# SUPREME COURT OF YUKON

Citation: *R.* v. *Leef and Ruby Range Outfitters,* 2009 YKSC 68

Date: 20091029
Docket S.C. No.: 08-AP021
Registry: Whitehorse

BETWEEN:

**REGINA**

Appellant

AND:

**RYAN KENNETH LEEF and RUBY RANGE OUTFITTERS (1989) LTD.**

Respondents

Before: Mr. Justice R. Foisy

Appearances:
Zebedee Brown — Appearing for the Appellant
Ryan Leef — Appearing on behalf of the Respondents

**REASONS FOR JUDGMENT**
**DELIVERED FROM THE BENCH**

[1] FOISY J. (Oral): The respondent, Mr. Leef, is an outfitter within the meaning of the *Wildlife Act*, R.S.Y. 2002, c. 229, and was acquitted after trial on a charge that, in providing information required to be provided under s. 118(1) of the *Wildlife Act*, he did provide false information.

[2] Section 118(1) reads as follows:

> A person shall not, in providing any information required to be provided by or under this Act, or in answering any questions that the person is required to answer pursuant to a provision of this Act, make a false or misleading statement, or provide false or misleading information or fail to disclose a

material fact.

[3] The information that was provided was false and was on an outfitter hunter export form, also referred to as OHE. The OHE indicates, *inter alia*, the specific game management subzone where the wildlife was taken or killed. The respondent submitted an OHE stating that the client's sheep was killed in an incorrect subzone. It is clear that this false information was not provided intentionally but rather as a result of a careless mistake, a term adopted by the respondent in his evidence.

[4] The trial judge was of the view that the use of the word "false" in the legislation meant that the Crown was bound to produce proof that the false information provided by the respondent was done so knowingly or deliberately. In other words, the trial judge concluded that because of the use of the word "false" in s. 118(1) of the *Wildlife Act*, the offence was one that required proof of *mens rea*. Since the evidence fell short of this standard of proof, he acquitted the respondent.

[5] With respect, I have concluded that the trail judge erred in so concluding and that the appeal must be allowed. The offence here is, without doubt, a public welfare offence, and is presumed to be a strict liability offence. The presumption can be displaced by the use of words such as "wilfully," "with intent," "knowingly" or "intentionally" in the legislation, and no such language is found here.

[6] Information that is false can be provided in a number of ways, particularly in a careless or negligent manner, as was the case here. Nothing further, in terms of the mental state of the accused, is required. There are many other uses of the word "false" that do not imply knowledge or intent. Unless the accused is able to prove on a balance

of probabilities that he exercised due diligence, his actions are not excusable at law.

[7] Case law tells me that the defence of due diligence is not easily established. At the very least, the respondent had a duty to carefully review the information on the OHE with other signatories and to ascertain that the information he retrieved from the map that he used to check the location was the proper information. Instead, the respondent admits to carelessness in retrieving and supplying the information required on the OHE, which also requires a certification that the information was correct.

[8] The respondent argued that the maxim *de minimus non curat lex* applies in this case. In my view, it cannot apply, as the giving of information on the OHE is a requirement of statute. The supplying of information is important and necessary. A failure to do so, in any manner, cannot result in the application of the maxim.

[9] All in all, in this case the respondent's evidence falls short of establishing due diligence on the balance, and accordingly I allow the appeal.

[10] The Crown has asked that a verdict of guilty be entered. I would, of course, have the power to send this matter back for a new trial. The evidence of the respondent at trial makes it clear to me that there is nothing to be gained by submitting the respondent to the cost and inconvenience of a new trial. His own evidence is such that the only result could be a finding of guilt.

[11] Accordingly, I find the accused guilty.

[12] Before I invite the parties to speak to the matter of sentencing, I simply would like to add that in arriving at my decision the following cases have been reviewed by me,

and they are as follows: *Cata International Inc.* v. *Canada (Minister of National Revenue)*, 2004 FC 663 (CanLII); *City of Vancouver* v. *Access Collateral Pawnbrokers Ltd.*, 2006 BCSC 1514 (CanLII); *Jean-Pierre Samson* v. *The Minister of National Revenue*, 2007 FC 975 (CanLII); *Lévis (City)* v. *Tétreault; Lévis (City)* v. *2629-4470 Québec inc.*, 2006 SCC 12 (CanLII); *The Queen* v. *Sault Ste. Marie*, [1978] 2 S.C.R. 1299; *R.* v. *Petten*, 129 Nfld. & P.E.I.R. 37 (QL); *R.* v. *Taylor*, [1988] N.W.T.R. 321 (QL).

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FOISY J.