

FORM 301 - Rule 301

FEDERAL COURT

BETWEEN:

HELSHIRON FISHERIES LTD.

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER section 18.1 of the *Federal Courts Act*, RSC, 1985, c F-7 and Rule 301 of the *Federal Courts Rules*, 1998.

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Halifax, Nova Scotia.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date Issued: _____

Issued by: _____

Address of local office:

1801 Hollis Street, 17th Floor
Suite 1720
Halifax, Nova Scotia
B3J 3N4

TO: ATTORNEY GENERAL FOR CANADA
 Department of Justice
 Suite 1400, Duke Tower
 5251 Duke St.
 Halifax, NS B3J 1P3

Application

This is an application for judicial review in respect of a decision of the Minister of Fisheries, Oceans and the Canadian Coast Guard (the “Minister”) dated November 8, 2022, and communicated to the Applicant via e-mail on November 10, 2022, which denied the Applicant’s request for an exception to the requirements set out in Commercial Fisheries Licensing Policy for Eastern Canada, 1996, Chapter 3, Section 11 in relation to the issuance of herring weir licences 140049, 140048, and 140085 (the “**Decision**”). A copy of the Decision and covering e-mail is attached as Schedule “A” to this Notice of Application.

The Applicant makes application for:

1. An order quashing the Decision as unreasonable or incorrect;
2. An order referring the matter back to the Minister for a
3. determination in accordance with such directions as the Court considers to be appropriate;
4. Costs of this application; and
5. Such further and other relief as this Honourable Court deems to be just and appropriate.

The grounds for the application are:

1. The Applicant Helshiron Fisheries Ltd. (“Helshiron”) is a family-owned fishing business incorporated pursuant to the laws of the Province of New Brunswick.
2. Up until 2016, the company held three weir licences identified as 140049, 140048, and 140085 for many years. The beneficial interest in these licences spanned generations.
3. In 2015, Helshiron received a physical renewal statement dated November 16, 2015, regarding the renewal of its 2015 licences. Following receipt of this notice, the licences fees were successfully paid via the National Online Licensing System (NOLS) on November 24, 2015.
4. In 2016, Helshiron did not receive a physical renewal statement. Nor did it receive an e-mail reminder. In the absence of any renewal notice, Helshiron did not pay the annual fee for the three licences.
5. The annual renewal fee for the licences was a nominal amount of \$100/licence per year. Helshiron did not realize the annual fee had not been paid until about 2019.

6. Julia McCleave, Fisheries Management advisor, confirmed during the RLAC hearing on December 11, 2019, that the Department of Fisheries and Oceans ("DFO") had no record of communication with Helshiron during 2016 and that it had no record of a renewal reminder being sent via e-mail.
7. Section 2.2 of the National Online System (NOLS) User Training Manual, provided that users were to be notified by e-mail every time they received a new notification in the system.
8. Around the time when the herring licences were not reissued in 2016, the Bensons also lost three lobster pound licences that had expired. When the Benson family contacted DFO to explain the situation, the lobster pound licences were returned promptly.
9. In 2019, the Bensons purchased a new herring licence so they could continue in the weir business. The cost of acquiring the new licence was approximately \$10,000.
10. The Decision is incorrect or unreasonable because the Minister failed to notify the Applicant of the requirement to renew its licences, contrary to ordinary departmental practice.
11. The Decision is unreasonable and in bad faith because (a) the Minister has established practices, conduct and representations that fish harvesters would receive notice regarding the renewal of their licences; (b) it does not serve the stated purpose of helping fish harvesters and other users complete licensing transactions using a computer with Internet access; (c) it deprives the Applicant of its beneficial interest in the licences without any compensation; and (d) the Minister has failed to provide meaningful reasons for the Decision.
12. The Decision is incorrect or unreasonable because the Applicant had a legitimate expectation that it would receive notice of the requirement to renew its licences.
13. The Decision is incorrect or unreasonable because it was made in a procedurally unfair manner.
14. The Decision is incorrect or unreasonable because it was made with a deficient evidentiary foundation and without a cogent chain of reasoning.
15. The Decision is incorrect or unreasonable based on other grounds which may appear in the Record.

This application will be supported by the following material:

16. this Notice of Application;
17. Affidavits along with exhibits;
18. The certified tribunal record;
19. Such further and other materials as counsel may advise and this Honourable Court may allow.
20. The Applicant requests that the Minister and DFO send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Minister and DFO to the applicant and to the Registry:
 - a. The certified record relied on by the Minister in reaching the Decision;
 - b. The complete record of the Regional Licensing Appeal Committee (RLAC) hearing that took place on December 11, 2019, including the panel's recommendation;
 - c. The complete record of the Atlantic Fisheries Licence Appeal Board (AFLAB) hearing that took place on August 18, 2020, including the panel's recommendation; and
 - d. Any other materials or documents relied on by the Minister in arriving at the Decision.

DATED at Yarmouth, Nova Scotia, this 9th day of December, 2022.



Sarah A. Shiels

Counsel for the Applicant, Helshiron
Fisheries Ltd.

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SCHEDULE "A"

Correspondence from Fisheries and Oceans Canada

Minister / Ministre (DFO/MPO) <DFO.Minister-Ministre.MPO@dfo-mpo.gc.ca>

Thu 2022-11-10 12:21 PM

To: info@bensonlobster.ca <info@bensonlobster.ca>

Cc: Sarah Shiels <sarah@cslegal.ca>

 1 attachments (102 KB)

Reply from Fisheries and Oceans Canada (21-00057).pdf;

=====le français suit=====

Please see the attached correspondence from the Honourable Joyce Murray, Minister of Fisheries, Oceans and the Canadian Coast Guard.

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Veillez consulter la correspondance ci-jointe de l'honorable Joyce Murray, ministre des Pêches, des Océans et de la Garde côtière canadienne.



November 8, 2022

Helshiron Fisheries Ltd.
c/o Morton Benson
6 Old Factory Round Turn
Grand Manan, NB
E5G 2J4

Dear Mr. Benson:

Your appeal of the February 20, 2020 decision by the Regional Director General of Fisheries and Oceans Canada (DFO) Maritimes Region to decline your request for an exception to the requirements set out in the Commercial Fisheries Licensing Policy for Eastern Canada (CFLP) was heard by the Atlantic Fisheries Licence Appeal Board (AFLAB) on August 18, 2020. Pursuant to subsection 11(2) of the CFLP, "licence renewal and payment of fees is mandatory on a yearly basis in order to retain the privilege to be issued the licence."

Our records indicate that herring weir licences 140049, 140048, and 140085 were first issued to you in 1987, 2015, and 1996 respectively. Records also indicate that there were landings reported in 2003 and 2007 for licence 140048, and in 2004 for licence 140085. Our records also indicate that the licences were renewed successfully every year until 2016, and that the renewals for the 2014 and 2015 year were successfully accomplished via the National Online Licensing System. You failed to renew the licences in 2016, and in keeping with the CFLP provisions, you were not offered the opportunity to renew the licences in 2017. Additionally, there is no record of you attempting to contact the Department to renew the licences until 2019.

After careful review and consideration of all the relevant information pertaining to your licensing case, including your representations, the materials submitted to AFLAB, and AFLAB's recommendation, I am of the view that the circumstances you have put forward do not constitute extenuating circumstances that would warrant making an exception to the CFLP in this case.

While I do understand that there were a number of administrative difficulties with staff turnover and a new computer system, there is no evidence to suggest that any effort was made to contact DFO between 2016 and 2019 for assistance in renewing the licences.

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I have therefore decided that your request for the issuance of herring weir licences 140049, 140048, and 140085 will not be approved.

I apologize in advance for the delay in communicating with you and regret that this process did not result in a more favourable outcome.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'J. Murray', with a long horizontal flourish extending to the right.

The Honourable Joyce Murray, P.C., M.P.
Minister of Fisheries, Oceans and the Canadian Coast Guard