

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
HER MAJESTY THE QUEEN	- and -	ALLISON BERNARD, JR.
Appellant		Respondent
CAC 169702	Halifax	ROSCOE, J.A.

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[Cite as: **R. v. Bernard, 2002 NSCA 5**]

**APPEAL HEARD:** October 5, 2001

**JUDGMENT DELIVERED:** January 15, 2002

**SUBJECT:** **aboriginal rights, s. 35 Constitution Act, 1982, Wildlife Act, R.S.N.S., 1989, c. 504, s. 68, hunting at night with a light**

**SUMMARY:** The respondent was charged with hunting at night with the aid of a light contrary to s. 68 of the **Wildlife Act**. At trial in Provincial Court, the respondent, who is Mi'kmaq, claimed that his aboriginal right to hunt for food exempted him from the operation of s. 68. At trial he was convicted. His summary conviction appeal to the Supreme Court of Nova Scotia was allowed. The Crown appealed.

**ISSUES:** Does s. 68 of the **Wildlife Act** infringe the aboriginal right to hunt for food?

If so, is the infringement justified?

**RESULT:** Appeal allowed. The respondent's aboriginal right to hunt for food was not infringed by s. 68 of the **Wildlife Act**. The legislative purpose of s. 68 is at least partially to prohibit unsafe hunting and it is therefore a reasonable limitation on the aboriginal right to hunt for food. The prohibition against night hunting with a light did not inflict undue hardship, nor did it interfere with a preferred means of exercising the aboriginal right.

If it were necessary to deal with justification, the Crown has proven that the section was a justified infringement.

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