

Citation: *R. v. Santa*, 2006 YKTC 24

Date: 20060221
Docket: T.C. 05-06120
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Worship Justice of the Peace Cameron

REGINA

v.

BRIAN G. SANTA

Appearances:
Lori Lavoie
Brian Santa

Counsel for Crown
Appearing on his own behalf

REASONS FOR JUDGMENT

[1] CAMERON J.P.T.C. (Oral): It seems to me that firstly, the facts are not in dispute in regards to the offence, and the facts certainly support the offence. The question is whether or not there was, or should have been, an offence at the time that this was issued. I think that is where the confusion, if there is confusion, may have resulted from a misunderstanding of what the process is in regards to the making of laws, the amending of laws, et cetera. I think, as Ms. Lavoie pointed out, it is very important to understand that amending a bylaw does not strike down the bylaw.

[2] The *Criminal Code* is being amended all the time; it does not mean that the *Criminal Code* is not effective until the latest amendments come in. The only thing that

happens is that if an amendment, in fact, strikes down a particular section or subsection, then there is exactly the argument that you put forward to be made. If it does not strike down that particular section, if the amendments simply alter that section by number, which is what has happened here, because what happened is in the amendments, the only difference is instead of 3(14) it is 3(12). The wording is exactly the same.

[3] The intent of the law in prohibiting smoking in cocktail lounges or taverns was not changed. What was changed, clearly, in the prohibition between then and now, is that they have added more specifics to what is prohibited and what is not, but it did not change what the original prohibition was, and the prohibition for you was not changed in wording, at all for Mr. Santa. It was not changed in wording at all. It simply says, as it was then, that no person shall smoke in a cocktail lounge or tavern, and it still states in s. 3(12), no person shall smoke in a cocktail lounge or tavern.

[4] So the argument that the bylaw did not exist during the amendment period or the period that it was being questioned or amended is not a valid one in law. The law was never struck down. As far as your view that there was no further enforcement, that can be for any number of reasons, not the least of which, I do not know that it would necessarily be policy, but it could be policy. Even if it is policy, it does not mean that the law does not exist; it just means that they are choosing not to enforce it at this particular time. Gun registry, the gun registry law exists, but it is not really being enforced very hard in a lot of areas, particularly in the west. So it does not mean that a charge cannot come forward on that. The other thing that could have been happening is simply the fact that there are lots of days where stop sign violations and speeding violations are

not necessarily being enforced unless they are seen, simply because we only have a limited number of people who can do a limited number of enforcements.

[5] So the bottom line is that in the argument as to whether or not the bylaw was in full force and effect on the day in question, the argument falls short and the evidence and the law would support, that the bylaw did exist. In its form, at that time, it was s. 3(14). What would be normal, and as is the normal course, when there are amendments and changes that result in a different number for the same offence, the person being charged must be charged under the number as it was on the day of the particular offence. So that is why it would not be proper for the Crown to have simply stood up and said we would like to amend this 3(12), because 3(12) did not exist on December 2nd, but 3(14) did. So the argument that the law did not exist does not follow through and the Court does not accept that argument.

[6] As such, the Court will make a finding of guilt on Mr. Santa and the penalty sought was a \$100 fine. Did you wish to speak on how long you would need to pay that, Mr. Santa?

[7] THE ACCUSED: Yes, I would like two months.

[8] THE COURT: Two months. Two months time to pay. You should also be advised that you can appeal this particular decision if you wish. You must launch that appeal within 30 days of today's date.

[9] THE ACCUSED: Okay, thank you.

CAMERON J.P.T.C.