Stott v Russell & *Fellows v Russell* [2010] NTSC 49

PARTIES:	STOTT, Steven Bruce & RUSSELL, Peter John FELLOWS, Timothy Francis & RUSSELL, Peter John
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE TERRITORY EXERCISING APPELLATE JURISDICTION
FILE NO:	No. JA 38 of 2010 (21020183) No. JA 39 of 2010 (21020186)
DELIVERED:	22 October 2010
HEARING DATES:	25 August 2010
JUDGMENT OF:	BLOKLAND J
APPEAL FROM:	Court of Summary Jurisdiction

CATCHWORDS:

FISH AND FISHERIES -- OFFENCES -- JUSTICES APPEAL

Appeal from sentences imposed by a Stipendiary Magistrate under the *Fisheries Act* (NT) and *Marine Act* (NT) – appeal grounds that fines imposed were manifestly excessive – general deterrence features strongly in

matters concerning safety of the public or sections of it – no direct evidence of danger to crew – no authority to support proposition that all breaches must be dealt with harshly – each case must be evaluated in terms of objective seriousness – a number of factors existed that affected appellant capacity to pay fines- appeals on counts 1-5 by both Appellants allowed, appeal on count 6 in relation to the Appellant Fellows dismissed.

Fisheries Act (NT) ss 10, 13
Marine Act (NT) ss 25, 97
Navigation Act (Cth) s 427
Sentencing Act (NT) ss 17, 26

Bahloni and Kalungan v Munn [2001] NTSC 101
Crannssen v The King (1936) 55 CLR 509
Director of Public Prosecutions v Amcor Packaging Australia Pty Ltd (2005) 11 VR 557
Mason v Pryce (1988) 34 A Crim R 1
Ragett, Douglas and Miller v The Queen (1990) 50 A Crim R 41
The Queen v Tait and Bartley (1979) 46 FLR 386

REPRESENTATION:

Counsel:

Appellant:	Mr Tippett QC
Respondent:	Ms Truman

Solicitors:

Appellant:	Mr Maley
Respondent:	ODPP

Judgment category classification:	C
Judgment ID Number:	BLO 1007
Number of pages:	19

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Stott v Russell Fellows v Russell [2010] NTSC 49
No. JA 38 of 2010 (21020183)
No. JA 39 of 2010 (21020186)

BETWEEN:

STEVEN BRUCE STOTT
Appellant

AND:

PETER JOHN RUSSELL
Respondent

TIMOTHY FRANCIS FELLOWS
Appellant

AND:

PETER JOHN RUSSELL
Respondent

CORAM: BLOKLAND J

REASONS FOR JUDGMENT

(Delivered 22 October 2010)

Introduction

[1] Steven Bruce Stott and Timothy Francis Fellows (the Appellants) appeal against the severity of fines imposed in the Court of Summary Jurisdiction for offences committed by them against the *Marine Act* (NT), and *Fisheries Act* (NT). The charges against both Appellants were heard consecutively in

the Court of Summary Jurisdiction. By consent the Appeals were heard together in this Court.

[2] On his pleas of guilty the Appellant Stott was convicted of one count of *permitting* a vessel to be put to sea with a lesser number of certified persons than required, namely a Marine Engine Drive Grade 2 and Skipper Grade three, contrary to s 25(1) *Marine Act* (NT) (count 1); failing to maintain direct control of assistants while fishing operations were conducted under a Barramundi licence contrary to s 13A(2)(b) of the *Fisheries Act* (NT) (count 2); one count of failing to maintain direct control of assistants while fishing under his Barramundi licence, contrary to s 13C(2)(b) *Fisheries Act* (NT) (count 3); and two counts of knowingly send a 6.2 metre fishing vessel to sea without the required buoyancy contrary to s 97(1) *Marine Act* (NT) (counts 4 and 5).

[3] On counts 1, 4 and 5 the Appellant Stott was fined an aggregate fine of $35,000. On counts 2 and 3 he was fined an aggregate fine of $8,000. The total of the fines imposed on the Appellant Stott was $43,000.

[4] On his pleas of guilty the Appellant Fellows was convicted of one count of taking a vessel to sea with a lesser number of certified persons on board than permitted, namely a Marine Engine Driver Grade 2 and Skipper Grade 3, contrary to s 25(1) *Marine Act* (NT) (count 1); three counts of being a master of a 6.2m vessel, knowingly taking the vessel to sea without the required buoyancy contrary to s 97(2) *Marine Act* (NT), (counts 2, 3 and 4);

a further count of knowingly taking a 5 metre vessel to sea without the required buoyancy, contrary to s 97(2) *Marine Act* (NT), (count 5); and one count of fishing for Barramundi without being the holder of a licence, contrary to s 10(1)(a) *Fisheries Act* (NT), (count 6). All offences were alleged to have been committed 30 May 2010 and 5 June 2010.

[5] On counts 1 to 5 inclusive the Appellant Fellows was find an aggregate sum of $30,000. On count 6 he was fined $300. The total of the fines imposed on the Appellant Fellows was $30,300.

[6] Victim's levies were imposed, in the case of the Appellant Stott, $200; in the case of Appellant Fellows, $240.

[7] Both Appellants argue the fines imposed are manifestly excessive *having regard to the offences and the offender*.[1]

[8] The offences need to be seen in the overall regulatory framework. Broadly, the *Marine Act* (NT) regulates shipping and related matters within the Northern Territory and implements the Uniform Shipping Laws Code in accordance with s 427 *Navigation Act* (Cth).[2] Similarly, the *Fisheries Act* (NT) provides for the regulation, conservation and management of fisheries and fishery resources so as to maintain their sustainable utilisation, and to regulate the sale and processing of fish and aquatic life.[3]

[1] Notice of Appeal, Steven Bruce Stott, 15 July 2010. Notice of Appeal, Timothy Fellows, 15 July 2010.
[2] Preamble, *Marine Act* (NT) at s 7.
[3] Preamble and s 2A *Fisheries Act* (NT).

Sentencing Facts Alleged and Proven in the Court of Summary Jurisdiction

[9] The facts in support of the charges as relevant to this appeal are as follows:[4]

The Appellant Fellows in the past four years has been an approved nominated person under licence and has leased and operated barramundi licences in the Northern Territory. He is the holder of an NT marine qualification, skipper grade 3 with an endorsement allowing him to operate vessels at 200 nautical miles.

[10] In May 2010, the Appellant Fellows entered into a barramundi fishing partnership with the Appellant Stott. Stott is the owner and holder of barramundi licence A7359. Stott made arrangements with another barramundi fishing licence owner and holder to be nominated under the license A71112 from 30 May 2010 to 30 June 2010. Stott is the owner of fishing vessel FV Gold Coaster, registration IL956, a 17 metre vessel that currently has Northern Territory 3B survey.

[11] The Appellants recruited five employees as assistants to work as crew during a planned voyage. The five crew and the Appellant Fellows all signed a fisheries form for them to act as assistants only. Both Appellants and the crew prepared the vessel (FV Gold coaster) for barramundi fishing utilising 2,000 metres of gill net and four tenders. Two of the tenders were owned by the Appellant Fellows, marked IL935. One of those tenders had a

[4] Drawn from transcript, Court of Summary Jurisdiction 25 June 2010 pages 2 – 10, (Fellows) and transcripts pages 4-8 (Stott)

reel with a gill net fitted. The remaining two were owned by the Appellant Stott, marked IL956 and IL956B.

[12] On 30 May 2010 at 4:30pm the FV Gold Coaster with the Appellant Fellows, five crew, nets and four tenders in tow, departed Darwin for Anson Bay. The Appellant Stott, (the licence holder), remained in Darwin due to illness. At that time no approvals had been sought from the relevant fisheries licensing body for the Appellant Fellows to operate the Appellant Stott's licence (licence No. A7/359), nor had an application for the Appellant Fellows been submitted for him to be an approved nominee under licence A71112.

[13] The Appellant Fellows was the skipper of the FV Gold Coaster for the journey. The only person to have recognised marine qualifications was a deckhand with a coxswain certificate issued in Queensland.

[14] On 31 May 2010 the Appellant Stott submitted an application to Fisheries licensing for the nominee on licence A71112, nominating himself as the approved person under this licence and not the Appellant Fellows. The Appellant Stott also submitted an application for all six persons, including the Appellant Fellows to be approved as assistants on the FV Gold Coaster and to work as assistants under fishing licenses A7359 and A71112. The Appellant Stott did not proceed with an application to have the Appellant Fellows approved as a short term operator or nominee on A71112 after being informed the Appellant Fellows would need to be present for an interview,

neither did he seek approval for the Appellant Fellows to be nominated on licence A7359. The Appellant Stott made no attempt to order the FV Gold Coaster to return to Darwin or cease fishing operations. Between 30 May and 5 June 2010 the Appellant Fellows conducted fishing operations by the use of gill nets at Anson Bay, catching and processing over two tons of barramundi and other fish. During this period the Appellant Fellows was not licensed to conduct commercial fishing. The crew operated under the instructions of the Appellant Fellows.

[15] Police attended on 5 June 2010 and observed the FV Gold Coaster with four tenders alongside. The tenders IL956 and IL956B contained gill nets. Tender IL935 was fitted with a net reel but no net on the reel; another tender was observed containing anchors and floats.[5] Safety equipment was present on all tenders save for IL935.

[16] The Appellant Fellows made admissions concerning fishing for barramundi using gill nets, however stated to police he believed he was operating lawfully under licenses A7359 and A71112. He told police he was unaware of "manning" (sic) requirements concerning the FV Gold Coaster under 3B survey, requiring a skipper 3 with 200 nautical mile endorsement as the master, a skipper 3 as the mate and a marine engine grade 2 engineer. He confirmed none of those qualified persons were on board. He complied with police instructions concerning retrieval of fishing gear and return to Darwin.

[5] T, Stott 25/06/2010 at 9.

[17] An inspection of the tenders revealed three of the tenders had the required safety equipment. One of the tenders had no safety equipment at all on board. The Appellant Fellows admitted there was no safety equipment on the tender stating it was just used as storage. He also agreed he had not checked for buoyancy requirements. A later inspection by a marine safety branch surveyor found the FV Gold Coaster complied with marine legislation save for minor deficiencies, however the four tenders failed to comply with buoyancy requirements.

[18] It was also noted that a laminated NT Seafood Council notice distributed to all of its members outlining marine safety requirements, (including buoyancy requirements and safety equipment check list), was found on two of the tenders.

[19] On behalf of the Appellants it was pointed out to the Court of Summary Jurisdiction that *between them*[6] they possessed the appropriate licences. The Appellant Stott owned one and was a nominated person on the other. There was no suggestion the amount of fish caught was in excess of that permitted under the licenses. The Appellant Fellows had been approved on a number of licenses in his own name. Since the events forming the basis of the charges, the Appellant Fellows has been approved as an appropriate person to operate the two licenses in question which had not at the relevant time been completed, lodged or approved.

[6] T, Stott 25/6/2010 at 9.

[20] The Court was informed the Appellant Stott's health problems were of some significance, including at one point hospitalisation. As a consequence of his poor health he was not present on board; if he had been present he would not have been in breach of the *Fisheries Act* (NT). The *Fisheries Act* (NT) breach was submitted to be a *paper work* infringement; the fishing resources were not affected adversely or put at risk.[7] It was also explained the breaches concerning buoyancy of the tenders are calculated by reference to weight and other determinants to assess the amount of foam to be applied to the boat to ensure adequate buoyancy. The buoyancy is tested against the Uniform Shipping Laws Code ("USL") and involves calculation by a formula. It was not suggested there was *no* buoyancy, but that the buoyancy failed the regulated standard.

[21] Further facts were put on behalf of both Appellants that were not disputed by the Respondent. First, it was conceded to be a single operation between the Appellants and that *between* them, they did possess appropriate licenses. The Appellant Stott owned one license and was a nominated person on the other. If the Appellant Fellows had been approved as was initially intended, the licensing charges would not have been an issue. The Appellant Fellows had held licenses in his own name and subsequent to the offences had been approved by the Director of Fisheries as an appropriate person to operate the licences. At the time of the offences the nominations had not been completed and approved.

[7] T., 25/06/2010 Stott at 10.

[22] The health status of the Appellant Stott at the relevant time was described as life threatening which led to him not being able to be present on the vessel when it left and resulted in him not completing the licensing paperwork contrary to his original intention. Counsel described this omission as essentially a "paperwork infringement". The Appellant Fellows left on the fishing operation on the basis that the Appellant Stott would attend to the licensing. The catch was within the limits of the licenses that had been issued to the Appellant Stott.

[23] As noted, in relation to the offences relating to buoyancy, the Court was told buoyancy needs to be calculated by reference to weight and involves calculation by complicated formula relevant to various weights and meterage. The difficulties in ensuring compliance were explained to the Court and on behalf of the Appellant Stott it was submitted he believed the tenders met buoyancy standards. The lack of opportunities to have small vessels surveyed was explained and he acknowledged he was proven wrong after the tenders were seized and the buoyancy was tested.

[24] In terms of the FV Gold Coaster and the failure to comply with the requirement to have correctly qualified persons on board, it was pointed out to the Court that the FV Gold Coaster was operating within 15 nautical miles off shore, namely at five nautical miles. As the vessel was capable of operating up to 200 nautical miles off shore, it was surveyed as class 3B, and therefore required the specified certified persons under s 25(1) *Marine Act* (NT). The point was made that this fishing operation was at 5 nautical

miles. Further, on board was a coxswain with a Queensland recognized certificate. It was argued the breaches of the *Marine Act* (NT) were technical and were not in flagrant disregard of the requirements. It was submitted the nature of the offending was therefore at the lower range.

Personal Circumstances of the Appellants

[25] It was said of the Appellant Stott, that although a commercial fisherman, he was relatively unsophisticated. He left school at 14 years of age and worked in the building industry and more recently as a professional fisherman. He was described as "the banker" in the arrangement, having borrowed money against the property he owns up to $700,000 to equip and purchase the boat and license. He missed the start of the season due to ill health, so too did the Appellant Fellows being interstate attending to difficult personal matters. The likelihood was that they would only be working half of the season as a result of their personal difficulties. As a result of the seizure of the nets and tenders consequent of the offending, both Appellants were unable to exercise their fishing licenses and carry out their business.

[26] The Appellant Fellows left school at 15 years of age; at the time of sentencing he was 35 years of age. The previous year's fishing season was interrupted for him due to attending to divorce and custody issues interstate. This was his first fishing trip for the season. He was described as being back to "square one" in financial terms. He has worked as a professional fisherman all of his working life. He had suffered financially as a result of seizure of his assets incidental to the offending. He relied exclusively on

the proceeds of fishing and had not commenced this season following a bad year previously. He was indebted to a mortgage broker and fish buyer involving credit arrangements and owed a further $20,000 - $25,000 to the Appellant Stott under the partnership.

[27] The learned Magistrate was told in gross terms the fishing operation brought in approximately $100,000 per month which after operating costs, paying crew and other expenses and if the catch was good, there was approximately $50,000 split between them per month. While they were unable to fish, their loss was also to that extent.[8]

[28] No relevant previous convictions were alleged against either Appellant. The Appellant Fellow's record disclosed one count of possessing a firearm unlicensed for which he was fined, the Appellant Stott's record disclosed traffic offences in 1971.

Arguments and Discussion on Appeal

[29] In arguing the fines were manifestly excessive Senior Counsel for the Appellants asserted the learned Magistrate had sentenced on a flawed basis, namely by regarding the breaches as severe breaches of the *Marine Act* (NT) and *Fisheries Act* (NT) resulting in, it was argued, severe fines. On behalf of the Appellants it was argued the various breaches should have been regarded as "technical" or "paper" breaches rather than with the high level

[8] T. Stott 25/06/2010 at 13.

of objective seriousness the learned Magistrate regarded the majority of the counts.

[30] Part of the learned Magistrate's ex tempore reasons are as follows:[9]

> "The issues about safety are clearly serious issues. If a commercial fishing venture goes wrong and the vessels upon which are being used are not safe for whatever reason, and in this circumstance buoyancy, it is then the lives of the crew that is at stake. It is then the cost of a rescue operation that may have to ensue given if there was something that went wrong. Luckily in their circumstances, in your offending, nothing did go wrong".

[31] In the circumstances of this offending, on behalf of the Appellants, it was argued the learned Magistrate formed an erroneous impression of the scale of the offending leading to the fines imposed. The learned Magistrate, it was argued, sentenced on the basis the vessels were actually unsafe to the point that the safety of the crew working on the vessels had been compromised. It was contended that this was not the prosecution case.

[32] It was submitted that this may have occurred by virtue of a reading of Division 4 *Marine Act* (NT) which is headed "Unsafe Ships" and that while that part of the *Marine Act* (NT) declares certain defects to amount to "unsafe ships", it does not necessarily reflect a factual situation that in each case or in this case a person's life is at risk or there is a serious consequence flowing from the breach. Offences under the *Marine Act* (NT) cover a wide range of circumstances, some breaches may amount to severe and immediate threats to safety whereas others may be evidence of non compliance that has

[9] T 18, Stott, 25 June 2010.

a tendency to undermine the regulatory regime but may not in fact put lives at risk in the same way that more significant breaches do.

[33] The relevant offences carry significant financial maximum penalties, indicating the serious regard the legislature and therefore the community has for breaches under both Acts, however, as with any penalty regime there is a range of conduct starting from non-compliance without adverse consequences through to serious breaches resulting in safety being compromised, injury or worse. With respect I agree with the learned Magistrate's view on the reason for the significant maximum penalties:[10] "But the reason the penalties are so high is because when they do go wrong, they can go terribly wrong". From that perspective, even minor breaches may still attract significant penalties to satisfy the preventive aims of both regulatory regimes. There is however a difference between a breach that has the real potential to risk safety and one where those risks are minimal. Although this type of offending should rarely be considered simply "technical" or "paper breaches", (implying there is little or no need for a sanction), there are situations where the risks of non-compliance are minimized or do not have the attributes of more egregious breaches.

[34] A number of factors are argued to be relevant in assessing the scale of the significance of the offending. In relation to the failure to have appropriate certified staff (s 25(1) *Marine Act* (NT)), it was raised again on appeal that although the FV Gold Coaster was surveyed to class 3B, (meaning it was

[10] T at 18, Stott, 25/06/2010.

capable of travelling up to 200 nautical miles off shore), it was operating at 5 nautical miles and was adequately crewed for that operation. The breach therefore attached to the survey of the vessel and not to the fact that at 5 nautical miles the complement number of crew was adequate. Had the vessel obtained a survey to operate 15 nautical miles off shore it would have complied with the complement of crew. It was not suggested at any time the safety of the crew was put at risk by the FV Gold Coaster operating at 5 nautical miles. Similarly it was argued in relation to the buoyancy offences, it was not the prosecution case that the tenders did not have buoyancy but rather the buoyancy did not comply with the requirements of s 97(1) *Marine Act* (NT) in circumstances where the correct buoyancy is difficult to calculate.[11] Further, it was pointed out that all vessels carried appropriate safety equipment save for the 5 meter tender that was used exclusively for the storage of nets.

[35] On appeal the reasons for the Appellant Stott's absence from the operation that led to the various breaches of the licenses was put to the Court. Both Appellants were qualified and there was no allegation of fishing resource being placed in jeopardy.

[36] I am reminded by counsel for the Respondent the onus is on the Appellants to establish error in the exercise of the sentencing discretion of the learned Magistrate: *Crannssen v The King*;[12] an appellate court can only interfere if

[11] See Para 20 above.
[12] (1936) 55 CLR 509 at 519.

there is some reason for regarding the discretion conferred on the learned Magistrate was improperly exercised and the learned Magistrate fell into error: *Mason v Pryce*;[13] an appellate court can only interfere if it is convinced the sentence was manifestly excessive: *Ragett, Douglas and Miller v The Queen*.[14] It is necessary for the Appellant to demonstrate that the learned Stipendiary Magistrate was in error in acting on a wrong principle or in wrongly assessing some salient feature of the evidence or to show that the sentence itself was so excessive to manifest such error. There is a presumption that there is no such error: *The Queen v Tait and Bartley*.[15]

[37] Further, learned Counsel for the Respondent points to the maximum penalties for each offence to demonstrate a legislative intention to treat breaches of both Acts "seriously and dealt with harshly".[16]

[38] The relevant maximum penalties are as follows:

S 25(1) *Marine Act* (NT)	$13,300[17]
S 97(1) *Marine Act* (NT)	$166,250[18]
S 97(2) *Marine Act* (NT)	$166,250[19]
S 10(1)(a) *Fisheries Act* (NT)	$20,000
S 13A(2)(b) *Fisheries Act* (NT)	$20,000
S 13C(2)(b) *Fisheries Act* (NT)	$20,000

[13] (1988) 34 A Crim R 1.
[14] (1990) 50 A Crim R 41 at 46.
[15] (1979) 46 FLR 386.
[16] Respondent's submissions para 12(a).
[17] 100 penalty units.
[18] 1250 penalty units.
[19] 1250 penalty units.

[39] It was argued on behalf of the Respondent the fines were well within the proper exercise of the sentencing discretion as on counts 1 to 5 the Appellant Fellows was fined just over 4.4% of the total maximum fine that could be imposed; on count 6 he was fined 1.5% of the total maximum that could be imposed; in terms of the Appellant Stott the fines imposed on counts 1, 4 and 5 were just over 10% of the total maximum fine that could be imposed and on counts 2 and 3 were just over 20% of the total maximum fine that could be imposed.

[40] Although the maximum penalties have a significant bearing on setting a proportionate penalty, that penalty covers a significant range of conduct and consequences. I know of no authority to support the proposition that all breaches must be dealt with "harshly". I accept there is significant benefit in ensuring penalties deter generally and specifically to support the safety regime, however, each case must still be evaluated in terms of its objective seriousness. Although there is no evidence of prevalence of this type of offending, (as compared to using foreign fishing boats in the AFZ[20]), general deterrence features strongly in matters concerning safety of the public or sections of it, especially in the area of occupational health and safety.[21] The difficulties and costs associated with regulating regimes to monitor marine and fishery activities also underpin the penalty structure.

[20] *Bahloni and Kalungan v Munn* [2001] NTSC 101 discussing general deterrence in the context of foreign fishing in the AFZ.
[21] *Director of Public Prosecutions v Amcor Packaging Australia Pty Ltd* (2005) 11 VR 557.

[41] On behalf of the Respondent it was argued strongly that the nature of the offences are serious as they went to the issue of safety, (save for count 6 in relation to the Appellant Fellows). Further, it was submitted that while there was no direct evidence of specific danger to the crew, failure to comply with buoyancy requirements of itself raised an issue of safety. I readily accept the underlying premise that compliance is important for safety in the industry overall and in any given fishing operation, however here, there was no allegation that any person's life was "at stake" as expressed by the learned Magistrate, although I acknowledge compliance is needed to prevent such a situation. I am drawn to the conclusion that the learned Magistrate gained an impression that led to the assessment of the objective seriousness of the offending being far more significant than it was. In my view the sentences, save for and except count 6 against the Appellant Fellows were manifestly excessive.

[42] Some dissatisfaction was expressed on behalf of the Appellants in relation to how their financial circumstances were put before the learned Magistrate. It may be that some confusion was caused as a result of that. In my view however, there was enough material in the submissions before the learned Magistrate to conclude that neither Appellant had significant means when the facts of illness and other personal circumstances led to the late commencement of their participation in the fishing season. Similarly, their credit arrangements, debt, and difficulties with being able to re-commence work as a result of the seizing of their equipment are all matters that bear on

their capacity to pay a fine. I did not take the submission before the learned Magistrate that approximately $50,000 per month is split between the Appellants to be the full extent of their financial circumstances. In terms of re-sentencing both Appellants I will tend to regard them as persons of limited means as that is the conclusion I have come to when reading both transcripts as a whole. In re-sentencing the Appellant's I will take brief submissions on their capacity to pay. I agree capacity to pay must be assessed to comply with s 17 *Sentencing Act* (NT), although there will be no order that fines be subject to a warrant of commitment being issued pursuant to s 26(2) *Sentencing Act* (NT). The Appellants can make arrangements for time to pay. Although the learned Magistrate did take into account the early pleas of guilty, there is no indication in the reasons as to the extent of the reduction on that basis. Both Appellants are of good character, the previous matters alleged are irrelevant, remote and minor. There is no record of any industry or safety offences against them in circumstances where they have been professional fishermen for significant parts of their working lives. In my respectful view the sentencing discretion has miscarried and the fines (save for count 6 on the Appellant Fellows) are manifestly excessive.

[43] In re-sentencing the Appellants, while I bear in mind their personal financial circumstances, the fact that minimal risk and no danger was actualised, their pleas of guilty and lack of previous offending, those offences must still be dealt with in a manner to preserve the integrity of the regulatory regime, deter themselves and others and promote the safety and environmental

objectives underpinning both Acts. Although the maximum penalties are significant and any resulting sentences must be cognizant of that, in my view the offending does not possess the attributes that would place it in a range that is as significant as was considered in the Court of Summary Jurisdiction. I note also there was some compliance with safety requirements and the catch was within the limits of the license so there was no detriment to the resource.

[44] I will re-sentence the Appellants once current information concerning their capacity to pay is before the Court.

Orders

1. In relation to the Appellant Stott the Appeal is allowed, the sentences imposed on counts 1 – 5 are quashed and the Appellant Stott will be re-sentenced in this Court.

2. In relation to the Appellant Fellows the Appeal is allowed in part, the sentences imposed on counts 1 – 5 are quashed and the Appellant Fellows will be re-sentenced in this Court on counts 1 – 5.

   The Appeal as it relates to count 6 is dismissed and the fine of $300 and a victim's levy of $40 is confirmed.