

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Corneillsen, 2009 NSPC 60

Date: September 10, 2009

Docket: 1890367, 1890368
1893009, 1893010

Registry: Sydney

Her Majesty the Queen

v.

Alexander Cornelissen

and

Peter Hammarstedt

DECISION ON SENTENCING

Judge: The Honourable Judge Jean M. Whalen

Heard: April 27, 28, 29 & 30, and June 30, 2009

Decision: September 10, 2009

Charges: Section 78(a) and 78 *Fisheries Act*, R.S.C. 1985,
c. F-14 x4,
Section 33(1) of the *Marine Mammal Regulations*

Counsel: Paul Adams, Crown Attorney

By the Court:

[1] This is the sentencing of Alexander Cornelissen and Peter Hammarstedt. I would note for the record that neither Defendant is present, nor is there any agent or counsel appearing on their behalf.

[2] On June 30th, 2009, the Defendants were convicted of offences contrary to section 33(1) of the *Marine Mammal Regulations* that occurred on March 30th, 2008, and between April 11th and 12th of 2008. I will not review at length the evidence or my findings, however, I will make a few comments that the court feels are necessary for the purposes of sentencing.

[3] The court heard a lot of evidence from the Coast Guard officials and experts about the activities of the Defendants, and in particular, the close proximity of the *Farley Mowatt* to the seal hunters. But it was the *viva voce* evidence of the four fishers that made it crystal clear that the risk and danger faced by them was a direct result of the actions of the Defendants.

[4] Mr. Darcy Hardy, a fisher for 30 years, testified the *Farley Mowatt* was “...getting in close, becoming very aggressive, pushing ice pans and cutting across his bow...”, and as a result, he took his crew off the ice. He was unable to read the *Farley Mowatt* on the radar because it was too close, less than a hundred feet.

[5] Mr. John Buchanan, a fisher for 22 years testified he went “upon a clamper” to harvest a seal and then returned to his skiff. The wake of the *Farley Mowatt* overturned the clamper just as he had returned to the skiff.

[6] Mr. Patrick Briand, a fisher for 40 years, testified that the *Farley Mowatt* was so close it just barely missed his vessel’s stabilizer. He had never experienced anything like that before.

[7] Mr. Shane Briand was 37 and had fished all of his life. The *Farley Mowatt* came within 100 to 150 feet of his skiff, so close he could see: “...the ponytails of crew members. The *Farley Mowatt* was squeezing the ice and lifting him up.”

[8] The Captains of the vessels called the Coast Guard. Fisheries Officers in turn radioed the Captain of the *Farley Mowatt* and the First Officer on numerous occasions to direct them to remain outside the one half nautical mile limit. However, the Coast Guard officials were either ignored or met with flippant responses.

[9] With respect to a record, I am satisfied with the documents that were entered by the Crown. They are certified copies of the convictions of both Mr. Cornelissen and Mr. Hammarstedt. On January 26th they were convicted pursuant to section 33(1) of the *Marine Mammal Regulations* and each fined \$1,000.

[10] With respect to a Victim Impact Statement, there are no formal statements before the court, however, I think it is important to mention the impact the Defendants’ actions had on the fishers. The Captain of the *Shirley Ann D3* took his

crew off the ice because he was frightened that they would be hit overboard, and only 60 seals were harvested. The Captain of the *Kathy Erlene* stopped harvesting seals because it was unsafe for the crew, and only 700 seals were harvested.

[11] The purpose and principles of sentencing are found in Section 718 of the *Criminal Code* and they are applicable to Regulatory offences, and in particular Section 33 of the *Marine Mammal Regulations*. But before rendering my disposition, it is important to mention that the regulation of the observation of the seal hunt has come about because of the history between the groups, which sometimes was “violent, bloody and disruptive.” The commercial sealers engage in a lawful hunt, and the legislators have tried to strike a reasonable balance between the sealers right to safely pursue their livelihood, and the rights of those individuals who want to observe and express their opinions about the seal hunt. The Regulations have been upheld by the PEI Court of Appeal in 2007, as a demonstrably justified limit on the right to freedom of expression.

[12] Judge Orr, of the Provincial Court of Prince Edward Island, (December 9, 2005 - unreported) stated:

The sealers have a right to engage in the lawful seal hunt, that is their profession, and like farmers, teachers or janitors, they have the right to earn a living. They have a right to hunt seals provided they follow the laws in that regard.

[13] And later in that same case, at p. 18, she states:

There are clearly safety issues, given the nature of the seal hunt and the environment in which it occurs.

[14] Judge McGeigan, in the *IFAW v. Canada*, (1988) 45 C.C.C. (3d) 457 (F.C.A.) stated:

“The right to a livelihood is one of the most fundamental, if not the most fundamental, of economic rights, and may be said to be necessary to the fulfillment of a human being, but it is certainly an aspect of the right to an adequate standard of living.”

[15] The Supreme Court in *R. v. Wholesale Travel Group*, (1991) 67 C.C.C. (3d) 193 (S.C.C.) has stated:

“Governments must have the ability to enforce a standard of reasonable care in activities affecting public welfare. Regulation is absolutely essential for our protection and well being as individuals and for the effective functioning of society.”

[16] Therefore, Canada has the right to regulate the seal industry, and has every right to enforce those regulations and to impose penalties upon those who breach the laws and regulations.

[17] What is a fit and proper sentence for this regulatory offence in all of the circumstances before the court. In the case of *R. v. Grandy and Bell* (1992), 113 N.S.R. (2d) 85, Chief Judge Palmer stated: “General deterrence is the paramount and

overriding principle to be considered in imposing sentence.” And Provincial Court Judge Handrigan, in *Cox and Forsey*, [1999] N.J. No. 264 stated:

“Deterrence must be a primary consideration, both specifically of the accused, and generally of other members of the public, who are inclined to act in the same manner. Penalties must be imposed to reflect the seriousness of the offences, and to achieve the deterrence that is requisite.”

[18] These latter two cases had to deal with the defendants ignoring regulations and exceeding quotas. What I find even more egregious with the case at bar is, not only did the Defendants ignore the requirements of the Regulations, they deliberately put the lives of the fishers in grave danger when they were inside the half nautical mile limit; sometimes within 50 to 100 feet of their boats or skiffs. The principles enunciated are still applicable.

[19] The maximum fine is \$100,000 or imprisonment for one year. That signals to the court the seriousness of this type of offence. The Defendants are repeat offenders, and there was a deliberate disregard for regulatory requirements. The Defendants deliberately followed and interfered with the sealing vessels. They deliberately disrupted those engaged in the lawful activity of harvesting seals. The Defendants deliberately, on numerous occasions, ignored Coast Guard officials instructions to remain outside the one half nautical mile limit and persisted in their

reckless behaviour. The Defendants endangered the lives of the fishers involved in harvesting seals that day, in particular March 30th, and then the Defendants returned on April 11th and 12th and engaged in the same reckless behaviour. Their behaviour was so egregious, it caused seasoned veterans of the sea to fear for their lives.

[20] No one is saying that the Sea Shepherd Society and it's members can not lawfully protest the seal hunt. They have every right to do that. But they do not have the right to flagrantly ignore the laws of this sovereign nation, or endanger the lives of it's citizens who are lawfully engaged in earning a living.

[21] Therefore, I impose the following sentence upon Mr. Cornelissen: For the offence of March 30th, I impose a fine of \$10,000.00, a Victim Fine Surcharge of \$1,500.00, Court Costs in the amount of \$107.00, for a total of \$11,607.00. In default, he will serve 180 days. For the offence of April 11th and 12th for Mr. Cornelissen, I impose a fine of \$10,000.00, a Victim Fine Surcharge of \$1,500.00, and Court Costs of \$107.00, for a total of \$11,607.00, and in default, 180 days in jail. Mr. Cornelissen will be given time to pay that fine, November 12, 2009.

[22] With respect to Mr. Hammarstedt, for the offence of March 30th, I impose a fine of \$10,000.00, a Victim Fine Surcharge of \$1,500.00, Costs of \$107.00, for a total of \$11,607.00, in default, 180 days in jail.

[23] With respect to the offence of April 11th and 12th, 2008, regarding Mr. Hammarstedt, I impose a fine of \$10,000.00, a Victim Fine Surcharge of \$1,500.00, and Court Costs in the amount of \$107.00, for a total of \$11,607.00, and in default, 180 days in jail. Mr. Hammarstedt will be given time to pay, November 12th, 2009.

[24] The Crown has requested an Order pursuant to Section 79.2 of the *Fisheries Act* for five years. Because of the following aggravating factors, I am going to grant the Crown's request for that order for the period of five years: (1) the Defendants' previous record; (2) their flagrant interference with the seal hunt and the danger that they created on March 30th, and returning again on April 11th and 12th. And (3), given the First Officer's response to the Coast Guard official's directions, it is obvious that they have no regard for the laws and regulations of this country, therefore, Mr. Cornelissen and Mr. Hammarstedt, will be prohibited from entering or being within any sealing area, as illustrated and enumerated in Schedule III of the

Marine Mammal Regulations, at any time between March 1st and May 30th for a period of five years from the date of this court's order.

Judge Jean M. Whalen