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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER:

HER MAJESTY THE QUEEN

VS

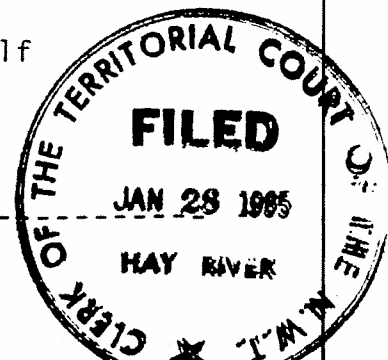
ARMANDO BERTON

Transcript of Proceedings of an Oral Judgment given
by His Honour Judge R. W. HALIFAX, sitting at Fort
Smith in the Northwest Territories on Monday, January
14, A.D. 1985.

APPEARANCES:

MS. N. BOILLAT Counsel for the Crown

MR. A. BERTON On His Own Behalf



1 THE COURT: This is a matter for judgment. The accused is
2 before this Court on seven Counts relating to breaches under
3 the Territorial Lands Act and, more particularly, Section 7
4 of the Territorial Land Use Regulations. The alleged breaches
5 were May 1, May 2, May 3, May 4, May 26, May 28, and May 29,
6 1984.

7 Now, the Land Use Permit previously issued to
8 the accused expired on April 30, 1984, and there is no Land
9 Use Permit issued after that date. There is no doubt that
10 at the time of these alleged offences there was no Land Use
11 Permit in effect under which the accused could legally carry
12 on the operations in question.

13 The only issue is whether the Crown has proved
14 each of the offences beyond a reasonable doubt.

15 At the close of the trial, Crown Counsel admit-
16 ted--and, in my view, quite properly--that there was not
17 sufficient evidence for a conviction on Counts 2 and 4 in the
18 Information, and I so find; and I therefore find the accused
19 not guilty on Counts 2 and 4.

20 Conversely, on Counts 1 and 5, I am of the view
21 the Crown has proved the alleged offences beyond a reasonable
22 doubt. On both occasions, the accused and/or his employees,
23 who were acting under his direction, were seen loading gravel
24 in the Salt Mountain Quarry and to haul gravel away at which
25 time there was no valid and subsisting Land Use Permit. I
26 therefore find the accused guilty of Counts 1 and 5.

27 With regard to Counts 3, 6, and 7, there is no

1 direct evidence of the accused loading and hauling gravel
2 from the Salt Mountain Quarry. In support of Count No. 3,
3 which is the offence of the 3rd of May, 1984, there is
4 evidence of three loads of gravel being delivered to Manton
5 Building Supplies on May 2 or 3rd at the request of Mr. Manton,
6 the owner. There is no evidence that these three loads came
7 from the Salt Mountain Quarry. As well, at that time on the
8 3rd of May, members of the Department of Indian Affairs and
9 Northern Development noted two further loads of gravel had
10 been delivered to the airport in Fort Smith where the accused
11 had been hauling gravel earlier. Now, the Crown has submit-
12 ted that the Court should presume that the gravel came from
13 the Salt Mountain Quarry considering the whole of the accused's
14 behavior over the period May 1, 1984, to May 29, 1984.

15 After a careful review of the evidence, I am of
16 the view there is not sufficient evidence upon which such a
17 presumption can properly be made. The fact that five loads
18 of gravel appeared in two locations in Fort Smith and were
19 delivered by the accused is not, in my view, sufficient to
20 presume that he obtained and hauled the gravel from the Salt
21 Mountain Quarry without a valid and subsisting Land Use Permit.
22 As a result, I find the accused not guilty of Count No. 3.

23 Count No. 7, which is the offence of the 29th
24 of May, is similar to Count No. 3 in that the accused's
25 vehicle was seen in the town of Fort Smith hauling a load and
26 dumping the gravel at what was called the Bolts' residence
27 on the 29th of May, 1984. He had been seen earlier with the

1 gravel truck loaded near the airport turn off; and thereafter,
2 it was delivered. Again, it seems to me improper to presume
3 that the load came from the Salt Mountain Quarry without more
4 evidence. This is basically the same situation as far as the
5 standard of proof required as Count 3. I am not satisfied
6 the Crown has proved that charge beyond a reasonable doubt,
7 and I find the accused not guilty of Count No. 7.

8 With regard to Count No. 6, which is the offence
9 alleged to have occurred the 28th of May, 1984, on that date,
10 Officers of the Department of Indian Affairs and Northern
11 Development noted both of the accused's trucks with the
12 accused being one of the drivers heading east on the highway
13 between the Salt Mountain Quarry and Fort Smith, Northwest
14 Territories, in other words, proceedings towards Fort Smith.
15 At the time, both vehicles were loaded with gravel. Now,
16 the only place in the area of Fort Smith at which gravel can
17 be obtained is the Salt Mountain Quarry. It is my view that
18 the Crown has provided something more than what was provided
19 on Count 3 and Count 7 and that we now have the vehicles--
20 one operated by the accused on the highway proceeding from
21 the Salt Mountain Quarry area towards Fort Smith--with the
22 two loads of gravel. I am therefore of the view that the
23 presumption can properly be made since there is no other place
24 to obtain the gravel that the accused did obtain that gravel,
25 these two loads, from the Salt Mountain Quarry; and such was
26 obtained and hauled by the accused without a valid and sub-
27 sisting Land Use Permit; and I find the accused guilty of

1 Count No. 6.

2 Do you understand that, Mr. Berton?

3 MR. BERTON: Yes, sir.

4 THE COURT: So you are found guilty, basically, of Counts
5 1, 5, and 6 and not guilty on the other Counts, the other
6 four Counts.

7 Now, before we proceed with sentencing on Counts
8 1, 5, and 6, I wish to make a few comments. There is no
9 doubt in my mind that there has been some problems between
10 the accused and members of the Department of Indian Affairs
11 and Northern Development in the past. Partly, such problems
12 seem to result from a personality conflict. During the trial,
13 I got the distinct impression that at least the Assistant
14 Resource Management Officer responsible for the Fort Smith
15 area at that time took some relish and, in my view, seemed
16 to make an extra effort to make the accused's life uncomfort-
17 able.

18 It should be of concern when a public
19 servant is given special enforcement powers and uses those powers
20 for a malicious motive, which I have the feeling was part of
21 the reason behind these prosecutions. In our society, it
22 should be expected that the superiors of such a person would
23 have provided proper direction and not acquiesce in such
24 behavior, which seems to have occurred over this period of
25 time.

26 I appreciate that the accused may not be the
27 easiest person to get along with, but such is no excuse for

1 a lack of cooperation if it is fueled by malicious intent.

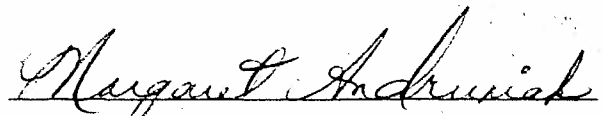
2 The last time this matter was before the Court,
3 I indicated that cooperation between the accused and the
4 Department of Indian Affairs and Northern Development would
5 hopefully solve any further problems. I would expect both
6 parties to proceed with due diligence and cooperation in the
7 future for the benefit of both in carrying out their respect-
8 ive aims and duties.

9 Mr. Berton, as I indicated to you previously
10 when this matter was adjourned over, it takes some coopera-
11 tion on both parties. I do not say that you are all to
12 blame. I feel that the Department has probably acted a little
13 untoward as well.

14 Just have a chair for a moment.

15 With regard to sentencing from the Crown, please.
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19 Certified a Correct Transcript:

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22 Margaret Andruniak
23 Court Reporter
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