

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

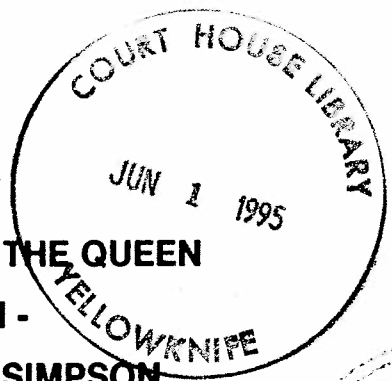
RAM HEAD OUTFITTERS LTD.

AND BETWEEN:

HER MAJESTY THE QUEEN

- and -

STANLEY D. SIMPSON



JUDGMENT

This is the last in a series of five trials for alleged contraventions of the *Wildlife Act*, R.S.N.W.T. 1988, c. W-4 by the corporate defendant and its principal shareholder and operating mind, Stanley Simpson. As with the fourth group, there are 12 offences charged here in six informations. Ram Head faces three counts of outfitting outside its area and three more of failing to report an offence after acquiring knowledge of it. Simpson is charged with aiding, abetting or inducing his corporation to commit

each of the outfitting offences and Ram Head's guide, Bryan Snow, to contravene the terms of his guide's licence by guiding outside the area for which he was licensed. The trials were held together pursuant to the procedure described in the first judgment in this series ("judgment #1"). All of the issues raised in this prosecution have been dealt with, to one extent or another, in the trials preceding it; as a result, the reasons here can be relatively brief.

I characterize all of the charges against Ram Head as strict liability offences and all of those against Simpson as full *mens rea* offences. Accordingly, for the reasons given in judgment #1, the Crown has the burden of proving each unlawful act beyond a reasonable doubt, and in the case of the charges against Simpson, the necessary mental element as well. Assuming the Crown discharges its burden against the company, it will be open to that defendant to avoid liability by establishing due diligence on a balance of probabilities according to the tests set out by the Supreme Court of Canada in *R. v. City of Sault Ste. Marie* (1978), 40 C.C.C. (2d) 353.

Ram Head: Outfitting Outside its Area

That Ram Head provided outfitting services outside its area is not in issue. Simpson himself as much as conceded that the moose taken by Lasalle, Phillips and Westphal were shot in area E/1-5 ("the Nelson Area"). Even if he had not, the evidence supporting that proposition is overwhelming. Applying the definition of "outfitting services" found in judgment #1, it is clear, on all the evidence, that they were provided here outside Ram Head's area by employees acting within the scope of their employment so as to bind the company.

Ram Head puts forward, in its defence, what might best be described as a combination of the two branches of the due diligence test set out in *City of Sault Ste.*

Marie. On the one hand, it says its employees were hunting in the Nelson Area, albeit on the instructions of Ram Head, in the mistaken belief that it was in fact the Ram Head area. That was a belief shared by its employer, apparently by reason of information and a map (ex. #10) given to Simpson by the previous licensee of the area when it was purchased from him. Even though he only referred to the map once, when he "bought" the area, Simpson notes that the border is, in effect, wrongly marked there. If that is not a sufficient defence, he posits his reliance on the map and the words of the previous owner as due diligence.

The misapprehension under which Simpson, and thus Ram Head, was operating as regards the location of the border, being a mistake of law, is no more a defence here than it was in the charges arising from Jim August's hunt (judgment #2). As was pointed out there, one cannot rely on a mistake of law to meet that branch of the due diligence test which absolves the defendant who reasonably believes in a set of facts which if true would make his conduct lawful. Nor can it be said that Ram Head, through Simpson, took all reasonable steps to avoid contravening the law, the other branch of the test. Without quoting again what was said by de Weerd, J. in *Weston v. R.*, [1986] N.W.T.R. 145 (N.W.T.S.C.) at p. 152, his own evidence confirms that Simpson was not misled either by erroneous information originating from official sources or by the unavailability of the Regulations. On the contrary, he "... never looked at the Regulations until this came up". If he had, he would have seen that the relevant border was the east bank of the Intga River, not as he presumed, 1000 yards east of that bank. (see ex. #3, p. 12). The Regulations are framed in clear and simple language.

Ram Head, then, has not established due diligence and it must be convicted of the three counts alleging illegal outfitting.

Ram Head: Failing to Report Offences

The duty to report offences is conditioned on knowledge of their commission. As noted in other judgments in this series, the duty is framed in such a way that proof of knowledge becomes a part of the proof of the *actus reus* of the offence. The problem for the Crown here, as it was in the August prosecution, is that there is no actual knowledge of the commission of the offence nor, by reason of Simpson's mistake of law, is there any way to impute that knowledge to Ram Head. Without repeating again what was said on that point in judgment #2, the Crown must show a deliberate, as opposed to a negligent, failure to make the necessary inquiries to rely on "wilful blindness" as the vehicle whereby the necessary knowledge might be found. The evidence here falls far short of showing that Simpson deliberately attempted to remain ignorant of the proper boundary. His negligence in ascertaining it may be sufficient to impute, for some purposes, "constructive knowledge" of the border, but in criminal matters, including in my view strict liability prosecutions where knowledge forms a part of the unlawful act itself, "constructive knowledge" is no knowledge at all: see *R. v. F.W. Woolworth Co. Ltd.* (1974), 18 C.C.C. (2d) 23 (Ont. C.A.) at p. 30. While "mistake of law" could not be a defence were Ram Head required to establish due diligence, it can, as here, be relevant to the Crown's duty to prove the unlawful act.

So far as "wilful blindness" is concerned, I am quite unable to say, on the evidence, that his failure to question his guides about where they were hunting would have resulted in his obtaining the necessary knowledge, as they were operating under the same mistake he was. In the result, then, the necessary pre-condition to engage the duty to report not having been shown, the company must be acquitted on those three counts.

"Knowingly" Did Aid and Abet

The charges against Simpson personally may be disposed of quickly. The *mens rea* to be proven by the Crown in an aiding and abetting prosecution is "... knowledge on the part of the alleged aider of the circumstances necessary to constitute the offence which he is alleged to have aided, ...: *R. v. F.W. Woolworth Co. Ltd., ibid.*, p. 34. Here, as in the August prosecution, that means proof that he knew that both outfitting and guiding were taking place outside Ram Head's area even if he didn't know that was an offence. Once again, by reason of his mistake of law, the most that can be imputed to him is "constructive knowledge", insufficient in a prosecution like this one to prove the necessary mental element. He is entitled to the benefit of any reasonable doubt on that issue. I give it to him here and find him not guilty on all six of the charges of aiding and abetting.

DATED this 10th day of February, A.D. 1995 at the City of Yellowknife in the Northwest Territories.

"Peter Ayotte"

Peter Ayotte, Deputy Judge
Territorial Court of the Northwest Territories

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