

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN



- v -

HER MAJESTY THE QUEEN as represented by the
COMMISSIONER OF THE NORTHWEST TERRITORIES
(hereinafter referred to as the "GNWT")

Transcript of the Oral Reasons for Sentence of The
Honourable Judge B.A. Bruser, sitting in Yellowknife, in the
Northwest Territories, on the 25th day of March, A.D. 1998.

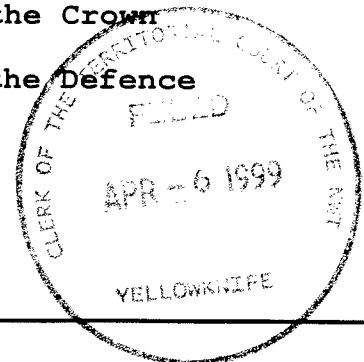
APPEARANCES:

Mr. A. Regel:

Counsel for the Crown

Mr. E. Johnson, Q.C.:

Counsel for the Defence



1 THE COURT: Good morning. Can we begin with the
2 Safety Act matter or is there something else that
3 could be brief and should have priority?

4 MR. REGEL: That's fine with me, Your Honour.

5 THE COURT: Right now I'm focused on that and I
6 would prefer to do it. Does the Crown have anything
7 further?

8 MR. REGEL: No, Your Honour.

9 THE COURT: Anything more from the defence, Mr.
10 Johnson?

11 MR. JOHNSON: No, Your Honour.

12 THE COURT: I begin by thanking Crown counsel and
13 defence counsel for their helpful materials. It has
14 simplified the task somewhat, although the
15 sentencing, nevertheless, remains a difficult one. I
16 also thank both counsel for their well-prepared and
17 thorough submissions. They represented their
18 respective interests in a highly competent manner.

19 The defendant is the largest employer in the
20 Northwest Territories. It is the Government of the
21 Northwest Territories.

22 The event in question arose on February 15,
23 1998. The limitation period for this type of offence
24 is one year under the applicable statute. The charge
25 was sworn February 12, 1999. Yesterday Crown counsel
26 gave reasons for why the matter did not result in a
27 formal charge at an earlier date.

1 The charge is contrary to the Safety Act of the
2 Northwest Territories, legislation enacted by the
3 defendant. The charge is that it, as an employer,
4 did fail to take all reasonable precautions and adopt
5 and carry out all reasonable techniques and
6 procedures to ensure the health and safety of every
7 person in its establishment.

8 There are a broad range of facts which have gone
9 into the charge. Yesterday the Crown said that it
10 could have charged the defendant with a number of
11 offences but chose to use the one which we are now
12 concerned about. Nevertheless, I am being invited to
13 take into account all the circumstances as alleged
14 and agreed upon.

15 The agreed facts are set out in Exhibit 1 which
16 is an Agreed Statement of Facts. After the Crown
17 read the facts into the record yesterday, defence
18 counsel added some facts, none of which have been
19 placed in dispute by the Crown.

20 The Agreed Statement of Facts consists of 39
21 paragraphs. I do not intend to read them again; this
22 was done yesterday. As well, the exhibit is a public
23 document and is available for examination by the
24 media and by interested members of the public.

25 Nevertheless, even though I do not propose to
26 read them again in court, the exhibit, Madam
27 Reporter, will form part of the reasons in the

1 sentencing should there be a transcript prepared. As
2 well, the extra facts added verbally by defence
3 counsel will also form part of the facts should there
4 be a transcript.

5
6 **THE FACTS:**

7
8 HER MAJESTY THE QUEEN and the GNWT, through their
9 respective counsel agree upon the following facts and
10 dispense with formal proof of same:

- 11
12 1. The GNWT is the largest employer in the
13 Northwest Territories.
- 14
15 2. The GNWT through its Arctic Airports Division
16 was, at all relevant times, responsible for the
17 operation and maintenance of Nanisivik Airport and
18 the roads between the Nanisivik Airport, the
19 Nanisivik Mine, and Arctic Bay.
- 20
21 3. The GNWT employed, at all relevant times, Iniaq
22 (Aiyow) Qavavaug, Andrew Taqtu, and Johnny
23 Attagutsiak as Airport Maintainers at the Nanisivik
24 Airport.
- 25
26 4. The Airport Maintainers at the Nanisivik Airport
27 are required to maintain the road infrastructure and

1 keep it open at least six days a week from 700 hrs to
2 1900 hrs, and to ensure the runway is clear enough
3 for jet aircraft to land.

4
5 5. Terrain around the Nanisivik Airport and the
6 road system has steep inclines and high elevations
7 with severe drop-offs. Weather conditions with
8 regard to visibility and snow accumulation is among
9 the severest in the Northwest Territories.

10
11 6. In order to safely and properly maintain the
12 Nanisivik Airport and road system, a minimum of five
13 Airport Maintainers are required. For about seven
14 months prior to February 15, 1998, there were only
15 three Airport Maintainers. They were all employed on
16 a casual basis.

17
18 7. The GNWT has a policy that all Airport
19 Maintainers are to be specially trained and "Arctic
20 Airport Certified" in order to permit them to safely
21 carry out the job. None of the three Airport
22 Maintainers at the Nanisivik Airport were so trained
23 and certified.

24
25 8. On or about the 14th day of February, 1998, Mr.
26 Qavavaug in his capacity as an Airport Maintainer and
27 in consultation with Johnny Attagutsiak, the senior

1 Airport Maintainer, determined that it was impossible
2 to conduct a snow clearing operation of the Nanisivik
3 Airport road due to white-out conditions resulting
4 from high winds.

5
6 9. Mr. Qavavaug was born on December 25, 1943.

7
8 10. On February 15, 1998, Mr. Qavavaug advised Mr.
9 Attagutsiak that he would begin clearing the
10 Nanisivik Airport road at 1300 hrs with the use of
11 the GNWT's Case 821B Loader.

12
13 11. At approximately 1600 hrs on February 15, 1998,
14 Mr. Qavavaug returned to Nanisivik to advise Mr.
15 Attagutsiak that the D6D Caterpillar Bulldozer
16 (hereinafter "the bulldozer") would have to be used
17 to complete the snow clearing operation at the
18 junction of the highways between Nanisivik and Arctic
19 Bay. Mr. Attagutsiak authorized Mr. Qavavaug to
20 arrange for Andrew Taqtu to operate the bulldozer.

21
22 12. Mr. Taqtu drove his snowmobile from Arctic Bay
23 to the Nanisivik Airport to get the bulldozer from
24 the airport. On his way to the Nanisivik Airport,
25 Mr. Taqtu passed Mr. Qavavaug at mile marker 15 of
26 the Arctic Bay highway.

27

1 13. Mr. Taqtu began clearing snow with the bulldozer
2 on February 15, 1998 some time between 1730 hrs and
3 1800 hrs and was within 5 km of the junction of
4 highways between the Nanisivik Mine and Arctic Bay
5 some time between 1830 and 1900 hours.

6
7 14. For reasons unknown, Mr. Qavavaug returned to
8 that section of the road where Mr. Taqtu was clearing
9 snow with the bulldozer. Mr. Taqtu was able to see
10 the lights on the roof of the Case 821B Loader, but
11 was unable to see the rest of the loader or Mr.
12 Qavavaug. The view was obstructed by a high snow
13 bank window created by the clearing operation that
14 was between the bulldozer and the loader.

15
16 15. At approximately 1900 hrs, Mr. Qavavaug left his
17 loader and walked across the snow bank between Case
18 821B Loader and the bulldozer.

19
20 16. Mr. Taqtu was backing the bulldozer up. He did
21 not see Mr. Qavavaug approach the bulldozer. Mr.
22 Qavavaug's clothing was caught in the bulldozer's
23 track trapping him between the bulldozer and the snow
24 bank. As the bulldozer backed up, Mr. Qavavaug's
25 left leg was caught under the bulldozer's track and
26 almost completely severed.

27

1 17. It is not known whether Mr. Qavavaug was
2 standing on the snow embankment and lost his footing
3 and fell into the path of the bulldozer or if he
4 walked into it.

5
6 18. Mr. Taqtu, who was unaware of Mr. Qavavaug's
7 presence, drove the bulldozer forward for
8 approximately 50 feet. When he began backing up
9 again, Mr. Taqtu noticed Mr. Qavavaug laying in the
10 middle of the road approximately 50 feet away. Mr.
11 Taqtu continued backing up until he was about 25 feet
12 away from Mr. Qavavaug. He then realized Mr.
13 Qavavaug was injured. Mr. Taqtu ran to Mr.
14 Qavavaug's assistance.

15
16 19. When Mr. Taqtu reached Mr. Qavavaug, he saw
17 blood around Mr. Qavavaug's mouth and left leg and
18 snow on his face. Mr. Qavavaug advised Mr. Taqtu
19 that he ran over him.

20
21 20. At the time of this incident it was dark. The
22 temperature was -36 degrees Celsius.

23
24 21. Mr. Taqtu was not trained in First Aid.

25
26 22. There was no radio or other communication device
27 on the bulldozer. The radio on the loader could only

1 communicate with the Nanisivik Airport. No one was
2 on duty at the airport the time of the accident.

3
4 23. Mr. Taqtu advised Mr. Qavavaug that he would
5 have to leave him alone and take the loader to
6 Nanisivik to get help. The Nanisivik Mine is
7 approximately 3 km and Arctic Bay was about 28 km
8 from the accident.

9
10 24. Mr. Taqtu went straight to the Nanisivik Mine
11 Health Centre and advised the Nurse-in-charge, Mary
12 Paule Carriere, of the accident. Ms. Carriere
13 immediately contacted Boyce Wellman, the Mobile
14 Foreman for the Nanisivik Mine, for assistance. It
15 was now 1920 hours. The three proceeded to the
16 accident scene in one vehicle.

17
18 25. When they arrived at the scene, Mr. Taqtu ran to
19 Mr. Qavavaug calling his name. Mr. Qavavaug had
20 dragged himself approximately 5 feet from where Mr.
21 Taqtu had left him.

22
23 26. Ms. Carriere pronounced Mr. Qavavaug dead at the
24 scene at 1942 hours.

25
26 27. The RCMP and the Arctic Bay coroner were notified
27 and arrived at the scene at approximately 2100 hours.

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28. It was noted that a major artery in Mr. Qavavauq's left leg was severed and he bled to death.

29. The investigations into the incident conducted by the Worker's Compensation Board and the GNWT revealed the following safety deficiencies in the equipment of the GNWT:

- The GNWT has a training program for persons working with heavy equipment specifically at the airports. None of the workers involved in this incident had the training usually provided by the GNWT in this regard. In addition, at the time of this incident, the Airport Maintainers at the Nanisivik Airport did not have any safety training, hazard identification or education in how to handle emergency situations;

- There was no health and safety committee established by the GNWT to act as an internal auditor of the GNWT's health and safety program at the Nanisivik Airport.

- Around the time of this incident the GNWT failed to provide an on-site supervisor at the Nanisivik Airport to set standards of performance and ensure

1 safe working conditions were always observed.

2
3 - Heavy equipment units in Nanisivik were in poor
4 condition due to neglect, lack of service and
5 improper use. The shortcomings in this regard
6 include:

7
8 - The absence or inoperability of equipment
9 designed to enhance safety of operators, such as a
10 means of communicating between operators of different
11 items of heavy equipment, and between operators of
12 heavy equipment and those in a position to render
13 assistance in the event of an emergency;

14
15 - A back-up alarm, though present on the bulldozer
16 involved in this accident, was not working;

17
18 - Windows and mirrors of the bulldozer involved in
19 the incident were marked or broken, thus restricting
20 view.

21
22 - Back-up lights and rotating beacons on some of
23 the equipment not involved in the accident were not
24 operative.

25
26 30. Action was taken by GNWT to correct each of the
27 deficiencies identified during the investigation,

1 shortly after the accident, except for radio
2 communications. In December of 1998 the GNWT
3 installed radio or other forms of electronic
4 communication in all its heavy equipment at the
5 Nanisivik Airport. The GNWT spent between \$20,000.00
6 and \$30,000.00 on remedying the deficiencies.

7
8 31. The investigation also revealed a number of
9 deficiencies in the practice, policies and procedures
10 of the GNWT at the Nanisivik Airport, some of which
11 may have contributed to the specific deficiencies
12 above not being detected prior to the within
13 accident. These included:

- 14
15 - The lack of daily inspections of equipment;
16 - Sporadic and incomplete circle checks of
17 equipment.
18 - The absence of equipment service records on
19 site;
20 - The absence of daily equipment inspection record
21 sheets;
22 - The lack of maintenance records of equipment;
23 - The absence of a record of parts inventory for
24 equipment;
25 - At the time of the accident there were only
26 three maintainers on staff at the airport. Some of
27 the reports generated after the accident, which

1 reports were based in part on statements of the
2 maintainers, indicated this was not a sufficient
3 number of maintainers to carry out their duties in a
4 manner that did not compromise the safety of the
5 workers;

6
7 - Although reflective vests were available to the
8 Airport Maintainers at the Nanisivik Airport, the
9 GNWT failed to ensure the workers used them; and

10 - There were no policies and procedures being
11 enforced by the GNWT at the Nanisivik Airport to
12 ensure the safety of workers working alone.

13
14 32. The GNWT was aware of some of the above-noted
15 safety deficiencies at the Nanisivik airport but
16 failed to take appropriate action before the
17 accident.

18
19 33. Generally-accepted industry standards and GNWT
20 policy both require that all heavy equipment such as
21 the bulldozer be equipped with a radio or other form
22 of electronic communication device.

23
24 34. A medical opinion was obtained by WCB with
25 respect to whether Mr. Qavavaug would likely have
26 survived if Mr. Taqtu had First-aid training or if
27 the bulldozer and loader were equipped with the

1 appropriate communications equipment. It was the
2 doctor's opinion that while the likelihood of
3 survival is substantially increased if proper medical
4 attention is provided within an hour after the
5 injury, "given the significance of this injury, the
6 possibility of multiple injuries, the temperature,
7 his underlying medical conditions [diabetic and
8 hypertensive] and the transport times [to Iqaluit],
9 it is extremely unlikely that Mr. Qavavaug could have
10 survived this injury even without the initial
11 20-minute delay."
12

13 35. The GNWT's Security and Protective Services
14 Officer's function is to assist regional managers of
15 airport operations in safety, security and
16 fire-related issues and accident/incident
17 investigations. The GNWT's Security and Protective
18 Services Officer was sent from Rankin Inlet to
19 Nanisivik on or about February 20, 1998 to provide
20 training to the equipment operators. He was
21 specifically directed by his superiors not to
22 interview any of the parties involved in the
23 accident.
24

25 36. On the GNWT's Security and Protective Services
26 Officer's return to Rankin Inlet, approximately four
27 weeks after the accident he was instructed to write a

1 report on this accident.

2
3 37. As a result of this incident, the GNWT also
4 conducted other studies or investigations to reassess
5 and upgrade its Occupational Health and Safety
6 practices at the Nanisivik Airport and at its
7 airports generally. These investigations included
8 reports by the Heavy Equipment Superintendent, a
9 contracted trainer and the GNWT's safety advisor,
10 Earl Gaetz. In July of 1998, Mr. Gaetz conducted
11 safety training sessions at the Nanisivik Airport
12 site for four of the staff, including First Aid, CPR
13 and Workplace Safety.

14
15 38. Mr. Qavavauq is survived by three infant
16 children: Roxy Peter Kanayuk (born July 3, 1983),
17 Gregory Moses Nauyakvik (born 16th March, 1987), and
18 Peter Jr. Zacheriah Qavavauq (born 3rd September,
19 1989), and three adult children Tahpsa Kasanask,
20 Irene Quavavauq, and Judy Quavavauq. At the time of
21 his death, Mr. Quavavauq was separated from his wife
22 Leah Qavavauq.

23
24 39. As a result of this incident, Mr. Taqtu
25 experienced emotional shock and was required to take
26 extended sick leave for three weeks.

27

1 AGREED VERBAL FACTS:

2
3 MR. REGEL: Just this morning I was given some
4 details with respect to the amounts that the WCB
5 expects to be paying out in this claim and I talked
6 to Mr. Johnson and we thought it was appropriate to
7 put that before the Court as well.

8 With respect to the three infant children, the
9 including expected to be made there is \$56,200.
10 Because Mr. Qavavaug and his widow were separated at
11 the time, and as far as WCB is aware he was not
12 paying maintenance to her, they have disallowed her
13 claim. She has, however, appealed the disallowance
14 and if she's successful in appeal, then the
15 calculations are fairly straightforward and they are
16 estimating that it's approximately \$151,938 that the
17 widow would be receiving. As I say, it's been denied
18 at this stage and it's under appeal. Those are the
19 facts that are alleged, Your Honour.

20 THE COURT: Mr. Johnson, do you have any further
21 facts that you would like to add to this?

22 MR. JOHNSON: Yes just a few, Your Honour. The
23 Government of the Northwest Territories took over the
24 operation of 52 airports in the Northwest Territories
25 starting in 1991 when the Arctic B and C Airports
26 were transferred and there was 43 of these B and C
27 Airports including the one at Nanisivik that is

1 before the Court today.

2 The Department also took over the A Airports and
3 there are nine of those, that includes all the major
4 centres of Yellowknife, Iqaluit, Hay River, etc.

5 In 1975, the Department of Transportation is
6 also responsible for the maintenance of 2200
7 kilometers of all-weather road in the Northwest
8 Territories, 1300 kilometers of winter road, five
9 ferry crossings, as well as all the infrastructure
10 such as mechanical shops and that type of thing that
11 would go with maintaining the roads.

12 Each region varies in how the airports are
13 maintained and operated. In some regions there are
14 contracts that are entered into with contractors.
15 For instance, generally in that area of Nanisivik
16 there are contracts with the Hamlets where the
17 Hamlets then provide the services which are then
18 built into the contracts. There would be safety
19 monitoring that would be done by the Government of
20 the Northwest Territories.

21 Now in this particular case, this airport had
22 previously been maintained by the Government of
23 Canada up until 1991 and the Government of Canada had
24 contracted the services out to Narwhal.

25 The Government of the Northwest Territories,
26 prior to 1991, was involved in the maintenance of the
27 road between the community and the airport and after

1 the Government of the Northwest Territories took
2 over, both the road maintenance and airport
3 maintenance operations were combined and were handled
4 by direct employment as opposed to a contractor with
5 the Government.

6 Just another note, I think this comes out of the
7 case that my friend has in his authorities which was
8 disposed of by Judge Brown, there was some indication
9 in that case about a lack of contact between the
10 employer and the deceased family after the accident
11 and the judge expressed some concern. And I'm
12 advised that in this case an employee of the
13 Government by the name of Methusalah Kunuk, who is
14 the Regional Superintendent responsible for this
15 airport who is Inuit and he's very well respected, he
16 handled the relations with the family after this
17 accident and assisted in every way possible to make
18 contact with Worker's Compensation to make sure that
19 Government benefits were paid as soon as possible,
20 and to ensure that the family received counselling
21 and all the support necessary to deal with this
22 tragedy. And that's all the additional facts that I
23 have there, Your Honour.

24 THE COURT: The facts are extremely serious. They
25 fall toward the upper end of responsibility. The
26 maximum fine available is \$500,000. The Crown is
27 seeking a fine in the range of \$200,000. The defence

1 says this is too high and that it should be more in
2 the range of \$125,000. Therefore, I am not dealing
3 with a joint submission as is sometimes the case in
4 sentencing for this type of regulatory offence.

5 The position of the prosecution in support of a
6 high fine is as follows.

7 The Crown acknowledges that the defendant has
8 entered a guilty plea and although the Information
9 was sworn at a late date, it always has been the
10 intention of the accused and the understanding
11 between the parties that a guilty plea would be
12 forthcoming. The Court, therefore, affords the
13 defendant credit for what we often say in sentencing
14 is a prompt plea of guilty.

15 The Crown says that the single count, however,
16 takes into account many aggravating factors, all of
17 which, when put together, direct the Court toward a
18 fine of around \$200,000.

19 The cases vary. The booklets filed by the Crown
20 and by the defence make this abundantly clear. Crown
21 counsel has correctly, in my view, identified the
22 reality that Legislatures throughout this country are
23 increasing maximum penalties for infractions of
24 occupational health and safety laws.

25 Crown counsel has also correctly identified the
26 fact that the Courts are increasingly imposing hefty
27 penalties for such infractions.

1 The prosecution says that the primary goal of
2 sentencing in cases like this ought to be the need to
3 discourage others from committing related offences.
4 The main goal, in my view, is public protection.
5 This is what the aim of the sentencing process ought
6 to be about. In order to achieve this end, it is
7 important to signal a clear, loud, message to others
8 that this sort of conduct will not be tolerated.

9 The Crown says that the Government of the
10 Northwest Territories knew of the problems which
11 presented dangers to property and to lives before the
12 fatality on February 15th, 1998. The agreed facts
13 appear to bear this out.

14 In 1993, the maximum fine was increased from
15 \$10,000 to the current \$500,000. This shows that the
16 people of this jurisdiction, through their elected
17 representatives, sought to protect the population
18 through the sanction of severe penalties for
19 violations of the applicable legislation. Mr. Regel,
20 on behalf of the prosecution, argues that the
21 Government of the Northwest Territories is in a
22 special position. After all, he says, it made the
23 law. It increased the maximum penalties. It was
24 trying to set a standard for industry and for others.
25 It is a role model, according to Mr. Regel, and if
26 industry generally is to follow the law, then the
27 Government must be seen by everyone to follow it too.

1 I agree.

2 Mr. Regel also has identified the large size of
3 the Government. I have already remarked about this.
4 The large size of the defendant in a case like this
5 is a factor for the Court to take into consideration
6 and I do so. It follows from this that the
7 Government can afford to pay a high fine, but what is
8 the Government? It is ultimately the tax payers who
9 will be paying the price.

10 Mr. Regel has said that if there were no
11 budgetary restraints in February 1998 or in the
12 period leading up to it, then why did the Government
13 not spend more money where it ought to have been
14 allocated, namely, public protection through
15 occupational health and safety legislation?

16 The other branch of Mr. Regel's argument is that
17 the Government might not have had the money through
18 fiscal restraint or otherwise or having it did not
19 wish to spend it.

20 I accept the defence argument that there were no
21 fiscal restraints at the material time, but rather it
22 is more a case of priorities not having been
23 accurately targeted in a timely manner. I will have
24 more to say about this shortly.

25 Mr. Regel says that the scale of "criminality"
26 is high. I interpret the use of the word
27 "criminality" to be intended not to convey to the

1 public that the Government of the Northwest
2 Territories is a criminal, but rather the behavior of
3 the Government is aggravating; that is, more serious
4 than many cases of its type. This Court is not
5 sentencing the Government as being a criminal or for
6 having engaged in criminal behavior contrary to the
7 Criminal Code of Canada.

8 Mr. Regel has said that the Government spent
9 twenty to thirty thousand dollars to remedy the
10 deficiencies which led to the fatality. He says that
11 had the money been spent earlier, we would likely not
12 be here today.

13 Because the money was not spent earlier and
14 because of all the deficiencies in safety, which are
15 identified in the Agreed Statement of Facts, the
16 Crown argues that death or some other lesser form of
17 accident was foreseeable. In other words, there was
18 a substantial risk of harm to employees in the
19 Nanisivik operation. I agree. The facts appear to
20 bear this out.

21 Mr. Regel has alleged a record. There are two
22 convictions against the Government of the Northwest
23 Territories. One is what has commonly come to be
24 called the Sewage Lagoon case. In that case, Judge
25 Bourassa imposed a fine of \$49,000 and directed the
26 Government to pay \$40,000 toward an environmental
27 study. There was an appeal and on November 14th,

1 1994, the fine was increased to \$100,000. As well,
2 the Government was directed to pay \$100,000, as I
3 understand the submissions yesterday, to promote
4 conservation measures and \$10,000 in costs were
5 directed to be paid. That was for an environmental
6 prosecution where there was no loss of human life.

7 The other conviction was in 1996. Chief Judge
8 Halifax sentenced the Government to pay a fine of
9 \$3,000 and to pay \$25,000 by way of environmental
10 measures. There were other aspects of the sentencing
11 that did not involve the payment of money by the
12 Government.

13 The defence says that this is the first time the
14 Government has been before the Court with an
15 occupational health and safety conviction resulting
16 in the loss of a life.

17 Mr. Johnson, on behalf of the Government, has
18 argued that the Department of Transportation has an
19 excellent record for safety. As for the issue of
20 fiscal restraint with respect to safety measures, Mr.
21 Johnson has informed the Court that fiscal rollbacks
22 came into effect in April, 1996. The Department of
23 Transportation was, it appears, affected by the
24 rollback measures, but there were no cutbacks to
25 occupational health and safety. I have already said
26 that I accept this submission. Were it not so, were
27 there cutbacks to safety measures, the fine which I

1 am about to impose would have been markedly higher.

2 Mr. Johnson has said that for about seven months
3 before the accident, staff turnover in Nanisivik was
4 high and there was no on-site supervisor who resided
5 in Nanisivik. The site, it is said, had a higher
6 turnover than other communities primarily because of
7 bad climatic conditions and, I infer, due to the
8 isolation.

9 About the time of the incident, there were
10 studies underway to determine if the Government
11 should contract out the sort of work that the
12 deceased employee and his colleagues were doing in
13 February, 1998. The defendant admits that the focus
14 and the priorities were not appropriate at the
15 relevant time and, hence, the plea of guilty.

16 The problem then was not one of the Government
17 not wanting to spend money where it ought to be
18 spent, but rather of not prioritizing in appropriate
19 ways.

20 Although there was no site supervisor in
21 Nanisivik on a daily and a weekly basis, an
22 individual in a supervisory capacity did visit from a
23 neighboring community from time to time. The
24 Government felt that the three maintainers who were
25 on site (although there ought to have been five) were
26 sufficiently knowledgeable to carry out the duties
27 and tasks assigned to them, but the defendant

1 acknowledges that having less than five at work could
2 have been a factor in the fatality.

3 The defence says that heavy equipment operation
4 is a high-risk activity. Yesterday during an
5 exchange with Mr. Johnson I agreed, but pointed out
6 that there are two sides to this. It is a high-risk
7 activity and, therefore, from time to time people are
8 injured and killed due to the dangerous nature of the
9 work. On the other side, it is for this very reason
10 that safety priorities must be met in a timely
11 manner; herein lies a significant aggravating factor.

12 The Assistant Deputy Minister of the Department
13 of Transportation had the last word yesterday after
14 counsel were finished. I accept what he had to say.
15 He said the Department of Transportation, and hence
16 the Government of the Northwest Territories, takes
17 safety and health issues very seriously. The
18 Department of Transportation has a great deal on its
19 plate.

20 The problem I have with this line of reasoning
21 is that if the Department has too much to be able to
22 handle, then it has to find more money or more
23 employees or it has to assign its priorities in the
24 manner which I earlier mentioned. It recognizes that
25 it is spread thin, but human safety ought never to be
26 compromised by concerns of this type.

27 Mr. Vician said that supervisors have a duty to

1 enforce health and safety laws, yet during the
2 material time there was no on-site supervisor. The
3 supervisors have, as part of their responsibilities,
4 the mandate to ensure that safety procedures are
5 maintained at all times. This was not done.

6 Finally, I accept the representation made by Mr.
7 Vician that not only is this type of accident
8 extremely rare, but it was remedied very quickly;
9 although I note from the facts that the remedial
10 process, while commenced quickly, did not conclude
11 for many months following the fatality.

12 At Tab 3 of the book of authorities filed by the
13 defendant, there is the case of the Crown against
14 Giant Yellowknife Mines Ltd. Judge Bourassa of this
15 court quoted from the leading case of the Crown
16 against Cotton Felts Ltd. This is an Ontario Court
17 of Appeal judgment from 1982. The Giant case was
18 from 1991. The Cotton Felts judgment, in my view, is
19 still sound law and I adopt the principles in it. In
20 its judgment, the Ontario Court of Appeal held that,

21
22 In our complex interdependent modern
23 society, such regulatory statutes are
24 accepted as essential in the public
25 interest. They ensure standards of
26 conduct, performance and reliability by
27 various economic groups and make life
tolerable for all. To a very large extent,
the enforcement of such statutes is
achieved by fines imposed on offending
corporations. The amount of the fine will
be determined by a complex of
considerations including the size of the
company involved, the scope of the economic

1 activity in issue, the extent of actual and
2 potential harm to the public, and the
3 maximum penalty prescribed by statute.
4 Above all, the amount of the fine will be
5 determined by the need to enforce
6 regulatory standards by deterrence.

7
8 Further on, the Ontario Court of Appeal added,

9
10 It is essential for the proper functioning
11 of our society for citizens at large to
12 expect that basic rules are established and
13 enforced to protect the physical, economic
14 and social welfare of the public.

15
16 In a 1993 judgment of the Ontario Provincial Court at
17 Tab 7 at page 9, the Court held that the purpose of
18 legislation like this and the sentencing process are,
19 "not to punish the accused, but to give notice to the
20 community," that it disapproves of the sort of
21 behavior and thus,

22
23 To achieve a change in actions and
24 attitudes, not only by the individual
25 concerned, but by all members of that
26 particular trade or group of people. In so
27 doing, the objectives of the regulatory
offence can be achieved; that is, the
protection of the health and welfare of the
public.

28
29 I return to aspects of the submissions made by Mr.
30 Johnson. As has been mentioned, he argues that the
31 Government did not cut back on safety expenditures.
32 The Assistant Deputy says it was a case of misguided
33 priorities or, to put it differently, of priorities
34 not being in the right places at the right time.
35 Through the misapplication of priorities, the safety

1 of employees was, in fact, endangered. A life was
2 lost.

3 The purpose of the sentencing as should be clear
4 by now is not to redress the family of the deceased
5 through monetary compensation, rather it is to
6 protect the public through an appropriate penalty.

7 Under the appropriate legislation in Section
8 22(6), it is provided that,

9 Every fine imposed under this Act shall,
10 when collected, be paid over to the board
11 and form part of the accident fund
12 established under the Worker's Compensation
13 Act.

14 This does not mean that the sentencing process is to
15 be seen as a collection vehicle for the Worker's
16 Compensation Board. Rather, it merely says that once
17 the Court has fulfilled its duty of imposing a fit
18 and proper fine, there is an administrative function
19 to be done which will see the fine being paid for the
20 benefit of the workers of the Northwest Territories.

21 Occupational health and safety laws mandate, and
22 I emphasize "mandate", carefully-planned and
23 well-supervised priorities. The dangers of inaction
24 or misapplication of priorities are too great and
25 must not be tolerated by anyone including Government
26 administrators. The Government of the Northwest
27 Territories has woefully failed to meet the very
objectives that it placed into law. If the
Government is not seen to be a safe employer then how

1 can industry be expected to respect and to obey the
2 law?

3 The sentence I impose must be seen by everyone:
4 By Government, by industry and by the general public
5 as meaningful. The fine must enhance respect for the
6 laws of the Government (ironically the defendant
7 before the Court).

8 While the principles of sentencing which I have
9 referred to are not difficult to understand, arriving
10 at a fit and proper sentence is a difficult task. If
11 there were a dozen judges seated with me, there would
12 likely be a wide range of fines.

13 I have concluded that the range, considering the
14 totality of the circumstances, should have \$200,000
15 as the bottom end. Allowing for the \$20,000 to
16 \$30,000 spent by the Government by way of remedial or
17 corrective measures, I sentence the Government of the
18 Northwest Territories to pay a fine of \$220,000. I
19 see this as a fine of around \$250,000, but I have
20 given the Government credit for monies paid as is
21 evident from the amount I have arrived at.

22 Is it necessary for the Court to deal with time
23 to pay? Is this something I need consider?

24 MR. JOHNSON: Yes, Your Honour. The Government is
25 moving through a fiscal year-end, March 31st, and in
26 order to accommodate that reality we would request
27 that the fine be paid over a period of three months.

1 THE COURT: Mr. Regel, do you have anything to say
2 about this?

3 MR. REGEL: I have no objection, Your Honour. I
4 have no objection.

5 THE COURT: Let's have a date certain for it. How
6 about the end of June, 1999? June 30th?

7 MR. JOHNSON: That will be fine, Your Honour.

8 THE COURT: June 30, 1999 to pay. Is there
9 anything more, Mr. Regel, that the Court need do in
10 this matter?

11 MR. REGEL: Not for myself, Your Honour.

12 THE COURT: Mr. Johnson, anything more?

13 MR. JOHNSON: No, Your Honour.

14 THE COURT: Again I thank counsel for their help.

15 MR. REGEL: If I might be excused, Your Honour?

16 THE COURT: Yes.

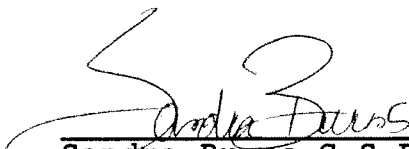
17 -----

18 Certified correct to the best of my skill
19 and ability (Subject to Editing by Presiding
20 Judge).

20

21

22


Sandra Burns C.S.R. (A)
Court Reporter

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