TC CR 88 029

[1988] NWTR 321

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

vs

MITCHELL TAYLOR

Heard at Yellowknife, N.W.T.

Judgment filed: June 30, 1988

REASONS FOR JUDGMENT

of

His Honour Judge R. M. Bourassa

APPEARANCES:

MS. L. WALL — Counsel for the Crown

MR. J. BAYLY — Counsel for the Defence

(Charge under Section 84(1) Wildlife Act)

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

vs

MITCHELL TAYLOR

REASONS FOR JUDGMENT

The Defendant is charged with an offence pursuant to Section 84 of the **N.W.T. Wildlife Act:**

> Section 84(1):
>
> No person shall make or give false or misleading entry, statement, particulars or information in any application for a licence or permit or in any form, books, records or other documents required by this Ordinance or the regulations.

One issue is whether this is a full mens rea offence or one of strict liability as set out in the landmark case of **R. vs Sault Ste. Marie,** and to that issue I will address myself first.

The **Wildlife Act**, and the **Regulations** made pursuant thereof, form a vital statutory scheme for the protection and management of one of the renewable resources of the Northwest Territories. I would pause to note that wildlife is a special renewable resource in that it is fundamental both in practical terms as food, and in cultural terms, and bears far more importance to people in this jurisdiction than it would in some southern jurisdictions.

The whole issue of wildlife management reflects an attempt by the legislators to enhance and protect this resource, in that context, through a system of permits, classification of hunters, and the licensing of all who may hunt. As such, I am of the view that the matter is prima facie one of public welfare, which would place it into the second category or classification of offences as set out in **R. vs Sault Ste. Marie**, i.e. one of strict liability. The offence of providing false information is not like a true criminal offence such as fraud or breach of trust, but rather is an offence by virtue of the **Wildlife Act** which attempts to effectively and in an organized fashion govern the hunting of wildlife.

I note that Section 84 of the **Wildlife Act** above does not contain words such as "wilful" or "knowingly" which would

tend to impute a mental element and move the offence from one of strict liability into the mens rea category. I concur with the submission of the Crown Attorney that the evil sought to be avoided is the issuing, on the basis of false information, of a hunting licence to one who is not entitled to it.

My Brother Judge Halifax, sitting in Hay River in **R. vs Schimanek** dealt with a similar offence, and acquitted the Defendant on the basis that, in law, he fulfilled the residency requirements, notwithstanding that, in fact, his residency was interrupted from time to time. His Honour did not deal specifically with the issue of whether or not it was a strict liability offence, but, in my view, the finding of strict liability was implicit in his Judgment.

In **R. vs Duntra and Bertrand**, Unreported, Fort Liard, July 28, 1977, the Defendants were charged with an offence under the **Forest Protection Ordinance** of failing to totally extinguish a camp fire which subsequently caused a forest fire. In that case Halifax, T.C.J., after canvassing the law, concluded that it was a strict liability offence.

Other jurisdictions have from time to time dealt with regulatory offences related to hunting and fishing and

categorized them as strict liability, and in this regard I would refer to **R. vs Sterling,** Jan. 20, 1986, B.C. Co. Ct., Drost, Co. Ct. J. (fishing without a licence); **R. vs Wesley,** June 14, 1985, B.C. Co. Ct., Errico, Co. Ct. J. (fishing without a licence); **R. vs MacDougall,** Jan. 27, 1981, N.S. Co. Ct., Sullivan, Co. Ct. J. (driving while licence suspended - strict liability); **R. vs G. M. Smith Ltd.,** May 14, 1981, Ont. Co. Ct., Mossop, Co. Ct. J. (overweight motor vehicle - strict liability); **R. vs George,** Jan. 4, 1984, Nfld. Dist. Ct., Barry, D.C.J. (unlawfully cutting wood on Crown land - strict liability); **R. vs Horne,** June 13, 1984, Sask. Prov. Ct., Bobowski, Prov. Ct. J. (unlawfully importing wildlife - strict liability).

The statutory schemes represented in these cases are all similar in purpose to the **Wildlife Act** in the instant case, and all represent public welfare offences. I cannot agree with submissions of Defence Counsel made on the basis of **R. vs Bone** (1985) 37 Man. Reports (2d) 311, that it is open for this Court to impute the word "knows" to Section 84(1) of the **Wildlife Act** or that it is implicit in the Section itself, thus moving it to a mens rea offence.

Having made this ruling on the law, the Crown must then prove its case that the Defendant provided false or misleading

information with respect to his residence and it is open for the Defendant to argue the exercise of due diligence.

Before dealing with further issues that have arisen, it is appropriate to review the facts as I have found them. The Defendant, at all material times, is a well educated research biologist whose professional interests are centered upon the study of polar bears. The Defendant was a landed immigrant, but whose home and roots originated in the U.S.A. Because of the absence of polar bears in that jurisdiction, he sought and obtained, from time to time, research projects in the Northwest Territories relating to polar bears, and from time to time, obtained support from the Government of the Northwest Territories and conducted research with others, publishing results of that research. **Modeling the Sustainable Harvest of Female Polar Bears,** October 1987, and **Correct and Incorrect Use of Recruitment Rates for Marine Mammals,** were published in the United States of America. While this research required his presence in the Northwest Territories, and notwithstanding that the Defendant's name is associated therein with the Government of the Northwest Territories, he was not a resident in the ordinary meaning of that term when the research was done some time prior to the date of publication. The association of the Defendant's name with that of the Government of the Northwest Territories was for

purposes of credit to the sponsor - the Government of the Northwest Territories, not a reflection of the Defendant's residence.

In June of 1985, the Defendant decided that his best career move would be to Northern Canada where he could carry out his vocation on a full time basis with full access to polar bears. At this time he was an American resident, and in my view, an actual and continuous resident of the State of Michigan. He was building a house for himself and his family and was employed, even though "only" on a contractual basis, as a lecturer/professor with a State University.

In August of 1985 the Defendant personally delivered a small trailer load of effects from Vancouver to Fort Smith, consisting of a few books and a bed, leaving them in a friend's barn, and in his words, "so I can consider myself a resident", used Fort Smith as a mailing address. At this time, the Defendant had been made aware of a northern preference in hiring, hence his desire to be considered a northern resident. He went back to Michigan to his spouse, children, house building and teaching. His address in Vancouver became, in his words, "a contact point".

The Defendant applied for a position as a polar bear biologist in September 1985 and provided proof of his Landed Immigrant Status, together with a return address in Michigan. Some time later he attended in the Northwest Territories for a job interview, at which time the Defendant provided his address as General Delivery, Yellowknife, because "I considered my residence to be Yellowknife". At that time, he had no connection to Yellowknife. At a later time when it was pointed out to him by the official documenting him that he was ineligible for removal expenses because of his claimed Yellowknife address, his residence became other than Yellowknife.

The application for employment was processed, declined, appealed, and ultimately an offer of employment was made on January 15, 1986, which was accepted on January 31, 1986, and received by the Government of the Northwest Territories on February 18, 1986. He physically moved to Yellowknife in March of 1986.

On September 9, 1987, the Defendant, while in Coral Harbour, N.W.T., applied for a hunting licence, and in that application made the following declaration on a form approved by the Minister pursuant to Section 9 of the **Wildlife Act:**

> I am a resident - a Canadian citizen or landed immigrant living in the N.W.T. at the relevant date and who lived there continuously for the two years immediately preceding that date.

The fee was $5.00. (The fee for a non-resident was $10.00.)

I have considered the extended legal meaning of residency in **Fells vs Spence,** and **R. vs Schimanek,** the words "lived" and "continuously" and I am unable to conclude that the accused was a resident living continuously in the Northwest Territories in light of those cases or the law. I believe it is clear that notwithstanding his expressed intention and the series of "contact points", the accused was quite simply not a resident until March of 1986.

While the desire to live in the Northwest Territories, and the intention may have been present, they amount to nothing but that, and cannot, in my view, create residency as required in the **Wildlife Act** using normal connotations and meaning of that word, together with the judicial considerations I have already alluded to.

In making the application to the Wildlife Officer in Coral Harbour, the Defendant sought to induce the Wildlife

officer to make the decision with respect to his residency for him. Quite properly the Wildlife Officer declined, and presented the application to the Defendant, saying he would accept the Defendant's word, that is to say the truth, that he was a resident within the meaning of the **Wildlife Act.** I can find no obligation that requires the Wildlife Officer or issuer of licenses to cross examine or test every applicant on the two year residency requirement. The obligation is upon the applicant who may satisfy the issuer with his word or other documentation in support of his word.

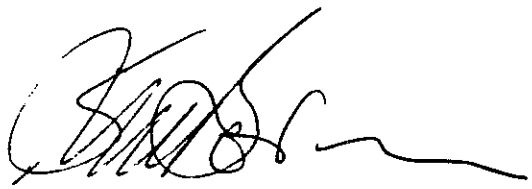
There was some argument and evidence surrounding the use of the Northwest Territories Health Care Plan Certificate of Registration as a document confirming or reflecting the date upon which residency commences in the Northwest Territories. There was some evidence from vendors that they use this card for that purpose, adding three to six months from its quoted effective date, being the time presumably it takes the Government of the Northwest Territories to process and issue such a card following an individual's arrival in the Northwest Territories. Using that formula and other documentation, the Defendant argued that he fit within the two year residency. In any event, the very Health Card that the Defendant proffered to the Wildlife Officer, and the Court, in support of his claim of two year residency was

issued based upon an application dated March 6th of 1986, when the Defendant was actually in the Northwest Territories on a permanent basis. Its effective date was December 1, 1985 - still insufficient to support the two year residency claim without adding the speculative processing factor of three to six months. However, in my view, resort to the Card just begs the question. Vendors and issuers of licenses are free to use whatever documents that they, in their discretion, think appropriate. In law, there is no requirement to demand any kind of proof. The use of the card may be convenient and practical in many instances, but the question always remains the same -- in its simplest form -- Have you lived in the Northwest Territories for two years? -- and Health Care Cards or other documents notwithstanding, their dates cannot alter the fact of residency or lack thereof.

I cannot agree that there was anything that might be construed as an officially induced error, or that the Defendant was operating under mistaken facts.

For whatever reason, the Defendant sought to induce others to analyze his position and make decisions favorable to him, thus avoiding responsibility and therefore liability for decisions found to be in error upon later analysis. The veracity

of the declaration is the Defendant's and the Defendant's alone. I listened carefully to the Defendant's testimony and the cross examination thereon, and I am satisfied that the declaration and residency required as a pre-requisite to the issuing of a resident hunting permit was false; that the Defendant did not exercise due diligence in analyzing his own position and in declaring his residency existed for two years. For these reasons he is convicted of the offence.



Judge R. M. Bourassa