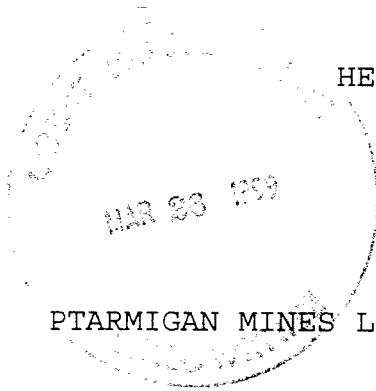


IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:



HER MAJESTY THE QUEEN



- v -

PTARMIGAN MINES LIMITED and TREMINCO RESOURCES LTD.

Transcript of the Reasons for Sentence
 held by The Honourable Judge R. M. Bourassa,
 sitting in Yellowknife, in the Northwest Territories,
 on Wednesday, the 3rd day of March, A.D., 1999.

APPEARANCES:

Mr. A. Regal:	Counsel for the Crown
Mr. J. Posynick:	Counsel for the Defence

1 THE COURT: The accused were charged and
2 promptly pleaded guilty to an offence under the Mine
3 Health and Safety Regulations of not keeping a magazine
4 securely locked at all times contrary to Section 39 of
5 the Mine Health and Safety Act.

6 The circumstances of the offences involves
7 numerous other offences which the Crown has withdrawn.
8 Of course, I am not sentencing on them, such as not
9 keeping proper records of explosives, not keeping
10 logbooks, not having explosive magazines under proper
11 care and control but in any event, those are by the
12 board at this time.

13 The two magazines in question were both available
14 and accessible to nonmine personnel. On one of the
15 properties, Mr. Varkonyi and Mr. Horne, mine safety
16 inspectors carrying out their obligations, found a
17 detonator magazine and explosives magazine at the
18 Ptarmigan bone yard. "Bone yard," as I understand it,
19 is a term of art I suppose for a junk yard or so called
20 recyclables. The magazine was locked with a chain and
21 pad, but the door could be opened far enough to see
22 inside the magazine and 90 sticks of Geldyne explosives
23 were in that magazine.

24 On another site at the Tom Mine site, an
25 explosives magazine was found. The door was unlocked
26 as the padlock had been cut with a torch and inside
27 were 50 sticks of dynamite, all in a deteriorated

1 condition. No one was at the site. No one was in
2 charge of these magazines.

3 When the accused indicated to the Chief Mines
4 Inspector, Prevention Services, that they were going to
5 close the mine temporarily or as they call it,
6 temporarily suspend operations, there were discussions
7 which are noted on Appendix 2. Ptarmigan and Tom spoke
8 to Len Palmer, the mine manager, re closure, and
9 required them to do and report to us after completion
10 (1) close all entrances for Tom Mine; (2) close all
11 entrances to Ptarmigan Mine; (3) remove all explosives;
12 (4) update all plans and sections; and (5) deactivate
13 all stationary and mobile equipment.

14 Then on the 15th of July, 1997, Mr. Palmer the
15 mine manager wrote to Mr. Wong the Chief Mines
16 Inspector: "Just a note to confirm that all
17 explosives, blasting caps and detonating cord were
18 removed from all surface and U/G magazines by July
19 5...."

20 That was a lie. It did not happen or if it did
21 happen, it was done in such a slovenly manner that the
22 explosives referred to in the agreed statement of facts
23 were missed by the clean up crew.

24 Clearly, the Crown has the right to choose who it
25 is going to prosecute and on this occasion, it has
26 chosen to prosecute Treminco Resources Limited and
27 Ptarmigan Mines Limited. They could just as well have

1 prosecuted the mine manager. The mine manager has
2 overall responsibility for operating the mine and is
3 answerable up the chain of command to the board of
4 directors, and they are responsible for his actions.
5 That chain of command and responsibility was clear in
6 R. v. Panarctic Oils. It is clear in a multitude of
7 cases. It is not enough to say that the mine manager
8 defaulted on his obligations or the mine manager was
9 poor at his job.

10 I move now to the danger that it posed: I reflect
11 for a moment of children and how incredibly ingenious,
12 devilsome, and mischievous some children are. I have
13 no doubt that some young boys or children, on an
14 afternoon of exploration at an old mine site so
15 intriguing, could have found a way to extricate the
16 sticks of dynamite and Geldyne from these magazines.
17 There is a public park not too far away.

18 Surely this is the kind of danger the legislation
19 is designed to protect against. It is the kind of
20 danger that has been recognized in the common law and
21 in legislation for years. In law school, we study
22 cases of attractive traps that are left unprotected and
23 the liability that a person has, whether it is a hole
24 in the ground or a partially built house. These are
25 considered to be traps and inducements to children. It
26 is hard to think of something more exciting for a young
27 band of boys than to explore an old mine site and all

1 the neat things in the bone yard. I beg to disagree
2 with defence. In my view, there is a high danger
3 here. These are explosives. It does not matter
4 whether it is 100 yards or 400 yards from the road.
5 That distance may protect the cars, but it is not going
6 to protect some young child who picks up a stick of
7 dynamite and finds a way to try and explode it. It
8 will only take one stick.

9 The obligation on the board of directors is to
10 hire carefully and to supervise. One cannot just hire
11 someone and shrug one's shoulders and at the end of the
12 day say, we hired carefully but he did not do his job.
13 There is case law to that effect.

14 What the inspectors found could have been cleaned
15 up in two or three hours. I do not have exactly before
16 me how long it took, but it was not that much, maybe a
17 day at the most by one or two men. It was a simple
18 matter to clean up, yet it was left. There was a total
19 absence of any kind of plan or follow-up with respect
20 to removing the dynamite or the explosives and little
21 or no effort to comply. Those are the aggravating
22 features of this case.

23 The other comment I would make with respect to the
24 law is that it seems that just about every court that
25 has dealt with health and safety public regulations has
26 indicated that deterrence is a factor.

27 Another way of putting that is "cost benefit." It

1 has got to be made clear that it will be worthwhile to
2 spend the money in advance than to wait for court
3 action. When the financial analysts and prospectors or
4 prospective mine operators are planning a mine, they
5 have to take into consideration the regulations that
6 are set out to protect all of us, the obligation to
7 comply with them, and in a plain and simple cost
8 benefit analysis conclude that it would be cheaper to
9 comply than not.

10 This is a regulatory scheme or regime. There was
11 no harm done and no one was actually injured. In
12 R. v. Echo Bay, Judge P. Ayotte said that the whole
13 point of the statutory regime is to prevent problems
14 and when the statutory regime is ignored and not
15 complied with, it suffers. My obligation is to
16 reinforce the statutory regime and, as I said, ensure
17 that it will be followed and complied with.

18 The defendants have no prior convictions for any
19 kind of offence. The Corporate Secretary is present in
20 court and has testified as to what is transpiring
21 here. He has cooperated fully and immediately which
22 are all matters to be taken in mitigation.

23 I should look at the corporations' financial
24 situation. What is before me indicates that the
25 corporations have no money. It is a concern and it is
26 a concern that is voiced often enough when mines are
27 opened in the Northwest Territories. Millions of

1 dollars of material are taken out. The shareholders
2 who have bought and sold the shares and made money, the
3 operators who have made money, everybody leaves and the
4 mess is left to the Northwest Territories to clean up.
5 Here, just estimating the cost of gold or the price of
6 gold at \$300 an ounce for the period the mines were in
7 operation indicate that the mines produced something in
8 the neighbourhood of \$40 million worth of gold. Now,
9 that is a gross figure, I acknowledge. I know they
10 have costs of production that have to be subtracted
11 from that and taxes and the rest of it; however, that
12 is a lot of money that they have made from the ground
13 here in the Northwest Territories. What is left?
14 Abandoned magazines with dynamite and Geldyne in them
15 and no money. I just do not see that as a positive
16 situation.

17 Defence argues for either a suspended sentence or
18 a very low fine. Crown asks for \$20,000. In my
19 respectful view, that is low especially when one looks
20 at how simply it would have been to prevent this.

21 Just to clarify, Mr. Regel, are you asking for
22 20,000 against each?

23 MR. REGEL: I had indicated, Your Honour,
24 something in the range of 20,000 globally.

25 THE COURT: Well, both mines are responsible.
26 Trying to balance the factors as best I can before me
27 and paying particular attention to the submissions of

1 able counsel, I am going to impose fines of \$15,000 in
2 each case.

3 Is that everything, counsel?

4 MR. REGEL: It is, Your Honour.

5 THE COURT: Thank you, gentlemen.

6
7 Certified correct to the best of
8 my skill and ability.

9
10
11
12 *Tara Taylor*
13 -----
14 Tara Taylor, CSR(A), Court Reporter

15
16
17
18
19
20
21
22
23
24
25
26
27