

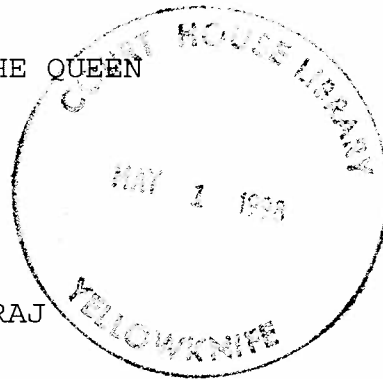
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

AZIZ KHERAJ



Transcript of the Reasons for Judgment
held by The Honourable Judge B. A. Bruser,
sitting in Resolute, in the Northwest Territories,
on Friday, the 3rd day of April, A.D., 1998.

APPEARANCES:

Ms. E. Bellerose:

Counsel for the Crown

Mr. J. Posynick:

Counsel for the Defence

1 THE COURT:

2 The Crown (also called the
3 prosecution) and the defence (Mr. Posynick and the
4 accused) have presented fair, thorough, and carefully
5 prepared cases. This is the third day of this trial.

6 From time to time, I did not allow some questions
7 to be asked or some answers to be given. This is a
8 normal part of the trial process and is especially
9 common the longer a trial becomes. The reason for this
10 is that as time goes on, there may be a greater chance
11 for the lawyers and for the witnesses to wander off the
12 trail.

13 The charge before the Court is that the accused,
14 not his company, but him as a person, on or about
15 February 1st, 1996, here at Resolute Bay, knowingly
16 used a forged document, namely, a business license, as
17 if it were genuine, that is, as if it were the real
18 thing or a true copy of the real thing.

19 There is a history to this proceeding. Some may
20 wonder how it is that this is before the Territorial
21 Court which I am part of. The charge was sworn on
22 August 7th, 1996, close to two years ago. It is not
23 very common in my experience to spend close to two
24 years to conclude a matter, and this is not a
25 particularly complicated matter; therefore, there might
26 be people who, unless I explain something of the
27 history, would think that the courts have been rather
28 turtle-like in concluding the matter.

1 On August 7th, 1996, the charge was sworn. The
2 charge was first read to the accused on November 7th of
3 that year here in Resolute Bay. The accused had been
4 given a summons to come here. It was given to him
5 August 15th and for one reason or another, perhaps
6 because the court does not come here very often, the
7 November date was chosen for him to be here and for it
8 to be read to him. He did not waste any time in
9 choosing, as was his right, to be tried in the Supreme
10 Court with a jury.

11 A preliminary hearing into the matter to determine
12 if there was enough evidence to justify a trial was
13 held on September 25th, 1997, at which time the accused
14 was ordered to stand trial. That is a delay of about
15 ten months. Taking into account that the court does
16 not come here very often relative to other communities
17 and the number of witnesses who had to be accommodated
18 and the documents, the ten-month period seems to be
19 reasonable and indeed, I have not heard the defence to
20 complain about it.

21 The accused changed his mind as he is allowed to
22 do. On December 19th, 1997, the accused elected (or
23 chose) to be tried in this court, and the Crown
24 prosecutor gave her consent on the same date. That
25 consent was required. The prosecutor who gave her
26 consent is not the same prosecutor before the Court
27 today.

1 The time period from the 19th of December, 1997,
2 to where we are now in April is not very long. These
3 are the reasons why, though, it has taken about two
4 years to complete the matter.

5 For those who are not parties, to this proceeding
6 but who may be interested in this judgment, it is
7 important to know, as the Crown knows and as the
8 accused knows, that I have followed legal principles
9 that in some aspects go back many centuries. One of
10 these principles of law is that the prosecution does
11 not have to prove its case to an absolute certainty.
12 Instead, what it has to do is to prove its case, as we
13 have heard in argument, beyond a reasonable doubt.
14 What does this mean? This means that for me to have a
15 reasonable doubt upon which to find the accused not
16 guilty, such doubt has to be founded or based on
17 reason. That reason has to have a foundation coming
18 from the evidence. I am not allowed to go about
19 gathering my own evidence and deciding on my own where
20 the chips may fall.

21 If, at the end of my assessment and weighing of
22 the evidence, I have strong suspicions, even a thousand
23 suspicions or even more than that but am not satisfied
24 of the accused's guilt beyond a reasonable doubt, I
25 have to find him not guilty.

26 From what I have said, it is apparent that the
27 prosecution has a heavy burden of proof, and it is

1 further apparent that the accused does not have to
2 prove to me that he is innocent. A finding of guilty
3 means that the accused committed the offence of using
4 the forged document as charged. A finding of not
5 guilty does not mean that I do not believe the
6 witnesses for the prosecution or any of them.

7 There is another principle which is important in
8 this case. Mr. Posynick already referred to it during
9 his argument. It comes from a Supreme Court of Canada
10 judgment called D.(W.), and it has to do with the
11 principle of credibility, that is, how to determine
12 issues of credibility. Mr. Posynick summarized what
13 the various principles from D.(W.) are. I will go over
14 them again but using my language.

15 If I believe the accused who said he did not do
16 it, I have to find him not guilty. If I do not believe
17 the accused but if his evidence raises a reasonable
18 doubt in my mind, I have to find him not guilty. If I
19 do not believe the accused and if his evidence does not
20 raise a reasonable doubt in my mind, I still have to
21 consider all the evidence in the trial to determine if
22 the prosecution has proven its case to the required
23 standard of proof beyond a reasonable doubt. Finally,
24 if I am unable to determine what or who to believe, the
25 benefit of the doubt has to go to the accused in which
26 case in a trial with a judge sitting alone as this one
27 is he has to be found not guilty; whereas if there were

1 a jury and the jury could not agree about what to do,
2 if some believed the accused was guilty and if even one
3 believed the accused to be not guilty, there could be
4 no verdict -- there would be a hung jury as it is often
5 called.

6 Another long-established principle has to do with
7 motive. We have heard quite a bit about motive
8 throughout this trial: motive by the accused to
9 falsify a document, motive by the accused to use a
10 false document, and motive by witnesses for the
11 prosecution to fudge the truth or otherwise not to
12 remember accurately because of bad blood between one or
13 more of them and the accused. The defence calls the
14 last part of this "bias."

15 While it may be useful for the Court to know about
16 any motive which an accused may have to commit a crime,
17 the prosecution does not have to prove motive. It is
18 simply not a standard that it has to meet, but, where
19 motive is established, it can often be helpful to the
20 Court in its assessment and weighing of all the
21 evidence.

22 The case for the prosecution is that the accused,
23 who is a Resolute Bay businessman, used a forged copy
24 of a business license in his dealings with officials of
25 the Northwest Territories Housing Corporation. It may
26 be more accurately stated that the Crown says that the
27 accused used a falsified copy of the document. I will

1 say more about this shortly. The Crown says that the
2 motive for doing so is connected to the accused's
3 ongoing need to make a profit in his business, Kheraj
4 Enterprises.

5 The accused is not charged with, forging any
6 document; therefore, the Crown need not prove that the
7 accused did so. For someone to be guilty of using a
8 forged or falsified document, certain things have to be
9 proven beyond a reasonable doubt. These include a
10 document which is forged or falsified, knowledge before
11 using it that it is forged/falsified, using it in some
12 manner and, in using it, doing so or passing it off as
13 if the document, or copy thereof in this case, were
14 genuine. A document that is forged is a false
15 document. There are any number of ways in which a
16 document can be falsified. The human imagination is
17 without limit.

18 During my assessment and weighing of the evidence,
19 I have had to pan for gold. This has involved a
20 sifting of the sand from the flakes of gold. There is
21 a great deal of sand in the form of evidence in this
22 trial which ultimately has been of little assistance to
23 me.

24 The theory of the prosecution is that the accused
25 doctored a copy of a Hamlet of Resolute Bay business
26 license to trick an official with the Northwest
27 Territories Housing Corporation into believing that the

1 copy, Exhibit 16, was a true copy of a genuine license,
2 Exhibit 25, to operate a room and board establishment
3 in Resolute Bay without any conditions imposed on the
4 license. In fact, the Crown argues, the copy of the
5 license was not a genuine copy at all.

6 The Crown says that the real license issued by the
7 Hamlet had a restriction imposed on it. The Crown says
8 that the restriction was not included in the copy of
9 the license, Exhibit 16, used by the accused in his
10 dealings with the Housing Corporation employee. The
11 original license, Exhibit 25, had the following
12 restriction on it. Underneath the block words
13 "COMMERCIAL ROOM AND BOARD," there is in smaller print
14 and in brackets the following: (Kheraj Enterprises
15 employees only), all of which is underlined.

16 Exhibit 16 which is the alleged false document and
17 which had been presented to the witness Christine
18 Klazinga of the Housing Corporation does not have the
19 bracketed restriction on it. According to the Crown,
20 there is no evidence in this trial to show that the
21 accused could have been issued or provided with a copy
22 of a license from the Hamlet which did not have the
23 restriction on it.

24 The evidence of Ralph Alexander of the Hamlet of
25 Resolute Bay and who is the assistant senior
26 administrative officer is less than clear. He was
27 shown Exhibit 12. Exhibit 12 appears to be a copy of a

1 business license issued to the accused for commercial
2 room and board and which does not have a restriction on
3 it. The expiry date is the 31st of March, 1995. This
4 document is not dated, and it is not signed by the
5 Hamlet or by the accused. It is, in effect, a piece of
6 paper or another way to put it, an imperfect document
7 with no legal effect insofar as being a license is
8 concerned.

9 When shown Exhibit 12, Mr. Alexander said that if
10 he had called that document up in his computer from
11 which licenses are generated, as a renewal document of
12 a prior valid license, he would have changed the expiry
13 date, dated it at the bottom, and he would have signed
14 it. In his words, "it is barely possible" that this
15 happened.

16 He testified that he would have checked the
17 document carefully because he was aware of the
18 restriction that the Hamlet wanted and which is in
19 evidence from minutes of a Hamlet meeting from December
20 1994; and he would have added the restriction to the
21 license. He testified that to his knowledge, Exhibit
22 12 was never issued. He went on to add that he would
23 have treated Exhibit 12, if he had dealt with it, as a
24 first license and not as a renewal. He was the one
25 apparently who actually issued Exhibit 25 with the
26 restriction.

27 It is appropriate to say something about what is

1 not essential to the case for the prosecution. I have
2 touched on one or two of these factors, but I intend
3 now to go into them in more detail given the way in
4 which the evidence unfolded and the way in which the
5 arguments were presented.

6 It is not necessary for the Crown to prove whether
7 a license issued by the Hamlet supersedes a license
8 issued by an agency or department of the Government of
9 the Northwest Territories or whether the converse is
10 true. (For the interpreter, the other side, the other
11 way around.) Some time was spent on this issue in the
12 evidence. This is an issue which has little to do with
13 my task.

14 It is not necessary for the Crown to prove at what
15 point or in what manner a document was falsified if, in
16 fact, I find that falsification has been proven at
17 all. It is not necessary for the Crown to prove that
18 the accused falsified any document -- I made reference
19 to this earlier.

20 It is not necessary for the Crown to prove whether
21 or not the Hamlet had any authority to impose
22 restrictions on the license or whether or not the
23 Hamlet had a statutory duty to issue a business license
24 once various preconditions had been met. Again, these
25 are issues that have little to do with the task at
26 hand.

27 It is not necessary for the Crown to establish

1 what approach any government agency including the
2 Housing Corporation and including Economic Development
3 & Tourism, called the E. D. & T., would have taken had
4 it or they had knowledge of the Hamlet-imposed
5 restriction on the accommodation license issued to the
6 accused.

7 It is not necessary for the Crown to prove harm or
8 prejudice to the Government of the Northwest
9 Territories or to any of its departments or agencies.

10 It is not necessary for the Crown to prove that
11 the accused used his accommodation license from the
12 Hamlet contrary to any existing condition.

13 This case is not a civil lawsuit. It is not a
14 case involving whether or not the accused broke a
15 contract or promise or anything else. It is about
16 whether he committed a crime according to what it is
17 that the Crown has to prove. The focus, therefore, is
18 narrower than what it might be in a broader-ranging
19 civil case. From time to time, this trial wandered
20 into the realm of civil law. I wish to make it clear
21 that this case is not a civil lawsuit.

22 The Crown also need not prove that any lawful
23 motion or lawful resolution was made prior to the
24 Hamlet, through Ralph Alexander, issuing Exhibit 25.

25 The case for the defence is simple: there is no
26 false document. If any false document was created, it
27 was not the accused who did it and he had no knowledge

1 of it. That is the case for the defence.

2 In support of it, the defence says that the
3 accused was provided, in fact, with a copy of the
4 original license, and the copy faxed in this case to
5 the accused did not have conditions on it. The license
6 which had conditions on it, I infer from the defence
7 argument, was either a separate document or else the
8 conditions were added by someone else after the accused
9 was given the copy.

10 In an interview with a police investigator, an
11 interview that took considerable time and which began
12 as a written document but which was later taped and
13 transcribed, the accused repeatedly denied having
14 altered any document or having knowledge that the copy
15 of the license he gave to Christine Klazinga was
16 falsified. The statement is Exhibit 24. This
17 statement in its entirety was put into evidence by the
18 Crown as part of its case. The Crown did not have to
19 do so.

20 What do I make of this? The fact that I have
21 before me a statement full of denials is some evidence
22 to be weighed along with all the other evidence in the
23 trial for the Crown and for the defence. What the
24 statement shows at the end of the day is that at the
25 time he was interviewed by the police, the accused was
26 adamant that he had not committed a crime, and he
27 continued with that denial in the courtroom under

1 oath.

2 At the heart of the defence is that if the accused
3 falsified a copy of the original license, he would
4 quickly have been caught. He would have stood to lose
5 credibility within the community, with his business
6 contacts including the government, and his reputation
7 would have suffered greatly. By doing this, he would
8 stand to lose future business opportunities and
9 ultimately would bring more harm onto himself than any
10 good which could have flowed from the act of trying to
11 trick Christine Klazinga.

12 The Crown argues that the accused had everything
13 to gain and if that theory is not found to be proven by
14 the Court, there is another aspect of the matter which
15 I ought to consider and which I raised in argument with
16 counsel. I should refer to it because there is
17 evidence to support it.

18 The Economic Development & Tourism license is
19 before the Court. That license has an expiry date on
20 it of December 31st, 1995. It licenses the business of
21 the accused as a staff house. It is dated December
22 16th, 1994. There are no stated conditions apart from
23 the maximum guest capacity and so forth. The wording
24 used is that the business is licensed "as staff house,
25 a lodge, at a maximum guest capacity of nine persons."

26 There are minutes before the Court from the
27 Hamlet. One is from December 5th, 1994, and the other,

1 December 19th, 1994. The December 5th one is Exhibit
2 10. The December 19th one is Exhibit 11. Curiously,
3 the license issued by E. D. & T. falls between those
4 dates. On the 19th of December, the Hamlet purported
5 not by resolution and not by motion to agree to "issue
6 him (the accused) a business license for commercial
7 room and board (Kheraj Enterprises employees only)."
8 There is evidence that the accused was aware of this.
9 He would have been aware of it, I infer, shortly after
10 it was issued.

11 Later on in February 1996, the accused was issued
12 an
13 E. D. & T. license. That one had terms and conditions
14 on it: "Accommodation for construction and
15 subcontractor employees only," that condition not being
16 on the 1994 one.

17 There is also evidence that the accused did not
18 believe that the Hamlet had any authority to impose
19 conditions on his use of the accommodation once he had
20 an E. D. & T. permit. Therefore, to continue along
21 this line of reasoning, it is possible that the accused
22 had a strong motive to delete the Hamlet condition from
23 a copy of a license he had received from the Hamlet
24 that had conditions on it. His reasoning would be that
25 because the Hamlet had no authority to do this, no harm
26 could be done by his deleting it. This is a strong
27 suspicion that I have been harbouring. I continue.

1 The evidence of the accused is that he asked to be
2 faxed in July 1995 copies of licenses that he had with
3 the Hamlet and which he claims to have misplaced or
4 lost. He informed the Hamlet that he needed the
5 material for his purposes. The theory of the defence
6 is that he must have been faxed a copy that did not
7 have conditions on it. Exhibit 12 would be an example
8 of this sort of document. Exhibit 12 does not have any
9 facsimile indicator along the top of it as is missing
10 from other exhibits before the Court.

11 The accused also testified that Ralph Alexander
12 told him that what he, Alexander, was faxing to him
13 would have no valid effect. That is, it would not be a
14 legal license because it lacked the signature of the
15 accused. The accused said that when he received the
16 fax of the license, Exhibit 16, that he took the
17 telephone conversation with Ralph Alexander to be
18 permission to add his (the accused's) signature to the
19 document which he then passed along to Christine
20 Klazinga. This is how, according to the theory of the
21 defence, the two signatures are on Exhibit 16 while
22 only that of Ralph Alexander is on Exhibit 25.

23 Apparently, it is not the usual practice for the
24 Hamlet to fax a license to anyone, but the evidence
25 supports the claim of the accused that Mr. Alexander
26 did, in fact, do this.

27 The Crown says that the accused should be

1 disbelieved by the Court. The reasoning is as I have
2 already outlined, but part of the reasoning process of
3 the Crown is the one of profit motive -- the need to
4 make a profit and to cut costs. While being alive to
5 this motive, I believe it would be, most dangerous to
6 infer that because the accused runs his business with
7 these basic lawful business principles in mind that he
8 would be susceptible to engaging in criminal conduct.

9 The evidence of his character is before the
10 Court. The Crown has not led evidence to show that he
11 is of bad character. Once an accused opens his
12 character to the Court, it is open to the Crown to
13 rebut the evidence with evidence of bad character.

14 The accused is meticulous, and he is a careful,
15 aggressive business person. The Crown says that if he
16 is so careful, how could he possibly misplace such an
17 important document as a Hamlet business license? The
18 accused does not have to answer that question. He has
19 nothing to prove; however, for the accused to produce
20 to Christine Klazinga, as I have already said, a false
21 document which likely would be checked against Hamlet
22 records thereby exposing the falsification is not
23 consistent with the care in which the accused does
24 things. That argument goes some way to neutralizing
25 the argument advanced by the Crown on the issue of the
26 meticulous, careful nature of the accused.

27 I turn my attention now to the filing system of

1 the Hamlet of Resolute Bay. There is evidence before
2 the Court that the filing system, including other
3 aspects of the issuing of licenses, was not, during the
4 time in question, well organized. It is now, but it
5 was not then.

6 The evidence of how poorly the paperwork was
7 handled comes from more than one witness, and it comes
8 from people in the know -- not people who were
9 guessing. There is Gary Guy who was elected as a
10 Hamlet councillor in 1995 and who is now the mayor of
11 Resolute Bay. He described the Hamlet files at the
12 time as having been "mixed up" before he became a
13 councillor. It is open on the totality of the evidence
14 for me to conclude that when it came to the preparation
15 and management of paperwork, the Hamlet practice was,
16 and I emphasize the past tense, not the present,
17 somewhat lax. Evidence leading me to use the word
18 "lax" comes from the testimony of Mayor Guy. In
19 describing the minutes which are taken of council's
20 meetings, he said "the minutes are very lax." He added
21 "they are condensed," but he did say that the minutes
22 do not vary from what council has said because they are
23 checked by Hamlet staff. The problem is that the
24 Hamlet staff who were doing the checking during the
25 material time were the very people who were in charge
26 of the day-to-day mismanagement of the paperwork.

27 Further support for my conclusion that the filing

1 system was in need of improvement came from the
2 evidence of the assistant S.A.O. (Senior Administrative
3 Officer) Ralph Alexander who described the system in
4 place as "informal" but which was improved once the
5 investigation into this matter got underway.

6 Mr. Alexander acknowledged that the files from time to
7 time were misfiled. We heard more evidence about that
8 today. This evidence was supported by that of Susan
9 Salluviniq who worked as the S.A.O. for about nine
10 years.

11 The office, I conclude, ran on a largely informal
12 basis and on a somewhat ad hoc one with little in the
13 way of concrete, well-defined, clear principles to
14 follow. Therefore, it is hardly surprising that when
15 the Hamlet witnesses testified, they were less than
16 clear in the delivery of their testimony. How can one
17 be clear about that which is unclear? This caused the
18 lawyers and to some extent the Court to require this
19 category of witness to go over the same ground
20 repeatedly to enable us to understand what went on in
21 the Hamlet office with the issuing of the licenses and
22 with their filing.

23 Another complicating factor in this matter is that
24 documents that are supposed to be copies of other
25 documents differ when looked at carefully. Exhibit 16
26 and 30 are good examples. They are copies, it would
27 appear, of the Form A business license from the

1 Hamlet. They are both dated June 30th, 1995. Each has
2 the signature of Ralph Alexander on it. Each has the
3 signature of the accused on it and so forth; yet the
4 clarity of the documents is not similar and when these
5 two are compared against other copies, Exhibits 28 and
6 29 which the Crown says belong together as do 16 and 30
7 according to the Crown, the words "Hamlet of Resolute
8 Bay" we can see across the top of 28 and 29. Both of
9 these are dated again June 30th, 1995. The Court has
10 had filed before it many copies of what is supposed to
11 be an original document. The copies vary, leading me
12 to wonder what direction I ought to be following.

13 Another principle of law that I have to follow is
14 that the Court is not allowed to speculate or to engage
15 in conjecture. What this means for the benefit of the
16 interpreter is that the Court is not allowed to guess.
17 The Court cannot guess that one document is more
18 persuasive than another. There has to be evidence from
19 which I can comfortably follow a trail to the end where
20 the Crown says lies proof beyond a reasonable doubt.
21 Similarly, I am not allowed to guess in order to find a
22 reasonable doubt.

23 On the totality of the evidence, applying the
24 appropriate law to it, I find that it would be
25 dangerous to convict the accused who by the end of his
26 testimony stuck to his guns. There are no significant
27 inconsistencies within his evidence. There is no way

1 that I could properly apply the credibility principles
2 from the Supreme Court of Canada and find the accused
3 guilty.

4 I have a strong suspicion that the theory I
5 earlier identified having to do with the
6 E. D. & T. permits and the accused's belief that they
7 in some way superseded any Hamlet right to impose
8 conditions is the correct theory, but I am not
9 satisfied beyond a reasonable doubt that the Crown has
10 proven the elements of the offence, in particular, that
11 the accused knew when he handed over to Christine
12 Klazinga Exhibit 16, that it was a false document.

13 Had the Hamlet practices been more precise, had
14 they avoided the sloppy practice of faxing an original
15 document that missed a signature, had those checks and
16 balances been in place at that time, the ultimate
17 outcome in this matter may or may not have been
18 different. I do not know.

19 My final words, because I find you, sir, not
20 guilty, are to the elders who are here. The Court is
21 very pleased that you were able to come for the three
22 days. The Court is very pleased too, and please keep
23 in mind that I have never been here before, with the
24 friendliness and the hospitality which this community
25 has shown to us. Thank you.

26 I thank the interpreter for his very hard work,
27 counsel.

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You can now close court.

THE CLERK: Thank you, Sir.

All rise. This court is now closed. God save
The Queen.

Certified pursuant to Practice
Direction #20 dated December 28, 1987.

Tara Taylor
Tara Taylor, CSR(A), Court Reporter