Date: 20030514
Docket No.: T.C. 02-11035/A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
(Before His Honour Judge Faulkner)

REGINA

v.

WESTOWER COMMUNICATIONS LTD.

Brett O. Webber — Appearing for Crown
David A. McWhinnie

Henry Easingwood — Appearing for Defence

DECISION

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[1] FAULKNER T.C.J. (Oral): In this case, the applicant, Westower Communications Ltd., has been charged with a number of offences under the *Canada Labour Code*, arising out of an industrial accident that occurred in October of 2001.

[2] The location of the accident in question was at a communications tower located near Dawson City, in the Yukon Territory. The defendant, Westower Communications Ltd., is based in the lower mainland of British Columbia.

[3] The allegations are that workmen, who were employees of Westower

Communications, were doing some maintenance work on the communications tower, and that because of health and safety deficiencies, which are the responsibility of the employer, one of the workers fell from the tower and was killed.

[4] The present application by Westower is for a change of venue. The change that is sought is to move the trial from the Yukon Territory to Surrey, in the province of British Columbia.

[5] Normally, in proceedings under the *Criminal Code,* such an application would fail at the outset because it is quite clear under the *Criminal Code* that a change of venue can only be within a province or territory and not to another province or territory.

[6] There is, however, a provision in the *Canada Labour Code* unlike the provisions of the *Criminal Code.* Section 150 of the *Canada Labour Code* arguably provides a basis for prosecutions under that *Code* in one province or territory where the acts complained of occurred in another province or territory. It is on the basis of s. 150 that the application is made.

[7] In my view, s. 150 clearly provides power to commence prosecution in one province where the offence occurred in another. Indeed, there have been cases where challenges by defendants to proceedings brought in one province where the offence occurred and another have failed.

[8] One case which I have been made aware is the case of *R. v. Wilson Fuel Co.,* [2000] N.S.J. No. 243. It should be noted that an application for leave to appeal that decision in the Supreme Court of Canada was dismissed.

[9] However, the situation in *Wilson Fuel*, *supra*, was different than the situation here. In *Wilson Fuel*, *supra*, the defendant was challenging the jurisdiction of the court to proceed with charges against it under the *Canada Labour Code* on the basis that the charges had occurred in another province.

[10] In this case, as I have already indicated, the situation is reversed. The defendant is arguing that the court in the jurisdiction where the offence occurred should decline jurisdiction, and transfer it to another where the company has its main offices, and where it argues it will be more convenient for it to defend the charges.

[11] I tend to agree with the submission of the Crown, that the real intention of s. 150 is to give to the appropriate authorities the power to commence prosecutions under this piece of federal legislation without regard to the usual provincial jurisdictional issues, and, that this section does not provide a power for the court to order a change of venue from one province to another.

[12] However, I think it may be convenient to leave the actual decision of that matter to another day, and to proceed on the basis, and on the assumption, that it would be within my jurisdiction and power to order that the matter be moved to the province of British Columbia.

[13] Assuming that to be the case, in my view, the application must fail. In the first place, it is a well-known general rule, of venue matters, that a charge should be tried in the locale where it arose. It is also clear that the usual reasons for a change of venue are the possibility of bias or prejudice in the place where the trial is to be held, or the impossibility of impaneling an impartial jury, or the threat to a fair trial from extensive publicity that has occurred in the original jurisdiction; none of these apply in

this case. The only argument is that it would be more convenient and perhaps less costly for the defendant to defend in British Columbia. It seems to me that even under civil law rules of *forum non conveniens* such an application would probably fail. I doubt that those apply to this present situation.

[14] It should also be noted that, although the corporate defendant has its main offices in British Columbia, it, nevertheless, on the face of the allegations, was conducting business in the Yukon Territory, and therefore, must be taken to assume the risk of having to defend suits, whether they be civil or criminal, arising from its operations within the Yukon.

[15] In the result, I have not been persuaded that even if I had the power to do so, that it would be in the interests of justice to order that the matter be transferred to the province of British Columbia.

[16] Now, what stage are we at with this? Has there been a trial date fixed?

[17] MR. MCWHINNIE: Trial date has been set for the latter part of October, Your Honour. It has already been learned that Mr. Sulowski whom you heard more... today ... is not available then, so we might have to shift the trial date a few weeks either way, and those arrangements have been put on hold awaiting the determination of today's application. We can now meet with the Trial Coordinator and see if we can find some time.

[18] THE COURT: All right. In any event, whatever the trial date may be, I am ordering that the final report of the expert and the factual underpinnings therefore be provided to the accused, not less than 60 days prior to

the date of trial.

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FAULKNER T.C.J.