

NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Henneberry*, 2009 NSCA 112

Date: 20091113
Docket: CAC 310960
Registry: Halifax

Between:

Andrew William Henneberry, Clark Andrew
Henneberry, Marcel Steven Henneberry,
Wesley L. Henneberry, Paul Raymond Parnell,
James Philip Ryan, Gregory Burton Smith, and
Ivy Fisheries Limited

Appellants

v.

Her Majesty the Queen in right of Canada

Respondent

Judge: The Honourable Justice Jamie W.S. Saunders

Appeal Heard: September 23, 2009

Subject: Bluefin tuna. **Fisheries Act**, R.S.C. 1985, c. F-14 and **Regulations**. Strict liability offences. Standard and burden of proof. Admissibility. Consent. Sentencing. Section 79 “additional fine”. Monetary benefits. Standard of review.

Summary: The individual and corporate appellants were convicted in the Provincial Court of catching 135 bluefin tuna in contravention of the **Fisheries Act**, R.S.C. 1985, c. F-14 and **Regulations**. The sale value of the illegal catch was \$1.2M. The trial judge sentenced the appellants under s. 78 of the **Act** to fines and other penalties ranging from \$500 to \$25,000. Further, pursuant to s. 79, the judge imposed “an additional fine” in the amount of \$643,000 (apportioned among the offenders) based on the evidence of a forensic accountant as representing the

amount of monetary benefits acquired from the sale of those particular tuna caught as a result of the most serious offences.

The appellants appealed to the Nova Scotia Supreme Court sitting as a summary conviction appeal court. The SCAC judge dismissed the appeals against conviction and sentence.

On appeal to this Court leave was granted but the appeals from conviction and sentence were dismissed.

First, the SCAC judge did not err in endorsing the trial judge's rulings concerning the admissibility of certain evidence, or the fact that consent was given by defence counsel during the trial.

Second, the SCAC judge did not err in endorsing the trial judge's analysis and application of the proper burden and standard of proof in strict liability offences.

Third, the SCAC judge did not err in refusing to disturb the trial judge's imposition of a s. 79 "additional fine", or in affirming the trial judge's approach to "monetary benefits" based on the evidence presented and accepted at trial.

Finally, the SCAC judge did not err in refusing to interfere with the other sentences imposed by the trial judge.

Held: Leave to appeal granted, appeals dismissed, suspension of fishing license reinstated.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 23 pages.