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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

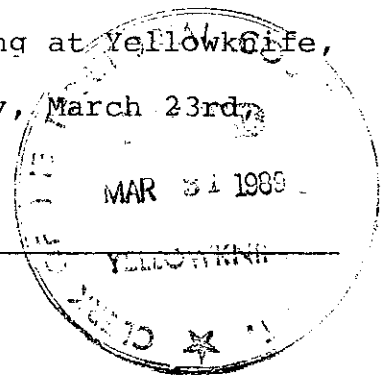
- and -

FELEC SERVICES, INC.

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Transcript of the Oral Sentencing delivered by His  
Honour Chief Judge J.R. Slaven, sitting at Yellowknife,  
in the Northwest Territories, Thursday, March 23rd,  
A.D. 1989.

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APPEARANCES:

MR. T. HUMPHRIES                      Counsel for the Crown  
MR. J. FORAN                              Counsel for the Defence  
MS. S. MacPHERSON

(Charges under Section 6(1) & 6(2) D.G.A.)

1 THE COURT: Well, in this case, Felec Services Incorporated,  
2 which has had a Canadian presence for many years in its  
3 occupation as a contractor for the U.S. Air Force in operat-  
4 ing and maintaining radar equipment at D.E.W. Line sites  
5 in Canada, has plead guilty to offering for transport,  
6 sealift, dangerous goods without providing their description  
7 and also without displaying safety marks on them as  
8 required by The Dangerous Goods Act and regulations there-  
9 under.

10 This came about with the replacement of a great  
11 deal of equipment on the D.E.W. Line sites during which  
12 unwanted and outmoded equipment had to be-- or at least, in  
13 any event, happily was being removed from the sites. The  
14 preparing for shipment of the goods was left to the  
15 individual supervisors at the various sites across the  
16 Northwest Territories who were inadequately trained. As a  
17 result, at both Lady Franklin Point and Hall Beach, equipment  
18 containing PCBs were loaded without displaying proper mark-  
19 ings on them and without being properly described by the  
20 manifest. Also, at Hall Beach and at Long Staff Bluff the  
21 same deficiencies occurred with reference to inflammatory  
22 materials and asbestos.

23 Felec Services Incorporated has, in effect,  
24 pled guilty at the first opportunity. Crown counsel agrees  
25 that they have provided their wholehearted cooperation in  
26 this matter since it first came to light. I am assured by  
27 counsel that they have taken steps to ensure that this

1 never happens again; that training programs have been  
2 prepared and are even now ongoing; that their experience in  
3 this matter to date has already been a very expensive one.

4 Mr. Humphries points out the Acts and regula-  
5 tions are of a preventive character to ensure that people  
6 handling goods know what they are handling, and, accordingly  
7 that they handle it in the proper way. In the case of the  
8 inflammatory and asbestos in open containers, they should  
9 have to know that it is for their own safety. I suppose I  
10 could compare, however, PCBs with asbestos twenty or thirty  
11 years ago, and I believe later since then an insulating  
12 material called polyurethane or something, which along with  
13 asbestos certainly was a great discovery for insulating and other  
14 reasons. It provided greatly to the prosperity of Canada,  
15 in Quebec particularly, but after a time it came to light  
16 that those working in the mines and processing the asbestos  
17 were suffering from its harmful effects on their health,  
18 and latterly that asbestos was having a deleterious effect  
19 on the health of people in buildings that were insulated by  
20 asbestos, just as with polyurethane. Hundreds of millions,  
21 or even billions, have been spent in the past few years  
22 removing these materials from structures.

23 With PCBs, the danger has come to light more recently.  
24 There could well be a greater danger, a more insidious one.  
25 We are only learning now how it persists in the food chain  
26 and is ending up in the bodies of Northern people, particu-  
27 larly because of their diet largely consisting in some places

1 of what we call country food, and certainly with the Inuit,  
2 in seals and other food from the seas. Flying across this vast  
3 territory through the years it is sometimes hard for me to  
4 imagine world over-population or even pollution when I look  
5 at the millions, I guess, of small lakes and streams. But  
6 we certainly have been finding out despite the immense size  
7 of our Territories and the small population, nonetheless,  
8 things like PCBs accumulate where they can do the most  
9 harm. Throughout Canada, certainly in the last year or two,  
10 there have been other occurrences with PCBs sufficient to  
11 bring it to the attention of everybody as to what a great  
12 danger they are.

13 In this case, counsel have made joint submiss-  
14 ions as to what they would feel are appropriate fines.  
15 Regarding the failure to provide a description of the  
16 dangerous goods, contrary to Section 6(2) of the Act, the  
17 maximum fines for a first offence, as these are, proceeded  
18 with summarily, is \$10,000.00. For the failure to comply  
19 with subsection 6(1) and not to display the markings, the  
20 maximum fine on each occurrence is \$50,000.00. There is filed  
21 a joint submission of counsel, which is not a usual thing,  
22 certainly a most unusual type of submission in Courts in the  
23 North. Generally, not even counsel on one side would suggest  
24 an exact appropriate sentence. The joint submission suggests  
25 that for the subsection 6(2) offences I should fine \$5,000.00  
26 each, for the subsection 6(1) matters, \$10,000.00 each.  
27 The Agreed Statement of Facts points out that it has already

1 cost the Defendant a great deal of money and will continue  
2 to cost it, or its contractor, a great deal of money to  
3 handle the remaining PCBs properly.

4 I am inclined to think that I don't have to go  
5 higher than the fines suggested to deter Feléc Services Incorporated  
6 from re-offending. Accordingly, I don't feel any probation  
7 order is called for in this matter. But I do feel that I  
8 have to have exemplary punishment in mind because of the great  
9 danger of PCBs and to show others who may be handling them  
10 that it is not a matter to be trifled with, not a matter to  
11 be gambled with as simply another expense of doing business.  
12 I may say before I go further that I feel that the \$5,000.00 fines  
13 under the subsection 6(2) matters are quite adequate, being  
14 one-half of the maximum fine provided. I feel, however, the  
15 \$10,000.00 fines on the 6(1) matters are inadequate where they  
16 refer to PCBs.

17 On count one, an offence against subsection 6(2)  
18 the 8th of August, Lady Franklin Point, I direct the  
19 Defendant pay a fine of \$5,000.00. Count two, the same  
20 date at the same place, offering unmarked PCBs for transport,  
21 contrary to subsection 6(1), I direct the Defendant pay a  
22 fine of \$25,000.00. Count three, at Hall Beach, an offence  
23 against section 6(2), I direct the Defendant pay a fine of  
24 \$5,000.00. Count four, offering PCBs for transport without  
25 displaying safety marks at Hall Beach, I direct the Defendant  
26 pay a fine of \$25,000.00. For the remaining five counts, I  
27 agree with the joint submission. On count five the fine will

1 be \$10,000.00. Count six, the fine will be \$5,000.00.  
2 Count seven, a fine of \$5,000.00. Count eight, a fine of  
3 \$10,000.00. Count nine, a fine of \$5,000.00.

4 Gentlemen, I followed your joint submission on  
5 seven of the counts in the indictment, but on counts two and  
6 four I have imposed fines of \$25,000.00 rather than the  
7 \$10,000.00 recommended. Ninety-five thousand dollars.  
8 How much time would be appropriate to allow for payment on the  
9 fines?

10 MR. FORAN: It's necessary, Your Honour, to process the  
11 cheque and send it in.

12 THE COURT: Three months.

13 MR. FORAN: Oh, I don't think so. One month would be  
14 adequate.

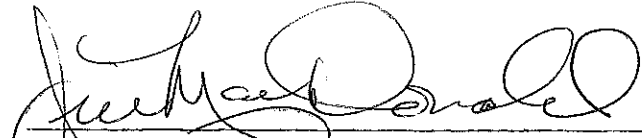
15 THE COURT: I will make it two months in case the airlines  
16 or the post office or something goes astray. Is that all,  
17 gentlemen?

18 MR. HUMPHRIES: Thank you, sir.

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Certified a correct transcript,

  
Jill MacDonald, Court Reporter.