CANADA
PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

C.H. No.: 76859

I N T H E C O U N T Y C O U R T
OF DISTRICT NUMBER ONE

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

GEORGE F. GRANDY

Respondent

C.H. No.: 77065

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

WILLIAM RICHARD BELL

Respondent

Michael A. Paré, Esq., Counsel for the Appellant.
Kevin A. Burke, Q.C., Counsel for the Respondent.

1992, June 24th, Palmeter, C.J.C.C.: -

These are joint appeals by the Crown against sentences imposed by Her Honour Judge Sandra Oxner, a Judge of the

Provincial Court, upon the Respondent, George F. Grandy, on December 17th, 1991 and upon the Respondent, William Richard Bell, on January 7th, 1992. In the case of Grandy the sentence was pursuant to Section 20(1.1) of the **Nova Scotia Fishery Regulations** C.R.C. 1978 C. 848, as amended, made pursuant to the **Fisheries Act**, R.S.C. 1985, C. F.14 as amended. In the case of Bell the sentence was pursuant to section 20.4 of the **Regulations** made pursuant to the **Fisheries Act.**

Generally the situation was as follows. George F. Grandy, William Richard Bell, Paul Timothy Allen Grandy and Paul David Brennan were charged under the **Fisheries Act**, R.S.C. 1985, c. F-14 with two offences relating to salmon. The Information alleged that they:

> (a) on or about the 11th day of July 1991, at or near East Dover, in the County of Halifax and Province of Nova Scotia did catch and retain salmon by means of a net, without having a license or permit issued pursuant to the **Fisheries Act**, R.S.C., 1985, c. F-14 or any Regulations made thereunder, contrary to section 20(1.1) of the **Nova Scotia Fishery Regulations**,

C.R.C., 1978, c. 848, as amended, made pursuant to section 43 of the **Fisheries Act**, as amended, and did thereby commit an offence under section 78(a) of the said **Act**.

(b) and further at the same place did have in their possession salmon that did not have salmon tags affixed thereto in accordance with the **Nova Scotia Fishery Regulations**, C.R.C. 1978, c. 848, as amended, contrary to section 20.4 of the **Nova Scotia Fishery Regulations**, made pursuant to section 43 of the **Fisheries Act**, R.S.C. 1985, c. F-14, as amended, and did thereby commit an offence under section 78(a) of the said **Act**.

The accused were tried on December 17th, 1991. At commencement of trial the Respondent, George F. Grandy, pleaded guilty to the fishing charge (i.e. section 20(1.1)) and the Crown elected not to proceed on the section 20.4 charge. The Crown elected not to proceed against Paul David Brennan and Timothy Grandy was

acquitted of the charges against him. The proceeding was adjourned to January 7th, 1992 when the Responent, William Richard Bell, was found guilty of the section 20.4 charge and a stay was entered on the section 20(1.1) charge.

On December 17th, 1991, the Respondent Grandy was sentenced as follows:

(1) He was fined $5,000.00 or in default 6 months in jail, the fine being due by January 27, 1993. $20.00 court costs were also imposed;

(2) The salmon which had been previously seized (or rather the proceeds of sale of that salmon), and two wire traps were ordered forfeited to the Crown.

(3) Mr. Grandy was also prohibited from engaging in recreational fishing for salmon for one year.

On January 7th, 1992 Judge Oxner sentenced the Respondent Bell as follows:

(1) He was fined $3,000.00 or in default 4 months in jail. He too was given to January 27, 1993 to pay the fine.

(2) Like George Grandy, he was prohibited from fishing recreationally for salmon for the period of one year.

Counsel for both the Appellant and the Respondents extensively refer to the facts of the case in their memoranda, but in my opinion it is not necessary to go into the facts in any great detail. Suffice it to say that the Respondents had on board their vessel 96 untagged salmon weighing a total of 415 pounds. Eighty of these salmon were grilse and 16 were large salmon referred to as "spawners" or multi-sea winter fish. The grilse weighed approximately 5 pounds each. The 16 multi-sea winter fish were mainly female and weighed between 6 to 12 pounds each. They ranged in length from 25 1/2 inches to 36 3/4 inches.

The grounds of appeal as set out in the Notices of Appeal filed herein, are as follows:

(1) the sentence imposed by the learned trial judge is inadequate in all the circumstances of the case by failing, inter alia, to properly reflect the seriousness of the facts;

(2) the sentence imposed fails to adequately address the principles of specific and general deterrence;

(3) the sentence fails to reflect the range of sentences normally imposed for such violations especially in light of the recent substantial increase in maximum penalties under the **Fisheries Act**;

(4) such other grounds as counsel may advise and this Honourable Court may permit.

In sentencing the Respondent Grandy to a fine of $5,000.00 Judge Oxner stated at p. 179 of the transcript:

> "In my view, I have been very lenient in the imposition of the fine. It's my view that the appropriate fine would have been $10,000.00 and even that is probably lenient in the circumstances."

In sentencing the Respondent Bell to a fine of $3,000.00 Judge Oxner stated at page 208 of the transcript:

> "I've taken into, as I said before, it seemed to me the appropriate fine for this offence would be $10,000.00 I've taken into account both in the sentencing of Mr. Grandy and of Mr. Bell the very dismal economic situation we are now in. I do think that this is a very serious environmental offence, one that's of great importance to the community because of the amount of money the Government has invested in protecting the salmon fishery and because of the importance of the fishery to, to this region. And I have lowered the fine substantially because of the mitigating factors that are u - I can't say unique to Mr. Bell, but which exist to Mr. Bell's situation as well as in the fishing community as a whole. Indeed pretty well the whole province, the difficult economic situation that is present this year."

The Crown basically argues that the sentences are clearly inadequate having regard to the seriousness of the matter and the proper principles of sentencing having to do with specific and general deterrence.

The duty of an appellate court in appeals such as this has been well established. This is a summary conviction appeal proceeded with pursuant to section 813(b)(ii) of the **Criminal Code**. Pursuant to section 822(1) of the **Code** the Summary Appeal Court has the power to deal with sentence appeals as set out in section 687 of the **Code**, which reads as follows:

> "687(1) Where an appeal is taken against sentence the court of appeal shall, unless the sentence is one fixed by law, consider the fitness of the sentence appealed against, and may on such evidence, if any, as it thinks fit to require or to receive,
>
> (a) vary the sentence within the limits prescribed by law for the offence of which the accused was convicted; or
>
> (b) dismiss the appeal.
>
> (2) A judgment of a court of appeal that varies the sentence of an accused who was convicted has the same force and effect as if it were a sentence passed by the trial court."

In the case of **R. v. Cormier** (1974), 9. N.S.R. (2d) 687, MacDonald, J.A. of the Nova Scotia Court of Appeal stated at p. 694:

> "Thus it will be seen that this Court is required to consider the 'fitness' of the sentence imposed, but this does not mean that a sentence is to be deemed improper merely because the members of this Court feel that they themselves would have imposed a different one; apart from misdirection or non-direction on the proper principles a sentence should be varied only if the Court is satisfied that it is clearly excessive or inadequate in relation to the offence proven or to the record of the accused."

In **R.v. Melanson** (1976), 18 N.S.R. (3d) 1989, the Appeal Division of the Supreme Court of Nova Scotia stated at p. 192:

> "Section 614 [now section 687] of the **Criminal Code** imposes an obligation on the courts of appeal to consider the fitness of the sentence appealed against and a duty to go into the matter fully and to consider each appeal from sentence with the utmost care even though the sentence on its face does not shock the Court by its excessive or inadequacy." (parenthesis added)

Cases cited to the Court would indicate that in the context of regulatory offences in general and

particularly relating to offences under the **Fisheries Act** and regulations, and other Acts dealing with the fishing industry, general deterrence is the paramount and overriding principle to be considered in imposing sentence. This is certainly applied in sentences imposed by our Courts in Canada under the **Coastal Fisheries Protection Act**. Although this is different legislation our Courts have recognized that deterrence both general and specific, is the most important factor to be considered for the purpose of protecting our fishery resource. I agree with counsel for the Appellant when he submits that this proposition is as applicable, if not more applicable to the severely threatened salmon stocks in Nova Scotia.

There would appear to be a paucity of decisions dealing with a sentence appeal involving, inter alia, a charge under section 20 (1.1) of the **Nova Scotia Fishery Regulations**. The Appellant refers to the case of **R. v. Ronald Judd Trenholm**, unreported County Court decision, May 26th, 1987, C. Am. No. 5889. This was at a time when the maximum fine under the section was $5,000.00 and the accused had in his possession two salmon. MacDonnell, C.C.J. stated at pages 4 and 5:

> "Taking into consideration that the maximum fine for each of these

> offences if Five Thousand Dollars ($5,000.00), or imprisonment for a term not exceeding twelve months, or to both, it would appear that the learned Trial Judge was not overly harsh in imposing a fine of One Thousand Five Hundred Dollars ($1,500.00) for the offence pertaining to the unlawful catching and retaining salmon contrary to Section 20(1.1) of the Nova Scotia Fishery Regulations made pursuant to Section 34 of the Fisheries Act. The nature of the offence, and the conduct of Trenholm in endeavouring to elude apprehension by the fisheries officers, as well as the need of deterrence, both to the accused and general deterrence, makes it clear that the learned Trial Judge did not misdirect himself. In fact, he could very easily have doubled the fine and still be within a proper range for the said offence. I dismiss the appeal against the sentence of One Thousand Five Hundred Dollars $1,500.00), or in the alternative imprisonment in the Correctional Centre for a period of four months, and the forfeiture of the gill net and the fibreglass boat for the offence under Section 20(1.1) of the Nova Scotia Fisheries Regulations made pursuant to Section 24 of the Fisheries Act."

In 1991 the Federal Parliament, realizing the serious depletion in our fishery resources increased the maximum penalties available under the **Fisheries Act** for summary conviction offences under Section 78(a) of the **Act** from $5,000.00 to $10,000.00. This in itself indicates the serious problems which existed in the

fishing industry and the desire of Parliament to put a greater emphasis on deterrence in sentencing.

With all due deference to the learned trial judge I agree that the sentences imposed upon the Respondents are grossly inadequate, having regard to the seriousness of the offences and the amendment to the **Fisheries Act** in 1991 increasing the maximum amount of the fine which could be imposed.

The trial judge considered that the amount of $10,000.00 would have been an appropriate fine in the case of each Respondent, but then went on to reduce the fines because of what she calls mitigating factors, namely what she perceived as a dismal economic situation faced by the fishing community and by the province as a whole at the time of sentencing. I have perused the transcript and can find no evidence therein which would support the learned trial judge in reaching this conclusion. In my opinion a trial judge cannot take "judicial notice" of such a situation without evidence being presented in support. A fine has to reflect the seriousness of the offence and I find the offence to be most serious by the taking illegally of 96 salmon.

In this case counsel for the Appellant lists an

example of the exacerbating factors in this case which would justify a substantially greater penalty. These are as follows:

(1) the type of fish taken;

(2) the unprecedented quantity of salmon taken;

(3) the fact that these fish could easily have been released unharmed and alive into the wild;

(4) the present state of salmon stocks;

(5) the obvious effect which this violation would have on salmon stocks;

(6) the obvious commercial motive which fuelled the Respondents' conduct;

(7) the affront which this conduct constituted to all individuals who have expended time, effort and money to rehabilitate this dying resource, and to others who comply with "the rules of the game".

Again, I have read the transcript and find evidence therein which would substantiate these seven exacerbating factors as suggested by the Appellant.

The learned trial judge herself was aware of the inadequacy of the fines. In my opinion she clearly underemphasized the principle of deterrence in imposing the sentences she did. The sentences, in my opinion, are clearly not fit as envisaged by Section 687 of the **Criminal Code**.

I will, accordingly, grant the appeal and provide for the following relief, namely:

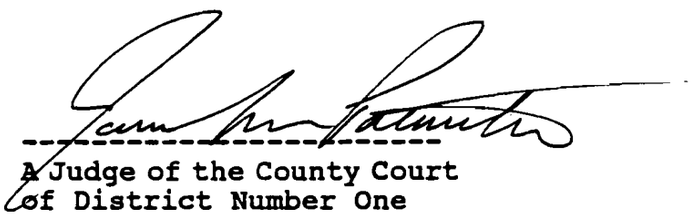
(1) The fine on George F. Grandy to be increased to $10,000.00 or in default twelve months in jail, to be paid on January 27, 1993.

(2) The fine on William Richard Bell to be increased to $10,000.00 or in default twelve months in jail, to be paid on January 27, 1993.

(3) That the recreational fishing bans imposed upon the Respondents be increased to two years.

(4) That the Forfeiture Order imposed by the Trial Judge be confirmed.

(5) That the Appellant shall have the costs of this Appeal together with any costs imposed by the Summary Conviction Court.



A Judge of the County Court
of District Number One

CANADA
PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

C.H. No.: 76859

I N T H E C O U N T Y C O U R T
OF DISTRICT NUMBER ONE

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

GEORGE F. GRANDY

Respondent

C.H. No.: 77065

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

WILLIAM RICHARD BELL

Respondent

ON APPEAL FROM

THE PROVINCIAL COURT

HEARD BEFORE: JUDGE SANDRA OXNER

PLACE HEARD: Provincial Court, Spring Garden Road

DATE HEARD: December 17th, 1991
December 23rd, 1991
January 7, 1992