R. v. The Commissioner of the Northwest Territories, 2015 NWTTC 012

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

The Commissioner of the Northwest Territories as represented by the Government of the Northwest Territories Generally and by the Department of Public Works and Services and the Department of Education, Culture and Employment of the Government of the Northwest Territories

Transcript of Reasons for Sentence delivered by the Honourable Judge R.D. Gorin, sitting in Yellowknife, in the Northwest Territories, on the 4th day of June, 2015.

APPEARANCES:

Mr. J.D. Cliffe, Q.C.

Counsel for the Crown

Mr. S. Toner

Counsel for the accused

(Charge under s. 22(1)(a) of the Safety Act)

1 THURSDAY, JUNE 4TH, 2015

REASONS FOR SENTENCE

GORIN J. (Orally):

I think that counsel have correctly identified the factors that I have to address when imposing sentence in this matter. There is, of course, the seriousness of the offence itself. Workers were exposed to what I think was a very serious risk to their long-term health, and it will not be known for many years whether or not injuries or disease actually occur.

There is the prior record of the GNWT, although I do have to take into account as well that only one of the convictions on the record was for an offence that antedates the offence that I am dealing with here today.

Also when I consider the record, I have to consider the size of the GNWT as an employer. It is a very large employer, I believe the largest employer in the Northwest Territories.

Having said that, the GNWT should be a model employer, it should be a model contractor as well. In that regard, I agree fully with the comments of Justice de Weerdt in the *Nanisivik* case:

"If the Government is not seen to be a

safe employer, then how can industry be expected to respect and to obey the law?"

As pointed out by Mr. Cliffe, the quote goes on to state:

"The public deserves to have its laws respected by its governments, and their officials, who owe us all no less than that."

In taking into account the seriousness of the offence, I also have to consider that the offence was committed through negligence, lack of attention, rather than actual wilfulness. It was not committed on purpose; there was not actual knowledge either. There was a lack of thoroughness that resulted from inadequate systems being in place and inadequate communication occurring between the different parties involved.

And I also have to take into account as well that, since the offence, the government has taken very significant steps to deal with the problem and to ensure that it doesn't happen again.

So under all of the circumstances, given that counsel have identified all of the appropriate

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factors that I need to consider, and also
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           considering the guilty plea which I think is a
           highly mitigating factor as it is in all cases, I
 3
           find the joint submission of counsel to be
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           appropriate. I am going to impose a $100,000 fine.
           I believe that the victims of crime surcharge would
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 7
           be only 15 percent because territorial legislation
           applies, not the federal legislation. So 15 percent
 8
           will be the victims of crime surcharge in this
10
           matter.
11
                Nothing further as far as penalty is concerned,
12
           simply a fine?
13
       MR. CLIFFE:
                                 Fine, yes, Your Honour.
       THE COURT:
                                 And time to pay? Six months,
14
15
           is that enough time?
16
       MR. TONER:
                                 That will be fine, Your Honour.
17
           Thank you.
       THE COURT:
                                 Six months. All right.
18
19
           don't believe I have to order whom it is payable to.
20
           I believe that the legislation covers that, does it
21
           not?
       MR. CLIFFE:
                                 I think, for the sake of the
22
23
           record, perhaps just an acknowledgment that the
24
           funds will go to the Workers' Protection Fund,
25
           pursuant to s. 22(6) of the Safety Act.
26
                                 Certainly, it is not simply a
       THE COURT:
27
           matter of the government paying itself the fine.
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1	MR. CLIFFE:	No.	
2	THE COURT:	It will be paid as you have	
3	indicated.		
4	MR. CLIFFE:	Thank you.	
5		*****	
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10		Certified Pursuant to Rule 723 of the Rules of Court.	
11	Lyn Caniere		
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13	Lynn Carrière Certified Court Reporter	Lynn Carrière Certified Court Reporter	
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