

Citation: *R. v. The City of Dawson*, 2011 YKTC 82

Date: 20111212
Docket: 01-00050A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Lilles

REGINA

v.

THE CITY OF DAWSON

Appearances:
John Cliffe
Tony Crossman

Counsel for the Crown
Counsel for the City of Dawson

REASONS FOR JUDGMENT

[1] LILLES T.C.J. (Oral): This is an application made jointly by the City of Dawson and the Director of Public Prosecutions to vary the order made originally pursuant to s. 79(2)(b) and (i) of the *Fisheries Act*, R.S.C., 1985, c. F-14, on March 5, 2003, and varied on August 31, 2004 and October 30, 2008, pursuant to s. 79.5 of the *Fisheries Act*.

[2] The original order made as a result of a guilty plea to a single charge pursuant to s. 36(3) of the *Fisheries Act* on March 5, 2003, directing the City of Dawson to construct a secondary sewage treatment plant. The variation made on October 30, 2008 required the City of Dawson to:

Construct a sewage treatment plant, facility or system and have it in operation by December 31, 2011.

[3] The application before me today comes with the consent of both parties and requests that the order be amended to allow the sewage treatment plant to be completed and be in operation by December 31, 2012. As the application comes by way of consent it is unnecessary to review the lengthy history of this matter. Mr. Cliffe, in court, has provided a quick summary of that history, and I emphasize a very quick “Coles notes” summary, because, in fact, a full summary would take much more time than we have available this afternoon.

[4] I will note that the plant is currently under construction and is scheduled for completion in the spring of 2012. Although the secondary treatment plant is scheduled for completion in the spring of 2012, the parties have agreed to an extension to December 31, 2012. That is a prudent decision, in my view, in part because there can always be unforeseen delays in major construction projects. Dawson winters, as we have heard last year, can be severe and can delay construction.

[5] Secondly, the original intent was to construct an “operational secondary sewage facility that complies with the *Fisheries Act*,” meaning a treatment plant that had the desired impact of reducing toxicity levels to fish. That can only be determined by evaluating the performance of the secondary treatment plant over the summer when the demands on the system are maximized by the influx of tourists to Dawson.

[6] In the result, leave to amend due to change of circumstances is granted pursuant to s. 79.5(2) of the *Fisheries Act*. The order should therefore be amended to

substitute the December 31, 2012 date for the December 2011 date where it occurs in the last amended order.

LILLES T.C.J.