

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

ECHO BAY MINES LTD.

Transcript of Sentencing delivered by His Honour,
Judge R. M. Bourassa, sitting at Yellowknife, in
the Northwest Territories, on December 11th, A.D., 1989.

APPEARANCES:

Mr. D. Gates

For the Crown

Mr. J. Vertes, Q.C.

For the Defendant

(CHARGED UNDER SECTION 46 OF THE MINE SAFETY ACT OF THE NWT)

1 THE COURT: It's always difficult imposing a
2 sentence on a defendant, particularly when the results
3 of a particular action are so devastating or dramatic,
4 such as occurred in this case with the death of a
5 miner, an employee of the defendant.

6 There are two sources of liability in a sense;
7 the corporate defendant may or may not be liable
8 civilly, and it has pleaded guilty and admitted
9 liability under a regulatory regime, which required
10 the placement of a railing.

11 One has to impose a sentence taking into account
12 all of the circumstances, which I think means you have
13 to have regard to the terrible results or consequences
14 of this particular offence, and yet at the same time,
15 I think we have to bear in mind that we're not
16 directly dealing with the death of a miner. It's much
17 like a speeding -- or perhaps similar to a speeding
18 ticket -- where someone is charged with speeding, as a
19 result of a high speed driving, someone is
20 killed. The Court is faced with and has to deal, with
21 by way of sentence, the offence of speeding, not
22 homicide or some species of homicide or negligent
23 homicide.

24 In this case, the Court must deal with the
25 regulatory offence in its own context, taking into
26 account, to a degree, the tragic consequences. I
27 don't think anyone would for a moment question or

1 quibble with the \$10,000 maximum fine as a reflection
2 of the importance of safety in mining. The
3 development of the law, the numerous regulations and
4 enactments that apply to all styles of mining I think
5 is also reflective of that.

6 I'm left with the impression, after hearing the
7 facts, studying the diagrams, and reading the facts
8 earlier, when given to me in chambers, that the
9 proximate cause of the death of the unfortunate
10 individual was not directly attributable to the lack
11 of railing, and secondly, was perhaps more
12 attributable to the difficulties with the bucket that
13 came down, and perhaps a failure of human judgment in
14 terms of dealing with that problem. Obviously, the
15 possibility of the whole load of concrete bursting out
16 of the bucket that came down was not contemplated by
17 the workers at the time, and the weight of the
18 concrete simply washed everything down the shaft.

19 It may or may not be, that a railing would have
20 prevented the loss of life. The crown is in no
21 position to assent that, and from the diagrams and the
22 facts before me, I cannot conclude that the lack of
23 railing was a factor in the death of the
24 individual. The presence of a railing is clearly
25 provided for in the regulations; these wing platforms
26 on either side of the concrete hopper -- were two
27 and-a-half meters above the ground -- a half meter

1 more than the limit prescribed by the regulatory
2 regime.

3 The defence has provided by way of Exhibit 1,
4 substantial background with respect to the
5 defendant. I note in passing the various enterprises
6 and contributions to the community as a whole
7 undertaken by the defendant. Perhaps sometimes we can
8 look at these simply as an attempt to buy goodwill, or
9 in some other light, but I don't accept it in any
10 other light than which it is offered, that is, to give
11 a total complexion of the corporation, which, I think
12 is to be welcomed, but neutral in terms of sentence
13 consideration.

14 In this case, the accident frequency rate, as
15 provided by the defence, is perhaps of greater
16 assistance to the Court. It clearly -- both by way of
17 comparison with other mining operations in the
18 Northwest Territories, and in terms of the operation
19 of the Lupin Mine itself -- indicates that Echo Bay
20 Mines, in terms of frequency of accidents, is the
21 lowest of the other five mines to which it was
22 compared. The lost time and accidents, second lowest,
23 and severity -- defined as a day lost to one million
24 man-hours worked -- again, the second lowest by a long
25 shot, compared to the worst.

26 The other information, with respect to Echo
27 Mines, as I stated earlier, simply sets out the whole

1 complexion and character of the accused, which the
2 Court welcomes. There is very little jurisprudence,
3 that I'm aware of, in dealing with this particular
4 section of the mine safety regulations. In instances
5 like this, Courts are always interested in what other
6 Courts have done in similar circumstances. I take it
7 then that there is no precedent, at least in this
8 jurisdiction.

9 I think it's been said that mining is inherently
10 a dangerous occupation, and the facts of this
11 particular case unfortunately bear that out, and I
12 would hope, at the very least, it redoubles the
13 efforts by not only the corporation, but by each
14 individual worker, to exercise every conceivable
15 caution. The case brings to mind the situation with
16 Esso Resources where notwithstanding extensive efforts
17 by the corporate defendant, the ultimate injury or
18 loss that the Court had to address in that case --
19 although it was in a different kind of case -- was the
20 result of the failure of employees to exercise proper
21 judgment, and that may have been a factor here.

22 In any event, addressing the corporate
23 liability -- taking into account that it pleaded
24 guilty -- the facts that are before me, keeping in
25 mind the tragic consequences, but recognizing that in
26 this Court, on this offence, cannot address those
27 tragic consequences. In my view, the penalty that

1 should be imposed should be one that would hopefully
2 accomplish what I just stated a moment ago, in terms
3 of reinforcing the important of safety and I accept
4 that the penalty in no way -- and I'm sure no one will
5 argue -- that the penalty in no way can address the
6 loss sustained by the families of the worker. In my
7 judgment, a fine of \$4,000 is appropriate.

8 MR. GATES: Thank you, Your Honour.

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Certified Correct,
(dated December 13, 1989)

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Karen Myren,
Court Reporter

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