

DIOXIN POLLUTION: IT'S A CRIME

The case that I'm prosecuting involving dioxin pollution is still before the courts so it is difficult to comment on the facts, but the case illustrates an important development in environmental prosecutions in the Province; the combination of criminal and environmental offences. This is a development that is not the product of any policy decision but seems to arise naturally from the kind of investigations that we are currently pursuing.

In a high proportion of our environmental files, there is a concomitant criminal charge. In the dioxin case, three accused were burning insulation off copper wire thereby releasing dioxins and furans into the atmosphere and perhaps contaminating the soil where the material was being burned. There has been a proliferation of these kinds of offences given the substantially higher salvage price for stripped wire. The copper wire in this case was stolen in the 24 hours immediately before the accused were caught burning it and all three have been charged with possession of stolen property of a value exceeding \$5,000. We were extremely fortunate that in this case the wire was identifiable and absolutely unique.

Incidentally, we are pursuing the public health angle that was raised by our expert in that this burning occurred five to six times at the same site within fifty feet of a residence. There has been some literature on the subject of the effects of burning of insulation from copper wire, but we hope through lab analysis from this case to offer some concrete evidence as to the impact of this illegal activity.

The overlap between criminal and environmental offences that we have in this case is certainly not unique. In other case now before the courts, there is an allegation that hazardous waste was illegally disposed of in a landfill. These wastes were accepted on the basis of a falsified lab report, and as a result the company and it's plant manager have been charged with the criminal offence of uttering a forged document.

In another case, the accused extended a drainage project from his own land using a backhoe to cut a channel through his neighbour's field. The accused was charged with the environmental offence of diversion of water without a permit, but also with the criminal code offence of mischief. The accused ultimately plead guilty to the environmental offence.

Mischief has also been the appropriate charge in pesticide cases where there has been intentional damage to another's property. I recently prosecuted a Queen's Bench trial in which the Accused was convicted of mischief for the misuse of a soil sterilant. There are other similar cases before the courts at this time.

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The strongest example of a case that had an associated criminal charge occurred before I took my current position. A company had been charged under the environmental legislation for breach of their operating licence in that they ran the plant without any air pollution equipment at all. In doing so, deadly hydrogen sulphide was released inside a building and several workers were sent to hospital. The President of this company was a chemist so he certainly was aware of the consequences of his actions. To my mind, the company should have been charged with criminal negligence causing bodily harm.

I expect this current trend will continue in light of the new environmental legislation which came into force in our Province in September of 1993. The new legislation creates full mens rea offences, punishable by a period of imprisonment for up to two years. The new environmental legislation has in effect "upped the ante" and should we be in a position to prove a wilful act in the environmental arena, we may be able to prove the reciprocal criminal offence as well.

In Canada, environmental offences are criminal offences governed by Criminal Code procedure, criminal rules of evidence and the criminal burden of proof. In a purely legal sense, there is no difference between a proceeding under the Criminal code or environmental legislation. The corporate vice-presidents in my cases sit in criminal docket court beside the hookers, just like everyone else. However, there is a quantum difference in perception between environmental and criminal convictions, the most important difference being the approach in sentencing. Notwithstanding recent cases from Ontario, there has never been a gaol term imposed in Alberta for an environmental offence. I suspect there would be great reluctance from our bench to do so. I think it is more likely in our jurisdiction that a gaol term will be imposed on an environmental offence in connection with a criminal one.

The combined criminal/environmental proceedings raised a very practical problem in that environmental offences are within the jurisdiction of the Provincial Court and the Criminal Code offences are generally handled in the Superior Court of the Court of Queen's Bench. In discussions with our Chief Justice I suspect that the Superior Court will assume jurisdiction over criminal and environmental matters in some cases so that there will be a single trial.

This emphasis on criminal proceedings highlights the need for cooperation and liaison between our investigators and the police and the need to train investigators to recognize Criminal Code offences so as to preserve evidence at the early stage of the investigation. On the other hand, there is the danger that environmental investigators might overstep their authority and pursue pure criminal investigations. As well, we must ensure that the excellent relationship with environmentally responsible industries is not jeopardized.

With these caveats in mind, I expect that this trend towards criminal charges in association with environmental offences may heighten the perception that an environmental offender is a criminal.

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