

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

TREMINCO RESOURCES LTD.

Transcript of the Remarks on Sentencing delivered by
His Honour Chief Judge R. W. Halifax, sitting at
Yellowknife, in the Northwest Territories,
October 24, A.D. 1991.



APPEARANCES:

MR. M. DALE

On behalf of the Crown

MR. J. BAYLY

On behalf of the Defence

1 THE COURT: The first point that has to be made,
2 and made very clearly, the six offences before the
3 Court for the Court to dispose of today are not
4 related in any way whatsoever to the unfortunate
5 occurrence on the 13th of September, 1990, that
6 resulted in Mr. Ian Curnow's death. That should be
7 made very clear that what is being dealt with in this
8 court today does not relate to those circumstances.

9 Now these offences, there are four now, of the
10 13th of September, do relate to the various and sundry
11 breaches of the Mining Safety Act or regulations, all
12 of which violations are completely unrelated to the
13 unfortunate incident that occurred on that day.

14 There are a further two offences under Section
15 46(1) of the Mining Safety Act for failing to test the
16 skip hoist and for failing to test the cage hoist
17 ropes as required under the Mining Safety Act. As
18 well the Court has to view what is a fit and proper
19 penalty.

20 There are six counts, this has to be taken into
21 consideration with the totality in the circumstances,
22 and having said that, I think the Court has also to
23 consider that the company today has pled guilty to two
24 counts in replacement of one count that cannot be
25 accepted that increased the maximum penalty of \$50,000
26 thousand to a maximum penalty of \$60,000. I think
27 that indicates that the company is not trying to shirk

1 its responsibility, when it in effect increased its
2 maximum liability by ten thousand, by accepting the
3 responsibility for these two other offences under that
4 section that occurred and formed part of the original
5 charge under Section 11.

6 On the other hand this type of legislation is in
7 place to protect workers, and particularly in an
8 industry like mining which is considered a very
9 dangerous industry. Occupational health and safety
10 legislation, in my view, is something that the Court
11 should treat very seriously any breach thereof. In
12 particular any breach that results directly in injury
13 or loss of life, which is not the case here, and I
14 think has to be considered when comparing these
15 circumstances with some of the circumstances in the
16 cases provided, and the other cases that have been
17 filed.

18 Now obviously the question from the court with
19 regard to the testing of the ropes, the skip hoist
20 rope and cage hoist ropes, there is thirteen months
21 between tests instead of six. There was no indication
22 that there was any danger or difficulty with those
23 ropes, but part of the reason for testing is to insure
24 that does not occur. That can be taken into
25 consideration. It is not a situation where anything
26 dangerous did actually result, although it could have.

27 With regard to the situation regarding the

1 failure to appoint a mine manager, and notify the
2 chief inspector of the name of that manager, is in my
3 view a very, very serious breach in the circumstances
4 when one considers what occurred earlier in the week,
5 and reading the Mine Safety Act where there is a
6 substantial responsibility placed on the mine manager.
7 Other persons may be working under the shift boss or
8 mine captain, but there are several places where the
9 mine manager has direct and specific responsibility,
10 and it is very important that requirement be complied
11 with. It is obvious if something does occur that the
12 manager is required to do, or has not done, or where
13 there is injury as a result, there has to be somebody,
14 somebody who has been appointed, who has that
15 responsibility that has been given to him by statute.
16 I do treat that very seriously.

17 The failure to keep the Mine Occupational Health
18 and Safety Committee, to maintain and keep it
19 operating, is also a situation, when you look at the
20 whole scheme that is in place, the inspection
21 committee plays an important and integral part in
22 relating to management any deficiencies so management
23 can correct them.

24 Having said that, deterrence of course is the
25 main and important function in this matter, and
26 deterrence not only of Treminco Resources, the accused
27 before the Court, but any others of like mind,

1 operators or owners who may be breaching the Mine
2 Safety Act. The penalty should be stiff to deter both
3 this accused and possibly others in the future.

4 Having said that, one has to also take into
5 consideration the ability of the accused to pay. I
6 have no direct evidence as to, the maximum liability
7 being one of sixty thousand, if the company has the
8 ability to make payment of that kind of fine or not.
9 It seems to me the circumstances before the Court
10 where there is an agreed statement of fact, are not
11 circumstances that are such that this is a worse case
12 scenario for which maximum penalties are provided for
13 in law. The standard in law when it comes to
14 sentencing, if the maximum penalty is to be imposed,
15 is one for circumstances that are such that it is a
16 worse case scenario. Obviously that is not the
17 situation before the court today.

18 The seriousness of the offence has to be
19 considered. One has to point out that there was, as a
20 result of the breaches that the court is dealing with
21 today, no injury or loss. One has to also consider
22 the conduct of the accused in these matters. It seems
23 to me, from the undertaking that has been filed, that
24 the company has gone to great lengths to clear up any
25 deficiencies with its operations at Ptarmigan mine
26 site, and has been cooperative in working with the
27 mine inspectors in that regard.

1 One also has to consider the totality of the
2 penalty. As I have indicated earlier, the maximum is
3 one of \$10,000 on each, and I treat some of them much
4 more seriously than others; that should be reflected
5 in the penalty. Again I can't point out too strongly
6 that the offences that the court is dealing with today
7 have no relationship to the death of Mr. Curnow, which
8 I think everybody appreciates is very unfortunate.

9 Now, with regard to count number two, failing to
10 notify the chief inspector with regard to an
11 appointment of a mine manager, contrary to Section
12 12(1) of the Mine Safety Act, there will be a fine in
13 the amount of \$7,000. With regard to the charge of
14 failing to maintain the committee, the Occupational
15 Health and Safety Committee, contrary to Section 9(1),
16 there will be a fine in the amount of \$5,000. With
17 regard to the two counts that were pled to as included
18 offences, that being Section 14, with regard to the
19 training and supervision, and Section 148 with regard
20 to the blasting certificate under the regulations, it
21 seems to me that the Court should consider this in the
22 same light as the total, the total would be the same
23 as if it would have been on count one originally,
24 taking into consideration the comparison with other
25 cases that have been filed as to penalty. There will
26 be a fine in the sum of \$2,000 on each of those
27 counts.

1 That leaves us then with the failing to provide
2 the tests, contrary to section 46(1)(a) of the Act.
3 With regard to each of those counts, there will be a
4 fine in the sum of \$1,500. Now I had considered what
5 the cost of such tests are, I wanted to take into
6 consideration any profit for ignoring to do those
7 tests, and what I find is I am not advised of that.

8 It seems to me when I consider the total amount
9 of these fines it is a total of \$19,000, and further
10 on each count there will be a 15 percent victims of
11 crime surcharge. That is with regard to each count,
12 on each of the six counts there will be a surcharge.
13 With regard to time to pay the fines?

14 MR. BAYLY: I am going to suggest perhaps three
15 months will be appropriate.

16 THE COURT: The total of 19,000 plus the 15
17 percent victims of crime surcharge?

18 MR. BAYLY: I hadn't done the mathematics with the
19 15 percent.

20 THE COURT: About 23,000; three months, very well.
21 Is there anything further with regard to this matter?

22 MR. DALE: No, sir.

23 MR. BAYLY: No, sir.

24 THE COURT: I have another comment. I notice the
25 press has been here today, and I trust that the Court
26 has been very clear on what the circumstances are of
27 the circumstances before the court today. There have

1 been other cases before the Court that the press has
2 been less than accurate in reporting, to say the
3 least. Unfortunately, the most offending member of
4 the press has left the courtroom. But it seems to me
5 there is an obligation on the press to report it
6 promptly and accurately, and I hope such is done.

7 Those are all the matters then?

8 MR. DALE: Yes, sir.

9 MR. BAYLY: Yes, sir.

10 (AT WHICH TIME THIS MATTER WAS CONCLUDED)

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Certified a correct transcript,

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Loretta Mott
Court Reporter

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