fishing. Little, if any, attention has been paid to the non-salmon sports fishery in the Dawson area, but it was acknowledged that grayling. fishing did not form part of these discussions. There has been no consultation with the Native people in setting grayling catch limits whether for food or otherwise. None of the Crown witnesses had any direct knowledge of the frequency or scope of the consultation with the Dawson band. Agnes Joseph testified in both her personal capacity and as chief of the band that she was not aware of any consultation with the band regarding the Indian food fishery. She was not aware of any approach by the department to survey Native people with regard to food fishing catches. Further, she testified that in the current environment she doubted that accurate information would be communicated by the Natives to the department. Native people are afraid that any information provided could be used against them in the future.

Although the transfer of the non-salmon fishery in the Yukon from the federal government to the territorial government began in April 1989, Mr. Toews was not hired until September 1989. I-lis evidence was that they are still in the process of establishing a management plan and are in the process of developing a licensing system for commercial, Indian food and sports fishing for the Yukon government. There is an implicit recognition that the previous regime was inappropriate.

Mr. Toews acknowledged that the enforcement process should be part of the education and consultation process which can be used to transfer relevant conservation information to those involved in fishing, including Native people. He also stated that laying charges in appropriate circumstances can be very "educational." Nevertheless, it was evident that there was no central policy with regard to education and consultation regarding enforcement in place at the time that Agnes Joseph was charged. This fact is highlighted by the existence of quite differing enforcement practices among fishery officers.

Mr. Toews also testified that at the current time there was no proposal to change the Yukon angling laws so as to recognize food fishing and Aboriginal rights in fishing for grayling by rod and reel.

There was strong and convincing evidence, at a theoretical level, that an effective licensing system, which includes consultation and feedback with regard to the number and kind of fish caught, could be a very useful tool for conservation and for implementing government policy with regard to fishing priorities.

Conclusion

In the first step of the justification analysis prescribed by the Supreme Court in *Sparrow*, it is incumbent on the Crown to establish a "valid legislative objective." It is evident from an examination of the *Fisheries Act* and the regulations promulgated thereto that this legislation is concerned with conservation of fish stocks and habitat. There is evidence that the licensing scheme is rationally connected to these objectives:

1. The angling licence limits both catch and possession limits, as well as the possession of canned fish;
2. Licensing schemes can be useful conservation tools;
3. The "participation rate," as reflected by the number of licences issued, is a factor in making conservation decisions;
4. In the Yukon, sample surveys of licence holders are conducted every five years by means of a questionnaire;
5. Detailed surveys of holders of food fish licences are conducted on a more frequent basis;
6. The data collected is used to formulate policy and changes to the regulations.

The above facts distinguish the decision in *R. v. Nikal,* supra, where it was held that there was no rational connection between the Indian food fish licence and valid conservation objectives. Moreover, the *Sparrow* decision emphasizes that the detailing of conservation measures should be left to the experts. I am satisfied that the Crown has established a "valid legislative objective" as part of its justification analysis.

This finding does not end the matter, however. The Crown must further establish that both the legislation and its implementation are in keeping with the special trust relationship and the responsibility of the government towards Aboriginal people. In *Sparrow*, the court held that any allocation of priorities after valid conservation measures have been implemented must give top priority to Indian food fishing. Depending on the circumstances of the inquiry, further questions must be addressed. These include but are not limited to whether there has been as little infringement as possible in order to effect the desired result, whether in a situation of expropriation, fair compensation has been given, and whether the Aboriginal group in question has been consulted with respect to conservation measures being implemented.

At the time this matter first came before the court, right up to the time of the *Sparrow* decision, the Crown has denied the existence of an Aboriginal right to fish. It is evident that the entire legislative scheme was erected on this premise. Section 7 of the Act makes fishing and the issue of fishing licences a privilege, to be exercised in the absolute discretion of the minister. There is no evidence before the court indicating that the applicable regulations were formulated in consultation with the Native people in the Yukon, or that they were intended to accommodate *real* Aboriginal rights. While Native angling licences can be obtained at no cost by Native people, they incorporate restrictive catch limits which are inconsistent with the Aboriginal right to fish for food. The licences are a privilege, and not a right, and further restrictions could be imposed unilaterally. Licences must be obtained from an authorized person or vendor, and this may create an inconvenience for some Native people who live outside an established community. Ironically, the no-cost licence reflects non-Native values: Native culture emphasizes consultation and consensus decision-making. Native people object to white people making unilateral decisions about what they can eat.

This lack of consultation is apparent in the angling provisions of the Act. There is no recognition that Native people have and continue to food fish for grayling using rod and line. Certainly Officer Knutson was not aware of the possibility that a food fish licence could be obtained for this purpose. Nor was this known to the Native people in the Dawson area. The form of the food fish licence does not suggest that it is possible and, in fairness to Johnston and Toews, their evidence did not establish that food fish licences could be used by Native people angling for food.

Had there been consultation, it would have been apparent that the catch and possession limits prescribed by the angling licence are inadequate in recognizing the Aboriginal right to food fish for grayling. The Act treats non-Native sport fishers exactly the same as Natives fishing for food. No priority or preference is given to the Aboriginal right. This prosecution has proceeded precisely because the department placed Agnes Joseph in the lowest priority, that of sports fishing, even though she was fishing for food in the exercise of her Aboriginal rights.

There is no evidence to indicate that conservation of grayling fish is a concern or an issue in the Dawson-North Klondike area. The department does not "track" this species of fish as part of the food fishery. There was no evidence to indicate that a restriction on catch limits for Native food fishing was necessary for conservation purposes. Indeed, the opposite was true: there has never been a need to limit the 12-month open season or close the grayling fishery in the North Klondike region or anywhere in the Yukon for that matter.

The method of enforcement in this case was not in keeping with the fiduciary principles established in *Sparrow.* Wildlife officers adopted different and personal policies of enforcement, in the absence of direction from above. Some issued licences in the field, at no cost, to Native anglers. Others charged everyone without a licence. In other words, enforcement was arbitrary. An opportunity for education, consultation and co-operation was thus lost. Mutual distrust was increased.

It is important to note that there is no treaty or agreement between the Han Owitch'in people and the government which restricts their Aboriginal rights. The impact and enforcement of the *Fisheries Act* and regulations must be considered in this light.

In all the circumstances, the restrictions on the angling licence are not fair and reasonable for Native people. Agnes Joseph is not obligated to accept these conditions by obtaining a licence to fish for grayling fish for her food purposes.

The angling fishing licence requirement imposed on Agnes Joseph, a member of the Han Owitch'in Indian people, by s.4 of the *Yukon Territory Fishery Regulations* infringes upon her Aboriginal right as protected in s.35 of the *Constitution Act, 1982.* For the reasons given, the Crown has not established that this infringement is justified and therefore, by virtue of s.52 of the *Constitution Act,* is of no force or effect in relation to Native persons who angle for food fish pursuant to their Aboriginal right. Agnes Joseph stands acquitted of the charge before the court.