

**IN THE TERRITORIAL COURT OF YUKON**

Before: His Honour Judge Faulkner

Regina

v.

Westower Communications Ltd.

Appearances:  
Brett Webber  
Reginald Easingwood

Counsel for Crown  
Counsel for Defence

**REASONS FOR SENTENCING**

[1] FAULKNER T.C.J. (Oral): In this case, Westower Communications Ltd. has entered a plea of guilty to a charge under the *Canada Labour Code*, R.S.C., 1985, c. L-2. Essentially, the charge involves a failure to provide adequate training and instruction to an employee. The prosecution arose out of a fatal industrial accident that occurred in October of 2001. A rigger, Mr. Brownie, who was an employee of Westower Communications Ltd., was performing maintenance work on a communications tower south of Dawson City in the Yukon Territory. Westower is in the business of, I gather, both construction and maintenance of communications towers, amongst other things.

[2] The rigger, Mr. Brownie, climbed to the top of the tower together with another employee. What happened then is not exactly clear but it appears that Mr. Brownie either attempted to clip his safety harness onto a lightning rod attached to the

communications tower, or possibly grabbed onto the lightning rod for support while he moved his safety harness from one clipping location to another. In either case, it turned out that the lightning was corroded and it snapped, and Mr. Brownie fell 230 feet to his death.

[3] In entering the guilty plea, Westower has acknowledged that there was a gap both in its training manuals and training methods because it did not really address the issue of whether or not it was safe to clip into or onto so-called add-on equipment or devices on these towers. Obviously, in light of what occurred, it was not safe.

[4] Westower has no prior record of similar infractions under the Canada Labour Code or, indeed, I would assume, under any related health and safety statutes.

[5] I have been presented with a joint submission that there be a fine in the amount of \$25,000 and that the corporation be placed upon probation for a period of one year.

[6] With respect to the amount of the fine, since the Crown proceeded by summary conviction, the maximum fine which could have been imposed is in the amount of \$100,000. Taking into account what occurred in this accident, but also taking into account the lack of a prior record, I am satisfied that I can endorse the fine sought. Accordingly, there will be a fine with respect to Count 3 in the amount of \$25,000. In default, enforcement.

[7] There was an additional leg, if I can call it that, to the joint submission, and that is that the corporation be placed on probation for a period of one year. There is no explicit power, under the *Criminal Code* or the *Canada Labour Code*, to place a

corporation on probation, but there is, nevertheless, a history of doing that in appropriate circumstances in this jurisdiction and probation orders have been imposed against corporations in a number of cases.

[8] I am satisfied that this is an appropriate case in which to impose a probation order. The proposed terms of the order, apart from the normal statutory terms, have been agreed to between the parties and form part of the joint submission, and, indeed, those terms were filed with the Court. I do not propose to read them into the record.

[9] Essentially, and I think quite properly, the corporation has undertaken to do two things. Firstly, to revise and improve its own internal training and supervision with respect to these matters in order that there is not a repetition of this tragedy. Secondly, it has undertaken to assist the appropriate officials in the delivery of training to the industry at large. Those are both appropriate remedies and I am pleased to endorse that aspect of the joint submission.

[10] In addition to the eleven terms as outlined in the filed document, there will be additional terms to the probation order, and they are that: the corporation will keep the peace and be of good behaviour; it will report to the Court as and when required, and it will notify the Court in advance of any change of name or address.

[11] The remaining counts?

[12] MR. WEBBER: Yes, the Crown would direct a stay on all other counts, sir, on all Informations before the Court.

[13] THE CLERK: Your Honour, just under number 11, if the word “view” is to be “review”?

[14] THE COURT: Yes, number 11 has a typographical error. The word “view” in the second line should be “review.”

[15] MR. WEBBER: I’ve just been advised by Mr. Easingwood with respect to the payment of the fine. Apparently, they will be paying that today, forthwith, so there is no time to pay issues.

[16] MR. EASINGWOOD: I will.

[17] THE COURT: Very well. Thank you to both counsel.

(Sentencing concluded)

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FAULKNER T.C.J.