

**PROVINCIAL COURT OF NOVA SCOTIA**  
**Citation: *R v. Cormier and Muir*, 2023 NSPC 50**

**Date:** 20230726

**Docket:** 8571744 and 8571745

**Registry:** Sydney

**Between:**

His Majesty the King

v.

Kevin Gerard Cormier and Wayne Robert Muir

<b>Judge:</b>	The Honourable Judge Diane McGrath
<b>Heard:</b>	April 13, 2023, in Sydney, Nova Scotia
<b>Decision</b>	July 26, 2023
<b>Charge:</b>	AFR 115.2 FA 43.4(1)
<b>Counsel:</b>	Constantin Draghici-Vasilescu, for the Crown Tony Mozvik, for the Defence

**By the Court: (Orally)**

[1] This is the decision of the court on sentencing in relation to the matter involving Kevin Cormier and Wayne Muir. For purposes of the record, I note that both Mr. Cormier and Mr. Muir, on April 13<sup>th</sup> of 2023, pled guilty to one count of leaving fishing gear unattended in the water for more than 72 consecutive hours, contrary to s. 115.2 of the *Atlantic Fisheries Regulations* thereby having committed an offense under s. 78 of the *Fisheries Act*, as amended. The facts that form the basis of that guilty plea were set out in written form by the crown. They were agreed to by the defence and were read into the record at the time of the sentencing hearing by the crown.

[2] At the time of the sentencing hearing, both crown and defence called evidence. The crown called evidence from a fisheries officer, who spoke to some photographs that showed crab in the traps that were hauled, and testified to the fact that those crab were either in distress or dead and decaying. Mr. Cormier, when he testified, took issue with that representation.

[3] At the sentencing hearing the defence offered an explanation for why the traps were left as they were. The defendants testified that at the relevant time the Callie Rae, the fishing vessel they were operating, was mechanically sound,

meaning it was seaworthy, but was not fit for crabbing as the RSW system, meaning the refrigerated sea water system, was not working and they were waiting for Harris Refrigeration to fix it. This system is necessary to ensure the integrity and viability of the catch from the time the nets are hauled from the water until the vessel returns to shore and is offloaded.

[4] While the boat was not fit for crabbing there was nothing that would have interfered with the defendants hailing out to dump or tend to the traps while they could not fish them, other than the fact they would be paying crew for their time but not reaping any financial gain. It should also be noted that during the relevant time frame the defendant, Wayne Muir, was suffering with an elbow injury which directly impacted his physical ability to fish and haul traps.

[5] Both defendants in this matter, Mr. Cormier and Mr. Muir, are experienced fishermen. Mr. Cormier grew up in a fishing family, if I can use that phrase. He has been fishing his whole life, since he was 17 years old. Mr. Muir has been fishing for ten years, six of those have been with the Cormiers. Both were aware of the 72 hour imposed time limit for unattended gear.

[6] At the sentencing hearing Mr. Cormier in particular, took issue with the testimony of the DFO Officer that the traps when hauled by the Department were

filled with dead and decaying snow crab. Mr. Cormier testified that when he hauled his traps, only after becoming aware that the DFO was hauling and confiscating them, that the crab contained in the traps appeared normal and healthy to him.

[7] The condition of what was in the traps when they were eventually hauled is not the main issue here. Whether the crab in the traps was dead and decaying or a viable catch, while relevant perhaps as an aggravating or mitigating factor, in this instance is not the point. The fact remains that the regulation is in place for a reason.

[8] The fishery is a highly regulated industry. It is also a highly profitable industry. Fish are one of this country's greatest renewable resources but are only a renewable resource if it is properly managed, thus the need for the high degree of regulation. The rules and regulations in place for the fishing industry have been developed over time with expert input. They are designed to ensure that this necessary industry, one that both feeds and employs a significant portion of our population, can thrive and continue to be viable for generations to come. Those that have the privilege of earning a livelihood in this industry also have an obligation. That obligation is to observe the rules and regulations and thus ensure

the continuity and viability of the fishery, not just for themselves but for the generations that follow.

[9] This case involves much more than a technical breach of the regulation in question. The regulation places a 72 hour time cap for leaving gear unattended, three days. After 22 days the DFO started hauling the traps and three days after that the parties went to retrieve the remaining traps themselves. During that entire time frame the defendants did nothing to notify the DFO of the situation they were encountering, they did nothing to try to work with the DFO to find a solution or compromise. In his testimony, Mr. Cormier essentially said that he didn't think the traps were causing any issue or harming anything. Even if that was the case, that is not the point. Those who have the privilege of working in the fishery have the responsibility to follow the laws that govern the fishery. Individual fishers do not get to pick and choose which rules or regulations they follow. Individual fishers do not get to make their own assessment of what rules and regulations are important, nor do they get to choose to ignore certain regulations because they think they aren't causing any harm. The rules are in place for a reason, to ensure the conservation and continued viability of the fishery and marine life in general. The goal is for the benefit of all fishers and as the crown puts it "humanity as a whole".

[10] This court has been provided with a number of cases which are relevant for the basic principles they stand for. I have reviewed all of the cases submitted and while the offences charged and the circumstances surrounding them may not be completely on par with this matter the basic principles and ideals enunciated in them are of importance. Of particular assistance is the decision of Judge Gorman of the Provincial Court of Newfoundland and Labrador in *R. v Payne and Crocker*, found at Tab 10 of the crown's Book of Authorities, where he stated at paragraph 20 with respect to discretionary licence suspensions:

This provision specifically applies to offenders such as Mr. Payne, who have committed an offence while acting pursuant to a valid licence. It is a discretionary order, but it is designed to illustrate the importance placed upon encouraging strict compliance with regulatory provisions. Those who fish pursuant to a commercial fishing licence have been granted a privilege from which great financial gain can be achieved, but this is a privilege which includes responsibilities and obligations. Cancelling or suspending the licence of an offender or prohibiting the offender from applying for a licence, when that offender has breached a condition of his or her licence, is instinctively related to the offender's conduct and thus, inherently proportionate. In such a case, it is the offender him or herself that has placed their ability to fish pursuant to a licence in jeopardy.

[11] And further in paragraphs 25 to 29 Judge Gorman reviews the law and sets out the following principles that flow from the law as follows:

...in conservation cases involving the protection of marine life, the sentencing judge must properly concentrate on the sentencing principles of deterrence...

...prohibition orders constitute the most demonstrative of the remedies employed by the trial judge in his bid to achieve deterrence...

...The length of such a prohibition should be determined by its effectiveness and the shorter effective period would be the appropriate disposition...

...the trial judge must inquire about the impact the prohibition would have on an accused before making the order.

[12] Turning first to the defendant Kevin Gerrard Cormier, I note that this is not Mr. Cormier's first offence. Mr. Cormier has a lengthy and not insignificant record for breaching the *Fisheries Act*.

[13] Mr. Cormier has received hefty fines in the past and licence suspensions, but yet he's back here again. I don't know Mr. Cormier at what point you get the message that the rules apply to everyone and if you continue to ignore the rules or pick and choose which ones you follow, you are jeopardizing your privilege to continue to engage in this industry. It's not the DFO that's doing this to you, you are doing it to yourself by disregarding the rules. If the livelihood of your crew is jeopardized or threatened, it's because of your actions not the actions of the Fisheries Officers, it is your actions and your decisions not theirs.

[14] The crown is seeking a \$10,000 fine which I will accept and impose. As requested, I'm going to give Mr. Cormier one year to pay that fine.

[15] The crown is also seeking forfeiture of the gear seized, which is substantial with each trap being valued at \$1000. With 40 traps having been seized that amounts to an additional loss of \$40,000. Given Mr. Cormier's history, I find this request by the crown to be entirely appropriate and I am ordering forfeiture of the gear seized with the proceeds of the sale to go to conservation research initiatives of the Department of Fisheries and Oceans.

[16] The final submission of the crown relates to the issue of license suspension. The crown is seeking a one year personal fishing licence suspension. In arguing that one year is appropriate, the crown points to the recent three month suspension imposed on Mr. Cormier in 2022, which they argue appeared to have had little effect given this subsequent charge. The crown is suggesting that the suspension go into effect on September 1. I note the last suspension was delayed as well and went into effect on November 28 of 2022.

[17] Defence has suggested that a licence suspension would not be appropriate given their position that no harm was done by Mr. Cormier in committing this offence and further, a year suspension would cause great financial hardship to Mr. Cormier, his family and his employees. As I stated earlier, if such is the case, Mr. Cormier has no one to blame but himself. However, I am mindful of the principles to be applied in considering any licence suspension as articulated by Judge



Gorman, and in particular the principle that the length of any prohibition should be determined by its effectiveness and the shorter effective period would be the appropriate disposition. I am therefore going to impose a four month personal licence prohibition on Mr. Cormier starting September 1, 2023 and ending December 31, 2023. That takes Mr. Cormier out of play, so to speak, for some significant periods when he would otherwise be actively fishing. Mr. Cormier I hope you get the message that if you continue to violate the *Fisheries Act*, you are jeopardizing your future in this industry.

[18] Turning now to Wayne Robert Muir, I note Mr. Muir comes before this court as a first time offender. There have been no previous convictions for Mr. Muir under the *Fisheries Act*. The crown has taken the position that responsibility for these offences is shared equally by the two defendants and thus the crown is also seeking a \$10,000 fine, pointing to the length of time the traps were left unattended as an aggravating factor. The crown however also acknowledged they know very little about Mr. Muir's financial situation and ability to pay such a fine. Mr. Muir in his testimony was somewhat evasive about his income last year saying he thought it was about \$150,000, but didn't know what he claimed on his income tax return. I'm not sure whether that was simply convenient or if Mr. Muir honestly did not know what his income was. I must admit I find it somewhat odd

that he would only have a vague notion of how much he earned last year. Defence argued that as a first time offender Mr. Muir should be liable to a fine more in the range of \$5,000. The crown is also seeking forfeiture of any seized fishing gear that is associated with Mr. Muir's offence.

[19] While I understand the logic in the crown's submission that responsibility should be shared equally, Mr. Muir is a first time offender. However, that must be balanced against the very aggravating factor of the time that elapsed before any thought was given to dealing with the traps that were left unattended. It was not until the DFO began hauling and seizing traps that either party sprang into action. Given the egregiousness of the conduct the fine should be somewhat elevated and I am imposing a fine in the amount of \$7,500 with one year to pay.

[20] I am also ordering forfeiture of any fishing gear seized associated with the offence, the proceeds of the sale of which is to be applied to conservation efforts and studies conducted by the DFO.

Gentlemen you have to stay to sign the fine orders. The forfeiture orders and suspension orders are hereby granted.

McGrath, JPC