

Date: 1998 03 10
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

MEMORANDUM OF JUDGMENT

[1] This is my ruling on the issue heard by way of telephone conference call today.

[2] The defendant Bettger has refused to answer questions on his examination for discovery related to criminal charges he faced in relation to his activities during the strike at the Giant Mine. His counsel takes the position that any criminal proceedings not related to the subject matter of the Amended Statement of Claim are irrelevant.

[3] The allegations against this defendant are that (a) he assisted Warren in various ways such as to gain access to the site, and (b) by his own conduct he encouraged Warren in criminal conduct. Allegations similar to (b) are made against other defendants, including Johnston and Evoy. The Court of Appeal, at [1997] N.W.T.R. 1, refused to strike those allegations on a motion arguing no cause of action. If, therefore, there is an arguable cause of action then the plaintiffs are entitled to pursue any line of inquiry that may be relevant. All of Bettger's conduct during the strike may be relevant.

[4] Rule 251(1) says that a person who is examined for discovery shall answer "any proper question relating to any matter in issue in the action". There is a broad scope to the issue of relevance at the discovery phase. As stated in *Czuy v. Mitchell* (1976), 1 Alta. L.R.(2d) 97 (C.A.), at page 101: "The greatest latitude should be allowed to a party who is examining an adverse party for discovery so that the fullest inquiry may be made as to all matters which can possibly affect the issues between the parties." (Emphasis in original)

[5] On February 5, 1998, I directed production of documents by Bettger relating to the criminal prosecutions against him. I ruled at that time that those documents are producible for purposes of discovery. Similarly I rule that questioning with respect to the criminal prosecutions is properly within the scope of discovery. He must answer the questions put to him.

[6] Bettger has appealed my ruling on production of documents. He intends to appeal my ruling on answering questions on discovery. I therefore make the following directions:

- (a) a notice of appeal is to be filed within 7 days of today;
- (b) the appeal will be heard on April 15, 1998, at the same time as the appeal on the production issue;
- (c) this ruling is stayed pending the hearing of the appeal;
- (d) the examinations for discovery of Bettger will continue and Bettger will answer all proper questions put to him save and except questions related to his criminal prosecutions; and,
- (e) the examinations for discovery of Bettger will reconvene once the decision of the Court of Appeal is known.

[7] Costs are reserved for future application.

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

Dated this 10th day of March 1998.

To: J.B. Champion,
Counsel for the Plaintiffs

M.J. Kelly, Q.C.,
Counsel for the Defendant Bettger

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Defendants

MEMORANDUM OF JUDGMENT OF THE HONOURABLE
JUSTICE J.Z. VERTES

