

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

GOLD RANGE INVESTMENTS LTD.,

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Transcript of the Reasons for Judgement given orally by  
His Honour Judge R.M. Bourassa, sitting in Yellowknife,  
on Sept 10/'92.

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APPEARANCES:

MR. D. MILLER: Counsel for the Crown

MR. A. MARSHALL: Counsel for the Defence

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CHARGED UNDER S. 98 L.A.



1 THE COURT: Well, I'd really like to reserve on this.  
2 Not because I'm in doubt as to how to proceed, but  
3 simply to provide a properly organized decision for  
4 counsel to consider. I'm so busy and I'm going to be  
5 on so many circuits the next few months that I would  
6 anticipate if I do that, I'm not going to have a  
7 decision available for counsel for a couple of months  
8 and that's not fair. I'm going to give my decision  
9 now.

10 I'll deal with the facts first. The  
11 Defendant, Gold Range Investments Limited is charged  
12 on three Counts of allowing persons under 19 to remain  
13 in a licensed premises where liquor is sold contrary  
14 to Section 98(3) of the Act. The 3 individuals are  
15 named. I'm satisfied on the evidence adduced by the  
16 Crown that all 3 individuals were at the time, on the  
17 10th of January, 1992, all under the age of 19.

18 I'll go directly to the factual issue. I  
19 conclude, without any hesitation, that those 3 boys  
20 were, in fact, in the bar, owned and operated by Gold  
21 Range Investments Limited on the night in question.  
22 They all testified to that fact clearly and  
23 unequivocally. It was pointed out in cross-examination  
24 that the statement that Mr. Silverthorn made to the  
25 R.C.M.P. first indicated Rec Hall which was stroked  
26 through and Gold Range substituted. Mr. Silverthorn  
27 did not write the statement. It was the police

1 Constable or the investigating Constable who wrote out  
2 the statement. The only conclusion I can come to is  
3 the investigating Constable made a mistake when he  
4 wrote it down. In any event, whatever error there was  
5 with respect to the Rec Hall was corrected.

6 Secondly, in the second statement made by  
7 Mr. Silverthorn, there was no mention of being in the  
8 bar. He was questioned about that and his answer, in  
9 my view, was a perfect answer to that omission and it  
10 was that, "the Constable never asked me." People tend  
11 to respond to the questions put to them, and I take  
12 it, that Silverthorn did and he wasn't asked which bar  
13 he was in and he didn't volunteer it. That ends that.

14 The evidence of Mr. Yurkiw, the, president  
15 and executive officer of Gold Range Investments  
16 Limited is that those three boys weren't there. He  
17 knows everyone and they weren't there. I don't doubt  
18 for one minute that he believes that they weren't  
19 there. I don't doubt for one minute that he's quite  
20 certain that they weren't there, but he is, in my  
21 view, in error. Those three boys were, in fact, there.  
22 It's unreasonable to expect that anyone in a  
23 particular bar can possibly keep track of over two  
24 hundred people whose numbers wax and wane, whose  
25 identities change. Not during the Southern busy hours  
26 of eight to midnight but all day long. Those three  
27 boys were there.

1                   Now, the Crown in, my view, has made out its  
2 case, prima facie case, and it is up to the Defence to  
3 establish on the balance of probabilities that it  
4 exercised due diligence in, and Mr. Marshall is  
5 correct, in ejecting or removing under-age individuals  
6 from the bar. The obligation in law is not to prevent  
7 their entry. Their obligation is not to let them  
8 remain. We are, therefore, dealing with the problem of  
9 minors drinking.

10                   It appears, on the evidence before me, that  
11 this is an extremely busy bar. It has the second  
12 highest gallonage consumption of beer in Canada. It  
13 seats 262 people legally and it is busy all day long.  
14 By any standard, this is a very major operation in  
15 terms of the dispensing of alcoholic beverages. It is  
16 also, and I think as a judge sitting in this community  
17 for 11 years, I think I can take judicial notice of  
18 the fact that it's a center point. It's a social  
19 point. It's a gathering point for many, many people in  
20 the community. A lot of drinking goes on in that bar.  
21 Obviously from the gallonage rates. A lot of drinking  
22 goes on in the Northwest Territories including  
23 Yellowknife, and I don't think there is any question  
24 that the use and abuse of alcohol constitutes a major  
25 social economic problem in the Northwest Territories  
26 and in Yellowknife. It's no different. A very  
27 significant problem.

1                   The particular problem of individuals under  
2 19 drinking at this bar also appears to be a  
3 significant one, and I say that based on the evidence  
4 that's before me. Each of the three individuals, well,  
5 two of the named individuals who testified, the third  
6 didn't, as I recall the evidence, all indicated that  
7 they have been in that bar before. That they have been  
8 ejected on occasion before. They were 18 at the time  
9 on the 10th of January. So, they were in the bar  
10 before. The evidence also indicates that there is a  
11 problem with respect to under-age drinkers,  
12 particularly from Akaitcho hall.

13                   Students from that area are identified as  
14 problematic in terms of gaining access and remaining  
15 within the premises separate from other young drinkers  
16 or young patrons. That's interesting. The evidence  
17 before me as well as from Mr. Craig and Mr. Downe is  
18 that there are under-age drinkers or under-age patrons  
19 in that premises from time to time but they have found  
20 and requested to have I.D. checked and on four  
21 occasions in the last year individuals have left as a  
22 result of checks by the liquor inspector in  
23 cooperation with the staff from the bar.

24                   On one occasion there were two young girls  
25 who left. The situation with respect to under-age  
26 drinkers is such that on two occasions -- I'm sorry.  
27 That on four occasions Mr. Downe noted

1 "unsatisfactory" in his report on the issue of under  
2 19 year old drinkers and on two occasions inserted  
3 cautions in his report to the Chief Liquor Inspector.

4 These findings, he testified, have been  
5 discussed with both the bar manager, Ms. Gillespie,  
6 and I take it, Mr. Yurkiw. The response -- there has  
7 been spirited argument over the presence of  
8 individuals under the age of 19 with Ms. Gillespie  
9 stating, "you can't expect us to watch everyone." Mr.  
10 Glowach, who I found to be a most down-to-earth,  
11 honest witness and straight-forward, he was quite  
12 candid. He stated that on any given night he picks out  
13 and ejects or asks to leave anywhere from 6 to 12  
14 under-age drinkers.

15 Now, I comment on that evidence simply to  
16 indicate that there is, on the evidence before me, and  
17 that's all I can go on, a significant, identifiable  
18 notable, problem with under-age drinkers from Akaitcho  
19 Hall. That's clear on the evidence. It is an  
20 identified problem. It's not something that's sneaking  
21 up on anyone. Everyone knows about it. The problem,  
22 the danger to the public, generally, with respect to  
23 alcohol abuse, the problem of under-age drinkers from  
24 Akaitcho Hall, according to my understanding of the  
25 law, dictates or sets out the parameters when it comes  
26 to the exercise of due diligence. The more serious the  
27 problem, obviously the greater due diligence must be

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exercised.

A very minor problem or insignificant matter does not require the same amount of test. What is required by an individual to discharge the onus of due diligence is a function of the size of the problem. It is a function of the circumstances and a great number of other things. It's clear on the evidence that the defendant is aware of the problem. What has the defendant done on the evidence before me to address that problem and it is argued amounts to due diligence?

Mr. Yurkiw has testified -- I should also mention perhaps for the record. It was with respect to the problem, again. Both Mr. Yurkiw and Mr. Glowach testified as to the problem in terms of the kids or the under-age drinkers using false I.D. and changing their clothes and sneaking in with gangs. I just put that in, again, to emphasize the size of the problem we are dealing with.

Now, Mr. Yurkiw's evidence with respect to what he does as the -- as being in charge of the bar. There are three entrances to the bar. Two in front or one on the side or in the back. He has staff. He's been operating the Gold Range Lounge and Bar for some 16 years and it operates from 10:00 in the morning until 2 o'clock in the morning. He has a staff of 14 to 16. He spoke of 3 floor walkers/doormen, it would

1 appear, that check I.D.'s. That wander around also  
2 described at a later point as bouncers by someone  
3 else, I believe, who try and keep things under  
4 control. Check I.D.'s. Manage the door. When it gets  
5 really busy and there is a line-up outside they let 10  
6 out and 10 in and he stated unequivocally that if any  
7 under-age people sneak in they don't last 15 minutes.  
8 Even if they hide they are caught and out they go.

9 Well, with respect, that's just not so with  
10 the case of the three individuals that are named in  
11 the information I find on the facts that they were in  
12 the bar for up to an hour. I recognize that evidence  
13 with respect to time is always suspect, but it's clear  
14 on the evidence, in this case, that they were there in  
15 time to have a jug of beer and at least one shooter.  
16 They were there between a half hour and an hour.

17 Mr. Yurkiw was aware of the problem with  
18 the, he calls them the 'Akaitcho kids.' He knows of  
19 the problems of false I.D.'s. What system has been  
20 implemented? The only system and I don't say only in a  
21 derogatory way. But the system that has been  
22 implemented is, 'if he looks under-age you ask him for  
23 I.D.,' and I don't know how you can train people to  
24 determine who is under-age. It's a pretty subjective  
25 test. It didn't work on the 10th of January.

26 A waitress, who I'm told under this system,  
27 is also mandated to demand I.D., walked up to the



1 table and sold a shooter to the first named  
2 individual, Thaddeus Holman which he drank. No I. D.  
3 was requested and at that table of four, one was over  
4 the age and three were under. No I.D. was requested. A  
5 jug of beer was purchased at the bar. I don't know by  
6 who. It appears that it was not purchased by the  
7 individual who is over 21, Mr. Kwasney. No one was  
8 asked. None of the others were asked if they purchased  
9 a beer to my recollection. In any event, one of them  
10 went up and bought the beer and got it from the bar.  
11 He wasn't asked for I.D.

12 Those who get by the doormen are apparently  
13 supposed to be picked out by the waitress but a  
14 waitress has up to 50 people to serve. That's a lot of  
15 people. I don't have any scale to judge, but it  
16 strikes me as being a lot of people for one person to  
17 keep track of. If it's constantly changing even though  
18 they are dealing with the same zone, clearly the  
19 defendant relies on the staff to identify, visually,  
20 those that are under 19 to ask for I.D. If they don't  
21 have I.D. to reject them. Is that enough? And that's  
22 really what the case is about. Is that enough? Is that  
23 enough of a process or system to deal with under-age  
24 drinkers?

25 The test of due diligence is set out in  
26 Sault Ste. Marie and modified by the Wholesale Travel  
27 Case. There is no real argument with counsel on that.

1 Is the defendant's response to the particular problem  
2 due diligence? The doormen, I should add, or  
3 floor-walkers are present at the door but not  
4 constantly. They are there and they are not. There are  
5 three doors to monitor. I have no cases before me as  
6 to what other bars or I have no evidence before me as  
7 to what other bars do either in this jurisdiction or  
8 in other jurisdictions, and I have no cases before me  
9 as to what any other Court has determined would be an  
10 appropriate standard of care reflecting due diligence  
11 dealing with under-age drinkers.

12 Mr. Miller argues that the standard or a  
13 proper exercise of due diligence would not require a  
14 great effort by the defendant. It would require simply  
15 someone at the door checking everyone's I.D.

16 I conclude that the evidence is clear that  
17 the subjective test applied by the staff on an ad hoc  
18 basis functions to a certain extent. Does it function  
19 to an extent to amount to due diligence? In light of  
20 the problem described, I conclude not. On all of the  
21 evidence before me that I've already referred to, the  
22 evidence of under-age drinkers from Akaitcho Hall is a  
23 significant one that everyone is aware of. To address  
24 that problem by the ad hoc, subjective questioning by  
25 staff failed on the 10th of January.

26 In light of the problem, I just come to the  
27 conclusion that it's not enough. It is not set out in

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the Act what the defendant should or should not do; It is not for me, certainly, to tell the defendant what to do or what not to do. I can only rule on the matters that are before me and what is before me falls short. Certainly there is some effort made but, in my view, in light of the problem it just falls short of amounting to due diligence.

On that basis, I convict the accused on Counts one, two and three. On sentence, Mr. Miller?  
-- AT WHICH TIME COUNSEL SPOKE TO SENTENCING SUBMISSIONS --  
-- DECISION ON SENTENCE GIVEN BY JUDGE BOURASSA --

THE COURT: Well, I found the Defendant, Gold Range Investments Limited, guilty of three Counts under the Liquor Act of allowing persons under 19 to remain in a licensed premises where liquor is sold or kept for sale. The question that I must determine now is that of penalty.

I agree with Mr. Marshall. We are not talking about a moral culpability in this case. Usually or often in regulatory offences the courts speak of criminality of conduct, and I don't think that's particularly appropriate in this case. In this case we are dealing with a situation where there is an effort made to weed out and remove young drinkers, but I have found that it's insufficient.

In terms of the public good and what the

1           Liquor Act is designed to prevent, it's clear and  
2           that's to protect those under 19 from themselves to a  
3           certain extent and certainly to regulate the use and  
4           consumption of alcohol which I've already noted is a  
5           real problem. It's hardly surprising in something like  
6           this that it's a contest between those who want to  
7           drink and the defendant who wants to comply with the  
8           law and it will continue to be such. There will always  
9           be those who will do whatever is possible try and get  
10          into licensed premises while prohibited from doing so  
11          because of age. It's not a new problem by any means.

12                        I have found that while the defendant -- I  
13          found that the defendant -- that the efforts required  
14          by the defendant to meet the problem particularly with  
15          respect to Akaitcho Hall students, it does not meet  
16          the standard required by law. The defendant has to do  
17          more. That's not to say the defendant is doing  
18          nothing. I admit and I think I've made it clear, the  
19          defendant is doing something. It's just not enough  
20          that's required by law. I have to take that into  
21          account on sentencing.

22                        I would point out though, however, and this  
23          is no different than in any other case, that should  
24          the defendant be convicted, again, of the same offence  
25          that the considerations would change drastically and  
26          the considerations with respect to sentence would be  
27          far different. In my view, in terms of the goal of

1           sentencing, I would hope that the defendant takes the  
2           necessary precautions and modifies and fine tunes his  
3           process to keep the young drinkers from remaining in  
4           the premises.

5                       No licensed holder is held up to an absolute  
6           standard. There will always be those in the contest  
7           that will out-trick or out-finesse a licensed holder,  
8           I suppose. That's not the point. The point is that  
9           steps have to be taken. Positive steps and they have  
10          to be serious steps. That I think as a sentencing  
11          judge is what I would like to see done. I'm in no  
12          position to order steps to be taken. That's up to the --  
13          license holder as it should be.

14                      My obligation is to underline, perhaps, that  
15          that has to be done. I live in this community and I  
16          feel I should say because I know that some people are  
17          going to be disappointed at this. It's well known that  
18          one of the individuals set out in the information is  
19          deceased. The penalty that this Court imposes and the  
20          conviction for this defendant has got nothing to do  
21          with that and doesn't relate to it in any way.

22                      In my view, a fine of a thousand dollars on  
23          each Count should come accomplish the goals that I've  
24          tried to articulate. In default, distress. Is that  
25          everything you have then, Mr. Miller?

26          THE CROWN:     Yes, Your Honour.

27          THE COURT:     Thank you counsel.

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Certified a correct transcript to  
the best of my skill and ability,

*M. Belsito*

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Michael Belsito,  
Court Reporter