

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the *Criminal Injuries Compensation Act*;

IN THE MATTER OF a certain motor vehicle accident which occurred in Inuvik, Northwest Territories, on September 2, 1992, and criminal liability of Bradley Firth arising therefrom;

IN THE MATTER OF an Appeal from a decision of the Criminal Injuries Compensation Officer dated February 15, 1994;

BETWEEN:

BEVERLY NAVRATIL

Applicant

- and -

THE COMMISSIONER OF THE NORTHWEST TERRITORIES

Respondent

Appeal from a decision of the criminal injuries compensation officer denying a victim's claim for compensation in circumstances where her own behaviour contributed to her injuries.

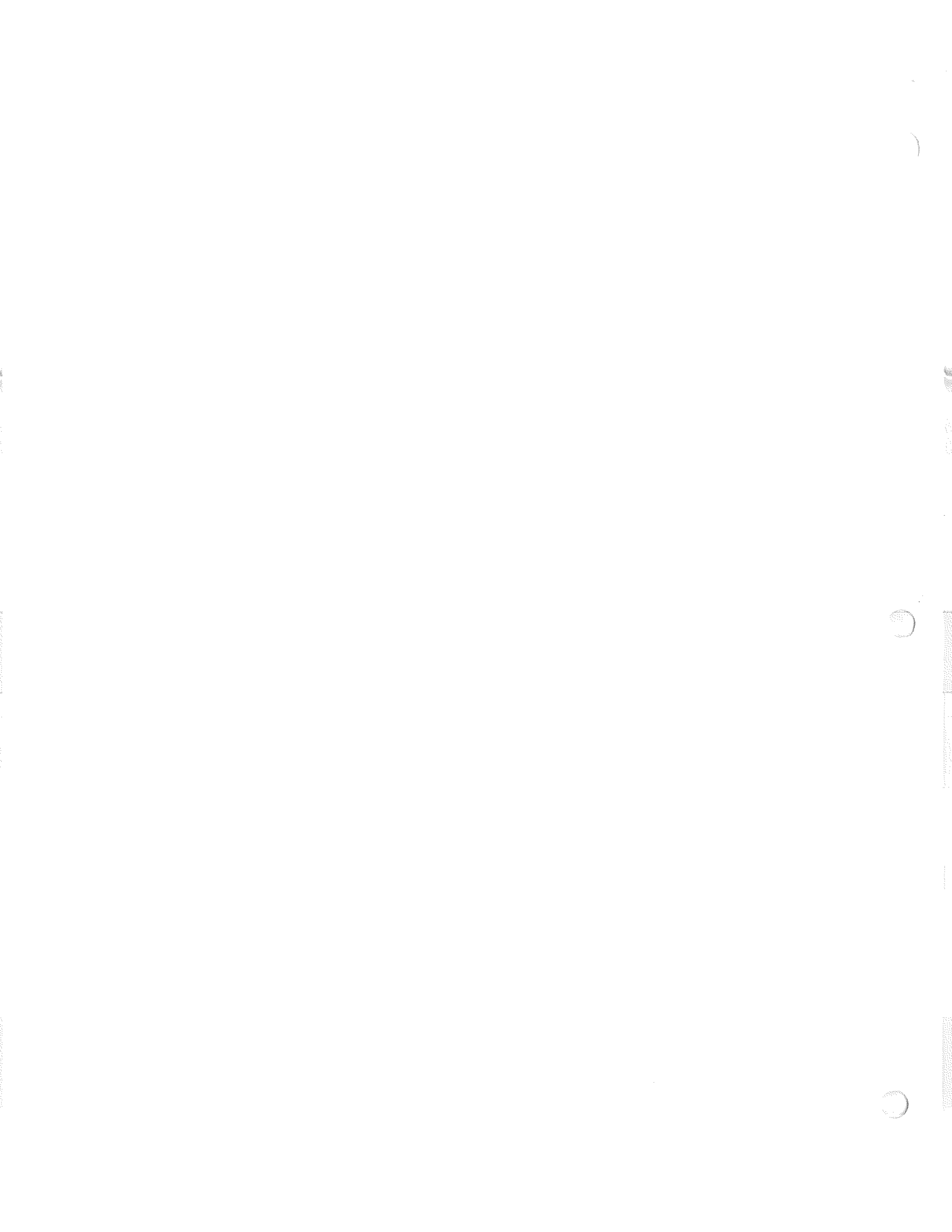
Heard at Yellowknife on November 14, 1995

Judgment filed: January 5, 1996

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J.E. RICHARD

Counsel for Applicant: A.E. Fox

Counsel for Respondent: J. Donihee



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REASONS FOR JUDGMENT

1 The applicant suffered severe and permanent injuries in a motor vehicle accident in Inuvik in September 1992. The driver of the vehicle was convicted of impaired driving causing bodily harm. The applicant sought compensation pursuant to the *Criminal Injuries Compensation Act*, R.S.N.W.T. 1988, ch. 32 (Supp.). The criminal injuries compensation officer denied her claim on the basis that the applicant's own behaviour led to her injuries. She appeals to this Court pursuant to s.20 of the Act.

2 The applicant and the offender had been drinking in a bar and in a private

of the operation of the applicant's vehicle. Under either version, however, it was the offender's impaired operation of the vehicle which caused it to leave the road, thereby causing the applicant's injuries.

10 In his decision denying the claim for compensation under the Act, the officer stated:

The evidence indicates that the applicant had been driving while intoxicated. It is chance that the accident did not happen while she was driving as opposed to when the offender took control of the vehicle.

...

When the applicant started to drive her friend's vehicle, she was in contravention of more than one section of the *Criminal Code* and was acting in complete disregard for her own safety and that of any other person who may have been travelling on the roads at that time. This imprudent and illegal behaviour led either directly or indirectly to the subsequent taking of control of the vehicle by the offender and the resultant accident ...

11 In my view the officer erred in the application of s.10 of the Act.

12 In order to properly invoke s.10, the officer "must weigh all the relevant circumstances, [he] must consider whether any conduct of the victim directly or indirectly contributed to his injury, and [he] must then decide whether to grant compensation, deny compensation or whether [he] will allow a reduced award". See *Dalton v. Criminal Injuries Compensation Board* (1978) 36 O.R. (2d) 394 (Ont. Div. Ct.).

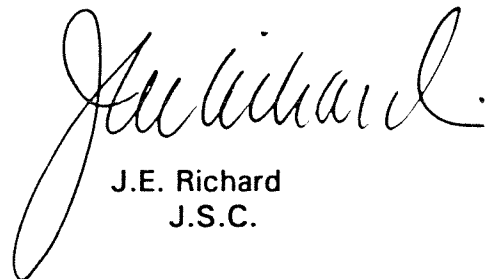
13 Here, it is a relevant circumstance that, ultimately, it was the offender's impaired operation of the vehicle which caused the accident and the injuries. In making

his decision the officer did not consider this relevant circumstance.

14 I agree with the officer's observations that the applicant was acting unlawfully and in disregard for her own safety, and that her behaviour was a cause of her tragic injuries; however, it was not the sole or exclusive cause. Both victim and offender were engaged in unlawful and dangerous activity. At the time, neither could be described as a law-abiding citizen.

15 Having regard to all the relevant circumstances, including the applicant's contributory behaviour as described, I find that the applicant is entitled to an award for compensation, in the maximum amount permitted by the statute, reduced by 50% by reason of the applicant's contributory behaviour.

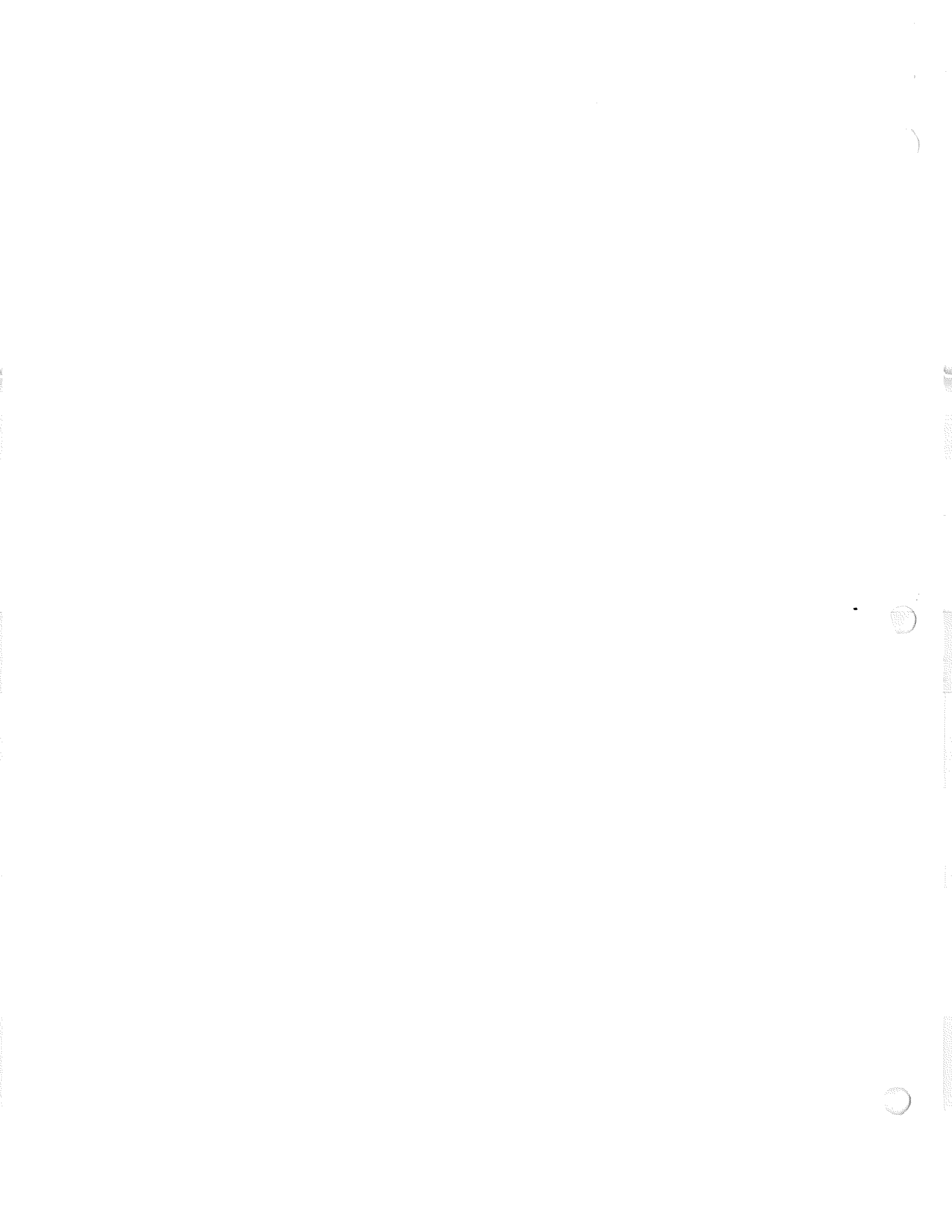
16 I shall leave it to counsel to discuss the structure of the award, given the options available pursuant to s.17 of the statute. If counsel are unable to reach agreement on that matter and/or with respect to costs, they shall provide written submissions to me within thirty days of the date of filing of these reasons.



J.E. Richard
J.S.C.

Counsel for Applicant: A.E. Fox

Counsel for Respondent: J. Donihee



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REASONS FOR JUDGMENT
HONOURABLE MR. JUSTICE J.E. RICHARD

