

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

BOREALIS EXPLORATION LIMITED



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Transcript of the Sentence delivered by His Honour Judge  
R. M. Bourassa, sitting at Yellowknife in the Northwest  
Territories, on the 3rd of March, A.D., 1993.

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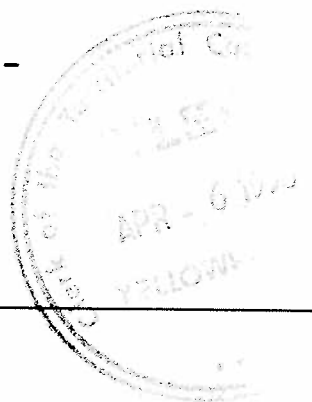
**APPEARANCES:**

MR. B. WEBBER: Counsel for the Crown

MR. R. COX: On behalf of the Defendant

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CHARGE (x 2) UNDER SECTION 7(1) OF THE  
TERRITORIAL LANDS ACT



1 THE COURT: I have to sentence the defendant on  
2 two counts. On Count 1, failure to remove equipment,  
3 materials, and fuel drums from the land use area; and  
4 Count 2, failure to restore the land use area. The  
5 counts cover a period of 75 days and the maximum  
6 penalty is \$5,000 a day.

7 The defendant has been convicted of similar  
8 offences in October of 1990. At that time, there were  
9 a number of convictions entered for identical offences  
10 with Fines totalling \$14,000. It is unknown to me if  
11 these Fines have been paid or not.

12 The problem, if I can call it that with respect to  
13 the continuing presence of these illegal items and the  
14 failure to restore the property, has been an ongoing  
15 one from what I can gleem from the evidence before me.  
16 The permit expired in March of 1990, that's three  
17 years ago.

18 Since then, there has been, as I have already  
19 referred to in my judgment, some limited cleanup.  
20 Some items have been taken apart but the area is  
21 generally in a state of disrepair.

22 The president and executive officer argues that he  
23 needs time to make arrangements to effect a cleanup.  
24 In that regard, I refer to two exhibits, 10 and 11 in  
25 the trial. One is a letter to Keith Sharp at Rankin  
26 Inlet and the other is a letter to a person at Whale  
27 Cove. Both of these letters are "offers". I have

1 nothing before me that would in any way indicate that  
2 there is a contract with the addressees as argued by  
3 the defendant.

4 With respect to the letter to Sharp, it is an  
5 offer to pay for the removal of the barrels and to  
6 effect payment in some way other than from cash from  
7 the company. At most, a surrender of salvage value.

8 MR. COX: All the barrels go with a \$30 deposit.

9 THE COURT: The other one is an offer to the  
10 hamlet of Whale Cove to sell them the four crew  
11 trailers from the site. I know the people in Whale  
12 Cove. I have been there on numerous occasions, and I  
13 express some surprise that they are so in need of  
14 those run-down trailers that they would consider the  
15 \$175,000 for them, but that is neither here nor there.

16 The letter of December 27, 1992, is only an offer.  
17 I'm assured that the people in Whale Cove have a great  
18 interest in this but neither of the two offered  
19 letters assist me with what is really the basic  
20 problem. That is the fact that the place isn't  
21 cleaned up and no concrete plans are in place.

22 I can't address that. Mind you, if the defendant  
23 had taken extraordinary steps over the past few  
24 months, I would have to take that into account, but he  
25 hasn't. I can't address that.

26 My obligation is to impose a penalty, and somewhat  
27 wryly as the defendant points out, I note that a

1           \$5,000 Fine may hurt and \$375,000 may be past the  
2 point of hurting.

3           Well, I appreciate that but the Fine, the penalty,  
4 has to reflect the situation. It has to be applied in  
5 accordance with ordinary legal principles. In this  
6 regard, the corporation has prior convictions for the  
7 same kind of offence; the corporation has been in  
8 default of its legal obligations for three years.

9           It may very well be, and I don't doubt Mr. Cox  
10 that the corporation has no money and he is trying  
11 hard and he can't bring it together. I don't doubt  
12 him or criticize him in any way, but the defendant has  
13 known that the situation out there is illegal. As he  
14 stated, "All I need is a storage permit to make it  
15 legal".

16           My obligation in applying the law is to make it  
17 clear not only to this defendant but to all other  
18 defendants that the law, this law, has to be obeyed  
19 and especially when it comes to land. It's a very  
20 sensitive issue and that has to be respected and taken  
21 into account by all. That's why the law is there. It  
22 has to be obeyed.

23           The site has to be cleaned up and the contractors  
24 and developers are going to have to recognize that  
25 whether they come from Europe or the United States or  
26 Canada. If they can't live with that, well then I  
27 don't really think they're welcome.

1           In terms of penalty, as I stated, the defendant  
2           has prior convictions for the same thing and this  
3           outstanding matter is three years old with really very  
4           little concrete efforts and with very little achieved  
5           in terms of cleaning up or restoring the site.

6           The only evidence that I have before me is the  
7           defendant is impecunious, with little or no money.  
8           \$1500 in the bank account. Well, if that's the case,  
9           it remains a significant matter to send a message to  
10          other developers that they must obey the law  
11          especially when it comes to land use permits.

12          I am satisfied on the law that I can impose a  
13          penalty for each of the 75 days and I intend to do  
14          that. It must be a penalty that is meaningful and it  
15          must be a penalty that, as I say, will make others  
16          conscious of their obligations.

17          I have to take totalility into account and I do.  
18          There will be a Fine of \$2,000 a day for a total of  
19          \$150,000.

20          I'll direct that, subject to the expiration of the  
21          appeal period, the documents submitted by Mr. Cox be  
22          returned to him. Should he require photocopies in the  
23          interim, I will have the court staff make those  
24          available to him.

25          Is that everything then, Mr. Webber?

26          MR. WEBBER:                    Yes, Your Honour.

27          (PROCEEDINGS CONCLUDED)

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Certified a correct transcript to  
the best of my skill and ability,  
(Subject to Editing by Presiding Judge)



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Lois Hewitt,  
Court Reporter