

IN THE COURT OF APPEAL OF THE NORTHWEST TERRITORIES

THE COURT:

THE HONOURABLE MR. JUSTICE CÔTÉ
THE HONOURABLE MADAM JUSTICE PICARD
THE HONOURABLE MADAM JUSTICE HUNT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW OF THE DECISION
OF THE CORPORATE BOARD OF THE WORKERS' COMPENSATION BOARD OF
THE NORTHWEST TERRITORIES ON MOTION #98/04-28, DATED APRIL 21, 1998;

BETWEEN:

SHEILA FULLOWKA, DOREEN SHAUNA HOURIE, TRACEY NEILL,
JUDIT PANDEV, ELLA MAY CAROL RIGGS and DOREEN VODNOSKI,

Appellants
(Respondents)

- and -

MARGARET K. WITTE

Respondent
(Applicant)

- and -

THE WORKERS' COMPENSATION BOARD OF THE NORTHWEST TERRITORIES
and THE CORPORATE BOARD OF THE WORKERS' COMPENSATION BOARD OF
THE NORTHWEST TERRITORIES and JAMES O'NEIL

(Respondents)

AND BETWEEN:

THE WORKERS' COMPENSATION BOARD OF THE NORTHWEST TERRITORIES
and THE CORPORATE BOARD OF THE WORKERS' COMPENSATION BOARD OF
THE NORTHWEST TERRITORIES,

Appellants
(Respondents)

- and -

MARGARET K. WITTE

Respondent
(Applicant)

- and -

JAMES O'NEIL, SHEILA FULLOWKA, DOREEN SHAUNA HOURIE, TRACEY
NEILL, JUDIT PANDEV, ELLA MAY CAROL RIGGS and DOREEN VODNOSKI,

(Respondents)

AND BETWEEN:

JAMES O'NEIL

Appellant
(Respondent)

- and -

MARGARET K. WITTE

Respondent
(Applicant)

- and -

THE WORKERS' COMPENSATION BOARD OF THE NORTHWEST TERRITORIES and
THE CORPORATE BOARD OF THE WORKERS' COMPENSATION BOARD OF
THE NORTHWEST TERRITORIES and SHEILA FULLOWKA,
DOREEN SHAUNA HOURIE, TRACEY NEILL, JUDIT PANDEV,
ELLA MAY CAROL RIGGS and DOREEN VODNOSKI

(Respondents)

SUPPLEMENTARY MEMORANDUM REGARDING COSTS

COUNSEL:

J. P. Warner, Q.C.

For the Appellants Fullowka et al

G. A. McKinnon

For the Appellant Workers' Compensation Board

J. E. Redmond, Q.C.

For the Appellant O'Neil

K. F. Bailey, Q.C.

For the Respondent Witte

SUPPLEMENTARY MEMORANDUM REGARDING COSTS

THE COURT:

[1] We have considered the varied written submissions of the parties as to costs.

[2] We do not think this is the sort of case where the parties ought each to bear their own costs, as suggested on behalf of Ms. Witte. We allowed the appeal because we felt bound by a line of Supreme Court of Canada cases relating to the standard of review to be applied to decisions of workers' compensation boards. While the particular statutory provision that we had to interpret is unique, the outcome of the appeal was not totally unpredictable, in the light of those cases. Nor do we agree with the Appellants that we should apply Rule 46 of the Northwest Territories Court of Appeal Rules, given that it came into effect after we had heard extensive oral argument.

[3] We reject, as well, Ms. Witte's submission that only one set of costs should be awarded, to the Board alone. The Board's role was at least partially limited to an explanation of its procedures and legislation and we think the other Appellants (Fallowka *et al.* and O'Neil) made a contribution to the argument that was additional to that of the Board. Having said this, we agree with Ms. Witte that there was some duplication among the arguments of the Appellants. That should be reflected in the costs awarded to each.

[4] In light of these points as well as the estimates of the Appellants as to their potential taxable costs under different scenarios, each Appellant (the Board, Fallowka *et al.*, and O'Neil) shall be entitled to costs consisting of a fee of \$4,350 and their disbursements (including the cost of the Appeal Books). This award includes the costs of this application.

[5] In the Supreme Court of the Northwest Territories, costs of \$2,000 payable by the Board were awarded in favour of Ms. Witte. That order is reversed, so that the same amount is payable by Ms. Witte to the Board, on the assumption that it has been paid and so now should be repaid.

MEMORANDUM FILED at YELLOWKNIFE, NWT,
this day of MARCH, 2000

CÔTÉ J.A.

PICARD J.A.

HUNT J.A.