

APPENDIX A

Case Name:
R. v. Watts

Between
Her Majesty the Queen, and
Robert C. Watts, Paulette Francis Bakke,
Hydro Kleen Systems Inc., accused

[2005] A.J. No. 568

No. 020 166520101001 - 004, 0206166520102001 - 004,
0206166520103001 - 004

Alberta Court of Queen's Bench
Judicial District of Red Deer

Sirrs J.

Oral Judgment: January 10, 2005.

(204 paras.)

Criminal law -- Offences -- Against the administration of justice -- Corruption of officials -- Sentencing -- Considerations -- Deterrence -- Joint submissions -- Particular sanctions -- Fines.

Sentencing of Hydro Kleen Systems, who pled guilty to bribing a foreign official. Watts was the president and majority shareholder of Hydro Kleen. Hydro Kleen operated in Canada and the United States. Hydro Kleen required its employees to travel to the United States for work. At times, Hydro Kleen's employees had difficulties entering the United States. Hydro Kleen hired a United States immigration officer as consultant. The officer facilitated the passage of Hydro Kleen's employees to the United States. Hydro Kleen paid money into a company incorporated in Alberta owned by the officer. Unbeknownst to Hydro Kleen, the officer obtained information about employees of Hydro Kleen's competitors who travelled to the United States for work. The officer entered the names of the competitors' employees into a database to make it more difficult for the employees to enter the United States. The officer provided Hydro Kleen copies of the competitors' employees' information. Hydro Kleen's competitors prepared a victim impact statement. Hydro Kleen and the Crown presented a joint sentencing recommendation ordering Hydro Kleen to pay a

fine of \$25,000.

HELD: Hydro Kleen was sentenced to paying a fine of \$25,000. The main sentencing objective was specific and general deterrence. Hydro Kleen pled guilty and accepted responsibility for its actions. The agreed sentence was not unfit.

Statutes, Regulations and Rules Cited:

Corruption of Foreign Public Officials Act, S.C. 1998, c. 34 s. 3(1)(a), s. 3(2)

Criminal Code s. 426(1)(a)(ii), s. 426(3), s. 579(1), s. 606, s. 722

Counsel:

T.A.H. Beanie, Esq. For the Crown

A.D. Pringle, Q.C. For the Accused Bakke

E.C. Wilson, Q.C. for the Accused Watts and Hydro Kleen Systems Inc.

K. Waite Court Clerk

1 SIRRS J. (orally):-- Mr. Beattie?

2 MR. BEATTIE: My Lord, my name is Beattie, initial 'T'. This matter I'll describe as the Watts, Bakke, and Hydro Kleen matter. My friend Mr. Wilson appears on behalf of Mr. Watts and the company, Hydro Kleen. My friend Mr. Pringle appears on behalf of Ms. Bakke.

3 And I would ask madam clerk to arraign the company, Hydro Kleen Systems Inc. on count 3 of the Indictment.

4 There has been a notice of re-election filed, I understand.

5 MR. WILSON: I believe it's there, madam clerk.

6 THE COURT CLERK: Yes, it is.

7 MR. WILSON: Yes. So it's to proceed judge alone.

8 THE COURT: Who is going to enter the plea on behalf of the corporation?

9 MR. WILSON: I am.

10 THE COURT: Okay. Read count 3, madam clerk, please.

11 THE COURT CLERK: Yes. Mr. Pringle, are you the counsel produced by the accused corporation for the purposes of this arraignment?

12 MR. PRINGLE: No.

13 MR. BEATTIE: Mr. Wilson is.

14 MR. PRINGLE: Mr. Wilson.

15 THE COURT CLERK: I'm sorry. Mr. Wilson, I mean.

16 MR. WILSON: I am, madam clerk.

17 THE COURT CLERK: Thank you.

18 And I'm sorry, I have to ask this. What is your full name, and what is your position with the accused corporation?

19 MR. WILSON: My full name is Earl Cory Wilson, and I have no position with the corporation. I am counsel, duly instructed to act on behalf of the -- on behalf of the company for all the proceedings, including that which will take place this morning in this courtroom.

20 THE COURT CLERK: Hydro Kleen Systems, you -- stands charged that it,

Between the 1st day of August, 2000, and the 1st day of December, 2001, at or near Red Deer and elsewhere in the Province of Alberta, in order to obtain or retain an advantage in the course of business directly or indirectly gave, offered, or agreed to give or offer a loan, reward, advantage or benefit, to wit: the sum of \$28,299.88 more or less to a foreign public official, to wit: Hector Ramirez Garcia for the benefit of Hector Ramirez Garcia as consideration for an act or omission by Hector Ramirez Garcia in connection with the performance of his duties or functions on behalf of the United States of America, United States Department of Justice, Immigration and Naturalization Service, contrary to section 3(1)(a) of the Corruption of Foreign Public Officials Act SC 1998, C34.

21 How say you to this charge? Do you plead guilty or not guilty on behalf of the accused corporation?

22 MR. WILSON: The plea is guilty, My Lord.

23 THE COURT: Mr. Wilson, would you confirm for the record that you have reviewed the provisions of section 606 with your client and he is fully apprised of them and, notwithstanding those sections, is prepared to enter that plea?

24 MR. WILSON: Indeed, sir, I can confirm that.

25 MR. BEATTIE: Yes, it may be of assistance to the court. I'll hand up through madam clerk a copy of the Corruption of Foreign Public Officials Act, and if you do turn to the second of four pages, you'll see the section under which we're dealing. The actual definitions appear in the first page.

26 I have copies for my friends if they --

27 MR. WILSON: I have a copy, yes.

28 MR. BEATTIE: Yes, all right.

29 The next thing I will hand up through madam clerk is an agreed statement of facts which has been executed by Mr. Wilson and myself today, and I would ask that that be entered as Exhibit 1 on this -- on this matter.

30 MR. WILSON: By consent, My Lord.

31 THE COURT: Okay. Exhibit 1 in the sentencing hearing then will be the agreed statement of facts filed by the Crown, I take it, with the consent of counsel for Hydro Kleen Systems Inc.

32 MR. WILSON: That is correct.

33 THE COURT: Okay.

*EXHIBIT S-1 - AGREED STATEMENT OF

*FACTS

34 MR. BEATTIE: My Lord, it's my intention to read the agreed statement of facts which is between Her Majesty the Queen and the accused, Hydro Kleen Systems Inc. And at the outset, it indicates a charge which is the charge which madam clerk just read, and which the guilty plea was entered.

35 On page 2, the first paragraph, the accused, Hydro Kleen Systems Inc, which is referred in the statement of facts as HKS, is a company incorporated pursuant to the laws of Alberta and carries on business in Red Deer and throughout North America.

36 The business, which is referred to as pigging, involves removing coke and other byproducts of

the oil refining process. And noted there, see Exhibit P22, and I did ask madam clerk to just bring that out, and what Exhibit P22 is, is a brochure actually from a competitor firm which describes -- it's actually from the firm Innovative Coke Expulsion Inc., which will be referred to, but it basically gives a visual and some description of what the process involves, the business.

37 THE COURT: I am looking at it. I am looking at what would appear to me to be some kind of asphalt product. Can you summarize what pigging actually is?

38 MR. BEATTIE: Pigging, there is a -- there's a thing that looks like a football with spikes in it, and what -- what happens is that they -- these companies attend at oil refineries, and the pig or the football with spikes is put through the pipes to clean out the coke and other byproducts.

39 THE COURT: Okay.

40 MR. BEATTIE: And continuing on from paragraph 2, Hydro Kleen Systems Inc. and its competitors conduct a substantial portion of this business in the United States of America by sending Canadian employees to the United States.

41 At all material times, Robert C. Watts was the president and majority shareholder of Hydro Kleen Systems Inc. Paulette Francis Bakke was an employee of Hydro Kleen Systems Inc., holding the position of operations coordinator.

42 Don Forsey (phonetic) was an employee of Hydro Kleen Systems Inc., holding the position of worldwide sales and export manager.

43 Hector Ramirez Garcia was at all material times a foreign public official holding the position of senior immigration inspector with the United States Department of Justice, Immigration and Naturalization Service, stationed at the Calgary port of entry, which is actually the Calgary International Airport.

44 Garcia and other INS officials were assigned to process and approve or refuse applications for L1, which is short for intra company transferee work permits, and TN, which is North American Free Trade Association under NAFTA, professional work permits, visas, which were -which when granted -- excuse me -- permitted the holder to work in the United States.

45 The L1 visa is a non-immigrant work permit available to Canadian citizens who are employed by companies that have offices in both Canada and the United States. The L1 allows the employees of such companies to enter the United States to work. A fee of \$110 is collected at the time of application. No additional fee can be paid to expedite the process.

46 The petitioner must show employment with the Canadian company for a one-year period before the application. Other qualifying factors may include executive or managerial expertise or specialized knowledge. The L1 can be granted by the Immigration and Naturalization Service office

located at the Calgary International Airport.

47 On or about July 28th, 2000, Garcia and his wife, Alene Celinas Garcia, registered a general partnership under the name of Genesis Solutions 2000 with the Alberta Registrar of Corporations. On July 28th, 2000, Garcia and his wife opened an account with the Royal Bank of Canada at 75 Crowfoot Way Northwest in Calgary in the name of Genesis Solutions 2000. The account number was 02491016468. Both were signing authorities on this account.

48 Mr. Forsey and Garcia were acquainted through a church connection. After Forsey told Garcia that Hydro Kleen Systems Inc. was periodically having problems in getting its employees over the border, Garcia approached Forsey and offered his services as an immigration consultant.

49 As a result of his dealings with persons in authority at Hydro Kleen Systems Inc., including Messrs. Watts, Forsey, and Ms. Bakke, Garcia was hired in the name of Genesis Solutions 2000 by Hydro Kleen Systems Inc. as an immigration consultant on or about August, 2000.

50 Garcia's services were retained by Hydro Kleen Systems Inc. in order to reduce legal fees paid to immigration lawyers and also because he knew all of the subtleties of the United States law, particularly as they vary over time.

51 Garcia's services would better ensure that fewer, if any, difficulties would confront Hydro Kleen Systems Inc. or its employees in attempting to enter the United States.

52 Forsey introduced Garcia to Hydro Kleen Systems Inc. and participated in meetings which Garcia had with the company. Paulette Bakke made arrangements for Genesis Solutions 2000 to be added to the Hydro Kleen Systems Inc. payroll, and Robert Watts was aware that Hydro Kleen Systems Inc. had hired Garcia in the name of Genesis Solutions 2000 as an immigration consultant as set out above.

53 Between September 8th, 2000, and November 30th, 2001, both dates inclusive, Hydro Kleen Systems Inc. directly deposited \$28,299.88 to the Genesis Solutions 2000 account with the Royal Bank of Canada.

54 The dates and amounts of payments are set out in appendix W, which is attached.

55 These payments were made from the Hydro Kleen Systems Inc. payroll account. Garcia used all funds for his own personal purposes.

56 In return for these payments, as an immigration consultant, Garcia attended the Hydro Kleen Systems Inc. offices in Red Deer from time to time and advised Hydro Kleen Systems Inc. employees on what to say when crossing the border. As part of the process, he exchanged emails and telephone calls with Hydro Kleen Systems Inc. employees.

57 Garcia also assisted Hydro Kleen Systems Inc. officials and employees in drafting letters and

documents that the Hydro Kleen Systems employees would use to apply for L1 visas and/or to gain entry at United States port of entry.

58 Under the terms of his employment with the Immigration and Naturalization Services, Garcia was prohibited from taking on outside work without permission from his superiors. At no time did he advise his superiors of his work for Hydro Kleen Systems, nor did he have permission to do this work.

59 Bakke told one of the Hydro Kleen Systems Inc. employees, Lisa Thiessen, not to acknowledge Garcia's employment with Hydro Kleen Systems Inc. in the event of outside inquiries.

60 Watts told Randy Cooper that Hydro Kleen Systems Inc. had a United States immigration officer on the payroll as a consultant. He also told Cooper that on one occasion Garcia attended at the Hydro Kleen Systems Inc. offices in uniform and that he, Watts, asked Garcia to put on his overcoat so that the rest of the employees would not see him in his immigration and Naturalization Services uniform.

61 Without the knowledge of Hydro Kleen Systems Inc. and without instructions from Hydro Kleen Systems Inc., Garcia undertook an investigation of a number of persons employed by firms in competition with Hydro Kleen Systems Inc. It was his opinion that these persons were illegally gaining entry into the United States.

62 In particular, his investigation focussed on employees of Hydro Kleen Systems Inc.'s competitors, namely Innovative Coke Expulsion Inc., which is referred to as ICE, and Eliminator Pigging, referred to as Eliminator.

63 Garcia entered comments concerning these employees into a United States computer system named the national automated immigration lookout system, or acronym NAILS, including Mark Magnusson (phonetic) of ICE, Patrick Rowan (phonetic) of ICE, Christopher Good of ICE, Christopher Bowes of ICE, Robert Brown of Eliminator, Wayne Nothoff -- Northoff or Nothoff. I may have that name wrong -- of Eliminator.

64 As a result of Garcia's actions, these individuals were denied entry into the United States, in some cases after further questioning by Immigration and Naturalization Services' officers.

65 On or about September 27th, 2001, Garcia, on his own initiative, without the knowledge of Hydro Kleen Systems Inc., denied Mark Magnusson entry into the United States. He also required Magnusson to return on the following Monday and provide him with various L1 application related documents which Garcia took and improperly photocopied.

66 On or about October 4th, 2001, Garcia, on his own initiative and without Hydro Kleen Systems Inc.'s request, improperly provided copies of the confidential documents which he had seized from Mark Magnusson to Ms. Bakke and requested that Hydro Kleen Systems Inc. assist him

with his investigation.

67 Throughout this time, without the request from Hydro Kleen -- throughout this time, without request from Hydro Kleen Systems Inc., he had also improperly provided Hydro Kleen Systems Inc. employees with information concerning his dealings with Hydro Kleen Systems Inc. competitors and a competitor's lawyer.

68 Throughout his employment with Hydro Kleen Systems Inc., Garcia sent and received email correspondence with Hydro Kleen Systems Inc. employees. Included in this email correspondence was an undated email from Garcia to Ms. Bakke advising that he was working on L1 petitions for Hydro Kleen Systems Inc. employees.

69 By reply email, Bakke provided the names of seven persons for which she required 'L' -- that should read L1 visas, or 'L' visas. In any event, by email dated September 27th, 2001, Don Forsey provided Garcia with information concerning the location of equipment belonging to Eliminator Pigging.

70 By two undated emails, Garcia advised Ms. Bakke that he had a telephone conversation with -- and I believe the person's proper name is Kevin Zemp, an attorney representing ICE, a competitor of Hydro Kleen Systems Inc., and that in that -- and that in an interview he had advised ICE members that their company had lost good faith in entering the United States.

71 I can also add, My Lord, and I advised Mr. Wilson, that these undated emails were all sent, and we can tell this from the printing dates, in early October, 2001.

72 Carrying on, Hydro Kleen Systems Inc. improperly received this information and retained the confidential documents which Garcia had obtained from Magnusson.

73 On October 19th, 2001, Mr. Justice John D. Rooke of the Court of Queen's Bench granted an Anton Pillar order permitting representatives of ICE to conduct a search on the Hydro Kleen Systems Inc. premises. The order was executed on October 24th, 2001.

74 During that search, copies of the documents which Garcia had seized from Mark Magnusson were located and seized from a briefcase in the office of Robert C. Watts. Watts confirmed that the briefcase was his and stated that he got the Magnusson documents from his lawyer.

75 When asked which lawyer that would be, he stated, You can get these things, or documents, referring to the documents, anywhere.

76 Watts had, in fact, received the documents from Ms. Bakke or another HKS employee one or two days before the execution of the Anton Pillar order.

77 And those are the facts that the Crown alleges and seeks to be admitted.

78 MR. WILSON: For the record, I formally admit those facts, My Lord.

79 THE COURT: On the basis of those facts, the court is therefore prepared to accept the guilty plea.

80 MR. BEATTIE: And I take that, My Lord, that that is a finding of guilt?

81 THE COURT: Yes.

82 MR. BEATTIE: My Lord, I am now entering or handing to madam clerk a letter signed by myself, basically directing a stay on -- against all accused on count 1, all accused on count 2, Mr. Watts and Ms. Bakke on count 3, and all accused on count 4, and that's pursuant to section 579(1) of the Criminal Code.

83 THE COURT: Mr. Beattie, I also understand that there is some form of victim impact statements filed in this matter.

84 MR. BEATTIE: That is correct, which neither Mr. Wilson nor myself have seen. What we would ask at this point is that since there has been a finding of guilt, it would be appropriate to provide us with a copy or -- yes, a copy of the victim impact statement, and what we would then ask is Your Lordship's indulgence in granting us an adjournment so that this document may be reviewed, please.

85 THE COURT: Okay. I also understand pursuant to section 722 of the Criminal Code that one of the individuals wishes to read his victim impact statement to the court.

86 MR. BEATTIE: That is correct.

87 THE COURT: If there is any representations in that regard, I will hear those as well.

88 MR. BEATTIE: Thank you.

89 THE COURT: So we will adjourn so that we can make copies of the victim impact statement and so that we can all review it.

90 MR. BEATTIE: Thank you.

91 MR. PRINGLE: My Lord, could I have leave to be excused at this point, since the charges have been stayed against my client?

92 THE COURT: Thank you, Mr. Pringle. You are excused.

93 MR. PRINGLE: Thank you.

(ADJOURNMENT)

94 THE COURT: Be seated.

95 MR. BEATTIE: Thank you, My Lord, and thank you for your indulgence. We -- the Crown and defence counsel have had an opportunity to review the victim impact statement, and Mr. Barry Sullivan, the president of Innovative Coke Expulsion Inc., wishes to read the document to the court. And the practice I follow is that the victim impact statement be read unsworn from the witness box.

96 Is that the practice you follow here? I think that's most appropriate.

97 THE COURT: I will have to defer to the clerk as to the practice here because I have not had experience where someone has wanted to read their statement.

98 Have you had experience?

99 THE COURT CLERK: I personally have not, sir.

100 THE COURT: That is probably best. We will just have him come take the witness stand.

101 MR. WILSON: That accords with my experience as well, My Lord.

102 THE COURT: Okay. Thank you, Mr. Wilson.

103 MR. BEATTIE: And actually -- oh, is this the witness stand here?

104 THE COURT: Yes.

105 MR. BEATTIE: Sorry about that. The only comment I would make, having read the victim impact statement, is reference is made throughout to Hydro Kleen Group Inc., and actually that was the name in which the corporate accused was originally charged by the Crown, and as a result of investigation, it was agreed that the proper corporate accused for the purpose of this matter and as named in the Indictment is Hydro Kleen Systems Inc., and whether my -- Mr. Sullivan states it the way he has in the victim impact statement or not, I just felt that would be helpful to point out.

So --

106 MR. WILSON: No issue is taken with that, My Lord.

107 MR. BEATTIE: Yes. So Mr. -

108 THE COURT: For the record then, we will simply acknowledge that if Mr. Sullivan refers to Hydro Kleen Group Inc., that that is the same as Hydro Kleen Systems Inc.

109 MR. BEATTIE: For these purposes, I think is --

110 MR. WILSON: For these purposes, yeah, he's referencing the corporate accused.

111 MR. BEATTIE: And Mr. Sullivan, I understand that you are the president of Innovative Coke Expulsion Inc.?

112 MR. SULLIVAN: Yes, sir.

113 MR. BEATTIE: And it is your wish to read to the court your victim impact statement?

114 MR. SULLIVAN: Yes, sir.

115 MR. BEATTIE: And I would then ask that you proceed to do so.

116 THE COURT: If I might just stop you. Mr. Wilson, you have had an opportunity to review this statement. There have been some changes and deletions from the statement agreed upon. Are you satisfied with the statement that has now been filed with the court?

117 MR. WILSON: I'm satisfied that the content of the statement now conforms with the law, which is all my concern. The content of it is -- obviously it's the - Mr. Sullivan's words. It certainly wouldn't be interpreted as -- that my client is agreeing with these words, just simply that this brings it in line with the provisions of the Code though.

118 THE COURT: Thank you, Mr. Wilson.

119 Mr. Sullivan, you may proceed.

120 MR. SULLIVAN: Innovative Coke Expulsion Inc., an Alberta company, was a competitor of Hydro Kleen Systems, an Alberta company doing business in Canada and the United States.

121 At the sentencing of one Hector Ramirez Garcia, a citizen of the United States of America, who was convicted of accepting secret commissions under section 426(1)(a)(ii) of the Criminal Code of Canada, the Honourable Judge McMeekin, on October 8th, 2002, stated:

Hydro Kleen Group, hereinafter referred to as Hydro, a Red Deer, Alberta, company involved in the oil refining business had employees requiring to travel to and from the United States to fulfil contracts. They were experiencing difficulty in doing so. Innovative Coke Expulsion Inc., hereinafter referred to as Innovative, and Eliminator Pigging Systems Inc., are also Alberta companies and in competition with Hydro in the oil refining business. The accused and Genesis were hired by Hydro to facilitate the granting of work permits and the travel of its employees to the United States. Thirty-three payments totalling \$28,299.98, between September 8, 2000, and November 30, 2001, were made to Genesis for these services, and the funds used by the accused for his own purposes.

Moreover, on the basis of information provided by Hydro, the accused entered

names and information concerning Innovative and Eliminator employees on the U.S. computer alert system, national automated lookout system, thereby precipitating secondary screening and security checks of these employees. In some cases, there were denials of entry and, in any event, delay.

The competitors' difficulties were of benefit to Hydro and ultimately led to a civil lawsuit which included the accused and brought these matters to light.

122 These are the particulars concerning count 1, page 3 to 4 of judgment of Judge McMeekin.

123 Garcia's assistance in the preparation of visas conferred an improper benefit in a competitive environment. Our employees' economic prospects were harmed. Were our shareholders not of some financial strength, our company would have gone out of business.

124 To corruptly give a reward or benefit to a government employee who has the power to influence normal commercial acts is reprehensible and against any system of morality and law.

125 Corruption distorts markets and harms overall economic, social, and political development. It is a pernicious disease and needs to be resisted by all citizens. This is the first case in Canada under Corruption of Foreign Public Officials Act 1998 C34.

126 This case has been reported to Canada's parliament on an annual basis since October 16th, 2001, under the heading development and society corporate social responsibility, bribery and corruption, Department of Foreign Affairs and International Trade.

127 To comply with regulations and the law has an economic cost. Unless all corporations comply and bear that cost, there can be no equal competition. The process is flawed. A lower cost structure as a result of non-compliance with the law is not acceptable.

128 In our case, this damage -- the damage inflicted went beyond the monetary value of the corrupt payment to Garcia by Hydro Kleen Group.

129 Our own employees questioned the point in maintaining our own ethical values. What's the use, was the most asked question.

130 With this conviction and guilty plea under the Corruption of Foreign Public Official Act, I feel we can say that most assuredly the system works.

131 Thank you.

132 THE COURT: Mr. Sullivan, thank you.

133 Madam clerk, do you have the corrected victim impact statement then entered as an exhibit?

134 THE COURT CLERK: That is not entered as an exhibit yet, but I do have permission to correct it.

135 THE COURTS: Okay. The corrected statement then should be Exhibit 2 in the proceedings.

136 MR. BEATTIE: Thank you.

*EXHIBIT S-2 - VICTIM IMPACT

*STATEMENT

137 MR. BEATTIE: With respect to the sentence, I can advise you at the outset that the Corruption of Foreign Public Officials Act, section 3 subsection (2) provides:

Every person who contravenes subsection

(1) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

138 This is the same penalty as is prescribed under section 426(3) of the Criminal Code, that referring to secret commissions.

139 As has been referred to, this act was passed in 1998 by the parliament of Canada to prevent what I would submit is precisely this type of behaviour. It would be my submission that the sentencing principles to be followed under this act, and as has been indicated to the court, to the knowledge -- to my knowledge, and also to the knowledge of the investigator who investigated this case, this is certainly the first and maybe the only conviction under the Corruption of Foreign Public Officials Act to date.

140 But it would be my submission that the sentencing principles to be considered are akin to those under the section 426, the secret commissions under the Criminal Code. And these sentencing principles emphasize, in my submission, specific and general deterrence.

141 In this case, since there is a corporate accused involved, the most appropriate way to express this would be the imposition of a high fine, and it is the submission of the Crown, and I understand that the defence is in agreement with this recommendation, that a fine of \$25,000, payable forthwith, would be an appropriate way of dealing with this matter.

142 Those are the submissions of the Crown as to sentence.

143 THE COURT: Mr. Wilson?

144 MR. WILSON: Thank you, My Lord.

145 There's a couple of things that I would just wish to emphasize, and not because I'm undercutting anything that Mr. Beattie has had to say, but it is important to note in terms of the agreed statement of fact that there is nothing to indicate that as a result of the contract with Garcia that my client's employees were improperly admitted into the U.S., and there's nothing to indicate that at any time my client instructed Garcia or paid Garcia to frustrate or impede the entry of competitor employees into the U.S.

146 It turns out as a matter of just, I guess we could say, historical progression, that a lot of the employees of ICE when it started out that came from Hydro Kleen and apparently, and don't push me in terms of my knowledge of the U.S. Immigration rules on these various forms that I would apply, but you have to apparently be an employee of the Canadian entity for at least a year before you can then qualify to get some of these visas, to be able to then work with your sister company in the U.S. And apparently there was that as a concern that some of these individuals may have been going down there when, in fact, they hadn't yet qualified.

147 Now, whether or not they were qualified, whether or not they were allowed in, and as to the facts that may have been alleged or the particulars alleged in front of Judge McMeekin on Garcia's guilty plea, the key thing is to keep in mind, that is nothing that my client did.

148 Anybody who is going to hold back any of the employees of the competitor companies, that's a decision made by the Americans, not by my people. Nobody in my client paid to have that done.

149 THE COURT: What were they paying for?

150 MR. WILSON: They were paying for exactly what you see in paragraph 11.

151 THE COURT: What is paragraph 11?

152 MR. WILSON: I will read it:

153 Garcia's services were retained by HKS in order to reduce legal fees paid to the immigration lawyers and also because he knew all the subtleties of the U.S. laws, particularly as they vary over time. Garcia's services would better ensure that fewer, if any, difficulties would confront HKS or its employees in attempting to enter the United States.

154 That was exactly what they were paying for. Now, what you end up -- sorry.

155 THE COURT: Madam clerk, can I have that exhibit?

156 MR. WILSON: It's Exhibit 1, I think.

157 THE COURT: Thank you.

158 Well, Mr. Wilson, that paragraph seems to be pretty subtle to me. In the last sentence, it

indicates that Garcia's services would better ensure that fewer, if any, difficulties would confront HKS or its employees in attempting to enter the United States.

159 Now, maybe it does not say that he gained any special favours, but it is pretty subtle that he is saying that without expressing it, in my opinion.

160 MR. WILSON: In terms of the benefit that they're getting?

161 THE COURT: Yes.

162 MR. WILSON: Yes, absolutely. That's why there was a guilty plea, sir, but that's the basis to it. And certainly the language that is chosen there was the efforts of both my friend and myself. It wasn't an attempt to try to be subtle or cute about anything, but that is certainly what was being purchased, and that's what you can't do. There can't be anything such as that.

163 THE COURT: So the end result, your client gained favour by gaining ins or access into the United States, and by the opposite of that, his competitors not having the same advantage were disadvantaged.

164 MR. WILSON: Well, they may very well have been. I don't know the quality of their advice that they were receiving, and if they happened to then not have the benefit of the advice that they had, from whomever was advising them, then they may have suffered some difficulty. But it's a distinction that is important to perhaps better underscore why we are here with the joint submission on the penalty that we have, because if it was otherwise -- well, the case is very complex, and I think it fair to state that certainly the civil process that commenced was under a full belief that my client was not just paying to get the benefit for themselves but were also paying to get any competitor disadvantage. I don't doubt there was any belief in that regard at all.

165 And when you see things of what Garcia was doing, one may be forgiven for thinking, ah-ha, he must have been doing this all at the behest of Hydro Kleen, when in fact, as you'll see, that's not the case.

166 In my humble opinion, and I know Garcia has testified at the preliminary. He's given a statement to the police. He made this quite clear that is all on his own.

167 Quite frankly, I think at the end of the day Garcia was trying to do anything here to try to show how important he could be or how much more benefit he could possibly be, because there's nothing -- my people didn't ask to get these documents from Magnusson. He decided to do that, and I think this subtle thing behind all of this is that down the road, then he's going to be able to come back to my people and ask for more money. See how much more I could do for you? And that's the problem, that when you start dealing with any official such as this, once you hire them, you can't get rid of them, because you do that, then you're going to realize you may end up being punished for terminating his services. So it becomes quite pernicious in that fact.

168 But do not misunderstand me. I'm not here telling you that my client is a victim. My client pleaded guilty because they broke the law.

169 My friend has indicated, and I think Mr. Sullivan read it in as well, that this is a new statute. It's the first charge. I have to be frank with the court. I never even heard of this statute until I had a chat with my friend, who I think may tell you his experience was the same. But that matters not. Ignorance of the law has absolutely no relevancy. But this is something that, as I understand in terms of the statute, was in no small measure implemented as part of the NAFTA arrangement, and I gather to better ensure the integrity of, you can call it, the marketplace or also the integrity of any type of business activities that may go across the border.

170 The nature of the cases I've indicated to you, My Lord, is that it was a complex matter. This case, had it proceeded, would have been proceeding with a jury, and it would have been proceeding for a period of three weeks.

171 There have been ongoing sporadic discussions seeking to resolve this case for some time, between counsel, of course, and I can tell you that those discussions were re-invigorated as a result of the pretrial conference that we had held with the court.

172 The end result was, as you now know, that we have saved three weeks of trial time without having to inconvenience a jury.

173 The nature as well of the penalty is one that I'd respectfully submit is a reasonable one. It was as well the requirement of the discussions between my friend and myself that I had to hold that amount, the \$25,000, in my trust account before we could proceed, and as soon as I had received those funds, then I was in a position to advise my friend, and therefore able to ensure that payment will be made.

174 The company is here today. The general manager of the company is present. The company recognizes they have broken the law. They appreciate there is media coverage that has been at the time of the charge, and now with this conviction. It obviously is an embarrassment.

175 It is, however, a situation that has been remedied and rectified, and these companies can now proceed further, undoubtedly ongoing competitors nevertheless, but they will be able to proceed.

176 Thank you.

177 MR. BEATTIE: And I should just advise you with respect to Garcia, who has been mentioned, sir, that he was charged with two counts of accepting a secret commission under the Criminal Code, one of which related to this matter, and the other of which related to an unrelated matter, completely different individuals, which I would characterize as less serious than this matter. It involved less money, and that he pleaded guilty to those two counts. And in October, as was indicated, of 2002, His Honour Judge McMeekin entered a -- convicted him and sentenced him to

six months in gaol.

178 At that time, it was indicated that the American authorities on his deportation would be continuing with prosecution under their statute. They didn't feel that there was double jeopardy, and that was the indication that everyone had.

179 He was deported to the United States and was again charged, and I'm not absolutely certain of the next statement, but it's my understanding he entered a guilty plea to the other matter and was given -- was given probation, and he is in the United States.

180 Those are my additional submissions. Thank you.

181 THE COURT: As Mr. Wilson indicated, this case certainly has attracted media attention in and around Red Deer, if not throughout the Province of Alberta, as it should. Where someone is dealing in international trade, especially with the United States, who is our closest and most important trading partner, matters that involve corruption that might interfere with trade are of much importance to Alberta.

182 We know of two instances right now of ongoing trade disputes that have adversely affected incomes of thousands of Albertans, and thus the importance that trade with the United States be seen to be honest and of high ethical standards in order to avoid further complications that affect people that maybe are not even in the oil industry, because of the fact of our reputations gained concerning the business practices of Albertans.

183 I note in the victim impact statement, the statement was made which certainly I think captures my thoughts, and that is that corruption distorts markets and harms overall economic social and political development. It is a pernicious disease that needs to be resisted by all citizens.

184 Mr. Sullivan has suggested, as has the Crown, that deterrence of individuals is of the utmost importance in these types of cases. Whether a \$25,000 fine is significant or not, I can only determine that Mr. Beattie must have canvassed the significance and the amount of the fine and what effect it might have on Hydro Kleen as being a significant amount.

185 It bothers the court that these people are able to plea from a corporation to protect the operating minds of the company from the stigma attached to a criminal record. However, the court does take into consideration that the operating minds of this corporation do not escape with their integrity intact.

186 Mr. Sullivan, you have indicated in your statement that your employees have asked themselves, What is the use of being honest, being proper, in your business, activities? All I can say to you is, as a citizen, you have to appreciate there are many more important things than profit. Maybe there is no financial value, but I think our society still places a large value on the loss of one's sole, loss of one's integrity, a loss of one's good reputation, all for the sake of more profit.

187 I do not think your employees want to be seen as slippery, slimy snakes that slither on their bellies in order to win business advantage. That is, in my opinion, most people will conduct themselves in their business affairs in a high ethical standard because they want to be thought well of. And in many ways, that is the more important deterrent when people conduct their business practices.

188 In this case, I take into consideration Mr. Wilson's statements that a guilty plea has been entered. In these types of charges, especially the mens rea elements are difficult for the Crown to prove. A guilty plea means that a three-week trial was avoided, that the individual has accepted responsibility. A significant fine has been agreed to, and on those factors, I am not able to determine that the sentence is unfit and would thus justify my interference with the penalty arrangements that counsel have worked out amongst themselves.

189 For those reasons, thus I am prepared to accept the recommendation of the Crown as agreed to by the defence, and Hydro Kleen Systems Inc. will be fined \$25,000, the fine to be paid forthwith.

190 MR. WILSON: Thank you, My Lord.

191 MR. BEATTIE: My Lord, could there be an order that all exhibits in this matter, and those would be the exhibits from the preliminary hearing, not to the exhibits before you -- the exhibits from the preliminary hearing be released to Corporal Sylvain Roussel of the RCMP?

192 MR. WILSON: There's no problem with that being done at all, My Lord.

193 THE COURT: When you say released to that corporal, would they be in the possession of the RCMP at this time?

194 MR. BEATTIE: No, these are the exhibit -- there was a preliminary hearing in this matter.

195 THE COURT: Okay.

196 MR. BEATTIE: And they're in the possession of the court.

197 THE COURT: So they will be -

198 MR. BEATTIE: Returned to the -

199 THE COURT: -- returned to the RCMP for destruction.

200 MR. BEATTIE: Yes, or otherwise dealt with, yes.

201 THE COURT: Okay. To be dealt with at the RCMP's discretion.

202 MR. BEATTIE: Yes, that's the usual.

203 THE COURT: Okay. Thank you, counsel.

204 MR. WILSON: Thank you, My Lord.

SIRRS J.

cp/s/qlmmm