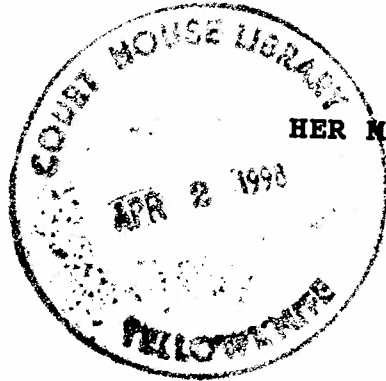


TC OR 178 004

Docket # 197-44832

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:



HER MAJESTY THE QUEEN

- v -

KEITH SHARP AND FERGUSON LAKE LODGE LTD.

Transcript of the Oral Sentencing by The Honourable Judge
 B. A. Bruser, sitting in Rankin Inlet, in the Northwest
 Territories, on the 15th day of August, A.D., 1997.

APPEARANCES:

Mr. A. Regel:	Counsel for the Crown
Mr. K. Sharp:	Representing the Defendants

1 THE COURT: Well, ideally what I would like to
2 do is to think about this for a longer period. There
3 is no precedent to guide me under the Safety Act. This
4 appears to be a new case. We are chartering waters
5 that have not been chartered before here. Yet, if I
6 delay this, Mr. Sharp, who has already been devastated
7 by what has happened, is going to continue to feel the
8 strain, the tug, and the stress of wondering what I
9 have in mind. I have to consider his personal
10 circumstances; yet public protection is what this
11 sentencing process is about in cases like this. I must
12 not hasten my sentencing at the expense of public
13 protection.

14 Mr. Sharp, is it your preference that I complete
15 this today, or would you prefer that I put it over
16 until we are back here in October? And that is only if
17 I am assigned here. I may not be, in which case I
18 would have to complete this elsewhere. If you feel it
19 would be too stressful for you, I am prepared to
20 complete it today. If I am in error, if I make
21 mistakes, then either you or the prosecutor can take
22 the matter to the appeal court.

23 MR. SHARP: Well, I can understand your
24 situation, Your Honour. It's the first time that this
25 type of case has been brought forward. I feel like a
26 guinea pig, which I probably am a guinea pig in this
27 case.

1 THE COURT: What is your preference?

2 MR. SHARP: I'd prefer to know, I couldn't
3 handle the strain for a month waiting. I'm prepared to
4 have you make the decision now.

5 THE COURT: That is what I thought. All
6 right, I will complete it now.

7 Ultimately in cases like this it is the Courts
8 of Appeal that define how the sentencing should track.
9 There are guidelines to follow from parallel cases as
10 argued by the Crown prosecutor, but they are distant
11 guidelines. They are not distant with respect to the
12 underlying principle which I have already referred to;
13 the protection of the public. How should I approach
14 this matter under the Safety Act and its regulations?

15 I begin by identifying that the paramount
16 consideration is public protection through general
17 deterrence. That is the golden thread which weaves the
18 sentencing together in every case of this type. The
19 prosecution at one point, although it has backed away
20 from it after submissions from the defendant Keith
21 Sharp were made, was asking for a significant fine. In
22 support of this, the prosecution filed material from
23 the Workers' Compensation Board with a projected
24 pension over time of \$165,378.12 with estimated medical
25 costs of \$50,000 for a total estimated claim cost of
26 \$215,378.12.

27 If I were sentencing a major international

1 corporation with a wealth of assets, I could
2 realistically consider a fine approaching what the
3 prosecution is seeking, or perhaps even more than what
4 the prosecution is seeking. In every case in which the
5 Court is called upon to sentence, the Court has to
6 consider all the factors before the Court and apply
7 whatever applicable law is available to those factors.
8 As well, the Court has to consider the circumstances of
9 the offender. In this case, there are two offenders,
10 but they are in reality almost one.

11 The circumstances of the offenders are that they
12 are not able to make any meaningful monetary payment,
13 which may be imposed by way of punishment. They simply
14 cannot do it now, and there is no reasonable
15 expectation that they could do so in the foreseeable
16 future.

17 The defendant, Keith Sharp, has serious health
18 problems. He has had several heart attacks, he has
19 diabetes, he cannot do physical work, he is trying to
20 keep the company going and is barely able to do this.
21 There is some machinery which is owned by the company,
22 but if that machinery is sold, then the company will
23 collapse. Not only will it collapse, but it will be
24 worth probably almost nothing because there would be no
25 capital equipment available for any potential
26 purchaser.

27 The purpose of this sentencing procedure is not

1 in any way to break defendants. The idea is not to
2 crush people or corporations. Sentences must not be
3 excessively harsh, yet I must not make a mistake by
4 focussing mainly on the circumstances of the defendants
5 because if I did, then I give secondary consideration
6 to public protection. Public protection has to be
7 number one, and that is what I am identifying as the
8 main goal today.

9 This Court must not be seen as a collection
10 agency for the Workers' Compensation Board, or for any
11 other body for that matter. It may be that any
12 meaningful fine would find its way into the bank
13 account of the Workers' Compensation Board, but that is
14 not for me to take into account. There are civil
15 remedies for the Workers' Compensation Board; it is
16 welcome to follow those civil remedies at its pleasure
17 and on its time table.

18 This Court is not an agency of the Workers'
19 Compensation Board, and it is not an agency of the
20 Government of the Northwest Territories. This is a
21 court of law, it is independent of the executive and
22 political arms of any government. Therefore, the
23 desire by the Workers' Compensation Board to have the
24 Court, initially through the first part of the
25 prosecutor's submissions, levy a high fine approaching
26 what is in the exhibit which I have referred to is not
27 a determinative factor. It is simply a minor factor to

1 place on the scale along with other matters. It is
2 minor because I am guided by the paramount principle I
3 identified earlier.

4 I agree with the Crown prosecutor that a purpose
5 of the Workers' Compensation Board and related bodies
6 elsewhere in the country is to protect injured workers
7 by ensuring that they are compensated whether or not
8 the employer can afford to pay compensation. That is
9 fine; but nothing in that argument, which I accept,
10 changes anything I have said or what I have in mind.

11 I add that a further purpose of the Workers'
12 Compensation Board is to act as a strong body to assist
13 the legislature in enacting appropriate legislation to
14 protect workers from becoming injured in the first
15 place.

16 The factors in the accused's favour are the
17 remorse which I attribute to the corporate defendant as
18 well. The remorse is very real, it is live, and for
19 the purposes of the appeal court should the matter go
20 further, it is readily apparent to everybody in this
21 courtroom.

22 This brings into play the element of compassion
23 and mercy, factors always for the Court to consider.
24 In some cases more consideration is given than in other
25 cases. In this case it is a major factor, but not more
26 important than public protection.

27 Another factor in the defendants' favour is the

1 lack of any intention to cause harm. I have in my
2 reasons for judgement gone on at length about that and
3 I need not repeat it, but what I said in the judgement
4 I have in mind at this time, and is to be incorporated
5 into the reasons should the matter go further.

6 There was no intention on the part of the
7 defendants or either of them to cut corners by saving
8 money at the expense of safety. There was no profit
9 motive leading to the accident itself. I do not find
10 as a fact that the defendant, Keith Sharp, directed
11 Norman Corrie to go off the trail to save a few liters
12 of gasoline or diesel.

13 The defendant, Keith Sharp, not only has felt
14 remorse, but he has suffered tremendously and being
15 devastated by what has occurred. What has led to the
16 devastation in particular are the injuries to his
17 employee, and the court case which has been a
18 tremendous strain for him to bear. He does not have a
19 lawyer; I infer that he does not have a lawyer due to
20 financial constraints.

21 Another reason for the devastation has to do
22 with the close working relationship which he has had
23 with Norman Corrie, who was injured, and the other
24 employees who appeared in this trial as witnesses.
25 Everybody suffered. It was akin to a family unit.

26 Yet another factor in favour of the defendants
27 is the cooperative attitude with the authorities during

1 the investigation, and the cooperation shown with the
2 Court during the course of the trial.

3 And finally by way of factors in favour of the
4 defendants is the absence of any record of any type let
5 alone any related record. It may be that acts have
6 occurred which amounted to safety violations in the
7 past as hinted at by the Crown prosecutor, but that is
8 not for me to consider. Everybody in this country is
9 presumed innocent unless proven guilty.

10 The prosecutor has said that there is no record,
11 therefore both come before the Court with clean hands.
12 I am not going to mar the sentencing process by
13 suggesting that there were previous violations, but by
14 the grace of God he got away with them or the
15 corporation got away with it. It is simply not a
16 factor for the Court, although it was appropriate for
17 the prosecutor to weave that into his submissions.

18 Crown counsel in his usual fair way, after
19 hearing from Mr. Sharp, has said that there is room in
20 the unique circumstances of this sentencing for there
21 to be a creative sentence. I agree. I believe there
22 is room for creativity. If Mr. Sharp had been
23 represented by a lawyer I am confident that his lawyer
24 and the corporation's lawyer would have made that
25 submission. It not only was appropriate but
26 commendable for the Crown prosecutor to take that
27 position.

1 How can a sentence be created in this case?

2 Crown counsel says that there could be a lowering of
3 the fines along with community service work to be
4 performed by both Keith Sharp and by the corporation.
5 Mr. Regel says that there is some law which says that
6 there can be community service work by a corporation
7 and some law that says probation cannot be imposed;
8 community service work being a condition of a probation
9 order. I prefer to err on the side of the accused and
10 find that a probation order is appropriate. That issue
11 need not be visited any further.

12 Any fine in this case is going to be crushing to
13 both defendants. A fine of, for example only, \$1,000
14 for Mr. Sharp would be akin to tens of thousands of
15 dollars for a major national corporation, maybe even
16 more; and the same goes for the defendant corporation.

17 Since this is public welfare legislation, the
18 public ought to have the opportunity of benefitting
19 from the sentencing. The public can benefit other than
20 by a monetary penalty, which would go into the coffers
21 of the Workers' Compensation Board for public
22 purposes. If the Workers' Compensation Board is
23 dissatisfied with this line of reasoning it still, as I
24 have said already, it still has open to it a civil
25 remedy whereby it could go after one or both of the
26 defendants for reimbursement. This is not anything for
27 this Court to get into. This is not a civil

1 proceeding.

2 What I am going to do is place both the
3 defendants on a suspended sentence, so I suspend the
4 passing of sentence. There will be the same punishment
5 for both, there will be a probation order, and it will
6 be for a two-year period.

7 What this means, Mr. Sharp, and you may have
8 heard me say this to other people in court when you
9 were waiting about for your case, is that the
10 authorities will have the opportunity of requiring you
11 and/or the corporation to come back to court and ask
12 that the suspended sentence be revoked if any of the
13 conditions of this order are not completely obeyed. As
14 well, you and/or the corporation could be charged with
15 failing to obey the probation order, and that is a
16 whole separate matter which could amount to a criminal
17 prosecution.

18 The conditions are that each of you keep the
19 peace and be of good behavior -- I need say nothing
20 more about that. There will be a review of this matter
21 when the Court is next here, there will be a review on
22 October 28th, 1997, at 10 in the morning. If you have
23 to be out of the community for any work-related matter
24 or for any health reason that is fine. In any event,
25 there still will be a review in which case the
26 probation officer can give it to the Court.

27 You will have to, and the corporation through

1 you, will have to report to a probation officer no
2 later than 4 p.m. this coming Monday, August 18th.
3 Counselling is not a factor. We often do that in
4 criminal cases, but it is not a factor here.

5 What I have in mind now is for each of you to do
6 community service work and a lot of it. There is the
7 ability to do community service work. It can be done
8 through the -- by example only, and I do not intend to
9 be exhaustive -- but it could be done by the loan of
10 equipment to some public body, even the government for
11 its purposes; or you might want to use the equipment
12 yourself for some public purpose. There are actually
13 many, many ways in which you and your equipment, and
14 for that matter the lodge, could help the public. I
15 could even see the lodge being used as a facility for
16 some sort of public conferences or whatever. But these
17 are simply ideas. That is up to the probation officer
18 to look into it in more detail and then to direct you
19 and the corporation to follow.

20 The community service work will be when and as
21 directed by the probation officer and to the
22 satisfaction of the probation officer. It is that
23 person who will determine if the work is adequate and
24 suitable. The number of hours will be 200 hours for
25 you and 200 hours for the corporation for a total of
26 400 hours. The maximum I could impose by law is 240
27 hours in each case; this comes close to the maximum.

1 Mr. Regel, is there anything more along the
2 creative lines, to borrow your terminology, that might
3 be incorporated into the probation order?

4 MR. REGEL: Not that I can think of at this
5 time, Your Honour.

6 THE COURT: In a case this summer, a judge
7 directed an accused to take out a newspaper ad for
8 purposes related to that particular matter, and at the
9 expense of the offender. Is there anything of that
10 sort which might benefit the Workers' Compensation
11 Board or the public generally?

12 MR. REGEL: I know that's coming very close to
13 a forced apology.

14 THE COURT: No, it is not. No, I am not
15 suggesting that there be a forced apology, which I am
16 sure as you were about to say has been held to be
17 unlawful by our Supreme Court sitting in its appellate
18 capacity. No, this was an ad, and it was an ad that
19 was more along the lines of why certain conduct should
20 not occur.

21 MR. REGEL: Okay. If I can have a moment with
22 the safety officer, Your Honour, I'll inquire whether
23 that will be of assistance.

24 THE COURT: It should be remembered before you
25 say anything that any of the conditions of this order
26 can be altered from time to time, and for that matter
27 conditions can be added to it or taken away from it.

1 Is there anything on your mind right now that might be
2 incorporated?

3 MR. REGEL: I'm told that it may be of some
4 assistance if an ad like that were placed to inform
5 others that additional precautions have to be taken and
6 may have been taken in the area in the past when
7 dealing with crossing over ice, and that would go some
8 distance toward achieving general deterrence as well
9 which is, as you've stated, the operative sentencing
10 principle here.

11 THE COURT: Where would the ad be taken out?
12 What is the name of the local newspaper?

13 MR. REGEL: I am not aware of that, Your
14 Honour.

15 MR. SHARP: The Kivaliq News.

16 THE COURT: Is there a representative from
17 that paper in the courtroom? I am not actually trying
18 to generate business for the private newspaper, but you
19 happen to be here. So what is the name the paper?

20 AN UNIDENTIFIED MAN: The Kivaliq News.

21 THE COURT: How do you spell that?

22 AN UNIDENTIFIED MAN: K-I-V-A-L-I-Q.

23 THE COURT: Is that associated with Northern
24 News Services?

25 AN UNIDENTIFIED MAN: It's a regional company.

26 THE COURT: And that is the only
27 territorial-wide paper that we have here, isn't it?

1 AN UNIDENTIFIED MAN: News North is the territorial
2 paper, this is just a regional paper.

3 THE COURT: Yes, but Northern News Services is
4 the only territorial operation that we have, isn't it?
5 And this is your regional paper, like The Drum is in
6 Inuvik and in Yellowknife and et cetera.

7 AN UNIDENTIFIED MAN: Yes.

8 THE COURT: Okay. What approximately does the
9 full-page ad cost, without pinning yourself down or
10 limiting yourself? Can you give me some guidance?

11 AN UNIDENTIFIED MAN: Probably about \$1,200.

12 THE COURT: The defendants will take out a
13 full-page advertisement. I would like it to be done
14 before the ice freezes. When does the ice usually
15 freeze around here? In Yellowknife it is November,
16 December. When does it happen here in fresh water?

17 MR. SHARP: It will start freezing the end of
18 September.

19 THE COURT: I do not want to make it too soon
20 because of the financial hardship. That is why I want
21 to extend it to some months, sir.

22 By the end of December, 1997, the defendants
23 will take out a full-page advertisement in a
24 territorial-wide circulated newspaper; by the default
25 it becomes the News North. The heading of the
26 advertisement will be -- and I look to your safety
27 officer here, Mr. Regel, for some guidance. What would

1 be the most catchy title? Something that will catch
2 the attention of the public. Your safety officer must
3 go to public safety awareness sessions, and he would
4 have an idea I think better than I would.

5 MR. REGEL: Or better than I would, perhaps
6 he's in the court, Your Honour.

7 THE COURT: And his name for the record. I
8 know him, but his name for the record.

9 MR. REGEL: It's Ron Simpson, and the other
10 safety officer here is David -- I'm not sure I'm
11 pronouncing it right, he can correct me if I'm wrong --
12 Qirqqut.

13 THE COURT: What heading would these gentlemen
14 like? What will they suggest?

15 MR. SIMPSON: Well, I only suggest you get
16 together with this gentleman here, he's the man -- We
17 could have a pamphlet out, it does deal with ice
18 safety, but something catchy, Your Honour. Maybe this
19 fella's the best, work with him.

20 THE COURT: I have an idea how to did this.
21 You will take out an ad on the subject of ice-crossing
22 safety, the title to be as directed by the probation
23 officer in cooperation with yourself; and I am
24 referring when I say "yourself," for the record to the
25 accused, Keith Sharp.

26 Anything more from the Crown prosecutor?

27 MR. REGEL: No, Your Honour.

1 THE COURT: Mr. Sharp, is there anything more
2 about this at this time, remembering that any part of
3 it can be adjusted as it need may be from time to
4 time. The only monetary cost will be the cost of the
5 ad.

6 MR. SHARP: I'm still in a little bit of shock
7 there, Your Honour, but I like the idea of the ad, and
8 I'll put a write-up in there myself about ice safety.
9 You know I'd like to put it in the local context that I
10 know people in this area will understand.

11 THE COURT: It sounds like a good idea. What
12 about the 200 hours by each of you? I am thinking of
13 100 hours by each of you within four months of today
14 with the balance to be four months thereafter. Does
15 that seem reasonable to you or is that too many hours?

16 MR. SHARP: No, that's no problem, Your
17 Honour.

18 THE COURT: Okay, that is the way it will be.
19 Does the Crown have anything further?

20 MR. REGEL: No, I don't, Your Honour.

21 THE COURT: Anything more from you,
22 Mr. Sharp?

23 MR. SHARP: No, Your Honour.

24 THE COURT: You will have to remain here to
25 sign the probation order. There will be one order, but
26 both the defendants will be on the one order. The
27 clerk will leave a copy with you, and then after you

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sign it you are free to go.

Mr. Sharp will have to, Mr. Clerk, sign in two capacities; in his individual capacity and then his capacity as president and director of the company.

THE CLERK: Yes, Your Honour.

**Certified Pursuant to Practice Direction #20
dated December 28, 1987**



**Joel Bowker
Court Reporter**