

Clause 7.

7. Every person is guilty of an offence who
- (a) being master or in command of a fishing vessel,
 - (i) enters Canadian territorial waters contrary to this Act, or
 - (ii) fails to bring to when required so to do by any Protection Officer or upon signal of a government vessel;
 - (b) being aboard a fishing vessel, refuses to answer any questions on oath put to him by a Protection Officer;
 - (c) after signal by a government vessel to bring to, throws overboard or staves or destroys any part of the vessel's cargo, outfit or equipment; or
 - (d) opposes or obstructs any Protection Officer in the execution of his duty.

Mr. APPLEWHAITE: Mr. Chairman, there is one obvious question there and I think it can be answered without great length. Clause 7 (a) (i)—“Every person is guilty of an offence who being master or in command of a fishing vessel, enters Canadian territorial waters contrary to this Act.” What is the overriding international law which permits anybody to bring their ship into port under stress of weather, danger of loss of life, and so on?

Mr. OZERE: I think that is under The Hague Convention. Perhaps Mr. Erichsen-Brown might know something about that.

Mr. ERICHSEN-BROWN: I would not like to answer that without considering it.

Mr. APPLEWHAITE: The question I really wanted to ask is, has it been definitely established that that provision is a defence without setting it out in any way in this Act which creates the offence?

Mr. OZERE: The courts of our land have always applied any international law that is applicable.

Mr. APPLEWHAITE: Without any necessity of referring to this in this Act?

Mr. OZERE: That is right.

Mr. ROBICHAUD: Referring to clause 7 (a) (ii)—Every person is guilty of an offence who being master or in command of a fishing vessel, fails to bring to when required so to do by any protection officer or upon signal of a government vessel. This provision could apply to a Canadian vessel as well as a foreign vessel under this clause. Is it realized that a sailing schooner, due to current and high winds, simply cannot, sometimes, especially when it is tacking, come to when it is required, and, hence, why should not the word “wilfully” precede this subsection? According to the Criminal Code, in some of those severe sections, punitive sections, it always contains the word “wilfully”, and I would strongly suggest that in this case for failure to bring to, that the word “wilfully” should precede that subsection. I know for a fact, and from practical experience, especially with a sailing vessel, you cannot “bring to” under certain circumstances, and if the word “wilfully” is left out it would be too easy to convict some of our Canadian mariners.

Mr. OZERE: Yes, I see your point, but I think in offences of this nature guilty intent is always a material ingredient. In other words, you have to prove, in addition to everything else, that the mind was a guilty mind, that there was what we call legally *mens rea*, and unless you showed that, I doubt very much that the court would ever convict anybody who accidentally could not avoid the commission of the offence. I think that perhaps in the other subsection the word “wilfully” could be inserted. Was that in your mind?

Mr. ROBICHAUD: Yes, I was coming to that later.