

TERRITORIAL COURT

IQALUIT, N.W.T.

IN THE MATTER OF

IKALUIT ESKIMO CO-OP ASSOCIATION LIMITED

Hearing held in the Territorial Court,
Iqaluit Courthouse, Iqaluit, Northwest
Territories, on the 1st day of December,
1987.

B E F O R E:

JUDGE ORVAL TROY

APPEARANCES:

Ms. N. Boillat

Crown Counsel

Ms. A. Crawford

Counsel for the Accused

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1 ---Upon commencing.

2 THE CROWN ATTORNEY: There is an addition to
3 the docket, that of the Ikaluit Eskimo Co-op Association
4 Limited.

5 THE COURT: Yes, that would be on the last
6 page?

7 THE CROWN ATTORNEY: Sir, there is another
8 one also on the docket which will be spoken to later on on
9 the first page, sir, the Fisheries matter, Sam Bensakria.

10 THE COURT: Sam Bensakria, all right.

11 THE CROWN ATTORNEY: Sir, if we could deal
12 with the charged company first.

13 THE COURT: All right.

14 THE CLERK OF THE COURT: Ikaluit Eskimo
15 Co-op Association Limited?

16 MS. CRAWFORD: Yes, sir. I represent the
17 Co-op. Mr. Bensakria is the manager and is authorized to
18 enter a plea.

19 THE COURT: Is Mr. Bensakria here?

20 MS. CRAWFORD: Yes, sir. He is with me today.

21 THE COURT: All right. Would you read the
22 charge, then, Mr. Clerk.

23 THE CLERK OF THE COURT: Ikaluit Eskimo
24 Co-op Association Limited is charged
25 on or about the 3rd day of September,
26 1987, did have in its possession a
27 narwhal tusk that was not accompanied
by a tag contrary to Section 9(3) of
the Narwhal Protection Regulation,
pursuant to Section 34 of the Fisheries
Act.

1 THE COURT: That is a summary conviction,
2 I think.

3 THE CROWN ATTORNEY: Yes, sir. It is a
4 summary conviction.

5 THE CLERK OF THE COURT: How does the Company
6 plead to that charge: Guilty or not guilty?

7 MS. CRAWFORD: The Company pleads guilty.

8 THE CLERK OF THE COURT: Thank you.

9 THE CROWN ATTORNEY: Sir, I am prepared to
10 proceed with sentencing. I note that it is quarter to
11 twelve. Sir, I am in the Court's hands in regards to
12 sentencing. I do not expect it to be lengthy.

13 THE COURT: Yes. What is the charge number?

14 THE CROWN ATTORNEY: It is the Fisheries
15 Act, sir, Section 34 of the Fisheries Act and under the
16 Narwhal Protection Regulations.

17 THE COURT: Section 34.

18 THE CROWN ATTORNEY: That is the general
19 charging section, sir, under the Fisheries Act. The offence
20 is under Section 9(3) of the Narwhal Protection Regulations.

21 THE COURT: All right. When do you wish to
22 deal with this?

23 THE CROWN ATTORNEY: Well, sir, I am prepared
24 to proceed now if that is the case.

25 THE COURT: We are not ready to go on with
26 anything else then at this time?

27 THE CROWN ATTORNEY: No, sir. The remaining

1 matters, hopefully, could also be dealt with before lunch.

2 THE COURT: All right.

3 THE CROWN ATTORNEY: Sir, I am prepared to
4 proceed.

5 THE COURT: All right. So, there is a plea
6 of guilty. All right.

7 THE CROWN ATTORNEY: Your Honour, it was on
8 the 3rd of September, 1987, that the Northwest Territories'
9 Fisheries officers, Mr. Robinson, who is beside me now, and
10 two other officers in the courtroom, sir, Mr. Akeeagok and
11 Constable Luke, they went to the Co-op store in Iqaluit and
12 they noticed a narwhal tusk there. It was standing in the
13 corner of the building. They observed the tusk and noted
14 that it did not have any tag affixed to it, which is
15 required, sir, under the Narwhal Protection Regulations,
16 that all narwhal tusks have a tag affixed to it.

17 At that time, Mr. Bensakria was there. As
18 stated, he is the manager of the Ikaluit Eskimo Co-op
19 Association Limited, sir, which manages that Co-op store at
20 the airport. He indicated that there was not a tag for it,
21 that he was not aware that one was required, and that the
22 tusk had been there for some time.

23 The tusk, then, sir, was seized pursuant to
24 the Fisheries Act by Officer Robinson and taken back to
25 their lock-up. Mr. Bensakria was asked to come in and this
26 was not done. He was contacted on several occasions to
27 contact them. Needless to say, sir, no contact was made

between the officers and Mr. Bensakria.

Sir, investigation further revealed that the tusk had been shipped to him in February, 1986, by Artic Co-op Limited, which I understand, sir, is the parent company in Winnipeg, Manitoba. At that time, sir, it did not have a tag. This has also been confirmed by Artic Co-op Limited. And, sir, the tusk is here. The Court can observe it. It is about four feet long. That's as to facts. I will have more comments on sentencing, sir.

THE COURT: Yes. It is not a full tusk, then?

THE CROWN ATTORNEY: No, sir.

THE COURT: That's as to facts. All right, thank you. Have you got a copy of the regulations?

THE CROWN ATTORNEY: Sir, yes. I will, perhaps, loan to the Court the only copy I have.

THE COURT: The charge is laid under the General Penalty Section, is it?

THE CROWN ATTORNEY: Yes, sir.

THE COURT: Section 34 of the Fisheries Act.

THE CROWN ATTORNEY: Yes, sir. That is the section allowing regulations to be made under the Fisheries Act. Sir, I will on sentencing inform the Court what the penalty section says, sir, and what power the Court has.

THE COURT: All right. What have you got to say about the facts, Madam Counsel?

MS. CRAWFORD: Well, the facts read by Crown

1 Counsel are admitted. Mr. Bensakria had been out of town
2 for a period during this time and I guess there was some
3 difficulty between himself and the Fisheries officers in
4 terms of getting together. He provided a statement; he
5 provided all the necessary information to back up this
6 particular charge.

7 The tusk had been kept in the Co-op to
8 basically show to tourists. It is an old tusk. Apparently,
9 it is more than five years old, and because of its condition
10 it is not fit for carving or for the ordinary uses of a
11 narwhal tusk.

12 THE CROWN ATTORNEY: Sir, I have no objection
13 to what my friend has said. Sir, the penalty section is
14 provided under Section 61 of the Fisheries Act. It indicates
15 that on a summary conviction offence the fine is not to
16 exceed \$5,000 nor is there to be a term of imprisonment
17 exceeding twelve months.

18 THE COURT: Imprisonment or both?

19 THE CROWN ATTORNEY: Yes or both, sir. The
20 maximum penalty.

21 THE COURT: And, what about default on
22 imprisonment? Is there anything on that?

23 THE CROWN ATTORNEY: Sir, nothing is specified
24 in the Act. It is a summary conviction matter, a Federal
25 offence.

26 THE COURT: Fine is not to be more than
27 \$5,000 or twelve months imprisonment or both. All right.

1 THE CROWN ATTORNEY: I would submit that the
2 summary conviction general rules apply.

3 THE COURT: Okay.

4 THE CROWN ATTORNEY: Sir, under Section
5 58(5), it is also possible for the Court on convicting of
6 an offence under the Fisheries Act or the Regulations to
7 order that goods seized, which was indeed done in this
8 case, be forfeited, sir. It is not a mandatory order. It
9 is within the Court's discretion, sir.

10 In regard to forfeiture, it is the Crown's
11 position that the tusk be forfeited. Sir, I state that as
12 essentially, sir, the tusk is until now, sir, an illegal
13 tusk and that there never was any tag affixed to it. Just
14 on that basis it should be forfeited. Sir, it is also the
15 Crown's position that a fine be imposed in the range of --
16 Well sir, again, I leave that within the Court's discretion,
17 but several hundred dollars. And, again, sir, there is a
18 wide range open to the Court in that regard, sir.

19 THE COURT: Has any education been given to
20 these co-ops in regards to these regulations which in some
21 cases are not widely publicized or well-known to people in
22 the North?

23 THE CROWN ATTORNEY: Perhaps, sir, Mr.
24 Robinson, who is the Fisheries officer, if the Court wished,
25 he could address the Court in that regard. He is the
26 Fisheries officer in this community.

27 THE COURT: Yes.

1 MR. ROBINSON: Yes, Your Honour, the co-ops
2 have been dealing in ivory for several years now and they
3 are fully aware of all the regulations pertaining to tags
4 and permits.

5 THE COURT: Yes. How long have these
6 regulations been in effect?

7 MR. ROBINSON: The tagging system has been
8 in effect since approximately 1980.

9 THE COURT: Since 1980?

10 MR. ROBINSON: Yes, sir.

11 THE COURT: Yes. Before that there was no
12 such regulation about tags being on narwhal tusks?

13 MR. ROBINSON: Well, there is always
14 regulations as far as marine mammal export permits go, but
15 there wasn't any as far as tag. That is a regulation to
16 limit hunting on the narwhal.

17 THE COURT: The export, what does that
18 imply?

19 MR. ROBINSON: That is for taking them
20 across territorial provincial boundaries.

21 THE COURT: For taking them outside the
22 Territories?

23 MR. ROBINSON: Yes.

24 THE COURT: And, that was in effect before
25 1980?

26 MR. ROBINSON: Yes, sir.

27 THE COURT: Well, I would like to see the

1 regulation and I would like to look at those sections.

2 THE CROWN ATTORNEY: Well, sir, I could
3 provide --

4 THE COURT: Well, perhaps, I better look at
5 them over the noon hour, because it is getting pretty close
6 to noon and we want to stop at twelve o'clock today.

7 MS. CRAWFORD: Well, sir, perhaps, I can
8 make some of the submissions as to sentence so that we
9 could finish that matter off.

10 THE COURT: All right.

11 MS. CRAWFORD: Mr. Bensakria is the manager
12 of the store and it is supposed to be opening at twelve
13 o'clock. He has been here this morning. I recognize that,
14 obviously, the Court has to take its time in these matters,
15 but he is under some constraints in terms of his attendance.

16 THE COURT: Yes.

17 MS. CRAWFORD: With regard to the penalty,
18 basically it is an old tusk. As we said with regard to the
19 facts, it was more than five years old and potentially it
20 could have been from before the time of the regulations.
21 It was received from Winnipeg without a tag. Although the
22 Fisheries officer indicates that the co-ops are well-informed,
23 in this particular case they were not informed; at least,
24 the manager was unaware that a partial tusk of this nature
25 required a tag, and I am sure that there are many other
26 people who are in a similar position, especially with old
27 tusks.

It was in full public view. There certainly wasn't any attempt to hide it or to hide from the officers its source, and the source is being confirmed as being the central offices in Winnipeg. The central office is searching for the tag and it is possible that it is actually still attached to the other portion of the tusk.

THE COURT: The tag for what? For the export?

MS. CRAWFORD: Well, searching to see if they cannot find a tag somewhere in their warehouse for it, but they are not able to and in any event the Co-op here did receive it without the tag and did keep it.

THE COURT: They received it from Winnipeg?

MS. CRAWFORD: They received it from Winnipeg from the Central Co-op Warehousing. But, it has been in full view and certainly this is not an attempt to secret the tusk or to use it for profit aside from what the co-ops do with their sales.

THE COURT: This is a complete example of "ignorance of the law," of course, which is no excuse.

MS. CRAWFORD: Well, sir, ignorance of the law is no excuse with regard to conviction but, of course, in sentencing it is a matter for your consideration.

THE COURT: Yes, that is right. There was no attempt to hide it or anything?

MS. CRAWFORD: It was in full view of the officers. The officers came in for coffee and saw it and

1 they seized it and they received a statement from the
2 manager and have been able to follow up on its history
3 based on the information they received from the Co-op. The
4 co-operative is supportive of the legislation, obviously,
5 and the protection of narwhals and the Fisheries Act, and
6 their attempts to protect the marine mammals, because
7 obviously the Co-operative's livelihood relies on the same
8 sources. So, it was not an attempt to break the law in any
9 flagrant sense. Their interests are very similar to those
10 of the Fisheries in this particular matter.

11 THE COURT: Yes. And, the regulation in
12 respect to tagging them have effect, in the way I understand
13 it or the way it has been put to me here so I want to check
14 the legislation, applies to tusks before 1980 as well as
15 any tusks after.

16 MS. CRAWFORD: Well, sir, we cannot date
17 this, of course, because of the tagging and because of the
18 problems in the warehouse in Winnipeg.

19 THE COURT: Yes.

20 MS. CRAWFORD: So, that is the difficulty.
21 I mean, there are probably a number of people who are in a
22 similar position.

23 The other point I would like to make is
24 usually in these offences if the goods are forfeited, that
25 is, if you exceed to the Crown's request that the tusks be
26 forfeited, that usually makes a considerable difference in
27 reducing the amount of the fine paid, and in the alternative,

if the tusk is not forfeited usually the penalty is in the higher end of the range. I do not mean the higher end of the \$5,000, I mean.

THE COURT: Well, this tusk is only the base of the tusk. What is its value? It seems it would not have much value. Does anyone know the value of it?

THE CROWN ATTORNEY: Sir, it is hard to say, but I understand that they are estimated at somewhere around \$100 a foot.

THE COURT: Well, that is for a full tusk.

THE CROWN ATTORNEY: That gives the Court some range of that.

MS. CRAWFORD: But, on the other hand, that value would usually apply to a good one.

THE COURT: Yes.

MS. CRAWFORD: It is just old and it is not fit for carving or any of the other uses. So, that is probably a very high estimate of the value.

THE COURT: Are there any other comments to be made by Crown counsel?

THE CROWN ATTORNEY: No, sir.

THE COURT: All right. So, this will be put over until this afternoon when the Court resumes.

THE CROWN ATTORNEY: What time would that be?

THE COURT: I will have to decide that.

MS. CRAWFORD: Sir, could this matter be

adjourned until four o'clock so that Mr. Bensakria could go and open the store rather than meeting after the lunch hour?

THE COURT: All right. Set over to 4:00 p.m.

MS. CRAWFORD: Thank you very much.

THE COURT: And, in the meanwhile, I would like to look at the sections mentioned by the Crown Attorney, Section 61, Section 58, and the Narwhal Protection Regulations.

All right. This matter is set over to 4:00 p.m.

THE COURT: All right. This case was set over to 4:00 p.m. this morning and the Crown asked me to consider a penalty. Apparently, the penalty section, Section 61, says that a fine of not more than \$5,000 can be imposed or twelve months imprisonment. If I recall, the Crown in its submission said that the fine should be in the range of several hundred dollars. The Crown also pointed out that the Court could order under Section 58(5) that the goods seized can be forfeited and the Crown asked that the tusks be forfeited. If the tusk is forfeited, can the Crown assist in telling me what happens to it?

MR. ROBINSON: Your Honour, if it is forfeited

1 to the Department of Fisheries, it is later used for display
2 purposes, conservation education in schools and this type
3 of thing.

4 THE COURT: All right. What happens if it
5 is not forfeited and returned to its owners? How are they
6 going to take legal possession of it if they cannot find
7 the tag or no tag exists?

8 MR. ROBINSON: Well, if no tag exists it is
9 an illegal tusk, Your Honour, and they would be illegally
10 in the hands of it.

11 THE COURT: There is no way in which that
12 can be corrected by the Department of Fisheries? It is
13 such an old tusk.

14 MR. ROBINSON: Yes, if it can be proven
15 where it came from, if there was a tag for it then that tag
16 can be affixed to it.

17 THE COURT: Yes, but the tag is missing.

18 MR. ROBINSON: Yes, I realize that. If we
19 can find the tag it would be put on or affidavits of where
20 the tusk came from.

21 THE COURT: Yes.

22 MR. ROBINSON: If it can be proven, the
23 origin of the tusk, and it was a legally got tusk then
24 there could be a tag put on it.

25 MS. CRAWFORD: Sir, if the tag were returned,
26 obviously, they would have legal possession of it, because
27 there is no question of the origin and they could not be

1 charged with the same offence twice. On the other hand, as
2 the office indicates, through a process of providing
3 affidavits with regard to its origin, it is possible to
4 secure a new tag, but that would not happen immediately.

5 THE COURT: Well, what I am wondering is
6 whether or not I should -- I mean, it is in the discretion
7 of the Court whether to order the tusk forfeited or to
8 allow it to be returned. But, if it is returned then the
9 Co-op is in a position, because there is no tag, they are in
10 the position of an illegal tusk again.

11 THE CROWN ATTORNEY: Well, that I understand,
12 is a problem, and the problem is these tags are allotted.
13 So many tags are allotted to each community.

14 THE COURT: Yes.

15 THE CROWN ATTORNEY: So, when the hunter
16 gets the narwhal he puts it directly on it. I mean, it is
17 not a question of giving a new tag to that tusk. It is a
18 question of finding an old tag and there is no evidence
19 that there is an old tag.

20 THE COURT: But, it seems that when there is
21 something that is apparently as old as this tusk is and no
22 one seems to know where it comes from -- The regulations
23 are to guard against the improper sale and barter and
24 trading of tusks of narwhal shortly after they have been
25 captured or killed. And, something like this that has been
26 around for years; it was outside in Winnipeg and then was
27 sent back to Frobisher, it seems that the regulations were

not meant to really cover a situation like this. What happens to a narwhal tusk that is cut up into carvings?

THE CROWN ATTORNEY: Sir, there is a distinction between a narwhal tusk that is found and one that came from a supposed allotment. Sir, again, with the Court's permission, perhaps, the officer could explain what happens, for example, when the tusk is found or what happens in this particular case.

THE COURT: Yes.

THE CROWN ATTORNEY: That might enlighten the Court.

MR. ROBINSON: Your Honour, if a tusk is found on the beach; if you are walking on the beach and you find a tusk, which is done quite often, and then, you come to us or a wildlife officer, whatever the case may be, an affidavit is written out by that person and they bring it to us and a new tag is issued to them. But, for a tusk that has been hunted, like hunted, and at one time had a tag on it, you can't issue a new tag for it, you know. You know what I mean?

THE COURT: No, when the tag is gone, it's gone. The way I read the definition about a tag, there is a little end on it. The hunter attaches it to the body of the narwhal or the tusk. He cuts it underneath. He has to take off the piece on the end and he submits that to the Fisheries officer.

MR. ROBINSON: Yes, sir.

1 THE COURT: And then, the tag remains either
2 on the tusk or on the body of the narwhal. And, the hunter
3 gets a tag which expires, it says in the regulations, on
4 March 31st of each year.

5 MR. ROBINSON: Yes.

6 THE COURT: So, the tag might be used; it
7 might not be used. And, if it expires, then it is not
8 used, but how long? This is an old tusk, at least five
9 years old, and it is not even a tusk. It is just part of a
10 tusk. I supposed it is still a narwhal tusk, but it seems
11 to me that the regulations were not meant to cover a
12 situation like this. It was meant to cover people who are
13 trading narwhal tusks ---

14 MR. ROBINSON: Yes.

15 THE COURT: --- to make a profit. This was on
16 display as a tourist information piece at the Co-op here so
17 tourist could see what a narwhal tusk looked like, and it
18 is only a piece.

19 MR. ROBINSON: Yes, I realize that, but it
20 still is supposed to have a tag. Now, when a tusk does not
21 become a tusk that is up to ---

22 THE COURT: Well, the regulations are not
23 very clear on that, you see. I mean, it seems to me that
24 the regulations were not meant to really cover a situation
25 like this. What if it is twenty or thirty years old? It
26 seems to me there should be some looking into those
27 regulations by someone for situations like this. If this

1 were a tusk that had just been taken off of a narwhal and
2 they were trying to sell it there and a tag was not on
3 it, I mean, that is clear-cut, isn't it?

4 MR. ROBINSON: Yes.

5 THE COURT: And, this is not, you see. This
6 is not a clear-cut situation at all. So anyway, I understand
7 the situation. Is there anyway the Co-op can get legal
8 possession of that if it is returned to them?

9 If I exercise the discretion to forfeit it
10 to the Crown and if the Co-op who said that they were
11 possession it out of ignorance -- I mean, it not being a
12 clear-cut situation. I do not know how long it has been
13 around. There is no evidence of how long it has been
14 around. It would seem that there must be some way if it
15 was forfeited to the Crown that it could be held onto and
16 possibly returned at a later date to the Co-op by either
17 the Department of Fisheries or through permission of the
18 Minister. But, I mean, that, of course, that is up to the
19 Minister if I forfeited it. It is really not of much value
20 to anyone.

21 MS. CRAWFORD: Well, it really does not have
22 a commercial value. It continues to have a sort of
23 educational and instructive value. Winnipeg is still
24 looking for the tag and it is possible that they will find
25 the tag in their warehouse.

26 THE COURT: And, if they found it then the
27 tag would be put on it. But, it might be on the other part

1 of the tusk. So, somebody is going to be a culprit with a
2 tusk that has been divided.

3 MS. CRAWFORD: Well, there are provisions
4 for cutting up a narwhal tusk, because with export licenses
5 you get a different license for each part, don't you? When
6 you export, you get a different license for each part of
7 the tusk if it is cut?

8 MR. ROBINSON: If it is cut, yes.

9 MS. CRAWFORD: What if you have a tusk and
10 you got it into pieces? What do you do with the tag?

11 MR. ROBINSON: I think you are right. What
12 I am saying: When does a tusk not become a tusk? Is a
13 ring a tusk?

14 THE COURT: Yes.

15 MR. ROBINSON: It is still ivory. It comes
16 from the narwhal.

17 THE COURT: Yes.

18 MR. ROBINSON: Now, if you take a tusk and
19 cut it all into different pieces and ship them all over
20 Canada to different places essentially there is supposed to
21 be a tag and an export permit for every little piece, but
22 now that gets pretty impossible.

23 THE COURT: If you carry these regulations
24 to the extreme, which I do not think is the purpose of
25 them.

26 MR. ROBINSON: Yes.

27 THE COURT: I think the purpose is to stop

1 exploiting of tusks and exploiting the hunters.

2 MR. ROBINSON: That is correct.

3 THE COURT: But, there has been nobody
4 exploited in this situation. That is the point that bothers
5 me, you see. This was a tourist attraction in the Co-op.

6 MR. ROBINSON: Yes, it was in the Co-op.

7 THE COURT: And, possibly the ivory could be
8 used for carving. I find it a very difficult case to deal
9 with. It might be worthwhile to look into that situation.

10 Well, all right. I suppose I have to make a
11 decision on this. Is there anything further that Counsel
12 wish to say?

13 MS. CRAWFORD: It is on the issue of the
14 forfeiture. I do not know that it is necessary that the
15 forfeiture be decided right now. Maybe if it was retained
16 by the wildlife officers and adjourned to some date down
17 the road and either there is a possibility of retrieving
18 the tag from Manitoba or, if that is not the case, then we
19 would be obliged to provide you with some additional infor-
20 mation as to either the possibility of retagging it or what
21 the consequences would be.

22 THE COURT: Is it possible to retag these
23 things when there is no tag?

24 MS. CRAWFORD: What do you do with somebody
25 who in 1980 had a tusk that was a prior existing tusk, like
26 existed before 1980? What do you do with the tusk?

27 MR. ROBINSON: It was not 1980. It was 1977

1 actually. I was a bit wrong there when that ruling came in
2 and you had to have tags.

3 THE COURT: Yes.

4 MR. ROBINSON: It was 1977.

5 THE COURT: Yes.

6 MR. ROBINSON: If you can prove where a tusk
7 came from. You see, the purpose of a tag is to control the
8 hunting.

9 THE COURT: Okay.

10 MR. ROBINSON: Each community is allotted a
11 certain many tags, much like a quota. That's what it is.

12 THE COURT: Yes, the quotas are listed
13 there.

14 MR. ROBINSON: And, when an animal is shot,
15 that tag is affixed to the animal, be it male or female.

16 THE COURT: Yes.

17 MR. ROBINSON: Now, if you go out like I
18 said and walk along the beach and you find a tusk, which is
19 done every day, you know, because they fall off.

20 THE COURT: Yes.

21 MR. ROBINSON: And, they wash up. Now, if
22 you come to us and write out an affidavit, sign it, swear
23 it, swear it, whatever, that that's where you got the tusk,
24 okay, fine, here's the tag. Unless they outright lie on
25 the affidavit, I can't control that.

26 THE COURT: ~~What about tusks that existed~~
27 before 1977?

1 MR. ROBINSON: Same thing. If you got a
2 tusk that you got prior to '77 and now you want to do
3 something: You want to get it carved or you realize that
4 you have to have a tag for it -- It is essentially an
5 illegal tusk until you get a tag for it.

6 THE COURT: How can you get a tag, then,
7 because tags did not exist?

8 MR. ROBINSON: Well, no, you come to us and
9 we give you a tag now for the tusk.

10 THE COURT: Oh, I see.

11 MR. ROBINSON: Not then, no, but now for the
12 tusk or a piece of, but the problem comes in: When does a
13 tusk no longer become a tusk?

14 THE COURT: We are back to the old
15 Shakespearean question, is it, when is a rose a rose and
16 when is a tusk a tusk. Well, it is a very interesting
17 point.

18 THE CROWN ATTORNEY: I guess, sir, it is a
19 problem. The problem is that if, for example, the tusk
20 is ordered back today into the possession of Artic Co-op we
21 are no further ahead because this non-existent tag has not
22 been found.

23 THE COURT: And, they are still illegally in
24 possession of it.

25 THE CROWN ATTORNEY: But, on the other hand,
26 there seems to be some indication that maybe at one point
27 there was a tag somewhere, in which case if that tag was

1 one day found, the tusk would be legally in the Co-op's
2 possession.

3 THE COURT: The thing is if it was returned
4 to the Co-op and then they would be in illegal possession
5 of it. If the tag is found and the tag was put on it, they
6 would not be in illegal possession of it.

7 MS. CRAWFORD: Well, sir, could I make a
8 suggestion?

9 THE COURT: I am just wondering if this
10 case ought to be put over and possibly the Crown could look
11 into the matter in the meanwhile and we deal with it at a
12 later date, because there does not seem to me to be much --
13 I know ignorance of the law is no excuse -- but regulations,
14 even though they may be strick liability in many instances,
15 it just seems to me that the purpose of these regulations
16 is not really for a situation like this, and I would like
17 to have Counsel look into what should be done. I just do
18 not know what to do about exercising my discretion under
19 58(5). I do not have to exercise my discretion, but if I
20 do not what happens to the tusk?

21 MS. CRAWFORD: Well, you will probably have
22 to exercise your jurisdiction one way or the other. What I
23 would suggest is that you order that the tusk be retained
24 by Fisheries and Oceans until such time as the Co-op can
25 either provide a pre-existing tag or can secure a new tag.

26 THE COURT: ~~It might be that this was a part~~
27 of a tusk that belonged to the co-op in Winnipeg long

1 before 1977. If that is the case, then that is a perfect
2 defense for this case. It just seems to be a very difficult
3 one.

4 MS. CRAWFORD: Well, sir, it is not necessarily
5 a defense that it pre-existed 1977 in that they received it
6 from Winnipeg in the past year without a tag.

7 THE COURT: And, it should have had a tag.

8 MS. CRAWFORD: And, it should have had a tag
9 and it should have been sent back.

10 THE COURT: All right.

11 MS. CRAWFORD: So, my suggestion would be
12 that there be an order that Fisheries retain it and that it
13 may be retrieved by the Ikaluit Eskimo Co-op Association if
14 they either bring forward an existing tag or secure a new
15 tag for the tusk.

16 THE COURT: I suppose it is better to deal
17 with this matter and get it settled.

18 MS. CRAWFORD: And, of course, the factor
19 that you are discussing in terms of what the appropriate,
20 you know, the difficulties with the legislation and with
21 old tusks, I think, are appropriate considerations, along
22 with the issue of the ignorance of that particular regulation,
23 are appropriate considerations when you are determining
24 what penalty you would choose to impose.

25 THE COURT: As the Fisheries officer mentioned,
26 the co-ops are well aware of the necessity of having tags
27 on narwhal tusks or on narwhals, and being aware of that

this arrived, it should have been reported to the Fisheries officers. It is a difficult thing for everybody concerned, especially when the Fisheries officers discovered when they went over to the Co-op to have coffee.

So, what I am going to do is I suppose I can impose a penalty and if the Co-op wishes they can appeal or the Crown can appeal, but what I would like to do for the time being is reserve exercising any discretion under 58(5) or if I order forfeiture I would recommend that the Fisheries people recommend that the Minister consider possibly returning this tusk to the Co-op.

THE CROWN ATTORNEY: Well, sir, my friend's question, I think could resolve the matter quite easily, is whether the seized object is to remain in the possession of the Fisheries unless the Co-op can provide proof and a tag of origin of this tusk came from or if they can secure a new tag and affidavit, evidence or whatever that will satisfy that requirement. Otherwise, sir, it remains indefinitely in the possession of the Fisheries without an order of forfeiture, and leave it at that.

THE COURT: I think under the regulations there is very wide discretion in the Fisheries Department for the Minister to do whatever he likes. And, in respect of forfeiture and if the Minister saw fit to return it, I suppose he could do so, and if he does not -- But, I do not think it is up to me to make a recommendation in that respect and I do not intend to so, because I think the Act

1 clearly gives all that power to the Minister and his
2 officials.

3 So, what I am going to do is fine the Co-op
4 \$200.00 and under Section 58(5) - I have not got the wording -
5 but I think it is that the narwhal tusks shall be forfeited.
6 I am not sure whether it is to the Minister or to the
7 Crown, but it shall be forfeited under the provisions of
8 that section and possibly some consideration can be given
9 to finding some way of, like when the tusk was found, of
10 eventually returning it to the Co-op, but that is something
11 I am sure that the local Fisheries officer can handle
12 someway or other to satisfy his duties and the law. So, we
13 will leave it at that.

14

15 I hereby certify that the foregoing is a
16 true and accurate transcript of my notes to the best of my
17 skill and ability.

18

19 CERTIFIED CORRECT:

20

21

Petie Gallacher.
Petie Gallacher
Shorthand Reporter

22

JUDGE ORVAL TROY

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