1989

PROVINCE OF NOVA SCOTIA
COUNTY OF SHELBURNE

C. SB. 2664B

IN THE COUNTY COURT
OF DISTRICT NUMBER TWO

BETWEEN:

DOUGLAS W. BROWN

APPELLANT

- and -

HER MAJESTY THE QUEEN

RESPONDENT

HEARD BEFORE:	The Honourable Judge G. B. Freeman
PLACE HEARD:	Shelburne, Nova Scotia
DATE HEARD:	February 17, 1989
COUNSEL:	Donald G. Harding, Esq. for the Crown S. Clifford Hood, Q.C. for the Appellant
DECISION DATE:	April 3, 1989.

DECISION ON APPEAL

This is an appeal by Douglas W. Brown from his conviction and sentence for violating a condition of his vessel's fishing license by over-fishing for haddock.

The Appellant was fined $800 and a portion of his catch valued at $10,884.50 was ordered forfeited.

The charge alleges that the appellant "did fail to comply with a condition of a license specified under the authority of Subsection 33(1) of the Atlantic Fishery Regulations, 1985, to wit: did take in excess of the quantity of haddock specified in Variation Order # 1988-027, and Variation Order # 1988-029, contrary to Subsection 33(2) of the said Regulations, and did thereby commit an offence pursuant to Subsection 61(1) of the Fisheries Act, R.S.C. 1970, c. F-14 as amended.

He has appealed from his conviction on three grounds:

1. The variation orders on which the charge was based were not proven.

2. The variation orders were not legal, having resulted from an improper delegation of authority.

3. It was not proven that the Appellant's vessel was of a class affected by the variation orders.

No viva voce evidence was called and the case was determined on the following "Agreed Statement of Facts":

> "1. The license, Exhibit 1 and the condition, Exhibit #2, were valid for the date of the offence and the accused was fishing pursuant to same.
>
> "2. On February 19th, 1988, the accused did take in Divisions 4X and 5 by a Class C vessel, less than 19.7 meters length overall, 39,790 pounds of haddock and Exhibit #3 is verification of that weight.
>
> "3. Defence admits that the variation orders in Exhibit 3 were issued on the dates set forth on them and subject to their legal validity were in effect at the time of the offence.
>
> "4. Notice pursuant to Section 5 of the Atlantic Fishery Regulations was given and brodcast in the forms set out in Exhibit #5.".
>
> "5. Neil Bellefontaine signed and issued all three variation orders referred to in Exhibit #4.
>
> "6. Neil Bellefontaine was not the Regional Director on the dates the variation orders were made by him.
>
> "7. The accused landed his fish at Shelburne, Nova Scotia, on the 19th day of February, 1988.
>
> "8. Notice pursuant to the Canada Evidence Act of the documentary evidence where required was given.
>
> "Dated this 19th day of May, A.D. 1988."

The exhibits indicate that the Appellant was fishing on the Allison & Kristan, a 64-foot vessel licensed to fish by means of otter trawl, that is, a dragger. The license holder is shown as Small & Small Fish' Ltd. on behalf of which Brown was apparently operating the vessel. The conditions of license, Exhibit #2, indicate the Allison & Kristan is a Class C-2 vessel.

The reference to Exhibit #3 in paragraph 3 of the admitted facts is in error: Exhibit # 3 is a tally sheet. Exhibit #4 refers to two, not three, Variation Orders, and I assume that was the reference intended.

The variation orders in Exhibit #3 referred to in paragraph 3 of the admitted facts are reproduced as follows:

Haddock Quota Variation Order

Atlantic Fishery Regulations, 1985 1988-027

Pursuant to section 4 of the Atlantic Fishery Regulations, 1985, being Order-in-Council P.C. 1985-3662, as amended, the Regional Director-General hereby makes the following Order respecting haddock fishing in Subarea 5.

1. The fishing quota as set out in subsection 88(1) of the said Regulations for haddock fishing in Subarea 5 for Class C vessels reverts to 10 per cent.

2. The fishing quota as set out in subsection 88(2) of the said Regulations for haddock fishing in Subarea 5 for Class C vessels is hereby varied to be 9000 kg.

In making this Order the Regional Director-General hereby revokes items 2 and 3 of the previous

Haddock Close Time and Quota Variation Order

Atlantic Fishery Regulations, 1985 1988-013

This Order comes into effect 12:00 h February 11, 1988 and will remain in effect until December 31, 1988, unless otherwise revoked.

Dated at Halifax, Nova Scotia, this 11th day of February, 1988.

Haddock Quota Variation Order

Atlantic Fishery Regulations, 1985 1988-029

Pursuant to section 4 of the Atlantic Fishery Regulations, 1985, being Order-in-Council P.C. 1985-3662, as amended, the Regional Director-General hereby revokes item 2 of the previous

Haddock Close Time and Quota Variation Order

Atlantic Fishery Regulations, 1985 1988-011

The fishing quota as set out in subsection 88(2) of the said Regulations for haddock fishing in Division 4X for Class C vessels reverts in 1500 kg effective February 16, 1988.

Dated at Halifax, Nova Scotia, this 15th of February, 1988.

Variation Order 1988-027 relates to Subarea 5, the Canadian segment of George's Bank, and Variation Order 1988-027 relates to Division 4X, an area including the waters of southwestern Nova Scotia from Halifax Harbour to the Bay of Fundy and bordering on Subarea 5. While the quotas differ for both areas, and the Appellant was admitted to have been fishing in both, he is charged not with the overfishing as such, but for violating a condition of his license. The admitted catch was greater than the quota for either area.

The notices broadcast in the form admitted in paragraph 4 of the statement of facts defined class "C" vessels as those less than 19.8 meters in overall length using mobile gear, or otter trawl. It may be noted that 19.8 meters is the equivalent of 65 feet.

THE FIRST GROUND

The variation orders establishing the quota that became a condition of Brown's fishing license were admitted subject to their legal validity. At issue in this ground is the extent of the Crown's duty to prove earlier orders upon

which these orders are necessarily founded. Presumably those are Haddock Close Time and Quota Variation Order 1988-013 in the case of Variation Order 1988-027 for Subarea 5 and Haddock Close Time and Quota Variation Order 1988-011 in the case of Variation Order 1988-029 for Division 4X.

S. 33(1) of the Regulations authorizes, for purposes of management and control of the fisheries, the imposition on fishing licenses of conditions which may include species and quantities of fish permitted to be taken, and the period during which fishing is permitted.

S. 33(2) says "no person fishing under the authority of a license shall contravene or fail to comply with any condition of the license."

It was made a condition of the license of the Appellant that he should obey the provisions of whatever variation orders should be in effect. Variation orders are orders issued by fisheries officials to control species and quantities of fish permitted to be taken, and the periods when fishing is permitted.

S. 34 of the Fisheries Act authorizes the Governor-in-Council to make Regulations, and s. 34(m) provides for Regulations "authorizing a person engaged or employed in the administration or enforcement of this Act to vary any close time or fishing quota that has been fixed by the Regulations."

The Regulations resulting from s. 34(m) are ss. 4 and 5 of the Atlantic Fishery Regulations:

"4. A Regional Director-General may, by order, vary any close time or fishing quota fixed by these Regulations."

S.5 requires that notice of the variation be given to the persons affected or likely to be affected by the variation in various specified ways. The variation orders relevant to the present case were broadcast in the usual and accepted manner over the Canadian Coast Guard marine radio station in Yarmouth, N.S.

The relevant regulatory scheme hinges on Schedule XXIII of the Regulations establishing Groundfish close times by species, stock area, and vessel classification. Subsections 23, 24 and 25 of Schedule XXIII govern haddock. Division 4X and Subarea 5 are closed to haddock fishing by Class C vessels from Dec. 30 to Dec. 31 in each year. The authority for Schedule XXIII is set forth in s. 87 of the Regulations.

The nominal close periods in Schedule XXIII are clearly intended to be expanded by variation orders.

S. 88 of the Regulations, central to the regulatory scheme relevant in the present case, is as follows:

> "88(1) Where, pursuant to these Regulations, a person is prohibited from fishing for a species of groundfish in a Stock Area and is engaged in a fishing trip in that Stock Area for another species of groundfish, that person may retain a quantity of incidentally caught grounfish

> not exceeding a fishing quota of 10 per cent of the total weight of all groundfish on board his vessel that are not prohibited and were taken in that Stock Area during that fishing trip.
>
> "(2) Where fishing for a species of groundfish with a Class A vessel or Class C vessel in Subdivision 4Vn, Division 4VsW, 4X, 5Y or 5Z is prohibited a person may, with a Class A vessel or Class C vessel, fish for and retain during any one fishing trip a quantity of the prohibited species not exceeding a fishing quota of 1,500 kg."

For example, if a variation order is in effect extending the Schedule XXIII close time to a particular period, thereby making a species of fish a "prohibited species" during that period, ss. 2 of s. 88 of the Regulations may be used by the Department to impose "trip limits" for that species by varying the 1,500 kg. fishing quota. Unless there has been a variation of the close period under Schedule XXIII, a variation order purporting to change the by-catch or trip limit quotas under s. 88 cannot be effective because the species to which it relates has not been made a prohibited species, saving only for the nominal period of December 30-31.

The Crown has referred to s. 19 of the Fisheries Act which states:

> "no one, without lawful excuse, the proof whereof lies on him, shall fish for, buy, sell or have in his possession any fish, or portion of any fish, in a place where at that time fishing for that fish is prohibited by law."

Under the relevant legislative scheme there must be a variation order extending the Schedule XXIII close time before fishing for haddock is "prohibited by law".

When s. 88 of the Regulations is at issue, and it is necessary for the Crown to prove that a species is a "prohibited species", the usual practice is to prove a variation order extending the close time for that species to the period of the alleged offence. I have found that proof of the variation order establishing a species as a prohibited species within the meaning of s. 88 is a necessary element of the Crown's case in R. v. Arenburg 87 N.S.R. (2d) 164.

The Crown did not follow that practice in the present case. Is evidence that haddock is a prohibited species otherwise before the court?

Variation orders are usually proved by producing a copy of the order issued by the Regional Director-General together with proof of notice to affected persons. No copy of Variation Order 1988-011 or -013 is in evidence; s. 21 of the Canada Evidence Act does not apply. There is no evidence in the present case that the relevant variation orders were gazetted, and there appears to be no practice of doing so. Judicial notice cannot be taken of them under s. 16 of the Statutory Instruments Act. They must be proved afresh in each case; actual knowledge of the court resulting from production of a variation order in a previous case is not a valid basis for taking judicial notice.

The trial judge stated that "variation orders . . . have the force of law and the Court is able to take cognizance of the variation orders in the same way the court is able to

take cognizance of any law of the country which . . . is within the jurisdiction of the person or body making it . . . I consider the variation orders as having the force of law because the chain of authority going back to Parliament is valid and within the constitution and is law that this court is bound to apply."

While the chain of authority is undoubted what I must consider, with respect, is how the court in the absence of even a copy of the varition orders can properly be fixed with knowledge as to how and to what end the authority was exercised and whether, under s. 5 of the Regulations, notice has been given to affected parties.

By its admission that Variation Orders 1988-027 and -029 "subject to their legal validity were in effect at the time of the offence" the defence must have intended to relieve the Crown of further proof of their existence. They could not have been in effect in the absence of close time variations, which presumably had been made by the earlier variation orders to which they referred. The Crown was entitled to rely on the admission of the orders as an admission of the various facts proving the substructure on which they were based. The admission is sufficient to distinguish R. v. Arenburg. The defence could not have intended to hold the Crown to strict proof of the previous orders.

The reference to the "legal validity" of the orders referred to the manner in which the orders were issued, which is

dealt with as the second ground of the appeal.

As the orders in question are referred to as "Haddock Quota Variation Orders" and make reference to Haddock Close Time and Quota Variation Order Atlantic Fishery Regulations, 1985, 1988-011 and 1988-013 it may be inferred that Variation Orders 1988-011 and -013 extended the close time for haddock fishing in Subarea 5 and Division 4X to the relevant period.

The Crown is also assisted by the presumption in favour of the regularity of official documents, but I would not go so far as to find that presumption would save the variation orders in question in the absence of the incorporating reference on their face and their admission by the defence.

I find that haddock may be inferred to have been a prohibited species at relevant times, and that Variation Orders 1988-027 and -029 have been proved.

SECOND GROUND

The ground of delegation, so called, was argued forcefully by the defence, and is an issue in a number of other fisheries appeals, several of which were heard concurrently with the present one.

To be determined is the question whether variation orders must be signed personally by J.-E. Hache', the Regional Director General, or whether it is permissible for him to

designate a person to sign for him in his absence. Paragraph 5 of the statement of facts refers to three variation orders signed by Neil Bellefontaine on behalf of the Director General, but there are only two in Exhibit #4 and one of those, 1988-029, appears to have been signed by J.-E.Hache' personally.

The position of Regional Director General is not defined either in the statute or the regulations. Fisheries officers are appointed by the Governor-in-Council. The Minister may appoint fisheries guardians and certain inspectors but the Act does not appear to give him broad powers of appointment. Nevertheless as head of the department, and the person responsibile to the Governor-in-Council for its administration, the minister must exercise an implied or conventional authority to appoint officials responsible to himself and to assign their duties. In the absence of evidence of an Order-in-Council appointment, the Regional Director General must be presumed to be an official appointed by the minister whose duties include the issuance of variation orders under ss. 4 and 5 of the Regulations.

Under s. 34(m) of the Act, reading back from ss. 4 and 5 of the Regulations with the aid of the presumption of regularity, the Regional Director General must be "a person engaged or employed in the administration or enforcement of this Act."

S. 4 of the Regulations refers only to the Regional Director General as the person authorized to "by order, vary any

close time or fishing quota fixed by these Regulations."

There is nothing in the statute and Regulations, nor in the evidence, to offer guidance as to whether the Regional Director General can delegate or assign responsibility for issuing variation orders to persons responsible to him, or to name persons to act in his absence.

The defence has invoked the maximum "delegatus non potest delegare". The translaton in Black's Law Dictionary (4th) is as follows:

> "A delegate cannot delegate; an agent cannot delegate his functions to a subagent without the knowledge or consent of his principal; the person to whom an office or a duty is delegated cannot lawfully devolve the duty on another, unless he be expressly authorized to do so."

It would appear that the duty not to delegate is owed by the delegate to his principal, who might have understandable objections to being bound by a stranger. The duty appears to exist only in the absence of consent or authorization, which can be provided by the principal. The presumption in favour of regularity would cast the onus of proving the absence of consent or authorization upon the person contesting the actions of the agent, that is, the Appellant. There is nothing in the evidence to establish lack of approval by the Minister. That is not a question of reverse onus. The Crown has discharged its duty of proving the variation orders, aided by the presumption of regularity. It is then open to the defence to rebut that presumption.

In R. v. Harrison (1977) 1 S.C.R. 238 S.C.C. Mr. Justice Dickson, as he then was, refers with approval to Professor Willis' article in 21 C.B.R. 257 on delegation where he states at p. 264:

> " . . . in their application of the maximum delegatus non potest delegare to modern governmental agencies, the courts have in most cases preferred to depart from the literal contruction of the words of the statute which would require them to read in the word 'personally' and to adopt such a construction as will best accord with the facts of modern government which, being carried on in theory by elected representatives but in practice by civil servants or local government officers, undoubtedly requires them to read in the words 'or any person authorized by it.'"

It may be helpful to consider whether the issuance of a variation order is administrative or legislative in nature. True to form, perhaps, for matters under the Fisheries Act, variations orders appear at first blush to be both. More accurately, the regulatory structure gives them apparent characteristics of both. A variation order is a temporary amendment to regulations passed by the Governor in Council, in this case to Schedule XXIII and Section 88. It therefore seems legislative in form.

Nevertheless, the purpose served by variation orders is administrative. In essence--in pith and substance--they are administrative measures. They permit access to fish stocks to be speeded up or slowed down, halted or resumed, in response to volatile current data. A traffic policeman performs the same essential function with a wave of his hand, an air traffic

controller with a spoken directive. S. 34(m) of the Fisheries Act is the legislation establishing the policy that access to fish stocks shall be controlled by a system of quotas and close times imposed by regulation and varied by "a person engaged or employed in the administration or encorcement of this Act." The specific regulatory machinery was created by the Governor-in-Council in s. 88 and Schedule XXIII of the Regulations. The Regional Director General is the administrative person empowered by s. 4 of the Regulations to operate the machinery; variation orders are the levers he pulls to do so.

Despite certain appearances to the contrary, variation orders must be considered administrative and not legislative measures.

They were obviously seen as administrative by Parliament when responsibility for the day to day decisions was entrusted to "a person engaged in the administration or enforcement of this act".

Subdelegation of powers under s. 34 of the Fisheries Act was closely considered by the Ontario Court of Appeal in Re Peralta and the Queen (1985) 16 D.L.R. (4th) 259. That case confirmed the right to delegate federal powers to a province: the Ontario Minister of Fisheries was empowered to impose quotas on Great Lakes species.

While the issues are substantially different from the

present case, which merely involves the exercise of one official's responsibilities by another official acting in his name, the review of authorities respecting subdelegation by MacKinnon, A.C.J.O. is instructive:

> ". . . When courts have considered whether delegation of ministerial powers was intended, considerable weight has been given to "administrative necessity", that is, it could not have been expected that the minister (in this case the Governor in Council) would exercise all the administrative powers given to him. Further, in such cases the suitability of the delegate has been a material factor in determining whether such delegation is intended and lawful:
>
> "See Lanham, 'Delegation and the Alter Ego Principle,' 100 L.Q.R. 587 (1984).
>
> "There is no rule or presumption for or against subdelegation": Driedger, "Subordinate Legislation," 38 Can. Bar Rev. 1 (1960), at p. 22. The language of the statute must be interpreted in light of what the statute is seeking to achieve. As Professor Willis pointed out, the maxim "delegatus non potest delegare" "does not state a rule of law; it is 'at most a rule of construction' and in applying it to a statute 'there, of course, must be a consideration of the language of the whole enactment and of its purposes and objects'": Willis, "Delegatus Non Potest Delegare", 21 Can. Bar Rev. 257 (1943), at p. 257.
>
> "The first particular power given under the regulation-making power of the Governor in Council is 'for the proper management and control of the sea coast and inland fisheries" (para. 34(a)). This states the general purpose of the entire section and a wide authority is conferred in the following paragraphs by the use, as noted earlier, of the word "respecting", "embracing any regulation for any purpose coming within the defined subject" matter: Driedger, The Composition of Legislation, 2nd. ed. (1976) at p. 192. Driedger (at p. 193) points out that the distinction between purposes or subjects on the one hand and powers on the other is relevant to the subdelegation:
>
> "'For example, if a Minister had powers to make regulations respecting tariffs and tolls he could authorize some other person to fix a tariff or toll; such a regulation would clearly be one respecting tariffs and tolls. But if the Minister's

> authority is to make regulations prescribing tariffs and tolls then the Minister must himself prescribe, and cannot delegate that authority to another. Expressions commonly used to introduce specific powers are prescribing, fixing, determining, prohibiting, requiring, establishing."

Applying the last quotation from Driedger to the present case, it is to be noted that the operative expression in s. 34(m) is "authorizing . . . to vary." S. 4 of the Regulations, says: "A Regional Director General may, by order, vary . . . " That is, S. 4 does not exceed the scope of the enabling authority in s. 34 of the Act, but specifies how that authorization is to be exercised.

It is also to be noted that s. 4 does not specify how the order is to be made. In practice variation orders are in writing signed by the Regional Director-General. There is nothing in the language of s. 4 to prevent the issuance of a verbal order by the Regional Director-General to be commmitted to writing and promulgated by his officials, nor to cause a written order to be issued in his name.

A clear distinction exists in the case law between the delegation of authority by the Minister and the delegation of authority by lesser officials. It is clear the Minister cannot carry out in person the many duties which fall to him as the most responsible official in a departmental chain of command, duties which might appear to require his personal consideration. Further down the chain of command, as duties become less sweeping in their significance, the requirement that they be carried out by a designated official, perhaps

paradoxically, becomes more rigid. In the absence of statutory authority, for example, a fisheries officer could not, acting within his own authority, issue a variation order. (Such statutory authority exists in S. 5 of the Pacific Commercial Salmon Regulations considered in Gulf Trollers Association v. Minister of Fisheries & Oceans (1984) 6 W.W.R. 220 F.C.C.) That is not to say, however, that an official responsible to the Regional Director General, acting in his name and on his behalf, cannot issue a variation order. What harm results when this occurs?

That question takes its relevance from S. 12 of the Interpretation Act R.S.C. 1985 (Ch. 1-21):

> "Every enactment is deemed remedial and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects."

If Parliament had intended the designated functionary under s. 34 (m) to have been one official person, and one only, this could have been readily achieved. The office of Regional Director General might have been defined, and limitations on his authority particularized by statutory authority. Parliament was content, however, to allow the Governor-in-Council to attach the authority to "a person engaged or employed in the administration or enforcement of this Act". The designation of that person was left to the Governor-in-Council. The absence of any description of the role of the Regional Director General in the Regulations suggests a certain lack of formality surrounding the position. There is little on which to base an inference that an official

for the time being fulfilling a largely undefined function must do so personally. Such an inference might be drawn more readily if the position were created and limited by statute. A person engaged in the administration of the Act has a duty to ensure that the act be administered, and it follows that in the absence of clear directives to the contrary that he should be able to make reasonable arrangements for its administration in his name when he is not personally present.

Parliament, nor the Governor-in-Council in passing ss. 4 & 5 of the Regulations, could hardly have intended that the carefully constructed administrative machine should become inoperative, nor that fish stocks should be decimated, while the Regional Director General of the moment was on vacation or home with the Taiwan flu.

Both Parliament and the Governor-in-Council must have been cognizant of Sections 24(4) and 24(5) of the Interpretation Act R.S.C. I-21:

> "(4) Words directing or empowering any other public officer to do any act or thing, or otherwise applying to him by his name or office, include his successors in the office and his or their deputy.
>
> "(5) Where a power is conferred or a duty imposed on the holder of an office as such, the power may be exercised and the duty shall be performed by the person for the time being charged with the execution of the powers and duties of the office."

The language and the underlying intent seem plain: the continuing administration of government must continue

independently of the physical presence of any individual official. Ss.(5) seems broadly drawn to make this clear, even in the absence of any acts of appointment or designation of the "person for the time being charged. . . ."

As already noted, S. 4 of the Regulations stops short of saying the variation orders the Regional Director General may issue must be signed by his hand alone. If no other official has been "charged with the execution of the powers and duties of the office" by the Minister or the Governor-in-Council, it does not seem unreasonable that the Regional Director General should "charge" a person with the continuing function of his office in his absence. Here it appears he authorized the issuance of variation orders by the Regional Director General over the hand of Neil Bellefontaine signing "for" the Regional Director-General, J.-E.Hache. Mr. Hache remained responsible to the minister who appointed him, who in turn was responsible for his department to the Governor in Council, for orders issued in the exercise of authority granted to The Regional Director-General by the Governor-in-Council under s. 4 of the Regulations. The order in question was in his name and signed by another hand. No one to whom the orders applied was misled nor prejudiced. The actual authority was exercised with apparent authority.

The Crown has invoked the maximum "omnia praesumuntur rita esse acta," to which I have referred as the presumption of regularity. It is translated in Black's Law Dictionary as: "a prima facie presumption of the regularity of the acts of public

officers exists until the contrary appears." I do not find that the contrary has appeared. I do not accept this ground of appeal.

Between the drafting and the issuance of the foregoing I have been referred by counsel to two recent dicisions of the County Court in which similar arguments were considered. MacDonald, C.C.J. came to conclusions similar to mine in R. v. McRae (February 27, 1989 SN. #16655 unreported) and Haliburton, C.C.J. came to a different conclusion in R. v. Porter (C.Y. 4353 March 17, 1989 unreported).

THE THIRD GROUND

The Appellant's position is that the variation orders do not apply to his vessel: they relate to Class C vessels and the Allison and Kristan is a C-2 vessel; he argues there is no evidence to show that the Class C designation includes Class C-2 vessels.

Apparently Class "C" vessels have recently been subdivided into Class C-1 and C-2 classifications but there is nothing in the evidence to indicate the regulatory scheme by which this was accomplished, nor its relevance to the present appeal.

Exhibit C-1 is the fishing license for the Allison and Kristan and shows her to be 64 feet in length, licensed to fish otter trawl as a dragger. It may be noted that otter trawl,

dragged behind the vessel, is mobile gear. The relevant notices of varation orders in Exhibit #5 which were broadcast in accordance with s. 5 of the Regulations include the definition of the class "C" vessels to which the variation orders relate: "Class 'C' vessels are vessels less than 19.8 meters in overall length using mobile gear." As noted above, 19.8 meters is the equivalent of 65 feet.

If that were not conclusive, the statement of facts includes an admission that the Appellant was fishing a Class "C" vessel.

I find no merit in this ground of appeal.

Accordingly, the appeal against conviction is dismissed.

With respect to the sentence appeal, I find that the fine is fit and proper in the circumstances. The order of forfeiture reflects the value of the fish unlawfully taken by the Appellant; the lawful portion of his catch was not involved. In my opinion the trial judge proceeded on the proper principles. I dismiss the appeal against sentence.

JUDGE OF THE COUNTY COURT
OF DISTRICT NUMBER TWO

IN THE COUNTY COURT OF DISTRICT NUMBER TWO

ON APPEAL FROM

THE PROVINCIAL COURT

BETWEEN:

HER MAJESTY THE QUEEN

- and -

DOUGLAS W. BROWN

HEARD BEFORE: His Honour Judge P. R. Woolaver

PLACE HEARD: Shelburne, Nova Scotia

DATE(S) HEARD: March 17, 1988, May 19, 1988, October 13, 1988

CHARGE: That he at or near Shelburne in the County of Shelburne, Nova Scotia, on or about the 19th day of February 1988 did fail to comply with a condition of a licence specified under the authority of Subsection 33(1) of the Atlantic Fishery Regulations, 1985, to wit: did take in excess of the quantity of haddock specified in Variation Order # 1988-027, and Variation Order # 1988-029, contrary to Subsection 33(2) of the said Regulations, and did thereby commit an offence pursuant to Subsection 61(1) of the Fisheries Act, R.S.C. 1970, c. F-14, as amended.

COUNSEL: Donald G. Harding, Esq., for the Prosecution

S. Clifford Hood., Q.C., for the Defence

C A S E O N A P P E A L
