

BREAKING CASE LAW

*R. v Snowfield
Development Corp.*



This Issue

Environmental clean-up obligations in the Northwest Territories

R v. Snowfield Development Corp.
2015 NWTTC 09

On May 4, 2015 the Territorial Court of the North West Territories (NWTTC) released a decision which is bound to make mining and drilling companies in the NWT think twice about abandoning their environmental responsibilities once their mining and drilling operations come to an end. This decision may mark the beginning of increased enforcement activity and greater penalties imposed by the NWTTC in circumstances when mining and drilling companies fail to live up to their environmental responsibilities as outlined in the Mackenzie Valley Resource Management Act (Act). With remedial damages awarded in excess of \$200,000.00, the NWTTC has begun baring its teeth in response to the prevailing operating theory that trivial fines have become simply the cost of doing business in the North.

Snowfield Development Corp. (Snowfield) was issued a land permit for mineral exploration on August 30, 2004. This permit expired in 2009, at which point Snowfield obtained an extension until August 30, 2011. A storage authorization was obtained until August 2012 and the area was occupied by Snowfield until April 15, 2013. An inspector visiting the mining site observed that heavy equipment, machinery, bags of diamond drill cores and oil drums containing hazardous materials were all abandoned and strewn across the tundra. Later it was determined that the mining site had, for all intents and purposes been abandoned since 2011.

Based on the state of the abandoned mining site, Snowfield committed 4 offences contrary to section 92 of the Mackenzie Valley Resource Management Act, which is a provision that outlines offences and punishment. Snowfield acted contrary to both section 15 and section 16 of the Mackenzie Valley Land Use Regulation (Regulation) which led to the 4 offences under the Act. Section 15 of the Regulation required Snowfield to restore the permit area, to substantially the same condition as it was prior to the commencement of the mineral exploration. Section 16 of the Regulation required Snowfield to remove all structures, temporary buildings, machinery, equipment, materials, fuel drums and other storage containers and other items used in connection with the land-use operation on the permit site. Neither section of the Regulation was complied with so the offence provision in the Act was triggered.

Suite 2250
10104 – 103 Avenue
Edmonton, Alberta
T5J 0H8

Tel 780.448.9275
Fax 780.423.0163
shoresjardine.com

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In determining the appropriate sentence, Judge Gagnon enunciated and described five principles that need to be considered for determining a sentence for environmental offences. These principles include: the degree of responsibility; the past record of environmental offences; acceptance of responsibility; damage or harm to the environment; and deterrence.

It was found that Snowfield's degree of responsibility was high because there was no effort to either erase or reduce its footprint on the mining site. Further, Snowfield attempted to abandon reclamation responsibilities by arguing that the company was bankrupt, which in effect placed the financial burden on the Government of the Northwest Territories. Secondly, although this was Snowfield's first offence, the corporation was warned about the obligation to both restore the mining site and to remove all equipment and material prior to the expiry of the permit. Thirdly, Snowfield had been avoiding responsibility for the violations. Fourthly, actual harm to the environment was found based on the lack of restoration to the mining site. Potential harm was also found due to the contamination risk from the oil drums abandoned on the mining site. Finally, the need for deterrence was found to be high based on the nature of the conduct and the purpose of the legislation, which is to protect the environment.

Perhaps the most significant effect of this decision is that a drilling or mining company can no longer assume that enforcement of obligations under environmental statutes is unlikely and even if a prosecution results only trivial fines will be imposed when such laws are breached. With significant remedial damages being awarded to the Government of the Northwest Territories in the six figure range, a new page has turned in regards to the enforcement of environmental legislation.

In considering all of the aggravating factors referred to by Judge Gagnon, it was found that Snowfield had to pay \$40,000.00 in fines and \$212,908.00 to cover the cost paid by the Government of the Northwest Territories to remediate the abandoned mining site. As summarized by the Judge, one of the governing principles behind the Mackenzie Valley Resource Management Act and all environmental legislation generally is to ensure that, "the footprint left by any commercial activity be as small as possible, and that when the activity ceases, the land be restored to its initial state as much as possible (at para 62)." Snowfield ignored its statutory responsibility to remediate the mining site and now faces a significant financial penalty for doing so. Undoubtedly this decision will serve as a "cautionary tale" for other similarly situated mining companies in the Northwest Territories and other jurisdictions with comparable enforcement regimes.

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