Citation: *R.* v. *Goeppel,* 2017 YKTC 62

Date: 20171109
Docket: 16-05456A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Chisholm

REGINA

v.

NICOLAI GOEPPEL AND
H. COYNE & SONS LTD.

Appearances:

Megan Seiling	Counsel for the Territorial Crown
Richard Fowler	Counsel for Nicolai Goeppel
Meagan Hannam	Counsel for H. Coyne & Sons Ltd.

REASONS FOR JUDGMENT

[1] The defendants are charged that between June 20, 2016 and July 4, 2016, north of the Village of Carmacks, Yukon, they caused to be undertaken forest resource harvesting without authorization, contrary to s. 15(1) of the *Forest Resources Act,* SY 2008, c.15 (the "*Act*").

[2] The factual background to this matter is relatively straightforward. Mr. Goeppel hired H. Coyne & Sons Ltd. to use a bulldozer to clear land subject to a pending application for a lease to prospect under the *Placer Mining Act,* SY 2003, c. 13. H. Coyne & Sons Ltd., under the direction of Mr. Goeppel, cleared trees and vegetation in this forested area in order to enable access by motorized vehicles.

[3] The defendants have pleaded guilty to three contraventions of the *Land Use Regulation* as a result of this activity.

[4] Regarding the outstanding charge under the *Act,* the defendants clearly did not have authorization to undertake forest resource harvesting. However, the defendants take the position that the important question to be resolved is whether the defendants in fact engaged in forest resource harvesting.

[5] Pursuant to section 1 of the *Act*, "'forest resource harvesting' means the cutting and removal of any forest resource." It is apparent from this definition that the harvesting of forest resources comprises two steps, firstly cutting, and secondly, removing.

[6] The term 'forest resources' is defined as including "all flora in a wild state and for greater certainty, includes mushrooms".

[7] In Part 3 of the *Act*, under the heading, 'Disposition of Forest Resources', a prohibition on harvesting, without authorization, is made.

[8] Section 15(1) of the *Act* reads:

> No person may undertake or cause to be undertaken forest resource harvesting except in accordance with a harvesting licence, a cutting permit, a forest resources permit or as provided by the regulations.

[9] The following subsection outlines a number of exceptions, including one that assists, in my view, in understanding the meaning of the word 'harvesting', as employed in the legislation.

[10] Section 15(2) states:

> Subsection (1) does not apply to
>
> (a) a person harvesting forest resources for personal sustenance, cooking or obtaining warmth;

[11] The defence argues that the ordinary meaning of the verb 'harvesting' is to reap, and that this action encompasses the acquisition of the good. I agree that this is a fair description of the ordinary meaning of the word.

[12] In the text *Statutory Interpretation (*3rd ed. 2016*)*, Professor Ruth Sullivan observes that in interpreting legislation, the ordinary meaning of a word is presumed. She notes at p. 59 that:

> The starting point of every interpretative exercise is determining the 'ordinary meaning' of the text. This is what Driedger means when he says the words of an Act are to be read in their ordinary, grammatical sense. It is the meaning that spontaneously comes to the mind of a competent language user upon reading the text.
>
> In practice, the ordinary meaning is presumed to be the meaning intended by the legislature, and in the absence of a reason to reject it, it should be adopted by the court. …

[13] Additionally, this ordinary meaning is supported by the Oxford English Dictionary which defines it as to 'reap or gather in'.

[14] The definition of 'harvesting' in the *Act* is therefore consistent with the ordinary and dictionary meanings of the word. It cannot, in my view, be equated to the verb 'to clear', as has been suggested by the Crown.

[15] Furthermore, the terms ‘clearing’ and ‘harvesting’ are employed in different fashions in the *Act*, as evidenced by s. 32(2), which states:

> No person may ***clear*** any forest resources for the purpose of constructing a road or trail to assist with ***forest resource harvesting*** except as authorized by a cutting permit. (emphasis added)

[16] In this regard, Professor Sullivan states at p. 147:

> As Sopinka, J. wrote in *R. v. Zeolkowski* ‘giving the same words the same meaning throughout a statute is a basic principle of statutory interpretation.’ In light of this principle, and the legislature’s preference for uniform expression, it follows that different words appearing in the same statute should be given a different meaning. …

[17] I conclude that the two activities, ‘clearing’ and ‘harvesting’, are distinct and are treated distinctly in this piece of legislation.

[18] Although it is true that the defendants uprooted and cleared trees, brush and other vegetation, the evidence demonstrates that they did not remove this forest resource.

[19] Witnesses for the Crown testified to the fact that the defendants cleared, and in so doing, disturbed the landscape in order to construct a road. Some of what was cleared was a preexisting trail or road that had grown in. The debris was piled to the sides of the road, as evidence by photos submitted at trial.

[20] There was no evidence to indicate that anything that was cleared or cut was ever removed. Therefore, the defendants did not complete the second step of harvesting. They did not harvest any forest resource through its cutting and removal.

[21] As a result, the Crown has not proved the *actus reus* of the offence charged. I find both Mr. Goeppel and H. Coyne & Sons Ltd. not guilty.

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CHISHOLM, T.C.J.