

CASE NO.

Cite as: R. v. Harris, 1997 NSCA 203

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JAMES LLEWELYN HARRIS

- and -

HER MAJESTY THE QUEEN

Appellant

Respondent

C.A.C. No. 139239

Halifax

ROSCOE, J.A.

APPEAL HEARD:

November 25, 1997

JUDGMENT DELIVERED:

November 25, 1997

WRITTEN RELEASE OF ORAL:

November 26, 1997

SUBJECT:

Fisheries Act; Summary Conviction Appeal; due diligence defence;

SUMMARY:

A Provincial Court judge acquitted the appellant of a **Fisheries Act** offence after finding that his evidence of how he determined the weight of the fish he caught, demonstrated a reasonable and honest belief in the existence of facts which if true, would have rendered his conduct innocent. The Summary Conviction Appeal Court judge found that the appellant's belief although honestly held was not reasonable, and entered a conviction on the charge of having more than the allowable by-catch of haddock.

ISSUES:

Whether the Summary Conviction Appeal Court judge erred in reversing the trial judge's finding on the question of the reasonableness of the appellant's belief.

RESULT:

Appeal allowed. There was evidence upon which the trial judge could find that the appellant's belief was reasonable. The appellant's excuse for the haddock overrun was not the inaccuracy of his system for estimating the weight of his catch, but the failure of his crew member, on whom he relied, to carry out his instructions. Whether he acted reasonably was a question of fact for the trial judge. Applied **R. v. Starvish** (1987), 79 N.S.R.(2d) 136.

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