

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Croft*, 2003 NSCA 109

Date: 20031015

Docket: CAC 194550

Registry: Halifax

Between:

David Hilton Croft

Appellant

v.

Her Majesty the Queen

Respondent

Judge: Saunders, J.A.

Appeal Heard: October 14, 2003

Subject: **Section 57(2) of the Atlantic Fisheries Regulations 1985. Section 78 of the Fisheries Act, R.S.C. 1985, F-14, as amended. Possession of “short” lobsters. Standard of Review. Strict liability offences. Due diligence. Reasonable and honest mistake of facts. *De minimis non curat lex.***

Summary: After the appellant’s lobster catch was inspected by DFO officers he was charged with unlawful possession of undersized lobsters contrary to regulation under the **Fisheries Act**. He was convicted in the Provincial Court and fined \$5,000.00. His conviction was upheld by the Summary Conviction Appeal Court. He alleged error of law in the courts below in rejecting his statutory defences of due diligence and reasonable and honest belief, and in their determination that the legal maxim *de minimis non curat lex* had no application to the circumstances of his case. The appellant also sought to reduce his sentence on the basis that it was unduly harsh.

Held: Leave to appeal granted, appeal against conviction and sentence

dismissed. The charge is one of strict liability. The charge is made out by proving the *actus reus*, which is then subject only to the limited statutory defences provided in the **Act**. Whether or not the appellant raised, on a balance of probabilities, a defence of due diligence or a defence of reasonable and honest belief was a question of fact for the trial judge. No error of law on the part of the SCAC judge in concluding that on the evidence presented the trial judge's rejection of these statutory defences was not patently unreasonable.

The maxim *de minimis non curat lex* has no application to the circumstances of this case, a strict liability offence, where compliance is measured in millimetres. There is no tolerance or margin extended for "almost" or "close" compliance. The public interest in protecting our commercial fishery is hardly a trifling matter.

The \$5,000.00 fine imposed by the trial judge was not demonstrably unfit and should not be disturbed.

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 6 pages.