

Citation: *R. v. Lobird Living Corp.*, 2026 YKTC 25

Date: 20260520
Docket: 25-04696A
25-04696
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Christie

REX

v.

LOBIRD LIVING CORP.

Appearances:
Kelly McGill
Luke Faught

Counsel for the Territorial Crown
Counsel for the Defence

This decision was delivered from the Bench in the form of Oral Reasons. The Reasons have since been edited without changing the substance.

REASONS FOR SENTENCE

[1] CHRISTIE T.C.J. (Oral): On April 1, 2026, Lobird Living Corp. pleaded guilty to five counts under s. 38(3)(a) of the *Waters Act*, SY 2003, c. 19 (the “Act”).

[2] The facts were admitted in a document signed by both Crown counsel and defence counsel, which was filed as Exhibit 1. The Agreed Statement of Facts reads as follows:

1. Lobird Living Corp. is a Yukon corporation registered under the *Business Corporations Act*, RSY 2002, c. 20 and is the entity named on the Information.

2. Lobird Living Corp. owns and operates the Lobird Trailer Park, a mobile home park located in Whitehorse.
3. The Lobird Trailer Park is not connected to the City of Whitehorse water or sewer infrastructure. Water and sewage for the approximately 200 residents in the trailer park are provided by four groundwater production wells and drinking and wastewater treatment systems.
4. The Yukon Water Board is the sole regulator of the use of water and the deposit of waste into water in the Yukon. It is an independent administrative tribunal established under the *Waters Act*.
5. The Yukon Water Board issued a Type B water licence for Lobird Trailer Park to 40023 Yukon Inc., the corporation that, at that time, owned and operated the park, on December 2, 2020. The water license expires on November 3, 2026.
6. Originally, 40023 Yukon Inc. had applied for a 25-year water licence, the maximum allowable licence term.
7. During the application process, the Government of Yukon raised concerns with the lack of information regarding baseline conditions of the hydrology in the area and how that related to safe drinking water and movement of groundwater, with respect to the deposit of waste infiltrated to the ground from the trailer park's sewage lagoons.
8. Ultimately, the Yukon Water Board approved the issuance of a 6-year water licence, rather than 25 years. It addressed the Government of Yukon's concerns by requiring the licensee to monitor, collect samples, and report data on its water use and the disposal of waste.
9. Subsequently, in 2021, Lobird Living Corp. purchased the Lobird Trailer Park from 40023 Yukon Inc. and successfully applied to the Yukon Water Board to transfer the existing water licence to itself.
10. Since December 2, 2021, Lobird Living Corp. has been the licensee of the Type B water licence for the

Lobird Trailer Park. A copy of that Water Licence is attached as **Exhibit "A"**.

11. The Water Resources Branch, Government of Yukon, employs inspectors who are appointed under the *Water Act* to inspect for compliance with the terms and conditions of water licences.
12. The water licence for Lobird Trailer Park requires Lobird Living Corp. to, amongst other things:
 - a. Keep a current Spill Contingency Plan and submit any changes to the spill contingency plan to the Yukon Water Board within 10 days (condition 18).
 - b. Collect and report water sampling data of all effluent, surface water monitoring locations and all groundwater wells as set out in Schedule 1-A of the licence (conditions 26 to 28).
 - c. Measure the sludge levels in the anaerobic lagoon each year in August and include those results in its annual report, which must be filed by February 28th of the following year (condition 29).
13. In July 2024, Inspector Montgomery with the Water Resources Branch inspected under the Lobird Trailer Park water licence. He noted numerous areas of non-compliance with the water licence, including the lack of a spill contingency plan, missing water quality data, missing reports and a lack of required water sampling data (collectively, "the Deficiencies").
14. Inspector Montgomery met with Shaun Heffernan, Lobird Living Park Manager, and reviewed the compliance issues. Inspector Montgomery issued an inspection report with corrective action items required to address the Deficiencies.
15. The deadline given for addressing the Deficiencies was August 15, 2024; however, that deadline was extended at Mr. Heffernan's request to August 30, 2024.

16. Lob[ir]d Living Corp. did not take the corrective actions required to address the Deficiencies by the August 30th deadline.
17. On February 18, 2025, Inspector Montgomery again ordered Lobird Living Corp. to take corrective action to address the Deficiencies by March 12, 2025.
18. Lob[ir]d Living Corp. did not take the corrective action required to address the Deficiencies by the deadline.
19. Between July 2024 and August 2025, Inspector Montgomery and other staff at the Water Resources Branch had ongoing communication with the Park Manager and Lobird Living Corp. directors, Dwight Chalifour and Henry Deason, about the Deficiencies and what the corporation must do to bring itself into compliance.
20. On August 15, 2025, Inspector Montgomery swore a seven-count Information charging Lobird Living Corp. under the *Waters Act*.

[3] Findings of guilt were made on counts 1, 3, 4, 5, and 6.

Crown's Position

[4] The Crown seeks fine penalties for the five counts on replacement Information 25-04696A that set out contraventions of the Type B water licence under s. 38(3)(a) of the *Act* for a total fine of \$8,500.

[5] For each conviction under s. 38(3)(a) of the *Act*, the penalty is a “fine of up to \$15,000, or imprisonment for a term of up to six months, or to both”.

[6] Crown also pointed out s. 10 of the *Act*, which states that the objectives of the Board are:

...to provide for the conservation, development, and utilization of waters in a manner that will provide the optimum benefit from them for all Canadians and for the residents of the Yukon in particular.

[7] Crown also submits that deterrence and denunciation are the primary principles of sentencing in matters such as this.

Defence's Position

[8] The defence submits that much lower fines are appropriate in all the circumstances of this matter, namely, \$600 for each of the five counts for a total of \$3,000.

[9] The defence submits that Lobird Living Corp. is now compliant with the *Act* and their licence. They have done everything they are supposed to as evidenced by the defence sentencing documents filed, which are as follows:

1. Confirmation of acceptance of Lobird's Spill Mitigation Plan 2025 11 04
2. Shaun Heffernan professional upgrading
 - a. Remote First Aid, CPR and AED Level C 2025 10 23 (Canadian Red Cross)
 - b. Communication in the Workplace 2025 11 14 (Yukon University)
 - c. Records Management for Admin Professionals 2026 02 23 (Yukon University)
3. Lobird's new reporting form with entry field for Wasterwater input into Lagoon
4. Environmental Consulting Services Agreement between Stream Pro Resources and Lobird Living Corp. 2025 06 18

5. Correspondence from Stream Pro Resources confirming continuing agreement 2026 03 31

[10] Defence counsel explained that the company representatives were overwhelmed, inexperienced, and misguided in some respects. He submits that the company now realizes the error of their ways and have benefited from legal advice and education about their licence and the *Act*. They are now compliant and will not fail to remain compliant from now on.

Principles of Sentencing for Environmental Offences

[11] Judge Chisholm set out relevant sentencing principles in *R. v. Tamarack, Inc.*, 2017 YKTC 40, at paras. 8 and 9:

8 The Yukon Territorial Court decision of *R. v. United Keno Hill Mines Limited* (1980), 10 C.E.L.R. 43 (Terr. Ct.), sets out various factors to be considered in determining the appropriate penalty for offences of environmental abuse. These are summarized as follows:

1. the nature of the environmental damage;
2. the criminality of the conduct;
3. the extent of attempts to comply;
4. remorse;
5. the size of the corporate offender;
6. the profits or gain realized by the offence; and
7. the criminal history of the corporation.

9 More recently, in *R. v. Terroco Industries Limited*, 2005 ABCA 141, the Court details general principles at play in environmental offences, namely:

1. culpability;
2. prior records and past involvement with the authorities;
3. acceptance of responsibility;
4. damage/harm; and
5. deterrence.

[12] Judge Chisholm, again, notes that there is much overlap between those two approaches.

[13] At para. 20 of *Tamarack*, it is also important to note that:

A fine should not be perceived either by the offender or the general public as a cost of doing business. In other words, while the penalty must be fair, it must also have some impact on the offenders. Where, as here, the environmental infractions under scrutiny were broadcast widely to a large viewership, the need for both specific and general deterrence is an important factor.

[14] In a similar vein, in *R. v. B.Y.G. Natural Resources Inc.*, [1999] Y.J. No. 35 (Y.T. Terr. Ct.), Judge Lilles notes that compliance with the *Act* is important and that the penalties for non-compliance must exceed the cost of compliance. He also stated that large fines can attract publicity and, thus, have both a denunciatory and deterrent effect.

Analysis and Decision

[15] I find that the culpability of Lobird Living Corp. is in the mid- to high-range on the spectrum.

[16] The length of time that this company was in violation is significant. They had time and numerous opportunities to bring themselves into compliance, but they did not. During the period of July 2024 to August 2025, there were numerous warnings about compliance issues and deficiencies that the company did not heed. The spill mitigation plan was not finalized for more than 15 months (in November 2, 2025).

[17] Monitoring and reporting requirements were not complied with for 167 days.

[18] There was also a significant amount of time with no water quality data.

[19] Lastly, sludge level reports were not submitted for two years of annual reports in 2023 and 2024.

[20] Although it is laudable and mitigating that the company has since brought themselves into compliance, the purpose of sentencing is to deal with the charges that arose because of past non-compliance.

[21] The company saved money by not doing what they were required to do to be in compliance with the *Act* and their water licence. Based on the costs in compliance monitoring and sampling lagoon sludge data, as well as groundwater monitoring and sampling as shown, and the environmental consulting service agreement filed, those costs are up to \$25,000 for a period of about eight months. The period of that first agreement was June 18, 2025, to February 28, 2026.

[22] It is mitigating, however, that there was full admission of responsibility and guilty pleas. I accept that there is regret, remorse, and desire to not make the same mistakes ever again.

[23] Also mitigating is that there is no prior history or record of convictions of this company. Thankfully, there is no evidence of environmental damage or harm to anyone as a result of these deficiencies and compliance failures by the company.

[24] The objectives of deterrence and denunciation are very important in this case. The public needs to be assured that conservation and protection of our waters are not to be disregarded or discounted. Given the amount of money saved by the company not being compliant with their licence and the *Act*, the sentence if imposed could arguably be much higher. However, I also give weight to the mitigating factors set out by the Crown and defence in this matter, and that has resulted in fines that are not as high as they could have been if I had only considered the aggravating factors.

[25] Therefore, my decision is to impose the fines and the amounts sought by Crown, that is, for the five counts that set out contraventions of the Type B water licence under s. 38(3)(a) of the *Act*. I will go through each of these:

- Count 1 – \$1,500 fine for failing to submit a current spill contingency plan to the Yukon Water Board;
- Count 3 – \$2,500 fine for failing to collect required data on monitoring programs;
- Count 4 – \$2,500 fine for failing to report the data on monitoring programs;

- Count 5 – \$1,000 fine for failing to report the results of sludge measurements on the anaerobic lagoon in the 2023 report; and lastly,
- Count 6 – \$1,000 fine for failing to report the results of sludge measurements on the anaerobic lagoon in the 2024 annual report.

[26] The total amount of the fine is \$8,500.

[DISCUSSIONS]

[27] Lobird Living Corp. will have one year time to pay.

[28] I will now turn to the fine surcharge.

[29] Defence asked for the fine surcharge to be waived or for it to be in the lower range of 0% to 5%. In support of that, defence submitted that the Court should not impose a fine surcharge in this case because it is a regulatory offence and there was no victim but, instead, his client is essentially being punished for creating a risk of something bad happening.

[30] Defence further submits that fine surcharges should only be imposed in cases where a victim is identified, or there is a clear connection between the conduct and victimization.

[31] In addition, he argued that this case does not meet the purposes as set out in s. 4 of the *Crime Prevention and Victim Services Trust Act*, RSY 2002, c. 49, which states at s. 4(1):

Subject to any conditions under which money is paid into it the trust shall be used for the following purposes ...

[32] I am not going to read all of the sections, but (a) to (e) are set out addressing the issues of crime and criminality and victims and victimization.

[33] Crown sought a 15% fine surcharge in accordance with s. 11 of the *Crime Prevention and Victim Services Trust Act*. Section 11 sets out how a fine surcharge can be imposed for most Territorial Act convictions.

[34] Section 2 of the *Crime Prevention and Victim Services Trust Act* sets out the sources of money for the Crime Prevention and Victim Services Trust, which includes the s. 11 fine surcharge money, as per (a), as well as the other subcategories, including lotteries scheme money as per (b); donations to the fund as per (e); *Criminal Code* victim surcharges as per (f); et cetera.

[35] Section 4, *Purposes of the Trust*, sets out how all the money obtained under s. 2 will be used — essentially to address the issues of crime and victimization.

[36] The defence argument appears to be creative and novel, but I find that it is flawed because s. 4 deals with the outcome or purported uses of these funds. The Legislature could have chosen any purpose that the funds could be used for, such as

for education or healthcare. They decided that it should be used to address the impacts of crime and victimization.

[37] Further, those funds are collected not only from fine surcharges but also for other reasons as set out in s. 2 that I listed.

[38] I find that the fine surcharge is appropriate in this case, therefore I am imposing the 15% fine surcharge, which is 15% of the \$8,500 total in fines, which by my calculations is \$1,275. There will be likewise a year to pay on those as well.

[39] The remaining counts?

[40] MS. MCGILL: Your Honour, if the Court could dismiss the remaining counts 2 and 7.

[41] THE COURT: Yes.

[42] And there is Information 25-04696.

[43] MS. MCGILL: Yes, if that Information could be dismissed in its entirety because we —

[44] THE COURT: That is dismissed in its entirety and the outstanding counts 2 and 7 are dismissed as well.

CHRISTIE T.C.J.