

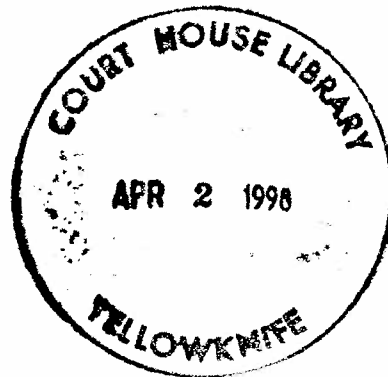
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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN



- v -

CON EXPLORATION and MIRAMAR CON MINE LTD.,

a body corporate

Transcript of the Oral Reasons for Sentence of The Honourable Judge R.M. Bourassa, sitting in Yellowknife, in the Northwest Territories, on the 28th day of January, A.D. 1998.

APPEARANCES:

Mr. A. Regel:

Counsel for the Crown

Mr. N. Daugalis:

Counsel for the Defence

1 THE COURT:

Thank you. Well, I have to

2 sentence the defendant corporation on two counts of
3 breaching conditions of its water license.

4 I am presented with a joint submission by Crown
5 and defence, both Crown and defence counsel are
6 well-known, well experienced, and have obviously given
7 the matter consideration in light of the various
8 principles that have evolved in dealing with offences
9 such as this.

10 The Court of Appeal has indicated that a joint
11 submission ought not to be disregarded unless it's
12 unreasonable and I'll say at the outset, I can't
13 conclude that a total financial penalty to the
14 defendant of \$50,000 for the delict that has been
15 described to me is unreasonable.

16 I have a few comments, however, that I would like
17 to make.

18 In my view, there is nothing much different here
19 than with Echo Bay Mines or some other cases. The
20 offence is the harm to the regulatory regime that is
21 set up. The regulatory regime has to be obeyed.
22 Surely the defendants here, large experienced
23 companies, are aware of the regulatory regime
24 especially dealing with water. Surely it's not
25 unreasonable to expect that they would have someone
26 designated to ensure statutory and regulatory
27 compliance. It may very well be that no one was harmed

1 and there will be no harm in the future, but the
2 regulatory regime is there to be obeyed and it's not an
3 optional thing.

4 I have looked at the photographs and the documents
5 that were submitted with the submissions or the
6 authorities, it's clear that the defendant was anxious
7 and gung ho to address the issue and did so promptly
8 and it appears effectively and properly, but I want to
9 point out that the end does not justify the means.
10 They required approval from the Water Board. It's in
11 black and white on the license. The license isn't a
12 complicated document - a few pages long - it's not like
13 reading the income tax act. Anyone can understand what
14 it says.

15 In this day and age it's not enough to have
16 compliance by a nod and a wink and tacit assumptions.
17 Where a license or a directive indicates that written
18 approval is needed, then written approval is needed.
19 I'm sure that in it's desire to remedy the problem that
20 a week or so would not have destroyed the construction
21 season for the new Taylor Road Dam; a week or so taken
22 to deal with the Water Board on emergency basis.

23 In so far as the weather goes: yes, there was
24 more rain that April than there had been for a few
25 years, but when one works at the edge of standards -.5
26 meter freeboard - then in my view it's patently obvious
27 that any variation of base assumptions will cause a

1 fall off the edge, so a rainfall unexpected but within
2 normal limits over a ten-year period occurs and there
3 is a disaster. The whole point of the Water Board and
4 the regulatory regime and the considerations that go
5 into the regulations is that operators not work at the
6 edge of standards but that with a decent margin for
7 safety given variations of base assumptions and
8 unexpected circumstances.

9 The only other comment that I would like to make
10 is in looking at the exhibits that were attached to the
11 authorities and in particular Appendix 7, the "Surface
12 Contamination Study" and "Surface Runoff Directions"
13 from the Study Area. Con Mine operates effectively in
14 the middle of the city of 16 or 17 thousand people. It
15 provides a lot of employment, it does a lot of good. I
16 have nothing before me to suggest that it's anything
17 other than a good corporate citizen, but it's dealing
18 with by-products, heavy metals and cyanide. Look at
19 this map, where is the surface runoff? Right down
20 School Draw Road, right through Rat Lake, right down by
21 the Esso Bulk Fuel Plant towards Joliffe Island and
22 into Great Slave Lake. Little children in the spring
23 time play on School Draw Road making dams in the
24 runoff. There are boaters, fishermen, by Joliffe
25 Island along the edge of Great Slave Lake. Con Mine is
26 dealing with a deadly substance, cyanide, that requires
27 appropriate precautions.

1 It's not enough to play or to work on the edge
2 here, certainly not given their location and given the
3 substances, the by-products of their business or
4 otherwise.

5 Now, I said at the outset that I don't have
6 difficulty endorsing or accepting the joint submission.
7 I have one reservation; it's suggested to me that the
8 Court make an order requiring the defendant to
9 contribute \$48,000 to the West Kitikmeot Slave Study.
10 I've perused the annual report from 1996 and 1997 and
11 obviously the West Kitikmeot Slave Study Society is
12 well funded and quite active in a variety of areas.

13 I think I've indicated in the past, and I'd
14 confirm it again today, that in my view when a Court
15 makes orders on environmental offences, there must be
16 some relevancy between the offence before the Court and
17 the order it makes. In my view it's not enough to
18 simply take the money from the defendant and put it
19 wherever is convenient. In my view there should be a
20 constructive element in the contribution of funds,
21 constructive both to the defendant and with respect to
22 reducing the potential harm of the area within which
23 it's working. I don't want to be provincial, but it
24 seems to me the money ought to be spent on something
25 dealing with cyanide in Yellowknife.

26 I understand - I'm a citizen of this community -
27 that there is a lot of concern with respect to cyanide

1 levels. There is a lot of concern about cyanide or
2 heavy metals in Yellowknife Bay. As I have indicated
3 in my discussion here, I don't know and I don't imagine
4 the public knows whether there is a cyanide taint to
5 the spring runoff down School Draw? It seems to me
6 that any order requiring the defendant to contribute
7 the funds to some kind of project should be made with
8 that in mind.

9 Therefore what I'm going to do is I will, and I
10 say that in future tense, I will impose a fine on the
11 first count of \$1,000; a fine on the second count of
12 \$2,000, in my view the delict was more reprehensible,
13 and I will place the accused on probation for a period
14 of months, which counsel can address me on, requiring
15 them to pay \$47,000, and that's where I'm going to stop
16 and require counsel to see what they can do to
17 determine what is available in so far as research study
18 or work having to do with cyanide and the cyanide
19 levels in the water in Yellowknife, Yellowknife Bay,
20 I'm open to anything in that regard. But I don't see
21 that counting caribou on the Coronation Gulf is going
22 to be of much assistance to either the defendant or the
23 people immediately affected by this mine which are the
24 citizens of Yellowknife.

25 So I can set this aside, counsel, I can hear from
26 you later today or I can hear from you tomorrow, I'm in
27 your hands?

1 MR. REGEL: If I could just have a minute,
2 Your Honour?

3 MR. DAUGALIS: My friend and I were just talking
4 about who we need to talk to to try to identify some
5 worthwhile project. At the same time which, is my
6 probable rather than anyone else's --

7 THE COURT: You've got a plane to catch?

8 MR. DAUGALIS: I was hoping to be on an airplane
9 at 5 o'clock this evening, so I wonder if we could
10 maybe stand it down for now and then hopefully before
11 the end of the day we can come back and --

12 THE COURT: Sure, all right, I'll set it aside
13 then.

14 MR. REGEL: Thank you, Your Honour.

15 **(OTHER MATTERS SPOKEN TO)**

16 THE COURT: So we'll recess then until Con
17 Mine.

18 **(ADJOURNMENT)**

19 THE COURT: It didn't take long to find a
20 place to spend \$50,000.

21 MR. REGEL: Your Honour, we quickly realized
22 that we couldn't do justice to the issue in the time we
23 have this afternoon or tomorrow and we certainly
24 wouldn't want to come up with something that was a
25 useless project just for the sake of accomplishing --

26 THE COURT: Well I appreciate that.

27 MR. REGEL: -- and I'm sure you wouldn't want

1 to endorse that.

2 In speaking with Mr. Unrau he noted that the
3 Department of Environment wanted to obtain some funding
4 for a study of the Meg Peg Keg runoff system, and again --

5 THE COURT: The what?

6 MR. REGEL: The Meg Peg Keg Lakes?

7 THE COURT: Oh, okay.

8 MR. REGEL: Actually the tailings pond area
9 and the runoff system there is something they have been
10 talking about, we don't know what parameters they were
11 thinking of or anything like that. In order to kind of
12 accomplish our goals today and at the same time ensure
13 that whatever project is selected is something
14 worthwhile what we'd be proposing is this; if we could
15 require Con to forthwith deposit the sum of \$47,000
16 into a trust account for the purpose of funding a
17 study, actually a research study, to determine the
18 presence of and the nature and concentration of
19 contaminants, specifically cyanide and heavy metals, in
20 the water bodies in or around Yellowknife, specifically
21 Yellowknife Bay, which study shall be approved by this
22 Court.

23 And if we could have a further paragraph there, In
24 the event a suitable research project is not identified
25 within three months of today's date, that counsel shall
26 forthwith make arrangements to bring this matter back
27 before the Court to speak to at that time.

1 THE COURT: Is that satisfactory to you and
2 your client?
3 MR. DAUGALIS: NODS IN THE AFFIRMATIVE
4 THE COURT: Then there is no need for a
5 probation order; is there?
6 MR. DAUGALIS: Yeah, no I think that will be
7 satisfactory because --
8 THE COURT: Well, you know -- all right.
9 MR. DAUGALIS: -- that will then put the funds
10 in trust and some work to see if we can identify --
11 THE COURT: All right. Well then on the basis
12 of those funds being paid into trust then my sentence
13 on the two offences are as I indicated fines only, and
14 you can bring the matter back to me within three months
15 if there is difficulty.
16 MR. REGEL: And in order to obtain the Court's
17 approval would it be sufficient if counsel joined the --
18 endorsed a letter indicating what we think might be
19 approved or might be suitable, perhaps identifying two
20 or three options?
21 THE COURT: Yes.
22 MR. REGEL: Thank you, Your Honour.
23 THE COURT: Just so long as something useful
24 comes out of this, useful for the defendant and useful
25 for agencies in and around Yellowknife dealing with the
26 problem of cyanide and water runoff.
27 MR. REGEL: And we'll focus on that issue,

1 Your Honour.

2 THE COURT: All right.

3 MR. REGEL: Thank you.

4 THE COURT: And that sounds satisfactory to
5 me. Is the fine to be paid forthwith?

6 MR. DAUGALIS: So long as forthwith can --

7 THE COURT: Well forthwith -- there won't be
8 distress, I assure you, for a couple of weeks anyway.

9 MR. DAUGALIS: Yeah, I would think that it will
10 take at least a few days just to get things done.

11 THE COURT: All right. That's it then? Thank
12 you counsel.

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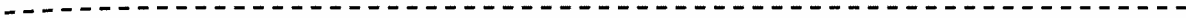
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and ability (Subject to Editing by Presiding
Judge).

Sandra Burns
Court Reporter