

FIRST NATIONS LEADERSHIP COUNCIL

News Release

April 20, 2021

First Nations Leadership Council congratulates five Nuu-chah-nulth Nations for victorious BC Court of Appeal decision

(X̣ẉməθḳẉəỵəm (Musqueam), Sḳwx̣ẉú7mesh (Squamish) and sə̣liẉəṭə̣ł (Tseil-Waututh)/Vancouver, BC) The First Nations Leadership Council (FNL) are applauding five Nuu-chah-nulth Nations (the Ehattesaht, Hesquiaht, Mowachaht/Muchalaht, Ahousaht and Tla-o-qui-aht) for their efforts leading to the April 19th BC Court of Appeal (BCCA) decision (*Ahousaht v Canada, 2021 BCCA 155*).

The BCCA made an important ruling, reaffirming that the Nuu-chah-nulth Nations' commercial multi-species fishing right is an evolving right to sustainable viable priority commercial fisheries in their territories. The Court rejected arguments that the Nations' rights have a lower priority in relation to some species, finding that "Aboriginal rights are constitutionally protected, and must be taken seriously. First Nations have a prima facie entitlement to have their rights take priority over rights that are not constitutionally protected." [Para 251]

The BCCA found that the lower court's limits on the commercial fishing right, describing it as "artisanal", "small-scale" and "local", were incorrect and created confusion, and found that the limit of "using small low-cost boats with limited technology and restricted catching power" did not take into account the need to allow Aboriginal rights to evolve to meet modern conditions and requirements.

The BCCA confirmed that the Nuu-chah-nulth have an essential relationship to the fisheries of their territories, and that relationship included a strong economic component. The BCCA confirmed the trial judge's original finding that fishing and trading in fish was historically an integral part of the Nuu-chah-nulth existence and it served an important economic purpose. The BCCA confirmed that sustainability and viability of the exercise of the commercial right are important questions to consider in assessing whether the Aboriginal right in question is being respected.

"We hold up our hands up to the Nuu-chah-nulth for their steadfast determination in their lengthy and costly legal battle to fight for recognition of their rights. It has taken decades of work and numerous trips through the courts. In the process, we have seen both DFO and stakeholders resist the true recognition of our rights. We are grateful that the BCCA has helped move us all along the path of reconciliation," said Lydia Hwitsum of the FNS Political Executive. "Indigenous people have fought for decades to have Canada implement the priority confirmed in the landmark decision in *Sparrow*. This decision definitively confirms that the priority of s. 35(1) constitutional rights must be taken seriously, must be respected, must be given priority over other users, and must evolve over time."



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Regional Chief Terry Teegee stated, "It's a good day to celebrate another court victory in defence of First Nations rights to fisheries resources. I congratulate the five Nuu-chah-nulth Nations on behalf of the BCAFN and the AFN National Fisheries Committee. First Nations' rights are not frozen in time. We are also pleased that this case affirms that First Nations have rights to access all fisheries resources, not exclusive from one species to another." Regional Chief added, "Prime Minister Trudeau must turn his attention to giving his ministers and senior officials new mandates that move beyond policy and regulatory limitations. It's been more than 11 years that the Nuu-chah-nulth have been seeking to control and benefit from their fisheries resources. Canada has spent over \$19 million dollars in fighting the Nuu-chah-nulth, this confrontational approach must stop, and proper negotiations take place to share the wealth from First Nations' lands, waters and resources."

Chief Don Tom, Vice-President of the Union of BC Indian Chiefs stated, "UBCIC congratulates the Nuu-chah-nulth for their victory. The BCCA decision reaffirms that First Nations have the right to provide for our peoples and the right to an economy. It is unfortunate that Nations such as the Nuu-chah-nulth must continue to press for the recognition of their rights through the courts. Regrettably and surprisingly, the BCCA did not take the opportunity to consider how Canada must uphold the basic human rights recognized by the *United Nations Declaration of the Rights of Indigenous Peoples* (UNDRIP) in its management of the fishery; however, it upholds First Nations' inherent Title and Rights and exercising of those rights on our respective territories. We call on Canada to immediately engage with the Nuu-chah-nulth to implement this decision in ways that are respectful to Nuu-chah-nulth governance systems."

The five Nuu-chah-nulth Nations' view the BCCA decision as a signal towards a new beginning that will result in Canada coming to the negotiations table to immediately and in good faith engage to co-develop meaningful and vital fisheries for the Nuu-chah-nulth Nations. The First Nations Leadership Council will be an active advocate calling on the Hon. Bernadette Jordan, Minister of Fisheries, Oceans and the Canadian Coast Guard, to take immediate steps to implement the court decision.

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The First Nations Leadership Council is comprised of the political executives of the BC Assembly of First Nations (BCAFN), First Nations Summit (FNS), and the Union of BC Indian Chiefs (UBCIC).

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