



Court File No. **VLC-S-S-251228**

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CERMAQ CANADA LTD.

PLAINTIFF

AND:

ATTORNEY GENERAL OF CANADA,
MINISTER OF FISHERIES, OCEANS AND THE
CANADIAN COAST GUARD, AND JOYCE MURRAY

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. Cermaq Canada Ltd. (“**Cermaq**”) is a BC Company with its head office in Campbell River, BC and a records and registered office at 2900 – 550 Burrard Street, Vancouver, British Columbia, V6C 0A3. Cermaq is in the business of aquaculture production.
2. The defendant, the Attorney General of Canada on behalf of His Majesty the King in Right of Canada (the “**Crown**”), represents the Minister of Fisheries, Oceans and the Canadian Coast Guard (“**Fisheries Minister**”) and has an address for service at the Department of Justice Canada, British Columbia Regional Office, 900-840 Howe St., Vancouver, British Columbia, V6Z 2S9.
3. The Fisheries Minister is a statutory decision-maker with various prescribed powers under the *Fisheries Act*, R.S.C. 1985, c. F-14. The Fisheries Minister is responsible for Fisheries and Oceans Canada (“**DFO**”), the department of the Government of Canada that has primary responsibility for the administration and management of aquaculture in Canada.
4. The defendant Joyce Murray (“**Minister Murray**”, which is used interchangeably with “Fisheries Minister”) was the Fisheries Minister from October 26, 2021 to July 26, 2023.

Cermaq’s Operations in the Discovery Islands

5. Cermaq is in the business of farming Atlantic salmon. Three of Cermaq’s longstanding aquaculture facilities are located in the Discovery Islands: Brent Island, Venture Point and Raza Island (the “**DI Facilities**”).
6. Cermaq or its predecessors have operated the Brent Island and Venture Point sites since 1989 and the Raza Island site since 1993.
7. The Discovery Islands sites have historically represented approximately 20 percent of Cermaq’s annual business and are an important part of Cermaq’s overall business.

8. Cermaq's operations have substantially contributed to the North Island economy, through employment opportunities, as well as contractual arrangements that have provided tens of millions of dollars per year to local businesses, including Indigenous-owned businesses. The Discovery Islands sites have annually employed just under 50 individuals.
9. The aquaculture production process, referred to as a production cycle, is complex and requires careful planning and scheduling for each step of the cycle. The production cycle from the spawning of broodstock to the harvest of fish takes approximately seven to eight years. The production cycle includes tightly timed and highly coordinated transfers of fish between hatcheries and sea sites.
10. Cermaq's production of marketable fish from its DI Facilities follows a consistent two-year schedule, wherein fish are transferred to DI Facilities every second year and then harvested approximately 18 months to two years after those transfers are made. Cermaq's planned production schedule for the DI Facilities included planned transfers in 2021 and 2023 and other future years.
11. At all material times, this two-year transfer schedule was known to the DFO and the Fisheries Minister.
12. Cermaq was issued all licences necessary for such operations and transfers with the exception that since 2020, each of Cermaq's applications to transfer fish to the DI Facilities has been denied or prohibited by Minister Murray or Minister Bernadette Jordan, who was the Fisheries Minister from November 20, 2019 to October 26, 2021 ("**Minister Jordan**").
13. The fish in Cermaq's production cycle are Cermaq's property from egg through to harvest. At all material times, the Fisheries Minister and DFO knew this.
14. Cermaq has made significant investments to:
 - (a) Identify suitable aquaculture sites and obtain the regulatory approvals required to effect the production cycles at the DI Facilities;
 - (b) Set up, obtain regulatory approvals for and operate its hatcheries from which smolts are transferred to sea sites to grow out to harvest;
 - (c) Set up the DI Facilities and the nursery facility to which some fish are transferred prior to being transferred to one of the DI Facilities (the "**Nursery Site**") to receive and grow the fish; and
 - (d) Harvest the fish farmed at the DI Facilities.
15. At all material times, the Fisheries Minister and DFO knew of the significant investments Cermaq is required to make.

Regulatory Requirements for Aquaculture in the Discovery Islands

16. Multiple regulatory approvals are required to undertake aquaculture in British Columbia, including:

- (a) **A licence of occupation** authorizing the tenure for the site, issued by British Columbia under the *Land Act*, RSBC 1996, c 245. These are typically long-term authorizations with terms of 10 or more years. At the material times, Cermaq held licenses of occupation issued for each of the DI Facilities.
 - (b) **An aquaculture licence** issued by the Minister/her delegate under section 7 of the *Fisheries Act*, RSC 1985, c. F-14 (the “*Fisheries Act*”), and section 3 of the *Pacific Aquaculture Regulations*, SOR/2010-270. Cermaq’s aquaculture licences for the DI Facilities were last issued on December 19, 2020, with a June 30, 2022 expiry. Among other things, aquaculture licences include a maximum allowable biomass per facility.
 - (c) **Introduction and transfers licences** to transfer fish into or between sites issued by the Minister/her delegate pursuant to section 56 of the *Fishery (General) Regulations*, SOR/93-53. With the exception of Cermaq’s transfer licence applications in the Discovery Islands made after December 2020, Cermaq has regularly applied for and received transfer licences for each of its facilities.
 - (d) **Approvals under the *Canada Navigable Waters Act***, R.S.C. 1985, c. N-22, authorizing Cermaq to locate and operate the DI Facilities in navigable waters at all material times.
17. Cermaq’s operations rely and depend on the predictable issuance and replacement of such licences and authorizations, in particular the aquaculture licences and introduction and transfer licences. At all material times, the Fisheries Minister and DFO knew that Cermaq relies on the predictable issuance of such licences in order to operate and for Cermaq’s business to remain viable.
18. At all material times and currently, DFO deems the transfer of Atlantic salmon to licensed BC aquaculture facilities from local sources (meaning other licensed BC hatcheries and saltwater facilities) to be routine and low risk.
19. DFO has adopted the Aquaculture Policy Framework (October 2008), which describes DFO’s vision for aquaculture development. It emphasizes the importance of transparency in decision making as well as the importance of making decisions based on science. It contains several statements of commitment from the DFO including, among others:
- (a) “DFO will address issues of public concern in a fair and transparent manner, based on science and risk-management approaches endorsed by the government of Canada.”
 - (b) “DFO will make every effort to understand the needs of the aquaculture industry and to respond in a manner that is solutions oriented and supportive of aquaculture development.”
 - (c) “DFO will work with provincial and territorial governments to provide aquaculturists with predictable, equitable and timely access to the aquatic resource base.”

- (d) “This policy framework explicitly affirms DFO’s recognition of the aquaculture industry as a valued DFO client group. When developing and applying operational policies, laws, programs or any other governance measure affecting aquaculture development, DFO will consider the interests of aquaculturists and will adopt a solutions-oriented approach to dealing with specific challenges.”
- (e) DFO would ensure “DFO’s laws and regulations relating to aquaculture are clear, efficient, effective, consistently applied and relevant to the sector”

(collectively, the “**Framework Statements**”).

- 20. At all material times, Cermaq relied on the Framework Statements when managing and investing in the DI Facilities’ operations.
- 21. Cermaq has regularly applied for and received the necessary licences to operate its facilities, including aquaculture licences and introduction and transfer licences, according to its production schedule. Cermaq continues to receive such authorizations for its facilities outside of the Discovery Islands. However, since the 2020 Decision (defined below), Cermaq has not received any of the licences it has requested for the DI Facilities.

Wei Wai Kum First Nation and Klahoose First Nation

- 22. Cermaq has agreements with Wei Wai Kum First Nation (“**Wei Wai Kum**”), for the Brent Island and Venture Point facilities, and Klahoose First Nation (“**Klahoose**”), for the Raza Island facility. The Brent Island and Venture Point facilities are within Wei Wai Kum’s core territory and the Raza Island facility is within Klahoose’s core territory.
- 23. The respective agreements provide Wei Wai Kum and Klahoose’s respective consent and support for Cermaq’s operations at each of the relevant DI Facilities at the material times. The respective agreements also provide Wei Wai Kum and Klahoose with rights of oversight over Cermaq’s operations, conservation and science commitments, including with respect to aquaculture innovation, the transfer of the provincial licences of occupation for the facilities to the First Nations and payments for the use of the facilities and for the harvest of fish.

Science Subsequent to the Cohen Commission

- 24. The Canadian Science Advisory Secretariat (“**CSAS**”) provides formal scientific advice to the DFO as part of the Government of Canada’s formal administrative processes for procuring and publishing scientific advice to inform statutory decision-making.
- 25. In September 2020, the DFO announced the results of the nine peer-reviewed risk assessments (the “**Risk Assessments**”) it had commissioned from CSAS to examine pathogens identified as potentially linked to aquaculture. The Risk Assessments concluded that the risk of the pathogens to the health of migrating sockeye salmon was no more than minimal. The Risk Assessments were completed in response to the recommendations of the Cohen Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River.

26. In October 2020, DFO released a report of the performance of salmon farms in the Discovery Islands from 2011 to 2020. The report concluded that the facilities in the Discovery Islands were well performing with good fish health and sea lice management and minimal risk of disease or pest transfer to wild fish.
27. In January 2023, CSAS released Science Response 2022/045 concluding that there was no statistical correlation between the presence of Atlantic salmon farms and sea lice counts on wild juvenile Pacific salmon.

The Transition Plan

28. In 2019, the Government of Canada announced it would work with Indigenous groups and the Province to develop a province-wide transition plan by 2025 to transition net-pen salmon farming in British Columbia (“**Transition Plan**”).
29. The DFO and Minister Jordan, made several statements in relation to the development of the Transition Plan in BC. The statements included:
 - (a) a statement made by Minister Jordan on or around January 19, 2020 that “[t]he mandate letter is clear that I have to come up with a plan by 2025 and that's what I will be doing”;
 - (b) a statement made by Minister Jordan on or around January 19, 2020 that “it will take about five years to come up with a plan to phase out open-net aquaculture on British Columbia's coast”;
 - (c) a statement made by Minister Jordan on or around January 19, 2020 that the Minister's mandate did not require her to “remove all open-net salmon farms out of the ocean in five years;”
 - (d) a statement on July 22 2022, in the DFO’s framework for developing the Transition Plan which contemplated engagement and consultation regarding the development of the plan which would occur during 2022 and 2023 and that contemplated that the Transition Plan would be finalized in spring 2023.
30. Cermaq relied on these statements and publications in continuing its planned operations and transfers in the Discovery Islands for the 2023 year and beyond.
31. The Government of Canada published the Transition Plan, entitled *Salmon Aquaculture Transition Plan for British Columbia*, in draft in September 2024.

The 2020 Decision and Judicial Review

32. After the Crown announced the development of the Transition Plan and after the CSAS risk assessments were completed, on September 28, 2020, Minister Jordan announced in a press release that she would begin consultation on the renewal of aquaculture licences for aquaculture sites in the Discovery Islands including the DI Facilities.

33. In December 2020, Minister Jordan reissued the aquaculture licences for Discovery Island facilities to June 2022 and, at the same time and without notice, prohibited any aquaculture licences from being issued after June 30, 2022 and immediately prohibited any transfers of fish to those sites (“**2020 Decision**”).
34. Without transfers to these facilities, the Discovery Islands aquaculture sites could not operate. As a result, Cermaq was prevented from conducting its planned production at the DI Facilities and was forced to cull over a million fish, sell smolts to other companies and adjust its production plan for some of its other aquaculture facilities.
35. Cermaq and other aquaculture operators successfully challenged the 2020 Decision. On April 22, 2022, the Honourable Madam Justice Heneghan set aside Minister Jordan’s decision, holding that it was both procedurally unfair and unreasonable (“**Heneghan Decision**”).
36. Notwithstanding the Heneghan Decision, since the 2020 Decision, all of Cermaq’s applications for transfer licences into the DI Facilities have been denied. As a result, Cermaq has been unable to use the DI Facilities since the Minister’s 2020 Decision, despite that decision ultimately being found to be unfair and unreasonable.
37. Cermaq has never been prohibited or prevented from making transfers of fish to any of its licenced facilities except for those transfers sought to be made to the DI Facilities since the 2020 Decision.
38. After the Heneghan Decision, in which the court held that the 2020 Decision was unreasonable and procedurally unfair, Cermaq reasonably expected that it was entitled to apply for renewals of its aquaculture licences for the DI Facilities and for transfer licences into the DI Facilities and that such applications would be considered on their merits on an individual basis and in accordance with the statutory scheme, established licensing criteria, regulatory guidance, the Heneghan Decision, and public law duties and obligations owed to Cermaq. Cermaq reasonably expected that aquaculture licencing for the DI Facilities would be treated in a consistent manner to aquaculture in the rest of British Columbia and any transition in the area would be addressed as part of the Transition Plan framework, particularly in light of the fact that it had consent and support from Wei Wai Kum and Klahoose.

The 2022 Decision and 2022 Consultation Process

39. On June 22, 2022, Minister Murray advised by letter and press release that she would not reissue the Discovery Islands aquaculture licences upon their expiry in June 2022 (the “**2022 Decision**”). She advised that a distinct engagement and consultation process would apply to the Discovery Islands, separate from the British Columbia-wide consultations applying to aquaculture facilities in the rest of the province regarding the Transition Plan framework (the “**2022 Consultation Process**”). Minister Murray stated that the 2022 Consultation Process would occur between July and December 2022 and would inform the decision she would make in January 2023 on the reissuance of the Discovery Islands aquaculture licences.

40. Minister Murray also advised that the 2022 Consultation Process would include consultations with First Nations and licence holders, would be fair, comprehensive and offer Cermaq and First Nations the opportunity to be heard and respond to Minister Murray's and each other's concerns. Cermaq relied on these statements in continuing to plan its operations in the Discovery Islands in 2023.
41. That same day, the DFO announced by press release that Minister Murray would renew aquaculture licences for facilities outside of the Discovery Islands for two years and announced the next steps for a separate consultation process regarding the Transition Plan for facilities outside of the Discovery Islands which would run until early 2023.
42. On or around July 1, 2022, Minister Murray renewed Cermaq's finfish aquaculture licences throughout the province except for the DI Facilities for a period of two years. All of those other facilities continue to be dealt with as part of the Transition Plan framework.
43. Prior to the 2022 Decision, no consultations were undertaken by the DFO or Minister Murray regarding relicensing of aquaculture in the Discovery Islands.
44. Consultation with Cermaq on the Transition Plan overlapped with consultation on the Discovery Islands licences, despite communications from the DFO and Minister Murray that these processes would be undertaken separately.
45. Cermaq participated in the 2022 Consultation Process in good faith.
46. The 2022 Consultation Process, which ran between late June 2022 and December 2022 was not fair or transparent for reasons including, among other things:
 - (a) Cermaq and the BC Salmon Farmers Association (in which Cermaq is a member) made requests for additional information and to clarify the considerations for the decision (including in August 2022). DFO did not reply until October 2022 and neither Minister Murray nor the DFO provide substantive responses to those requests, which made it particularly difficult for Cermaq to respond and fairly participate in the process.
 - (b) Cermaq notified the DFO and Minister Murray that a positive reissuance decision by January 31, 2023 was of extreme importance to Cermaq's business, to provide sufficient time for Cermaq to make its planned transfers of fish to Raza Island in March 2023 and Venture Point in June 2023. Instead, Minister Murray, without notice, delayed her decision to February 17, 2023 in order to seek to justify her pre-determined outcome to close aquaculture in the Discovery Islands.
 - (c) Cermaq provided a proposal for its Brent Island, Venture Point and Raza Island facilities which included, among other things, Cermaq's agreements with, oversight by, and support and consent from Wei Wai Kum and Klahoose. The Minister did not grapple with or engage with Cermaq about it.
 - (d) Wei Wai Kum and We Wai Kai First Nation submitted a related proposal to Minister Murray setting out their vision of the future for aquaculture in the

Discovery Islands, including Wei Wai Kum and We Wai Kai First Nation's support for Cermaq's Brent Island and Venture Point facilities. The proposal provided for the oversight of aquaculture facilities in the Discovery Islands by First Nations as well as the federal and provincial governments. The Minister did not acknowledge, grapple with, or engage with Wei Wai Kum and We Wai Kai about the proposal.

- (e) Cermaq was not provided with the ability to know and respond to opposing concerns regarding the re-licensing decision, despite that being a commitment in the 2022 Decision.
 - (f) Cermaq was not given an opportunity to meet bilaterally with Minister Murray about the licensing decision.
47. On February 1, 2023, Cermaq submitted transfer applications to transfer over 1.5 million smolts from its hatcheries to Raza Island and the Nursery Site, for fish later destined for Brent Island or Venture Point, starting in or around March 10, 2023. This application met all standard transfer licence requirements.
48. As Minister Murray had promised a decision on the licences in January 2023, and that deadline had come and gone, on February 10, 2023, Cermaq wrote again to Minister Murray. In that letter, Cermaq emphasized, among other things:
- (a) Cermaq had structured the timing of its scheduled fish entries around Minister Murray's commitment that she would provide her renewal decision for the aquaculture licences by January 2023, as stated in her June 2022 letter.
 - (b) The delay in the renewal decision and non-issuance of transfer licences from April 2022 to January 2023, and further delay beyond January 2023, created further uncertainty for the company and put its benefit sharing agreements with its Indigenous partners, local jobs and the local economy at risk.

The 2022 Consultation Process and the Minister's Conduct was Aimed at Achieving Her Predetermined Outcome

49. Without informing Cermaq and without Cermaq's knowledge, Minister Murray made the 2022 Decision and conducted the 2022 Consultation Process to create a justification to achieve her pre-determined outcome to shut down aquaculture in the Discovery Islands, knowing that this was unlawful and contrary to her obligations as Fisheries Minister, and knowing that her conduct would injure Cermaq.
50. Minister Murray had decided to not issue aquaculture licences regardless of anything she heard or any submissions she received during the 2022 Consultation Process, knowing that her conduct was unlawful and contrary to her obligations as Fisheries Minister, and knowing that her conduct would injure Cermaq.
51. During the consultation period, on December 8, 2022, Minister Murray received an email from her aunt, which was sent at the request of her aunt's friend to "put a word in [Minister

Murray's] ear" regarding the Decision and transition plan (in support of a decision to remove fish farms from coastal British Columbia).

52. On December 9, 2022, Minister Murray responded to her aunt, stating that she was "not waffling" and noting that "the courts struck down the previous minister's move to close farms in the Discovery Islands, a big step backwards, creating further complexity for me." She further stated that her "difficult assignment... regarding both Discovery Islands and the broader transition... is not helped by the fact that DFO's science division has done a formal and comprehensive peer-review process to assess the research and came to the conclusion that aquaculture operations pose minimal risk to wild salmon." Minister Murray also noted she was aware of some scientists and anti-aquaculture activists that did not agree with DFO's conclusion regarding risk.
53. On January 16, 2023, the Deputy Minister finalized a memorandum for Minister Murray providing an assessment of key issues raised by Minister Murray in her 2022 Decision Letter (the "**Assessment Memorandum**") which concluded that the DFO does not have a basis to treat the aquaculture licences in the Discovery Islands differently than in the rest of British Columbia.
54. On January 24, 2023, the Deputy Minister finalized a memorandum for Minister Murray providing DFO's advice, recommendations and next steps on the Decision (the "**Decision Memorandum**"). The Decision Memorandum recommended that Minister Murray approve all aquaculture licences in the Discovery Islands until June 2024 to allow for future alignment of subsequent licences with the direction that would be provided in the new Transition Plan. The Decision Memorandum strongly recommended against denying all aquaculture licences. Among other things, the Decision Memorandum stated that:
 - (a) Of all the submissions to the Department, Cermaq's was the most comprehensive, complete, and specific, with a high degree of support from First Nations.
 - (b) There is not sufficient evidence to substantiate a decision to not relicence the aquaculture licences in the Discovery Islands.
 - (c) Departmental officials could not defend Minister Murray's suggestion that the Discovery Islands is unique, and relatedly, did not have a scientific basis to apply a higher level of precaution in the Discovery Islands area compared to elsewhere in BC.
 - (d) Consistent with other aquaculture licences in BC, renewal of licences is informed by current peer reviewed science advice provided by the DFO and existing risk assessments concluded that pathogen transmission from Atlantic salmon farms in the Discovery Islands pose minimal risk to Fraser River sockeye salmon population abundance and diversity under existing fish health management practices.
 - (e) In the event new science advice were to identify issues of concern, licence conditions could be adjusted in response.

- (f) Minister Murray is required to make individualized decisions for each aquaculture licence and decisions must be clearly justified, particularly if DFO recommendations are not followed.
55. After receiving the Assessment Memorandum and Decision Memorandum, it became clear to Minister Murray that the results of 2022 Consultation Process did not support her predetermined outcome.
56. Minister Murray therefore delayed her decision and convened additional meetings with, and sought and received submissions in January and February 2023, from, external scientists, activists and environmental non-governmental organizations known to be opposed to aquaculture for the specific purpose of receiving submissions to justify her predetermined decision to not re-issue the Discovery Islands licences. Minister Murray sought biased submissions that would be contrary to the science supported by DFO and the CSAS and that expressed opposition to relicensing and knew that such submissions and the conclusions drawn would not stand up to scientific scrutiny.
57. DFO did not participate in the meetings held with those known to be opposed to aquaculture and Minister Murray did not engage the DFO or CSAS regarding the submissions she received during this period as she knew that DFO and CSAS would contradict or correct such submissions.
58. Despite knowing that it was unlawful and contrary to her obligations as Fisheries Minister, Minister Murray based her decision on the submissions she sought from the external scientists, activists and environmental non-governmental organizations opposed to aquaculture.
59. Neither Minister Murray nor DFO notified Cermaq of these additional meetings or submissions or gave Cermaq an opportunity to respond to them.

The 2023 Decision

60. On February 17, 2023, Minister Murray wrote to Cermaq informing it that she was refusing to issue aquaculture licences for the DI Facilities (the “**2023 Decision**”, and collectively with the 2022 Decision, the “**Decisions**”). The letter outlining the reasons for the 2023 Decision which reflected the concerns raised in her 2022 Decision letter.
61. At the same time, Minister Murray also denied to issue aquaculture licences to all other Atlantic salmon aquaculture facilities in the Discovery Islands and provided nearly identical decision letters for each of those denials.
62. The justification Minister Murray provided in the 2023 Decision letter to not reissue the aquaculture licences centred on her belief that the Discovery Islands is a “unique” area. Minister Murray also used this belief to justify excluding the Discovery Islands from the Transition Plan process.
63. The 2023 Decision letter indicated that “a highly precautionary approach” was required for the Discovery Islands, in part, due to new science. Her letter stated:

During the consultation period, numerous stakeholders and Indigenous communities brought to my attention more recent scientific work, which provided me with additional findings, including with respect to the Discovery Islands. My department also provided me with an overview and background on various studies (Annex #2). The findings in some of these studies raise the possibility of harmful impacts on wild salmon, from Atlantic salmon aquaculture in the Discovery Islands.

64. “Annex 2” to the 2023 Decision letter excerpted abstracts from 59 scientific studies (“**59 Abstracts**”) related to Piscine Orthoreovirus (“**PRV**”) and Tenacibaculum maritimum (“**TM**”) published since the CSAS Risk Assessments were undertaken.
65. Annex 2 did not provide Minister Murray with DFO or CSAS’s assessment on the results, implications, rigour or validity of each of the 59 Abstracts, or any overarching evaluation or assessment on their impact on the Risk Assessments and Minister Murray did not engage DFO or CSAS for their advice regarding the same.
66. Minister Murray knew that these studies did not support her conclusion in the 2023 Decision letter that they “raise the possibility of harmful impacts on wild salmon” and she did not seek or obtain advice from the DFO or CSAS on that issue.
67. Cermaq was not notified of the studies Minister Murray would consider, provided with the 59 Abstracts, nor provided an opportunity to respond to the 59 Abstracts.
68. Cermaq was also not notified of Minister Murray’s interpretation of those 59 Abstracts or their influence on Minister Murray’s decision-making including on whether or how she considered those studies to affect the CSAS Risk Assessments’ findings or influenced the 2023 Decision.
69. Minister Murray purported to rely on science in making the 2023 Decision, but knowingly and deliberately went against the advice of the DFO and CSAS and did not engage the DFO or CSAS to assess the submissions she obtained after the close of the 2022 Consultation Process or the 59 Abstracts.
70. Minister Murray knew, or was recklessly indifferent or wilfully blind to the fact that, the Decisions, were unlawful, made in bad faith, irrationally or for an improper purpose, were in excess of her power, were contrary to the public law duties owed to Cermaq, were contrary to DFO’s advice, and her purported justification for the 2023 Decision was not supported by the record before her.

Impact of the 2023 Decision

71. As a result of the Decisions, Cermaq was forced to sell the smolts which were intended to be transferred to Raza Island and Venture Point in the spring of 2023, to Grieg Seafood B.C. Ltd.
72. By prohibiting aquaculture at the DI Facilities without adequate notice or justification, the Decisions:

- (a) Eliminate the rights held by Cermaq to operate the DI Facilities and left Cermaq with only notional use of the land, waters and its remaining authorizations for those facilities;
 - (b) Deprive Cermaq of the benefit of its commercial goodwill, market position and strong reputation as an aquaculture producer operating in the Discovery Islands;
 - (c) Obtained a corresponding enhancement of a Crown asset, namely the clear access and use of Crown land and navigable waters used and occupied by the DI Facilities;
 - (d) Reduced the DFO and Fisheries Minister's obligation to consult First Nations, industry and local communities in respect of the 2025 Transition Plan and aquaculture in the Discovery Islands region generally; and
 - (e) Reduced the DFO and Fisheries Minister's obligations and resources necessary to regulate the aquaculture industry in British Columbia by reducing the number of farms and locations in which aquaculture operations take place.
73. The Decisions removed all reasonable uses of Cermaq's property and related rights. More particularly, the Decisions:
- (a) Removed all reasonable uses of the DI Facilities by Cermaq;
 - (b) Removed all reasonable uses of the provincial and federal authorizations held by Cermaq to operate its business;
 - (c) Removed all reasonable uses of Cermaq's fish, smolts eggs and broodstock and forced Cermaq to sell or dispose of them at a significant loss; and
 - (d) Rendered Cermaq's specialized facilities, equipment and infrastructure useless.

Damages Suffered

74. As a result of the Decisions and associated misconduct of Minister Murray, Cermaq has suffered and continues to suffer serious loss and damages, some particulars of which include:
- (a) Loss of profits for eggs, smolts, and fish in hatcheries or elsewhere which were in the production plan for the DI Facilities at the time of the 2023 Decision, which had to be sold, culled or otherwise treated;
 - (b) Loss of profits for future production cycles;
 - (c) Loss of capital investment in eggs, smolts and fish required to be culled, sold or otherwise treated as a result of the Decisions;
 - (d) Costs of finding alternate sites for the smolts destined for the DI Facilities or their Nursery Site at the time of the 2023 Decision;

- (e) Costs to decommission aquaculture sites;
- (f) Costs to locate, permit, set-up, and maintain aquaculture sites which can no longer be used;
- (g) Costs to terminate employees, including severance and administrative costs;
- (h) Loss of capital investment in and returns on capital investment on site infrastructure, equipment and hatcheries which could not be repurposed and had to be liquidated, discarded or closed;
- (i) Losses arising from contractual agreements with third parties which were adversely impacted by the Decisions;
- (j) Costs associated with reducing support operations for the DI Facilities, such as head office and hatchery operations;
- (k) Loss of goodwill, market position and reputation;
- (l) Decrease in the fair market value of Cermaq; and
- (m) Such further and other damages which may be proven at or before the trial of this action.

Cermaq's Attempts to Mitigate its Losses

75. Cermaq attempted to mitigate its losses arising from the Decisions by, among other things:
- (a) Early communication to the DFO of Cermaq's intentions to stock the DI Facilities and associated timing and the impact that would result if it were not permitted to stock the DI Facilities;
 - (b) Making its aquaculture license applications with the consent and support of First Nations in whose core territories the marine aquaculture facilities were located;
 - (c) Attempting to find other locations for the smolts that were destined for the DI Facilities at the time of the 2023 Decision;
 - (d) Selling the smolts that were destined for the DI Facilities at the time of the 2023 Decision to other aquaculture operators; and
 - (e) Delayed putting infrastructure in the water to receive the fish that were destined to be transferred to the DI Facilities.

Part 2: RELIEF SOUGHT

76. Cermaq seeks orders for the following:
- (a) General damages

- (b) Special damages;
- (c) Aggravated and punitive damages;
- (d) Compensation for constructive expropriation;
- (e) Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
- (f) Costs of this action; and
- (g) For such further and other relief as the nature of this case may require and this Honourable Court may deem proper.

Part 3: LEGAL BASIS

- 77. This proceeding is taken against the Crown in the name of the Attorney General of Canada and the Attorney General is joined as a defendant pursuant to the provisions of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, s. 3(b)(i).
- 78. At all material times, Minister Murray and DFO officials were servants of the Crown that exercised public powers pursuant to the *Department of Fisheries and Oceans Act*, the *Fisheries Act* and its regulations. At all material times, the actions of Minister Murray and DFO officials, so far as they are material to this proceeding, were expressly or impliedly authorized by the Crown.
- 79. In the circumstances, the Crown is vicariously liable for the conduct of Minister Murray and DFO officials. In the event it is not possible for the Court to establish different degrees of fault as between Minister Murray and DFO, Cermaq pleads and relies on the *Negligence Act*, R.S.B.C. 1996, c. 333.

Misfeasance in Public Office

- 80. The defendants are liable in tort for misfeasance in public office. Minister Murray engaged in deliberate and unlawful conduct in the exercise of public functions with actual and constructive knowledge that the conduct was unlawful and would or was likely to injure Cermaq.
- 81. Minister Murray's unlawful acts included exercising her authority under the *Fisheries Act* and its regulations recklessly, irrationally, in bad faith and for an improper purpose, in excess of her powers, and contrary to the public law duties owed to Cermaq.
- 82. The reasons provided by Minister Murray in the 2023 Decision were not the actual reasons underlying the 2023 Decision. Rather, the 2023 Decision was made for collateral political or otherwise improper reasons having no relation to the merits or legality of the aquaculture licenses. The 2023 Decision is therefore invalid, unlawful and *ultra vires*.
- 83. In making the Decisions, Minister Murray acted outside her jurisdiction, refused to exercise her jurisdiction, or fettered her discretion. To the extent that the 2023 Decision constitutes the adoption of a blanket rule that prevents the reissuance of licences regardless of

individual circumstances, the 2023 Decision is akin to a regulation, and in issuing it, the Minister unlawfully exercised a power belonging to the Governor in Council. In so far as the Minister has prohibited the issuance of future licences in the Discovery Islands region, the Minister fettered her discretion under the *Fisheries Act* and its regulations.

84. In particular, but without limiting the foregoing, particulars of Minister Murray's unlawful acts include, among other things:
- (a) The Decisions were made in bad faith, irrationally, or for an improper purpose, were in excess of Minister Murray's power, were contrary to DFO's advice and the record before Minister Murray, were made in a procedurally unfair and unreasonable manner, and were made to achieve her pre-determined outcome of closing aquaculture in the Discovery Islands;
 - (b) The 2022 Consultation Process was undertaken in bad faith, irrationally, or for an improper purpose, was undertaken in a procedurally unfair and unreasonable manner, and was made for an ulterior purpose of creating a justification for Minister Murray's pre-determined outcome of closing aquaculture in the Discovery Islands;
 - (c) Minister Murray predetermined that she would not issue aquaculture licences for the DI Facilities regardless of anything she heard or any submissions she received during the 2022 Consultation Process;
 - (d) Minister Murray sought submissions after the close of the 2022 Consultation Process for the purpose of creating a justification for her pre-determined outcome of closing aquaculture in the Discovery Islands, knowing that the record before her did not support her pre-determined outcome;
 - (e) Minister Murray based the Decisions on biased information that she knew was contrary to the science supported by DFO and CSAS and that she knew would not stand up to scientific scrutiny;
 - (f) Minister Murray did not engage the DFO or CSAS on the interpretation, scientific integrity or impact of the 59 Abstracts or on the submissions received through Minister Murray's consultations after the close of the 2022 Consultation Process;
 - (g) Minister Murray failed to include clear rationale and justification for the 2023 Decision, including a clear rationale why the DFO's advice was not followed;
 - (h) Minister Murray failed to consider each aquaculture licence request separately on its own merits and make individualized decisions in accordance with the statutory scheme, established licensing criteria and regulatory guidance; and
 - (i) Otherwise making the Decisions and implementing the 2022 Consultation Process in bad faith, recklessly, capriciously, arbitrarily and for an improper purpose.

85. Minister Murray knew that her actions were unlawful and inconsistent with the duties of her office, and that her conduct would harm Cermaq, or acted with reckless indifference or wilful blindness to the same.
86. Minister Murray knew that the Decisions and the 2022 Consultation Process were unlawful, made in bad faith, irrationally or for an improper purpose, were in excess of her power, were contrary to the public law duties owed to Cermaq, were contrary to DFO's advice, and her purported justification for the 2023 Decision was not supported by the record before her.
87. Minister Murray knew or was recklessly indifferent that Cermaq would suffer damages as a result of the Decisions. In particular, but without limiting the foregoing, Minister Murray knew that:
 - (a) Cermaq's aquaculture business operates on a long term production schedule which requires timely access to saltwater aquaculture facilities with sufficient permitted biomass capacity to accommodate fish in accordance with their lifecycle and Cermaq's production plan;
 - (b) Cermaq would not be able to expand existing aquaculture facilities or find suitable replacement sites for the DI Facilities to accommodate the fish destined for the DI Facilities;
 - (c) Declining to renew the aquaculture licenses for the DI Facilities would result in the sale or culling of eggs, smolts and fish; and
 - (d) Prohibiting aquaculture licenses in the Discovery Islands would eliminate a significant part of Cermaq's business, harm its fair market value, goodwill, market position and reputation.
88. The deliberate and unlawful conduct of Minister Murray caused and continues to cause Cermaq damages, expenses and loss, as described above.

Negligence

89. In the alternative, the defendants were negligent in making the Decisions and undertaking the 2022 Consultation Process.
90. The defendants owed Cermaq the following duties:
 - (a) To exercise reasonable care, skill and diligence in considering Cermaq's request for reissuance of aquaculture licenses for the DI Facilities;
 - (b) To consider each request for reissuance independently and in accordance with the statutory scheme, established licensing criteria, and regulatory guidance;
 - (c) To provide Cermaq with an opportunity to respond to any concerns held by, submissions made or documents relied on by DFO, Minister Murray, or provided by third parties in respect of each request for reissuance;

- (d) To treat aquaculture licences throughout British Columbia fairly and consistently and to consider the specific factors applicable to each application;
- (e) To make rational, evidence-based decisions following proper legislative criteria and with the support of the DFO with respect to scientific issues; and
- (f) To provide clear justification for decisions, particularly where DFO's recommendation is not followed.

91. The defendants breached the duties of care owed to Cermaq:

- (a) Failing to exercise reasonable care, skill and diligence in considering Cermaq's request for reissuance of aquaculture licences for the DI Facilities;
- (b) Failing to consider each request for reissuance independently and in accordance with the statutory scheme, established licensing criteria and regulatory guidance;
- (c) Failing to provide Cermaq with an opportunity to respond to any concerns held by, submissions made or documents relied on by the DFO or Minister Murray or provided by third parties in respect of each request for reissuance;
- (d) Failing to provide a rational basis to treat aquaculture licences in the Discovery Licences to a different standard than aquaculture licences in the rest of British Columbia;
- (e) Failing to make rational, evidence-based decisions following proper legislative criteria and with the support of the DFO with respect to scientific issues;
- (f) Failing to provide clear justification for not following the DFO's advice;
- (g) Seeking out justification to close the DI Facilities and seeking out such justification after the close of the 2022 Consultation Process;
- (h) Relying on the submissions sought out after the close of the 2022 Consultation Process, unidentified "recent scientific work" and the 59 Abstracts without engaging DFO or CSAS to interpret or assess such information, while disregarding the CSAS' established, rigorous and peer-reviewed Risk Assessments and DFO's advice;
- (i) Failing to grapple with and justify the Decisions in light of the particular facts applicable to Cermaq's facilities, including its proposals with Wei Wai Kum and Klahoose for the operation of the Cermaq facilities, measures to reduce interactions between wild and farmed fish, and the Wei Wai Kum and We Wai Kai proposal; and
- (j) Basing the Decisions on erroneous findings of fact made in a perverse or capricious manner or without regard for the material before her and without engaging the expertise of the DFO or CSAS.

92. The defendants knew, or it was reasonably foreseeable that, a breach of these duties would very likely result in the losses and damages suffered by Cermaq. The defendants' negligence caused Cermaq's loss and damage.
93. Cermaq has suffered and continues to suffer loss and damage as a result of the defendants' breach of the duty of care to Cermaq, as described above.

Negligent Misrepresentation

94. In the further alternative, the defendants made multiple negligent misrepresentations regarding the growth of the aquaculture industry, the regulatory framework to be applied to the industry, the transition of the aquaculture industry in BC and how the particular decision would be made which Cermaq reasonably relied upon to its serious and significant detriment.
95. The defendants made the following untrue, inaccurate, or misleading representations:
 - (a) The process for consulting on the aquaculture licenses for the DI Facilities would be fair, comprehensive and offer Cermaq an opportunity to be heard and respond to Minister Murray's and other parties' concerns;
 - (b) A decision on the licences would be made in January 2023;
 - (c) DFO will address issues of public concern in a fair and transparent manner, based on science and risk-management approaches endorsed by the government of Canada;
 - (d) DFO will consider the interests of and make every effort to understand the needs of the aquaculture industry and to respond in a manner that is solutions oriented and supportive of aquaculture development;
 - (e) DFO will provide aquaculturists with predictable, equitable and timely access to the aquatic resource base;
 - (f) The transition from net pen aquaculture would be implemented no earlier than 2025 and the 2025 Transition Plan would address aquaculture in all of coastal British Columbia;
 - (g) DFO would ensure DFO's laws and regulations relating to aquaculture are clear, efficient, effective, consistently applied and relevant to the sector; and
 - (h) Such further and other representations, particulars of which will be provided before the trial of this action.
96. The defendants acted negligently in making the misrepresentations described above. The defendants knew or ought to have known that Cermaq would rely upon these representations.

97. Cermaq reasonably relied on these representations by, among other things, continuing to invest in the DI Facilities and enter into agreements with Indigenous nations and local third party businesses.
98. Cermaq relied on these representations to its detriment. As a result of the defendants' negligent misrepresentations, Cermaq has suffered and continues to suffer loss and damage as described above.

Abusive Administrative Action (The Paradis Honey Cause of Action)

99. Cermaq has been the victim of an abusive administrative action in that it has been deprived of millions of dollars in profit, incurred severance and remediation costs, has lost goodwill, market position and reputation, has had the value of its assets undermined, and been forced to sell eggs, smolts and fish at a loss as a result of unfair and unreasonable decisions of a minister.
100. The Decisions and 2022 Consultation Process offended public law principles outside of the requisite range of acceptability or defensibility on the facts and law.
101. That is, the Decisions were made in bad faith, irrationally or for an improper purpose, were in excess of her power, were contrary to the public law duties owed to Cermaq, were contrary to DFO's advice, and Minister Murray's purported justification for the 2023 Decision was not supported by the record before her.
102. Minister Murray was aware that the Decisions would have a multi-million dollar impact on Cermaq.
103. The Decisions were simple operational decisions. The Decisions were not suffused by policies, discretions, subjective appreciations and expertise.
104. In these circumstances, the courts remedial discretion should be exercised so as to provide monetary relief to Cermaq for damages caused by Minister Murray's maladministration and to vindicate public law values.

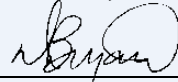
Constructive Taking of Cermaq's Business and Property

105. The Decisions have effectively expropriated Cermaq's property interests, without compensation. In support of that claim, Cermaq relies on and repeats the allegations in paragraphs 72-73 of this notice of civil claim. In particular, and without limiting the foregoing, Cermaq is entitled to compensation for the constructive taking of its property interests in the DI Facilities, fish livestock, goodwill and reputation, and the rights afforded by provincial and federal authorizations to carry out its business.

Plaintiff's address for service: Fasken Martineau DuMoulin LLP
550 Burrard Street, Suite 2900
Vancouver, BC V6C 0A3

Fax number address for service: +1 604 631 3232
E-mail address for service: dbryant@fasken.com
Place of trial: Vancouver
The address of the registry is: 800 Smithe Street, Vancouver, BC V6Z 2E1

Dated: 18-Feb-2025



Signature of Lawyer for Plaintiff

Dani Bryant

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Tort of misfeasance in public office, negligence, negligent misrepresentation and expropriation (constructive taking).

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Court Order Interest Act, R.S.B.C. 1996, c. 79
Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50
Negligence Act, R.S.B.C. 1996, c. 333

The Solicitors for the Plaintiff are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232 E-mail: dbryant@fasken.com (Reference: Dani Bryant/259040.00099)