

IN THE PROVINCIAL COURT OF NOVA SCOTIA
[Cite as: R v. Glace Bay Fisheries, 2001 NSPC 23]

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
Her Majesty the Queen	v.	Glace Bay Fisheries et al
	Sydney, N.S.	Campbell, J.P.C.

HEARING HELD: September 12, 13, 2001

DECISION DELIVERED: September 17, 2001

WRITTEN RELEASE OF ORAL: September 17, 2001

SUBJECT: Undue Delay - Prejudice to the Accused

SUMMARY: The eleven accused were charged under the Fisheries Act. Initial appearances began in 1998 and a lengthy trial commenced in September of 1999. Following a decision of the Court the Crown appealed. Appeal was heard in October, 2000 with continuation ordered. That continuation began in September of 2001.

ISSUE:

- 1) Whether the delay represents real prejudice to the accused;
- 2) Whether the length of time to complete trial can be attributed to either the defendants or the Crown.

RESULT: Rights under s. 11(b) of the Charter not breached. Actual delay time amounts to 21 months. This time attributable to waiver and complexity of case. Balance must be struck between the impact on the accused and the right of society to have these matters adjudicated. Application Dismissed.

This Information does not form part of the court 's judgement. Quotes must be from the judgement, not this cover sheet. The full court judgement consists of 5 pages.

[1] The facts relating to this application under the **Charter** are referred to in the briefs submitted by counsel. I'll refer to the factual situation briefly and where the facts are the subject of interpretation by counsel.

[2] The charges against the accused were laid by the Crown in July of 1998. The accused appeared in Court on September 15, 1998, October 7, 1998, December 14, 1998 and January, 1999 on which latter date trial dates were set down. The trial was set for September 20, 1999 and ran until a decision was rendered November 24, 1999. An appeal filed by the Crown on December 23, 1999, was heard by the Appeal Court of Nova Scotia on October 17th and 18th, 2000. Continuation of the trial was ordered on February 28, 2001 and that continuation was set down for September 10, 2001.

[3] The total elapsed time from the laying of the charges to the present time is approximately thirty-eight (38) months. Based upon the authorities quoted in counsels' briefs, notably R. v. Potvin and R. v. Morin, both decisions of the Supreme Court of Canada, I am of the opinion that the appeal period which exhausted fifteen (15) months of that time can be deducted, as can the two (2) month period in which the trial actually took place. This time is not attributable to either side. This then leaves a period of some twenty-one (21) months to be examined. I see no reason to consider pre-charge time in these circumstances. The investigation was a very detailed and complex undertaking. The statute has limitation periods within which a charge must be laid and those periods were met.

[4] In order to put the matter into some perspective one has to consider the reality of what the Court was presented with. There were eleven defendants and literally hundreds of charges presented to the Court. The time frame for individual trials being looked at required some twenty-one (21) to twenty-four (24) months of court time. The impact of this huge allotment of time on regular dockets already overcrowded was or should have been apparent to all. The matter was eased to a great degree when joinder of the charges was raised. Nevertheless the hearing of these charges even in one trial called for a period of some four (4) months. Here again it was made clear to counsel that scheduling was a problem either way. Concessions and agreement were urged upon both sides with little result.

[5] The solution the Court and the court administration resorted to in order to ensure as expedient a resolution of these charges as was possible, was to appoint a *per diem* judge, to arrange special court space in the former Town of Louisbourg, with support staff assigned from regular docket courts on a rotating basis. This worked well and the trial, once underway, proceeded without interruption to its conclusion.

[6] It is important as well to note that a large segment of time lapse related to the concern the defendants had in their ability to fish during a time frame that roughly extended from May to September. In spite of the protests from the present counsel for the Defendants, it was my clear impression from start to finish that these defendants did not want trial dates to conflict with their fishing seasons. It was no accident that the months of May to September were avoided the first time the trial dates were set, nor was it when the dates for the continuation of the trial were set. This was certainly in keeping with the experience and practice of the Courts in dealing with fishing matters which came before it. I refer to specific comments in the transcript of the proceedings of these matters, namely October 7, 1998 p. 21, lines 10-13 (Mr. Campbell (Crown)); again at p.

27, lines 14-17 (Mr. MacDougall); again the comments by the Court at p. 34, lines 5-11; and further at lines 14-15; p. 72, January 22, 1999 (Mr. Corsano); p. 73, lines 18-22 (Mr. Campbell); and lastly Mr. Truckair at p. 76. These are not exhaustive but serve to illustrate the consistent concern of the Defendants with their fishing season.

[7] In my opinion an analysis of what has transpired shows the following:

(A) As to the Length of delay - when one subtracts the periods of time which are not to be counted in our assessment, i.e. - appeal delay and actual trial time we are left with approximately 21 months which is borderline problematic in a case of this complexity.

(B) Waiver of Time Periods - It is my conclusion based on the whole of the proceedings that the Defendants were agreeable to avoiding trial times that conflicted with their fishing season and must be taken to have waived these times, namely January, 1999 to September, 1999 and further February, 2001 to September, 2001.

(C) Reasons for Delay

(i) Inherently this case was one which would consume unusual amounts of time, longer than normal amounts of time, time akin to fraud trials or taxation trials. The gathering and organizing of some 2,000 documents was in itself a difficult task. The work and time involved in disclosure and analysis of these documents is beyond the normal, certainly beyond the normal **Criminal Code** charge or impaired driving or break and enter. The involvement of numerous defendants and counsel is a consideration as is the number of charges. The fact that counsel were changed from time to time is a consideration.

(ii) Actions of the Accused - I cannot find that the accused deliberately set up road blocks which sought to delay their trial.

(iii) Actions of the Crown - I cannot find that the Crown failed in any way in their efforts to move this matter forward.

(iv) Limits on Institutional Resources - Extraordinary steps were taken to see that these matters were given the attention they warranted to assure adequate facilities and personnel were available.

(v) Other Reasons for Delay - I see no other areas

(D) Prejudice to the Accused - It is without doubt a long and trying time for all the Defendants. Nevertheless we must strike a balance between that impact on the accused and the right of society to have these matters adjudicated. It is important to note that these charges relate to an industry that has a tremendous impact on the economy of the area. Those involved have to be assured that not only are the accused fairly treated but that the community's interests overall are being considered.

[8] Based on the foregoing analysis, I am satisfied that the rights of the accused parties under s. 11(b) of the **Charter of Rights and Freedoms** have not been breached. These comments and conclusions apply equally to those accused parties who were in the early stages, unrepresented. The Court made every effort to see that they understood and further that they benefitted from inclusion in all of the proceedings.

[9] The application is dismissed.

Dated at Sydney, County of Cape Breton, Nova Scotia, this 17th day of
September, A.D., 2001

Stanley D. Campbell, J.P.C.