

Citation: *R. v. Stuart Placers Ltd.*, 2023 YKTC 38

Date: 20230914  
Docket: 22-11350A  
Registry: Dawson City  
Heard: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**  
Before His Honour Judge Phelps

REX

v.

STUART PLACERS LTD. and  
ROGER STUART

Appearances:  
Lee Kirkpatrick  
Luke S. Faught

Counsel for the Territorial Crown  
Counsel for the Defence

**REASONS FOR SENTENCE**

[1] PHELPS T.C.J. (Oral): Stuart Placers Ltd. is before the Court having pleaded guilty to two offences contrary to the *Occupational Health and Safety Act*, RSY 2002, c. 159 (the “*Act*”) while in the position of “employer” as defined within the *Act*:

Count 1: On or about the 23rd day of April, 2021, at or near Dawson City, Yukon, failed to take all reasonable precautions and implement measures to prevent an occupational injury to worker Richard Cull by eliminating hazards where possible, as required by paragraph 1.04(a) of the *Occupational Health and Safety Regulations* thereby committing an

offence contrary to section 44(1) of the *Occupational Health and Safety Act*; and

Count 3: On or about the 23rd day of April, 2021, at or near Dawson City, Yukon, failed to have a roll over protective structure installed on a dozer weighing over 700 kilograms prior to it being placed into service, as required by paragraph 6.19(1)(b) of the *Occupational Health and Safety Regulations* thereby committing an offence contrary to section 44(1) of the *Occupational Health and Safety Act*.

[2] Roger Stuart is before the Court having pleaded guilty to two offences contrary to the *Act* while in the position of “supervisor” as defined within the *Act*:

Count 5: On or about the 23rd day of April, 2021, at or near Dawson City, Yukon, did knowingly permit a worker to operate mobile equipment which was unsafe or could create an undo hazard to the worker, contrary to the requirements of paragraph 6.05(a) of the *Occupational Health and Safety Regulations* thereby committing an offence contrary to section 44(1) of the *Occupational Health and Safety Act*; and

Count 7: On or about the 23rd day of April, 2021, at or near Dawson City, Yukon, did fail to ensure that work done by Richard Cull, at work and under his direction and control, was performed without undue risk as required by s. 7(a) of the *Occupational Health and Safety Act* committing an offence contrary to s. 44(1) of the *Act*.

[3] All Counts are in relation to Richard Cull losing his life when a bulldozer he was operating, owned by his employer, Stuart Placers Ltd., slid off an icy road and rolled over. The bulldozer was not equipped with roll-over protection or other safety equipment.

### **Agreed Statement of Facts**

[4] There was an Agreed Statement of Facts filed with the Court and entered as an exhibit at sentencing. The Agreed Statement of Facts was read into the record by the prosecutor and consists of 58 paragraphs. The following facts are summarized from the Agreed Statement of Facts.

[5] Stuart Placers Ltd. is a registered company operating in the Yukon. Its directors are Roger Stuart and Donald James Stuart. It has been operating the mine in the same area for over 20 years, which mine is a family run operation with about half a dozen employees. Prior to incorporating, they had operated a mine in the Dominion Creek area for approximately 30 years.

[6] Richard Cull worked for Stuart Placers Ltd. for a number of years and became very close to Roger Stuart, who considered Mr. Cull to be like a brother to him.

[7] On April 23, 2021, Stuart Placers Ltd. was operating a mine near Dawson City, Yukon. Their shop is located several kilometers from the top of a hill that is known as the "Switchbacks" on a road maintained by the company for access to the mine. A bulldozer was being delivered to the mine and Mr. Stuart and Mr. Cull drove up the

Switchbacks to meet the delivery. The bulldozer was being delivered on a flatbed truck operated by Tom Fenton.

[8] They did not find Mr. Fenton at the top of the Switchbacks and drove further to locate the bulldozer being operated by Mr. Fenton as he could not get up a particular hill, known as “Eureka Hill”, with the bulldozer on the truck. At this point, Mr. Stuart took over and drove the bulldozer to the top of the hill where it was loaded back onto the flatbed and driven by Mr. Fenton to the top of the Switchbacks.

[9] Once at the Switchbacks, the bulldozer was offloaded as that was the point of delivery. The bulldozer was being delivered without its safety equipment to enable it to be transported from British Columbia to the Yukon. The removed safety equipment included a rollover protective structure known as a ROPS, ripper shank and tooth, ice cleats, also known as grousers, and the blade. All of these items add to the safe operation of a bulldozer and had been transported separately to Stuart Placers Ltd.

[10] At this point, it was decided that Mr. Cull would drive the bulldozer from the top of the Switchbacks to the shop. Mr. Stuart drove ahead and waited at the shop.

[11] It is noted that prior to and on April 23, 2021, the area had been thawing in the day and freezing at night. The temperature was about -8 degrees Celsius when Mr. Stuart and Mr. Cull first left the shop to meet up with the bulldozer delivery.

[12] Sometime after arriving at the shop, Mr. Stuart called Mr. Cull to check in on how things were going. Mr. Cull indicated that it was “going good” and he was about one kilometre from the shop. When Mr. Cull did not show up, Mr. Stuart attempted to call

him but got no response and drove out to look for him. Mr. Stuart located the bulldozer near where it slid off the road on ice and rolled over causing the death of Mr. Cull. The cab of the bulldozer was flattened, which would not have happened if the bulldozer had been equipped with the ROPS.

[13] Mr. Stuart provided a statement to authorities acknowledging that the ROPS could have been transported to the bulldozer from the shop with their equipment and installed before operation. The ROPS bolts on and could have been installed “in ten minutes”. While likely an exaggeration, I take this to mean that it is not a complex process and one that Stuart Placers Ltd. could have completed prior to transporting the bulldozer down the Switchbacks to the shop.

### **Position of the Crown**

[14] Crown filed the decision from the Ontario Court of Appeal of *R. v. Cotton Felts Ltd.* (1982), 2 C.C.C. (3d) 287 (SC (CA) (Ont.)), a leading case regarding the importance of deterrence in sentencing for offences contrary to public welfare legislation, wherein the Court stated at para. 19:

...Examples of this type of statute are legion and cover all facets of life ranging from safety and consumer protection to ecological conservation. In our complex interdependent modern society such regulatory statutes are accepted as essential in the public interest. They ensure standards of conduct, performance and reliability by 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 activity in issue, the extent of actual and potential harm to the public, and the maximum penalty prescribed by statute. Above all, the amount of the fine will be determined by the need to enforce regulatory standards by deterrence.

[15] The Crown also relied on *R. v. Westfair Foods Ltd.*, 2005 SKPC 26, wherein the Judge outlines the approach to sentencing regulatory offences at para. 38:

Having regard to the approach taken in *Cotton Felts*, supra, and the emphasis upon deterrence as a sentencing factor in the decisions that I have discussed, the approach which best fits with my understanding of sentencing of regulatory offences, and pertaining most specifically to occupational health and safety regulation, might be expressed as follows:

- i. The primary objective of regulatory offences is protection and in the context of occupational health and safety legislation, it is the protection in the workplace of the employee and the general public.
- ii. The sentencing principle which best achieves this objective is deterrence and while deterrence may be regarded in its broadest sense and includes specific deterrence, general deterrence is a paramount consideration.
- iii. There are numerous factors, which may be taken into account and the weight attributed to each will depend upon the circumstances of each case. The following is not an exhaustive list of factors that may be considered, but they are likely relevant to most occupational health and safety offences:
  - the size of the business, including the number of employees, the number of physical locations, its organizational sophistication, and the extent of its activity in the industry or community,
  - the scope of the economic activity in issue - the value or magnitude of the venture and any connection between profit and the illegal action,
  - the gravity of the offence including the actual and potential harm to the employee and/or the public[,]
  - the degree of risk and extent of the danger and its foreseeability,
  - the maximum penalty prescribed by statute,

- the range of fines in the jurisdiction for similar offenders in similar circumstances,
- the ability to pay or potential impact of the fine on the employer's business,
- past diligence in complying with or surpassing industry standards,
- previous offences,
- the degree of fault (culpability) or negligence of the employer,
- the contributory negligence of another party,
- the number of breaches - were they isolated or continued over time,
- employer's response - reparations to victim or family - measures taken and expense incurred so as to prevent a re-occurrence or continued illegal activity, and
- a prompt admission of responsibility and timely guilty plea.

[16] The Crown outlined that Stuart Placers Ltd. is a relatively small company while the gravity of the offence was very high. She also noted that the degree of responsibility of the employer was very high, given the awareness of the road conditions on the date in question and that the bulldozer had the safety equipment removed, making it illegal to operate. She noted that Mr. Stuart, as the employer in the circumstances, had a heightened responsibility to ensure the safety of Mr. Cull, referencing *Westfair Foods* at para. 42:

...The employee may, out of a sense of duty, or in pressing circumstances, or merely due to lack of forethought, in the course of carrying out her duties of employment, expose herself to risks unnecessarily. An employee may act in the best interests of the employer, but not necessarily in her own best interests. This is why an employer is

charged with the responsibility of making arrangements, including the establishment of routine safety procedures that are understood by the employees and third parties, that serve to reduce those risks to which the employee may be exposed.

[17] The Crown also relied on:

- *R. v. Westower Communications Ltd.*, 2003 YKTC 96;
- *Yukon (Director of Occupational Health and Safety) v. Yukon*, 2010 YKTC 97;
- *R. v. Procon Mining and Tunnelling Ltd.*, 2013 YKTC 21;
- *Yukon (Director of Occupational Health and Safety) v. Yukon Tire Centre Inc. and North 60 Petro Ltd. and Frank Taylor*, 2014 YKTC 19;  
and
- *R. v. Tower Arctic*, 2020 NUCJ 39.

[18] The Crown submitted that the Court should impose fines in the amount of \$115,000 as follows:

Count 1	\$25,000
Count 3	\$40,000
Count 5	\$25,000
Count 7	\$25,000

The fines are subject to a 15% surcharge.



## **Position of the Defence**

[19] Defence counsel pointed out that the defendants took steps to mitigate the risk on the road where this accident occurred by rerouting the road over a period of five days, which should be taken into account as mitigation.

[20] He also provided an e-mail from Mr. Cull's daughter, who currently works for Stuart Placers Ltd. and has known Mr. Stuart for her entire life. She is very close to Mr. Stuart and noted in the e-mail: "I know he is hurting just as much as I am in this, and going through his own trauma from having to find his best friend the way he did". She goes on to state: "my dad loved and cherished him dearly, and would not want anyone in my family to hold Roger to blame, or make him pay more than he already has."

[21] Defence counsel emphasised totality, parity, and restraint noting that specific deterrence in Mr. Stuart's case is not necessary. I note that Mr. Stuart spoke on his own behalf and, while brief, expressed sincere emotion and sorrow for the harm caused. He accepted full responsibility for the accident.

[22] Defence pointed out a very early acceptance of responsibility on the part of his clients, and the early guilty pleas before the Court.

[23] The defence relied on some of the cases filed by the Crown, as well as *R. v. Procon Mining and Tunnelling Ltd.*, 2012 YKTC 100.

[24] The defence submitted that the Court should impose a \$10,000 fine on each Count for a total of \$40,000. The surcharge would be \$1,500 on each Count.

## Analysis

[25] Determining the appropriate penalty in cases such as the one before this Court is difficult, even with the benefit of caselaw as filed by the Crown and defence. I echo the comments of Judge Faulkner in *Yukon Tire Centre Inc.*:

9 ...while stating the general principles of sentencing in such cases is easy, applying those principles to specific cases is less so. Cases involving fatalities are particularly difficult.

10 First and, of course, most obviously, no sentence, whatever it is, can restore a lost life.

11 Secondly, in fixing the amount of a fine, the Court is certainly not saying how much money a life is worth.

...

14 Counsel referred extensively to other Occupational Health and Safety cases. This is entirely proper and useful, as consistency in sentencing is important. However, facts and circumstances are seldom, if ever, the same.

[26] I find that the factors set out in *Westfair Foods Ltd.* are helpful when deciding the appropriate sentence in this case and will review them on the facts of this case briefly.

1. The size of the business.

[27] The Court was not provided financial information for Mr. Stuart and was advised that the Stuart Placers Ltd. profit the previous year was \$200,000. In addition, the Court was advised that the mine is a family run operation with about half a dozen employees. The financial information is of limited assistance as it does not set out the income drawn from the company by Mr. Stuart or provide an indication of either defendant's ability to pay. That said, I recognize that it is a relatively small mining operation.

2. The scope of the economic activity in issue.

[28] There is no indication in this case that the actions taken were based on cost or profit. While there would have been added difficulty with safely transporting the bulldozer to the shop, there is no indication that the decision was made for monetary reasons. It appears to have been a decision based on convenience.

3. The gravity of the offence.

[29] The gravity of the offence here is very high given that Mr. Cull died in the accident. The bulldozer could not be legally operated without the ROPS installed, and the other listed items that increase safe operation had been intentionally removed for transportation purposes.

4. The degree of risk and extent of the danger and its foreseeability.

[30] The degree of risk here was high. It is illegal to operate the bulldozer without the ROPS which is designed to protect the driver if there is a rollover. The defendants were aware of the icy conditions of the road and that the bulldozer was inadequately equipped with safety equipment, creating a significant hazard. The danger was foreseeable.

5. The maximum penalty prescribed by statute.

[31] The maximum penalty for each offence is \$150,000 which indicates the seriousness of each offence. That penalty is reserved for the worst of cases.

6. The range of fines in the jurisdiction for similar offenders in similar circumstances.

[32] The cases listed as provided by Crown and defence are of some assistance, although they do not reflect similarity in relation to the degree of knowledge and responsibility of the defendants as in this case. That is, the specific level of knowledge of Mr. Stuart and his personal participation in the events and decisions leading up to the accident.

7. The ability to pay or potential impact of the fine on the employer's business.

[33] As noted, there is little financial information before the Court. It appears on the information provided that both defendants have the ability to pay a fine within the range submitted by counsel before the Court.

8. The past diligence in complying with or surpassing industry standards.

[34] Stuart Placers Ltd. has been inspected on a number of occasions with good compliance.

9. Previous offences.

[35] Neither defendant has a prior record.

10. The degree of fault (culpability) or negligence of the employer.

[36] The degree of fault here is high. The defendants did not make adequate arrangements to ensure that the bulldozer had the safety equipment installed before operation, and Mr. Stuart was personally involved in the operation of the bulldozer in an

unsafe manner that day. He knew of the risk and was responsible for Mr. Cull operating the bulldozer that day as he was directly supervising him. Mr. Stuart acknowledged that it would not have been difficult to transport the ROPS to the top of the hill and install it prior to operation.

11. The contributory negligence of another party.

[37] This was not a factor. Mr. Cull was an employee under the direct supervision of Mr. Stuart.

12. The number of breaches.

[38] This was an isolated incident.

13. The employer's response.

[39] As noted, the defendants rerouted the road to prevent any future accidents. This took about five days to complete with Stuart Placers Ltd. personnel and equipment.

14. A prompt admission of responsibility and timely guilty plea.

[40] The defendants signalled the acceptance of responsibility early in the proceedings. They deserve full credit for the guilty pleas before the Court.

**Decision on Sentence**

[41] The sentences imposed here must be an amount that serves as general deterrence to similar sized companies and responsible supervisors who think that convenience should be paramount to safety. Mr. Stuart acknowledged that they could

have equipped the bulldozer with the ROPS prior to descending the hill which was known to be unsafe and icy. Employee safety must always be paramount to convenience.

[42] The deterrence is balanced against the early acceptance of responsibility, efforts to correct the hazard by rerouting the road, and the genuine remorse expressed by Mr. Stuart to the Court.

[43] The Crown in her submissions emphasized the significance of the sentence on Count 3 against Stuart Placers Ltd. for failing to equip the bulldozer with the ROPS. I agree with her emphasis and accept her submission for the monetary penalty on the Count in the amount of \$40,000 plus the applicable surcharge.

[44] For Count 1, recognizing the principle of totality as well as the overlapping nature of this Count with Count 3, I find a financial penalty in the amount of \$10,000 plus the applicable surcharge to be appropriate.

[45] In her submission, the Crown did not distinguish between Counts against Mr. Stuart. I find that Count 5, that he did “knowingly permit a worker to operate mobile equipment which was unsafe”, should be emphasized and agree to the Crown submission for a monetary penalty in the amount of \$25,000 plus the applicable surcharge.

[46] For Count 7, recognizing the principle of totality as well as the overlapping nature of this Count with Count 5, I find that a financial penalty in the amount of \$5,000 plus the applicable surcharge to be appropriate.

[47] Counsel jointly recommended that this Court consider that a portion of the monetary penalty take the form of a donation to the Northern Safety Network Yukon (“NSNY”), which provides a variety of workplace safety programs for the Yukon. The NSNY states their goal as “to foster a commitment to occupational health and safety among Yukon workers”. A donation to NSNY was ordered in *Yukon Tire Centre Inc.*, and counsel submitted that it worked well in application. I also note Mr. Stuart’s personal remorse and hope that making such a donation is received as being meaningful to him in his own healing process.

[48] I impose the following penalties:

1. On Count 1, Stuart Placers Ltd. will forfeit and pay a fine in the amount of \$10,000 plus a surcharge in the amount of \$1,500 for a total of \$11,500. It will have three months’ time to pay;
2. On Count 2, Stuart Placers Ltd. will be subject to a probation order for a period of six months with the statutory terms as set out in the *Summary Convictions Act*, RSY 2002, c. 210, as well as an additional term requiring that the offender make a contribution of \$46,000 to the NSNY, within three months of the commencement of the order;
3. On Count 5, Roger Stuart will be subject to a probation order for a period of six months with the statutory terms as set out in the *Summary Convictions Act*, as well as an additional term requiring that the offender make a contribution of \$28,750 to the NSNY, within three months of the commencement of the order; and

4. On Count 7, Roger Stuart will forfeit and pay a fine in the amount of \$5,000 plus a surcharge in the amount of \$750 for a total of \$5,750. He will have three months' time to pay.

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PHELPS T.C.J.