

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

B E T W E E N :

THOMAS SMITHSON, HEALTH OFFICER, MEDICAL SERVICES

and

PETER BROERE and LYDIA DE GROOT

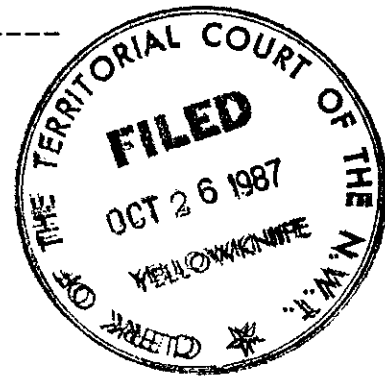
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Heard at Yellowknife, N.W.T.

Judgment Filed: October 26, 1987  
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REASONS FOR JUDGMENT

of

His Honour Judge R. M. Bourassa



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Mr. B. A. Bruser

Counsel for the Crown

Mr. C. Rehn

Counsel for the Defence

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

THOMAS SMITHSON, HEALTH OFFICER, MEDICAL SERVICES

and

PETER BROERE and LYDIA DE GROOT

REASONS FOR JUDGMENT

The accused persons are charged as follows:

Count 1:

On or about the 29th day of September, 1986, at or near the City of Yellowknife in the Northwest Territories, did sell, offer for sale or deliver milk for human consumption that has not been pasteurized, contrary to Section 3 of the Milk Regulations and Section 23 of the Public Health Act (N.W.T.);

Count 2:

On or about the 21st day of October, 1986, at or near the City of Yellowknife in the Northwest Territories, did sell, offer for sale or deliver milk for human consumption that has not been pasteurized, contrary to Section 3 of the Milk Regulations and Section 23 of the Public Health Act (N.W.T.).

I would indicate at the outset that I am satisfied that, in law, an offence is made out upon proof of any one of the three actions referred to in Section 3; that is to say, on sale, offer for sale, or delivery, provided of course in each case the limitation of "for human consumption" is included.

Secondly, I have absolutely no evidence before me of the involvement of the Defendant Peter Broere, whatsoever. He was not mentioned in any of the evidence on the two counts before the Court, other than some uncertain evidence with respect to a contractual or employee/employer relationship with the President of Agriborealis, such evidence insufficient to draw any conclusions. There is absolutely no evidence of his involvement in either of the two impugned transactions that are before the Court today, and the charges as against him are, therefore, dismissed.

I don't wish to minimize the importance of the issues at stake here, or the role of any of the individuals involved in these matters, however, looking at this matter objectively and obviously without any involvement other than hearing the facts before me today, this case seems to be very much ado about very little.

The Crown pretends, or alleges, that the Defendant De Groot is a raw milk bootlegger, selling unpasteurized milk to the public, knowing that it is illegal to do so, and seeking through the fiction of calling it pet food to avoid the regulations and enactments made under the Public Health Act of the Northwest Territories. It is an old saw that a rose by any other name is still a rose, and Courts are rarely deceived by fictions constructed by clever Defendants in an attempt to sanitize and disguise illegal activity. I have great difficulty in coming to the conclusion that the Crown urges the Court to make. I have absolutely no evidence before me that would lead this Court to suspect, or even infer, that the Defendant De Groot is a bootlegger as pretended. I have no evidence of any transaction of alleged sale, delivery, or offer, other than the two before me. I have no evidence of any conduct upon which the Court could make an inference that the conduct of the accused could be characterized as advanced by the Crown.

Quite simply, there is no evidence that directly indicates, or from which one could infer, that the accused was knowingly acting illegally. There is nothing to indicate that this Defendant was trying to dispose of the unpasteurized milk in an illegal fashion. Indeed, the evidence is to the contrary. On the first occasion, Count 1, the investigators testified that there was a sign posted clearly stating that the milk was not for

human consumption; it was for pet use only. I can accept that under some circumstances that kind of a sign could be looked at somewhat cynically as a nod and a wink to the legislation, however, as I have already indicated, there is no evidence before me upon which I can make that inference. After the facts surrounding Count 1 were investigated, a local official, a Mr. Smithson, wrote to the President of Agriborealis in the following terms:

This practice (of unpasteurized milk being sold as pet food) is not acceptable with our department as there is no guarantee people will not consume the product. Therefore the sale of unpasteurized milk must cease immediately.

(My emphasis)

Be that as it may, the law does not require such a guarantee, and Mr. Smithson is in no position to demand more than what the law requires. There are no guarantees that guns aren't going to be used to assault people, but that doesn't stop people from lawfully selling guns. There is no guarantee that pet food is not going to be consumed by human beings, but that does not prevent the lawful sale of pet food. The demands made by the Department of Health went beyond the requirements of law. The law is clear, and in my view, were this a true case of raw milk bootlegging, then I believe the evidence would be available and that the Court has clear eyes enough to see through fictions and make proper determinations.

I have no reason to believe that the milk was being offered, delivered or sold for any other reason than that set forth on the sign -- for pet food, and not for human consumption. What other people did with it was out of the control of the Defendant. There was no evidence from which one could find or infer that the Defendant was turning a blind eye to the use to which people were putting this unpasteurized milk. In my view, Count 1 fails completely.

With respect to Count 2, once again the investigation instituted by the Public Health Officers found a similar sign that the milk was unpasteurized, and when the investigator spoke to the Defendant De Groot, she indicated that there was nothing wrong with the milk. From that I am asked to conclude a subtle invitation to purchase for human consumption. I cannot. I do not believe that anything adverse can be taken from her statement that there was 'nothing wrong with it' -- neither encouragement to purchase for human consumption, or in fact anything. To do so would be to embark upon sheer speculation.

I accept on the evidence stated by Dr. Kinloch, that there is a modest danger associated with the sale of unpasteurized milk, and it is a danger that the government has addressed, and quite properly so, in fulfilling one of its mandates to protect the public. However, there is nothing in Count 2 to indicate

that the Defendant was trying to do anything underhanded or illegally. In my view, there is insufficient evidence to support a conviction on Count 2.

A handwritten signature in black ink, appearing to be 'R. M. Bourassa', written in a cursive style with a long horizontal flourish extending to the right.

Judge R. M. Bourassa