IN THE PROVINCIAL COURT OF NOVA SCOTIA
Citation: R v. Ivy Fisheries Ltd., 2006 NSPC 5

Date: 2006-03-01
Docket: 1145495, 1145521, 1145509, 1145543, 1145493, 1145517, 1145518, 1145519, 1145505, 1145506, 1145507, 1153632, 1145525, 1145530, 1145532, 1153640, 1153634, 1153635
Registry: Bridgewater

Between:

R.

v.

Andrew W. Henneberry, Clark Henneberry, Marcel Henneberry, Wesley Henneberry, Paul R. Parnell, James P. Ryan, Gregory B. Smith
Ivy Fisheries Limited
Clark Henneberry, Director, Ivy Fisheries
Marcel Henneberry, Director, Ivy Fisheries
Wesley Henneberry, Director, Ivy Fisheries

Defendants

Judge:	The Honourable Judge Anne E. Crawford
Heard:	March 1, 2006, in Bridgewater, Nova Scotia
Charges:	33 FA x 5, FGR 22(7) x 7; 13(1)(c) AFR x 2; 14(1)(b) AFR x 3; 14(1)(a) AFR
Counsel:	Gerald A. Grant, for the Crown Thomas E. Hart, for the Defence David Demirkan, for the Defence

By the Court:

[1] The defendants are charged with numerous offences under the Fisheries Act and its regulations. I will deal first with issues relating to all of the charges, and then with the issues and facts of each individual charge.

PRELIMINARY ISSUES

1. *Charter* s. 11(b): trial within a reasonable time

[2] Following the completion of the trial and submission of written briefs for closing argument, the defence made a second application for a stay of all charges because of an alleged breach of the defendants' *Charter* s. 11(b) right to trial within a reasonable time.

[3] The defence submits and the Crown agrees that, in accordance with the analysis in *R. v. Morin*, [1992] 1 S.C.R. 771, the overall length of the delay from charge to this date in the proceedings is such as to call for a detailed inquiry. However, in my decision of January 8, 2004 I held that there had been no *Charter* violation to that point. I see no need to revisit that decision and the *Morin* analysis in this application will begin at that date.

[4] For ease of reference I attach as a schedule to this decision a chronology of events and elapsed days, as submitted by the Crown in its brief on this issue, to which I have added an additional column showing my conclusion as to the *Morin* category into which each event falls.

A. Length of delay

[5] I note that almost exactly two years has passed from the date of the January 8, 2004 decision to the hearing of this second application on January 16, 2006. Certainly this is sufficient to warrant further inquiry.

B. Waiver of time periods

[6] Waiver of a defendant's s. 11(b) right can be either implicit or explicit. Although mere silence is not enough to constitute waiver, agreement to future trial dates and/or accommodating the needs of defence counsel in regard to scheduling

generally counts against the defence in calculating delay. *R. v. Morin*, *supra*, at p. 791; *R. v. Barkman* [1994] M.J. No. 362 (C.A.) at paras. 34-35.

[7] The defendants expressly waived 70 days between February 21, 2005 and May 2, 2005. I also find that they have implicitly waived the period between May 2 to November 28, 2005 (210 days) by agreeing to dates for the submission of written closing argument and asking for a date to conduct oral arguments. It is to be noted that earlier dates were available and that the agreed dates were chosen at least in part to accommodate the schedule of defence counsel.

C. Reasons for the delay

(i.) inherent time requirements

[8] The time required for the actual trial itself – the calling of evidence – is part of the inherent time requirements of the case and is not to be counted in this assessment. In this case, that includes 144 days as follows:

January 8-13/04	from *Charter* decision to and including trial continuation
February 6- Mar 10/04	from further *Charter* decision to and including completion of Crown evidence
June 23/04-July 23/04	Time required to deal with issue of admissibility of documents
Dec 7/04-Feb 21/05	from completion of defence motions to scheduled date for calling of defence evidence

(ii) actions of the defendant

[9] Delays caused by, consented to, or requested by an accused (or his counsel) cannot be used in support of a claim that a s. 11(b) violation has occurred. This is not to blame the defence for its procedures and strategy, but simply to state the obvious, that if a defendant chooses to employ a given tactic he cannot then use the time required to deal with it to support a claim for unreasonable delay. Otherwise, there

would be an incentive to engage in delay simply for the sake of delay. *R. v. MacDougall* [1998] S.C.J. No. 74, at para 48.

[10] In this case I find that the following periods of time are attributable to actions of the defendants:

January 13-February 6/04	Time required to hear and decide defendant's *Charter* motion
March 10-April 28/04	Time required to hear and decide a further defence *Charter* application
April 28-June 23/04 July 23-Sept 24/04	Time required to hear and decide defence directed verdict motion
Sept 24-December 7/04	Time required for defence to decide whether or not to call evidence

(iii) actions of the Crown

[11] I find that the adjournment of oral closing argument from November 28, 2005 to January 16, 2006 was caused in part by the Crown action of filing an additional late brief on November 22, 2005. The Crown attempted to characterize this further brief as being oral argument submitted in writing, but as it was an extensive answer to issues raised by the defence brief filed in June and not covered in the original Crown brief, I find this characterization incorrect. Had the Crown dealt with these issues properly in its original brief at least part of this delay would not have occurred.

[12] But the defence is also at least partly responsible for this delay, as it requested the adjournment not only to reply to the late Crown brief but also to prepare for and make this second s. 11(b) *Charter* motion.

[13] I therefore apportion responsibility for these 49 days equally to Crown and Defence.

(iv.) Limits on Institutional Resources

[14] I find no delay in this period due to such limits. Each step in the case was scheduled as promptly as possible, taking into account the time required for preparation on each side and the availability of counsel.

(v.) Other reasons for the delay

[15] There were no other reasons for delay.

Summary of reasons for delay

[16] In summary, then, I find that, of the time elapsed from January 8, 2004 to January 16, 2006, 280 days were waived by the defence, either explicitly or implicitly; 144 days were attributable to inherent case requirements; 290 days were attributable to the defence; and 25 days were attributable to the Crown.

D. Prejudice to the Accused

[17] Prejudice in this context may be inferred from the length of the delay or it may be proven by the accused. It may be to the liberty interest of the accused, his security interest, or his fair trial interest. As the defendants here were neither in custody nor subject to restrictions, and as the trial has now been concluded, only the security interest is at issue here. Given the extremely small proportion of the elapsed time that is attributable against the Crown, I find that in this case actual prejudice to the defendants security interest has been slight.

Conclusion on Charter issue

[18] Adding the twenty-five days of delay attributable to the Crown under this *Charter* application to the seven months and three weeks so attributable under the earlier application, and considering that total against the total time requirements of the case, including the time waived by defence or attributable to the defence, I do not find that the defendant has established to any requisite degree that a stay is warranted here.

Other general issues

[19] Substantive general issues raised by the defence include:

> 2. In regard to charges alleging a breach of licence conditions, is such a breach an offence under the Fisheries Act?
>
> 3. If so, what are the essential elements of each breach which the Crown must establish?
>
> 4. What reliance can be placed on the documentary evidence entered by the Crown?

2. Is it an offence under the *Fisheries Act* to breach a licence condition?

[20] The defence submits that s. 22(7) of the *Fisheries (General) Regulations* and s. 13(1) and 14(1) of the *Atlantic Fishery Regulations* are *ultra vires* the *Fisheries Act*. It appears to base this argument largely on the fact that a bill was before Parliament in June, 2005 to amend the *Fisheries Act* to specifically make it an offence to breach terms and conditions of a lease, licence or permission granted under the Act. This was apparently recommended as a way to deal with a similar section in the Ontario Fishery Regulations, which, in the opinion of the Parliamentary Standing Committee scrutinizing regulations, was *ultra vires*.

[21] Be that as it may, the duty of this Court is to construe statutes and regulations as they presently exist in the light of s. 12 of the *Interpretation Act* which states:

> 12. Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[22] The Supreme Court of Canada has recently approved the modern approach to the interpretation of statutes espoused in Driedger's authoritative *Construction of Statutes.* In *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559 Iacobucci, J. stated for the court:

> 26 In Elmer Driedger's definitive formulation, found at p. 87 of his Construction of Statutes (2nd ed. 1983):
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense

> harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

> Driedger's modern approach has been repeatedly cited by this Court as the preferred approach to statutory interpretation across a wide range of interpretive settings: see, for example, *Stubart Investments Ltd. v. The Queen*, [1984] 1 S.C.R. 536, at p. 578, per Estey J.; *Québec (Communauté urbaine) v. Corp. Notre-Dame de Bon-Secours*, [1994] 3 S.C.R. 3, at p. 17; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *R. v. Gladue*, [1999] 1 S.C.R. 688, at para. 25; *R. v. Araujo*, [2000] 2 S.C.R. 992, 2000 SCC 65, at para. 26; *R. v. Sharpe*, [2001] 1 S.C.R. 45, 2001 SCC 2, at para. 33, per McLachlin C.J.; *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84, 2002 SCC 3, at para. 27. I note as well that, in the federal legislative context, this Court's preferred approach is buttressed by s. 12 of the *Interpretation Act*, R.S.C. 1985, c. I-21, which provides that every enactment "is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects".

[23] This is so even in regard to penal statutes, as stated in *R. v. Hasselwander*, [1993] 2 S.C.R. 398 at para. 30:

> As Professor Côté has pointed out, this means that even with penal statutes, the real intention of the legislature must be sought, and the meaning compatible with its goals applied.

[24] Obviously, one of the objects of the *Fisheries Act*, as stated in s. 43 (a), is “the proper management and control of the sea-coast and inland fisheries”; and to this end the Governor in Council is authorized in s. 43 to make regulations, *inter alia*:

> (f) respecting the issue, suspension and cancellation of licences and leases;
>
> (g) respecting the terms and conditions under which a licence and lease may be issued;

[25] It is pursuant to the authority granted under s. 43 of the *Fisheries Act* that the *Fishery (General) Regulations* and the *Atlantic Fishery Regulations* were passed. The sections of those regulations to which the defence takes specific exception read as follows:

> *Fishery (General) Regulations*

> 22. (7) No person carrying out any activity under the authority of a licence shall contravene or fail to comply with any condition of the licence. SOR/93-333, s. 4.

Atlantic Fishery Regulations

> 13. (1) Subject to section 15 and subsection 51.1(2), no person shall use a vessel, and no owner of a vessel shall permit another person to use the vessel, in fishing for any species of fish referred to in these Regulations unless
>
> (a) a vessel registration card has been issued in respect of the vessel;
>
> (b) the use of the vessel to fish for that species of fish is authorized by a licence; and
>
> (c) subject to subsection (2), the person who is using the vessel is named in the licence referred to in paragraph (b).
>
> 14. (1) Subject to subsection (4) and section 15, no person shall fish for any species of fish set out in Schedule I unless
>
> (a) he holds a fisher's registration card; and
>
> (b) he is authorized, pursuant to subsection (2), to fish for that species.

[26] The defence argues that these sections create offences, but that the *Act* does not convey a regulatory power to do so. The Crown replies that the offences are not created by the regulations but by s. 78 of the *Fisheries Act* which makes it an offence to "contravene this Act or the regulations" and sets out penalties for such contraventions.

[27] I agree with the Crown that the whole tenor and intent of the *Act* is to create an enforceable regime for the management of the fisheries. To hold that Parliament intended to set up a scheme for licencing and controlling fishing without a mechanism for meaningful enforcement, other than licence suspensions, would be to make a laughing-stock of Parliament. The obvious intent of s. 78 was to provide for enforcement of all regulations properly enacted under the authority of the *Act*. As no one has suggested that the regulations referred to are not within the authority granted to issue and set terms and conditions of licences, I find that these regulations are not *ultra vires* and that they are enforceable under s. 78 of the *Fisheries Act.*

2. Elements of charges relating to breaches of licence conditions

[28] The defence states at para 14 of its June 15, 2005 closing argument:

> 14. Most of the charges in this matter relate to licence conditions. It is submitted that the onus is on the Crown to establish what conditions apply, to whom they apply, that the fisher in question knew of the conditions, and that the fisher in question saw the conditions, and that the conditions in question were on board the vessel at the time of the alleged infraction.

[29] Although it is clear that an element of each offence of breach of licence conditions is that the condition was one attached to the licence under which the defendant was fishing, it is equally clear that these regulatory offences are strict liability offences within the second category as stated in *R. v. Sault Ste. Marie (City)* (1978), 40 C.C.C. (2d) 353 (S.C.C.):

> 2. Offences in which there is no necessity for the prosecution to prove the existence of *mens rea*; the doing of the prohibited act *prima facie* imports the offence, leaving it open to the accused to avoid liability by proving that he took all reasonable care. This involves consideration of what a reasonable man would have done in the circumstances. The defence will be available if the accused reasonably believed in a mistaken set of facts which, if true, would render the act or omission innocent, or if he took all reasonable steps to avoid the particular event. These offences may properly be called offences of strict liability.

[30] Thus, once the Crown has established that a condition attached to the licence under which the defendant was fishing was breached, the onus shifts to the defence to establish on a balance of probabilities a defence of due diligence. In other words, there is no requirement on the Crown to prove any element of *mens rea*, including knowledge on the part of the fisher or that the licence was aboard the vessel, as failure to have it aboard would constitute another offence under the Act and regulations. Under the regulatory scheme it is the responsibility of the licence holder and anyone fishing under him to ensure that he has received the licence conditions, attached them to the licence, has the licence and conditions aboard the vessel at all times while fishing and abides by all of them.

4. Documentary evidence

[31] In its supplementary brief filed on January 13, 2005, the defence raised again the issue of the effect of the documentary evidence relied on by the Crown. The documents in this case fall into two categories: business records of the Department of Fisheries and dockside monitoring companies; and documents seized from the offices of the defendant Ivy Fisheries Limited.

[32] Much of what the defence now argues goes to admissibility, which was dealt with on July 24, 2005, when all of the documents on which the Crown now relies were held to be admissible, either by consent or by decision. However, I will attempt to deal with the defence arguments generally.

[33] With respect, the defence seems not to fully understand the nature and purpose of documentary evidence. Contrary to what the defence argues, documentary evidence can be direct evidence as stated in *McWilliams' Canadian Criminal Evidence* 4th ed. at 21:20:

> A document may be tendered as proof of the truth of its contents, that is as direct evidence, or as original evidence. It may be original evidence and not be proof of its contents. It is important to keep clearly in mind what the purpose is, because this affects the mode of proof.

[34] Also, documents seized from the accused are admissible, not under the business records exception to the hearsay rule, but as

> Documents made by or under the direction of an accused . . . tendered to prove the truth of the contents as an admission against interest. [*McWilliams, op.cit.* 21:20:10]

or, more generally, as documents found in the possession of the accused, which are *prima facie* admissible against him, subject to relevancy being shown. *McWilliams, op.cit.* 21.30.10.

[35] As the defence has admitted that all of the documents before the court "have been admitted as meeting the basic test of relevance" (Defence closing arguments, January 13, 2006, p. 8), all of the documents seized are admissible against the defendants either for the truth of their contents or for any other relevant purpose, subject to any explanation proffered by the defence (*McWilliams, op.cit.* 21.30.10 and cases cited therein) and subject to the court's determination of the probative value to

be accorded to each individual document in the over-all context of the Crown's case on each charge before the court.

INDIVIDUAL CHARGES

[36] As stated above, these are all strict liability offences; in regard to each of them once the Crown has established a *prima facie* case, the onus shifts to the defendant to establish a defence of due diligence or mistake of fact or law. As no such evidence was called by the defence on any of these charges, the issue in each charge will be simply whether or not the Crown has met its initial burden, which in the absence of any defence evidence, will become proof beyond reasonable doubt. Issues raised by the defence in regard to each charge will be considered within this over-all framework.

[37] At the beginning of the case the defence admitted the two elements of identity and place in regard to each charge, so it will not be necessary to consider proof of those elements in this decision.

Count #2: Clark Andrew Henneberry

[38] The charge reads:

> did on or between October 3, 2000 and November 5, 2000, inclusive, within Canadian Fisheries Waters adjacent to the coast of Nova Scotia while carrying out any activities under the authority of a licence, contravene or fail to comply with any condition of licence, to wit: did fail to enter confirmation number immediately in the comment field of the Atlantic Bluefin Tuna Log Document as specified in item 20 of the 2000 Bluefin Tuna Fishing Licence Conditions Maritimes Region 4VsW, 4x & 5 (EXCEPT FOR 4Wd) contrary to s-s. 22(7) of the Fishery (General) Regulations, SOR/93-186, thereby committing an offence under s. 78 of the *Fisheries Act*, R.S.C. 1985, c. F-14;

[39] All of the elements of this offence, viz., date, licence, condition, and the failure to enter the confirmation number as required are established by documents entered as exhibits in this matter: the company licence issued to Jenny May Fisheries, the licence conditions attached to that licence showing the vessel fishing the licence as "Becky H.", and the log document kept by the captain, shown as the defendant, Clark Henneberry. Item 20 in the conditions requires the confirmation number to be entered immediately in the comment field of the Tuna Log.

[40] These documents establish a *prima facie* case that the defendant Clark Henneberry was captain of the fishing vessel *Becky H.* for a one-day trip from October 3-4, 2000; that he was operating under fishing licence “Tun 17" (also identified as Licence # 109428 (ATUN00017)) to be operated by Jenny May Fisheries Ltd.; that Condition 20 of that licence required him to immediately write the confirmation number in the comments section of the Atlantic Bluefin Tuna Log Document (exhibit 4) which he was required to keep; and that he did not do so, either then or later, as that section of the Log is blank regarding the two tuna caught that day.

[41] Indeed, counsel for the defence admitted that no confirmation numbers were entered in this Log or in Logs for subsequent trips by the same boat under the same Captain and licence on October 8 (Exhibit 7 – 3 tuna), October 13-14 (exhibit 12 – 8 tuna), October 14-16 (exhibit 15 – 7 tuna), October 24-26 (exhibit 20 – 3 tuna), October 27 (exhibit 23 – 4 tuna), November 1-2 (exhibit 26 – 1 tuna), November 4-5 (exhibit 29 – 4 tuna). The defence also admitted that such confirmation numbers had been issued by Atlantic Catch Data Limited for these 32 tuna.

[42] The defence submits that a mere signature cannot establish the identity of the signer without further proof by a witness who saw the person sign. That may be so for other types of documents; however the Log Document is required to be maintained by the Captain of the vessel as part of his duties under the Fisheries Act and regulations and as such they are at least *prima facie* evidence of the facts contained therein, and I accept them as such.

[43] The defence also attempted to rely on a defence of due diligence and officially induced error; however, no one testified as to having been confused by the alleged inconsistency in Log Book instructions and licence conditions, so that there is no evidence before the court on which to base such a defence.

[44] As the defence called no evidence to rebut the facts established by the Crown or to found a defence, I find that the defendant Clarke Henneberry is guilty of this offence as charged in regard to the 32 tuna in question.

Counts 3 and 4: Wesley L. Henneberry

[45] These charges allege that Wesley Henneberry :

> . . . did on or between October 3, 2000 and October 11, 2000, inclusive, within Canadian Fisheries Waters adjacent to the coast of Nova Scotia while carrying out any activities under the authority of a licence, contravene or fail to comply with any condition of a licence, to wit: did fail to return immediately all other species of fish caught incidentally to the water from where it was taken as specified in item 8 of the 2000 Exploratory Porbeagle Shark Licence Conditions, contrary to s-s. 22(7) of the Fishery (General) Regulations, SOR/93-186, thereby committing an offence under s. 78 of the *Fisheries Act*, R.S.C. 1985, c. F-14;
>
> . . . did [at the same times and place] contravene or fail to comply with any condition of licence, to wit: did use the exploratory shark licence concurrently with another large pelagic licence, to wit: Bluefin Tuna Licence, as not permitted by item 9 of the 2000 Exploratory Porbeagle Shark Licence Conditions, . . .

[46] The essential elements the Crown is required to prove in regard to each count are: date, licence and condition; in regard to count 3: fail to return a fish other than porbeagle shark: and, in regard to count 4, use the shark licence concurrently with another large pelagic licence.

[47] Exhibit 32 contains the fishing licences issued to Wesley Henneberry for the year 2000. Of interest in this case are the exploratory porbeagle shark licence (#108030) and the two tuna licences (#109269 and #109441). The porbeagle shark licence and the restricted tuna licence were both longline licences, while the permitted gear for the tuna unspecified licence was tended line angling. All three were to be operated only by Wesley Henneberry on the fishing vessel *I.V.Y.*.

[48] Exhibit 33 contains the licence conditions for the porbeagle shark licence. Conditions 6, 8 and 9 state:

> 6. The only species of fish that is permitted to be caught and retained is PORBEAGLE SHARK. You are permitted to retain an incidental catch of other shark species.
>
> 8. You are immediately required to return all other species of fish caught incidentally to the water from where it was taken, and, where it is alive, in a manner that causes it the least harm.

> 9. Vessels are not permitted to use this exploratory shark licence concurrently with any other large pelagic licence, i.e., swordfish long line, blue fin, "other" tuna or swordfish harpoon.

[49] Exhibit 34 is the Atlantic Bluefin Tuna Log Document signed by the defendant Wesley Henneberry for the fishing trip aboard the *I.V.Y.*. dated October 3 to 5, 2000. It shows that the defendant was fishing under licence number 108030 (the porbeagle shark licence) and that he landed and tagged 3 bluefin tuna on that trip.

[50] The authorization number 343224 entered on the Log Document corresponds to an "auth# to fish" next to an entry for the *I.V.Y.* on a Departure Tracking Sheet entered as Exhibit 35. Fisheries Officer Scott Mossman testified that this Tracking Sheet was a document generated by Atlantic Catch Data, a company that contracts with the Department of Fisheries and Oceans to monitor fishing activity, including keeping track of fishing vessels as they go to sea and return, as they hail in their catches, and weighing and recording the catches when they land.

[51] The Departure Tracking Sheet shows that the *I.V.Y.* hailed out on October 3, 2000 under both the porbeagle licence and the tuna (unspecified) licence #109441; the authorization # entered on the Tuna Log Document is the one issued for the tuna licence, rather than that issued for the porbeagle licence.

[52] Exhibit 38 includes a Bluefin Tuna Weighout Tally produced by observer Harold Neil on an Atlantic Catch Data Limited form; it shows the statistics on each of the three tuna landed on that trip and states that the licence number applicable is 108030.

[53] From the foregoing, I am satisfied that the Crown has established a *prima facie* case that the defendant, while fishing under the exploratory porbeagle shark licence, caught tuna and did not immediately return them to the water as required under condition 8 of that licence, and was fishing the shark licence and the tuna licence concurrently.

[54] Similarly, Exhibits 39, 40, 42 and 43, and 44, 45, 47 and 48(a) establish the Crown's cases against the defendant in regard to 8 tuna caught on two subsequent trips from October 5 to 8, 2000 and October 10-11, 2000.

[55] Corroborating evidence for these charges is found at Exhibits 102 and 104, handwritten records seized from Ivy Fisheries Limited office, which show that "Wesley" was captain of the *I.V.Y.* during the relevant time and, as such, received a captain's share in the proceeds of sale of those trips.

[56] The defence made lengthy submissions in regard to the unreliability of the testimony of Scott Tanner, a fisher who testified that in October 2000 he saw the *I.V.Y.* long-lining close to shore in the vicinity of Port Medway, Queens County, Nova Scotia. Certainly if Mr. Tanner's testimony were the only evidence against the defendant, it would not be sufficient to establish even a *prima facie* case; however, even considering the fallibility of eye-witness testimony in general and the weaknesses shown by the defence in Mr. Tanner's testimony in particular, it does provide some minor corroboration for the facts alleged by the Crown, i.e. that at the time the defendant's vessel appears to have been long-lining, as required under the shark licence, rather than angling, as required by the tuna (unspecified) licence.

[57] The defence also submitted in regard to count #4 that Condition 9 is "vague and ambiguous" and asks rhetorically, "When is a licence being 'used'?" The defence also had difficulty with the word "concurrent" and submitted that, to be found guilty, the Crown would have to establish that the defendant was "doing two different types of fishing or fishing under two different licences at the same time."

[58] However, it seems clear that the word "use" in Condition #9 is not accidental. It is broader than the term "fish"; and, whatever else it may mean, in this context, it is broad enough to include hailing out under two licences for the same trip, and I so find.

[59] In regard to the defence contention that the Crown is attempting to create a new offence of "dual hailing", it is an offence to hail out under two licences when conditions of one of the licences prohibit the licencee from using the other concurrently with it, which is what is charged here.

[60] Finally, the defence submits that charges 3 and 4 are inconsistent. I find no inconsistency here. The defendant used two licences by hailing out on both; thus he is guilty of breaching condition 9 of the porbeagle licence. He stated that he was fishing the porbeagle licence, which requires him to return all incidental catch immediately. Clearly tuna are not shark; so the tuna could only be an incidental catch

under the porbeagle licence. They were not returned; they were landed and sold. The defendant is therefore guilty of breaching condition #6 of the porbeagle shark licence.

[61] In summary, I find that the Crown has established a *prima facie* case on each of these charges; and, the defence having called no evidence to establish a defence to these strict liability offences, I find the defendant guilty on both counts.

Count #5 – Wesley Henneberry

[62] The count reads:

> did on or between October 29, 2000 and November 08, 2000, inclusive, within Canadian Fisheries Waters adjacent to the coast of Nova Scotia while carrying out any activities under the authority of a licence, contravene or fail to comply with any condition of licence, to wit: did fail to hail to a Dockside Monitoring Company immediately after a Bluefin Tuna had been caught as specified in item 20 of the 2000 Offshore Tuna Licence, contrary to s-s. 22(7) of the Fishery (General) Regulations, SOR/93-186, thereby committing an offence under s. 78 of the *Fisheries Act*, . . .

[63] Exhibit 58 is an Atlantic Bluefin Tuna Log Document signed by Wesley Henneberry as captain. It is a document that he was required to maintain pursuant to s. 61 of the *Fisheries Act* and Condition 25 of the Tuna (Unspecified) Licence #142645 (AENT00005) under which he was fishing. I therefore find that Exhibit 58 is evidence against the defendant of the facts contained therein.

[64] It shows – and the testimony and report (Exhibit 60) of Fishery Observer David Murphy confirms – that the defendant operated the vessel *Ivy Rose* on a trip October 29-30, 2000 under a licence he stated as "#10474NFD". Fisheries Officer Scott Mossman explained that this was a reference to a company licence held by the company 10474 Newfoundland Limited entered as Exhibit 114. The official numbers for this licence as shown therein are #142645 or AENT00005.

[65] Condition 20 of that licence states:

> You are further required to hail from sea to a Dockside Monitoring Company that has been approved or designated by the Department of Fisheries and Oceans immediately after a bluefin tuna has been caught and tagged. The hail must include the vessel name; the vessel registration number, the company name; the Captain's name; the serial number of the bluefin tuna tag; the accurate round weight of the bluefin tuna; and accurate dressed weight of other fish by species; the fork and

> dressed length of the tuna; the date; local time (using the 24 hour system); area fished; and place where you intend to land your fish.

[66] A comparison of Exhibit 58, the log kept by the defendant, with Exhibit 27, a Tuna Tag Notification Report kept by Atlantic Catch Data Monitoring Company shows that of the fourteen tuna caught by the defendant on that trip, the first was hailed in thirteen hours and 49 minutes after the log states it was caught and the last was hailed in one hour and thirty minutes after it was caught. The Notification Report has all fourteen fish listed one after the other at consecutive times of 8:19 to 8:29 for the eleven fish caught on October 29, 2000 and 11:28 to 11:30 for the three fish caught on the 30th. The caller in all cases is noted as "Andy".

[67] From the documents it seems clear that, rather than calling in each fish as it was caught, the defendant waited and made one call for each day's catch.

[68] Exhibit 61, the Atlantic Bluefin Tuna Log Document for a trip November 1-6, 2000, and Exhibit 27, *supra*, establish that the defendant was captain on the *Ivy Rose* for that trip and, fishing under the authority of the same licence, caught one blue fin tuna, tag 3242, at 10:00 a.m. on November 3, which was hailed in at 11:22 a.m. the same day, a time lapse of one hour and twenty-two minutes. This information is confirmed by Exhibit 62, the Tuna Trip Summary, Bluefin Tuna Weighout Tally, Field Receipt and DFO Summary Report.

[69] Similarly, Exhibit 63, an Atlantic Bluefin Tuna Log Document for a trip November 7-8, 2000, Exhibit 30, a Tuna Tag Notification Report, and Exhibit 65, the Tuna Trip Summary, Bluefin Tuna Weighout Tally, Field Receipt and DFO Summary Report, confirm the same in regard to a bluefin tuna tagged as #3241, which was caught at 2200 hours on November 7, 2000 and hailed in at 2339 hours, a time lapse of one hour 39 minutes.

[70] The defence argues that the Crown adduced no evidence to establish that Wesley Henneberry was a registered fisher for the year 2000; however, Exhibit 32, referred to above, shows Wesley Henneberry's fisher registration number as 7-270559-02.

[71] The defence also argues that hailing in all fish at once is (a) normal procedure for long-line tuna fishing and/or (b) should be considered as coming within the meaning of "immediately" in Licence Condition 20.

[72] The defence called Troy Atkinson, general manager of Hi-Liner Fishing Gear and Tackle and president of the Nova Scotia Swordfishermen's Association, who testified that since the year 2000 there have been changes in the licencing and licence conditions in regard to bluefin tuna, to allow a by-catch of tuna in some long-line fisheries and to allow hail-in at the end of the haul-back in long-line operations. He said that these changes were made for the convenience of fishers, as it is difficult to stop the haul to call in each time a tuna is caught and it is also expensive to make multiple satellite telephone calls when one would do.

[73] Apparently the defence led this testimony to establish a defence of due diligence, relying on cases such as *R. v. Ross,* [2001] N.S.J. No 216 (N.S.S.C.), *R. v. Thibeau,* [1996] N.S.J. No 610 (N.S.S.C.) and similar cases from Newfoundland and New Brunswick, all of which define the words "forthwith" or "immediately" to mean, "as soon as reasonably possible in the circumstances" or "within a reasonable time and under reasonable circumstances in each case". Unfortunately for the defendant, such general testimony, without specific evidence as to the individual circumstances during these three trips, cannot form a basis on which to depart from the usual meaning of the word, which, according to the American Heritage Dictionary, means, "Occurring at once; instant," or "Of or near the present time." None of the time lapses in hailing established by the Crown in this case can be considered to fall within the duty to hail "immediately".

[74] On this charge I find the defendant Wesley Henneberry guilty.

Count #6 – Wesley Henneberry

[75] This count reads:

> did on or between October 24, 2000 and December 16, 2000 inclusive, within Canadian Fisheries Waters adjacent to the coast of Newfoundland, permit another person to use a vessel as operator in fishing for any species referred to in the Atlantic Fishery Regulations, 1985, SOR/86-21without the person using as operator being named in the licence authorizing the vessel to fish for that species of fish, contrary to s-s. 13 (1) (c) of the Atlantic Fishery Regulations, 1985 SOR/86-21, thereby committing an offence under s. 78 of the *Fisheries Act* R.S.C. 1985, c. F-14;

[76] Atlantic Fishery Regulations 1985, s. 13 states:

> 13. (1) Subject to section 15 and subsection 51.1(2), no person shall use a vessel, and no owner of a vessel shall permit another person to use the vessel, in fishing for any species of fish referred to in these Regulations unless
>
> (a) a vessel registration card has been issued in respect of the vessel;
>
> (b) the use of the vessel to fish for that species of fish is authorized by a licence; and
>
> (c) subject to subsection (2), the person who is using the vessel is named in the licence referred to in paragraph (b).

[77] The defence raises as a preliminary point that there is no proof that the defendant Wesley Henneberry owned the vessel in question, the *I.V.Y.* Indeed, the evidence of Fisheries Officer Scott Mossman was that the *I.V.Y.* was owned by Ivy Fisheries Limited.

[78] The Crown argues in reply that "owner" in the context of s. 13 really means "the person in whose name the vessel is registered by the Department of Fisheries and Oceans, Canada". That may well be, although the Crown cites no law or precedent to support that contention. However, as a director of the company which owned the vessel, under s. 78.2 of the *Fisheries Act* if he "directed, authorized, assented to, acquiesced in or participated in the commission of the offence" he can be found guilty as a party to it.

[79] The documentary evidence before the Court, supplemented by testimony of Fisheries Officer Scott Mossman and Fisheries Observers David Murphy and Anthony Pavlounis, establishes that:

> 1. Gregory Burton Smith signed Atlantic Bluefin Tuna Log Document (Exhibit 52) as captain of the *I.V.Y.* for a trip from October 24 to November 6, 2000, during which, according to the log, he caught seven tuna under licence #109441 (Exhibit 32), which was issued to Wesley Henneberry and the *I.V.Y.* Condition 1 of that licence states, "The vessel is to be operated by Wesley Henneberry only."
>
> 2. Meanwhile, as noted under charge 5 above, Wesley Henneberry was at sea aboard the *Ivy Rose* for two trips, October 29-30, 2000 and November 1-6, 2000 and caught tuna under the company licence, #142645 (AENT00005).

3. Exhibit 53, an Atlantic Bluefin Tuna Log Document signed by Gregory B. Smith as captain establishes that the defendant, caught 10 tuna under the same licence on a trip from November 7 to November 13, 2000 on the *I.V.Y.*

4. A subsequent Atlantic Bluefin Tuna Log Document (Exhibit 54), also signed by Gregory Burton Smith as captain, shows that Mr. Smith made another trip on the *I.V.Y.* from November 14 to November 23, 2000, during which he caught six tuna under licence #109441.

4. Exhibit 55, another Atlantic Bluefin Tuna Log Document, is proof that James Phillip Ryan, as captain of the *I.V.Y.* fished under the authority of licence # "TUN5009" (the old number for 109441) on a trip from December 4-16, 2000 and caught one tuna.

5. At the same time Wesley Henneberry was at sea aboard the *Ivy Rose*, as established by the direct testimony of Fisheries Observer Anthony Pavlounis, from December 4 to December 15, 2000, although the Atlantic Bluefin Tuna Log Document, Exhibit 69, for that trip was signed by Paul Parnell as captain. Mr. Pavlounis testified that he was aboard the *Ivy Rose* observing for that entire trip and that Wesley Henneberry, whom he knew previously, was the captain and that Paul Parnell was first mate. According to the log document the vessel was fishing under licence #10474LTD, which as explained previously is licence #142645 or AENT00005, owned by the limited company 10474 Newfoundland Limited. Other documentary evidence was produced by the Crown, including handwritten crew lists and payrolls for these trips, which supports the eyewitness testimony of Mr. Pavlounis.

6. The affidavit of Charlene Robitaille, Licencing Officer in the Regulations and Licencing Centre in the Federal Department of Fisheries and Oceans office, Scotia -Fundy Sector, Maritime Region, received in evidence by consent, establishes that no Temporary Vessel Operator Permission was granted to Wesley Henneberry for the period in question, October 1 to December 31, 2000.

[80] Although not an essential element of this offence, the Crown attempted to establish that Wesley Henneberry was at sea on the *Ivy Rose* as captain for a trip November 9 to 20, 2000 (overlapping Smith's trips on the *I.V.Y.* November 7-13 and November 14-23, 2000), relying on Atlantic Bluefin Tuna Log Document Exhibit 66 and notes of Fisheries Observer David Murphy contained in Exhibit 67. However Exhibit 66 is signed not by Wesley Henneberry but by Duane Hiltz; and David Murphy's notes record a conversation he had with Marty Henneberry aboard the *Seven Girls*, in which Marty Henneberry reported that Wesley Henneberry was aboard the *Ivy Rose*. Thus the only evidence before the court as to Wesley Henneberry's

whereabouts during the *I.V.Y.*'s November 14-23 trip is inadmissible hearsay and I make no finding in this regard.

[81] The Defence argued that the Crown had offered no direct evidence that the defendant gave permission to anyone to use the vessel or the licence. Once again, however, the defence appears not to understand the nature of proof required in a strict liability offence. Once the fact that the vessel and licence were used by someone other than the named operator/licence holder is established by the Crown, the onus shifts to the named person to show that he exercised all due diligence to prevent the occurrence of the offence.

[82] From all of the foregoing evidence I find that the Crown has established that Wesley Henneberry, as a director of Ivy Fisheries Limited asssented, acquiesced and participated in the commission of the offence of permitting a person other than himself to use the *I.V.Y.* to fish for tuna under the licence issued to him for the trips October 24 to November 6, 2000, November 7 to 13, November 14 to November 23, 2000, and December 4-16, 2000, during which twenty-four tuna were caught.

[83] As the defence has called no evidence on which a defence to this strict liability offence could be founded, the defendant is guilty as charged.

Count # 7: Marcel Steven Henneberry

[84] The charge reads:

> did on or between October 12, 2000 and October 28, 2000, inclusive, within Canadian Fisheries Waters adjacent to the coast of Nova Scotia while carrying out any activities under the authority of a licence, contravene or fail to comply with any condition of licence, to wit: did fail to hail to a Dockside Monitoring Company immediately after a Bluefin Tuna had been caught as specified in item 20 of the 2000 Offshore Tuna Licence, contrary to s-s. 22(7) of the Fishery (General) Regulations, SOR/93-186, thereby committing an offence under s. 78 of the *Fisheries Act*. . .

[85] The documentary and *viva voce* evidence led by the Crown on this charge leads me to the following findings of fact:

> 1. The testimony of Fisheries Observer David Murphy and his trip summary (Exhibit 96) completed at the time, together with the testimony of handwriting expert Terry

Pipes that the handwriting of Section E of the Atlantic Bluefin Tuna Log Document Exhibit 89 is the same as that on Section D of Exhibit 88, a swordfish/shark longlining Monitoring Document bearing the signature of Marcel ("Marty") Henneberry, are sufficient for me to find that the defendant Marcel Steven Henneberry was the person who completed Exhibit 89 and that he was captain of the vessel for the trip reported therein from October 20 to 22, 2000, despite the signature of Vern Rudolph as captain.

2. Exhibits 89 and 121 together are an Atlantic Bluefin Tuna Log Document completed, as found above, by the defendant Marty Henneberry. It establishes that he and the vessel *Ivy Rose* were fishing under the company licence #142645 issued to 10474 (Nfld.) Limited.

3. Condition 20 of that licence required the operator to hail "immediately" upon the catching of a bluefin tuna.

4. Exhibits 89 and 121 establish that thirteen tuna were caught on that trip; a comparison of those exhibits to Exhibits 115 and 21, Tuna Tag Notification Reports, establishes that the following tuna, identified by tag number, were caught and hailed in as follows:

Tuna Tag #	Date caught	Time caught	Date hailed	Time hailed	Time lapse
3202	October 21/00	00:20	October 21/00	10:29	10h 9 m
3203		00:40		10:30	9h50m
3204		01:10		10:31	9h 21m
3205		01:20		10:32	9h 12m
3206		09:35*		13:00	3h 25m
3207		9:45		13:01	3h 16m
3208		10:20		13:02	2h 42m
3209		10:40		13:03	2h 23m
3210		11:35		13:04	1h 29m
3211		11:50		13:05	1h 15m

3212	October 22/00	01:55	October 22/00	10:20	8h 25m
3213		02:25		10:21	7h 56m
3214		03:30		10:22	6h 52m

*There is a discrepancy of 5 minutes between the time caught as noted above from the Log (Exhibit 89) and the time of 0930 recorded in the Tag Report (Exhibit 115), but in my opinion nothing turns on this.

5. Exhibit 90 is another Atlantic Bluefin Tuna Log Document recording a trip the *Ivy Rose* made October 23 to 28, 2000. Although apparently signed by Vern Rudolf as captain, the evidence of Terry Pipes that the handwriting on this document matches that on exhibits 88, 93 and 94, all signed by Marty Henneberry, convinces me that he is the author of this Log, but without any other evidence is insufficient to prove beyond reasonable doubt that he served as captain on this trip.

[86] This charge is the same as Count 5 for Wesley Henneberry. Thus my conclusion there on the definition of "immediately" applies to this charge as well. In regard to the October 20-23, 2000 trip, I find that the Crown has established all elements of the offence beyond reasonable doubt and that, as there is no evidence to establish a defence, the defendant is guilty as charged. As it is unnecessary to sustain the charge, I make no finding in regard to the October 23 to 28, 2000 trip.

Count #8: **Marcel Steven Henneberry**

[87] This count states:

> did on or between October 1, 2000 and October 9, 2000 inclusive, within Canadian Fisheries Waters adjacent to the coast of Nova Scotia, permit another person to use a vessel as operator in fishing for any species referred to in the Atlantic Fishery Regulations, 1985, SOR/86-21 without the person using as operator being named in the licence authorizing the vessel to fish for that species of fish, contrary to s-s. 13(1)(c) of the Atlantic Fishery Regulations, 1985 SOR/86-21, thereby committing an offence under s. 78 of the *Fisheries Act*, R.S.C. 1985, c. F-14;

[88] Defence and Crown make the same arguments in regard to ownership of the vessel as in Count #6 against Wesley Henneberry; and I come to the same conclusion: that, whether or not the defendant can be held accountable as registrant of the vessel, he can be held accountable under s. 78.2 of the *Fisheries Act* as a director of the company that owned the vessel.

[89] In proof of the allegation that Marcel ("Marty") Henneberry permitted someone else to operate without being named in the licence authorizing the vessel to fish the Crown offered the following:

> 1. Exhibit 75 and the testimony of Scott Mossman are evidence that the defendant was a registered fisher for the year 2000; that the vessel *All of Us* was registered in his name and that Tuna Fishing Licence 109436 (old number ATUN05004) was issued to the defendant for that same year. It specified "To be operated by Marcel S. Henneberry only".
>
> 2. Exhibit 78, an Atlantic Bluefin Tuna Log Document, shows that the *All of Us* was at sea overnight on October 3-4, 2000, fishing under licence #109436 and caught three bluefin tuna.
>
> 3. Exhibit 88, a swordfish/Shark Longline Monitoring Document, signed by Marcel (Marty) Henneberry, shows that he was at sea aboard the *Ivy Rose* from October 3-11, 2000, as is further evidenced by Exhibit 95, the Onboard Fishery Observer David Murphy's report for the same trip, in which he reports the captain as being Marty Henneberry.
>
> 4. Exhibit 78 also apparently bears the signature "Marcel Henneberry". The mystery as to how the defendant could have been aboard two different vessels on overlapping trips is solved by the testimony of handwriting expert Terry Pipes who compared the signature on Exhibit 78 with that on Exhibit 88 (which we know from the testimony and report of David Murphy was signed by the defendant). He concluded after microscopic examination and comparison that Exhibit 78 was not signed by the person who signed Exhibit 88 or three other specimen signatures in Exhibit 86, as indeed is evident from even a cursory comparison of the signatures.
>
> 5. Similarly, although Exhibit 81, an Atlantic Bluefin Tuna Log Document reporting the October 6-8, 2000 trip of the *All of Us*, is also purportedly signed by Marcel Henneberry, the same evidence establishes that it was not so signed and that Marcel Henneberry was still at sea aboard the *Ivy Rose* at the time of this trip.
>
> 6. Exhibit 81 establishes that on that trip the *All of Us* fished under Licence #109436 which specified that the defendant was to be the only operator. It also shows that seven tuna were caught on that trip.
>
> 7. Similar evidence (Exhibit 83) and reasoning establishes that the defendant was not the operator of the vessel *All of Us* for a third trip, October 8-9, 2000, as required by the licence # 109436 under which it caught one tuna.

> 8. As to who was actually the captain of the *All of Us* during these three trips I conclude, on the basis of documents seized from the offices of Ivy Fisheries Limited that it was probably Paul Parnell. Exhibit 102, a handwritten payroll document, lists Paul Parnell as receiving a captain's share for the *All of Us* for the period Sept 16 to Oct 20; Exhibit 105, a cheque issued to Paul Parnell by Ivy Fisheries Limited in the net amount of $2404.60, the amount shown as owing to him on Exhibit 102, provides corroboration, as to a lesser extent does Exhibit 101, a cellular phone bill to Ivy Fisheries Ltd with handwritten notations beside various phone calls dated October 6 to 9, "Paul", "Harvey", "Brian", the inference being that they were at sea placing calls on this phone. None of the calls is noted as "Marty".
>
> 9. Exhibit 103, a Permit for Temporary Replacement or Substitute Operator, issued to Paul Parnell to allow him to replace Marcel Henneberry and valid from October 12 to November 12, 2000 provides evidence from which I infer that both men were aware of the requirement to get permission to replace or substitute the person named in a licence, although this is not an element of the offence which must be established by the Crown.

[90] The defence argued that Terry Pipes did not have a "known" or "specimen" signature from which to determine that Exhibit 88 was in fact signed by Marty Henneberry; however, as stated above, I am satisfied from the evidence and report of David Murphy that Marty Henneberry was the captain of the "Ivy Rose" for the trip reported in Exhibit 88 and therefore I am satisfied that his signature on Exhibit 88 as captain is genuine.

[91] The evidence of David Murphy also takes this case outside the fact situation in *R. v. Coyle*, [2004] N.S.J. No. 471 (S.C.) where the defendant was acquitted because the Crown provided no proof, by handwriting analysis or otherwise, that the signatures alleged to be the defendant's were in fact hers.

[92] I conclude that the Crown has established beyond reasonable doubt that the defendant, the sole operator named in Tuna Licence #109436, permitted someone else, probablyPaul Parnell, to use the *All of Us* in fishing for tuna between October 1 and 9, 2000 during which time 11 tuna were illegally caught.

Count #9: Marcel Steven Henneberry

[93] The charge reads:

did on or between October 12, 2000 to November 12, 2000 inclusive, . . . while carrying out any activities under the authority of a licence, contravene or fail to comply with any condition of licence, to wit: did fail to relinquish his rights and privileges to any commercial fishing activity during the period outlined in the Permit for Temporary Replacement or Substitute Operator, contrary to s-s. 22(7) of the Fishery (General) Regulations, SOR/93-186, thereby committing an offence under s. 78 of the *Fisheries Act*, R.S.C. 1985, c. F-14;

[94] I find that the following facts have been established by the Crown:

1. Exhibit 75 and the testimony of Scott Mossman are evidence that the defendant was a registered fisher for the year 2000; that the vessel *All of Us* was registered in his name and that Tuna Fishing Licence 109436 (old number ATUN05004) was issued to the defendant for that same year. It specified "To be operated by Marcel S. Henneberry only".

2. Exhibit 103 is a Permit for Temporary Replacement or Substitute Operator issued to allow Paul Parnell to replace Marty Henneberry as the operator of the licences attached to *All of Us* from October 12 to November 12, 2000. It was signed by Marcel Henneberry on October 12, 2000 below a paragraph which states in part:

> . . . This permission is not to be used as an attempt to circumvent any existing management plan or policy. The original operator also relinquishes all rights and privileges, with the exception of signing authority, to any commercial fishing activity or other forms of gainful employment during this period. . .

3. Exhibit 87 and 108 are Atlantic Bluefin Tuna Log Document and Swordfish/Shark Longline Monitoring Document, respectively, for the fishing trip of the *Ivy Rose* October 12 to 19, 2000. Although each is signed by Vern Rudolph as captain, the evidence of handwriting expert Terry Pipes convinces me that the record portion of each log was completed by Marcel Henneberry; and Exhibit 102 and 104, handwritten payroll and crew list records for the period October 2 to October 20, 2000 seized from Ivy Fisheries Limited offices, confirm that Marcel Henneberry acted as and was paid as captain of the *Ivy Rose* for that period.

4. Meanwhile, Exhibits 116-120, Atlantic Bluefin Tuna Log Documents signed by Paul Parnell as captain shows that the *All of Us* was at sea fishing under the authority of Licence #109436 issued to Marcel Henneberry under the Permit for Temporary Replacement (Exhibit 103) between October 12-24, 2000.

5. Marcel Henneberry was again at sea as captain of the *Ivy Rose* from October 20 to 22, 2000, as shown by Atlantic Bluefin Tuna Log Documents entered as Exhibits 89 and 121, as well as Swordfish/Shark Longline Monitoring Document, Exhibit 91. Although, once again, Vern Rudolph has signed as captain, the evidence of Terry

> Pipes establishes that the record portion of each of these documents was completed by Marcel Henneberry; and Onboard Fishery Observer David Murphy's testimony and his report, Exhibit 96, for this trip aboard the *Ivy Rose* confirms that the captain was Marcel Henneberry. Exhibit 106, a handwritten payroll document seized from Ivy Fisheries Limited offices, shows that Marty Henneberry received a captain's share for the period October 20 to November 13, 2000, further confirming that Marty Henneberry continued to fish throughout this period.
>
> 6. Similar documents provide unrefuted evidence that Marcel Henneberry made another trip as captain of the *Ivy Rose* from October 23 to 28, 2000, during the period of the Temporary Replacement Permit.
>
> 6. The documentary evidence demonstrates that altogether the defendant Marcel Henneberry fished for and caught 24 bluefin tuna on the three fishing trips referred to above.

[95] The defence argues that the defendant was not guilty of any offence because he was not fishing under the licence for which he and Paul Parnell had obtained the Temporary Replacement Permit, but rather was fishing under another licence. This is an absurd argument. The condition under which the Permit was issued was that the defendant, as the original operator, would not conduct any commercial fishery or, indeed, any gainful employment, during the period for which the permit was issued. The defendant signed that form and must be taken to have agreed to its terms and conditions.

[96] The defence also attempted to suggest that such a condition should be found to be contrary to public policy and s. 6(2)(b) and 7 of the *Charter*. It is to be noted that this issue was not raised in any of the defence *Charter* motions prior to closing and I am not prepared to deal with it at this late stage, the more so as I do not believe it to have any merit in the context of a temporary restriction, sought and agreed to by the defendant.

[97] The defendant has not taken the stand or otherwise provided any defence to this strict liability offence. The Crown has established beyond reasonable doubt that he was fishing during the period in question, while his replacement was also fishing. I find that he is guilty of the offence charged.

Count #12: Paul Raymond Parnell

[98] This charge of failing to enter confirmation number reads as follows:

did on or between October 12, 2000 and October 24, 2000, inclusive, within Canadian Fisheries Waters adjacent to the coast of Nova Scotia while carrying out any activities under the authority of a licence, contravene or fail to comply with any condition of licence, to wit: did fail to enter confirmation number immediately in the comment field of the Atlantic Bluefin Tuna Log Document as specified in item 20 of the 2000 Bluefin Tuna Fishing Licence Conditions Maritimes Region 4VsW, 4x & 5 (EXCEPT FOR 4Wd), contrary to s-s.22(7) of the Fishery (General) Regulations, SOR/93-186, thereby committing an offence under s. 78 of the *Fisheries Act*, R.S.C. 1985, c. F-14;

[99] From the testimony and documents proffered by the Crown, I find the following facts:

1. Exhibits 75 and 76, affidavits of Charlene Robitaille and licences attached thereto, establish that Paul Parnell was a licenced fisher for the year 2000, and that he was authorized to replace Marty Henneberry in operating several licences, including Licence #109436, attached to the *All of Us* from October 12, 2000 to November 12, 2000.

2. Conditions 19 and 20 of that licence required the operator to hail in immediately upon the catching and tagging of a bluefin tuna and to immediately record the confirmation number issued by the Dockside Monitoring Company in the comment field of the Atlantic Bluefin Tuna Log Document.

3. Exhibit 116, the Atlantic Bluefin Tuna Log Document completed by Paul Parnell as captain for a trip of the *All of Us* October 12-13, 2000 shows that 10 tuna were caught, and that no confirmation numbers were recorded as required by Conditions 19 and 20, although Exhibit 13, a Tuna Tag Notification Report shows that confirmation numbers were issued for each of those tuna, identified by tag numbers.

4. Additional confirmation that Paul Parnell was acting as captain of *All of Us* and was paid as such is provided by Exhibit 102, the handwritten payroll document of Ivy Fisheries Limited for Sept 16 to October 20, 2000, Exhibit 104, crew list for trips October 2-20, 2000 and Exhibit 105, cheque from Ivy Fisheries Ltd to Paul Parnell in the amount of $2404.60, as indicated in Exhibit 102.

5. Exhibit 117, an unsigned Atlantic Bluefin Tuna Log Document, shows that the *All of Us* was at sea October 16 -18, 2000 , fishing under the authority of Licence #109436 and caught no fish. Although Exhibits 102, 104 and 105,

referred to above, support the inference that the captain for this trip was Paul Parnell, I find it unnecessary to decide this point. If he was the captain, he did not commit this offence on this trip as no fish were caught.

6. Exhibit 118, an Atlantic Bluefin Tuna Log Document signed by Paul Parnell as captain, shows that *All of Us* was at sea October 20-21, 2000 and caught five bluefin tuna. No confirmation numbers were entered on the Document, although Exhibit 115, a Tuna Tag Notification Report, show that the tuna identified by tag numbers were hailed in and confirmation numbers were issued. Exhibit 106, a handwritten payroll document seized from Ivy Fisheries Limited office, identifies Paul Parnell as receiving a captain's percentage of sale proceeds for the period October 20-November 13, 2000.

7. Exhibit 119 is another unsigned Atlantic Bluefin Tuna Log Document for *All of Us* for a trip October 21-22, 2000, on which no tuna were caught.

8. Exhibit 120, Atlantic Bluefin Tuna Log Document for a trip of *All of Us* October 23-24, 2000 is signed by Paul Parnell and shows that 2 tuna were caught and that no confirmation numbers were entered, although they were in fact issued, as evidenced by Exhibit 21, the relevant Tuna Tag Notification Report.

[100] The defence makes the same comments on this charge as for count #2 against Clark Andrew Henneberry, and for the same reasons stated under that count, I find that they do not establish a defence. Nor am I persuaded that this is a case for the application of the maxim *De minimis non curat lex.* Failure to enter the confirmation number on one occasion among many might merit such consideration; but failure to do so seventeen times out of seventeen shows either a blatant disregard of the requirement or equally blatant ignorance of it – neither of which can be considered a mere "trifle" in the context of a regulated industry where strict adherence to licence conditions is necessary for the effective overall management of the fishery.

[101] Accordingly, I find that the Crown has established beyond reasonable doubt that the defendant Paul Parnell is guilty of this offence in regard to seventeen tuna on three trips between October 12 and 24, 2000.

Count #14: Paul Raymond Parnell

[102] This count, which is the converse of count #8, reads:

> did on or between October 1, 2000 and October 9, 2000, inclusive, within Canadian Fisheries Waters adjacent to the coast of Nova Scotia fish for any species of fish set out in Schedule 1 to the Atlantic Fishery Regulations, 1985, SOR/86-21 without authorization contrary to s-s. 14 (1) (b) of the Atlantic Fishery Regulations, 1985, SOR/86-21, thereby committing an offence under s. 78 of the *Fisheries Act*, R.S.C. 1985, c. F-14;

[103] It is clear from the evidence set out under count #8 that someone other than Marcel Henneberry was operating the *All of Us* during 3 trips between October 1 to 9, 2000. What I must now consider is whether the Crown has established beyond reasonable doubt that Paul Parnell was that operator.

[104] Exhibits 78, 80, 81 and 83 are the Atlantic Bluefin Tuna Log Documents for *All of Us* for the trips in question. Exhibits 78, 81 and 83 are purportedly signed by Marcel Henneberry; and Exhibit 80 is unsigned. Handwriting expert Terry Pipes testimony establishes that the signed documents were not signed by Marcel Henneberry, but did not offer any opinion as to who in fact signed them. He was not asked, for example, to compare the handwriting or numbering in these exhibits to those signed by Paul Parnell such as Exhibits 116, 118 and 120.

[105] Exhibits 102, 104 and 105, the handwritten payroll document of Ivy Fisheries Limited for Sept 16 to October 20, 2000, crew list for trips October 2-20, 2000 and cheque from Ivy Fisheries Ltd to Paul Parnell in the amount of $2404.60, respectively, are evidence that during this period Paul Parnell acted as captain of the *All of Us*, but because during a part of this period (October 12 onward) he was legitimately acting as captain pursuant to the Temporary Replacement Permit (Exhibit 75) and it is evident from Exhibit 102 that all captains received the same remuneration for that period, including Vern Rudolph, who was noted to be aboard the same vessel as Marty Henneberry for at least part of this period and Greg Smith, who was noted to be “Off”, these documents cannot establish, in the absence of signed log reports, that he was captain for any particular trip(s) within this period.

[106] I therefore find that the Crown has not established an essential element of this offence, viz., that Paul Parnell acted as captain of the *All of Us* for the three trips in question. It is probable that he did so; but in a circumstantial case that is not sufficient; it must not only be a reasonable inference, but the only reasonable inference to draw from the proven facts.

[107] I find Paul Parnell not guilty of this charge.

Count #18: Gregory Burton Smith

[108] This charge reads:

> . . . did on or between October 24, 2000 and November 29, 2000, inclusive, within Canadian Fisheries Waters adjacent to the coast of Newfoundland, fish for any species of fish set out in Schedule 1 to the Atlantic Fishery Regulations, 1985, SOR/86-21, without authorization contrary to s-s.14(1)(b) of the Atlantic Fishery Regulations, 1985, SOR/86-21, thereby committing an offence under s. 78 of the *Fisheries Act* R.S.C. 1985, c. F-14;

[109] This charge is the converse of count 6 against Wesley L. Henneberry. Under that charge I made the following findings of fact:

> 1. Gregory Burton Smith signed Atlantic Bluefin Tuna Log Document (Exhibit 52) as captain of the *I.V.Y.* for a trip from October 24 to November 6, 2000, during which, according to the log, he caught seven tuna under licence #109441 (Exhibit 32), which was issued to Wesley Henneberry and the *I.V.Y.* Condition 1 of that licence states, "The vessel is to be operated by Wesley Henneberry only."
>
> 2. A subsequent Atlantic Bluefin Tuna Log Document (Exhibit 54), also signed by Gregory Burton Smith as captain, shows that Mr. Smith made another trip on the *I.V.Y.* from November 14 to November 23, 2000, during which he caught six tuna under licence #109441.

[110] In addition,

> 3. Exhibit 53, an Atlantic Bluefin Tuna Log Document signed by Gregory B. Smith as captain establishes that the defendant, caught 10 tuna under the same licence on a trip from November 7 to November 13, 2000 on the *I.V.Y.*
>
> 4. At the same time, the evidence discussed under charge 6 above shows that Wesley Henneberry, the sole authorized operator of that vessel and licence, was at sea on the *Ivy Rose*, fishing another tuna licence.
>
> 5. Exhibit 106, a handwritten payroll document seized from Ivy Fisheries Limited offices, shows that the defendant was paid a captain's percentage for the period in question, October 20 to November 13, 2000.

[111] The defence submits that the place alleged – adjacent to the coast of Newfoundland – has not been proven. However, as noted at paragraph [37] above, at the beginning of the trial (see trial transcript for December 2, pp. 21-22) the defence admitted jurisdiction. In addition the Log Documents, Exhibits 52, 53, and 54, completed by the defendant, all show that the Home Management Area was Newfoundland and that the catch was landed in Newfoundland. I find this defence argument to be without merit.

[112] Once again, on this count, the defence raises the issue of the value of the documentary evidence tendered by the Crown in the absence of eye-witness testimony. In this regard I refer to my treatment of that issue at paragraphs [31]-[35] above and state that documents signed by the defendant in the ordinary course of his business and the Department of Fisheries and Ocean's business are admissible against the defendant for the truth of their contents, in other words, as direct evidence. In this case they establish the Crown's case against the defendant beyond reasonable doubt in the absence of any evidence from the defence pursuant to s. 78.5 of the *Fisheries Act* and, more generally, under s. 794(2) of the *Criminal Code.*

[113] Given all of the foregoing, I am satisfied that the Crown has established beyond reasonable doubt that Gregory Smith used the *I.V.Y.* to fish for tuna without authorization from October 24 to November 23, 2000 and that he is therefore guilty as charged.

Count # 19: Gregory Burton Smith

[114] This charge reads:

> . . . did on or between October 24, 2000 and November 29, 2000, inclusive, within Canadian Fisheries Waters adjacent to the coast of Newfoundland, fish for any species of fish set out in Schedule 1 to the Atlantic Fishery Regulations, 1985, SOR/86-21, without holding a fisher's registration card, contrary to s-s. 14(1)(a) of the Atlantic Fishery Regulations, 1985, SOR/86-21, thereby committing an offence under s. 78 of the *Fisheries Act*, R.S.C. 1985, c. F-14;

[115] Exhibit 123, the affidavit of Charlene Robitaille, establishes a *prima facie* case that the defendant did not have a Personal Fishers Registration for the year 2000. In addition, under s. 78.5 of the *Fisheries Act* the burden is on the defendant to prove that he was a registered fisher. As he has not done so, and as the fact that he did fish as alleged has been proven under count #18 above, he is guilty of this offence as charged.

Count #20: James Phillip Ryan

[116] This charge, which is the converse of charge #6 in regard to Wesley Henneberry reads:

> . . . did on or between November 25, 2000 and December 16, 2000, inclusive, within Canadian Fisheries Waters adjacent to the coast of Newfoundland, fish for any species of fish set out in Schedule 1 to the Atlantic Fishery Regulations, 1985, SOR/86-21 without authorization contrary to s-s. 14(1)(b) of the Atlantic Fishery Regulations, 1985, SOR/86-21, thereby committing an offence under s. 78 of the *Fisheries Act* R.S.C. 1985, c F-14;

[117] Under charge #6 I found as follows:

> 4. Exhibit 55, another Atlantic Bluefin Tuna Log Document, is proof that James Phillip Ryan, as captain of the *I.V.Y.* fished under the authority of licence # "TUN5009" (the old number for 109441) on a trip from December 4-16, 2000 and caught one tuna.
>
> 5. At the same time Wesley Henneberry was at sea aboard the *Ivy Rose*, as established by the direct testimony of Fisheries Observer Anthony Pavlounis, from December 4 to December 15, 2000, although the Atlantic Bluefin Tuna Log Document, Exhibit 69, for that trip was signed by Paul Parnell as captain. Mr. Pavlounis testified that he was aboard the *Ivy Rose* observing for that entire trip and that Wesley Henneberry, whom he knew previously, was the captain and that Paul Parnell was first mate. According

> to the log document the vessel was fishing under licence #10474LTD, which as explained previously is licence #142645 or AENT00005, owned by the limited company 10474 Newfoundland Limited. Other documentary evidence was produced by the Crown, including handwritten crew lists and payrolls for these trips, which tends to support the eyewitness testimony of Mr. Pavlounis.

[118] In regard to licence #109441 I also found that Condition 1 of that licence states, "The vessel is to be operated by Wesley Henneberry only," and that no Temporary Vessel Operator Permission had been issued to Wesley Henneberry for the period in question.

[119] Having dealt with the defence arguments against this count under count #18 (Gregory B. Smith) above, and noting that the defence called no evidence under s. 78.5 of the *Fisheries Act*, or otherwise, I find that James Phillip Ryan is guilty of this count as charged.

Count #10: Ivy Fisheries Limited and Directors Wesley Henneberry, Marcel Henneberry, and Clark Henneberry

[120] The count reads:

> . . . did on or between October 1, 2000 and December 17, 2000, inclusive, at or near Halifax Regional Municipality, Nova Scotia, and elsewhere in the Province of Nova Scotia, purchase, sell or possess fish caught in contravention of *Fisheries Act* or the Regulations, contrary to s. 33 of the *Fisheries Act*, R.S.C. 1985, c. F-14 thereby committing an offence under s. 78 of the *Fisheries Act* . . .

[121] Exhibit 130(8), a print-out of the directors of Ivy Fisheries Limited from the Nova Scotia Registry of Joint Stock Companies website establishes that Wesley Llewellyn Henneberry, Marcel Steven Henneberry and Clark Andrew Henneberry were directors of Ivy Fisheries Limited at the relevant time.

[122] I have found under counts #2-9 and 12 that, by my count and subject to confirmation, some 110 tuna were caught in contravention of the Act.

[123] The defence argues, based on *R. v. Pratas* (2000), 190 Nfld.&P.E.I.R. 153 (Nfld.S.C.) that Ivy Fisheries Limited cannot be found guilty of this offence because it is not a sole shareholder and director corporation. This argument appears to be based on a mis-reading of *Pratas*. In that case, the Crown had already established, in another

prosecution, that Pratas's company, Ulybel, had committed the offence. The question under consideration in *Pratas* was whether or not Pratas was guilty of the same offence as a director of the company. As he was the sole director, it was not difficult for Barry, J. to conclude that the company would not have committed the offence without his participation. In short, *Pratas* cannot be read to stand for the proposition that only a sole director company can be found guilty of this offence.

[124] The defence further argues that, as relates to the individual directors, the charge is defective because it does not allege an offence contrary to s. 78.2 of the *Fisheries Act*. I need go no further in answer to that argument than to quote Barry, J. in the *Pratas* case, *supra*:

> ¶ 25 As for the submission that the Indictment should refer to s. 78.2 of the Fisheries Act, a party to an offence may be charged simply as a principal. The different ways by which a person may become a party need not be specified. See, *Ewaschuk*, at pp. 15-2 to 15-3, and *R. v. Cousins* (1997), 155 Nfld. & P.E.I.R. 169 (Nfld. C.A.), leave to appeal to S.C.C. refused [1997] S.C.C.A. No. 543, 120 C.C.C. (3d) vii.

[125] The defence also argues that there is no proof that the individual directors "directed, authorized, assented to, acquiesced in or participated in" the sale of the illegally caught fish. However, the evidence of the forensic accountant Brian Crockatt and the paper trail of exhibits through which he led the court in his thorough and detailed testimony establishes beyond reasonable doubt that the tuna illegally caught under these counts were sold by Ivy Fisheries Limited to various fish buyers during the time and at the place alleged and that Ivy Fisheries Limited accounted for the total sale proceeds and received a part of the sale proceeds, distributing a part of the remainder of the sale proceeds to each of the three named director defendants. By receiving their shares of the sale proceeds, under s. 78.2 of the *Fisheries Act* the three directors at the very least "acquiesced in or participated in" their company's sale of illegally caught fish.

[126] Finally, the defendants argue that the *Kienapple* principle should apply to this charge. Although this argument might have some merit if the allegation was mere possession of illegally caught fish, the Crown has stipulated throughout that the delict in question here was not mere possession but sale of the tuna. That is an additional and distinguishing element in this offence, as compared to the other charges against the individual directors.

[127] I find that the Crown has established beyond reasonable doubt that Ivy Fisheries Limited sold the illegally caught tuna and that the three named directors acquiesced and participated in the sales by accepting their share of the proceeds. In the absence of any evidence to establish a valid defence, I find that the defendants are all guilty of this offence as charged.

Count # 17: Andrew William Henneberry

[128] This count states:

> . . . did on or between October 1, 2000 and December 17, 2000, inclusive, at or near Halifax Regional Municipality, Nova Scotia, and elsewhere in the Province of Nova Scotia, purchase, sell or possess fish caught in contravention of *Fisheries Act* or the Regulations, contrary to s. 33 of the *Fisheries Act,* R.S.C. 1985, c. F-14;

[129] The Crown's position is that this defendant was a party to Ivy Fisheries Limited's sale of illegally caught tuna, as an aider or abettor under s. 21(1) of the *Criminal Code*, which states:

> 21. (1) Every one is a party to an offence who
> (a) actually commits it;
> (b) does or omits to do anything for the purpose of aiding any person to commit it; or
> (c) abets any person in committing it.

[130] The Crown's position further is that, by complying with the hailing requirements under the Bluefin Tuna licences on behalf of the various defendants charged above, he assisted them in committing their various offences, and that he shared in the proceeds of sale of the illegally caught fish as the owner and sole director of Amos and Andy Fisheries Limited, to whom a "finder's fee" was paid by Ivy Fisheries Limited, apparently in payment for its services as a fish broker.

[131] I am satisfied that the defendant Andrew William Henneberry is the person named as sole director, president, secretary and registered agent for the company Amos and Andy Fisheries Limited in Exhibit 129(8), a printout of information from the Nova Scotia Registry of Joint Stock Companies, and that he was such from the founding of the company through to the date of the computer printout in 2004.

[132] Forensic accounting expert, Brian Crockatt's careful tracing of Ivy Fisheries Limited's tuna sales through to distribution of proceeds and issuance of cheques to Amos and Andy Fisheries Ltd for "finders fees" convinces me beyond reasonable doubt that as the sole director of Amos and Andy Fisheries Limited the defendant participated in the sale by his company of illegally caught tuna. In particular I note that Mr. Crockatt proved that finders fees of $10460.63, $7149.67 and $1000.00 were paid by Ivy Fisheries Limited to Amos and Andy Fisheries Limited for the trip periods September 16-October 20, October 20-November 13 and November 14-December 4, 2000 respectively. In addition various other documents referred to by Mr. Crockatt, such as tag receipts made out to Andy Henneberry, faxes from Amos and Andy Fisheries with notations regarding vessels, numbers of tuna and weights, and ICCAT Bluefin Tuna Statistical Documents signed by Andy Henneberry under "Exporter Certification" show that the defendant and his company were deeply involved in Ivy Fisheries Limited's 2000 tuna fishery.

[133] The only direct evidence as to the identity of the caller "Andy" or "Andy H." who did the hails relating to these charges appears to be the testimony of Fisheries Officer Scott Mossman. On December 2, 2003 at p. 61, line 2ff. of the transcript he stated:

> From, through the investigation it was determined that Andy H., which we later determined to be Andy Henneberry, acts as a shore skipper or a captain for a number of vessels fishing under the, with and for the company Ivy Fisheries Limited from Sambro, Nova Scotia. The indications are that the, the captain would call Andy and Andy would call the monitoring company and then presume that Andy would call the captain back. . .

[134] There was no objection raised at the time to this testimony; nor was Officer Mossman cross-examined as to the nature of the investigation that led him to this conclusion, but it seems safe to say that he had no first-hand knowledge as to the identity of the caller "Andy"; and no one with such knowledge was called to testify as to who "Andy" was. However in the entire context of the case, including the evidence of Brian Crockatt as to the over-all role Andrew Henneberry played with Ivy Fisheries Limited and its vessels, I am satisfied that the Crown has established beyond reasonable doubt that Andrew Henneberry was the caller and that he performed this function as part of his company's services to Ivy Fisheries.

[135] Accordingly, I find that the Crown has established beyond reasonable doubt that Andrew William Henneberry, both personally and as a director of his company,

participated in the offence of selling illegally caught tuna, if not by actually committing the offence, then certainly by aiding and abetting it.

[136] This, like all of the charges in these informations, is a strict liability offence. There is therefore no burden on the Crown to prove *mens rea*. In the absence of any evidence from the defendant to establish a defence, I find the defendant guilty as charged.

Conclusion

[137] In summary, my conclusion on each of the fifteen counts and eight defendants before me for decision is as follows:

Clark Andrew Henneberry	Count #2	guilty
	Count #10	guilty
Wesley L. Henneberry	Count #3	guilty
	Count #4	guilty
	Count #5	guilty
	Count #6	guilty
	Count #10	guilty
Marcel Steven Henneberry	Count #7	guilty
	Count #8	guilty
	Count #9	guilty
	Count #10	guilty
Ivy Fisheries Limited	Count #10	guilty
Paul Raymond Parnell	Count #12	guilty
	Count #14	not guilty
Andrew William Henneberry	Count #17	guilty

Gregory Burton Smith	Count #18	guilty
	Count #19	guilty
James Phillip Ryan	Count #20	guilty

_____

Anne E. Crawford
Judge of the Provincial Court

SCHEDULE "A"

Time Period	Description	Time	*Morin*
January 8, 2004	Court attendance to receive decision in respect of Defendants' first delay application and to set dates for the continuation of the trial		inherent
January 12, 2004	Court attendance to fix date for the hearing of the Defendants' *Charter* application and to continue trial	4 days	inherent
January 12, 2004 - January 13 2004	Court attendance to continue trial.	1 day	inherent
January 29, 2004	Court attendance to make oral submissions in regard to defendants' *Charter* application and to confirm and set future dates for the continuation of the trial.	16 days	Actions of Defence
February 6, 2004	Decision rendered in respect of Defendants' *Charter* application. Application is dismissed.	8 days	Actions of Defence
February 16, 2004	Court attendance to continue trial	10 days	inherent
February 16, 2004 - February 17, 2004	Court attendance to continue trial	1 day	inherent
March 4, 2004	Court attendance to continue trial	16 days	inherent
March 9, 2004	Court attendance to continue trial	5 days	inherent
March 9, 2004 - March 10, 2004	Court attendance to continue trial. All evidence for the Crown called as of this date. Defence advises that it would be making two applications before deciding to call evidence. Court schedules dates and confirms procedure for the hearing of both defence applications	1 day	inherent
April 28, 2004	Court attendance to receive decision in respect of Defendants' *Charter* application. Application is dismissed and date is set to hear Defendants' directed verdict motion	49 days	Actions of Defence
May 14, 2004	Defence advises Crown and the Court that it will not be ready to proceed with the hearing of its directed verdict motion on the scheduled date of June 23, 2004.	16 days	Defence
June 23, 2004	Court attendance for Crown to formally tender exhibits and close its case and to reschedule date for hearing the defence's directed verdict motion. Defence makes application in regard to admissibility of documents. Court schedules date to hear application and directed verdict motion.	40 days	Defence

Time Period	Description	Time	*Morin*
July 23, 2004	Court attendance to make oral submissions in regard to the Defendants application concerning the admissibility of documents. Decision rendered and Crown closed its case. Court adjourned to schedule d date to hear directed verdict motion	30 days	inherent
September 24, 2004	Court attendance to hear Defendants' directed verdict motion. Motion dismissed. Court sets out schedule so as to complete the trial	63 days	Defence
December 7, 2004	Defence advises the Court and the Crown that it intends to present evidence. Court confirms previous discussions for completing trial and confirms scheduled dates.	74 days	Defence
February 21, 2005	Scheduled date for defence to present its case. Previously adjourned at request of defence to May 2, 2005 with an express waiver not to argue unreasonable delay	76 days	waived
May 2, 2005	Court attendance for defence to present its case. Defence closes its case and procedure agreed upon as to closing arguments	70 days	waived
June 15, 2005	Defence files and serves its written closing argument.	44 days	waived
July 13, 2005	Crown files and serves its written closing argument. Court attendance to advise Court whether oral argument needed. Defence requests a further court date to conduct closing argument and Crown does not object. Court schedules date for oral closing argument on November 28, 2005	28 days	waived (earlier dates refused)
November 28, 2005	Scheduled date for oral closing argument previously adjourned at request of defence and rescheduled for January 16, 2006.	138 days	waived
January 16, 2006	Scheduled date for oral closing argument and hearing of Defendants' second delay application.	49 days	Crown and Defence equally