

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Allen*, 2005 NSCA 118

Date: 20050831

Docket: CAC 238837

Registry: Halifax

Between:

Clifford Robert Jr. Allen, Joseph E. Boudreau,
John Alex Grant, Darren Lee Langille
Jason Andrew MacDonald and Edwin D. Shaw

Appellants

v.

Her Majesty the Queen

Respondent

JUDGE: The Honourable Justice Jamie W. S. Saunders

APPEAL HEARD: May 16, 2005

SUBJECT: The fisheries. Constitutional authority to legislate. Statutory interpretation. Whether the **Fisheries Organizations Support Act** (FOSA) is *ultra vires* the legislative authority of the province. Division of powers: s. 91(12) and s. 92(13) of the **Constitution Act**, 1867. Whether FOSA violated s. 2(d) **Charter** rights, and if so whether justifiable under s. 1.

SUMMARY: The appellants appealed their conviction at trial for failing to pay annual dues to an accredited organization as required by the FOSA, arguing that the trial judge erred in law in finding that the FOSA was not *ultra vires* the constitutional legislative authority of the Province of Nova Scotia; that the FOSA did not violate their freedom of association under s. 2(d) of the **Charter**; but that if it did, it was justifiable under s. 1.

HELD: Appeal dismissed. The stated purpose of the FOSA should be given its plain meaning, namely to strengthen fisheries organizations and provide a mechanism by which accredited fisheries organizations may collect mandatory annual dues from licence holders.

There was no evidence to support the appellants' assertion that the impugned legislation either directly or by "colourable" means, trespassed in any way upon the fundamental areas over which the federal government exercises exclusive control over the fishery.

Ward v. Canada (Attorney General), [2002] 1 S.C.R. 569.

Nor was there evidence to support the complaint that the FOSA constituted a violation of their freedom of association by, in effect, violating their right not to associate. **Lavigne v. Ontario Public Service Employees Union**, [1991] 2 S.C.R. 211.

Upholding the correctness of the trial judge's conclusion that the appellants had failed to establish any violation of their **Charter** rights, it was not necessary to express an opinion concerning the issue of justification, nor the trial judge's analysis with respect to it.

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 20 pages.