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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

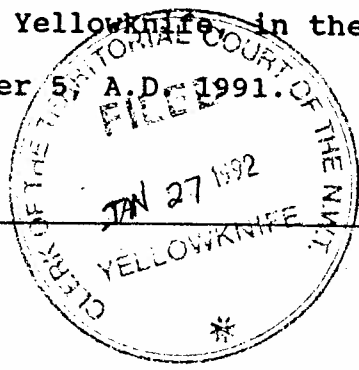
HER MAJESTY THE QUEEN

- and -

SILVER HART MINES LIMITED

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Transcript of the Reasons for Sentence of His Honour  
Judge R. M. Bourassa, sitting at Yellowknife, in the  
Northwest Territories, on November 5, A.D. 1991.



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APPEARANCES:

MS. J. DONIHEE

On behalf of the Crown

MR. S. SABINE

On behalf of the Defence

33A

1 THE COURT: Quite simply the accused is before the  
2 Court on six charges of failing to comply with certain  
3 licence requirements. Those licence requirements  
4 under the Land Use Regulations and the Territorial  
5 Lands Act require that those that intend to carry on  
6 business involving land use in the Northwest  
7 Territories (in this particular case for mineral  
8 exploration) are required to remove all junk and  
9 litter, and the like, upon completion of their work.  
10 They are required to restore the land to the way it  
11 was. They are required to provided a final plan to  
12 the appropriate Government department setting out the  
13 schedule for cleanup and restortion.

14 The scope of the defendant's operation is  
15 revealed to a certain limited extent in the  
16 photographs. In terms of the size of the problem,  
17 financially speaking, we are looking at something in  
18 the order of \$15 thousand or \$20 thousand to clean up  
19 these sites, whether that had been spent two years ago  
20 or today. It is not a major, significant problem, at  
21 least in terms of measurement by dollars.

22 A lot of time was spent by defence arguing  
23 strenuously and persuasively that some of the blame of  
24 this should fall on the department officials for  
25 allowing extensions or somehow leading the defendant  
26 into the belief that the clean up did not have to be  
27 done immediately, or when requested, and the long

1 delays involved resulted because of communications  
2 going back and forth. I have difficulty with that  
3 submission. It seems to me that such reasoning places  
4 the officials of the department, in fact any  
5 enforcement agency, in an impossible position. If  
6 they try and cooperate with an offender and exercise  
7 some discretion they are condemned for leading the  
8 offender will'o wisp fashion into a quagmire, and on  
9 the other hand if they walk in without exercising any  
10 discretion and lay charges they are criticized for  
11 acting high handedly.

12 From the facts that are before me, and what  
13 counsel have stated, I can only find that the  
14 department officials apparently made every effort to  
15 encourage, cooperate, and finally nudge a little to  
16 get the defendant to live up to its legal obligations,  
17 short of prosecution. At some point obviously  
18 somebody threw up their hands and prosecution was  
19 commenced. Even with the commencement of  
20 prosecutions, the matter proceeded at a snail's pace,  
21 and as of this date, the date of conviction, there has  
22 nothing done to clean up the sites; this has been  
23 ongoing since June, 1991.

24 I just want to make it clear that I can find  
25 nothing untoward with the way the accused was dealt  
26 with by the officials. They are in a very difficult  
27 situation. They did what they thought best in the

1 exercise of their discretion, and I can't take any  
2 adverse inference or make findings that somehow they  
3 led the defendant on. The defendant knew its  
4 obligations, it knew its obligations the day it  
5 obtained the permits and licensing. Knowing them at  
6 that time surely it is not unreasonable for any  
7 prudent business enterprise to budget. Salaries were  
8 budgeted for, tax losses were budgeted for,  
9 depreciation was arranged, millions of dollars were  
10 being thrown back and forth on the financial  
11 statements, and \$10 or \$20 thousand entry for cleaning  
12 up the site, complying with the law, is nowhere to be  
13 found. I think that is simply consistent with the  
14 words of the witness for the defendant that the  
15 cleanup was not a priority. It was simply not a  
16 reality that the defendant was prepared to deal with  
17 or confront, particularly at that time in 1987, 1988,  
18 1989, and indeed when things began to move from push  
19 to shove and prosecution was commenced. Even at that  
20 point there was very little done.

21 On the eve of the sentencing process the  
22 defendant comes forward with two contracts to provide  
23 for the cleanup of the sites in 1992, one contract  
24 with Bathurst Inlet Lodge. That contract appears to  
25 be premised on the basis that it will fail, there will  
26 be no money paid. This is fair enough if the second  
27 party to the contract was prepared to do the cleanup

1 in exchanger for a bulldozer, so be it, I don't have  
2 any difficulty with that. What I find interesting,  
3 however, is that a third party, under no legal  
4 obligation, is willing to "assist", using the words of  
5 the contract, the defendant in the performance of its  
6 obligations by paying the defendant to clean up the  
7 site.

8 Now, it would seem that Silver Hart Mines Limited  
9 has many ties with other corporations; its chief  
10 executive officer, a main shareholder, is heavily  
11 involved in other resource based corporations of which  
12 at least one is apparently on a very solid economic  
13 footing; there is money available. Silver Hart may be  
14 insolvent but it is not a shell, there is money  
15 available, there assets. I am not wholly satisfied  
16 that we are dealing with an orphan with empty pockets;  
17 nor one that is struggling from day to day to whom the  
18 application by the court of recognized principles is  
19 going to mean its destruction, involving the loss of  
20 jobs. If the defendant is as penniless as argued by  
21 Defence, then at the very worst Her Majesty the Queen  
22 may have to stand in line with the Alberta Treasury  
23 and other creditors. There will be no further loss to  
24 the body corporate Silver Hart Mines Limited.

25 If on the other hand there is in fact money or  
26 assets available, which there certainly appears to be,  
27 and as argued by Crown that the defendant is really

1 part of a spiders web of relationships with others  
2 that are not before the Court, then it may very well  
3 be that that money will come forward, at least money  
4 imposed by way of fines, to protect whatever assets  
5 that this corporation has or is connected with one way  
6 or another. It certainly seems to be part of a larger  
7 web, although I don't have information on this, there  
8 is certainly a lot of strings leading from this  
9 defendant that lead into the unknown. I can't avoid  
10 coming to that conclusion by reading the financial  
11 statements, listening to the evidence, and seeing that  
12 some money is in fact available at the eleventh hour.  
13 I can't see that imposing a fine that I would  
14 otherwise impose, for the moment discounting the  
15 alleged impecunity of the defendant, is going to  
16 create a hardship. If, and I am repeating myself I  
17 think, if the defendant is as penniless as it states,  
18 there is no real additional loss. On the other hand  
19 if there are other relationships, then I think  
20 imposing a proper fine may very well achieve the  
21 result of discouraging people from trying to hide  
22 behind a multitude of cobwebs and corporate shells,  
23 and encourage corporations to meet their lawful  
24 obligations when it comes to licences and permits.

25 I am taking into account that the defendant has  
26 pleaded guilty, I take that into some significant  
27 account, but I have to balance that I think against

1           what has been a long drawn out process, although I  
2           don't believe I should attribute much negative weight  
3           to that. I have to take the Defence at face value.  
4           They have pleaded guilty. I do note, however, that no  
5           effort has been made, other than what I have observed  
6           earlier and certainly nothing concrete has been  
7           achieved in terms of cleaning up the sites, which I  
8           have already indicated, looking at the photographs,  
9           appear to be a very modest undertaking.

10           I also take into account the submission of Crown  
11           that this has been an ongoing problem, that is to say  
12           obtaining a cleanup of the site has been an ongoing  
13           problem for a number of years, and the defendant has  
14           been most reluctant to prioritize and discharge its  
15           obligations. Once again I refer to the words of Judge  
16           Ayotte of the Territorial Court as he then was, that  
17           the whole point of these licenses and permits is to  
18           obtain compliance before not to enforce after the  
19           fact.

20           Much argument was made that there has been no  
21           environmental damage. I don't really disagree with  
22           Defence on that, but I do disagree with Defence that  
23           that is the major consideration. The Legislature of  
24           the Northwest Territories has determined that the land  
25           needs certain protection, and there is a legislative  
26           regime governing the use of the land, for whatever  
27           valid public policy reasons there are. That is not

1 for me to second guess or examine; that is the law.  
2 The defendant knew what it was getting into, the  
3 defendant agreed to be bound by that law by obtaining  
4 a permit, and the defendant has been singularly  
5 inattentive to its obligations with respect to a very  
6 modest expenditure, given the overall expenditures and  
7 activities of the corporation at the dates and time,  
8 in 1988 and 1989. That is a situation that can't be  
9 condoned.

10 I also agree with the Crown that these offences  
11 are public welfare matters meaning strict liability  
12 for offenders.

13 In terms of the quantum of fine, I am left with  
14 the conclusion that there has to be a meaningful fine  
15 for the reasons that I have given. The corporation  
16 has known all along what its obligations are, and in  
17 my view has by its conduct put compliance with the law  
18 at the very bottom of its priorities, and that can't  
19 be allowed to continue, not with respect to this  
20 defendant or any other.

21 There is no provision under the Territorial Land  
22 Use Act for the Court to make an order to take action.  
23 There is no way of insuring today that, in fact, the  
24 messes will be cleaned up. This is unfortunante  
25 because it may simply make it more difficult for the  
26 law-abiding companies that seek to conduct business  
27 here.



1                   With respect to the Back River area: on the  
2 charge of "failure to remove", if I can use that  
3 euphemism, the equipment and materials, there will be  
4 a fine of \$3,500; with respect to the failure to  
5 provide the final plan, \$1,500; with respect to Sunset  
6 Lake; failure to remove \$3,500 fine; failure to  
7 restore, \$1,500 fine; and the failure to provide a  
8 final plan, \$1,000. With respect to Tinny Hills: the  
9 failure to remove, \$3,500. In all cases in default -  
10 distress.

11                   Is that everything you have, Mr. Donihee?

12 MR. DONIHEE:           Yes, it is, sir.

13 THE COURT:            I think that takes care of all of the  
14 informations, all of the other ones have been  
15 withdrawn against the defendant?

16 MR. DONIHEE:           Yes, they have, sir.

17 THE COURT:            I just confirm that for the record.  
18 Thank you, counsel.

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Certified a correct transcript,



Loretta Mott  
Court Reporter