

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

N. G. TREESHIN,

Appellant

- and -

THE CITY OF YELLOWKNIFE, upon the
Information of Jaak Koosel, sworn
the 21st day of October, 1977,
the Informant,

Respondent

Appeal from Conviction and Sentence imposed by Justice of
the Peace R. Milligan

Heard at Yellowknife February 16, 1978

Appeal dismissed without costs

Reasons for Judgment filed: March 9th, 1978.

Reasons for Judgment by:

The Honourable Mr. Justice C. F. Tallis

Counsel on the Hearing:

Mr. W. Stefura for the Appellant

Mr. J. Vertes for the Respondent

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REASONS FOR JUDGMENT OF THE HONOURABLE
MR. JUSTICE C. F. TALLIS

The Appellant was charged in an information
sworn on the 21st day of October, A.D. 1977 that:

"N. G. TREESHIN, on or about the 11th day
of October A.D., 1977, at Yellowknife in
the Northwest Territories, being the owner
of Lot 3 Block 83 in the City of Yellow-
knife, Northwest Territories, did refuse
to remove trash, located on the foregoing
property, and designated as trash, in
accordance with Section 7(3) of by-law
No. 1690, contrary to Section 7(1) of
the said by-law."

He appeared before Justice of the Peace R.
Milligan on the 2nd day of November A.D. 1977 and after a
trial he was found guilty. He was sentenced to pay a fine
of \$50.00 plus \$6.50 costs and in default of payment to
seven days in jail.

The Appellant launched an appeal with respect to this conviction and sentence on the grounds:

- "(a) That the finding of guilt was contrary to the weight of the evidence;
- (b) That the Justice of the Peace erred in law in making the finding of guilt;
- (c) That the penalty imposed was unduly oppressive having regard to all the circumstances of the case."

A trial *de novo* was held before me at Yellowknife and at the conclusion of oral argument I reserved judgment.

By-Law No. 1690 of the City of Yellowknife together with amendments thereto in By-Law 2087 was proved before me.

The relevant section under which the Appellant was charged reads:

"7. (1) Every person having trash shall dispose thereof at such locations, and within such time, as may be designated by an Inspector, or by an agent of an Inspector.

(2) No trash shall be placed in a lane or street.

(3) An Inspector or an Officer finding any goods or materials which he reasonably believes to be trash exposed to public view in the City may give notice to the owner or occupant of the lands on or near which the same are found to the effect that the same in his opinion constitute trash, and a copy of such notice shall be receivable in evidence as prima facie proof that the goods and materials therein described are in fact trash within the meaning of this by-law.

In this By-law trash and garbage are defined as follows:

"2. (1) (d) 'Garbage' means abandoned, discarded or rejected goods and materials of every description or kind capable of disposal in a garbage can, and includes ashes, bottles, metal cans or tins, crockery, glass, grass cuttings, paper, cloth, food, foodwaste, wrappings, sweepings, and the like, but does not include refuse or trash;

(m) "Trash" means abandoned, discarded or rejected goods and materials of every description not capable of disposal in a garbage can, but does not include refuse."

Counsel for the Appellant and Respondent are to be commended for reaching an agreement on certain facts that are not in dispute. At the trial *de novo* ownership of the property in question was admitted by the Appellant as well as receipt of certain Notices under the By-law which provide, *inter alia*, as follows:

" CITY OF YELLOWKNIFE BK #2 #1690.7(3)

Notice

(pursuant to Section 7, subsection 3, of By-Law No. 1690 as amended)

To the Owner or Occupant of Lot 3, Block 83, in the City of Yellowknife.

Take notice that I have today inspected the property at Lot 3, Block 83, municipally known as 4401 - 50 Ave. (street address) and that in my opinion the goods and materials there exposed to public view, to wit: abandoned, discarded and rejected goods and materials of every description (description) constitute trash within the meaning of By-law No. 1690 of the City of Yellowknife as amended.

Date: August 12, 1977

Inspector / Officer

"

CITY OF YELLOWKNIFE

BK #2 #1690.7 (1)

"DOUBLE REGISTERED

Order for Disposal of Trash

(pursuant to Section 7, subsection 1, of By-law No. 1690 as amended)

To the Owner or Occupant of Lot 3, Block 83, in the City of Yellowknife.

Whereas I have today inspected the property at Lot 3 Block 83, municipally known as 4401 - 50 Ave. (street address) and ascertained that there is trash thereon, to wit: Abandoned, discarded and rejected goods and material (description). of every description

Take notice that you are hereby directed to dispose of the said trash at the following location: CITY DUMP before 8 a.m. (time) on the 13th day of September, 1977, or otherwise as may be designated by an Inspector, or by an agent of an Inspector.

Failure to comply with this Order renders you liable to prosecution under By-law No. 1690 as amended.

August 30, 1977

Date

Inspector

At the trial *de novo* before me the evidence clearly established beyond a reasonable doubt that some of the items described by the witnesses as being on the property in question were trash within the definition of that term as used in the by-law. The oral evidence of the witnesses was substantiated to some extent by the photographs that were tendered in evidence. On the evidence before me I am satisfied beyond a reasonable doubt that the old mattresses on the premises constituted trash.

While some of the items on the property in

question may be of value I am sure the Appellant as a responsible citizen of the community must recognize that items such as old mattresses are not items which he is entitled to leave on his property under circumstances that were described in the evidence. Indeed one would expect co-operation on the part of a mature individual such as the Appellant.

It was strenuously argued before me that By-law 1690 and amendments thereto could not be passed under Section 180 of the *Municipal Ordinance*. After carefully considering the matter I am of the opinion that the By-law in question is valid legislation. Perhaps the draftsmanship of the By-law could be improved upon but in dealing with matters of this kind, I adopt with respect, the approach of Mr. Justice Kelly in *Re Bruce and City of Toronto et al*, 19 D.L.R. (3d) 386 at 391 where he stated:

"The underlying purpose of the implementing by-law is, accordingly, to establish and maintain for each of the areas or zones into which the municipality is divided for the purposes of the plan, standards with respect to the use of land and the use and erection of buildings which will enhance and preserve the quality of life in the municipality and the amenities considered conducive to the health, safety, convenience and welfare of the inhabitants. On this account, I consider the by-law to be remedial and one to be accorded a liberal interpretation to the end that it may afford to the people of the community protection against departures from or encroachment upon the standards adopted by the municipality as expressive of these purposes."

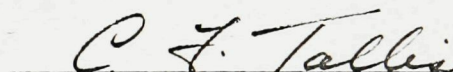
In other words Courts when called upon to interpret by-laws of this nature should not overlook the purpose of

the enactment and should apply the law in a meaningful way. I find further support for this approach in the unreported judgment of Mr. Justice Dechene in the case of *City of Edmonton v. Vernon Schwab* where the "dog litter" by-law of the City of Edmonton was upheld.

Under the circumstances I affirm the conviction of the Appellant. On the appeal against sentence, I find that there is no error.

The Appeal is accordingly dismissed without costs.

Dated at Yellowknife, Northwest Territories this
9th day of March, 1977.


C. F. Tallis, J.S.C.

NO. 17

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