

<b><u>CASE NO.</u></b>	<b><u>VOL. NO.</u></b>	<b><u>PAGE</u></b>
GERALD BAKER (Appellant)	- and -	ALLAN SMITH (Respondent)
CA 171349	Halifax, N.S.	CROMWELL, J.A.

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[Cite as: Baker v. Smith, 2002 NSCA 98]

**APPEAL HEARD:** April 15, 2002

**JUDGMENT DELIVERED:** July 24, 2002

**SUBJECT:** Contracts - Formation - Consensus, Completeness and Certainty

**SUMMARY:** Baker and Smith entered into an arrangement whereby Baker could fish on Smith's snow crab license and acquire it when and if it became transferrable. The arrangement broke down and Baker sued Smith for specific performance and damages for breach of the contract. Smith defended the action on the basis that there was no concluded contract. The trial judge found in Smith's favour and Baker appealed.

**ISSUES:**

1. Was there an enforceable contract between the parties?
2. If not, did the judge award an inappropriate remedy?
3. Should new evidence be received to show that Baker's *Charter* rights and fair trial rights at common law had been violated due to the fact that he was unable to hear some of the trial proceedings?

**RESULT:** Appeal dismissed.

The trial judge found that the agreement between the parties was missing essential terms and that their agreement was conditional on entering into a formal written contract which they failed to do. These findings were based on correct legal principles and were amply supported by the evidence at trial. The remedy awarded by the judge was practical and just in the circumstances. While it was in one respect not completely logical, the result was in the appellant's favour. The new evidence should not be received.

<p>This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 22 pages.</p>
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