

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Ivy Fisheries et al, 2004 NSPC 10

Date: 20040206

Docket: 1145525

1145521

1145495

1145509

1145543

Registry: Bridgewater

Between:

R.

v.

Ivy Fisheries et al

Judge: The Honourable Judge Anne E. Crawford

Heard: January 29, 2004, in Bridgewater, Nova Scotia

Counsel: Ronda Vanderhoek, for the Crown
Thomas Hart & David Demirkan, for the Defence

By the Court:

- [1] This is an application by the Defence to stay or quash charges 10 and 17.
- [2] Those charges read as follows:

“and further that, Ivy Fisheries Limited. Of 3776 Old Sambro Road, Sambro, Halifax Regional Municipality, Province of Nova Scotia, Wesley L. Henneberry (Director of IVY Fisheries limited.) Of 3776 Old Sambro Road, Sambro, Halifax Regional Municipality, Province of Nova Scotia, Marcel Steven Henneberry (Director of IVY Fisheries limited.) of 68 Kelly Drive, Williams Wood, Halifax Regional Municipality, Province of Nova Scotia, and Clark Andrew Henneberry (Director of Ivy Fisheries Limited.) of 23 Grey’ s Road, Sambro, Halifax Regional Municipality, Province of Nova Scotia,

did on or between October 1, 2000 and December 17, 2000, inclusive, at or near Halifax Regional Municipality, Nova Scotia, and elsewhere in the Province of Nova Scotia, purchase, sell or possess fish caught in contravention of *Fisheries Act* or the Regulations, contrary to s. 33 of the Fisheries Act, R.S.C. 1985, c. F-14 thereby committing an offence under s. 78 of the *Fisheries Act*, R.S.C. 1985, c F-14,”

and

“and further that, Andrew William Henneberry of 21 Atlantic View Drive, Sambro, Halifax Regional Municipality, Province of Nova Scotia,

did on or between October 1, 2000 and December 17, 2000, inclusive, at or near Halifax Regional Municipality, Nova Scotia, and elsewhere in the Province of Nova Scotia, purchase, sell or possess fish caught in contravention of *Fisheries Act* or the Regulations, contrary to s. 33 of the Fisheries Act, R.S.C. 1985, c. F-14 thereby committing an offence under s. 78 of the *Fisheries Act*, R.S.C. 1985, c F-14,”

ISSUES

- [3] Defence argues that the charges should be quashed as not complying with the minimum standards set out in ss. 581 and 587 of the *Criminal Code* and/or should be

stayed under s. 24(2) of the *Charter of Rights and Freedoms* for breach of the defendants' right to make full answer and defence under sections 7 and 11(d) thereof.

[4] In particular the defence says that the charges are vague, lack particulars, do not refer to a single transaction, and are multiplicitous.

FACTS

[5] From the representations of counsel and from the evidence tendered to date, I make the following findings of fact.

[6] These charges are part of a complex case, involving numerous charges against these and other defendants arising out of alleged irregularities in their tuna fishing operations in the 2000 tuna fishing season.

[7] More than one hundred three-inch binders containing thousands of documents were delivered to the Defence by way of disclosure.

[8] The charges follow the wording of the enactment in question, s. 33 of the **Fisheries Act**:

33. No person shall purchase, sell or possess any fish that has been caught in contravention of this Act or the regulations.

[9] The Crown has informed the Defendants that the fish referred to in these charges are the tuna referred to in the other charges before the court if they are ultimately found to have been "caught in contravention of" the Act.

[10] Each tuna is tagged on being caught and thus is individually identifiable from catch through to sale.

[11] The Crown has informed the Defence that although the charge is worded to include "purchase", it intends only to prove "possession" and/or "sale" in each case. The Crown has provided to defence by way of disclosure both the sale documents on which the Crown will rely to prove the possession and sale aspect of these charges and also the report of a forensic accountant to assist in following the "paper trail" for each tuna.

[12] This application was not made until early December, 2003, although pleas were entered in October, 2002 and the trial had been adjourned from July 2003 to December 2003 with no indication by the Defence either that disclosure was not adequate or that there was any difficulty in preparing for trial arising from the form of these charges.

LEGAL PRINCIPLES

Criminal Code, ss. 581 and 587

[13] These sections, insofar as they are relevant to this application, read as follows:

581. (1) Each count in an indictment shall in general apply to a single transaction and shall contain in substance a statement that the accused or defendant committed an offence therein specified.

(2) The statement referred to in subsection (1) may be

(a) in popular language without technical averments or allegations of matters that are not essential to be proved;

(b) in the words of the enactment that describes the offence or declares the matters charged to be an indictable offence; or

(c) in words that are sufficient to give to the accused notice of the offence with which he is charged.

(3) A count shall contain sufficient detail of the circumstances of the alleged offence to give to the accused reasonable information with respect to the act or omission to be proved against him and to identify the transaction referred to, but otherwise the absence or insufficiency of details does not vitiate the count.

587. (1) A court may, where it is satisfied that it is necessary for a fair trial, order the prosecutor to furnish particulars and, without restricting the generality of the foregoing, may order the prosecutor to furnish particulars

.....

(f) further describing the means by which an offence is alleged to have been committed; or

(g) further describing a person, place or thing referred to in an indictment.

(2) For the purpose of determining whether or not a particular is required, the court may give consideration to any evidence that has been taken.

[14] I will follow the order of these sections in dealing with the defence submissions on the alleged defects in the charges.

Section 581(1): Single Transaction

[15] Case law makes it clear that “single transaction” in this context can encompass more than one individual engaged in a course of conduct over a period of time. In one of the two charges under consideration here, a company and its directors are jointly charged with the possession and sale of illegally caught fish. In a separate charge their sales agent is similarly charged.

[16] The defendants say that these charges offend this rule because they

relate to numerous individuals who were on board numerous vessels during numerous different trips catching numerous different fish at various times in different locations. (Defence brief, p. 6)

However, the offence alleged in these charges does not involve the catching of the fish, but only possession and/or sale of fish determined to have been illegally caught.

[17] In this case the Crown alleges at para 68 of her brief:

. . . a clear pattern exists involving the same persons, the same species of fish and sales taking place during the same fishing season to the benefit of the same persons.

[18] Obviously, these are allegations which the Crown must prove at trial, but the charges as drafted encompass such allegations and consequently do not violate the single transaction rule.

Section 581(2)(b): Multiplicity

[19] The defendants argue that section 33 of the *Fisheries Act* creates three separate offences: purchase, sell or possess. Obviously, in an appropriate scenario that could indeed be the case. A fisher who caught fish for his own consumption could possess without purchasing or selling, as could someone to whom he gave the fish for no consideration. But in most cases at least two of the three acts will co-exist in the same transaction; for example, the fisher who sells his fish, or an agent who arranges a purchase or sale between two other parties without himself taking possession. And often all three may be involved, as where a fish buyer buys from a fisher, takes possession of the fish and then sells to a wholesaler or consumer.

[20] Section 581(2)(b) allows charges to use the wording of the statute, and indeed that is the usual and preferable practice; that is what the informant did in this case; and, so long as section 581(3) is also complied with, so doing does not render a count multiplicitous.

Section 581(3): Vagueness

[21] The defendants say that these counts are vague in that they allege that the offences occurred over a wide geographical area (the province of Nova Scotia) over a months long time span (October to December, 2000), do not state the species of fish involved, nor the sections of the *Fisheries Act* and regulations which were contravened to make the catching of the fish illegal. Also, as to count 10, four different persons are charged – a company and three individuals.

[22] While these complaints might have some validity if these were single charges in separate informations, it is to be noted that these charges are only two of a number of charges in one information. It should be clear from that context that the fish referred to and the illegalities involved are those alleged in the other counts in the information.

[23] As to the geographical area and the time span, from the same context which narrows the species and illegalities, it is obvious that the transactions attacked by these counts are those referred to in the other counts. In addition, as noted above, the Crown has provided to defence the records of each fish and sale involved as well as a forensic accountant's report.

[24] In regard to count 10, I note that the three individuals charged are named as directors of the company which is charged and for that reason alone, I find nothing objectionable in their being jointly charged. In addition, of course, there is no rule prohibiting persons from being jointly charged in any situation where the allegation is that they acted together in committing the offence.

[25] Taking into account the context of these counts, and the disclosure which has been provided to defence, I conclude that these counts are not vague.

S. 587: Particulars

[26] Similarly, given the context, disclosure and evidence to date, this is not a case where I find it necessary to order particulars.

Conclusion

[27] I conclude that these charges conform to the requirements of sections 581 and 587 of the *Criminal Code* and that there is no reason to quash them.

Charter of Rights and Freedoms, sections 7 and 11(d)

[28] The defendants *Charter* argument, in short, is that these charges are so flawed that they breach the defendant's right to make full answer and defence and should therefore be stayed under s. 24(1) of the *Charter*.

[29] As I have found that the charges are not defective, there is no basis upon which I could or should grant a *Charter* remedy.

CONCLUSION

[30] The defendants' motion is hereby denied.