

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

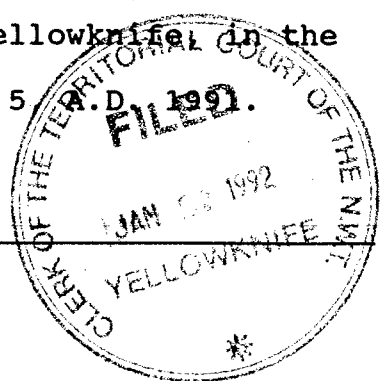
IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

SILVER HART MINES LIMITED

Transcript of the Reasons for Sentence of His Honour
Judge R. M. Bourassa, sitting at Yellowknife in the
Northwest Territories, on November 5



APPEARANCES:

MS. J. DONIHEE

On behalf of the Crown

MR. S. SABINE

On behalf of the Defence

1 THE COURT: Quite simply the accused is before the
2 Court on six charges of failing to comply with certain
3 licence requirements. Those licence requirements
4 under the Land Use Regulations and the Territorial
5 Lands Act require that those that intend to carry on
6 business involving land use in the Northwest
7 Territories (in this particular case for mineral
8 exploration) are required to remove all junk and
9 litter, and the like, upon completion of their work.
10 They are required to restore the land to the way it
11 was. They are required to provide a final plan to
12 the appropriate Government department setting out the
13 schedule for cleanup and restoration.

14 The scope of the defendant's operation is
15 revealed to a certain limited extent in the
16 photographs. In terms of the size of the problem,
17 financially speaking, we are looking at something in
18 the order of \$15 thousand or \$20 thousand to clean up
19 these sites, whether that had been spent two years ago
20 or today. It is not a major, significant problem, at
21 least in terms of measurement by dollars.

22 A lot of time was spent by defence arguing
23 strenuously and persuasively that some of the blame of
24 this should fall on the department officials for
25 allowing extensions or somehow leading the defendant
26 into the belief that the clean up did not have to be
27 done immediately, or when requested, and the long

1 delays involved resulted because of communications
2 going back and forth. I have difficulty with that
3 submission. It seems to me that such reasoning places
4 the officials of the department, in fact any
5 enforcement agency, in an impossible position. If
6 they try and cooperate with an offender and exercise
7 some discretion they are condemned for leading the
8 offender will'o wisp fashion into a quagmire, and on
9 the other hand if they walk in without exercising any
10 discretion and lay charges they are criticized for
11 acting high handedly.

12 From the facts that are before me, and what
13 counsel have stated, I can only find that the
14 department officials apparently made every effort to
15 encourage, cooperate, and finally nudge a little to
16 get the defendant to live up to its legal obligations,
17 short of prosecution. At some point obviously
18 somebody threw up their hands and prosecution was
19 commenced. Even with the commencement of
20 prosecutions, the matter proceeded at a snail's pace,
21 and as of this date, the date of conviction, there has
22 nothing done to clean up the sites; this has been
23 ongoing since June, 1991.

24 I just want to make it clear that I can find
25 nothing untoward with the way the accused was dealt
26 with by the officials. They are in a very difficult
27 situation. They did what they thought best in the

1 exercise of their discretion, and I can't take any
2 adverse inference or make findings that somehow they
3 led the defendant on. The defendant knew its
4 obligations, it knew its obligations the day it
5 obtained the permits and licensing. Knowing them at
6 that time surely it is not unreasonable for any
7 prudent business enterprise to budget. Salaries were
8 budgeted for, tax losses were budgeted for,
9 depreciation was arranged, millions of dollars were
10 being thrown back and forth on the financial
11 statements, and \$10 or \$20 thousand entry for cleaning
12 up the site, complying with the law, is nowhere to be
13 found. I think that is simply consistent with the
14 words of the witness for the defendant that the
15 cleanup was not a priority. It was simply not a
16 reality that the defendant was prepared to deal with
17 or confront, particularly at that time in 1987, 1988,
18 1989, and indeed when things began to move from push
19 to shove and prosecution was commenced. Even at that
20 point there was very little done.

21 On the eve of the sentencing process the
22 defendant comes forward with two contracts to provide
23 for the cleanup of the sites in 1992, one contract
24 with Bathurst Inlet Lodge. That contract appears to
25 be premised on the basis that it will fail, there will
26 be no money paid. This is fair enough if the second
27 party to the contract was prepared to do the cleanup

1 in exchanger for a bulldozer, so be it, I don't have
2 any difficulty with that. What I find interesting,
3 however, is that a third party, under no legal
4 obligation, is willing to "assist", using the words of
5 the contract, the defendant in the performance of its
6 obligations by paying the defendant to clean up the
7 site.

8 Now, it would seem that Silver Hart Mines Limited
9 has many ties with other corporations; its chief
10 executive officer, a main shareholder, is heavily
11 involved in other resource based corporations of which
12 at least one is apparently on a very solid economic
13 footing; there is money available. Silver Hart may be
14 insolvent but it is not a shell, there is money
15 available, there assets. I am not wholly satisfied
16 that we are dealing with an orphan with empty pockets;
17 nor one that is struggling from day to day to whom the
18 application by the court of recognized principles is
19 going to mean its destruction, involving the loss of
20 jobs. If the defendant is as penniless as argued by
21 Defence, then at the very worse Her Majesty the Queen
22 may have to stand in line with the Alberta Treasury
23 and other creditors. There will be no further loss to
24 the body corporate Silver Hart Mines Limited.

25 If on the other hand there is in fact money or
26 assets available, which there certainly appears to be,
27 and as argued by Crown that the defendant is really

1 part of a spiders web of relationships with others
2 that are not before the Court, then it may very well
3 be that that money will come forward, at least money
4 imposed by way of fines, to protect whatever assets
5 that this corporation has or is connected with one way
6 or another. It certainly seems to be part of a larger
7 web, although I don't have information on this, there
8 is certainly a lot of strings leading from this
9 defendant that lead into the unknown. I can't avoid
10 coming to that conclusion by reading the financial
11 statements, listening to the evidence, and seeing that
12 some money is in fact available at the eleventh hour.
13 I can't see that imposing a fine that I would
14 otherwise impose, for the moment discounting the
15 alleged impecunity of the defendant, is going to
16 create a hardship. If, and I am repeating myself I
17 think, if the defendant is as penniless as it states,
18 there is no real additional loss. On the other hand
19 if there are other relationships, then I think
20 imposing a proper fine may very well achieve the
21 result of discouraging people from trying to hide
22 behind a multitude of cobwebs and corporate shells,
23 and encourage corporations to meet their lawful
24 obligations when it comes to licences and permits.

25 I am taking into account that the defendant has
26 pleaded guilty, I take that into some significant
27 account, but I have to balance that I think against

1 what has been a long drawn out process, although I
2 don't believe I should attribute much negative weight
3 to that. I have to take the Defence at face value.
4 They have pleaded guilty. I do note, however, that no
5 effort has been made, other than what I have observed
6 earlier and certainly nothing concrete has been
7 achieved in terms of cleaning up the sites, which I
8 have already indicated, looking at the photographs,
9 appear to be a very modest undertaking.

10 I also take into account the submission of Crown
11 that this has been an ongoing problem, that is to say
12 obtaining a cleanup of the site has been an ongoing
13 problem for a number of years, and the defendant has
14 been most reluctant to prioritize and discharge its
15 obligations. Once again I refer to the words of Judge
16 Ayotte of the Territorial Court as he then was, that
17 the whole point of these licenses and permits is to
18 obtain compliance before not to enforce after the
19 fact.

20 Much argument was made that there has been no
21 environmental damage. I don't really disagree with
22 Defence on that, but I do disagree with Defence that
23 that is the major consideration. The Legislature of
24 the Northwest Territories has determined that the land
25 needs certain protection, and there is a legislative
26 regime governing the use of the land, for whatever
27 valid public policy reasons there are. That is not

for me to second guess or examine; that is the law.

2 The defendant knew what it was getting into, the
3 defendant agreed to be bound by that law by obtaining
4 a permit, and the defendant has been singularly
5 inattentive to its obligations with respect to a very
6 modest expenditure, given the overall expenditures and
7 activities of the corporation at the dates and time,
8 in 1988 and 1989. That is a situation that can't be
9 condoned.

10 I also agree with the Crown that these offences
11 are public welfare matters meaning strict liability
12 for offenders.

13 In terms of the quantum of fine, I am left with
14 the conclusion that there has to be a meaningful fine
15 for the reasons that I have given. The corporation
16 has known all along what its obligations are, and in
17 my view has by its conduct put compliance with the law
18 at the very bottom of its priorities, and that can't
19 be allowed to continue, not with respect to this
20 defendant or any other.

21 There is no provision under the Territorial Land
22 Use Act for the Court to make an order to take action.
23 There is no way of insuring today that, in fact, the
24 messes will be cleaned up. This is unfortunante
25 because it may simply make it more difficult for the
26 law-abiding companies that seek to conduct business
27 here.

2 to the Back River area: on the
3 ge or "failure to remove", if I can use that
4 euphemism, the equipment and materials, there will be
5 a fine of \$3,500; with respect to the failure to
6 provide the final plan, \$1,500; with respect to Sunset
7 Lake; failure to remove \$3,500 fine; failure to
8 restore, \$1,500 fine; and the failure to provide a
9 final plan, \$1,000. With respect to Tinny Hills: the
10 failure to remove, \$3,500. In all cases in default -
11 distress.

12 Is that everything you have, Mr. Donihee?

13 MR. DONIHEE: Yes, it is, sir.

14 THE COURT: I think that takes care of all of the
15 informations, all of the other ones have been
16 withdrawn against the defendant?

17 MR. DONIHEE: Yes, they have, sir.

18 THE COURT: I just confirm that for the record.
19 Thank you, counsel.

20 Certified a correct transcript,

21 

22 _____
23 Loretta Mott
24 Court Reporter

25
26
27