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**Saul Terry, Robert Edward Morgan and Patsy Rae Morgan v. The  
Department of Fisheries and the Environment**

[1980] 2 C.N.L.R. 103

Federal Court of Canada, Trial Division

**Collier J.**

19 July 1978

L. Mandell and C. Ruby, for the petitioners.

R. Wismer, for the respondents.

A motion was brought by the plaintiffs for an interlocutory injunction to prevent the respondent from exercising its conservation powers of closure under the Fisheries Act, R.S.C. 1970, c. F-14. A closure was ordered for July 17 and 18. The motion was heard on July 18. The plaintiffs were issued Indian Food Licenses under section 29 of the Regulations of the Fisheries Act. They submitted that the words "notwithstanding anything in these regulations" in section 29(1) exclude the power in section 4 of the Regulations to order closures affecting the fishing periods permitted at the time food licenses were issued.

HELD: (Collier, J.)

1. The rights of the plaintiffs were not made out on a prima facie basis. The words in s.29 of the Regulations might be interpreted as merely permitting Indians to fish at times, areas, and by methods otherwise prohibited to other citizens; the words do not necessarily prevent the applicability of closure orders.
2. Because of the short time period between the time of the hearing and the end of the closure the possible loss to the plaintiffs is small and the balance of convenience goes against application of the drastic measure of an injunction. The fair course would be to hear the matter at trial.
3. The motion of the plaintiff for an interlocutory injunction is dismissed.

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COLLIER, J.:--

The Plaintiffs have leave to add as party defendants:

The Minister of Fisheries  
Thomas A. Moojalsky  
The Attorney-General of Canada

The motion for an interlocutory injunction is dismissed.

The plaintiffs' case, in essence, is that food licenses, under s.29 of the applicable Regulations, were issued to them for specified periods of time in a week, and for specified periods of time in a week, and for specified areas, and perhaps for specified methods of dishing. The government department, it is said, by exercising its conservation powers of closure, has in effect altered the terms of those licenses. It is said that cannot be done. Reliance is placed on the words "Notwithstanding anything in these Regulations ...." found in s.29(1).

The plaintiff argues those words exclude the power, in s.4 of the Regulations, to order temporary or permanent closures which may affect the fishing periods earlier permitted when the food licenses were issued.

It is on that argument, essentially, the plaintiffs base their claim for injunctive relief.

I am not persuaded the right of the plaintiffs has been made out, either on a prima facie basis, or on a balance of convenience.

Without finally deciding the point, it seems to me it is equally open to say that the words in Regulation 29 merely permit, or enable, Indians to fish for certain species, in certain areas, and by certain methods, which are otherwise, in the Regulations, prohibited to other citizens; that the words do not prevent the applicability, by closure or other means, of conservation orders.

I am of the view there is a fair question to be tried. But it should be at a trial and full hearing, not on an interlocutory application such as this.

The only period of closure involved before this court is July 17 and 18. The period of time remaining today, July 18, is small. The loss, if any, to the plaintiffs in that short period, is not, as I see it, irreparable or disastrous. When that is considered, along with, what I conceive, the finely-balanced legal question of right, the balance of convenience is on the side of refusing the discretionary and drastic remedy of interlocutory injunction. The fair course, in my view, is to have the legal issues determined at a trial.

I add this. If the parties are diligent, and waive a good deal of the usual discovery procedures, an early trial date could be assigned.

The defendants do not ask for costs. There will be no order in that respect.

Order

1. The motion on behalf of the plaintiffs, dated July 17, 1978, for an ex parte interlocutory or interim injunction is dismissed.
2. The style of cause is amended by deleting the words "PETITIONERS" and "RESPONDENT" and substituting the words "PLAINTIFFS" and "DEFENDANTS", respectively.
3. The plaintiffs have leave to add the following as defendants and to amend the style of cause and Declaration accordingly:

The Minister of Fisheries Thomas M. Moojalsky The Attorney-General of  
Canada

s/nmb