IC CR 84 015

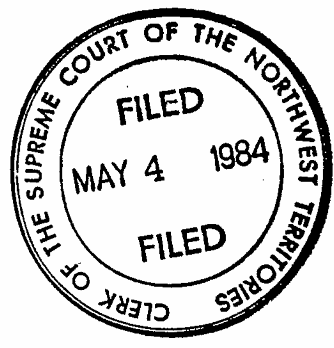
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

ECHO BAY MINES LIMITED



Transcript of the Sentencing delivered by His Honour Judge R. M. Bourassa, sitting at Yellowknife, in the Northwest Territories, on Wednesday, February 15, A.D. 1984.

APPEARANCES:

MR. G. BICKERT	On behalf of the Crown
MS G. LANG	On behalf of the Defence

THE CLERK: Echo Bay Mines Limited.

THE COURT: You are alone today, are you, Ms Lang?

MS LANG: Yes, sir.

THE COURT: In dealing with this matter, I have taken some time to consider the cases and materials that Counsel have provided me.

Mr. Gilroy had to make a decision: He needed some aggragate to make concrete; he had no permit to quarry; he decided to go ahead and quarry anyway. That is the pith and substance of this case.

The decision was probably the correct one from an economic perspective; it was probably the correct one from a practical viewpoint; but it was most assuredly the wrong one in the eyes of the law. The Defendant:

> "Between the 12 day of May, 1983, and the 18 May, 1983, inclusive, at Contwoyto Lake, in the Northwest Territories did unlawfully conduct a land use operation in a land management zone, without a land use permit that authorized such a land use operation as required by Section 7 of the Territorial Land Use Regulations, contrary to Section 3.3(1)a of the Territorial Lands Act."

This law, like others, is designed to regulate development and protect all users of the land which is a fundamental resource. The importance of obeying permit requirements and the like has been clearly stated by de Weerdt, J., SCNWT in R. v. Placer Developments Ltd. [1983] NWTR 356.

> "The whole point of the requirements for licences and authorizations under the legislation (in this case an offence under the Northern Inland Water Act RSC 1970 c28) as to assure the public that the waters in the

> public domain in the two northern territories will not be interferred with in ways beyond public control. It is therefore essential that these requirements be enforced in such a way as to give meaning to them."

The facts admitted before me reveal that at the eleventh hour the Defendant determined that it did not have a permit authorizing the quarrying of aggregate from an abandoned, formerly licenced, quarry. This aggregate was required to supply the construction needs in a plant expansion program.

A permit was applied for and on that same date quarrying commenced. A permit, with conditions, was received by the Defendant subsequent to ceasing of the quarrying operation. In arriving at the decision to proceed notwithstanding the absence of a permit, Mr. Gilroy, the mine manager, did not consider the legal implications of any significance. "I didn't think the mines people would look at it as they did." That the importance of simply obeying the law should have such a small role in the Defendant's decision making process, or alternatively, knowing the importance of legal requirements and ignoring them out of private considerations, is in either case unacceptable. The Defendant, Echo Bay Mines, cannot choose what laws it will obey and what laws it will not. The manager, the corporation, cannot set themselves above the law.

There has been no physical harm done as a result of the Defendant's illegal action. As stated above, a permit was issued _ex post facto_ upon acceptance of the Defendant's

1 application. I should note, of course, that the approving
2 authorities did not know that the quarrying operation had
3 commenced. In a sense, we are dealing with what might be
4 termed a 'pure' offence, a simple defiance of the law without
5 any complications by way of physical consequences. Be that
6 as it may, it appears to me that at risk here is the rule of
7 law.

8 The issue, of course, is what penalty should
9 such conduct attract. To answer that I have considered
10 the facts and note the following: The accused has a prev-
11 ious conviction for what I would term an almost identical
12 offence, i.e., operating without the appropriate permit.
13 The conviction was in Territorial Court before His Honour
14 Judge Ayotte, sitting in Yellowknife, February 9, 1979 (un-
15 reported). I quote extensively from that decision because
16 there is nothing I can say to this Defendant today that has
17 not been said to it in the past.

18 "...fines in these cases (speaking of an offence
19 under the Territorial Lands Act) should not be
so nominal as to invite corporations to take a
20 gamble as to detection, and that deterrence must
be expressed."

21 He goes on further to state:

22 "However, there is another factor which on con-
23 sideration I feel cannot be overlooked in this
case, and that is the company's deliberate de-
24 fiance of the law in so deciding on April 12th
to proceed with a project immediately without a
25 permit rather than waiting until April 26th
when it was informed a permit would in all like-
26 lihood be issued."

27 And further on:

> "While the question of deterrence, in the circumstances in most of the cases referred to, is spoken of in terms of deterrence in engaging in land use operations that may cause damage to the environment, that word has a broader and more basic meaning as well, and that is deterrence for acting contrary to the law itself."

And finally:

> "Despite this, the corporation deliberately chose to ignore these procedures (and that procedure is to obtain a land use permit) on April 12th and substituted their own decision for those of the people to whom those decisions were entrusted. They found themselves in a situation they did on April 12th through no one's fault but their own."

Those words can apply, literally, to the instant case.

I take the words of Judge Ayotte as a clear indication that the Defendant has been warned in the past in no uncertain terms that it cannot place itself above the law and that it must obey the permit and licence requirements as set out by the law.

The evidence at the sentencing hearing was that the mine manager was concerned that the ice road from the mine across Great Bear Lake, a short distance to the island quarry, would shortly become impassible. I have no evidence before me that in fact the Defendant's fears were justified, that the ice road was impassable on May 16, when the permit was issued.

I note in reading the third quarter report to shareholders, Exhibit S-4, the following paragraph.

> "The expansion program at our Lupin gold mine originally planned for completion by year end was completed on November 1. (This is 1983.) The expansion of our mill capacity increases

> nominal gold production from 121,000 to more than 140,000 troy ounces of gold per year. The accelerated completion schedule enabled us to meet our full year 1983 production target despite a malfunction in the third quarter in the mill's tertiary ore-crushing process which reduced third quarter production by about 10% from second quarter levels."

I would take these words as an indication that there was some pressure on the personnel at the mine to proceed as quickly and expeditiously as possible. I find the mine manager took a calculated risk to proceed and this decision was directly related to, inter alia, the pressure to increase production and meet production levels as quickly as possible.

The Defendant took a calculated risk in proceeding--it was a wilful disobedience of the law. Upon discovering, the same day, that quarrying operations were to commence, that it had no permit, the Defendant proceeded anyway and applied for the permit as if nothing was happening. They asked that the application be considered expeditiously, and it was. No steps were taken to inform the land use officials in Yellowknife of the 'crisis,' nor to seek special consideration as was done in R. v. Placer Developments Ltd. (Supra). In that case, while the Defendant acted prior to receiving a permit, the regulatory officials and the Defendant were aware of what was happening.

The disregard of previous warnings is an aggravating factor. (See R. v. Fabricated Plastics Ltd. (1979) 8 CELR 174). The calculated risk taking is, as well, an

aggravating factor. (See R. v. Cyprus Anvil Mining Corp. Ltd. (1977) FPR 32 YCA).

I take into account the size and wealth of the corporation. Clearly, the corporation is a substantial one with substantial assets. I also take into account the corporation's good name. It is well known in this jurisdiction, that this corporation has associated itself with public works, good works; and I point out as I have in the past that because the Defendant is convicted once or even twice does not make it a total scoundrel by any means. The corporation has had a long history in the Northwest Territories, and it as well as the people of the North have profited together.

There is another matter that I should comment upon. A number of cases have suggested that the reasonableness of standards may or may not be taken into consideration. (R. v. North Vancouver (1982) 11 CELR 158; R. v. Holmes Foundary, Sept. 22, 1981, unreported O.C.A.; contra R. v. Cyprus Anvil Mining Corp., (1979) 2 FPR 30, Y.T.C. and (1979) 2 FPR 32, Y.C.A.).

There is no argument before me that the standards imposed by the Territorial Lands Act are unreasonable or impossible to comply with. However, I cannot but note that this is the third conviction against corporations here in the Northwest Territories in the very recent past for acting without, or contrary to, permit requirements. It would appear to me, given the size of the Territories, the difficulties in communication, incumbent upon the legislators

to provide for some sort of interim or emergency permit so that if a corporation honestly finds itself in a situation that the normal channels are wholly impractical to resort to, that there is another way of obtaining or at least requesting what it desires and having an answer as quickly as is reasonably possible.

As I've indicated, I have no evidence before me that the standards required or the requirements of the Territorial Lands Act are inappropriate or unreasonable. It would seems to me that the Defendant would be better off lobbying for changes in the Act (if changes are needed) rather than spending their money on fines.

I note this case has some similarities, and I find some guidance from R. v. Placer Developments Ltd. (Supra). While the facts differ in many respects, the essence of the cases are both similar in that the defendants acted without the required permit. I note that the Supreme Court of the Northwest Territories, de Weerdt, J., imposed a fine of four thousand dollars per count on four of the nine counts, those being when the unauthorized work was in fact done.

I note as well that evidence has been called with respect to the Defendant's concern that steps be taken to keep its permits up to date and a log be kept of permits. That is fine, but I think it can only have minimal effect in mitigation in my view, because firstly the Defendant has committed the identical act in the past, and secondly the offence was a choice not to obey the law rather than one

committed in ignorance. It's not as though a permit to quarry under the Territorial Lands Act is something that is extraordinary. There is not a province or jurisdiction in this country that does not require the same kind of permit.

At the risk of stating the obvious, surely it must be evident to the Defendant that acting in this fashion would only serve its own destruction. The image presented by the Corporation in this matter adds another ladle-full to the simmering pot of suspicion and distrust that some elements within our society view resource corporations. This kind of action compromises the Defendant, it compromises its cousin corporations throughout the North, and will assuredly come back to haunt them. This kind of action in my view invites the legisltators to raise fine maximums and incorporate other punitive and corrective sections to the legislation. I have difficulty understanding why corporations such as this Defendant don't take those items into account when they are making some of their decisions.

Taking all these matters into account then, together with the submissions of counsel, I conclude that the offence cannot be treated as a minor or bureaucratic or regulatory offence. I believe to do so will invite further actions by this Defendant and other defendants contrary to law. I conclude that a fine of four thousand dollars per count is appropriate. I believe there are seven counts?

MR. BICKERT: Yes, sir.

THE COURT: That will be payable forthwith, in default, distress.

(AT WHICH TIME THIS MATTER WAS CONCLUDED.)

The text of this transcript varies from this Reporter's verbatim notes taken at this hearing, such variation having resulted from editing by the presiding judge

Edna Thiessen, Court Reporter

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