

Date:1999 09 02  
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 LOU 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) SCHRAM, JAMES MAGER, CONRAD  
LISOWAY, WAYNE CAMPBELL, SYLVAIN AMYOTTE and RICHARD ROE NUMBER  
THREE**

Defendants

- and -

**ROYAL OAK MINES INC., HER MAJESTY THE QUEEN IN RIGHT OF CANADA, THE  
MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT, CANADA, AND  
THE MINISTER OF LABOUR, CANADA and THE ROYAL CANADIAN MOUNTED  
POLICE AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA and THE  
COMMISSIONER OF THE ROYAL CANADIAN MOUNTED POLICE**

Third Parties

**MEMORANDUM OF JUDGMENT**

[1] Counsel for the plaintiffs and for the defendant Blaine Lisoway have submitted in writing a dispute concerning the continuation of Mr. Lisoway's examination for discovery.

[2] Mr. Lisoway was examined on May 28 and 29, 1998. Prior to those examinations, there were several requests for further production of documents from Mr. Lisoway. Many of the documents were not in his possession (although some were in the possession of others from whom he could obtain them). At the commencement of his examination the following exchange took place between counsel:

MR. CHAMPION: Mr. Kelly, so the record is clear, we have had some discussions in relation to the production of documents, and we'll proceed this morning with the Discovery, but I'm going to reserve my right to continue the Discovery after we've received a number of documents that haven't been produced -- for instance, the complete Crown disclosure package, preliminary transcripts, trial transcripts, copies of statements or interviews that Mr. Lisoway had with the RCMP, as well as any notes that he may have made in relation to activities -- and I'll pursue those further, so the record is clear.

MR. KELLY: I've heard you.

Nothing further was said on this point until the end of the examination when the following exchange took place:

MR. CHAMPION: In view of other material that may be forthcoming and others who may testify about you, I'm going to adjourn the Discovery.

MR. KELLY: Well, we take the position that you've had your Discovery, and we can maintain our different positions.

[3] Since that examination, further documents have been produced and answers provided for undertakings given at the examination. Plaintiffs' counsel now wishes to resume his examination for discovery and not be limited to questioning Mr. Lisoway only on matters arising from answers to undertakings.

[4] The Rules of Court clearly contemplate that a person may be subject to further examination on answers to undertakings or after-acquired information: see Rules 260 and 261. The court may also order a further examination: Rule 265. The general rule, however, is that a person be examined for discovery only once: Rule 237(1). But there is a proviso that an examination may be adjourned from time to time: Rule 237(2).

[5] Plaintiffs' counsel is not seeking a "second" discovery of this defendant. He is seeking to continue his discovery now that further production of documents has been made. This is not a situation where, for example, examining counsel merely withdrew from the discovery before exhausting the questions he planned to ask or where lines of inquiry which should have been pursued at the time are only now thought of. This is a resumption of the discovery for the purpose of examination on documents and information that should have been available the first time. There is ample authority for this: see annotations in Stevenson & Côté, *Civil Procedure Guide* (1996), at pages 883-885. This is not to say that the mere incantation of the word "adjournment" is sufficient in every case. In most cases the examination will be deemed to be complete save and except for questions arising from undertakings. Counsel are expected to come prepared to ask all the questions one has when the party presents himself for examination. But each case is fact-specific.

[6] Here examining counsel made his intention known at the beginning of the examination. If opposing counsel wanted to restrict the discovery to one examination he should have indicated so at the time. Then examining counsel could have, for example, adjourned the examination right then to await the further productions. In my opinion, the examination of Mr. Lisoway was adjourned and thus he is subject to further examination. That examination is not restricted to questions arising from the undertakings. But, examining counsel is also not entitled to merely go over the same ground again. The examination must relate to new matters not already covered, i.e., matters that arise from the further productions or from the undertakings.

[7] An order will issue directing Mr. Lisoway to attend for further discovery.  
Costs of this application will be in the cause.

Dated this 2nd day of September 1999.

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

To: J. Philip Warner, Q.C.,  
Counsel for the Plaintiffs

Michael J. Kelly, Q.C.  
Counsel for the Defendant Lisoway

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

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