

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

BRIAN ABBOTT

REASONS FOR JUDGMENT

of the

HONOURABLE JUDGE B. E. SCHMALTZ

Heard at: Yellowknife, Northwest Territories
July 9, 2012 and August 8, 2012

Reasons: August 8, 2012

Counsel for the Crown: M. Zimmer

Counsel for the Defendant: T. Boyd

(Charges under s. 78 of the *Fisheries Act*)

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

BRIAN ABBOTT

- [1] Brian Abbot has pleaded guilty to four counts under the *Fisheries Act*:
- To failing to fill out accurately and completely his commercial harvest log books relating to his fishing operation on Great Slave Lake, Tathlina Lake, and Kakisa Lake;
 - To operating a unregistered fishing vessel used for commercial fishing;
 - To fishing in areas that were closed to commercial fishing; and
 - To having fishing nets that were not properly marked in accordance with the Regulations.

I. **FACTS**

[2] Brian Abbot was, and still is, the owner operator of a commercial fishing operation here in the Northwest Territories. On July 27, 2011, Mr. Abbott was asked by Fisheries officers to bring his fishing log book to the Department of Fisheries and Oceans the following day. Mr. Abbott did not bring his log book to the Office on July 28.

[3] On July 29, Fisheries officers boarded Mr. Abbott's vessel, the *Seabird*, and attended the fish plant owned by Mr. Abbott. The officers inspected Mr. Abbott's commercial fishing log book and found that Mr. Abbott had made no entries for the 2011 season. The officers then requested Mr. Abbot's commercial fishing license and commercial fishing vessel registration, neither of which Mr. Abbott could produce. It was determined that Mr. Abbott did not have valid registration for either of his vessels, the *Seabird* or the *Lund*. On July 29, Mr. Abbott was given a warning for failing to register the commercial fishing vessels and was directed to attend the Department of

Fisheries and Oceans office the next business day to register the vessels. Mr. Abbott did not attend to register his vessels.

[4] Fisheries officers then began surveillance of Mr. Abbott and his fishing operation, and he continued to fish with the two unregistered commercial fishing vessels. On August 10, two weeks after Fisheries officers had initially contacted Mr. Abbott, Fisheries officers obtained a warrant to search Mr. Abbott's fish plant, his vessel the *Seabird*, and his fish truck that Mr. Abbott sold fish from. The search pursuant to the warrant was conducted on August 11, 2011.

[5] Both the *Seabird* and the *Lund*, still unregistered, were located actively fishing on Great Slave Lake. Inspection of Mr. Abbott's commercial fishing log book showed that the log book was not completed. Nets belonging to Mr. Abbott were observed set inside an area closed to commercial fishing at the time; the nets had been set for longer than 30 hours without being checked, and the nets were not properly marked.

[6] At the time of the search, 381 kilograms of fish was seized from the *Seabird*, 1,075 kilograms of fish was seized from the fish plant, and 45 kilograms of fish was seized from the fish truck. The facts read in were that "much of the fish that was seized was not marketable as, it is indicated, it was rotting at the time." From my reading of the document filed as Exhibit S1 titled "Estimated Value of Fish Seized", it appears that just under of 107 kg of fish that was seized is indicated as 'mouldy' [sic] or 'scrap';

[7] The Crown stated that "the estimated value of the fish seized, as indicated on the chart provided, is around \$1,500.00." The valuation placed on the fish from the document referred to by the Crown lists in one column the value, determined from the "Price as per price list from the Fish Plant", as \$14,373.24, and as determined from the "Price as per Fresh water Fish Marketing Corp Price List" as \$1,519.37.

[8] No evidence was called or presented to explain this discrepancy in valuation; I do not know what the value of the fish that was seized was.

[9] I do not know what fish was not marketable, other than the 107 kg referred to earlier, or why "much of the fish" was not marketable, or what was done with it.

II SENTENCING

[10] Pursuant to s. 78 of the *Fisheries Act* the maximum penalty for any one of the offences for which Mr. Abbot has been convicted is one hundred thousand dollars. There is no minimum penalty prescribed.

[11] Both Crown and Defence suggest that a fine of \$750.00 per count be imposed in this case, for a total fine of \$3,000.00, and that Mr. Abbott be placed on probation for one year with the conditions that he complete 40 hours of Community Service Work, that he present completed log books to the Department of Fisheries and Oceans on the first business day of each month, and that he cause to be published in the local paper a public apology; a draft of the “apology” that is suggested be published was provided. Counsel submits that this last condition be made pursuant to s. 79.2(c) of the *Fisheries Act*.

[12] Section 79.2(c) does not allow for the Court to order that a person apologize. Section 79.2(c) states:

(c) directing the person to publish, in any manner the court considers appropriate, the facts relating to the commission of the offence;

[13] The facts contained in the draft “apology” that has been submitted are:

- Mr. Abbott has been fishing on Great Slave Lake for two years;
- Mr. Abbot did not transfer the information from his notes to his log books on a daily basis;
- Mr. Abbott did not ensure his vessels were properly registered;
- Mr. Abbott fished in an area that was closed to commercial fishing;
- Mr. Abbott left his gill net in the water without being properly marked.

[14] Besides those facts, in the draft submitted Mr. Abbott acknowledges his duty to ensure his log books are filled out correctly, his vessels are properly registered, and that his nets are set in approved areas and monitored regularly, and refers to his failure to do these things as “oversights”. The remainder of the draft apology reads as an excuse for Mr. Abbott’s actions, being his inexperience and the difficulties he has encountered complying with the regulations and requirements of the *Fisheries Act* and in running his business.

[15] Notably, the draft “apology” does not refer to the *fact* that on July 27, Mr. Abbott was told to bring his log book to the Department on July 28, it does not refer to the *fact* that on July 29, Mr. Abbott was warned for failing to register his fishing vessels and was directed to attend the Department the next business day to register his vessels but failed to do so; it does not refer to the *fact* that close to two weeks passed before Fisheries officers took further steps, and that during those two weeks Mr. Abbott did nothing to comply with his duties under the *Fisheries Act* nor with the directions or warnings given to him by the Fisheries officers.

[16] If Mr. Abbott wants to publish the letter that has been drafted, he can, but I will not order it as a condition of probation. I do not see it as a statement of the facts, but merely a bare admission of his guilt to the offences that he has pleaded guilty to. Further, even if I could order that Mr. Abbott publish an apology, the apology suggested does not indicate remorse on Mr. Abbott’s part.

[17] The “apology” would not have any deterrent or denunciatory effect; again it reads as an excuse for Mr. Abbott’s actions and seems to indicate how difficult it is for a businessman to comply with the legislation and regulations. Consequently, I find the joint submission on sentence is not a sentence that could be imposed in this case, and additionally would not be a fit and proper sentence.

[18] Three cases under the *Fisheries Act* have been referred to me in support of the sentence that has been suggested: *R. v. Rideout*, 236 N.S.R. (2d) 354, from the Nova Scotia Court of Appeal, and *R. v. Richardson* (Court File Number: T2 CR 2009 000746) and *R. v. McPherson* (Court File Number T2 CR 2010 000691) both decisions from our Territorial Court.

[19] The Crown relies on *R. v. Rideout* to establish that specific and general deterrence are the main sentencing goals or principles when dealing with cases of this nature. I agree. Mr. Rideout was convicted only of fishing outside the area in which he was licensed to fish. In *Rideout*, the trial judge imposed what he concluded was a significant monetary penalty, a fine of \$4,000.00. The Crown appealed the on the issue of whether or not a forfeiture order should have been made. The summary conviction appeal court varied the sentence to a fine of \$2,000.00 and ordered forfeiture of

\$35,000.00 with respect to fish seized. Mr. Rideout's appeal to the Court of Appeal was dismissed.

[20] In the case of *R. v. Richardson* from our court, Mr. Richardson pleaded guilty to fishing in a closed area. Deputy Judge Lilles found mitigating circumstances in that Mr. Richardson was mistaken about the boundaries, but found that Mr. Richardson had not exercised due diligence. On that issue Deputy Judge Lilles said:

It seems to me if he is a fisherman, he has got a GPS and he has been thinking it is miles rather than kilometers or vice versa, quite frankly that is recklessness and I would not see that as a factual excuse. ... It may be a mitigating factor ... It is not a legal defence, but if there is a lack of intention it may modify the penalty that I impose.

Deputy Judge Lilles also expressed concerns in that there may be "significant room for improvement on the part of [the Department of Fisheries and Oceans] in terms of communicating changes to fishermen on the lake". The amount of fish seized in *Richardson* was 1,300 pounds (590 kilograms). Further in *Richardson*, the nets were down for a very short period of time, estimated at 3 to 4 hours, and Mr. Richardson was very cooperative with the Fisheries officers on learning that his nets were in a closed area.

[21] With respect to sentence in *Richardson*, Deputy Judge Lilles made the following comments:

... [I]t is an obligation of fishermen or hunters, or whoever is operating under licenses from government, to take all reasonable steps to determine what the laws are, what the rules are, knowing that these can change from day to day. ... [T]here is a real onus on people who operate their business under a license to find ways of informing themselves, and that could mean seeking assistance and double checking, utilizing other resources if in fact they have difficulty reading and writing. ...

Mr. Richardson was sentenced to pay a fine of \$1,000.00.

[22] In the case of *R. v. McPherson* from our court in May 2011, Mr. McPherson pleaded guilty to leaving his nets unattended for longer than 30 hours, allowing the fish to rot. The weight of the fish seized, all of which were rotten was 6,753 pounds (3,070 kilograms). A fine of \$2,000 was imposed, taking into account Mr. McPherson's impecunious circumstances, and that a fine in excess of \$2,000.00 could not be worked off on the fine options program.

[23] When I asked Mr. Abbott if he had anything to say, in speaking for some time, he expressed very little remorse. His remarks essentially amounted to him blaming many other factors for the situation he found himself in, including the regulations, employees, lack of support from the previous owner of the business, lack of help from Fisheries, his GPS malfunctioning, too much to do, his memory, other health problems. A very telling remark was when Mr. Abbot said “But, you know, we really didn’t know what the heck we were doing. ...” And later said “we’re learning this the hard way”. When referring to the obligations he has as a commercial fisher on the Great Slave Lake, Mr. Abbott said “It’s just overloaded with too much to do and not enough time to do it and always short of fish and just scrambling trying to keep above board and keep our nose above board.” Mr. Abbott concluded his remarks with “Had I known any of this, I would never have bought into this business...”

[24] When Mr. Abbott bought this business, when he decided to become a fisherman on the Great Slave Lake, he had a duty to ensure that he could undertake this endeavour within the bounds of the law; he had a duty to know the law and his obligations there under; and he had a duty to ensure that he could meet his obligations. “We really didn’t know what the heck we were doing” and “we’re learning this the hard way” shows a complete lack of insight into his situation, and his responsibility as a user of a valuable natural resource. It does not appear to me from his remarks that Mr. Richardson has acknowledged or perhaps even realized the harm he has done.

[25] The Great Slave fishery is a valuable resource that belongs to us all. It has to be managed, it has to be protected; it is of great benefit and we all have a duty and an obligation to ensure that its value and its benefits remain for future generations. A valuable resource is not maintained or preserved by individuals or companies going out to use it without knowing “what the heck” they are doing. It may seem like the rules and regulations attached to the Great Slave fishery are complicated or even burdensome, but rules and regulations are necessary and effective in ensuring that our natural resources are used and maintained in a responsible and sustainable manner.

[26] Sentencing today has to ensure that both Mr. Abbott and others who may think like him, who may think they can undertake profitable endeavours with such an irresponsible and careless attitude, have to realize that there are consequences to that

attitude, and to that approach to the use of our natural resources. Mr. Abbott and anyone else who decides to make a profit from exploiting our natural resources have a duty to do so in an informed and responsible way. A cavalier attitude to the use of our resources risks serious and even permanent damage to our renewable resources, to the Great Slave fishery. Everyone has to realize that there is a duty and responsibility to be informed of the requirements associated with this type of endeavour, and be prepared to comply with the relevant legislation and regulations.

[27] When we have a resource as valuable as the Great Slave fishery, all of us have to ensure that we maintain it, that we protect it. Its use comes with many duties and responsibilities. Ignoring one's obligations comes at too great a price, and that price will be paid by future generations.

[28] In sentencing Mr. Abbott, I not only have to attempt to deter Mr. Abbott and others from neglecting their duties and obligations imposed on them as users and beneficiaries of our natural resources, but a sentence should also promote a sense of responsibility in offenders, and acknowledgment of the harm done.

[29] Mr. Abbott may think that this legislation and the regulations are merely an inconvenience to him that make his life more difficult; I do not believe he recognizes the importance of regulating the use of our natural resources.

[30] I also have to consider the principle of parity, which is that the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Parity is a difficult principle to achieve, because individuals or businesses, and the circumstances that offences are committed in vary greatly. But it should certainly not be the case that a person who commits more offences, shows a greater degree of irresponsibility to his obligations, has a more cavalier attitude, thereby committing a greater number of infractions, should receive a lesser penalty, in essence get a quantity discount because he has breached more regulations.

[31] I recognize totality also has to be considered, but only to a point. I do not want to encourage the attitude that it appears to me that Mr. Abbott had towards his obligations; nothing in this case makes me believe that Mr. Abbott wanted to comply with the regulations – requests were made for his log books, warnings were given with respect to his vessels being unregistered, his nets were not properly marked, and nets were set

in a closed area – he says “oversights” – these are not oversights, it is an attitude of non-compliance, of disregard, and completely irresponsible. And such an attitude comes with a risk. This is willful blindness and it is reckless – it is fine to say I never wanted to break the law, I have respect for the fishery, but Mr. Abbott’s actions do not come anywhere close to backing up those words. They are just words with no foundation. Hopefully after today, Mr. Abbott’s conduct will change to be more in line with his words.

III. CONCLUSION

[32] I have significantly reduced all of the fines that I am going to impose taking into account totality, and exercising as much restraint as I can. I take into account that Mr. Abbott is a small business man, and have attempted to impose a total fine that both recognizes the completely unacceptable attitude that Mr. Abbott’s actions show, but will not be crushing to him. But I also do not want to impose a sentence that may be seen by other businesses as what is often referred to as a “licensing fee”; a nominal fine or a fine that is significantly less than the profit that can be realized if one ignores the law, does not discourage individuals or businesses from ignoring their obligations, and may in fact encourage such behaviour, especially if compliance with the law is seen as too onerous.

[33] On the count of failing to fill out accurately and completely his commercial harvest log books, there will be a fine of \$1,500.00; on the charge of operating an unregistered fishing vessel used for commercial fishing, there will be a fine of \$1,500.00; on the charge of fishing in areas that were closed to commercial fishing there will be a fine of \$2,000.00; and on the charge of having fishing nets that were not properly marked in accordance with the Regulations, there will be a fine of \$1,000.00. Pursuant to s. 72(2) of the *Fisheries Act*, the fish seized are ordered forfeited to Her Majesty.

B. E. Schmaltz
Territorial Court Judge

Dated at the City of Yellowknife
This 9th day of August, 2012

R. v. Brian ABBOTT, 2012 NWTTC 10

Date: 2012 08 08
File: T-1-CR-2011001967

**IN THE TERRITORIAL COURT OF THE
NORTHWEST TERRITORIES**

IN THE MATTER OF

HER MAJESTY THE QUEEN

- and -

BRIAN ABBOTT

REASONS FOR JUDGMENT

of the

HONOURABLE JUDGE B. E. SCHMALTZ
