

NOVA SCOTIA COURT OF APPEAL

Cite as: R. v. Vac Daniels Ltd., 1997 NSCA 86
Freeman, Hart and Bateman, JJ.A.

BETWEEN:

VAC DANIELS LIMITED

Appellant

)
) Warren Zimmer
) for the Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

)
) J. Christopher Nicholson
) for the Respondent

AND BETWEEN:

BARRY R. LOHNES

Appellant

)
) Appeal Heard:
) March 25, 1997

- and -

HER MAJESTY THE QUEEN

Respondent

)
) Judgment Delivered:
) March 25, 1997
)

THE COURT: Leave to appeal and cross-appeal granted but the appeals and cross-appeal are dismissed per oral reasons for judgment of Freeman, J.A.; Hart and Bateman, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by:

FREEMAN, J.A.:

The appellant Vac Daniels Limited was fined \$90,000 for refusing to furnish an inspector with information under s. 43(3) of the **Environmental Protection Act**, S.N.S. 1973 c. 6 ; Barry R. Lohnes, president of the appellant company, was fined \$25,000 for a similar offence. He was given two years to pay or in default, six months in jail.

The fines were imposed in Provincial Court and upheld on appeal to Justice Merlin D. Nunn of the Nova Scotia Supreme Court, sitting as a summary conviction appeal court. Leave to appeal his decision to this court is sought on grounds that the sentences are excessive having regard to the circumstances of the offence and the circumstances of the appellants. There is a cross appeal from Justice Nunn's judgment giving the company two years in which to pay the fine.

Vac Daniels Limited won a \$17,000 tender in 1992 to dispose of 5,400 gallons of hazardous fluid waste for M & M Manufacturing Limited, underbidding a competitor by \$8,000. The wastes consisted of 3,800 gallons of oils and oily water and other fluids including 120 gallons of freon and lesser quantities of solvents, thinners, paints and related wastes, tar, sludges, acetones, adhesives and the like.

At 3:30 a.m. on November 27, 1992, Vac Daniels' employees under the supervision of Barry Lohnes loaded the waste from M & M in Dartmouth into trucks. What happened to the wastes after that time remains largely a mystery. Demands for information were made in 1993 and 1994 under s. 43(3) of the

Environmental Protection Act, which provides:

43(3) No person shall hinder or obstruct an inspector in the lawful performance of his duties or furnish an inspector with false information or refuse to furnish him with information.

Some information was eventually furnished but it was not considered satisfactory. Charges were laid for failing to provide information during the period January 4 to 19, 1994 for the company and January 18, 1994, for Mr. Lohnes. Both appellants pleaded not guilty and were convicted on evidence including an agreed statement of facts. Both seek leave to appeal the amount of the fines.

The company has appealed on the ground that it is a small company which cannot afford a \$90,000 fine, which it argues is substantially higher than other fines imposed in Nova Scotia for environmental offences. The Crown's position is that the company behaved with blatant disregard for both the law and the environment and the circumstances approach a worst case scenario. Each day of violation constituted a separate offence and the fine was well short of the maximum. Mr. Lohnes asserts his \$25,000 fine is 1600 per cent higher than the \$1,500 fine he received earlier for a similar offence.

Justice Nunn considered all relevant facts and principles and applied **R. v. Shropshire** (1996), 188 N.R. 284 (S.C.C.). He found the fines were not "clearly unreasonable." We agree. Violations of rules for the protection of the environment strike at the interests of all individuals and call for strongly deterrent penalties. By refusing information as to where the wastes were dumped the appellants avoided costs of any cleanup, a factor considered in some of the cases cited.

We have not been persuaded that establishing a schedule for payment of the fine by the appellant company was inconsistent with the law at the time of Justice Nunn's decision, or with the present ss. 735 or s. 734.6 of the **Criminal Code**, or that it was otherwise an improper exercise of discretion.

Leave to appeal and cross-appeal is granted but the appeals and the cross-appeal are dismissed.

Freeman, J.A.

Concurred in:

Hart, J.A.

Bateman, J.A.

C.A.C. No. 129577
C.A.C. No. 129578

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VAC DANIELS LIMITED

) REASONS FOR

Appellant

) JUDGMENT BY:
) FREEMAN, J.A.

- and -

HER MAJESTY THE QUEEN

)

Respondent

AND BETWEEN:

BARRY R. LOHNES

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