

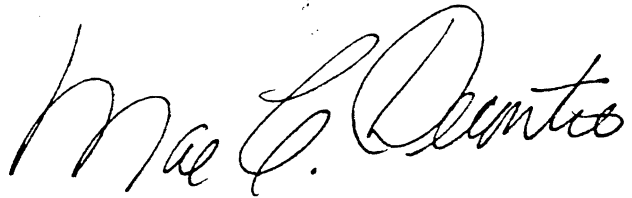
CANADA

Province of Quebec

TO WIT

I, MAE C. DECONTIE, residing at Nepean, Ontario make oath and swear that the paperwriting to which this affidavit is attached is a true copy of a document produced and shown to me and purporting to be the original by-law pursuant to the Indian Act and signed by the Chief and Council of the Qualicum Band of Indians and dated January 23, 1985, the said copy having been compared by me with the said original document.

Sworn to before me at the city of
Hull in the Judicial District of
Hull this *6* day of *March*, 1985



Isser Smith
Commissioner of the Taking of Oaths
Pursuant to Section 108 (a) of the
Indian Act

SOR/85-282
Enacted Jan 23/85.

Mar 22/85

BAND COUNCIL RESOLUTION
PASSED THE 23RD DAY OF JANUARY, 1985
BY THE COUNCIL OF THE QUALICUM INDIAN BAND
OF THE DISTRICT OF NANAIMO
IN THE PROVINCE OF BRITISH COLUMBIA

The Council of the Qualicum Indian Band DOES HEREBY RESOLVE at a meeting of the Band Council held on the 23rd day of January, 1985 that the following By-Law be made pursuant to Sections 81 and 83 of the Indian Act:

QUALICUM RESERVE FISHING BY-LAW, 1985, No. 4

Definitions

1. In this By-Law, unless the context otherwise requires, the following words and expressions shall have the meanings assigned to them below and other parts of speech or grammatical forms of the same words and expressions shall have corresponding meanings:

- (a) "Band" means the Qualicum Indian Band;
- (b) "Band Fisheries Officer" means the person holding such office pursuant to an appointment made under Section 4(1) of this By-Law and also includes the Band Manager while he is performing the duties and functions of such office;
- (c) "Band Manager" means the band manager of the Band;
- (d) "Band Council" means the council of the Band;

- (e) "Band Waters" means all rivers, streams, lakes, tidal waters and all other waters situate within the Reserve which are or are capable of being frequented by Fish and also includes all ground water situate within the Reserve which flows into such waters;
- (f) "Contamiant" means any solid, liquid, gas, odour, heat, sound, vibration, radiation or any other substance, condition, action or process resulting directly or indirectly from the activities of man, that does or is likely
 - (i) to impair the quality of Band Waters as a Fish Habitat,
 - (ii) to cause any damage or harm to Fish in Band Waters, or
 - (iii) to render any Fish in Band Waters unfit for consumption or use by man;
- (g) "Fish" includes shellfish, crustaceans, marine animals and the eggs, spawn, spat and juvenile stages of fish, shellfish, crustaceans and marine animals;
- (h) "Fishery" includes each area, locality, place or station within the Reserve in or on which a pound, seine, net, weir or other fishing appliance is used, set, placed, or located and the area, tract or stretch of water within the Reserve in or from which Fish may be taken by any such pound, seine, net, weir or other fishing appliance and also the pound, seine, net, weir or other fishing appliance used in connection therewith;
- (i) "Fishing" means fishing for, catching or attempting to catch Fish by any method;

- (j) "Orders" means orders made by the Band Council pursuant to Section 3(2) of this By-Law;
- (k) "Reserve" means the tract of land known as the Qualicum Indian Reserve that has been set aside by Her Majesty for the use and benefit of the Band.

Application

2. This By-law applies upon the Reserve and to all Band Waters.

Band Council

3. Subject only to the provisions of the Indian Act and this By-law, the authority for the preservation, protection and management of the Fishery and of Fish in Band Waters is hereby vested in the Band Council and the Band Council may overrule any decision of the Band Manager or the Band Fisheries Officer made under this By-law.

Band Fisheries Officer

4.(1) The Band Council may appoint a Band Fisheries Officer whose remuneration shall be as fixed from time to time by the Band Council, which remuneration shall be payable from the monies of the Band.

(2) The Band Manager may exercise any of the powers or perform any of the duties or functions of the Band Fisheries Officer under this By-law.

(3) The Band Fisheries Officer shall perform his duties and functions under this By-law under the general supervision and direction of the Band Manager.

Duties of Band Fisheries Officer

5. The Band Fisheries Officer shall:
- (a) enforce the provisions of this By-law and the Orders;
 - (b) maintain records of and make recommendations and reports to the Band Council with respect to the following matters:
 - (i) the maximum size of the Fish catch which the Band Waters are capable of yielding on a long term sustainable basis;
 - (ii) the number of Fish caught in Band Waters;
 - (iii) close times for Fishing in Band Waters;
 - (iv) the condition of spawning grounds in Band Waters;
 - (v) the number of Band members engaged in Fishing in Band Waters;
 - (vi) the types and sizes of Fishing devices and gear used in Fishing in Band Waters;
 - (vii) Fish stock levels in Band Waters;
 - (viii) prosecutions of offences under this By-law; and
 - (ix) such other matters as are from time to time directed by the Band Manager or the Band Council.

Entitlement to Fish

6. (1) Subject to and in compliance with the By-law and the Orders, every member of the Band shall be entitled to engage in Fishing in Band Waters at any time and by any method except by the use of rockets, explosive materials, projectiles or shells.

(2) Every member of the Band shall comply with the provisions of this By-law and the Orders.

(3) Where the Band Council considers that the Fish stocks in Band Waters exceed the reasonable requirements of the Band and the escapement requirements for conservation purposes, the Band Council may issue permits to persons who are not members of the Band entitling those persons to engage in Fishing in Band Waters.

(4) The Band Council may attach terms and conditions to any permit issued under subsection (2) and may charge such fees for the issuance of a permit as the Band Council in its discretion considers appropriate.

(5) The holder of a permit issued under subsection (2) shall comply with the terms and conditions of the permit and the provisions of this By-law and the Orders.

Prohibition on Fishing

7. (1) No person shall Fish in Band Waters except those persons permitted by Section 6 of this By-law.

(2) Any person found in the possession of Fish on the Reserve shall, for the purposes of subsection (1), be deemed to have caught the Fish by Fishing in Band Waters unless that person can prove that the Fish were otherwise caught.

Discharge of Contaminants

8. No person shall deposit in, add to, emit or discharge into Band Waters any Contaminant and no person responsible for a source of Contaminant shall permit the addition to, emission or discharge into Band Waters of the Contaminant.

Sale of Fish

9. No person shall sell any Fish caught in Band Waters in

contravention of this By-law but otherwise the Sale of Fish caught in Band waters is not prohibited.

Offence and Penalty

10. (1) Any person who contravenes any provision of this By-law or of any Order is guilty of an offence punishable on summary conviction and, on conviction, is liable to a fine of not more than one hundred dollars (\$100) or to imprisonment for not more than thirty (30) days, or to both.

(2) Where any contravention of this By-law or of any Order is committed on more than one day or is continued for more than one day, then the contravention on each day shall be deemed to constitute a separate offence for each day on which the contravention is committed or continued.

(3) All penalties imposed in respect of an offence under this By-law shall be recoverable and enforceable by summary proceedings taken under the provisions of the Criminal Code of Canada relating to summary convictions.

Severability

11. If any part of this By-Law is declared or adjudged to be invalid or unenforceable by any court, such invalidity or unenforceability will not affect the validity or enforceability of any other part of this By-law.

Repeal

12. "Fishing By-Law, 1980, No. 3" is repealed upon the coming into force of this By-law.

Citation

13. This By-Law may be cited for all purposes as "Qualicum Reserve Fishing By-Law, 1985, No. 4".

Considered, passed and adopted by the Council of
the Qualicum Indian Band on the 23rd day of January 1985.

(Signed) M. Recalma
Chief R. Mark Recalma

(Signed) A.P. Recalma
Councillor Arnold P. Recalma

(Signed) David J. Reid
Councillor David J. Reid