APPEAL NO. CR. 03891

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

DARREL BEAULIEU,
DETON'CHO CORPORATION and
THE YELLOWKNIVES DENE FIRST NATION

Appellants

- and –

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT

[1] The three appellants were each convicted in Territorial Court of two charges contrary to the *Fisheries Act*, R.S.C. 1985, c. F-14: (1) carrying on work or undertaking that involved depositing soil or debris into fish habitat, thereby altering, disrupting or destroying fish habitat contrary to s. 35(1) of the *Act*; and (2) carrying on work or undertaking that did deposit a deleterious substance in water frequented by fish or in a place under conditions where the deleterious substance may enter any such water, contrary to s. 36(3) of the *Act*. The location of the offences was Back Bay, a bay of Great Slave Lake, northwest of the City of Yellowknife; the date of the offences was sometime between May, 1997 and November, 1998. The appellant Yellowknives Dene First Nation (the "Band") was fined $60,000.00; the appellant Beaulieu was fined $3,000.00; and, the appellant Deton'Cho Corporation (the "Corporation") was fined $1.00. All appellants appeal their convictions and sentences. The Crown, in turn, has filed a notice of intention to seek an increase in the sentences.

[2] To succeed on this appeal, the appellants must establish either that the trial judge made an error of law or that the verdict is unreasonable or cannot be supported on the evidence. The test to be applied, in the absence of an error of law, is the same as that applied on an appeal in criminal cases: Is the verdict one that a properly instructed jury acting judicially could reasonably have rendered? The

appellate court is entitled to re-examine the evidence to determine whether it could reasonably support the verdict. But, the appellate court will only interfere with a conviction if it is satisfied that the verdict is inconsistent with the requirements of a judicial appreciation of the evidence: see *R. v. Yebes*, [1987] 2 S.C.R. 168; *R. v. Biniaris* (2000), 143 C.C.C. (3d) 1 (S.C.C.).

THE TRIAL JUDGMENT:

[3] The trial took place over three days with several witnesses being called and voluminous exhibits being filed. The first exhibit was an Agreed Statement of Facts that made a number of significant admissions:

1. The Yellowknives Dene First Nation is an Indian Band whose traditional territory included the area around Yellowknife known as N'dilo, which is along the shores of Back Bay.

2. The appellant Corporation was incorporated in 1989 by the Band.

3. At some point between May, 1997, and November, 1998, some persons or corporation deposited material consisting of blasted rock, soil, other vegetative material, and various other debris, in an area reflected in photographs (tendered as exhibits) of an area of N'dilo and Back Bay.

4. The deposit of materials was reported to the Department of Fisheries and Oceans on July 2, 1998.

[4] The agreed statement does not specify but presumably the reference to an "Indian Band" in point number one above means a "band" as that term is used in the *Indian Act*, R.S.C. 1985, c. I-5. No one took issue with this at the hearing of the appeal.

[5] It was also agreed by counsel that, with respect to numerous water quality reports tendered as exhibits, the trial judge could consider the reports as "evidence of the truth of their contents" and that the trial judge "may accept or reject all, part or none of any given report and may put such weight on the reports as is warranted when considered in the context of the evidence at trial".

[6] The trial judge's reasons set out that he found, as facts, that the appellant Beaulieu, at some point during the time period of the offences, directed that material from some housing construction projects in N'dilo be deposited at the edge of land that abuts Back Bay. More dirt and debris were brought in sometime later and the whole area was flattened by a bulldozer. In doing so, the accumulated

material was pushed into Back Bay covering a flooded grassy and marshy area along the shoreline. The evidence was not clear as to how extensive an area was covered by this fill but the extension of land into Back Bay was evidenced by what the trial judge referred to as “before” and “after” aerial photographs of the area in question.

[7] The trial judgment went on to conclude that the area displaced and covered over was fish habitat that was harmed by the fill. The trial judge accepted the opinion of a Crown expert who testified that there were at least three criteria of fish habitat present in the area:

> In the opinion of a qualified expert in fish habitat called by the Crown attorney, the area recently infilled and extending into the waters of Back Bay is fish habitat. In coming to that conclusion and giving that opinion she cited three criteria present at the site that were consistent with fish habitat; the shallow water in the area, the presence of macrophytes, and the gravel/sandy bottom all of which constituted primary fish habitat. Additionally she noted that the grassy areas are prime pike spawning and feeding habitat as well as a refuge for small fish species. Her evidence was uncompromised in cross examination.
>
> In addition her evidence established that the runoff from the infilled area and turbidity resulting therefrom would destroy macrophyte beds, smother any fish eggs present and generally make the adjacent waters inhospitable to fish.

[8] The trial judge went on to find that the fill activities would cause a deleterious substance to enter waters frequented by fish:

> The evidence clearly proved that the waters in the immediate vicinity of this infilling are frequented by fish. The waters are used for breeding, spawning, shelter and refuge and in fact two witnesses observed the presence of pike while attending at the scene. The evidence is clear and unambiguous that the fill material when dumped or spread into the waters of Back Bay would cause increased turbidity which would negatively affect any fish in the vicinity. The presence of solids in the water irritate fish gills and generally excludes them from the area that is subject to the turbidity. Additionally, once the suspended solids had settled out, benthic invertebrates – a food source for small fish – would be smothered thus removing an important food source for fish.

[9] The trial judge’s reasons also discussed at length the inter-relationship and roles of the three appellants. He stated that the Crown did not attempt to prove the exact

organization of each of the corporate entities and their relationship between each other and the Band. He found, however, that the Band set up a variety of corporations and that, at "the material time", the appellant Beaulieu was the elected Chief of the Band. The trial judge wrote:

> The exact organization and ownership of each of these various corporations and the relationship between them and the Yellowknives Dene First Nation is complex and ill defined by the evidence. The construction superintendent employed, apparently, by each of these corporations at various times, admitted in testimony that he himself could not explain the corporate organization or structure and was puzzled by it. In describing his employment duties and the supervision exerted over him he related that regardless of which corporate organization he nominally worked for he always received his instructions from the Yellowknives Dene First Nation and Darrel Beaulieu.
>
> It is clear from the evidence that at all material times herein these corporations were managed and directed by the Yellowknives Dene First Nation and its chief Darrel Beaulieu. It is also clear from the evidence that each of these organizations or legal entities were owned, operated and controlled by the Yellowknives Dene First Nation and in fact amounted to nothing more than the fingers and hands executing the will of the chief and council of the Yellowknives Dene First Nation.
>
> In addition, the evidence indicates that Darrel Beaulieu actively participated in all of the events examined here by making on site assessments and decisions as required from time to time. He issued directives and was effectively in charge throughout. I am satisfied that he and the Yellowknives Dene First Nation were the operating minds of the named corporations and in particular the named defendant Deton'Cho Corporation.

[10] I will touch on other aspects of the judgment in my discussion of the various arguments advanced on behalf of the appellants. The appellants concede that there is evidence linking both Beaulieu and the Corporation to the fill operations but argue that, for other reasons, the convictions should be set aside. Some are related to what are alleged errors of law while others relate to the reasonableness of the verdicts. I have reframed some of these arguments so as to coincide with the way in which they were articulated at the appeal hearing.

Evidence as to "Fish Habitat":

[11] The appellants submitted that the trial judge's conclusion that the area was fish habitat was an unreasonable one not supported by the evidence. To appreciate this submission, it is necessary to examine the relevant portions of the *Fisheries Act*. The offence is set out in s. 35(1):

> 35.(1) No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.

The definition of "fish habitat" is set out in s. 34(1):

> "fish habitat" means spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes;

[12] The offence in s. 35(1) requires proof not merely that there are fish in the affected area but proof that the area is one on which fish depend to carry out their life processes. Otherwise it is merely waters frequented by fish. There must also be proof of actual harm to fish habitat as opposed to merely potential or possible harm. By "harm" I mean harmful alteration or disruption or destruction: *R. v. St. Paul*, [1993] A.J. No. 953 (Prov. Ct.); *R. v. J.D. Irving Ltd.*, [1997] N.B.J. No. 531 (Prov. Ct.).

[13] The appellants conceded that Back Bay – what the trial judge referred to as the Back Bay littoral zone – is fish habitat. They argued, however, that there was no proof that the specific area in question was fish habitat. This point depends on what reasonable inferences can be drawn from the expert evidence and the surrounding circumstances.

[14] The appellants referred to the case of *R. v. Bowcott*, [1998] B.C.J. No. 2342 (S.C.), as one with a similar fact situation. In that case the defendants dumped fill in an area on the foreshore of a salt marsh. Expert witnesses testified that the salt marsh as a whole was an integral part of the environment necessary to sustain the fishery in the Strait of Georgia to which it was connected. There was evidence of fish being in the marsh and using it for food. The issue, however, was not whether the marsh in general was a fish habitat but whether the fill site was proven to be one. On this the evidence was much more limited. There was evidence, however, that prior to being filled in the area was filled to a large extent by log debris deposited over the years by water flow. The trial judge therefore concluded that all the evidence established was that the area could possibly have been a fish habitat. The defendants were acquitted and a Crown appeal was dismissed.

[15] The trial judge based his conclusions that the area of Back Bay filled in here was fish habitat primarily on the evidence of the Crown's expert witness, Ms. Julie Dahl, a fishery habitat biologist with the Fisheries Department. She in turn based her opinion on her own observations at the site and several reports compiled on the Back Bay area and shoreline habitat assessments. The reports identified the grassy areas of Back Bay as prime spawning habitat and feeding habitat for pike. They also reported on fish samplings in the shoreline areas that showed the presence of both young and adult pike, whitefish, walleye and other species. Ms. Dahl clearly outlined the criteria that would constitute fish habitat and their presence in the area. She also testified as to the harmful effects on and destruction of the habitat that would have occurred as a result of the fill operations.

[16] In my opinion, there was ample evidence, both from Ms. Dahl's testimony and the various reports filed, for the trial judge to conclude that the area in question was fish habitat that had been harmfully altered, disrupted or destroyed. To say that a trial judge could not draw the necessary inference to support this conclusion would mean that in every case where a specific site was in question there would have to be evidence of studies of that specific site in particular both before and after the detrimental conduct. Such a requirement would make it almost impossible to prosecute these offences since obviously no one can predict ahead of time when someone will come along and dump debris in a certain site.

[17] The trial judge's conclusions on these points are findings of fact based on expert evidence and the various reports tendered by agreement at the trial. An appellate court is not justified in interfering with a trial judge's findings of fact in the absence of palpable and overriding error. I find no such error here.

[18] The appellants also submitted in passing that there was no proof that what was deposited in the fill area was a deleterious substance as that term is used in s. 36(3) of the *Act*. This point was not pressed aggressively, however, and my comments above apply on this point as well. There was ample evidence to support the conclusion that the fill was a deleterious substance that did or may enter water frequented by fish.

Application of *Voir Dire* Evidence:

[19] During the course of the trial five *voir dires* were held regarding the admissibility of statements given by various individuals. In all cases the statements were ruled admissible and the evidence given on the *voir dires* applied to the trial. The appellants submitted that the trial judge erred because he did not, in the case of each *voir dire*, expressly obtain the consent of both the Crown and the defence to

apply the evidence. He did after the first *voir dire* but on each subsequent *voir dire* he simply directed that the evidence be applied to the trial without making any inquiry of counsel. In each case, however, there was no objection made by defence counsel (not the same as counsel on appeal).

[20] There is strong authority for the proposition that for evidence from a *voir dire* to be applied to the trial the trial judge has an obligation to obtain the consent of both Crown and defence to do so: *R. v. Gauthier* (1975), 27 C.C.C. (2d) 14 (S.C.C.); *R. v. Camara*, [1997] B.C.J. No. 2832 (S.C.). This applies whether it is a jury trial or a judge-alone trial. The purpose of the rule is to protect the right of an accused to testify on a *voir dire* on issues relevant to the *voir dire* without affecting his right to remain silent at the substantive trial. This right is not to be conditional on an exercise of judicial discretion: *R. v. Brophy*, [1982] A.C. 476 (H.L.).

[21] It is important to note, however, that in this case the accused offered no evidence on the *voir dires*. This is a significant distinction since in the *Gauthier* and *Camara* cases the accused testified on the *voir dires,* but did not testify on the trials. In both cases the trial judge relied on the *voir dire* testimony in coming to the final verdict. In *Gauthier*, the accused was acquitted and the court set aside the acquittal on the basis that the accused had an unfair advantage by insulating his evidence. In *Camara*, the accused was convicted and the court set aside the conviction on the basis that much of the evidence on the *voir dire* would not have been admissible at the instance of the Crown as part of its case. Thus, there was prejudice to the accused.

[22] In this case, it is not a question of undermining an accused's right to remain silent on the trial by using his *voir dire* evidence. The accused did not testify. Furthermore, defence counsel had ample opportunity to cross-examine the *voir dire* witnesses. There is no evidence of prejudice suffered by the appellants in this case.

[23] The fact that defence counsel failed to object at trial is not fatal to raising an argument at appeal about an error of law. But, it is indicative of the fact that counsel at the time did not consider it a serious problem. All that would have happened is that the evidence would have been repeated if there had been no consent. If this is an error of law, then I would apply the curative proviso in s. 686(1)(b)(iii) of the *Criminal Code* on the basis that there has been no substantial wrong or miscarriage of justice. In my opinion, there is no reasonable possibility that the verdicts would have been different had the error not been made: *R. v. Charlebois* (2001), 37 C.R. (5^{th}) 253 (S.C.C.), at 266-267.

Consideration of the "*De Minimus*" Principle:

[24] The appellants argued that the trial judge erred in his treatment of what is known in law as the principle of *de minimus non curat lex* ("the law does not concern itself with trifles"). As noted in *R. v. Overvold* (1972), 9 C.C.C. (2d) 517 (N.W.T. Mag. Ct.), the doctrine has "an ancient and colourful history in our jurisprudence, being honoured as much in its breach, it seems, as in its observance" (at 519). The principle is often invoked when it can be said that the violation was too trivial to warrant a criminal conviction (although it should be noted that its applicability in criminal matters is not without controversy).

[25] Assuming for sake of argument that the doctrine is available in prosecutions under the *Fisheries Act*, then the short answer to this submission is that the trial judge considered it and rejected it. The trial judge did express reservations about the availability of the doctrine but he also went on to find, as a fact, that the actions of the appellants resulted in more than slight or trifling consequences. This is a finding of fact within the province of the trial judge and I would not interfere with it.

The Conviction of the Appellant Band:

[26] The appellants submitted that there was no basis in the evidence for the trial judge's conclusion that the Band was a culpable party to these offences. It was argued that, as the trial judge noted in his reasons, the exact organization of the various entities and their relationships to each other were ill-defined by the evidence. Having said that, it was submitted, the trial judge should have had a doubt as to who had given the directions for the fill operation and the capacity in which the directions were given.

[27] The Crown replied that the trial judge had evidence before him to find that the Band and the Corporation were essentially one and the same entity. Among the exhibits entered at trial was a statement given by the superintendent of the appellants' construction activities, Mr. Donald Asher. He stated that the appellant Corporation was the general contractor for the removal of overburden and debris and that they moved it to the area in question. The statement continued, in response to a question as to whether any permits had been obtained, as follows:

> A: No, at the time we went to the Chiefs (1997), they directed us to deposit the material on the lot. (1997 was a low water year) The material was put into mounds and later leveled. In 1998 (summer) more overburden was put on top and leveled. Some debris was pushed into the water.

> Q: Was the N'dilo Band aware and kept informed as to where the blasted material was being deposited?
>
> A: Yes.
>
> Q: At the time of the infilling, who were you working with from the Band in regards to this project?
>
> A: Darrel Beaulieu.

[28] Mr. Asher also testified in person at the trial. His testimony was not so clear-cut. Indeed, a careful reading of his testimony reveals that much of what he stated in reference to the role of the Band was speculative assumption and hearsay. He certainly exhibited a great deal of uncertainty as to the role of the Band and Beaulieu. When asked about who, in connection with the appellant Corporation, gave him instructions he named first one person and then another (one Jack Poitras). Only if Mr. Poitras was away would he discuss things with the appellant Beaulieu. When testifying about the fill operation specifically Mr. Asher stated as follows:

> Q How did you determine where this dumping should be made; in other words, how did you determine where to tell Robinson's to dump the rock?
>
> A This area had been filled in previously here quite a few years before, I understand, with dirt before, so it was an area that was designated by Jack and by myself and by, as far as I know, Darrell was involved in making the decision on where we would store this material, as were the other chiefs, if I remember correctly.
>
> Q And can you elaborate on what led you to believe that Mr. Beaulieu and the other chiefs designated that as a place for infilling?
>
> A Just a discussion with Jack and myself.
>
> Q Did you ever talk to Mr. Beaulieu about the infilling?
>
> A Personally?
>
> Q Yes.
>
> A No.

> Q Did you every talk to any of the other Chiefs personally about that?
>
> A No.

[29] When asked about his written statement that had been admitted into evidence, Mr. Asher disagreed with some of the things he had previously said. Instead of confirming that the Band had been kept informed of where the fill was being deposited he stated that he did not give them a "run-down" of it. He said simply: "Everybody knows the area that was being filled in." In reference to the question as to who from the Band he was working with, instead of confirming that it was Beaulieu, he said his immediate supervisor was Mr. Poitras.

[30] There was evidence that the appellant Beaulieu was the chief executive officer of the appellant Corporation at the material time. There was also evidence that Beaulieu was directly involved with the fill operation. This triggers s. 78.2 of the *Fisheries Act*:

> 78.2 Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted.

The conviction of the appellant Beaulieu was properly entered.

[31] The Band's position is more problematic. Beaulieu was the Chief of the Band through at least part of the time frame set out in the charges (although not the entire time frame). This may trigger s.78.3 of the *Act*:

> 78.3 In any prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused.

[32] This section imposes liability on employers for the acts of their employees and agents. Beaulieu, as Chief, is arguably an "employee", but clearly he is an "agent" of the Band. He may also be a fiduciary as far as all other members of the Band are concerned. A Chief, upon election, acts in the name of and in the

interests of all other members of the Band. But, it seems to me that the Chief, just because he is the Chief, may not be acting as agent of the Band in all circumstances. Section 78.3 of the *Act* must require some nexus between the conduct of the agent and the agent's relationship to the principal. In other words, if at the material time, the agent was acting in his capacity *vis-à-vis* some other entity then there is no connection between the conduct and the principal.

[33] Section 78.3, quoted above, imposes vicarious liability on an employer or principal and places an evidentiary burden on that party to establish its lack of knowledge or participation in the offence. This, however, does not preclude the need for some nexus, as I said previously, between the conduct of the agent and the agent's relationship to the principal. Such a requirement, in my opinion, comports with the doctrine of "identification" as set out in *R. v. Canadian Dredge & Dock Co.*, [1985] 1 S.C.R. 662. A corporation will be liable for the criminal acts of an employee who is its "directing mind" based on the notion that the identity of the directing mind and the identity of the corporation coincide. But, the acts of the directing mind must be performed within the scope of his or her authority. Nothing in the case suggests that where a person may be considered a "directing mind" of two different corporations, and that person acts within the scope of his authority in relation to one of those corporations, then the other corporation is identified with that conduct as well. Under the *Fisheries Act*, a corporate entity could be directly liable or it could be vicariously liable. But in either case the actual person doing the culpable act must be acting in the context of a relationship with that corporate entity.

[34] In this case Beaulieu held two roles: chief officer of a duly incorporated body corporate (the appellant Corporation) and elected Chief of an unincorporated entity (the appellant Band). All of the evidence shows that Beaulieu's participation and direction of the activities comprising these offences was in his capacity as officer of the corporation. Mr. Asher's speculative and hearsay evidence is not proof that Beaulieu's involvement was on behalf of the Band.

[35] There was evidence admitted of a statement made by the appellant Beaulieu to a Fisheries Officer. Mr. Beaulieu gave the officer a business card identifying himself as the president of the appellant Corporation. When asked if the Band knew what was being done, Beaulieu told the officer that the Band "told him to put it on the empty lot". He said he had their approval and they were kept informed. The trial judge did not advert to this statement in his judgment nor is there any indication as to how, if at all, it was used. The Crown, at the trial, sought to have the statement admitted as evidence against all three appellants.

[36] One may assume that the trial judge took this evidence into consideration. But how he did so may be problematic because here, while Beaulieu may have been an "agent" of the Band, he was also a co-accused of the Band. The general rule is that a statement tendered in evidence by the Crown, while it is evidence for and against the maker of the statement, is not evidence against a co-accused: see *R. v. McFall*, [1980] 1 S.C.R. 321; *R. v. Mozza*, [1978] 2 S.C.R. 907. There are exceptions of course, and Beaulieu was wearing several hats at the same time, but it is not clear from the transcript of the trial proceedings on what basis this evidence was used.

[37] The major difficulty with this evidence is its ambiguity. The "Band" is merely all of the individuals who are members of the Yellowknives Dene First Nation (a point I will come back to later in these reasons). It is not a corporate entity. Its governing authority is a band council elected in accordance with the provisions of the *Indian Act*. But the band council is a distinct body from the band. So who or what is being referred to in this reference to "the Band" giving approval? Is it all of the individual members of the Band; or merely some of the members; or could it be the Band Council? I agree with the submissions of appellants' counsel to the effect that the lack of clarity on this point and the constant ambiguous references to some entity the witnesses kept referring to as simply "the Band" cannot satisfy the requirement for proof beyond a reasonable doubt. In my respectful opinion, this is insufficient to reasonably support a conviction.

[38] This issue also calls into question why any person or entity would utilize the corporate laws of this country to organize its affairs if that corporate structure can be pierced simply because of a parent-subsidiary corporate relationship or having some agents or officers in common. The law is quite well established to the effect that a corporation, even a closely-held one, is a separate legal entity from its shareholders: *Salomon v. Salomon & Co.*, [1897] A.C. 22 (H.L.). The limitations on lifting the corporate veil are also well established. If, for sake of argument, one can describe the Band as the "shareholder" of the Corporation, then there is no evidence in this case to hold that the corporate entity is a mere sham or fraud existing to protect the shareholder from its wrongful conduct. All of the evidence points to the appellant Corporation as the entity responsible for the fill operation. What direction or involvement Beaulieu played was in his role *vis-à-vis* that entity. There was no proper evidence that he was acting on behalf of the Band. There was no evidence of some conduct on the part of the Band that was severable (and culpable in itself) from the conduct of the subsidiary Corporation.

[39] The trial judge made reference in his reasons to the rule that where parties act in concert – "especially when they have the same operating mind" – the Crown need not establish the role played by each. I do not disagree with the statement of

the rule. Here, however, there is no direct evidence that the Band acted in any way whatsoever, in concert or otherwise.

[40] For these reasons, I have concluded that the conviction of the Band cannot stand. An acquittal will be entered with respect to both charges.

[41] There is finally one further significant and questionable point with respect to the Band (one which thankfully I need not decide). The agreed statement of facts said simply that this appellant was an Indian Band. A band is defined under the *Indian Act* as a "body of Indians". It is the collective representation of all those individuals who are members of that particular First Nation. The *Act*, however, is silent on the legal capacity of a band. For this reason, Canadian case law is highly ambivalent on the question of the legal status of a band. They are not bodies corporate and there is nothing in the statute referring to it as a legal entity. Yet it is a creature of statute and Parliament can be presumed to have intended that a band should have duties and liabilities in respect of those powers that it may exercise by virtue of the statute. The emphasis, however, is on the powers exercised by virtue of the statute. Just because a "band" is one thing in some contexts does not mean it is necessarily the same thing in all contexts. In civil disputes, especially ones involving contracts entered into by a band, most courts have held the band to be a body capable of suing and being sued. But no case that I am aware of has held that a band generally has a legal status (equivalent to that of a person or a body corporate) for purposes of prosecution in a criminal or quasi-criminal case. (For a review of the jurisprudence one can refer to Prof. Shin Imai's *Annotated Indian Act* (2000) at 3-20.) I raise this point because no one at the trial seemed to have considered the question of whether the Band is an entity that can be prosecuted. It was also not raised in the written briefs filed by the parties on this appeal but it was the subject of some discussion at the hearing. As I said, I do not have to answer this question but it is one worthy of further consideration should the authorities ever contemplate laying criminal or quasi-criminal charges in the future against a band. This question as to whether a "band" is prosecutable is important of course because it is a jurisdictional issue.

CONCLUSIONS ON CONVICTION APPEALS:

[42] For the foregoing reasons, the appeals from conviction on behalf of the appellants Corporation and Beaulieu are dismissed. The appeal of the appellant Band is allowed; that conviction is set aside; an acquittal will be entered with respect to the Band.

SENTENCE APPEALS:

[43] The appellants submitted that the trial judge erred by referring to the fact that the Band is an Aboriginal First Nation and holding it to a higher standard than other accused in similar circumstances. It will be recalled that the fine imposed on the Band was $60,000.00. Now that the conviction against the Band has been set aside, there is no point in analyzing the submissions on this point. It is still open to consider, however, whether a fine of $60,000.00 is an appropriate disposition in this case on a global basis.

[44] I am mindful of the deference that must be accorded by an appellate court to the sentencing dispositions of a trial judge. Having considered the facts as found by the trial judge, and the appropriate factors involved in sentencing in these types of cases, I am not convinced that the trial judge erred in principle or that a fine of $60,000.00 is either manifestly excessive or inadequate. As submitted by Crown counsel, the appellant Corporation and Beaulieu took a calculated risk for the sake of mere expediency and convenience and the sentence therefore should reflect the cost of that risk. The only necessary change I would make is to direct that fine to be paid by the appellant Corporation since, on the evidence, it was the entity directly responsible for these infractions. I would not change the sentence imposed on the appellant Beaulieu.

[45] For the same reasons, considering the deference to be accorded the trial judge on this issue, I dismiss the Crown's application for an increase in the overall sentences.

CONCLUSION ON SENTENCE APPEALS:

[46] Since the appellant Band has been acquitted, I set aside the fine of $60,000.00 imposed against it. With respect to the appellant Corporation, I set aside the fine of $1.00 levied against it and substitute therefor a fine of $60,000.00. The sentence appeal on behalf of the appellant Beaulieu is dismissed.

J. Z. Vertes
J.S.C.

Dated at Yellowknife. NT this 19th day of June, 2001.

Counsel for the Appellants: Richard G. Gariepy
Counsel for the Respondent (Crown): Ari Slatkoff

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Heard at Yellowknife, NT on May 28, 2001
Reasons filed: June 19, 2001

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

Counsel for the Appellants: Richard G. Gariepy
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