

Is Canada Finn-ished with Shark Finning?

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As early as 2011, the City of Toronto attempted unsuccessfully to regulate the possession, consumption or sale of shark fins and shark fin food products. The City's By-law was struck down in 2012.

In 2019, Canada joined in shark protection efforts by amending the federal *Fisheries Act* to include a ban on shark finning, and a prohibition on the import and export of shark fins absent a permit.

In early 2022, Canada enforced against the practice of unlawfully importing shark fins without a permit, demonstrating Canada's commitment to shark protection. On January 17, 2022, a British Columbia trading company was federally prosecuted, convicted and sentenced to pay a \$75,000 fine after pleading guilty to unlawfully importing fins of a protected shark species without a permit.¹

Fisheries Act enforcement is perhaps one step forward for ocean biodiversity conservation in Canada. Although, we are left to ponder whether Canada's enforcement of its shark fin importation ban will halt shark finning or further drive an underground market. Only time will tell.

EFFORTS TO REGULATE SHARK FINNING

Canada's *Fisheries Act*² defines shark finning as “the practice of removing the fins from a shark and discarding the remainder of the shark while at sea.”³

Although the practice of shark finning has been outlawed in Canadian domestic waters since 1994,⁴ importing shark fins into Canada from other regions was still permitted (until the 2019

¹ Environment and Climate Change Canada, “British Columbia-based trading company fined \$75,000 and ordered to forfeit 20,196 shark fins” (January 18, 2022), online: <<https://www.canada.ca/en/environment-climate-change/services/environmental-enforcement/notifications/british-columbia-trading-company-fined-75000-dollars-ordered-forfeit-20196-shark-fins.html>>.

² Bill C-68, An Act to amend the Fisheries Act and other Acts in consequence, (assented to June 21, 2019) [Bill C-68].

³ *Fisheries Act*, RSC 1985, c F-14, s 31(2) [*Fisheries Act*].

amendments). According to various news sources, Canada ranks as one of the largest shark fin importers outside of Asia.⁵

Statistics Canada’s Canadian International Merchandise Trade database indicates that between 2018 and 2019, 4,391 kilograms of shark fins were imported into Canada from around the world.⁶

SHARK FIN MUNICIPAL BY-LAW STRUCK DOWN

Toronto once had a By-law which stated “[n]o person shall possess, consume or sell shark fin or shark fin food products within the City of Toronto.”⁷ In *Eng v Toronto (City)*,⁸ the Ontario Superior Court of Justice (the “Court”) declared the By-law to be *ultra vires* and of no legal force and effect.⁹ The applicants argued that the By-law:

- ◆ lacked a proper municipal purpose¹⁰
- ◆ was unconstitutional because the Province of Ontario did not have jurisdictional authority to delegate power to municipalities to pass By-laws that protect national resources (i.e. sharks),¹¹ and
- ◆ was discriminatory against the Chinese community and businesses as the City’s Chinese residents were primary consumers of shark fin soup.¹²

⁴ Shark finning as a practice was outlawed in Canadian domestic waters since 1994 as a condition of a fish harvesters’ license; see Government of Canada, News Release, “Government of Canada bans shark finning” (20 June 2019), online: <<https://www.canada.ca/en/fisheries-oceans/news/2019/06/government-of-canada-bans-shark-finning.html>>; see also *Eng, supra* note 2 at para 29.

⁵ “Canada becomes first G7 country to ban shark fin imports”, *The Guardian* (21 June 2019), online: <<https://www.theguardian.com/world/2019/jun/21/canada-bans-shark-fin-imports-sale>>; John Paul Tasker, “After years of legal wrangling, Ottawa moves to ban imports of shark fins”, *CBC* (05 June 2019) online: <<https://www.cbc.ca/news/politics/tasker-shark-fin-ban-1.5161870>><https://www.cbc.ca/news/politics/tasker-shark-fin-ban-1.5161870>>.

⁶ “Canadian International Merchandise Trade”, *Statistics Canada*, Imports – Shark fins, fresh or chilled, online: <<https://www150.statcan.gc.ca/n1/pub/71-607-x/2021004/imp-eng.htm>>.

⁷ City of Toronto, By-law No 12347-2011, to prohibit the possession, sale and consumption of shark fin and shark fin food products (2011), s 2 (Toronto Shark Fin By-law).

⁸ *Eng v Toronto (City)*, 2012 ONSC 6818, [2012] OJ No 5661 [Eng].

⁹ *Ibid*, at para 88.

¹⁰ *Ibid*, at para 2.

¹¹ *Ibid* at para 4.

¹² *Ibid* at para 32; Shark fin soup is a Chinese delicacy often served at weddings or other celebratory events.

The City of Toronto receives its By-law making authority from the *City of Toronto Act* (“CTA”).¹³ The CTA, section 8(2) empowers the City of Toronto to pass By-laws respecting several matters, including, but not limited to:¹⁴

- ◆ economic, social and environmental well-being of the City
- ◆ health, safety and well-being of persons
- ◆ protection of persons and property, including consumer protection, and
- ◆ animals.

The Court undertook to determine whether the By-law had a valid municipal purpose. The Court first turned to the Preamble in the By-Law to assist in defining its municipal purpose. The Preamble stated:¹⁵

the consumption of shark fin and shark fin products may have an adverse impact on the health, safety and well-being of persons and on the economic, social and environmental well-being of the City of Toronto.

The Court found the Preamble to be of limited assistance in identifying the By-law’s municipal purpose. The Court stated that the Preamble did not identify the nature of potential adverse effects of shark fins or consuming shark fins.¹⁶ The Court held that if a municipality could simply state that a bylaw is “for the well-being of the community” to be valid, the municipality would not be accountable to its obligations under the CTA, section 8(2).¹⁷

The Court then turned to the public legislative record pertaining to the By-law and identified three themes that the ban intended to address:¹⁸

- ◆ shark finning causes shark extinction
- ◆ shark finning is an inhumane practice
- ◆ consumption of shark fins is unhealthy for humans due to the high level of mercury in shark fins.

¹³ *City of Toronto Act*, SO 2006, c 11, Schedule A.

¹⁴ *Ibid*, s 8(2).

¹⁵ Toronto Shark Fin By-law, *supra* note 7.

¹⁶ *Eng*, *supra* note 4 at para 23.

¹⁷ *Ibid* at para 27.

¹⁸ *Ibid* at para 30.

The Court held that the shark finning and shark fin trading prohibition in the By-law, in effect, does not have an identifiable benefit to the environmental well-being of the City of Toronto¹⁹ nor to social well-being of Torontonians.²⁰

The Court found that the ban in the By-law was not about animals but rather created a prohibited substance. The Court offered further detail about this in its reasons.²¹

The Court also held that the prohibition in the By-law does not support a municipal purpose associated with the health of Torontonians.²² The Court concluded that expert opinions exist to support that negative health effects can result from excessive consumption of shark fin products, but reasoned that a single bowl of shark fin soup does not pose a health threat to the consumer.²³

For all of these reasons, the Court held the By-law to be *ultra vires* thereby striking down the By-law.

FISHERIES ACT BAN ON SHARK FINNING AND FIN TRADING

The 2019 amendments to the *Fisheries Act* explicitly define shark finning, and prohibit both shark finning and shark fin trading. These are set out in ss. 32 and 32.1 of the Act:²⁴

Shark finning

32 (1) No person shall engage in the practice of shark finning.

Definition of shark finning

(2) In this section, shark finning means the practice of removing the fins from a shark and discarding the remainder of the shark while at sea.

Importation and exportation

32.1 (1) No person shall import into Canada or export from Canada, or attempt to so import or export, any shark fins or parts of shark fins that are not attached to a shark carcass except in accordance with a permit issued under subsection (2).

¹⁹ *Ibid* at para 65.

²⁰ *Ibid* at para 74.

²¹ *Ibid* at para 39.

²² *Ibid* at para 86.

²³ *Ibid* at paras 80-82.

²⁴ *Fisheries Act*, *supra* note 3, ss 32-32.1.

Notably, the amended *Fisheries Act* includes a stated purpose in section 2.1 of the Act:²⁵

2.1 The purpose of this Act is to provide a framework for

(a) the proper management and control of fisheries; and

(b) the conservation and protection of fish and fish habitat, including by preventing pollution.

The purpose of the *Fisheries Act* is to protect all fish. The definition of “fish” includes marine animals and any parts of marine animals.²⁶

PROSECUTION FOR UNLAWFUL IMPORTATION OF SHARK FINS

On September 25, 2017, a British Columbia-based trading company, Hang Hing Herbal Medicine Ltd., unlawfully imported a shipment of 22 bags of processed shark fins (declared as fish bone) into Richmond, British Columbia.

DNA testing determined that the shipment contained two species of shark, one of which was a Convention on International Trade in Endangered Species of Wild Fauna and Flora (or “CITES”) Appendix II-listed species, *Carcharhinus longimanus* (oceanic whitetip shark). A permit is required from the country of export before importing an Appendix II-listed species into Canada. The Defendant company failed to obtain a permit before importing 12,984 Oceanic Whitetip Shark fins.²⁷

A second shark species found in the defendant company’s shipment was *Carcharhinus falciformis*, or silky shark. This species was added to the CITES list in October 2017. As such, in September 2017, importation of *Carcharhinus falciformis* was not prohibited at the time the defendant company imported its shipment.²⁸

On January 17, 2022, the defendant company was sentenced to pay a \$75,000 fine for unlawfully importing a protected shark species without a permit. The fine was directed to the Government of Canada’s Environmental Damages Fund. In addition, the Court ordered the entire shipment of processed shark fins forfeited to the Crown.²⁹

²⁵ *Ibid.*, s 2.1.

²⁶ *Ibid.*, s 2(1).

²⁷ Environment and Climate Change Canada, “British Columbia-based trading company fined \$75,000 and ordered to forfeit 20,196 shark fins” (January 18, 2022), online: <<https://www.canada.ca/en/environment-climate-change/services/environmental-enforcement/notifications/british-columbia-trading-company-fined-75000-dollars-ordered-forfeit-20196-shark-fins.html>>.

²⁸ *Ibid.*

²⁹ *Ibid.*

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