



Information and Privacy  
Commissioner/Ontario

Commissaire à l'information  
et à la protection de la vie privée/Ontario

# ORDER P-882

Appeal P-9400494

Ministry of Natural Resources



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## **NATURE OF THE APPEAL:**

This is an appeal under the Freedom of Information and Privacy Act (the Act). The Ministry of Natural Resources (the Ministry) received a request for a copy of a letter from a Deputy Minister to an Indian band (the First Nation). The letter related to the commercial fishing rights of the First Nation. Access to the letter was denied pursuant to section 15 of the Act. The requester appealed the Ministry's decision to deny access.

During mediation, the Ministry notified the appellant and this office that it was also claiming section 18(1)(e) of the Act as an additional exemption.

The Ministry relies on the following exemptions in denying access to the letter:

- relations with other governments - section 15
- economic and other interests - section 18(1)

A Notice of Inquiry was provided to the appellant, the Ministry and the First Nation. Representations were received from the Ministry and the appellant. In its representations, the Ministry indicated that it was withdrawing its claim to section 15 of the Act. Therefore, the sole issue in this appeal is the application of section 18(1)(e) to the information in the letter.

## **DISCUSSION:**

### **ECONOMIC AND OTHER INTERESTS**

The Ministry submits that section 18(1)(e) of the Act applies to the record.

In order to qualify for exemption under section 18(1)(e), the Ministry must establish that:

1. the record must contain positions, plans, procedures, criteria or instructions; **and**
2. the positions, plans, procedures, criteria or instructions must be intended to be applied to negotiations; **and**
3. the negotiations must be carried on currently, or will be carried on in the future; **and**
4. the negotiations must be conducted by or on behalf of the Government of Ontario or an institution.

In its representations, the Ministry refers to the case of R. v. Agawa where the Ontario Court of Appeal found that the First Nation had a right to fish for commercial purposes. The Ministry states that this required

the Ministry to ensure that appropriate arrangements which reflect the court findings are in place. The information in the letter contains the Ministry's position on an interim arrangement for commercial fishing by the First Nation, prior to signing an interim agreement. The Ministry explains that since the court decision, the Ministry has been engaged in varying stages of negotiations but formal discussion has been sporadic.

However, in September or October, 1993, the First Nation initiated the process of negotiation. The Ministry states that an Ontario negotiator has been appointed and funding has been provided for the First Nation to retain a co-ordinator for the negotiations. The Ministry states that the letter contains the Ministry's position which will be applied to the negotiations which are anticipated to take place in the near future.

The appellant's representations reflect his concerns with the Ontario government's interpretation of sec. 35(1) of the Constitution Act, 1982 and its application of Regina v. Sparrow, a case decided by the Supreme Court of Canada involving an offence under the Fisheries Act. In my view, this is not the correct forum for the matters raised by the appellant. The issue to be determined in this order is whether a discretionary exemption claimed by the Ministry under section 18(1)(e) of the Act applies to the information in the record.

I have reviewed the information in the letter together with the representations of the parties. I am satisfied that the letter contains the Ministry's positions, plans, procedures, criteria or instructions intended to be applied to negotiations conducted by the Ministry and which are to take place in the future. I find that the letter qualifies for exemption under section 18(1)(e) of the Act.

**ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ February 28, 1995