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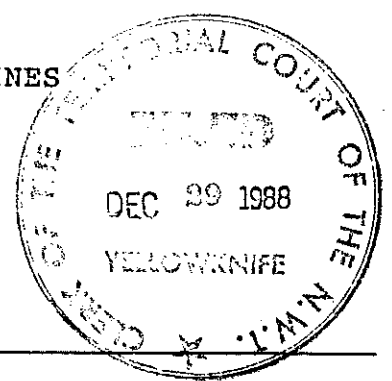
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

GIANT YELLOWKNIFE MINES



Transcript of the Oral Sentencing Delivered by His
Honour Chief Judge J. R. Slaven, sitting at Yellowknife
in the Northwest Territories, on Friday, December 16th,
A.D., 1988. x

APPEARANCES:

MR. T. HUMPHRIES: Counsel for the Crown
MR. J. VERTES Q.C.: Counsel for the Defence

(Section 6(1) & 32 N.I.W.A.)

050

1 THE COURT: Giant Yellowknife Mines has pled guilty to
2 offences under Section 6(1) of the Northern Inland Waters
3 Act for occurrences on August 21st, November 20th, November
4 23rd of 1987, and May 22nd of 1988. I thank counsel for the
5 agreed statement of facts filed, for their oral representations
6 in addition thereto, and the materials they filed with me.

7 In deciding what the amounts of the fines should be, I
8 found it useful to refer to what I may refer to as the check
9 points laid out by Judge B. D. Stuart of the Yukon Territorial
10 Court in the case of R. vs. United Keno Hill Mines Limited, a
11 judgement filed October 31, 1980.

12 Beginning at page 5, he refers first to the nature of the
13 environment and the extent of the injury. Referring to the
14 agreed statement of facts, it is agreed that in each incident,
15 and I quote: "No significant environmental damage would be
16 expected to result from this incident".

17 On page 7, he refers to the size, etc., of the
18 corporation, and I will get to that. At page 8, under his
19 considerations, the first is the criminality of the conduct,
20 and I quote:

21 "The severity of punishment should be
22 directly related to the degree of criminality
23 inherent in the manner of committing the
24 offence. Accidents, innocent mistakes, and
not reasonably foreseen events are less
damnable than wilful surreptitious violations."

25 He refers next under his heading (b) to extent of attempts
26 to comply. He says:

27 "A corporation should not be harshly

1 punished if evidence indicates diligent
2 attempts to comply with government
 regulations."

3 Both of those apply here. On page 9 he refers to remorse
4 under the headings of speed and efficiency in cleaning up,
5 which has some bearing on one or two of these incidents.
6 It refers to voluntary reporting. In this case, of course,
7 the licence, required reporting.

8 On page 10, he refers to the size of the corporation,
9 in effect, the larger the corporation, the larger the fine.
10 I will have that in my mind, too. Next, on page 11, he
11 refers to profits realized by the offence, which doesn't
12 come into play here. Then after that, he refers to the
13 criminal record of the defendant, and I will get into that.
14 I may say that the maximum penalty here is \$5,000 for each
15 occurrence.

16 The August 21st, and November 23rd occurrences were of the
17 same type, the release of mill solution to Baker Lake. In this
18 case, I think some significance re criminality of the conduct
19 is the fact that the lines of the emergency sump were plugged
20 because of poor design and maintenance, and that there was not
21 immediate notification, and that the situation wasn't rectified
22 until after the November 23rd incident. The situation was
23 rectified after that as is noted in the material before me.

24 Regarding the November 20th incident, Giant had reason
25 to suspect from earlier tests on the 9th of November that the
26 readings were high. I feel they didn't monitor it closely
27 enough after that. The situation continued until the place

1 froze up on November 21st, and there was not prompt reporting.

2 As to the May 22nd incident, it was a new operation.
3 What happened was completely unexpected. It was corrected
4 immediately. I do feel, however, that the new operation
5 should have been monitored more closely, and the staff on
6 site should have been more adequately instructed re monitoring
7 and observing how the new setup worked.

8 Now, we have here a long-time corporate citizen of the
9 Northwest Territories, in particular in Yellowknife. They
10 have had a large operation for many years. Giant, throughout
11 the years, has been one of the three or four biggest employers
12 in Yellowknife. They are responsible corporate citizens.

13 The Yellowknife operation was convicted of one offence
14 back in 1975 under the Fisheries Act. It also committed
15 offences in December of 1987 for a completely separate
16 operation many, many miles away. So they are not what we
17 would call persistent repeating offenders.

18 As I said, the maximum fines were \$5,000 for each
19 occurrence. That would be a total of \$20,000. In the minds
20 of some, a fine of \$20,000 would be a mere slap on the wrist
21 to a corporation with an annual income well in excess of
22 \$10,000,000. Even though that is the case, I am
23 sworn to uphold the law, and accordingly must apply the
24 principles of sentencing to these cases.

25 The maximum penalties are reserved for the worse possible
26 offences committed by the worst possible offenders. We are
27 no where near that today.

1 Giant is not a consistent law breaker to say the least.
2 None of the offences were done intentionally, or even
3 recklessly. The degree of mens rea, if I may, is very low,
4 and amount in effect to simply a lack of due diligence on
5 the part of the offender, as is all that is required in offences
6 of strict liability.

7 I have considered the principles of sentence. I have
8 considered the factors in the offences. I have considered
9 Giant as an offender, and arrived at fines that I think
10 are proper in the circumstances.

11 I convict Giant for the offence of August 21st, and
12 direct they pay a fine of \$1,500. I convict the defendant
13 for the occurrence on the 23rd of November, and direct it
14 pay a fine of \$3,000. I convict the defendant for the
15 occurrence on the 20th of November, and direct they pay a
16 fine of \$2,500. I convict the defendant for the offence on
17 the 22nd of May, 1988, and direct they pay a fine of \$1,500.
18 I make that a total of \$8,500. What time to pay would be
19 appropriate, Mr. Vertes, or adequate? *

20 MR. VERTES: Thirty days, Your Honour.

21 THE COURT: Very good. I think that is all, gentlemen.

22 MR. VERTES: Thank you, Your Honour.

23 MR. HUMPHRIES: Your Honour, the Crown is merely asking for
24 a return of the exhibits at the expiration of the appeal
25 period.

26 MR. VERTES: That is agreeable, Your Honour.

27 THE COURT: Okay.

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Certified a correct transcript,

Laurie Ann Young
Laurie Ann Young
Court Reporter