

CASE NO.

VOL. NO.

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HER MAJESTY THE QUEEN

CLIFFORD N. VANBUSKIRK

- and -

(Appellant)

(Respondent)

CAC 157129

Halifax, N.S.

HALLETT, J.A.

[Cite as: R. v. Vanbuskirk, 2000 NSCA 11]

APPEAL HEARD:

November 29, 1999

JUDGMENT DELIVERED:

January 19, 2000

SUBJECT:

**Fisheries Act, R.S.C. 1985, c. F-14; Fisheries General Regulations 1993, Regulation 22.(1) and 22(7)
Criminal Code, R.S.C. 1985, c. C-46, s. 839**

SUMMARY:

The respondent fisherman was charged with failing to comply with a condition of his license that required him to report by ship to shore radio (after he had finished fishing and before returning to port) his estimate of the weight of named species of fish on board his vessel. He was also required by his license to report the time he would be arriving in port. The apparent purpose of this latter provision was to enable fisheries officers to be there and actually weigh the catch.

The respondent's estimate of the weight of the round fish on board, as reported to the monitors, was about 20% less than the actual weight. This led to the charge that he had breached the condition of his license.

The trial judge convicted the respondent. The trial judge concluded that it would not be appropriate to apply the ordinary meaning of the word "estimate" considering the context of the **Fisheries Act**, the **Regulations** and the conditions of his license. He concluded that the report of the round weight of the fish on board was not reasonably accurate or precise.

The fisherman's appeal to the summary conviction appeal court was allowed and a new trial ordered.

The Crown appealed that decision to the Nova Scotia Court of Appeal.

The Appeal Court held that the summary conviction appeal court judge did not err in allowing the appeal - the ordinary meaning of the word "estimate" should have been applied by the trial judge.

The respondent fisherman filed a cross-appeal seeking an acquittal. The Appeal Court held that the Court could not assess the reliability of the statistical evidence which was rejected by the trial judge and which appears to have been accepted by Judge Crawford in **Doucette** and by Justice Boudreau. Secondly, if the estimate of the round weight of fish as made by the respondent was not reasonable, there is a paucity of evidence on the record with respect to the due diligence issue. As a result, the Court could not assess whether that defence should succeed.

The appeal and the cross appeal were dismissed.

This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 13 pages.