

Date: 1998 03 09
Docket: CV 05408

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

**SHEILA FULLOWKA, DOREEN SHAUNA HOURIE, TRACEY NEILL, JUDIT PANDEV,
ELLA MAY CAROL RIGGS, DOREEN VODNOSKI, CARLENE DAWN ROWSELL,
KAREN RUSSELL and BONNIE SAWLER**

Plaintiffs

- and -

**ROYAL OAK MINES INC., MARGARET K. WITTE, also known as PEGGY WITTE,
PROCON MINERS INC., PINKERTON'S OF CANADA LIMITED, WILLIAM J.V.
SHERIDAN, ANTHONY W.J. WHITFORD, DAVE TURNER, THE GOVERNMENT OF THE
NORTHWEST TERRITORIES AS REPRESENTED BY THE COMMISSIONER OF THE
NORTHWEST TERRITORIES, NATIONAL AUTOMOBILE AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA, Successor by
Amalgamation to CANADIAN ASSOCIATION OF SMELTER AND ALLIED WORKERS, and
the Said CANADIAN ASSOCIATION OF SMELTER AND ALLIED WORKERS, HARRY
SEETON, ALLAN RAYMOND SHEARING, TIMOTHY ALEXANDER BETTGER, TERRY
LEGGE, JOHN DOE NUMBER THREE, ROGER WALLACE WARREN, JAMES EVOY,
DALE JOHNSON, ROBERT KOSTA, HAROLD DAVID, J. MARC DANIS, BLAINE
ROGER LISOWAY, WILLIAM (BILL) SHRAM, JAMES MAGER, CONRAD LISOWAY,
WAYNE CAMPBELL, SYLVAIN AMYOTTE, and RICHARD ROE NUMBER THREE**

Defendants

Defendants

MEMORANDUM OF JUDGMENT

[1] This is a motion by the plaintiffs to compel production of documents by the defendant Legge. In its scope and effect it is similar to a motion previously brought with respect to the defendants Shearing and Bettger. On February 5, 1998, I issued Reasons for Judgment directing that those defendants make production of documents that they

received by way of Crown disclosure in certain criminal prosecutions against them. In my opinion the principles and approach I articulated in those Reasons are equally applicable on this motion.

[2] Ms. Kay, on behalf of her client, made three submissions.

[3] First, she argued that her client is in a different position than Shearing and Bettger. Legge was convicted on a mischief charge arising out of the strike but acquitted on a charge of rioting. Shearing and Bettger were convicted of far more serious charges.

[4] In my opinion, it is not the nature of the charges or the result that makes production necessary. This is not a question of imputed liability or an admission of culpability; it is simply a question of production of documents, in Legge's possession or control, that may be relevant to the issues in this action as framed by the pleadings. The broad claim against this defendant is that he had a duty to not conduct himself in such a way as to create an environment that encouraged or led Warren to set the bomb that killed the deceased miners. If there are documents in the Crown disclosure possessed by Legge that may be relevant to those issues then they must be disclosed.

[5] Second, Ms. Kay submitted that some types of documents should not be produced because they do not relate to offences with which Legge was charged but statements made by Legge with respect to police investigations of others. The point here, however, is not how or why a document may have been generated in the first place, but its relevance to this litigation. Absent some identifiable privilege, if relevant documents exist, and if they are in Legge's possession or he has power to obtain them, then they must be produced. At this stage of the proceedings there is no question of whether a document may be ultimately probative or even admissible at trial; it may not be. But that does not preclude production on pre-trial discovery. The requirement at this stage is to produce any document which may relate either directly or indirectly to any matter in question in the action.

[6] The final point made by Ms. Kay was one of policy. She submitted that there is a public interest in limiting the use of disclosure documents to the criminal proceedings. This was a point I also addressed in my previous Reasons for Judgment.

[7] I agree that there should be no use or dissemination of Crown disclosure documents for ulterior or collateral purposes. But a reply to legitimate production demands at the discovery phase of litigation in which the subject-matter of the criminal proceedings may be relevant and material cannot be labelled as being an ulterior or

collateral purpose. The limitations on how counsel may use this information are informed by the implied undertaking rule. I fail to see how one can say that, as a matter of law, Crown disclosure documents cannot be producible. And, if the case put forward by Ms. Kay, that being the judgment in *Beson v. Karens*, [1997] S.J. No.100 (Q.B.), suggests otherwise, or if it suggests that somehow the Crown can control production, then, with all due respect, I disagree with it. I note as well, however, that there is Saskatchewan appellate authority for the production of Crown disclosure documents: *Bryden v. Popowich* (Sask.C.A. No.2258; July 19, 1996).

[8] For these reasons the motion is granted. The defendant Legge is to file a further Statement as to Documents within 30 days of the filing of the formal order herein itemizing all documents in his possession or control relevant to the issues in this action. As with my previous direction, the defendant may still claim with respect to any specific item that it is not subject to production but the item must still be identified and the basis of objection stipulated. Any issues relating to the production of any specific item are to be determined within 60 days of the filing of the order.

[9] Also in accord with my previous decision, this ruling is stayed until April 15, 1998, or such further date as may be ordered, pending an appeal of this ruling.

[10] Costs of this application are reserved for further application.

Dated this 9th day of May 1998.

J.Z. Vertes,
J.S.C.

Counsel for the Plaintiffs: J.B. Champion
Counsel for the Defendant Legge: S.A.E. Kay

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Defendants

REASONS FOR JUDGMENT OF THE HONOURABLE
JUSTICE J.Z. VERTES

