

Citation: *R. v. 3542 Yukon Ltd.*, 2004 YKTC 55

Date: 20040629  
Docket: T.C. 04-00008  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: His Honour Judge Overend

Regina

v.

3542 Yukon Ltd.  
o/a Riverside Grocery

Appearances:  
Suzanne Duncan  
Ray McLennan

Counsel for Crown  
Appearing for 3542 Yukon Ltd.

**REASONS FOR DECISION**

[1] OVEREND T.C.J. (Oral): This is a prosecution under the Federal *Tobacco Act*.

That Act sets out, in s. 4, its purpose as follows:

The purpose of this Act is to provide a legislative response to a national public health problem of substantial and pressing concern and, in particular,

(c) to protect the health of young persons by restricting access to tobacco products.

[2] S. 8. (1) of the Act says:

No person shall furnish a tobacco product to a young person in a public place or in a place to which the public reasonably has access.

[3] Subsection (2) of s. 8 says:

A person shall not be found to have contravened subsection (1) if it is established that the person attempted to verify that the person was at least eighteen years of age by asking for and being shown documentation prescribed for the purposes of verifying age, and believed on reasonable grounds that the documentation was authentic.

[4] In this case, Lindsay Heynan was employed by Health Canada as a test shopper; and on the 19<sup>th</sup> of August, 2003, went to the Riverside Grocery, which is owned by the defendant company. The purpose was to check compliance with the requirements of the Act. To make a long story short, she went into the store, went to the candy counter, then went and requested cigarettes. She asked for a carton of Player's Light, received that carton of Player's Light, paid for it, received the change, left the store and was at no time asked for I.D.

[5] No evidence was called on behalf of the defendant company, and the only indication that any steps were taken by the defendant to show due diligence was a contract, which had been forwarded to Health Canada following the 19<sup>th</sup> of August, in which the defendant company appears to have entered into a form of contract with its employee, Brianna Quinsey. That document, among other things, and particularly with

reference to the sale of tobacco products, says: The employee is responsible for obtaining picture I.D. for the sale of any tobacco products. The employee will I.D. anyone 25 or younger. No I.D., no sale. That is the only evidence before the Court that any steps were taken to ensure compliance.

[6] In this particular case, there had been a prior check in February or March of 2003 where the defendant company had been found to be noncompliant and had been provided with a list of possible things that could be done to ensure compliance with the Act. There is no evidence before me that any of those measures were taken. Those measures are not exhaustive, and of course, it is up to the employer to ensure compliance and up to the employer to take what steps the employer deems reasonable to ensure there is due compliance. In this particular case, the one step taken by the employer to have a contract signed approximately two-and-a-half months prior to the 19<sup>th</sup> of August falls far short of the due diligence required to exempt a person from a conviction under the Act.

[7] Much of what Mr. McLennan said on behalf of the defendant will, of course, be taken into consideration by me in determining the appropriate sentence on this matter, but it is not and does not excuse or relieve the defendant from responsibility; and I find that the offence has been committed and that the defendant is guilty.

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OVEREND T.C.J.