CANADA
PROVINCE OF NOVA SCOTIA
DIGBY JUSTICE CENTRE

2001 NSPC 1
DATE: 20010122

IN THE PROVINCIAL COURT
Cite as R. v. Paul, 2001 NSPC 1

HER MAJESTY THE QUEEN

versus

JOHN PETER PAUL et al.
(Case No. 992083 and others)

DECISION

HEARD BEFORE: Hon. Jean-Louis Batiot, C.J.P.C.

PLACE HEARD: Annapolis Royal, Nova Scotia

IN THE MATTER OF: **Fisheries Act**, c.F-14

COUNSEL: Lori-ann Veinotte, Crown Attorney
Douglas Brown, Defence Attorney

[1] This is an application in the ***R. versus Paul et al*** cases pursuant to s. 71 of the Fisheries Act and heard on Tuesday the 16th of January, 2001, in Digby. The application by the defence was based on a decision of Judge Jardine of the Provincial Court of British Columbia in ***R. v. Nguyen***, undated, under s. 71, where Judge Jardine, at p. 26, stated:

> I am of the view that prior to ninety days, there is a discretion in the Minister to detain, unless a decision has been made not to institute proceedings. Once that determination [to not institute] has been made, the thing shall be returned. In all other proceedings, the Minister has ninety days on which to reflect, to investigate, and to determine whether to seek continued detention or arrange for return, or to seek to forfeit the item, **if the trial proceedings are commenced and concluded within the ninety days**. (My emphasis and parenthesis)

[2] It is further argued, as I understand the argument, that the charges and the seizure was over a hotly debated issue involving aboriginal rights, and that the Crown was in breach of its duty to act honourably toward Aboriginals by not having made a timely application under s. 71(4), which stands on its own, for further detention.

[3] The Respondent's position is that s. 71 is complete. It provides a full regimen for detention of things seized, including the possibilities of their release upon security satisfactory to the Minister, and that since the proceedings were initiated within ninety days of the seizure, and this seizure occurred at the time of the arrest, their continued detention is lawful.

[4] There is no issue with respect to the timing of the seizure; indeed there is none as to what was seized–there is no evidence–but I understand one or more vessels and their attendant gear were so seized on the day of the alleged offences, and the arrest of the accused. No other application had been made, such as one for an extension.

[5] The seizures were made by the Officers, in accordance to ss. 50 and 51:

> ***Arrest***
> **50.** Any fishery officer, fishery guardian or peace officer may arrest without warrant a person who that fishery officer, guardian or peace officer believes, on reasonable grounds, has committed an offence against this Act or any of the regulations, or whom he finds committing or preparing to commit an offence against this Act or any of the regulations.
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> ***Seizure of fishing vessel, etc.***
> **51.** A fishery officer or fishery guardian may seize any fishing vessel, vehicle, fish or other thing that the officer or guardian believes on reasonable grounds was obtained by or used in the commission of an offence under this Act or will afford evidence of an offence under this Act, including any fish that the officer or guardian believes on reasonable grounds
>
> (a) was caught, killed, processed, transported, purchased, sold or possessed in contravention of this Act or the regulations; or

(b) has been intermixed with fish referred to in paragraph (a).

[6] The only issue to be decided is whether the Crown must make an application to the Court for an Order for continued detention of the thing seized. If so, and it has not, then the property must be returned to those entitled to it. A reading of s. 71 will be helpful.

> ***Detention of seized things***
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> **71.** (1) Subject to this section, any fish or other thing seized under this Act, or any proceeds realized from its disposition, may be detained until the fish or thing or proceeds are forfeited or proceedings relating to the fish or thing are finally concluded.
>
> ***Return on deposit of security***
>
> (2) Subject to subsection 72(4), a court may order any fish or other thing seized under this Act to be returned to the person from whom it was seized if security is given to Her Majesty in a form and amount that is satisfactory to the Minister.
>
> ***Return where proceedings not instituted***
>
> (3) Subject to subsection 72(4), where proceedings are not instituted in relation to any fish or other thing seized under this Act, the fish or thing or any proceeds realized from its disposition shall be returned to the person from whom it was seized
>
> (a) on the Minister's decision not to institute proceedings; or
>
> (b) on the expiration of ninety days after the day of the seizure or any further period that may be specified in an order made under subsection (4).
>
> ***Order to extend detention***
>
> (4) Where a court is satisfied, on the application of the Minister within ninety days after the day on which any fish or other thing is seized, that detention of the fish or thing for a period greater than ninety days is justified in the circumstances, the court may, by order, permit the fish or thing to be detained for any further period that may be specified in the order. (My emphasis).

[7] S. 72(4) reads as follows:

> (4) Where the ownership of any fish or other thing seized under this Act cannot be ascertained at the time of the seizure, the fish or thing is thereupon forfeited to Her Majesty.

[8] To paraphrase these provisions:

(a) the general rule is: once the discretion has been exercised to detain, the detention continues until the conclusion of the proceedings;

(b) the Minister may agree to the return of the things seized, in exchange of satisfactory

security;

(c) the Minister has ninety days to decide to proceed. If he does not proceed, the things must be returned;

(d) should the Minister require more than ninety days to exercise his discretion to commence proceedings or not, the Minister must apply to the Court for an extension of time.

(e) forfeiture is automatic if ownership can not be ascertained at the time of the seizure.

[9] With respect to any contrary view, it seems to me that the phrase "where proceedings are not instituted", in ss. 3, are important. Up to that point, the dispute is between the Minister's agents and the accused. They have up to ninety days to resolve their differences. During that time, subject to a necessary extension, the Minister decides on the merits of the prosecution and retains those items seized.

[10] However, once the decision to prosecute has been made official by the laying of an Information, then time has stopped running against the Minister: the respective positions have crystallized; s. 71(1) continues to operate for the retention of the things seized; the matter proceeds through the Court, publicly, and as time and the priorities of the parties allow.

[11] Both ss. (2) and (3) deal with the return (a) against acceptable security and, (b) in case proceedings have not been instituted within ninety days. Ss. (4) provides for the application for an extension, made within the ninety day period, to retain the things beyond the said period. A plain reading of the whole section makes it obvious that this is the *further period* provided in ss. (3), in case *proceedings are not instituted.*

[12] As stated in **Driedger on the construction of Statutes, 3rd Ed., Butterworths**, at p. 7:

> (1) It is presumed that the ordinary meaning of a legislative text is the intended or most appropriate meaning. In the absence of a reason to reject it, the ordinary meaning prevails.

[13] There simply is no reason to reject the ordinary meaning here and go beyond the plain wording; there is no ambiguity, contradiction or obscurity in the meaning of the words used.

[14] Indeed, in ***Longmire v. Canada*** **[1993] F.C.J. No 977**, at para. 17, MacKay, J. of the Federal Court reviewed in part that section, and others. He found the applicant entitled to the value of a catch thrown back to sea three hours after the arrest and seizure, since, through a strict interpretation of the Statute, it was too late and contrary to s. 73(3) of the Act. By inference, the scheme the Act provides was confirmed as unambiguous.

[15] Such an interpretation accords with s. 12 of the **Interpretation Act, c. I-21**, in that it is a *fair, large and liberal construction...as best ensures the attainment of its objects.*

[16] It is true the section providing for the purposes (s. 2.1) of the Fisheries Act has been repealed; yet a quick perusal of the Act shows it exists for the protection and regulation of the Canadian fishery in general. The plain meaning attributed herewith to s. 71 does not derogate from this.

[17] There has been reference made to s. 490 of the Criminal Code, and more particularly to ***R. v. MacMillan Bloedel Ltd***., [1998] B.C.J. No. 908 (B.C.S.C.) where federal fisheries officers obtained a search warrant, executed it, retained documents seized relevant to an oil spill charge, without making the required report to the Justice *as soon as practicable*, nor was there a three clear day notice to the owner for an order to extend the detention. This was an improper detention; yet as proceedings had been instituted (s. 490(2)), there was no remedy for the Applicant.

[18] S. 490 is a parallel to s. 71 of the Fisheries Act at most. It does not replace it; yet it provides an example of a reasonable provision in case of seizure and detention, as also provided in s. 71.

[19] The Applicants are not without remedy, since s. 71(2) provides for return of the things seized, upon Order of the Court, with a security acceptable to the Minister. Apparently, as mentioned in ***Nguyen***, supra, the practice may be to reflect the market value of these things. This is however up to the parties to first discuss the issue, and then make an Application to this Court.

[20] As a result, the application is dismissed.

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Jean-Louis Batiot
Chief Judge of the Provincial Court of Nova Scotia