

Citation: *R. v. 19574 Yukon Inc.*, 2008 YKTC 37

Date: 20070905
Docket: T.C.07-00105
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Overend

REGINA

v.

**19574 YUKON INC.
o/a BERNIE'S RACE TRAC**

Appearances:
Noel Sinclair
Bernie Heffner

Counsel for Crown
Appearing on his own behalf

REASONS FOR SENTENCING

[1] OVEREND T.C.J. (Oral): The company has been convicted of this offence. It is the third conviction for non-compliance. In the past year and a half there have been fines of \$500 and \$1,000. The principles of sentencing require that I focus mainly on deterrence for others who might be inclined to sell tobacco to minors. In that sense, I must obviously consider a fine that is not less than the last fine because the last fine clearly has not gotten the message through to the company that they must do something to ensure that these things do not happen.

[2] They must take all reasonable steps to ensure it does not happen, which I indicated in my reasons that he had not done on this occasion. The Crown is asking that I impose a fine between \$1,000 and \$2,000 and impose a ban on the sale of

cigarettes. As Mr. Heffner has indicated to me, while he may be making \$60 a day on the sale of cigarettes, and that is perhaps somewhere between \$1,500 and \$2,000 a month net to him on the sale of cigarettes, it is not just the sale of cigarettes that -- a ban in publication will not just affect the sale of cigarettes but will affect the balance of his business. That is something that I will take into consideration.

[3] There is going to be a fine of \$2,000. There will be a ban on the sale of cigarettes for 30 days. There will be a public notice which will say on the 5th of September 2007, the company was convicted of the federal tobacco offence of furnishing tobacco to a young person in a public place and fined \$2,000. Smoking is addictive and kills.

[4] Do you need time to pay that fine?

[5] THE ACCUSED: I guess I could pay it right away.

[6] THE COURT: Well, right away that means today?

[7] THE ACCUSED: No, not today. Okay, it would have to be next week because I won't be back.

[8] THE COURT: No, I understand that. All right, I am going to give you until the 30th of September to pay the fine. The document, however, will be ready -- the publication order, does he sign that? He does not have to sign that today; he just has to put that in the paper?

[9] MR. SINCLAIR: That's right, yes.

[10] THE ACCUSED: All right. Actually, all I have to do is go to the newspaper and just tell them what it is and they have the form there already.

[11] THE COURT: Yes. Well, you get a copy of the order to do that then.

[12] MR. SINCLAIR: The only thing that the draft order neglected to include was where he says what he has to do. You have indicated the fine, but not the prohibition on sales.

[13] THE COURT: Yes, fined \$2,000 and prohibited from selling tobacco for a period of 30 days. That will also be included in the public notice.

[14] MR. SINCLAIR: Can I handwrite that into the draft order?

[15] THE COURT: Well, no, because it is not going to be dealt with today in any event.

[16] MR. SINCLAIR: I'll resubmit a --

[17] THE COURT: So he can resubmit it in a proper form tomorrow, all right.

[18] MR. SINCLAIR: And may I have an order dispensing with Mr. Heffner's signature on the draft?

[19] THE COURT: Yes.

[20] MR. SINCLAIR: Thank you.

[21] THE COURT: He is here; he understands what it is going to say, all right. You will get a copy of that order, sir.

[22] THE ACCUSED: Okay, the 30 days starts today?

[23] THE COURT: The 30 days starts today, starts right now.

[24] THE ACCUSED: Okay, so I go take my cigarettes out right now.

[25] THE COURT: All right. Right now, as of now you are not selling cigarettes. All right, that is all.

OVEREND T.C.J.