

Application For Particulars Of Charge Under Fisheries Act Denied

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In a recent decision, the British Columbia Provincial Court, considered the obligation of the Crown to give particulars for an offence under the Fisheries Act, RSC 1985, c F-14.

In a recent decision, R v 3853942 Canada Inc, 2016 BCPC 331, the British Columbia Provincial Court, considered the obligation of the Crown to give particulars for an **offence under the Fisheries Act**, RSC 1985, c F-14 (the "Fisheries Act"). The Court dismissed the application for further particulars relating to the charges under **the Fisheries Act** for the alleged unauthorized discharge of deleterious substances. The Court held that the Crown is not required to disclose specific details of the acts or omissions relevant to any offence it has charged against a party. Notably, the Crown was not ordered to provide details of the exact location of the alleged discharges or specific properties of the alleged deleterious substances.

Background

On April 21, 2013, Saputo Dairy Products Canada General Partnership ("Saputo") was **charged with six offences under sections 36(3) and 40(2) of the Fisheries Act**. According to the Crown, the alleged offences occurred at one of Saputo's dairy plants in Abbotsford, British Columbia, and involved the deposit of a deleterious substance (non-treated waste effluent) under conditions where a deleterious substance may enter water frequented by fish in a tributary of Marshall Creek.

Saputo brought an application for a Statement of Particulars, contending that the Crown's charges were overly ambiguous and scant on details relating to the particular locations where the alleged contamination occurred. In particular, the charges did not specify the exact locations of the alleged discharges and the quantities, concentrations or other parameters that render the alleged substances deleterious within the meaning **of the Fisheries Act**. According to Saputo, the current wording of the charges unfairly prejudiced Saputo's chances of defending itself at trial. In response, the Crown argued that an Order for particulars was unnecessary in this instance, as there had already been hundreds of pages of disclosure in this case, and any further disclosure would unfairly tie the hands of the Crown and impede the prosecutor's ability to move the case forward.

Decision

To succeed in its application, Saputo had to establish that the wording of the six charges was so vague as to be unfairly prejudicial. After reviewing the law of particulars and carefully examining a selection of the defence counsel's requests for additional information, the Court concluded that no further disclosure on the part of the Crown was necessary due to the "voluminous disclosure which had occurred between the parties" thus far.

The Court dismissed the application holding that the Crown is not required to disclose specific details of the acts or omissions relevant to any charges against a party and the burden of satisfying the Court that the particulars sought are necessary for a fair trial rests solely with the party applying for the Order.

The Court also held that, at this point in the litigation, the Crown was only required to **prove the essential elements of the Fisheries Act offences. As such, Saputo's request** for additional information relating to the exact locations at which the alleged discharge and contamination occurred, and the exact means by which the offences were perpetrated, was premature. In the end, Saputo's application for particulars was dismissed.

Implications

In recent years, Canadian Courts have established that they will only order particulars when further information is "necessary" for a party to fully understand and appreciate the Crown's charges, and to enable said party to furnish a proper defence. Parties should bear in mind that the determination of whether an Information is sufficiently detailed is a holistic process, and charges may be particularized by both the wording of the Information itself and the materials (such as Crown disclosure) supplied in the proceedings. This case serves as a reminder to keep diligent records of any release of substances in order to make full answer and defence to environmental charges, as particulars may not be readily ascertainable from the charges themselves.

By

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