TR CR 84 04

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

B E T W E E N :

HER MAJESTY THE QUEEN

and

NANISIVIK MINES LIMITED

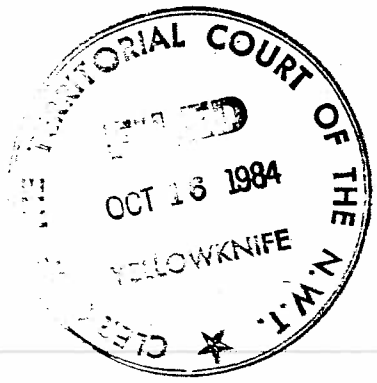
Heard at Yellowknife, N.W.T.

Judgment filed: October 16, 1984

REASONS FOR JUDGMENT

of

His Honour Judge Thomas B. Davis



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J U D G M E N T

Nanisivik Mines Limited is charged with an offence under Section 3.3(1)(a) of the *Territorial Lands Act*, alleging that from the 9th to the 13th of December, 1983, it did unlawfully conduct a land use operation in a Land Management Zone without a land use permit as required by Section 7 of the *Territorial Land Use Regulations*.

By an agreed Statement of Facts, the company admits that it did operate a lead-zinc mine at the place and times alleged, and that on the days in question did cut into and open the side of a hill from which it was removing mining materials, while it did not hold a Land Use Permit for that mining operation.

The preliminary question in law for the Court to determine, based on submissions presented on Friday, July 13th, 1984, at

Yellowknife by learned counsel, is whether or not the company required such a permit.

There seems to be no dispute that the accused company had been granted a Mining Lease dated the 4th day of April, 1972, which allowed the company an exclusive licence to search for, win and to take all minerals (under the *Canada Mining Regulations)* in, upon or under the lands governed by the Lease and in fact covering the lands in or on which the work was being done.

The Lease was granted under the *Canada Mining Regulations* of 1961. Both parties agree that the *Mining Regulations* were in effect at the time the Lease was executed.

The 1961 *Regulations*, pursuant to the *Public Lands Grants Act* and the *Territorial Lands Act* were similar to regulations under the 1952 *Canada Statute* for the Department of Mines and Technical Surveys, and continue to be referred to as the *Canada Mining Regulations*.

In 1970 the *Territorial Lands Act* was amended, and authorized the Governor in Council to set apart and appropriate lands as "Land Management Zones" for the purpose of protection of the ecological balance or the physical characteristics of any area in the N.W.T. and Yukon Territories.

On November 12, 1975, the lands containing the Nanisivik Mine site and property were geographically included in #5 Land Management Zone by an amendment to the *Territorial Land Use Regulations* cited as *SOR 75-661*.

In 1975 by *Regulation SOR 75-661*, the whole of the Northwest Territories was declared a Land Management Zone so that the development of any lands in the Territories became subject to the *Land Use Regulations* which were again fully amended in 1977 by *SOR 77-210*.

Under the 1961 *Mining Regulations*, a Lease of a Mineral Claim must be applied for no later than 30 days after the tenth year from the date of recording of the Claim or the rights under the Claim would be forfeited.

A recorded owner of a Mineral Claim was also required to apply for a Lease upon reaching a stated daily production level of ore. *(Regulation 44)*.

A Mineral Claim would automatically lapse unless the recorded owner satisfied various development or investment requirements under the *Regulations*.

The interest of the recorded owner of a Mineral Claim was deemed to be a chattel interest equivalent to a yearly lease of the minerals under the land, subject to the performance and observation of all the terms and conditions of the *Regulations*. *(Regulation 30)*

The 1961 *Mining Regulations* show "mineral claims" to mean a plot of ground staked out and acquired under the *Regulations*. *(Regulation 3(R))*. The recorded owner by entry or by Lease of a mineral claim is entitled to all minerals found within the lands indicated in the entry or Lease.

The *Regulations* specifically refer to mineral claims and Leases distinctly and again separately in *Regulations 105 and 106*. Under *Regulation 106*, a prior Lease means any Lease in good standing as of 1961 and includes a prior claim, defined in Section 105 as a mineral claim in effect before 1961, which has gone to Lease under the *Regulations*.

Under *Regulation 107*, licenses, mineral claims, and leases issued under the *N.W.T. Quartz Mining Regulations*, *N.W.T. Placer Mining Regulations*, and the *Canada Mining Regulations* are deemed to have been issued under the 1961 *Canada Mining Regulations*.

I note that the mineral claims and leases referred to therein are dealt with as separate and distinct interests.

In the 1966 *Regulations*, "claim" means a lode claim or placer claim. *(Regulation 3(e))*.

In the 1966 *Regulations*, a "mineral claim" means a plot of ground staked out and acquired under the provisions of these *Regulations*. *(Regulation 3(R))*.

The 1977 *Canada Mining Regulations*, which do not define a Mineral Claim, do define a "Claim" and a "Lease" as follows:

> "Claim" - means a plot of land located or acquired in the manner prescribed by these *Regulations*.
>
> "Lease" - means a Lease of a recorded Claim granted to the holder of the Claim pursuant to Section 58.

Section 58 governs the procedure and qualifications for a person to apply to convert the recorded Claim into a Lease at the expiry of the tenth anniversary of the recording of the Claim.

I refer to the various definitions in the *Land Use Regulations* and in the *Mining Regulations*, partly to indicate the complexity of the legislation and to illustrate the difficulty that people must face who wish to develop lands or businesses in the Territories.

However, for the purposes of the charge before this Court, it has been acknowledged that the Lease granted to the accused on April 4th, 1972, covered the 21 year period commencing on October 29, 1971.

At the time of entering into the Lease, the property and rights and responsibilities of the accused under the Lease were

not affected by any *Land Use Regulations* since they were not geographically in a Land Use Zone until after the Lease had been executed.

By Section 27 of the *Territorial Lands Act* which came into force by an amendment published in 1971: "Every license, exploratory permit, prospector's license, prospecting permit, and Mineral Claim" issued before 1971 shall be subject to regulations as may be made under the *Territorial Lands Act*.

Section 25 of the *Territorial Lands Act* provides that violations of the *Act* or *Regulations* are summary conviction offences. The *Act* must therefore be interpreted strictly as a penalty statute.

Although a broad and general interpretation of Section 27 could classify a Lease of the mineral rights as an extension of the Mineral Claim, I am not convinced that the overall review of the legislation would cause me to be inclined to do so. If the Legislature intended that existing Leases of Mineral Claims were to be governed by the subsequent *Land Use Regulations* or the *Territorial Lands Act*, it could very easily have expressed that intention by including in Section 27 the word "Lease".

As I have noted, the *Regulations* do refer separately to these terms in various amendments published in many different

Canada Gazettes, and a different kind of interpretation for this Section of the *Act* would be inappropriate.

Although the facts in the case referred to me by counsel for the accused, in *Western Counties Railway Co.* and *Windsor and Annapolis Railway Co.* as reported in English Reports, 1867, Vol VII, p. 178, are different from the case at bar, I am influenced by the statement at Page 188 which says that the interpretation of legislation must not take away or extinguish the rights of people under agreements "unless it appears, by express words or by plain implication, that it was the intention of the Legislature to do so".

The Alberta Court of Appeal in *Re: Public Utilities Act et al*, in 1919, as reported in Vol 1, Western Weekly Reports at page 31, also can be read to find that a Provincial Act should not disregard existing rights under a contract unless the Act clearly expresses the intention to ignore the contract.

The Supreme Court of Canada in the *Spooner Oils Ltd. et al* and *The Turner Valley Gas Board et al* in 1933, S.C.R., p. 629, found that a provincial statute was invalid because it tried to affect an existing Government Mining Lease when the Dominion had transferred authority to the Province on the grounds and agreement that no change was to be made in the existing contracts.

These cases support generally the theory that a contract or agreement must be supported by law, not varied or changed without the specific intention and expression to do so and only by a government which has the legislative authority to do so.

I am not convinced by the reading of the legislation that the Government expressly intended, nor by necessary implication meant to cause the derogation of the rights or responsibilities of the accused under its existing Lease.

I therefore find that the company is entitled to carry on its mining operation on the conditions referred to in the Lease and that it was not required to have an additional Land Use Permit on the dates and for the activities referred to in the charge before the Court.

I therefore dismiss the charge.

Thomas B. Davis
Judge