

Citation: *R. v. Goepfel*, 2017 YKTC 61

Date: 20171211
Docket: 16-05456A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Chisholm

REGINA

v.

NICOLAI GOEPEL AND
H. COYNE & SONS LTD.

Appearances:
Megan Seiling
Richard Fowler
Meagan Hannam

Counsel for the Territorial Crown
Counsel for Nicolai Goepfel
Counsel for H. Coyne & Sons Ltd.

REASONS FOR JUDGMENT

[1] The Defendants each face three charges contrary to the *Land Use Regulation*, O.I.C. 2003/51¹, namely:

On or between June 20, 2016 and July 4, 2016, north of the Village of Carmacks, Yukon, did carry on work involving the use a (*sic*) self-propelled power driven machine, to wit: a bulldozer, for moving earth or clearing land of vegetation without a Class A permit, contrary to paragraph 7(f) of the *Land Use Regulation*, O.I.C. 2003/51.

On or between June 20, 2016 and July 4, 2016, north of the Village of Carmacks, Yukon, did carry on work involving the levelling, grading, clearing, cutting of a trail or right-of-way exceeding 1.5 m in width and exceeding 4 ha in area without a Class A permit, contrary to paragraph 7(h) of the *Land Use Regulation*, O.I.C. 2003/51.

¹ Relevant portions of this and other legislation referred to is appended to this decision.

On or between June 20, 2016 and July 4, 2016, north of the Village of Carmacks, Yukon, did carry on work involving the use of a vehicle that is more than 5 t but less than 10 t net vehicle weight, to wit: a bulldozer, without a Class B permit, contrary to paragraph 8(b) of the *Land Use Regulation*, O.I.C. 2003/51.

[2] The parties disagree on the interpretation of the relevant legislation regarding the applicable penalties and, as a preliminary matter, sought a ruling from the Court in this regard. After hearing argument, I provided a short oral decision on November 7, 2017 finding that s. 3 of the *Summary Convictions Act*, RSY 2002, c. 210 governs the penalties for these offences. I advised that written reasons would follow. These are the written reasons.

[3] In brief, the defendants submit that the plain reading of the relevant territorial legislation leads to the conclusion that the maximum monetary penalty for each offence is a \$500 fine, whereas the Crown argues that the logical conclusion from reading the legislation as a whole is that the maximum monetary penalty for each offence is a \$5,000 fine.

[4] The *Land Use Regulation* (the '*Regulation*') was enacted pursuant to section 21 of the *Territorial Lands (Yukon) Act*, SY 2003, c.17, (the "*Act*"). The defendants argue that as no penalties are stipulated in either s. 21 of the *Act*, or in the *Regulation* itself, the general penalty provision found at s. 28 of the *Act* governs. Section 28 stipulates that if no other penalty is provided for in the *Act* or any regulation for a contravention, the offence is punishable on summary conviction.

[5] Therefore, the defendants contend that pursuant to s. 3 of the *Summary Convictions Act*, the maximum penalty for each of these three offences is a \$500 fine, six months in jail, or both.

[6] The Crown, however, refers to ss. 3 and 4 of the *Act*, and highlights the fact that these sections enable the Commissioner in Executive Council to set apart and appropriate territorial lands as a land management zone and to make regulations regarding the ‘protection, control and use of the surface of the land in a land management zone’.

[7] The Crown contends that the purpose of the *Regulation* is clearly to govern land management zones. Further, s. 2 of the *Regulation* designates “the Yukon” as a land management zone, and therefore the penalty section found at s. 5 of the *Act* applies.

[8] The Crown argues that since ss. 3, 4 and 5 of the *Act* deal with land management zones, it was unnecessary for the legislature to incorporate a specific punishment provision elsewhere in the *Act*.

[9] The defendants maintain that it would be improper to circumvent the express enactment of the *Regulation* pursuant to s. 21 of the *Act*, by instead considering sections 3, 4 and 5 of the *Act*, as is suggested by the Crown.

[10] The Crown further submits that in considering the legislation as a whole, the legislators clearly intended to impose significant penalties for those contravening provisions of the *Regulation*. Accordingly, the penalty set out in s. 5 of the *Act*, which stipulates that any contravention of a regulation made under section 4 is guilty of an

offence and liable on summary conviction to a fine not exceeding \$5000, is applicable to the offences in question.

[11] Finally, the Crown submits that the narrow interpretation of the legislation being suggested by the defendants would frustrate the purpose of the legislation.

Analysis

[12] The *Regulation* was made pursuant to s. 21 of the *Act* on March 25, 2003. It came into force on April 1, 2003.

[13] The notice for this enactment was published in the Yukon Gazette on March 25, 2003, indicating that the *Regulation* would come into force on April 1, 2003. The Yukon Gazette publication reiterated that the *Regulation* was made pursuant to s. 21 of the *Act*.

[14] It is useful to consider the evolution of the legislation which I am asked to interpret. The *Territorial Lands Act*, R.S.C. 1970, c. T-6 was earlier federal legislation that encompassed Crown lands in the Yukon Territory and the Northwest Territories. No mention is made in that legislation of land management zones.

[15] However, in 1970, the federal government amended this legislation by way of an *Act to amend the Yukon Act, the Northwest Territories Act and the Territorial Lands Act*, R.S.C. 1970, c. 48 (1st Supplement). The amendments to the federal *Territorial Lands Act* enabled the Governor in Council to 'set apart and appropriate any territorial lands' in the Yukon Territory 'as a land management zone'.

[16] Pursuant to ss. 3.1, 3.2 and 19 of the amended *Territorial Lands Act*, the federal *Territorial Land Use Regulations* were subsequently enacted in November 1971. These regulations contained, *inter alia*, general provisions with respect to Territorial Lands under Part I and provisions with respect to Land Management Zones under Part II.

[17] Section 3.2 of the *Territorial Lands Act* authorized the Governor in Council to make regulations respecting:

(a) the protection, control and use of the surface of land in a land management zone...

[18] Section 19 authorized the Governor in council to make:

(i.1) make regulations respecting the protection, control and use of the surface of territorial lands;

[19] Distinct penalties applied to contraventions of regulations under Part I as opposed to contraventions under Part II. The penalty for a contravention of the regulations made with respect to a land management zone was a fine not exceeding \$5000 (s. 3.3 of the amended *Territorial Lands Act*) whereas a contravention of a Part I regulation resulted in the conviction of an offence punishable on summary conviction (s. 25).

[20] The 2003 Yukon *Regulation* made pursuant to O.I.C. 2003/51 is in many ways a compilation of the 1971 federal *Regulations*.

[21] For example, under Part I of the 1971 regulations, section 6 reads:

All materials removed by an operator in the course of making an excavation other than rock trenching shall, unless otherwise authorized by

an inspector, be replaced and the area of the excavation shall be levelled and compacted.

[22] Similarly, section 11 of the 2003 *Regulations* states:

Subject to the terms and conditions of their permit or the express written authority of an inspector, every permittee shall replace all materials that they remove in the course of excavating, other than rock trenching, and shall level and compact the area of the excavation.

[23] As another example, under Part II of the 1971 *Regulations*, s. 25 states:

Every preliminary plan or final plan submitted under this Part shall

- (a) be drawn to a scale that clearly shows the lands the operator proposes to use or has used;
- (b) show the scale to which the plan is drawn, and
- (c) show locations
 - i) in accordance with sections 5 to 9 of the *Canada Oil and Gas Land Regulations*, as amended, or
 - ii) by giving the geographic co-ordinates thereof.

[24] This is very similar wording to s. 34 of the 2003 *Regulation*, which reads:

Every preliminary plan or final plan submitted under this Regulation shall

- (a) be drawn to a scale that clearly shows the lands that the applicant for a permit proposes to use or the permittee has used;
- (b) show the scale to which the plan is drawn; and
- (c) show locations
 - (i) in accordance with sections 2 to 4 of the *Oil and Gas Disposition Regulations*, or
 - (ii) by giving the geographic co-ordinates thereof.

[25] Therefore, it is apparent that the drafters, and ultimately the legislators, were fully cognizant of the history of this legislation. In my view, the legislators could have chosen to enact the 2003 *Regulation* pursuant to either s. 21 or s. 4 of the *Act*. They chose to enact under s. 21.

[26] It may have made some sense to enact the said *Regulation* pursuant to s. 4, as s. 2 of the *Regulation* designates the Yukon as a land management zone for the purpose of the *Regulation*. However, despite this designation, nothing prevented an enactment of the *Regulation* pursuant to s. 21 of the *Act*. It must be remembered that s. 21(j) permits the making of ‘regulations respecting the protection, control and use of the surface of **territorial lands**’. (emphasis added)

[27] The great majority of the *Regulation* makes reference to ‘territorial lands’. The aim of the legislation must therefore be with respect to ‘territorial lands’ as opposed to a ‘land management zone’.

[28] Indeed, section 7 of the *Regulation*, which the defendants are alleged to have contravened, begins, as follows:

No person shall, without a Class A Permit, carry on any work or undertaking on **territorial lands**... (emphasis added)

[29] In my view, the legislators chose to employ s. 21 as the vehicle regulating lands in the Yukon, and therefore to enact the *Regulation* pursuant s. 21 of the *Act*. Not only is this the plain language reading of the legislation, but had they decided otherwise, the provisions, in my opinion, would have been differently worded. For example, s. 7 would

have referred to working in a 'land management zone' as opposed to working 'on territorial lands'.

[30] In addition, the historical background of the legislation reveals that the term 'territorial lands' does not equate to the term 'land management zone'.

[31] I cannot infer, as the Crown argues, that the intention of the Commissioner in Executive Council was to enact this *Regulation* pursuant to s. 4 of the *Act*, and that the reference to s. 21 was an oversight.

[32] Although it is true that the Commissioner in Executive Council enacted another regulation pursuant to s. 21, namely the *Territorial Lands Regulation*, O.I.C. 2003/50, regarding the purchase and leasing of territorial lands, this in no way restricted the Commissioner from enacting the regulation in question pursuant to the same section.

[33] I am also unable to agree with the argument that the penalties available under s. 3 of the *Summary Convictions Act* are modest and not in keeping with the spirit of the land use legislation.

[34] It is important not to lose sight of the fact that, although there is a significant monetary difference between s. 5 of the *Act* and s. 3 of the *Summary Conviction Act* (\$5000 versus \$500), s. 3 also empowers a court to impose a period of imprisonment whereas s. 5 does not.

[35] As a result, in my view, the penalties under the *Summary Convictions Act* may, indeed, be severe and punitive.

[36] In conclusion, as there is no specific penalty section in either s. 21 of the *Act* or in the *Regulation*, reference must be made to s. 28 of the *Act*. As set out above, s. 28 makes it an offence punishable on summary conviction to contravene a regulation for which no other punishment is provided, thus leading to s. 3 of the *Summary Convictions Act*.

CHISHOLM, T.C.J.

Appendix 'A'

Territorial Lands (Yukon) Act, S.Y. 2003, c. 17:

Definitions

1 In this Act,

...

“territorial lands” means lands under the administration and control of the Commissioner ...

Land Management Zones

3 The Commissioner in Executive Council may, where he or she deems it necessary for the protection of the ecological balance or physical characteristics of any area in the Yukon, set apart and appropriate any territorial lands in that area as a land management zone.

Regulations concerning zones

4 The Commissioner in Executive Council may make regulations respecting

(a) the protection, control, and use of the surface of land in a land management zone set apart and appropriated under section 3; and

(b) the issue of permits for the use of the surface of land in a land management zone, terms and conditions of those permits, and the fees for them.

...

Offences and punishment

5(1) Every person who

(a) contravenes any regulation made pursuant to section 4 or 4.2 or an order made by the Minister pursuant to s. 4.1; or

...

is guilty of an offence and liable on summary conviction to a fine not exceeding \$5000.

...

Powers of the Commissioner in Executive Council

21 The Commissioner in Executive Council may

...

(j) make regulations respecting the protection, control, and use of the surface of territorial lands;

...

Publication in the *Yukon Gazette*

22 A copy of

(a) each order setting apart and appropriating any territorial lands as a land management zone that the Commissioner in Executive Council proposes to make under section 3, and

(b) each regulation or amendment to a regulation that the Commissioner in Executive Council proposes to make under section 4 or paragraph 19(j),

shall be published in the *Yukon Gazette* and a reasonable opportunity shall be afforded to all interested persons to make representations to the Minister with respect to it.

...

Offence and punishment

28 Every person who contravenes any provision of this Act or any regulation for which no other punishment is provided is guilty of an offence punishable on summary conviction.

Land Use Regulation, O.I.C. 2003/51:

Establishment of land management zones

2. The Yukon is hereby designated as a land management zone for the purposes of this Regulation.

Summary Convictions Act, R.S.Y. 2002, c. 210:

General offence and penalty

3 ...

(2) A person who commits an offence against an enactment is liable on summary conviction to a fine of \$500 or to imprisonment for 6 months, or both, except as otherwise specially provided in the enactment.