IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

-and-

SNOWFIELD DEVELOPMENT CORP.

REASONS FOR DECISION

OF THE

HONOURABLE JUDGE CHRISTINE GAGNON

Heard at:	Yellowknife, Northwest Territories
Date of trial and oral decision:	July 24, 2014
Submission as to Sentence and Decision on Sentence:	August 30, 2014
Date of Written Decision:	May 4, 2015
Counsel for the Crown:	Danielle Vaillancourt
Counsel for the Accused:	Unrepresented and absent

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1. Introduction

[1] I found the accused corporation guilty after a trial *Ex Parte* on July 24, 2014. I gave summary oral reasons at that time. The matter was adjourned for sentence and on August 20, 2014, I gave summary oral reasons for the sentence. I said I would give written reasons to explain my decision, as I expected that at the time of the decision, the Accused would only receive the Order to pay a fine of $40,000.00 and the Order to pay restitution in the amount $212,908.00, along with an order to confiscate the security deposit of $43,000.00.

[2] Here are the reasons for the verdict and the sentence, which are an expansion of the oral reasons given earlier, with a view to explain the legal principles behind the decision.

2. Overview

[3] On May 14, 2013 and on June 12, 2013, Clint Ambrose, an inspector from the Department of Lands (Formerly working for the Federal Department of Indian and Northern Affairs, (DIAND)) and Nahum Lee, a Water Resource Officer from the Department of Environment and Natural Resources (ENR), also formerly an employee of DIAND, visited a deserted

mining camp located at Drybones Bay, on the shore of Great Slave Lake in the Northwest Territories. They saw abandoned heavy equipment and machinery, buildings, supplies, oil drums containing hazardous materials and lubricants, and bags of diamond drill cores, some of which were ripped and their contents, strewn across the tundra. They saw dump piles that had not been levelled, and trench holes that had been left unsecured.

[4] The permit holder for that area was Snowfield Development Corp. The site had been deserted since 2011, and the land-use permit had been replaced by a storage authorization, issued on August 31st , 2011, for a period of 12 months, which was renewed on August 31st , 2012, for a further term of seven months.

[5] Upon observing the state of the site, they recommended that Snowfield Development Corp. be prosecuted pursuant to section 92 of the *Mackenzie Valley Resource Management Act*[1], on charges of failing to restore the permit area to substantially the same condition as it was prior to the commencement of the operation, contrary to s. 15 of the Mackenzie Valley Land Use Regulations, and of failing to remove all structures, temporary buildings, machinery, equipment, materials fuel drums and other storage containers and any other items used in connection with the operation, after completing a land-use operation, contrary to s. 16 of the Mackenzie Valley Land Use Regulations[2].

3. Description of the Accused

[6] Snowfield Development Corp. is a company incorporated in British Columbia[3] and it was authorized to do business in the Northwest Territories[4]. The president of the company is Robert Paterson.

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[1] SC 1998, c. 25
[2] SOR/98-429
[3] Exhibit 2
[4] Exhibit 3

[7] This company's business was mineral exploration. It had obtained a land use permit for five years, starting in 2004from the Department of Lands, and it exploited the permit at a site referred to as Pebble Beach camp, Drybones Bay, Great Slave Lake, NT.

4. The legal process

[8] The Information was sworn on February 24, 2014, alleging the following offences:

Count 1-

On or about May 14, 2013, did after completing a land-use operation fail to restore the permit area, Pebble Beach camp and associated land use area, located near Drybones Bay on Great Slave Lake in the Northwest Territories, to substantially the same condition as it was prior to the commencement of the mineral exploration operation contrary to section 15 of the Mackenzie Valley Land Use Regulations, thereby committing an offence contrary to Section 92 of the *Mackenzie Valley Resource Management Act* S.C.1998 c. 25.

Count 2 –

On or about May 14, 2013, did after completing a land-use operation fail to remove all structures, temporary buildings, machinery, equipment, materials, fuel drums and other storage containers and other items used in connection with the land-use operation on the permit site, Pebble Beach camp and associated land use area, located near Drybones Bay on Great Slave Lake in the Northwest Territories, contrary to section 16 of the Mackenzie Valley Land Use Regulation, thereby committing an offence contrary to Section 92 of the *Mackenzie Valley Resource Management Act* S.C.1998 c. 25.

Count 3 -

On or about June 12, 2013 did after completing a land-use operation fail to restore the permit area, Pebble Beach camp and associated land use area, located near Drybones Bay on Great Slave Lake in the Northwest Territories, to substantially the same condition as it was prior to the commencement of the mineral exploration operation contrary to section 15 of the Mackenzie Valley Land Use Regulations, thereby committing an offence contrary to Section 92 of the *Mackenzie Valley Resource Management Act* S.C.1998 c. 25.

Count 4 –

On or about June 12, 2013 did after completing a land-use operation fail to remove all structures, temporary buildings, machinery, equipment, materials, fuel drums and other storage containers and other items used in connection with the land-use operation on the permit site,

Pebble Beach camp and associated land use area, located near Drybones Bay on Great Slave Lake in the Northwest Territories, contrary to section 16 of the Mackenzie Valley Land Use Regulation, thereby committing an offence contrary to Section 92 of the *Mackenzie Valley Resource Management Act* S.C.1998 c. 25.

[9] The proceedings are governed by sections 92 and following of the *Mackenzie Valley Resource Management Act*, and by Part XXVII of the *Criminal Code* which pertains to prosecutions upon summary conviction.

[10] Snowfield Development Corp. is a company, and it is defined as an "organization" for the purpose of these proceedings.[5] An organization that is prosecuted may appear in court through counsel or through an agent pursuant to section 800(3) of the *Criminal Code*.

[11] Where an organization does not appear, the summary convictions court may, on proof of service of the summons, proceed *ex parte* to hold the trial[6].

[12] Snowfield Development was served with a summons on February 28, 2014. On March 3, 2014, the Clerk of the Court received a correspondence from Robert Paterson, asking permission to appear by telephone, as neither he, nor his company, now bankrupt, had the means to travel to Yellowknife to appear in court. Local counsel appeared as friend of the court in the Territorial Court in Yellowknife on March 4, 2014, and the matter was adjourned to April 29, 2014.

[13] On April 29, 2014, Snowfield did not appear before the Territorial court, and the Crown moved to proceed by way of an *ex parte* trial[7] upon tendering proof of service of the summons. The trial was set to proceed on July 24, 2014 in the absence of the accused.

5. The Elements of the offences

[14] In order to secure a conviction, the Crown must prove beyond a reasonable doubt all the elements of the offence.

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[5] S. 2 of the Criminal Code; Definition of Organization
[6] S. 800(3) Cr.C.,. Sections 620-623 of the Criminal Code are to the same effect, but they apply to indictable offences and their wording is slightly more complicated, reflecting the differences in the mode of prosecution.
[7] Transcript of court proceedings, April 29, 2014

[15] These elements are:

a) that the named accused is the permittee

b) the place and date of the offence

c) with respect to s. 15 of the Regulations, that

- the permittee had completed a land-use operation
- the permittee failed to restore the permit area to substantially the same condition as it was prior to the commencement of the operation, and
- the permittee was not otherwise authorized by a permit

d) with respect to s. 16 of the Regulations, that

- the permittee had completed a land-use operation
- the permittee failed to remove all structures, temporary buildings, machinery, equipment, materials, fuel drums and other storage containers and any other items used in connection with the operation
    a) unless otherwise authorized by a document granting a right to, or interest in, the land; or
    b) the owner of the lands on which the items are located has, by written notice to the Board, assumed responsibility for those items, and
- the permittee had not obtained storage authorization from the Board and of the landowner in writing, and
- the permittee did not have approval of the landowner to leave diamond drill cores at the drill site.

(A) <u>Proof that the named accused is the permittee</u>

[16] The first element which the Crown must prove is that the accused was a "permittee", or permit holder, and that the correct corporate entity was charged.

[17] The Crown called evidence to explain the discrepancy between the designation of the accused on the Information as "Snowfield Development Corp.", and the corporate name of "Snowfield Development Corporation"

that appeared on the permit issued to Robert Paterson by the Department of Lands.

[18] Although there was a discrepancy, I am satisfied that the identity of the accused was proved beyond a reasonable doubt by Exhibit 2, which shows that:

> 1. Robert Paterson has at all relevant times been the President and owner of the organization, whether it was designated as Snowfield Development Corp. or as Snowfield Development Corporation on the documents.
>
> 2. Nahum Lee explained in his testimony that he knew that Robert Paterson was the president of Snowfield Development Corp. He said that he thought the word "Corp." meant Corporation and he believed that it was more proper to write "Corporation" on the permit which he issued. He later realized that the word "Corporation" was not part of the company name and he corrected that, as it is shown at tab 6 of Exhibit 1.

[19] From the totality of the documentary evidence and the testimonies heard, it is clear that the words Corp. and Corporation were used interchangeably at certain times in the early stages of the land use. It is also clear from the correspondence exchanged between the authorities and Robert Paterson that all the parties knew that they were referring to a single entity, Snowfield Development, whether Corp. or Corporation was used.

[20] Snowfield Development Corp. (Snowfield) was issued a land-use permit by the Department of Lands on August 30, 2004[8] and it exploited that permit until 2009[9]. Snowfield obtained an extension of that permit from August 31st, 2009 to August 30, 2011[10]. It then obtained a storage authorization from August 31st 2011 to August 2012,[11] and continued to occupy the area that had been the subject of the land-use permit until April 15, 2013.

[21] I find that Snowfield Development Corp. was a permittee for the purposes of sections 15 and 16 of the Regulations.

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[8] Permit number MV2003C0023
[9] Tab 2 of Exhibit 1
[10] Tab 5 of Exhibit 1
[11] Tab 6 of Exhibit 1

B) Proof of date and place of offences

a) Place

[22] Inspectors Lee and Ambrose testified that they visited the Pebble Beach mining camp at Drybones Bay, which is located 60 km away from Yellowknife, in the Northwest Territories, on the shores of Great Slave Lake. They referred to Exhibit 1[12] which contains the Project Location & Claim Maps.

[23] The land-use permit application signed by Robert Paterson as President of Snowfield Development Corp. describes the intent to proceed with the exploration on various mineral claims to the east and north of the Drybones Bay area, Great Slave Lake, NT.

[24] Exhibit 4 is a map of the Northwest Territories, and Exhibit 5 is a map of the area around Great Slave Lake, within the Northwest Territories, showing where this land-use area is located. Pebble Beach is identified with the letters PB written with a red marker. This mark was made at trial by Clint Ambrose.

[25] I find that the place of offences with respect to counts 1-4 has been proved beyond a reasonable doubt both by the oral and documentary evidence.

b) Time

[26] Over the time Snowfield occupied the land-use area, it built roads, conducted drilling operations, and set up buildings to house workers. There was mineral exploration activity at the location of Pebble Beach camp until August 30, 2011.

[27] On December 3rd, 2010, Nahum Lee wrote to Snowfield Development Corp., reminding the organization of its obligation in the following terms:

[12] at Tab 1 – Appendix "A"

> "Unless a new permit is in place, the clean up and restoration of the entire land use area, must be completed prior to the expiry date of land use permit MV2003C0023 which is August 30th, 2011. Condition #63 of the land use permit states:
>
> "*the Permittee shall complete all clean-up and restoration of the lands used prior to the expiry date of this Permit."*[13]

[28] Robert Paterson obtained a storage authorization commencing August 31, 2011, and he wrote to the Mackenzie Valley Land and Water Board on November 23, 2011, asking for an extension of the time to file a Final Report, which is required to show that a permittee has complied with its obligations under sections 15 and 16 of the Regulations[14].

[29] Mr. Paterson had also attached a Final Plan to this correspondence. Clint Ambrose testified about this and said that he reviewed it for correctness. In that Plan, Mr. Paterson wrote that Snowfield was applying to extend its land-use permit for a further five years, but there is no evidence that this was actually carried out.

[30] Tab 25 of Exhibit 6 shows a correspondence from Clint Ambrose with respect to permit MV2003C0023, to a recipient named "John" to follow up on an inspection report of October 6, 2011. Mr. Ambrose writes about an expectation that "all hydrocarbon impacted soils, empty fuel drums and other waste items will be removed from the property for proper disposal by the spring of 2012".

[31] Tab 11 of Exhibit 7 shows a Memo from John A. Dalton, manager of Snowfield N.T. to Clint Ambrose. I infer that "John" mentioned on the correspondence at tab 25 of Exhibit 6 is John Dalton.

[32] Upon the expiration of the storage authorization, Snowfield had two options, the first was to apply for a new land use permit, and the second was to complete the restoration of the site according to the Final Plan.

[33] By August 30, 2012, Snowfield had not applied for a land use permit. Exhibit 1, at tab 7 shows that the Mackenzie Valley Land and Water Board instead approved a seven month storage authorization, commencing August

[13] Exhibit 10, tab 3
[14] Exhibit 7, tab 12

31, 2012 and expiring March 30, 2013. Snowfield was told that it was required to submit a Final Plan by April 15, 2013. A list of equipment and materials stored on site was attached to the storage authorization.

[34] April 15, 2013 came, and Snowfield did not file a Final Plan, notwithstanding that Nahum Lee wrote to the organization on April 3, 2013, once again reminding it of its obligations under sections 15 and 16 of the Regulations.

[35] In order to verify if Snowfield had complied with its obligations, Clint Ambrose and Nahum Lee conducted inspections at Pebble Beach camp on May 14, 2013 and June 12, 2013, and made the observation which led to a recommendation that clearance not be granted.

[36] I am satisfied that the dates mentioned on the Information are the dates at which inspections were conducted at Pebble Beach Camp, upon the expiration of the last extension of the Storage Authorization, and that on those dates, the obligations of section sections 15 and 16 of the Mackenzie Valley Land Use Regulations were still binding on the permittee.

[37] I find that the time of the offences has been proved beyond a reasonable doubt.

C) Proof of the specific elements of the offence contrary to s. 15 of the Mackenzie Valley Land Use Regulations

[38] The first element is that the permittee had completed a land-use operation. The proof of this is found in the documentary evidence showing that Snowfield had not applied to renew the land-use permit after August 30, 2011.

[39] Clint Ambrose testified with respect to the numerous environmental inspections he conducted during the life of the land-use permit and that there were no activities of mineral exploration conducted after August 30, 2011. One person was left on the site, one Robert Buckley, to exercise surveillance on the campsite, and after April 15, 2013, there was nobody left at the camp. I find that the permittee had completed a land-use operation.

[40] The land-use permit application filed by Snowfield described the nature and type of work expected to be done at Pebble Beach over the course of the land-use. Clint Ambrose conducted many inspections during the life of the land-use permit and documented each inspection with pictures, showing the state of the exploration camp. He had a point of reference for the purpose of forming an opinion with respect to what condition the permit area should be restored to upon completion of the land-use operation.

[41] Restoration of the permit area required among other things to level dump piles, clean the soil where hazardous materials had been spilled, secure trench holes and remove garbage. The pictures filed as Exhibit 9 show that traces of occupation were still visible and that none of the above remedial actions had been taken.

[42] I find that after the completion of the land-use, the permittee had not restored the permit area to substantially the same condition as it was in prior to the commencement of the exploitation of the permit. I further find that on May 14 and June 12, 2013, the inspectors observed that nothing had been done to the restore the permit area, and that it was in the same state as it had been observed to be at the expiration of the storage authorization. I am satisfied that the elements of the offences described at counts 1 and 3 have been proved beyond a reasonable doubt.

[43] The third element is that the permittee was not otherwise authorized by a permit, and I find that this has been proved beyond a reasonable doubt because all prior land-use permits and storage authorizations had expired and had neither been extended nor renewed by May 14, 2013 or June 12, 2013.

[44] Accordingly, I find Snowfield Development Corp. guilty of counts 1 and 3.

D) <u>The elements specific to section 16 of the Regulations</u>

[45] The first element is that the permittee had completed a land-use operation. It is similar to the wording of section 15 of the Regulation and I come to the same conclusion as I did at paragraph 39.

[46] The next element is that the permittee failed to remove all structures, temporary buildings, machinery, equipment, materials, fuel drums and other storage containers and any other items used in connection with the operation a) unless otherwise authorized by a document granting a right to, or interest in, the land; or b) the owner of the lands on which the items are located has, by written notice to the Board, assumed responsibility for those items.

[47] The pictures filed as Exhibit 8 show everything that was left at the campsite and prove beyond a reasonable doubt that the permittee failed to remove all structures, temporary buildings, machinery, equipment, materials, fuel drums and other storage containers and any other items used in connection with the operation.

[48] I also find from the documentary evidence and the oral testimonies heard at trial that the last storage authorization had expired on April 15, 2013 and that it had not been renewed or extended;

[49] I further find that the permittee did not have approval of the landowner to leave diamond drill cores at the drill site.

[50] Accordingly, I find Snowfield Development Corp. guilty of counts 2 and 4.

6. The determination of a fit sentence

[51] As a preliminary issue, I had directed the Crown to serve notice to Snowfield Development Corp. that it had been convicted, and to advise Robert Paterson of the date set for the determination of sentence.

[52] Crown counsel complied with this direction and provided proof of notification, which was filed as Exhibit S-1. Crown counsel also informed the accused in an electronic correspondence of the sentence which she intended to recommend, and copy of this correspondence was filed as

Exhibit S-2. The Crown also relied on the correspondence sent on March 3, 2014 by Robert Paterson to the clerk of the Territorial court.

[53] The sentencing of a corporate entity follows specific rules, and the Court is bound to impose the penalties provided for in the legislation. In this case, section 92 (1) of the *Mackenzie Valley Resource Management Act* provides that the maximum punishment for a violation of the Regulations is a fine of $15,000.00 or a period of incarceration not exceeding six months; it is trite to say that a court may not order that a corporation serve a term of imprisonment, therefore the only sentencing option before me is the imposition of a fine.

[54] Section 92(3) of the *Act* states that where an offence is committed on or continued for more than one day, it is deemed to be a separate offence for each day on which it is committed or continued. This means that the maximum fine of $15,000.00 may be imposed with respect to each separate count on which an accused is convicted.

[55] The Crown in this case limited the liability of the accused by laying only four counts, pertaining to two separate dates.

[56] On sentence, I heard submissions from the Crown with respect to the fact that Snowfield had paid a security deposit when it had applied for a land-use permit, in the amount of $43,000.00, and that this deposit was still in the possession of the authority which had received it.

[57] The Crown made a recommendation that a fine of $10,000.00 be imposed on each count and justified its position by citing a number of aggravating factors, including the fact that no attempt was made to retrieve anything from the site and to restore the environment that had been disturbed; the fact that Snowfield had had ample notice of their obligation to proceed to the restoration of the site; the fact that Snowfield is now bankrupt and has technically abdicated its financial obligations arising from the land-use permit.

[58] The conducts described at sections 15 and 16 of the *Mackenzie Valley Land Use Regulations* are environmental violations and are properly considered as public welfare offences.

[59] There are five principles which a court should consider when sentencing for an environmental offence: the degree of culpability, the past record of environmental offences, acceptance of responsibility, damage or harm to the environment and deterrence[15].

[60] I will begin with general comments pertaining to the particular place where the offences were committed, which is a remote area in the Northwest Territories that was in almost pristine condition, and

> …an accused has a duty to keep the environment healthy and to avoid and take precautions against situations which can result in the pollution of the lakes and water system[16].

[61] Furthermore,

> the duty of every person is to protect the control and use of the surface of the land, a land which although tundra in nature and frozen over for many months each year, is nonetheless a delicate land easily damaged and perhaps when once damaged, impossible to repair.[17]

[62] The governing principle behind the legislation is therefore to primarily ensure that the footprint left by any commercial activity be as small as possible, and that when the activity ceases, the land be restored to its initial state as much as possible. This speaks to the criterion of the degree of responsibility of the offender.

[63] The Crown says that Snowfield's degree of responsibility is high. I agree. The offender made no effort to either erase its footprint on the permit area or to even reduce it prior to the expiration of the permit and storage authorization.

[64] The letter of March 3, 2014 to the clerk of the court, in which Robert Paterson declares that his company is no longer active, that they have no assets and that he has no ability to attend court and face his obligations, is aggravating.

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[15] R. v. Terroco Industries Limited, 2005 ABCA 141
[16] R. v. Garry Johnson, 2010 NWTTC 17, at par. 12
[17] R. v. Kenaston Drilling (Arctic) Ltd, 1973 CarswellNWT 20

[65] By this letter Mr. Paterson is, in effect, abandoning his responsibilities by saying that he has no money. Due to Snowfield's bankrupt state, it is expected that it will conduct no remedial operation and that remediation of the site will fall upon the Government of the Northwest Territories.

[66] The next factor to consider is the past record of environmental offences. This is a first offence for Snowfield. However, there is an aggravating circumstance in the fact that the organization was warned that it had the obligation to restore the permit area and to remove the entirety of the equipment on-site, prior to the expiration of any permit or authorization.

[67] The third factor is the acceptance of responsibility. There was a trial and the accused was convicted. Responsibility was declared, and no action was taken by the accused at any time to show that it was accepting responsibility for its deeds.

[68] The president of the organization did not attend court and did not send an agent, suggesting that he did not take the prosecution seriously. The argument that they would not have enough money to travel to the Northwest Territories carries very little weight. I find as a question of fact that Snowfield Development Corp. and its president have been avoiding to accept responsibility for the violations.

[69] Next, is the factor of damage or harm to the environment. Actual harm may be measured objectively in the destruction of the habitat by the human activity that was conducted, or by the activity that was conducted by the organization and the fact that the environment was not restored. I find that there was actual harm to the environment.

[70] There is also potential harm, which is harm that may occur as a result of equipment and material being left on the site. The potential for harm to the environment is significant in the circumstances before me, because among the things left on-site were 45 full fuel drums.

[71] This creates a hazard in and of itself. There is a danger of contamination of the soil if these fuel drums would deteriorate and if the fuel were to leak from the containers. There is an obvious fire hazard. Furthermore, the deterioration of any of the equipment and machinery left

on-site poses a risk of further contamination of the site if hazardous waste would disperse as a result.

[72] This area is frequented by hunters and by community members from Yellowknife and Dettah. There are risks for their safety associated with a non-protected site. I find that the potential for harm to the environment and to the population is high.

[73] Finally, the need for deterrence is high, based on the nature of the conduct, the purpose of the legislation and the number of aggravating factors.

[74] The government assessed the cost for the remediation of this site at $212,908.00, based on what needs to be removed as per the Reclaim Model tendered at tab 7 of the Crown's book of authorities on sentence filed August 12, 2014.[18]

[75] Within the limits of the legislation, therefore, the fine to be imposed must be significant, and it must be such that it is more than the cost of doing business. A fine for a regulatory offence must not be considered as a tariff :

> In the context of a monetary penalty, the fine must be not less than an amount which will cause the offender to take all reasonable precautions to prevent the offence from occurring again. If it is more economic for the offender to pay the fine instead of taking the reasonable precautions, the specific deterrence will not be achieved. Other corporations who are in similar situations as the offender will make the same economic assessment[19].

[76] Therefore, I impose a fine of $10,000.00 on each count. The fines are imposed cumulatively, for a total of $40,000.00. Snowfield Development Corp. must pay this fine within three months of the decision, which was reflected on the Fine Order.

[77] I also order that Snowfield Development Corp. pay to the Government of the Northwest Territories the sum of $212,908.00. This restitution order is made pursuant to s. 738 of the Criminal Code, which applies by

[18] Judicial comment: I mentioned in my oral reasons that I made this into an exhibit and said it would be Exhibit 4 on sentence, but in fact, it should be Exhibit 3.
[19] R. v. Northwest Territories Power Corporation, 2011 NWTTC 03

interpretation[20]. This payment must be made within six months of this order. Upon the expiration of the term, the beneficiary of the order may file it as if it were a civil judgment and execute it accordingly.

[78] I also declare that the Government of the Northwest Territories may forfeit the security deposit of $43,000.00 paid by Snowfield Development Corp., and use it to offset some of the costs inherent to the remediation of the permit area and a written order was drafted accordingly.

Christine Gagnon, T.C.J.

Dated this 4th day of May, 2015,

at Yellowknife, Northwest Territories.

[20] S. 34(2) of the Interpretation Act, R.S.C. 1985, c. I-21: All the provisions of the *Criminal Code* relating to indictable offences apply to indictable offences created by an enactment, and all the provisions of that Code relating to summary conviction offences apply to all other offences created by an enactment, except to the extent that the enactment otherwise provides.

Date: 2015 05 04
File: T-1-CR-2014-000281

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