1964 CarswellQue 267
Quebec Queen's Bench (Crown Side)

REGINA v. CIVIL CONSTRUCTION INC.

1964 CarswellQue 267, 47 C.P.R. 208

REGINA v. CIVIL CONSTRUCTION INC.

Legault, J

Judgment: November 27, 1964
Docket: None given

Counsel: J. Claude Nolin, for accused.
Bernard M. Deschenes, for the Crown.

Subject: Intellectual Property; Property; Criminal

Related Abridgment Classifications

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For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Table of Authorities

Statutes considered:

Combines Investigation Act, R.S.C. 1952, c. 314 (Supp.)
Generally — referred to

s. 32(1)(c) [en. 1960, c. 45, s. 13] — referred to

Criminal Code, S.C. 1953-54, c. 51
Generally — referred to

***Legault, J*(translation):**

[Publisher's Translation]

1 The charge in the present case was preferred under the *Combines Investigation Act*, R.S.C. 1952, c. 314, and amendments to the effect that:

> Civil Construction Inc., a corporation having business premises at Montreal, did between June 1, 1961 and December 1, 1961 in Montreal, illegally carry out, acted in concert and agreed with Carriere-Beaudry Ltee, Lagace Construction, Spino Construction and Louisbourg Construction Ltee, corporations having business premises in the city or Montreal, to unduly hinder or decrease competition for the sale or supply of items or goods which can be bartered or traded, namely, pipes and accessories for sewer and admission pipe construction in and for the city of Duvernay and of having committed an indictable offence according to the provisions of section 32C of the Combines Investigation Act — 1952 R.S.C., c. 314 and amendments.

2 The Court refers in particular to the bill of indictment drafted in English.

3 The accused pleaded guilty to the bill of indictment and made representations.

4 The first representations were those of the prosecution who stated that the accused having obtained a contract to install a sewer and aqueduct system for the Town of Duvernay had, together with four other limited companies, been previously required to submit a tender.

5 The other limited companies were not interested in tendering although they appeared on the list of tenderers who had been called on or selected.

6 Civil Construction Inc. requested the four other companies to authorize them to produce tenders in their respective names, knowing they were not interested, physically completed the forms for the four other companies at a higher price than its own of course, obtained the signature of the respective tenderers including a cheque for the deposit. The said tenders, all drawn up and prepared by the same firm, at different prices, were filed with the Secretary Treasurer of the municipality concerned. Needless to say, the contract was let to Civil Construction Inc., that firm having submitted the lowest bid.

7 Counsel for the accused argued that Civil Construction Inc. had not acted in bad faith in the matter, but, so to say, had done so to "be of service" to the other parties who had been asked to tender, and that Civil Construction Inc. would not have done so otherwise, in brief that Civil Construction Inc. had only carried out the operation because of their good intentions towards the other tenderers.

8 Unfortunately this Court does not share the opinion of the learned counsel.

9 There have been so many similar abuses in the past that the Provincial Legislature had to legislate in order to oblige public corporations to call open tenders. Public corporations managed the rate payers' money and municipal councils in reality act only as trustees for those who come under their administration.

10 The prime purpose of calls for tenders is to maintain law and order and ensure a "competitive" price.

11 The accused's action completely distorted the objective of calls for tenders and rendered it illusory. The four other tenders were useless in view of the fact that they were submitted by one and the same person, and the fact that no unreasonable profit was realized, at least according to the engineering estimates, does not provide a reason for justifying or minimizing the action and manoeuvre of the accused.

12 Under the amendment to the Act, the amount of the penalty is left to the discretion of the Court.

13 The Court has before it a highly reprehensible system and if it were to impose the suggested fines a sentence would become ridiculous and useless in view of the fact that these charges call for an extensive inquiry beforehand, of which the public has to assume the cost.

14 In the circumstances it would be difficult to reconcile the suggested fine of $25 or $50 in view of the fine imposed for a speeding offence or for selling alcohol after hours.

15 The economy of the *Criminal Code* and the fines in the *Code* should be examined in order to eliminate any blatant difference in sentences passed.

16 The Court cannot object strongly enough to such manoeuvres carried out to the detriment of law and order. The system seems to be one of “it’s my turn”.

17 The condemned corporation may not have fully realized the gravity of the offence, but the gravity nevertheless exists.

18 In order to be effective the sentence should be truly prohibitive, but even the amount imposed below will not leave a ripple on the financial structure of the condemned corporation.

19 In the present case and in view of the fact that the accused’s manoeuvre was intentionally and deliberately carried out and completed because of its requests, and as it instigated the plot the Court has no hesitation in imposing a fine of $1,000 payable within 15 days as of November 27, 1964.

20 Counsel for the prosecution also asked for an order of prohibition and consequently:

(1) This Court forbids the condemned corporation to continue or repeat a similar offence;

(2) This Court, in addition, forbids the said condemned corporation and/or its director, officer, employee or agent to commit any act or deed likely to continue or which might tend to the commission or continuation of a similar offence.