



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

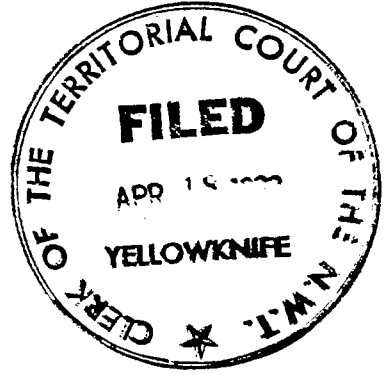
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

ALFREDO AZZOLINI and
TINA AZZOLINI



Transcript of oral judgment delivered by His Honour
Judge T. B. Davis, sitting at Yellowknife, in the
Northwest Territories, on Friday, the 18th day of
February, 1983.

APPEARANCES:

S. CREAGH: Appeared on behalf of the Crown.
W. KENNY and Appeared on behalf of the Accused.
M. BENINGER



1 To start with this morning, I wish to thank counsel
2 for the very complete submissions and references to various
3 cases that I had an opportunity to review and for the
4 explanations associated with all the exhibits that had been
5 filed. It was very complete and easy for me to understand the
6 situation that was presented to the Court.

7 The matter today is for decision on the charges
8 against the Azzolinis, Alfredo and Tina, who were charged under
9 an Information dated the 26th of July, 1982, with various counts
10 relating to unlawfully and wilfully evading payment of income
11 tax contrary to the Income Tax Act between the years 1975 and
12 1978 inclusive, contrary to Section 239, subsection 1(d) and
13 subsection 1(a) of the Act. The Azzolinis are charged jointly,
14 being husband and wife, on the charges as noted, while they
15 were operating businesses in the city of Yellowknife and a
16 residence in this area during the years referred to.

17 After an accident in a mine where Mr. Azzolini had
18 been working for a number of years, he was restricted in under-
19 ground work and decided that he would open his own business in
20 Yellowknife and did so in the year 1973. He had been living
21 for 30 years in the country, and from the evidence before the
22 Court and his obvious ability on the stand as a witness, I
23 consider that he is an astute businessman, has good control
24 over figures and amounts but is limited to some extent in his
25 ability to express himself in English and limited in his ability
26 to write, although a very competent and intelligent person.

27 The Azzolinis built buildings in the city of Yellowknife



1 including their own residence and other business premises and
2 commenced their operation in the secondhand business in the
3 basement of a building, later to include also a coin operated
4 laundry, and during the periods in question, operated a cleaning
5 business, rented part of the property in which they operated
6 their business, and for a short period of time had a temporary
7 new furniture sales outlet.

8 Evidence before me indicates that both husband and
9 wife had worked for long hours and were hard working people at
10 the business involved. From the first of their operations
11 until the present time, they had always taken all of the monies
12 received from their various businesses and deposited it into
13 bank accounts, mainly with the bank account for their business
14 at the Bank of Nova Scotia in Yellowknife.

15 The Azzolinis carried on the business by paying all
16 of their expenses by cheques and used the same account for
17 payment of various personal expenses as well. This particular
18 method of operating was, therefore, easily available and was
19 of easy access to the Tax Department when inquiry or investigation
20 was to be made as to the business operation. It appears as
21 well that the bank records are probably the only accurate
22 records that had been kept in the operations during the period
23 of years involved before the Court.

24 Neither of the Azzolinis had had any experience or
25 knowledge in good bookkeeping practice, although both appeared
26 to me to have very good common sense and certainly substantial
27 business abilities. On various occasions the Azzolinis would



1 check with the bank to see if there was money available for
2 their business and personal expenses. As I had said, the main
3 business account was also used for their business and their
4 own personal expenses.

5 When the Azzolinis were approached by the Department
6 of National Revenue, they gave the full records that were
7 available on their business operation and made full disclosure
8 and appeared to give full cooperation to the Department. It
9 was obvious that the records that the Tax Department had
10 received in the form of income tax returns were not the same
11 as the bank statements after the Department had done a spot
12 audit. The Department then commenced a full investigation, and
13 the department head of the Special Investigation branch prepared
14 a net worth statement for the Azzolinis. The method, of course,
15 is to determine a person's worth in one year, make inquiries
16 as to the improvements or decreases in that net worth for
17 subsequent periods of time, and in such a way determine what
18 income must have been accumulated or available in order to have
19 changed the net worth. The Department accumulated what appears
20 to be very full and complete information and made a new
21 assessment that is used in the net worth statement after having
22 the items confirmed by various third parties.

23 There was no denial by either of the accused of some
24 inaccuracies in statements filed by them with the Department on
25 income tax returns. The information before the Court is that
26 Mrs. Azzolini, the joint accused, who is the wife, of course
27 and business partner of the other accused, had prepared all



1 records and kept the records, and she also had no background or
2 training in accounting.

3 There has been full and continuous denial by both the
4 accused of any intent to evade taxes or any criminal intent
5 during the periods of time that cover the charges. There was
6 no evidence of any discussion whatsoever of evasion of taxes
7 by the accused persons by the use of cash from the business
8 generated, or the hiding of any money or any other obvious
9 methods that might be available to persons operating such a
10 business, since the coin operating machines would have caused
11 substantial amounts of cash money to transfer through the hands
12 of both the accused.

13 The Crown has confirmed the various business dealings
14 referred to in the net worth statement and all business dealings
15 to which the accused had been involved by various witnesses
16 who appeared before me during the last three days. Some of the
17 witnesses confirmed and made obvious to me that the Azzolinis
18 were not knowledgeable in any tax or business terminology, but
19 all were, when asked, of the opinion that the Azzolinis were
20 honest and hard working people.

21 It was obvious to me that inaccuracies did exist when
22 the original tax returns were filed, were presented to the Court,
23 as well as the business records which were prepared by the
24 Azzolinis and given to the persons who prepared their tax
25 returns for the years 1973 to 1978. Some of the business
26 records were listed as Exhibits 48 to 54 inclusive, and the
27 scribblers that were used at the time to keep records listed



1 expenses, including heat, property taxes, various figures with-
2 out any explanation on them, travel expenses. Under some
3 headings of expenses were listed such things as personal income
4 from other sources as paid to Mr. Azzolini who had been injured
5 and was receiving a pension and also some business revenue.
6 Other of the scribblers, which were for the business records,
7 listed family allowances, sales expenses and revenues, and on
8 some occasions marked percentage profits in a way that was
9 difficult for me to understand the meaning.

10 Evidence indicates that these various scribblers,
11 which were filed as exhibits, were provided to the accountants
12 who were hired to prepare and who did prepare, on typed forms,
13 sometimes full and complete business tax returns or tax returns
14 for the individuals, including full and complete business
15 information. From the exhibits that I have reviewed, it was
16 obvious that the persons who did prepare the returns did so on
17 very skimpy and limited -- what I would classify as insufficient --
18 details and information. Evidence indicates that neither of
19 the accused were asked for anymore information than had been
20 provided to the tax preparers and appear to have had no way of
21 knowing that more information would be required.

22 Although all of the records were kept in what
23 ordinary business and accounting practices would classify as
24 negligent and possibly grossly negligent ways, I have to
25 determine whether or not such record keeping and negligence was
26 of a criminal nature. In some of the tax returns that had been
27 filed, personal travel expenses and other personal benefits



1 were listed as expenses, and the evidence discloses that the
2 items had not been brought to the attention of either of the
3 accused by the accountants who prepared the returns, or by the
4 persons who prepared the returns because they were not fully
5 qualified accountants at the time. There had been no discussions
6 between either of the accused and the persons who prepared the
7 income tax returns after they had been prepared, when the
8 Azzolinis would look at the amount shown as owing and merely
9 pay the tax as listed to be due and owing, by cheque. I am
10 satisfied that the Azzolinis did not have knowledge of income
11 tax matters when they opened their business in 1973 or 1974, and
12 upon review of the tax returns, I am satisfied that the returns
13 were both favourable to the accused persons in some ways but
14 adverse to them in other ways in that some claimable items were
15 not included during those years. The record keeping of the
16 company improved slightly during the years in question but was
17 still far below a standard-like accounting system in 1979.

18 I note, not for any legal reasons, but for the purposes
19 only of putting on record, that the tax department probably could
20 have avoided some of the difficulties involved with persons
21 entering into new businesses by some direction or instruction to
22 them when they first filed returns indicating that they were
23 newly in business so that those persons, as well as the accused
24 persons in this hearing, would have been aware of what is re-
25 quired by the tax department and the Tax Act. This would then
26 have made it more obvious to me that failure to provide what
27 they would have known was required could have been with intent



1 to either ignore the recommendations or for some other possible
2 unlawful reason.

3 I have had an opportunity to review the information
4 circulars presented to the Court by counsel and some of the
5 texts referred to and have reviewed the cases suggested by
6 counsel and some other cases during the week, and I am satisfied
7 that under Section 239 of the Income Tax Act that mens rea is a
8 required element, and therefore, I will review a couple of the
9 cases that generally appear to me to give the jurisprudence
10 relating to the matter before the Court.

11 In the case The Queen v. Metke -- I believe it is
12 reported in 76 D.T.C. at page 6313 -- the accused in that case,
13 who was also without knowledge about bookkeeping and whose
14 records of a business operation were kept in boxes and given
15 over to his accountant at the end of the year, was classified by
16 the judge as keeping improper business records and that he was
17 negligent in the way he carried on the operation, but he was
18 found to not have any criminal intent even though he was
19 negligent and, therefore, found to be not guilty.

20 The other case that I will mention as a sample of
21 those, as has been referred to me by counsel, was the case of
22 The Queen v. Hummel, reported in 76 D.T.C. at page 6114, by the
23 British Columbia court. In that case the tax payer owned a
24 family business and failed to report some gains on the sale of
25 shares in companies and also claimed deductions which were not
26 authorized under the Income Tax Act. The Court found that such
27 treatment was to his advantage and, therefore, borderline on



1 criminal activity, but he was not considered criminally
2 responsible even though the treatment of these amounts was
3 wrong.

4 Other cases, of course, indicate that if the tax payer
5 has knowledge of any inaccuracies on any return, he cannot hide
6 behind the accountant, as noted in The Queen v. Nicholson, 75
7 D.T.C. at page 5095. In that case, however, the tax payer is
8 classified as a person who had knowledge of the inaccuracies.

9 I, therefore, come to the conclusion that with the
10 lack of technical knowledge by the accused persons to the income
11 tax requirements at the time, since neither of them had had any
12 business experience or accounting experience in the past, even
13 though the Crown has covered all of the aspects of the case and
14 made all the evidence available to the Court, that I am still
15 of some doubt as to whether or not there was criminal intent or
16 mens rea, and, of course, a doubt in that regard must be given
17 to the benefit of the accused, and on that basis, the matter
18 will be dismissed. All the charges before the Court will be
19 dismissed.

20 I have also just quickly reviewed the certificate that
21 was filed, and I would have been satisfied to have dismissed the
22 charges that were over the five year limitation period because
23 the certificate appeared to me to be possibly defective in that
24 it did not certify that the information came to the personal
25 knowledge or personal attention of the Minister, and secondly,
26 that it may have been defective in that it did not specify that
27 it was signed by or executed by an officer who was authorized by



1 the Regulations to exercise the duties of the Minister. It
2 merely indicates that it was a person who is for a Minister. On
3 that basis, I probably would have at least considered dismissal
4 of the first two charges, I believe, or the first two years of
5 the charges. That is not, of course, really necessary for the
6 purposes of the Court today, but I did find that it was interest-
7 ing to have reviewed that particular point.

8 That being the case, I think we have disposed of the
9 matters before the Court this morning, Madam Clerk. Is there
10 anything from counsel before we conclude?

11 MR. KENNY: No, sir.

12

13

14

15

16

Thomas B. Davis

17

T. B. DAVIS
TERRITORIAL COURT JUDGE

18

19

20

21

22

23

24

25

26

27