H.M.T.Q. v. *Beck*, 2009 NWTSC 26

Date: 2009 04 28
Docket: S-CR-2007000105

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

BRENT BECK

Respondent

Appeal by the Crown of the dismissal, after trial, of a charge against the Respondent.

Heard at Yellowknife, NT on March 31, 2009.

Reasons filed: April 28, 2009

REASONS FOR JUDGMENT OF THE
HONOURABLE JUSTICE L.A. CHARBONNEAU

Counsel for the Appellant: Glen Boyd
Counsel for the Respondent: Austin Marshall

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REASONS FOR JUDGMENT

A) INTRODUCTION AND BACKGROUND

[1] This is an appeal by the Crown of the dismissal, after trial, of a charge against Brent Beck. The Information charging Mr. Beck contained two charges, but the Crown only proceeded on the first count, which read as follows:

> On or about September 19, 2006, in Yellowknife Bay on Great Slave Lake, at or near Yellowknife in the Northwest Territories, (...) [d]id set unmarked fishing gear contrary to Section 27(1) of the Fishery General Regulations therefore contravening Section 78 of the Fisheries Act.

[2] The trial began on November 16, 2006. The Crown's case was relatively straightforward. Two enforcement officers testified about the discovery and seizure of unmarked nets on Yellowknife Bay. They also testified on a *voir-dire* into the admissibility of conversations they had with Mr. Beck about the nets in question. The gist of those conversations was that Mr. Beck admitted he was the owner of the nets. He also said they could not have contained rotten fish because he checks his nets regularly.

[3] By the time the Crown closed its case on the *voir-dire*, it was getting late in the afternoon. There was some discussion about whether the accused would present evidence on the *voir-dire*, and whether the Crown would make application to have the *voir-dire* evidence applied to the trial. During the course of his exchange with counsel on those matters, the Trial Judge made some comments about potential issues he saw with the Crown's case, including possible shortcomings in the evidence about who had set the nets and when this had occurred. After some discussion, proceedings were adjourned to continue on November 26.

[4] When proceedings resumed on November 26, defence counsel indicated that he would not present evidence on the *voir-dire*. The Trial Judge heard submissions from counsel and ruled the conversations between Mr. Beck and the enforcement officers admissible. The Crown then asked that the *voir-dire* evidence be applied to the trial. Defence did not oppose this request.

[5] The Crown then made an application to amend the charge, so that it would read that on the date in question, Mr. Beck did set, *operate or leave unattended* unmarked fishing gear. Defence opposed the application. The Trial Judge denied the amendment application because he found that the amendment would cause an injustice to Mr. Beck. This ruling is the subject-matter of the Crown's first ground of appeal.

[6] The Crown closed its case. Mr. Beck did not present evidence.

[7] After having heard submissions from counsel, the Trial Judge dismissed the charge. He concluded that there was sufficient circumstantial evidence to prove that Mr. Beck was the one who had set the nets. However, the Trial Judge concluded that he could not determine on what date this had taken place, except that it had taken place long before the date alleged in the charge. The Trial Judge concluded that the Crown had not established that the charge was laid within the limitation period, and that it should be dismissed for that reason alone. The Trial Judge went on to analyze various provisions of the *Act* and *Regulations*, and concluded that nets were not "fishing gear" within the meaning of section 27 of the *Regulations*. That, he concluded, was another reason to dismiss the charge. The

Trial Judge's interpretation of the meaning of "fishing gear" is the subject-matter of the Crown's second ground of appeal.

B) ANALYSIS

1. The Crown's Amendment Application

[8] The power to amend a charge stems from section 601 of the *Criminal Code*. That provision deals with amendments of indictments but applies, by reference, to summary conviction proceedings. *Criminal Code*, s. 795. Section 601 contemplates different kinds of applications to amend a charge. The first, provided for in subsection 601(2), is the power to amend a charge to have it conform to the evidence. The second, provided for in subsection 601(3), is the power to amend a charge to cure certain defects.

[9] At trial, the Crown framed its application as one based on subsection 601(3). The prosecutor argued that the charge was defective because it was missing two of the three modes of commission of the offence (operating fishing gear and leaving fishing gear unattended). The Crown argued that the amendment would not prejudice the accused because the application was being made before the Crown closed its case; because the accused had full disclosure as to what evidence the Crown would be presenting; and because the Crown witnesses had been fully cross-examined about their activities and observations and there really was no issue about what transpired.

[10] Defence opposed the adjournment application. Counsel told the Court he had received no notice that the Crown would be making the application. He argued that the amendment would add two completely different types of activities to the charge and would fundamentally change the scope of what Mr. Beck had to defend. Counsel argued that his approach to the case, in particular the cross-examination of the Crown witnesses, would have been different had he been aware that he would have to defend an expanded charge.

[11] The Trial Judge dealt with the application in the manner that it was presented, that is, as an application governed by subsection 601(3). He reviewed that provision in detail, as well as subsection 601(4), which sets out the criteria that

must be taken into consideration when deciding whether a charge should be amended. He concluded that the amendment should not be made because it would result in an injustice to Mr. Beck.

[12] In my respectful view, the Crown's application ought not to have been characterized, and dealt with, as an application to cure a defect in the charge. The charge was not defective in substance or in form, nor defective in any of the other ways contemplated by subsection 601(3). What the Crown was trying to achieve was to align the wording of the charge with the evidence that it had adduced. The Trial Judge had, earlier on in the proceedings, pointed out some of the potential shortcomings in the Crown's case, including the lack of evidence as to when and how the nets were set. Possible flaws or gaps in the Crown's case are not the same as the charge itself being defective within the meaning of subsection 601(3).

[13] In my view, this application really was, and should have been treated as, an application to amend the charge to conform to the evidence. At the hearing of the appeal, I understood the parties to be in agreement with this.

[14] Although it may not have made a significant difference in this particular case, as a matter of principle, the distinction between the two types of applications is not just a matter of semantics. The power to amend a charge to conform to the evidence is distinct from the power to amend a charge to cure a defect. It is a broader power, and it is not subject to some of the limitations that apply to the power to amend to cure defects:

> That power of amendment [to conform to the evidence] is distinct from the other powers of amendment set out in s.601 in that it is not premised on any defect in the language of the charge as initially laid, but rather on a divergence between the charge as laid and the evidence led. Legitimate limitations on the power to amend to cure defects in the way the charge is worded cannot be imposed on a separate amendment power aimed at an entirely different kind of defect.
>
> (...)
>
> On a plain reading, the section contemplates any amendment which makes a charge conform to the evidence. The limits on that amending power are found, not in the nature of the change made to the charge by the amendment, but in the

> effect of the amendment on the proceedings, and particularly, on the accused's ability to meet the charge. The ultimate question is not what does the amendment do to the charge, but what effect does the amendment have on the accused?

R. v. *Irwin* (1998), 123 C.C.C. (3d) 316 (Ont.C.A.), at paras. 18 and 25.

[15] Perhaps because it is a broader power, the power to amend to conform to the evidence is discretionary. This is reflected by the use of the word "may" in subsection 601(2), as opposed to "must" in subsection (3). This has an impact on the standard of review. Subsection 601(6) states that the question of whether an amendment should be made is a question of law, which normally triggers a standard of review of correctness, but the fact that the power conferred by subsection 601(1) is discretionary suggests a more deferential standard of review. Indeed, both parties agree that the standard of review that applies to this ground of appeal is that of overriding and palpable error.

[16] The overriding and palpable error that the Crown says the Trial Judge made in his assessment of prejudice is that he mischaracterized the true nature of the offence created by s. 27 of the *Fishery (General) Regulations*. The Crown argues that the key feature of that offence is to use unmarked fishing gear, and that the three types of behaviors set out in the section (to set, to operate, to leave unattended) are simply alternative ways of committing the same offence. The Crown argues that the amendment could not have possibly prejudiced the accused because it would not have altered the fundamental nature of the case against him, namely, having engaged in fishing activities using unmarked fishing gear. The Crown is unable to point to any authority in support of this interpretation of the provision, but argues it flows naturally from a review of the legislative scheme as a whole.

[17] Mr. Beck disagrees with the Crown's characterization of section 27. He argues that the provision creates three distinct offences that arise from entirely different conduct. He points to Schedule VIII of the *Regulations*. This Schedule sets out penalties for these offences when summary offences tickets are issued, and lists the three types of conduct referred to at section 27 as three distinct offences.

[18] Intriguing as this debate about the characterization of section 27 may be, resolving it would not answer the question posed by this ground of appeal. This is because, as I have already stated, the power to amend a charge to conform to the evidence includes the power to make an amendment that completely alters the nature of the charge. The effect of the amendment *vis-a-vis* the charge is therefore irrelevant when exercising the power conferred by subsection 601(1). What must be at the center of the analysis is the effect on the accused.

[19] Although the Trial Judge dealt with the application on the basis of subsection 601(3), when it really was an application based on subsection 601(1), the error is of no consequence in this case because the focus of his attention was the effect that the amendment would have on the accused, and whether it would result in prejudice. The following excerpt of his Reasons makes this clear:

> I am in agreement with [defence counsel] that had the defence known that "operate" or "leave" unattended would also have to be defended, different considerations may very well have come into play. The defence would have had to apply its mind to all three of those words: the setting, the operation, and leaving unattended. There may very well have been a different line of cross-examination on the issues of operating or leave unattended. For example, how did one operate fishing gear? There has been some evidence about that, but if that had actually been the charge, surely the defence would have explored it in considerable depth. On the issue of leaving a net unattended, what exactly does that mean? The defence could have, I assume, considered asking the officers about how it is that nets are attended in order to defend the charge of leaving the nets unattended.
>
> I conclude that while the Crown may need the amendment, to allow it would amount to the accused having been misled or prejudiced in its defence. (...)
>
> I would find that having regard to the merits of the case in its totality (as I am aware of it at this time) and considering the submissions of the Crown and how this could impact on the defence if I allow the amendment, that the amendment cannot be made without an injustice being done to the defence. While it does harm the case for the Crown perhaps not to make the amendment, the injustice to the accused would be insurmountable should the amendment be made.

[20] A finding by a trial judge that an amendment would cause an accused irreparable prejudice should not be interfered with lightly. Appellate courts must, in this area as in so many others, keep in mind the privileged position that trial

judges have in assessing how events that unfold in a trial may impact on its fairness. *R.* v. *Vezina*; *R.* v. *Cote*, [1986] 1 S.C.R. 2, at para. 68.

[21] In reaching his decision, the Trial Judge considered the evidence, the submissions, and the overall context of the case. He recognized that the Crown's case may be harmed if the application was not granted, but weighed that factor against how, in the context of how the trial had unfolded up to that point, the amendment might cause prejudice to the accused. He found that defence counsel's approach to the case may have been different had he known that Mr. Beck would be facing a charge that included three activities related to the unmarked nets instead of one. He found that some additional areas may well have been explored in cross-examination. I note, as well, that by the time the Crown made its amendment application, defence counsel had already agreed to have the *voir-dire* evidence apply to the trial proper.

[22] The Crown argues that the amendment was not prejudicial because the application was made before the Crown closed its case. I agree that the timing of the application is a factor to consider in assessing whether it will prejudice the accused. But that is not to say that a judge necessarily errs if he or she finds prejudice when an application to amend is made before the Crown closes its case.

[23] On the whole, I am unable to find any overriding and palpable error in the Trial Judge's reasoning on the issue of prejudice. For those reasons, I conclude that this ground of appeal must fail.

2. Limitation Period

[24] Although the application and operation of the limitation period was the subject of submissions at trial and detailed comments by the Trial Judge in his decision, the Crown has not raised it as a distinct ground of appeal. There appears to have been a deliberate choice on the Crown's part to treat this issue as ancillary to the issue related to the amendment application. The Crown has addressed the limitation period in a rather perfunctory way at paragraphs 75 to 78 of its Factum:

> 75. In conclusion to this part, this Court should amend the charge as requested by Crown. As a result of the amendment, it is respectfully submitted that the

> finding by the trial judge that the Crown had to prove when the nets were set becomes moot, which is why the Crown has not made it into a ground of appeal.
>
> 76. However, should this Court consider that this is still a live issue, let it be briefly addressed within the context of the Appellant's first ground of appeal.
>
> 77. Time is not an essential element of the offence under section 27 of the Fishery (General) Regulations.
>
> 78. In reference to section 82 of the Fisheries Act, the Crown does not have an onus to prove "when the nets are set" but rather, it has the obligation to lay the charges within two years of the "discovery" of the offence. The date at which the offence was noted by the authorities sets the starting point of the limitation period, and in our particular case, the prosecution had until September 18, 2008, to swear the Information.

[25] As I have concluded that the Trial Judge did not commit a reversible error in dealing with the amendment application, the limitation period is very much a live issue. It is somewhat surprising that the Crown has not treated this issue as a distinct ground of appeal, given its potential impact on the appeal. Nevertheless, the issue having been raised in both parties' Facta, and it being of some importance to the enforcement of this legislative scheme, I have concluded that it must be addressed.

[26] The limitation period issue must be examined in the context of the Trial Judge's findings of facts. The Trial Judge concluded that the evidence established that Mr. Beck had set the nets. He concluded that the nets were set long before their discovery on September 19, 2006, based on the evidence about the advanced state of decomposition of some of the fish in the net, the significant algae growth that was observed on the nets, and the evidence that algae growth in that area was slow.

[27] The Trial Judge also found that there was no evidence at all to assist him in assessing how long the nets would have to be in the water for the fish to decompose, or for the algae growth to build to the extent it had when the nets were discovered. He noted the absence of opinion evidence that might have assisted him on those issues. He concluded that it was not possible to make a finding as to when the nets were set, and that it was not possible to make even a general

assessment as to how long they might have been in the water before they were discovered in September 2006. Those findings are entitled to deference, and in any event, have not been appealed by the Crown.

[28] The provision that governs the limitation period for this offence is section 82 of the *Act*:

> 82. (1) Proceedings by way of summary conviction in respect of an offence under this Act may be instituted at any time within but not later than two years after the time when the Minister became aware of the subject-matter of the proceedings.
>
> (2) A document purporting to have been issued by the Minister, certifying the day on which the Minister became aware of the subject-matter of any proceedings, is admissible in evidence without proof of the signature or of the official character of the person appearing to have signed the document, and, in the absence of any evidence to the contrary, is proof of the matter asserted in it.

[29] The Crown argues that under this provision, the limitation period starts to run on the date of the discovery of the offence. This presupposes that knowledge of the offence by enforcement officers should be equated in all cases with the time of ministerial awareness, for the purposes of that section. If that is the correct interpretation, the charge was laid well within the limitation period, because the offence was discovered in September 2006 and the Information was sworn in November 2006.

[30] The Crown has not presented any authority in support of this interpretation of section 82. I am not persuaded that it is the correct one, for a number of reasons.

[31] First, this interpretation appears inconsistent with the wording of the provision. If it was intended that the date of discovery of the offence by enforcement officers was to be the event triggering the start of the limitation period, Parliament could have said so, instead of referring to "the time when the Minister became aware of the subject-matter of the proceedings". More importantly, if knowledge by enforcement officers were in all cases to be equated with ministerial awareness for the purposes of section 82, there would be no need for the

mechanism set out in subsection (2) to prove the date on which the Minister became aware of the subject-matter of the proceedings.

[32] The question, then, is how the limitation period set out in section 82 operates. The provision has been the subject of judicial interpretation and there has been some controversy about its meaning.

[33] In *R.* v. *West Fraser Mills* (1994) 13 C.E.L.R. (N.S.) 1, the British Columbia Court of Appeal concluded that the effect of section 82 is to create a minimum limitation period of two years from the date of the commission of the offence, and that this limitation period can be extended if the Crown elects to prove that the Minister became aware of the offence on a date other than its commission. The Court summarized its conclusions as follows:

> A limitation period provides an end date, and not a start date. The Minister could not become aware of the subject matter of the proceedings before it occurred. He or she could become aware of the subject matter only on or after the date of its occurrence. Assuming the Minister's awareness at the time of the events, the minimum limitation period would be two years. In the absence of evidence to the contrary, such an assumption is reasonable and in accord with common sense. If the Crown sought to proceed summarily outside that minimum two-year limitation period, it would have to show that the minimum period had been extended. Section 82(2) permits the Crown to do so upon proof that the Minister did not become aware until some date after which the two-year period would commence to run.
>
> *R.* v. *West Fraser Mills*, *supra*, at para. 21.

[34] Some Courts have expressly adopted the analysis in *West Fraser Mills;* see *R.* v. *Greenough* 2004 NBQB 371. Others have expressed different views about how s. 82 operates; see *R.* v. *Gateway Industries Ltd.*, [2001], M.J. No. 172 (Man. Q.B.).
I note that none of those authorities support the Crown's assertion that the date of the discovery of the offence by enforcement officers is to be taken as the date of ministerial awareness, thereby triggering the start of the limitation period.

[35] The wording of section 82 certainly leaves room for debate as to how Parliament intended the limitation period to operate in this context. For my part, I

agree with the analysis set out in *West Fraser Mills*. In the absence of evidence showing the date on which the Minister became aware of a matter, I conclude that it is reasonable to infer the limitation period starts to run on the date of the incident that forms the subject-matter of the charge. The Crown may, if it chooses to, extend the limitation period by proving the date on which the Minister became aware of the offence. This provides flexibility in enforcement in cases where an offence goes undetected for a significant period of time.

[36] I find, with respect, that the Trial Judge's treatment of the limitation period was problematic because it was somewhat contradictory. After having referred to section 82, he said:

> The Minister became aware of this on September 19th through the Minister's officers. The Crown, having sworn the Information on November 14th, could go back as far as two years, that, I interpret, would be two years before September 19th - that would be two years after September 19th. They have two years after September 19th, taking it to September 19th, 2008. The Information was certainly laid within two years after September 19th.

[37] This excerpt suggests that the Trial Judge accepted the Crown's position that the discovery of the offence was the trigger for the start of the limitation period. For the reasons I have already given, this was an error.

[38] The Trial Judge went on to consider whether the Crown had proven that the offence was committed on the date charged. He referred to subsection 601(4.1) of the *Criminal Code*, which provides that certain variances between a charge and the evidence are not material. It appears from the following excerpts of his analysis that the Trial Judge moved away from his earlier finding as to what triggered the start of the limitation period, and thought the two years should start to run from the date the offence was committed:

> But the issue that emerges from this is whether the Crown has proven beyond a reasonable doubt that the accused set unmarked fishing gear, and the evidence is clear that it was unmarked, on or about September 19th.
>
> *If I find as a fact that the nets were set before September 19th, then I would have to find that the Information was sworn no later than two years after that earlier time* (...)

> Two years prior to November 14th, 2006, which is the sworn date, is November 14th, 2004. The Criminal Code, section 601(4.1), provides that a variance between the indictment, and here one can read "Information", and the evidence is not material with respect to the time when the offence is alleged to have been committed if it is proved that the Information was preferred or sworn within the prescribed limitation period, if any.
>
> The words "if it is proved" do not cast an onus on the defence to prove anything. It is the Crown that must prove beyond a reasonable doubt that the Information was sworn within the prescribed limitation period.
>
> (...)
>
> When did the algae build-up begin? I do not know and I cannot guess, just like I cannot guess how long the seriously decomposed fish had been in the nets. All this tells me, conclusively, that long before September 19th, the nets were set.
>
> *Can I do what the Crown would argue I should do and find that regardless of the absence of opinion evidence, surely the nets were set within the past two years? I do not know that I can go that far.*
>
> The onus is on the Crown, beyond a reasonable doubt, to establish what is necessary under 601(4.1). It has, in my view, failed in its case to show, and to use more precise language, "proved" that the Information was sworn within the limitation period. On that ground alone, I would dismiss Count 1.
>
> (The emphasis is mine)

[39] In my view, the second part of the Trial Judge's analysis was at odds with his initial statement that the discovery of the offence was the trigger for the start of the limitation period. There cannot be different limitation periods for different purposes within the same case. If the discovery of the offence was the trigger for the limitation period to start to run, then the date of the offence was irrelevant to the application of subsection 601(4.1).

[40] All that being said, I conclude that the Trial Judge would have arrived at the same result if he had applied section 82 correctly. As I noted at paragraphs 26 and 27, *supra*, he found that the evidence was insufficient to enable him to make a finding as to a time frame when the nets might have been set. On what I find is the

correct interpretation of section 82, the limitation period was two years from the commission of offence (in this case, the setting of the nets). Since the evidence fell short of establishing anything about when the nets were set, it necessarily also fell short of establishing that the charge was laid within the limitation period.

[41] I would add that the Trial Judge did not have the benefit of much assistance from counsel in dealing with the limitation period issue. The record shows that when he first inquired about this issue counsel did not know what the limitation period was for this offence. At first, the prosecutor suggested that it was 6 months or 1 year. And even later on, when section 82 was brought to the Trial Judge's attention, he was not presented with any of the cases that have interpreted it.

[42] It is understandable that during a trial, unforeseen issues sometimes arise that take counsel by surprise. But the limitation period should not be one of them. In the prosecution of virtually every summary conviction offence, the limitation period is potentially a live issue. This is especially so in the regulatory context, where specific limitation periods are often provided for, and sometimes operate in a manner that is different from what usually applies in criminal cases. That being so, it is incumbent on counsel to be aware of what the limitation period is, and to have a general understanding of how it operates.

3. INTERPRETATION OF "FISHING GEAR"

[43] Given my conclusions on the first two issues, it is not necessary to deal with the statutory interpretation issue to dispose of this appeal. However, as this is also an important matter from the point of view of the enforcement of this legislative scheme, I find it is necessary to address it.

[44] Statutory interpretation is a purely legal issue, and the standard of review is one of correctness.

[45] The Trial Judge raised the statutory interpretation issue on his own motion. He voiced some of his concerns about the proper interpretation of the term "fishing gear" during the trial, and raised them again during submissions. He concluded that the prohibition to set, operate or leave unattended fishing gear did not apply to nets because nets are not "fishing gear".

[46] The Trial Judge noted that section 27 of the *Regulations*, which creates the offence charged, refers only to "fishing gear" whereas other sections in the *Act* (such as sections 23 and 25) refer to "fishing gear or fishing apparatus". He went on to consider that certain sections (sections 24 and 26) that refer specifically to nets clearly contemplate that they are "fishing apparatus".

[47] The Trial Judge then reasoned that "fishing gear" and "fishing apparatus" must contemplate different things, otherwise Parliament would not have used both terms in sections 23 and 25 of the *Act.* As there were no provisions that, in his view, showed that nets were also included in the concept of "fishing gear", he concluded that for the purpose of this legislative scheme, nets are "fishing apparatus" but not "fishing gear". Thus, he found that section 27 of the *Regulations* did not apply to nets.

[48] The trial submissions and the Trial Judge's ruling were focused on the examination and comparison of various provisions of the *Act* and the *Regulations*, the objective of this legislative scheme, and what the provisions revealed about Parliament's intent. In this appeal the Crown has introduced the additional element of what is revealed by the French text of the *Act* and *Regulations.* The Trial Judge did not have the benefit of those submissions. It seems clear that no one thought, at the time, of referring to the French text to see whether it would assist in interpreting these provisions.

[49] It is a fundamental principle of statutory interpretations that the French and English texts of bilingual enactments are equally authentic. This principle has existed for a long time and was enshrined in section 18 of the *Canadian Charter of Rights and Freedoms*:

> 18. (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authentic.

[50] The application of this principle was discussed in some detail in *R.* v. *Daoust* [2004] 1 S.C.R. 217. In that case, the Supreme Court of Canada outlined the steps that must be followed when interpreting bilingual statutes where there is a

discrepancy between the two. The first of these steps is to determine whether there is in fact a discrepancy between the two versions.

[51] In sections 23 and 25 of the *Act*, where the English text speaks of “fishing gear or apparatus”, the French text uses “engins ou appareils de pêche”. In those sections, the term that corresponds to “fishing apparatus” is “appareil de pêche”. The term that corresponds to “fishing gear” is “engin de pêche”. In fact, throughout the *Act* and the *Regulations*, the French text uses “engin de pêche” where the English text refers to “fishing gear”.

[52] However, the French text of sections 24 and 26 does not use “appareil de pêche” as the term for “fishing apparatus”. Instead, it is the term “engin de pêche” that is used in those provisions:

24. Seines, *nets or other fishing apparatus* shall not be used is such manner or in such place as to obstruct the navigation of boats and vessels and no boats or vessels shall destroy or wantonly injure in any way seines, *nets or other fishing apparatus* lawfully set.

24. Il est interdit de mouiller ou d’utiliser des sennes, *filets ou autres engins de pêche* de facon a nuire - ou a un endroit ou ils pourraient nuire - à la navigation, de même qu’il est interdit aux bateaux de détruire ou d’endommager de façon injustifiée les sennes, *filets, ou autres engins de pêche* légalement mouillés.

26. One-third of the width of any river or stream and not less than two-thirds of the width of the main channel at low tide in every tidal stream shall be always left open, and no kind of *net or other fishing apparatus*, logs, or any materials or any kind shall be used or placed therein.

26. Un tiers de la largeur des cours d’eau et au moins les deux tiers a marée basse de la largeur du chenal principal des courants de marée doivent toujours être laissés libres; il est interdit d’y employer ou d’y placer des *filets ou autres engins de pêche*, des grumes de bois ou des matériaux de quelque nature que ce soit.

(The emphasis is mine)

[53] The French text of sections 24 and 26 clearly contemplates that the term “engin de pêche” (“fishing gear”) includes “filets” (“nets”). Had this matter

proceeded in French on the basis of the French text of the *Act* and *Regulations*, there could have been no doubt that the prohibition set out in section 27 of the *Regulations* applied to nets.

[54] The notion that nets are both fishing gear and fishing apparatus is not clearly inconsistent with the wording of the English text. Thus, I conclude that there is no real conflict or discrepancy between the French and English versions of the provisions. To the extent that the English text of the provisions can give rise to any ambiguity about whether nets are included in the term "fishing gear", that ambiguity is fully resolved by reference to the French text. That being the case, there is no need to resort to other rules of statutory interpretation. *R.* v. *Mac* [2002] 1 S.C.R. 856, at para. 6.

[55] The interpretation that nets are "fishing gear" is also, in my view, better harmonized with the overall legislative scheme than the interpretation that they are not. It is difficult to imagine why Parliament would see fit to regulate the marking of various types of fishing equipment and not include nets in this regime. In addition, if nets are fishing gear, section 28 of the *Regulations*, which excludes a specific type of net from the operation of section 27, makes a lot more sense: if nets were not contemplated by section 27 in the first place, there would be no need to exclude specific types of nets from its scope.

[56] I conclude that the Trial Judge erred when he concluded that nets were not encompassed in the prohibition set out in section 27 of the *Regulations.*

[57] However, given my conclusions on the other issues, which are fatal to the Crown's case, the Trial Judge's error on the statutory interpretation issue does not justify ordering a new trial.

[58] The appeal is dismissed.

L.A. Charbonneau
J.S.C.

Dated this 28th day of April, 2009.

Counsel for the Appellant:	Glen Boyd
Counsel for the Respondent:	Austin Marshall

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