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C.C.S.M. c. F100

THE FISHERMEN'S ASSISTANCE AND POLLUTER'S LIABILITY ACT

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions

1 In this Act

"contaminant" means any substance whether gaseous, liquid or solid

(a) that is foreign to or in excess of the natural constituents of water, or

(b) that affects the natural, physical, chemical, or biological quality of water,

and that is, or may be, injurious to health or safety of a person, or injurious or damaging to property or to plant and animal life; (« contaminant »)

"minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act. (« ministre »)

Authority to make payments

2 The minister may make payments, whether by way of loan or otherwise, in such amounts and upon such terms and conditions as he considers appropriate, to any person then or formerly engaged in any capacity in the commercial fishing industry who, in the opinion of the minister, has suffered, or will suffer, financial loss by reason of the prohibition of the taking of fish from waters in the province because of the contamination of fish resulting from pollution of those waters.

Assignment of right to sue

3(1) The government may receive from any person to whom a payment is made under section 2, an assignment in writing of that person's right to sue any person responsible, or allegedly responsible, for pollution of the waters referred to in that section.

Government as assignee may sue in its own name

3(2) Notwithstanding that the subject matter of the assignment is a bare right to sue in tort or that the assignor assigns the right to sue in respect of a part of his loss only, upon execution of an assignment made under subsection (1), the government is the absolute owner of the right to sue, and of the proceeds thereof, and may enforce the right to sue in its own name.

Damages recoverable

3(3) In any suit brought by the government as assignee under an assignment made under subsection (1), in addition to any other item of damages properly recoverable the government, upon establishment of liability, may recover from the defendant the actual loss suffered by the assignor, or so much thereof as was assigned to the government, or the payment made to the assignor by the minister under section 2, whichever is the greater.

Government may re-assign

3(4) The government may at any time, upon such terms and conditions as the Lieutenant Governor in Council may approve, re-assign to the assignor a right to sue assigned to the government under subsection (1).

Facts to be proved and circumstances not constituting a defence

4(1) In any suit in which the government is a plaintiff wherein the pollution of water is in issue, if it is established by the degree of proof required in a civil suit that the defendant has without lawful excuse, the proof whereof lies on him, discharged or permitted the discharge of any contaminant from premises occupied by him, into waters in the province or into any waters whereby the contaminant is carried into waters in the province, and that thereafter fish in those waters have suffered death, disease or injury, or contamination rendering them unfit or unsafe for human consumption, or any adverse effect whereby they are rendered less marketable, the defendant is liable for all financial loss occasioned thereby to any person whose loss is a subject matter of the suit, notwithstanding any one or more of the following circumstances:

- (a) at no time did that person have any proprietary interest in the fishery containing the affected fish;
- (b) a regulatory authority has forbidden or refused to permit the taking of fish from that fishery by reason of the pollution of the waters thereof;
- (c) those waters have been, or are being, polluted from any other cause or by any other person;
- (d) it cannot be established that the contaminant affecting the fish derived from the actual volume of contaminant which the defendant discharged or permitted to be discharged from premises occupied by him, provided the deleterious effect on the fish is of a nature consistent with a contaminant of that kind being the total or partial, immediate or mediate cause.

Permit in one jurisdiction only no excuse

4(2) For the purposes of subsection (1) it is not a lawful excuse for the defendant to show that the discharge of the contaminant was permitted by the appropriate regulatory authority having jurisdiction at the place where the discharge occurred, if that regulatory authority did not also have jurisdiction at the place where the contaminant caused damage to the fishery.

Agreements with Canada

5 The minister may, on behalf of the government, enter into any agreement with the Government of Canada in respect of the payment to the government of a share of any payment made by the minister under section 2, and matters related to any such payment, on such terms and conditions as may be agreed upon.

Costs of administration

6 The costs of administering this Act shall be paid from and out of the Consolidated Fund with moneys authorized under an Act of the Legislature to be so paid and applied.