

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

NELSON BACTAD

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REASONS FOR JUDGMENT

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BEFORE THE HONOURABLE JUSTICE H. SALEM on
the 8th day of July, 2005 in courtroom 201,
2201 Finch Ave. West, Toronto, Ontario

A P P E A R A N C E S:

L. GONET COUNSEL FOR THE CROWN
C. MARTIN COUNSEL FOR THE ACCUSED

ONTARIO COURT OF JUSTICE
(PROVINCIAL DIVISION)

T A B L E O F C O N T E N T S

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5 THE COURT: I mean, it seems to me that
once we are facing or deciding a case
against a -- or on a criminal aspect
rather than a breach of a regulation --
and, I mean, I do not doubt that the way
I read these regulations that in fact
they were not adhered to to the letter,
and obviously if they were, that these
guns and the ammunition would have been
10 much safer. But it seems to me that in
order for the Crown to prove the
criminality of the offence, that the
carelessness would have to be
established beyond a reasonable doubt
15 and that carelessness involves
foreseeability, involves danger.

20 Certainly the testimony of the accused
when he talks about going to get a safe
and going to change the location and
adhere probably to the regulations, I do
not think that that necessarily infers
that he is not -- or that he is aware
that he is doing something wrong when he
25 stores them the way he did. I guess you
can infer that all he wants to do is to
improve and to follow through with the
regulations as set out. I am -- I mean,
you have got -- certainly you have got a
30 container that should have been locked.
He says the key was broken and he did
not get around to fixing the key or he

5 did not get around to getting the
container. They had just moved. He had
trigger guards so that these weapons
were certainly protected. Then
certainly obviously if someone took
those guns and worked at it, they could
remove the guards. I mean, certainly if
somebody broke into the apartment they
could have taken the guns.

10 I do not think though that is what the
section contemplates under the code.
I think that he did what he did, the
ammunition was separate and in a locked
15 container. Certainly a container made
of plastic is probably easier to break
into than something made of steel.
But again, to me that is breach of a
regulation, if in fact there is some
20 proof that it would be easy to break
into. I mean, that looks like a pretty
solid container to me. I am certainly
no expert, but I do not have any expert
evidence saying how easy it would be to
25 open up that tackle box. From my
experience there are some fishermen
whose lures are so vital to them that
they would be very happy with a box that
would be difficult to open. But in any
30 event, I am not satisfied beyond a
reasonable doubt that those relevant
portions of the -- as set out in the

Supreme Court of Canada has been proven,
and I am going to acquit.

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THIS IS TO CERTIFY THAT
the foregoing is a true and
accurate transcription from my
stenographic recordings made
herein, to the best of my skill
and ability.

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D. DeLuca

Official Court Reporter