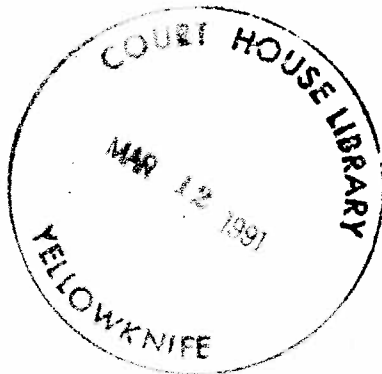


IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

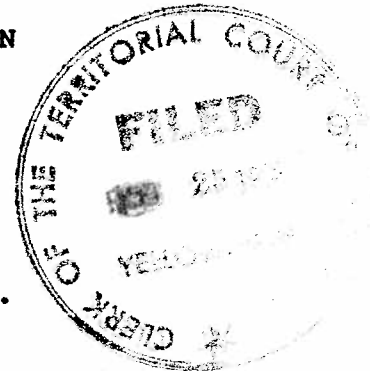
BETWEEN:



HER MAJESTY THE QUEEN

- and -

AURORA QUARRYING LTD.



Transcript of the Reasons for Sentence of His Honour
Judge R. M. Bourassa, sitting at Yellowknife in the
Northwest Territories, on Friday, February 15th,
A.D., 1991.

APPEARANCES:

MR. H. PRUDEN:

Counsel for the Crown

MR. J. BAYLY:

Counsel for the Defence

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THE COURT: The accused is before the court
for sentencing for an infraction of Section 11 of
the Mining Safety Act which carries with it a maximum
fine, as I understand it, of \$10,000. The enactment
under Section 11 as it would appear applying to this
particular case is that:

"The manager of a mine and every foreman, shift
boss and department head thereof should take all
reasonable measures to ensure this act and rules and
regulations made thereunder and to ensure their
observance by all persons working in and about the
mine or those under his charge as the case may
be. And that all persons working in or about a mine
should take all necessary and reasonable measures to
carry out their duties in accordance with the
provisions of this act."

One of the provisions of the act prohibits the
drilling of a hole closer than 15 centimeters to a
existing hole because of the danger of unexploded
dynamite in the latter, and this is precisely what
occurred here. The shift boss at the time was
experienced, highly experienced, well qualified,
certainly able, but uncertified by the applicable
legislation in the Northwest Territories. He could
have been certified on a short term basis when the
mining inspector was there, but he wasn't. The mining
inspector attended twice and on the sworn evidence
before me has no recollection of being asked by anyone
to certify the particular shift boss in charge at the
time. I have to accept that evidence.

To say that he is not certified is not to say

1 that he is unable, i.e. incompetent. To say that he
2 is uncertified is not, of course, to say the accident
3 wouldn't have occurred if he had been. The
4 certifications are to establish, I suppose, minimal
5 standards which I don't have any doubt in the mining
6 context must be substantially high. Mining is
7 inherently the most dangerous occupation in Canada.

8 In any event, there is a substantial obligation
9 on the operator or manager to see that the safety
10 rules are complied with. It may be that in many
11 instances rules may be seen by people working in the
12 field as an artificial impediment to carrying out the
13 "real work". That's an unfortunate view point, and I
14 think it is made pretty clear here. The shift boss at
15 the time should have complied with the rules, and,
16 notwithstanding the shift boss's experience, the
17 employer is under a positive obligation to ensure that
18 its workers - for their own protection, even if they
19 are willing to take the risks, are supervised and
20 protected from themselves to a degree.

21 In any event, in terms of culpability or
22 blameworthiness, Aurora allowed a condition to exist
23 which was contrary to law, and obviously allowed a
24 shift to take control of the mining work without
25 supervision required by the laws of the Northwest
26 Territories. In a way it is difficult to deal with
27 because the people who didn't comply with the law here

1 are the ones that suffered the most. The shift that
2 was drilling the rock face at that time were the ones
3 that all were in danger of losing their lives and in
4 fact one has been fairly severely injured.

5 In any event, the obligation is on Aurora to see
6 that the laws are followed and that its employees
7 followed them regardless of the situation. They have
8 to be complied with.

9 In terms of culpability, measured against Echo
10 Bay, having presided over Echo Bay and perhaps having
11 the benefit of the facts that were recited at that
12 time, I note for the purposes today that in my view
13 Aurora's responsibility is greater than that of Echo
14 Bay mines.

15 The defendant has no previous breaches of any
16 Mine Safety Act or any contravention of any regulation
17 with respect to mining safety. It has a long history
18 in the field. Its operations in terms of lost man
19 hours as a result of injuries has gone down
20 substantially so that by 1990 it is, looking at a bar
21 graph, and I would take it up the side is man
22 hours. It has gone from 78.7 incidents or days lost,
23 per 200,000 man hours down to 12.5. Am I reading that
24 correctly?

25 MR. BAYLY: They were actual incidents, Your
26 Honour, as opposed to hours.

27 THE COURT: Incidents, all right, and lost time

1 has gone from 30 days in 1985, 3.5 days down to 2.2
2 days in 1990. So one can't say that the defendant has
3 a cavalier approach or isn't conscious of its
4 obligations to protect its workers.

5 The only sentencing purpose I would suggest that
6 would be appropriate here in imposition of penalty is
7 to drive home to the defendant the very positive
8 obligation it has upon it to ensure compliance with
9 the Mining Safety Act in the Northwest
10 Territories. It has to protect its workers according
11 to law.

12 The conviction, and I am sure the intendant
13 publicity, will have a deterrent effect, and the
14 defendant will have to take steps to protect its own
15 reputation.

16 I am taking into account that the defendant has
17 pleaded guilty. I am taking into account the full
18 contents of the information supplied by Defence, and
19 accept it at face value excluding the proposition
20 advanced with respect to Mr. Vinkle. There is a
21 conflict. The only evidence I have before me is the
22 sworn evidence of Mr. Rozon, and I accept his evidence
23 with respect to the certification and the request for
24 testing. There was no request made for testing on the
25 evidence before me.

26 In any event, having read through the Defence
27 materials, I take them into account in terms of

1 sketching out the background and defining the
2 defendant before the court. I note as well that money
3 or a fine will at the most only very indirectly
4 benefit the employees. The point I am trying to make
5 is that the corporation has the general responsibility
6 for safety of its employees as reflected in the Mining
7 Safety Act, and its general duties as employer. The
8 injuries suffered here are clearly a combination of
9 the defendant failing to be more aggressive or
10 assertive in its legal obligations, but as I said at
11 the outset, all of the men were experienced, competent
12 and clearly able to do the work. They didn't do it
13 properly. And unfortunately, these experienced men
14 paid a price, a couple of them a significant price.

15 I also note the attendance at this hearing of
16 high level corporate personnel from Toronto, as factor
17 I take into account as reflecting the defendant's
18 serious view of this matter.

19 I am going to impose a fine of \$5,500. There
20 will be the usual order in default of payment -
21 distress. I have no authority to direct time for
22 payment, but I trust the Crown will work something out
23 with Mr. Bayly with respect to the fine so nothing
24 occurs precipitously.

25 MR. PRUDEN: Yes, sir.

26 MR. BAYLY: Thank you, Your Honour.

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(AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED)

Certified a correct transcript,

Laurie Ann Young

Laurie Ann Young
Court Reporter

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