

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

**THE ASSOCIATION OF PROFESSIONAL ENGINEERS,
GEOLOGISTS AND GEOPHYSICISTS OF THE
NORTHWEST TERRITORIES**

PLAINTIFF

-and-

**TREMINCO RESOURCES LTD. and
ROLAND TRENAMAN**

DEFENDANTS

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J. E. RICHARD

Injunction granted pursuant to s. 9(4) of the Engineering, Geological and Geophysical Professions Act R.S.N.W.T. 1988, ch E-6 restraining the defendants from practicing professional engineering in the Northwest Territories.

Heard at Yellowknife NT

Trial Held: July 17, 1995

Reasons Filed: August 4, 1995

Counsel for the Plaintiff: G. Phillips

Counsel for the Defendants: No one present

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1 The legislature has empowered the plaintiff association to govern the engineering profession and to regulate the practice of professional engineering within the Northwest Territories. In the same statute, the legislature prohibits the practice of professional engineering within these territories by anyone who is not a member, licensee or permit holder registered by the plaintiff association. In this lawsuit the plaintiff association alleges that both defendants are practising professional

engineering contrary to the statute and seeks an injunction or court order restraining the defendants from continuing such unlawful activity.

2 The statute in question, Engineering, Geological and Geophysical Professions Act R.S.N.W.T. 1988, ch E-6 is public interest legislation aimed at the protection of the public through a regime of professional qualification and standards. The plaintiff association is charged with the statutory duty of enforcing the provisions of the statute in the public interest. For the reasons which follow, I find there is merit in the application for an injunction against the defendants, to prevent further activities which are prohibited by the legislature.

3 Relevant provisions of the statute are as follows:

3. The objects of the Association are

- (a) to regulate the practices of professional engineering, professional geology and professional geophysics and to govern the professions in accordance with this Act and the by-laws, and
- (b) to establish and maintain standards of knowledge, skill, care and professional ethics among its members and licensees,

in order that the interest of the public may be served and protected.

...

9.(1) Subject to this Act, no person other than a member, licensee or permit holder shall

- (a) practise or offer to practise professional engineering, professional geology or professional geophysics;
- (b) use, orally or otherwise, the title "professional engineer", "professional geologist" or "professional geophysicist" or any abbreviation of these titles;
- (c) use, orally or otherwise, any name, title, occupational designation or position description in which the term "engineer", "geologist" or "geophysicist" appears or use any abbreviation of any such name, title, designation or description in a manner that would lead any person to believe that her or she
 - (i) is a professional engineer, professional geologist or professional geophysicist, or
 - (ii) is a person qualified to practise professional engineering, professional geology or professional geophysics; or
- (d) advertise himself or herself as, hold himself or herself out as, or act in such a manner as to create or induce in the mind of any

reasonable person the belief that he or she is a professional engineer, professional geologist or professional geophysicist or a person so qualified.

...

(4) Where a person contravenes subsection (1) or (3), a judge of the Supreme Court may, on the application of the Association, grant an injunction restraining that person from further contravening that subsection.

...

(8) for the purposes of this section, proof of one act of professional engineering, professional geology or professional geophysics is proof of the practice of professional engineering, professional geology or professional geophysics, as the case may be.

...

20. (1) In this section "firm" includes a partnership, corporation or association of persons.

(2) A firm may practise professional engineering, professional geology or professional geophysics in the name of the firm if it is the holder of a permit issued to it under this Act.

(3) The council shall issue a permit, valid for the year in which it is issued, to a firm that

- (a) files an application on a form provided by the council;
- (b) pays all the required fees; and
- (c) appoints at least one member or licensee who is a full-time employee, partner or officer of the firm to serve as its professional representative and to assume responsibility for the professional conduct of the firm.

4

A trial was held on July 17, 1995. Although duly served with notice of the trial, neither defendant appeared.

5

Evidence at trial indicates that Treminco Resources Ltd. is the owner and operator of a producing gold mine, the Ptarmigan mine, located approximately 20 kilometers from the city of Yellowknife in the Northwest Territories. Treminco Resources Ltd. is a company incorporated in the province of British Columbia and registered in this jurisdiction pursuant to the Companies Act R.S.N.W.T 1988 ch C-12. Roland Trenaman is the president of Treminco Resources Ltd. and resides in Vancouver, B.C. Mr. Trenaman is not a member or licensee of the plaintiff

association. Treminco Resources Ltd. does not hold a permit issued by the plaintiff association. No person employed by Treminco Resources Ltd. is a member or licensee of the plaintiff association.

6 Expert evidence adduced at trial satisfies me that the operation of the Ptarmigan mine or any other gold mine in the Northwest Territories necessarily involves the application of scientific principles and knowledge within the definition of "professional engineering" set forth in s.1 of the statute. Further, government mining inspectors in the course of carrying out their duties at the Ptarmigan mine pursuant to the Mining Safety Act R.S.N.W.T. 1988, ch M-13 made first-hand observations of the mine's structures and operations and confirmed in testimony that such structures and operations require the ongoing services and expertise of a professional engineer.

7 Officials from the mining inspection office testified of contact with Roland Trenaman at the Ptarmigan minesite and elsewhere in the Northwest Territories on matters of professional engineering. Copies of correspondence from Treminco Resources Ltd. originating within the Northwest Territories and signed by "R.T. Trenaman, P. Eng., President" were entered as exhibits at the trial. One letter names Mr. Trenaman as mine manager and gives his local telephone numbers for contact purposes.

8 Evidence was adduced that in late 1994 the mining inspection office required from the owner of Ptarmigan mine a report detailing the mine's practices aimed at

reducing ground fall hazards in unsupported excavations at the minesite. The mining inspection office's policy required that this report be a "thorough site investigation and report prepared under the direction of a professional engineer". This policy exists to minimize the risk to people working in an environment of unsupported excavations. The report (Exhibit #6) that was provided by Treminco Resources Ltd. in compliance with this policy is signed by "R.T. Trenaman, P. Eng." It is clear from this document that an on-site investigation and inspection was conducted in the preparation of the report.

9 On the evidence adduced at trial I am satisfied that Roland Trenaman has practised professional engineering in the Northwest Territories and has, in the Northwest Territories, used the title "professional engineer" or an abbreviation thereof.

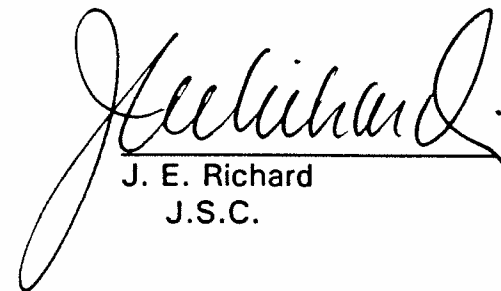
10 In the course of receiving evidence presented by the plaintiff association at trial, I heard reference (hearsay) to Roland Trenaman's assertion that he is a duly qualified professional engineer in the province of British Columbia. I wish to make clear that no admissible evidence was presented to establish that Roland Trenaman is or is not a registered member of British Columbia's professional engineering association. In any event, that is not an issue in this lawsuit.

11 For the foregoing reasons, an order will issue:

(a) enjoining the defendant Treminco Resources Ltd. from practising

professional engineering in the Northwest Territories contrary to s. 9(1)(a) of the Act

- (b) enjoining the defendant Roland Trenaman from practising professional engineering, using the title "professional engineer" or any abbreviation thereof, and/or holding himself out as a professional engineer in the Northwest Territories, contrary to s. 9(1) of the Act
- (c) directing the defendants to pay the plaintiff's costs of the within lawsuit at triple Column 2
- (d) directing the plaintiff to forthwith serve a copy of this order upon each of the defendants.


J. E. Richard
J.S.C.

CV 0564

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Plaintiff

-and-

TREMINCO RESOURCES LTD. and
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Defendant

Reasons for Judgment of the
Honourable Mr. Justice J.E. Richard

