TC CR 88 030

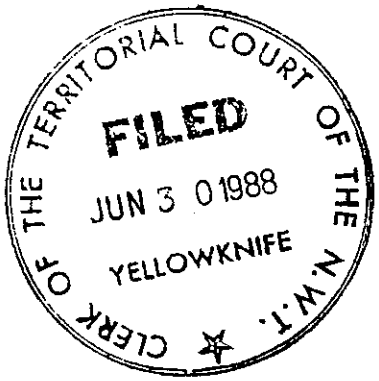
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

vs

MITCHELL TAYLOR



REASONS ON SENTENCING

of

His Honour Judge R. M. Bourassa

Sitting at Yellowknife, N.W.T. on June 3, 1988

APPEARANCES:

MS. L. WALL — Counsel for the Crown

MR. J. BAYLY — Counsel for the Defence

(Charge under Section 84(1) Wildlife Act)

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REASONS ON SENTENCE

The Defendant is before the Court for sentencing on an offence contrary to Section 84(1) of the **Wildlife Act** of the Northwest Territories:

> 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.

The Defendant applied and was granted a hunting permit in accordance with an application made under Section 9(1):

> Section 9:
>
> (1) Every application for a licence or permit shall:
>
> (a) be in the form approved by the Superintendent therefor,
>
> (b) set out such information as the Minister may reasonably require, and
>
> (c) be accompanied by the prescribed fee.
>
> (2) The applicant shall furnish such further information as the vendor considering the application may reasonably request to enable him to determine the application.
>
> (3) In an application for a licence or permit, the onus is upon the applicant to prove that he is eligible to hold it.

I have found that the applicant made and provided misleading information and false information in his application for a hunting permit for reasons set out in my Judgment.

With respect to the Defendant, there is nothing to indicate otherwise, other than the Defendant is of good character, with a successful past and potential for a productive and successful future. At the time he made the application he was not a two year continuous resident of the Northwest

Territories, in fact, or under any extended legal meaning such as had been applied in **Fells vs Spence** and **R. vs Schimanek.** The Defendant was not a two year resident and cannot create residence by deeming himself as such or constructing a residency by leaving a series of addresses from Michigan to Vancouver, Fort Smith and Yellowknife. I would point out in no uncertain terms that a rose by any other name is still a rose; one cannot create illusions on manufactured facts and have any hope that they will survive scrutiny by the Court. A rose is still a rose no matter what it is called.

In my view, the responsibility with respect to the provision of information in support of an application for a wildlife hunting permit is clearly and unequivocally the responsibility of the applicant who is required to declare:

> Declaration on Application
>
> 1. [X] 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.
>
> [ ] Non-Resident - a Canadian citizen or landed immigrant who is not a resident.
>
> [ ] Non-Resident Alien - an individual who is neither a resident nor a non-resident.
>
> 2. I understand that it is an offence to give false or misleading information in this application.

Section 9(2) provides the vendor with a discretionary power to demand or request proof of residency, but there is no corollary of examination or testing of the application. The responsibility in making a true declaration belongs to the Defendant. If I may refer to another old saw, "A man's word is his bond." The Wildlife Officer in this particular case was perfectly justified in accepting the Defendant's word that he was a resident and cannot be faulted for not examining the Defendant.

The Defendant is a senior biologist with the Department of Renewable Resources, Government of the Northwest Territories, and a conviction for this kind of offence may have repercussions unique to him. The Court can appreciate that there may be such consequences inchoate or uncrystallized at this time, and indeed the Court may have some sympathy for the Defendant for the consequences that may flow from this lackadaisical, cavalier approach to the discharge of his responsibility in applying for a hunting permit.

On all of the evidence I conclude that we are not dealing with a question of fraud or malice or any great intention to defeat the system in issuing hunting permits. I would characterize the offence as reckless, careless, and perhaps even stupid.

The Court must be careful in this case, as in all cases, that the consequences following a conviction ought not to be allowed to be blown out of proportion to the offence involved; however, at the same time recognize that there are normal consequences that flow from convictions of any sort, which are inevitable, regardless of what the conviction is for. I do not believe that those 'normal consequences' ought to be taken into account on sentencing. That a conviction for a criminal or quasi-criminal offence may have an impact on employment, friends, credibility, or otherwise, is unfortunately the price that a Defendant must pay as a result of his unlawful acts.

I have no doubt that given the Defendant's senior position, that he is in danger of suffering a loss of credibility, and perhaps rightly so. That will be an issue for him to address. I can appreciate the evidence of the Deputy Minister of the Department of Renewable Resources that there may be a loss of enthusiasm in having a member on his staff with this kind of conviction registered against him.

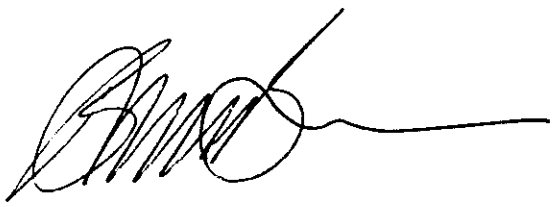
People who aspire to responsible positions bear an increased responsibility to apply their intelligence and sense of responsibility to avoid being embroiled in events such as have unfolded before this Court. I would note that the matter was

defended, an interesting point of law made, and written submissions filed. I am sure that this has been at no small expense to the Defendant, and I believe in trying to look at the global effect on the Defendant, and this is an element that I can take into account in this case.

I believe it important that this Court emphasize and make it abundantly clear that facts cannot be manufactured or created, the responsibility for providing true information lies upon the applicant and not the Wildlife Officer. Punishment in the broad sense may not be necessary in this case because we are dealing with a sophisticated Defendant with three university degrees, and surely the Court can appeal to his intelligence and rely upon self-correction. One would assume that in the future he will accept his responsibilities and not seek to lay them off on others in this context.

In my view, a discharge is appropriate. I have considered a conditional discharge with a period of probation, but I note it is the Defendant's first time in Court and I believe the Court can have some confidence in leaving the matter cleanly in the expectation that in the future the Defendant will respond appropriately to matters that he is faced with such as we have dealt with in this case. I, therefore, do not see any great

advantage to the public or the accused in wringing a few months of probation out of him. There will be an absolute discharge, the Defendant will have no record of conviction on this matter.



Judge R. M. Bourassa