

IN THE COURT OF APPEAL OF THE NORTHWEST TERRITORIES

REASONS FOR DECISION ON COSTS OF THE
HONOURABLE MR. JUSTICE CÔTÉ

IN THE MATTER OF SECTIONS 91 AND 92 OF THE CONSTITUTION ACT, 1867;

AND IN THE MATTER OF SECTIONS 5 AND 37 OF THE CITY OF
YELLOWKNIFE ZONING BY-LAW NO. 3424;

AND IN THE MATTER OF SECTIONS 2.9.8.14 AND 2.7.17 OF THE
CITY OF YELLOWKNIFE BUILDING BY-LAW NO. 2300 AND
SECTION 4.1.1 OF THE CITY OF YELLOWKNIFE BUILDING BY-LAW NO. 3815;

AND IN THE MATTER OF THE PROPERTY ASSESSMENT AND
TAXATION ACT, R.S.N.W.T. 1988, c. P-10;

AND IN THE MATTER OF CERTAIN DEVELOPMENT UNDERTAKEN BY
ANTHONY FOLIOT ON FEDERAL LANDS AND WATERS ADJACENT TO
FOLIOT HOUSEBOAT AND FRONTING BLOCK 201, PLAN 2396 IN THE
CITY OF YELLOWKNIFE; MATTHEW GROGONO ON OR ABOUT FEDERAL
LANDS AND WATERS; AND GARY VAILINCOURT ON OR ABOUT FEDERAL
LANDS AND WATERS;

BETWEEN:

MATTHEW GROGONO

Appellant
(Defendant)

- and -

THE MUNICIPAL CORPORATION OF THE
CITY OF YELLOWKNIFE

Respondent
(Plaintiff)

COUNSEL:

A. F. Marshall
For the Appellant

G. P. Wiest
E. Hellinga
For the Respondent

CÔTÉ J.A.:

[1] At the end of June I signed reasons for decision on a preliminary motion in this appeal. While my reasons were on their way from Edmonton to Yellowknife for filing, the plaintiff City filed a discontinuance of action in the underlying suit, which made it pointless to proceed with the defendant's appeal. My decision gave costs to the respondent City in any event, and said that further submissions might be made about the scale of costs.

[2] The respondent City has now filed argument, to which the appellant defendant has replied. The City seeks double column 2, and files a draft bill of costs to which the appellant defendant takes exception.

[3] No one suggests that my earlier costs decision is invalidated by the discontinuance of the underlying action, and I do not think that it would be, under the circumstances here. The appellant defendant certainly never abandoned his position at any time before my decision was filed.

[4] I agree with the appellant defendant that there should not be costs for a full appeal here, as no appeal was argued. I heard but a preliminary motion. Even if there was preparation for the main appeal, that appeal has not been heard or decided, and that is because of the respondent City's discontinuance of the underlying action. So I cannot and should not award costs for preparation for appeal, or for the appeal generally. It would prolong delay and expense to tax costs in the Court of Appeal.

[5] In respect of the motion which I heard, including the submissions on costs, I award the respondent City \$1,500 inclusive of disbursements. That will be set off against any costs payable in the other direction in the Supreme Court, and will not be payable until there has been a reasonable chance to tax the Supreme Court costs.

APPLICATION HEARD on June 19, 2000

DECISION FILED at YELLOWKNIFE, N.W.T.
this 5th day of October, 2000

CÔTÉ J.A.

APPEAL #CA 00750

A.D. 2000

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