

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF an application pursuant
to the *Cities, Towns and Villages Act*,
R.S.N.W.T. 1988, c. C-8, as amended

BETWEEN:

NORTH STAR TAXI LTD.

Applicant

- and -

THE MUNICIPAL CORPORATION OF THE TOWN OF HAY RIVER

Respondent

Appeal pursuant to s.180 of the *Cities, Towns and Villages Act*, from a decision of Town Council suspending a taxi licence. Appeal dismissed, with costs.

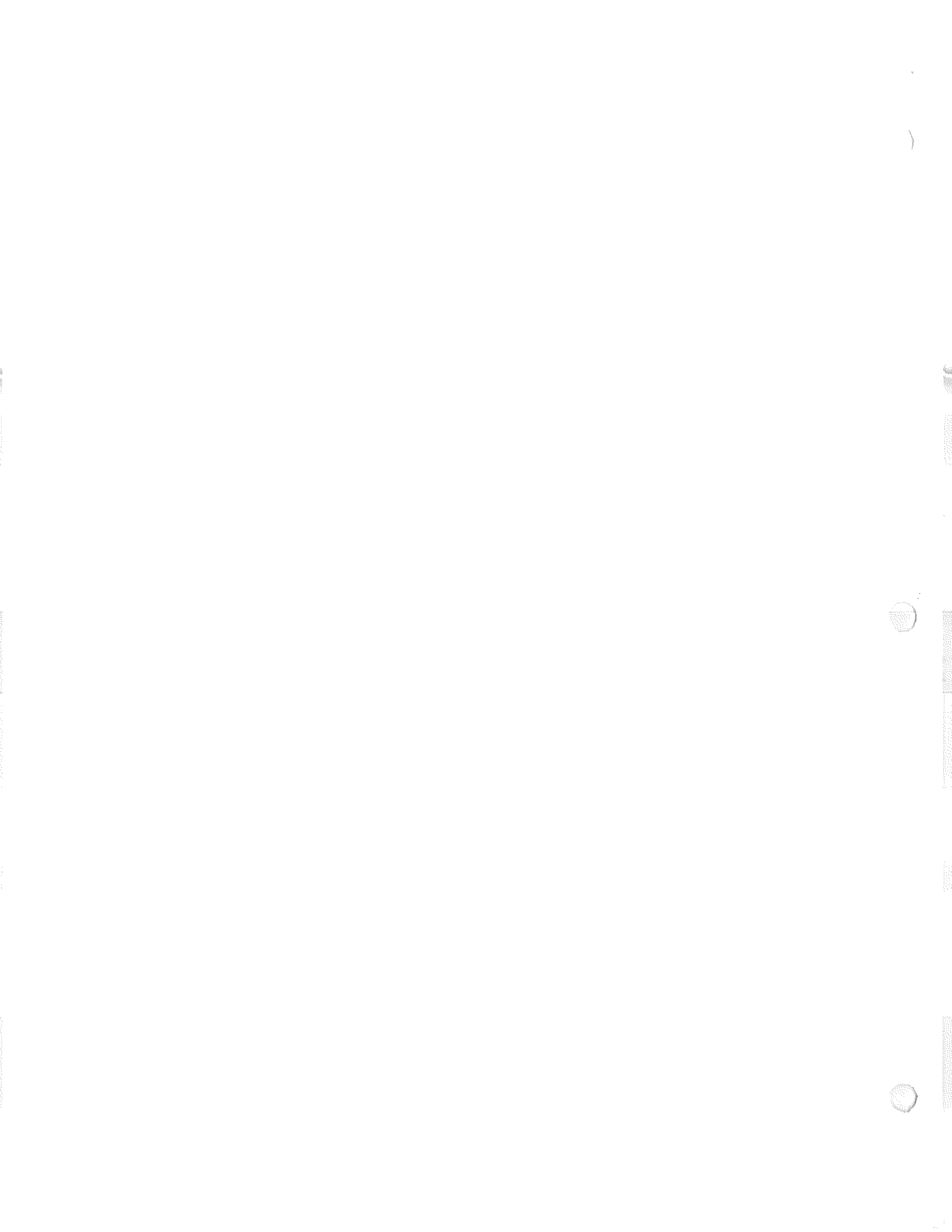
Heard at Yellowknife on October 17, 1995

Judgment filed: January 5, 1996

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

Counsel for the Appellant: D.V. Tomkins

Counsel for the Respondent: S.L. Cooper



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REASONS FOR JUDGMENT

1 The appellant operates a taxi business in the town of Hay River. On August 9, 1995 the town council, by two resolutions, suspended the appellant's taxi licence and cancelled its business licence. The appellant appeals the town council's decision to this Court pursuant to s.180 of the *Cities, Towns and Villages Act*.

2 In its Notice of Appeal the appellant states that "the grounds of appeal are that the council improperly exercised its discretion in passing the said resolutions". Yet, on the hearing of the appeal in this Court, the appellant made scant mention of council's exercise of its discretion, but rather attacked the validity of council's by-laws and alleged lack of jurisdiction by council to pass the resolutions in question. At the hearing of the appeal, counsel for the respondent town objected to the appeal being considered on grounds not included in the Notice of Appeal. I reserved decision on this objection and

proceeded to hear full argument on all grounds listed in the appellant's written brief which was filed in the Court on the date of hearing of the appeal.

3 For the reasons which follow, I find there is no merit in the appeal.

Relevant statutory provisions:

4 The *Cities, Towns and Villages Act*, in s.110, authorizes a town council to licence and regulate businesses generally. The respondent town has done so by enacting a Business Licencing By-law (By-law #1395).

5 The statute, in s.113, authorizes a town council to licence taxis, regulate the operation of taxis, and establish maximum fares to be charged by taxis. The respondent town has done so by enacting a Motor Livery By-law (By-law #820).

6 In s.178 of the statute, the legislature established mandatory procedures to be followed by a town council before suspending or cancelling a business licence or taxi licence, and in s.180 provided for a right of appeal to this Court.

7 These statutory provisions are as follows:

- s.110. A council may, by by-law,
- (a) classify business for the purposes of business licences;
 - (b) prohibit the operation of any class of business without a licence issued by the municipal corporation;
 - (c) regulate the operation of any class of business; and
 - (d) subject to sections 178 to 180, provide for matters relating to the issuance, suspension or cancellation of business licences.

...

- s.113** A council may, by by-law,
- (a) prohibit the operation of a taxi without the vehicle or operator, or both, being licensed by the municipal corporation;
 - (b) regulate the operation of taxis;
 - (c) establish quotas for taxi licences;
 - (d) establish a tariff of minimum and maximum fares that may be charged by taxi operators;
 - (e) regulate the transfer of taxi licences;
 - (f) classify taxis for the purposes of the by-law;
 - (g) regulate the nature and location of taxi stands; and
 - (h) subject to sections 178 to 180, provide for matters relating to the issuance, suspension and cancellation of taxi licences.

...

s.178. (1) This section applies to

- (a) the enforcement of by-laws made under subsection 98(2) and sections 108 and 125; and
 - (b) the suspension and cancellation of building permits, business licences and taxi licences issued under by-laws made under sections 107, 110 and 113.
- (2) Before any action referred to in subsection (1) is taken, the council shall allow any person affected, or representative of that person, an opportunity to be heard.
- (3) The hearing must be conducted by the council.
- (4) Notice must be served on any person affected at least three days before the date of the hearing.
- (5) The notice must
- (a) set out the time and place of the hearing; and
 - (b) advise the person of the purpose of the hearing and the right of the person to attend and make representations.
- (6) The notice must be served personally or, where personal service cannot be effected because the address of the person is not known, the notice may be published twice in a newspaper having general circulation in the municipality or the Territories.

...

s.180. (1) An appeal may be taken from a decision made under section 178 or 179 to a judge of the Supreme Court by way of originating notice under the Rules of the Supreme Court.

(2) The appeal must be made not later than 30 days after the decision.

(3) Subject to section 179, no person shall take any action referred to in subsection 178(1) until after

- (a) the period for taking an appeal has expired and no appeal has been taken; or
- (b) any appeal taken has been dismissed by a judge of the Supreme Court.

8 Pursuant to the authority granted by the legislature, the town enacted By-law #820 "Motor Livery By-law", providing generally for the regulation of taxi operations in the town, a tariff of minimum and maximum fares, and the issuance, suspension and cancellation of taxi licences. In particular, the by-law provided in s.32 for the suspension of a taxi licence:

32. If the holder of a license to operate a livery service fails to comply with the Tariff of Fares as set out in Schedule 3, or any of the provisions of the By-law the Council may suspend the licence for a period of not more than thirty (30) days, or cancel his license.

9 Further, with respect to the licensing of businesses generally, the town, as authorized by the Act, enacted By-law #1395 "Business Licence By-law". Sections 20 and 21 of that by-law deal with the suspension and cancellation of business licences:

20. Where any person has failed to observe and comply with:

- (a) any conditions endorsed on his license, or
- (b) any terms or provisions of this By-law, or applicable Act of Parliament, Act of the Legislative Assembly of the Northwest Territories or any By-law of the Town,

the Senior Administrative Officer may cancel the appropriate license or licenses of such person. In each such case, the fees paid for the issue of all such licenses are forfeited to the Town.

- 21.(1) Notwithstanding Section 20, and subject to the provisions of this By-law, before any license is suspended or cancelled, the Senior Administrative officer shall:
 - (a) allow the licensee, or that person's representative, an opportunity to be heard by Council, and
 - (b) serve written notice on any licensee at least three (3) days prior to the date of the hearing.
- (2) the notice shall:
 - (a) set out the time and place of the hearing, and
 - (b) advise the licensee of the purpose of the hearing and right of the licensee to attend and make representation.
- (3) The notice must either be served personally or by single registered mail addressed to the applicant at the address set out in the application.
- (4) Where the Council, or the Senior Administrative Officer, is of the opinion that there is imminent danger to public health and safety, the Senior Administrative Officer may
 - (a) abridge the time for notice, or
 - (b) take appropriate action without the notice or hearing required.
- (5) Any person may appeal the decision of Council within thirty (30) days to a justice.

Factual Background

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During the first six months of 1995 the appellant approached town council and sought an increase in the maximum fares permitted under the Motor Livery By-law. Financial information was provided to the town's officials. The appellant's solicitor made

a presentation to town council on June 26, 1995. The appellant was seeking an increase in excess of 40%. At the June 26 meeting, town council denied the appellant's request but did authorize an increase of approximately 13%.

11 The appellant did not accept the decision of town council. During the month of July the appellant charged its customers taxi fares in excess of the maximum permitted by the Motor Livery By-law. By letter of July 28 to the appellant, the Town's by-law officer advised the appellant that it was operating its vehicles in contravention of the by-law by charging rates higher than authorized.

12 On July 31, 1995 a formal motion was passed at a meeting of town council to amend the Motor Livery By-law, to increase the maximum taxi fares by approximately 13%.

13 Again, the appellant indicated in a clear way that it would not adhere to council's decision. By letter dated August 1, 1995 addressed to the Mayor and members of town council, the appellant stated that it would continue to charge the rates it desired. Further, it stated that it would henceforth operate its taxicabs under the by-laws of the Town of Fort Smith as "we feel working under the present by-law of Hay River will not allow us to run our company as a viable business".

14 The town decided to convene a special meeting to consider suspension or cancellation of the appellant's taxi licence and business licence. By written notice served on the appellant on August 4, the appellant was advised of the special meeting to take place on August 9 "to discuss and possibly suspend or cancel the taxi licence and/or

business licence of North Star Taxi Ltd."

15 Diane Robinson, a director of the appellant company, attended the August 9 meeting. Council heard the report of the by-law officer and then heard representations from Ms. Robinson. In those representations she acknowledged that the appellant had acted in contravention of the Motor Livery By-law in charging its rates, but pleaded dire financial circumstances. After much discussion, the town council passed the following resolutions:

- (1) "That the taxi license for North Star Taxi Ltd. be suspended for thirty days, in accordance with section 32 of the Motor Livery By-law #820."
- (2) "That the Business License for North Star Taxi Ltd. be cancelled in accordance with section 20 of the Business Licensing By-law #1385".

16 The following day, August 10, in a letter signed by the town's Senior Administrative Officer and hand-delivered to Ms. Robinson, the appellant was formally notified of the suspension and cancellation of the licences. That letter also advised the appellant of its right to appeal pursuant to s.180 of the *Cities, Towns and Villages Act*, and that the suspension and cancellation of the licences would be effective in accordance with that statute. (Those provisions - contained in subsection 180(3) - essentially delay the effective date of any suspension/cancellation until the expiry of the appeal period or until the dismissal of any appeal that is filed within the appeal period. This statutory stay of execution has been further extended in the present case by the regrettable delay in issuing the Court's decision due to other pressing Court matters).

17 The appellant's appeal was filed on the last day of the appeal period and, as previously mentioned, is stated to be on the grounds that town council "improperly exercised its discretion in passing the said resolutions".

Grounds of appeal

18 On the hearing of the appeal, no viable argument or submission was presented in support of the "grounds" stated in the filed Notice of Appeal, i.e. improper exercise of discretion by council. In my respectful view, considering the circumstances known to town council, including the blatant and acknowledged contravention of the by-law, council could hardly have acted otherwise. No improper or unreasonable exercise of council's discretionary power is shown.

19 Although I hold that it was not open to appellant's counsel to introduce new grounds of appeal at the hearing of the appeal, with a bare minimum of notice to opposing counsel, I find in any event that there is no merit in these additional grounds, and I propose to deal with these albeit briefly.

20 Firstly, it is submitted that the suspension of the taxi licence is a nullity by virtue of the repeal of By-law #820 and its replacement by a new Taxi Licence By-law #1599 on September 11, 1995 and the provisions of s.36(2)(d) of the *Interpretation Act*, R.S.N.W.T. 1988, ch. T-8:

s.36(2) Where an enactment is repealed in whole or in part and another enactment is substituted for the former enactment, ...

...

- (d) when any penalty, forfeiture or punishment is reduced or mitigated by the new enactment, the penalty, forfeiture or punishment if imposed or adjudged after the repeal shall be reduced or mitigated accordingly."

21 Counsel submits that by virtue of the stay of execution of the licence suspension, it is not yet "imposed or adjudged". He further submits that as the new Taxi Licence By-law does not contain a provision analogous to s.32 of the repealed By-law #820, no suspension can be made. This submission is specious. Although the new by-law contains a new or different "procedure", suspension of a taxi licence or chauffeur's permit remains as a possible penalty or punishment, no less so than in by-law #820.

22 Next, the appellant alleges breach of the rules of natural justice and procedural fairness with respect to the hearing held on August 9. There is no merit in this contention. The notice of hearing was in full compliance with the provisions of s.178 of the *Cities, Towns and Villages Act*, and s.21 of the Business Licence By-law. The appellant had full knowledge of the allegations that were to be considered at the hearing. The appellant was accorded a fair hearing. Ms. Robinson did not seek to cross-examine or contradict the by-law officer who gave a report to town council. *R. v. City of Calgary, ex parte Sanderson* (1965) 53 D.L.R. (2d) 477 (Alta. S.C.), cited on behalf of the appellant, is distinguishable.

23 Next, it is submitted that with respect to the cancellation of the business licence, town council does not have jurisdiction to do so, inasmuch as it has delegated that authority to its Senior Administrative Officer in s.20 of the Business Licence By-law. In giving consideration to this submission, one must look not only to the words of section

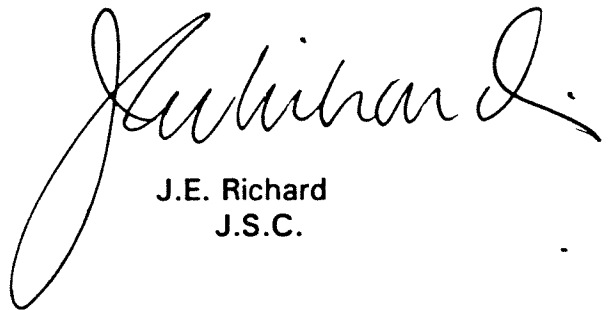
20 but to its context in the by-law and to the town's authority in this regard as provided by legislation. A careful reading of the following section (section 21) of the By-law, and the clear provisions of s.178 of the *Cities, Towns and Villages Act*, show that it is indeed the town council which must make the decision to cancel a business licence, and not the Senior Administrative Officer. By having the Senior Administrative Officer sign the letter of August 10, town council has met the procedural requirements.

24 The next submission of the appellant attacks the municipal by-laws themselves, claiming they are *ultra vires* the authority granted in sections 110 and 113 of the *Cities, Towns and Villages Act*. These statutory provisions authorize town council to enact by-laws on "matters relating to the issuance, suspension or cancellation" of taxi licences and business licences. This is clear language. The authorizing municipal legislation in the cases cited by the appellant, *In re By-law No. 92, Town of Winnipeg Beach*, [1919] 3 W.W.R. 696 (Man. C.A.) and *Rex et. rel. Morris v. Stimmel*, [1923] 3 W.W.R. 1185 (Alta. S.C., App.Div.) did not contain such clear language.

25 Finally, it is submitted on behalf of the appellant that as any suspension or cancellation of either licence under the relevant by-law must be founded on a breach of the by-law, and as the appellant had not been convicted of any such breach, town council acted without authority in passing its resolutions on August 9. Again, I find I am in disagreement with this interpretation of the two by-laws. Each by-law provides that any licensee who "fails to comply" with the by-law may have his licence suspended or cancelled. There is no requirement for a conviction in a court of law. It is for town council to determine, at the hearing mandated by the legislature in s.178 of the Act,

whether the licensee has failed to comply with the by-law. In the present case, the licensee acknowledged, both in writing prior to the August 9 hearing, and in oral presentation at the hearing, that it was acting in contravention of the by-law.

26 For the foregoing reasons, the appeal is dismissed. The respondent shall be entitled to its party-party costs of the appeal which I hereby set at \$800.00, plus reasonable disbursements.



J.E. Richard
J.S.C.

Yellowknife, Northwest Territories
January 5, 1996

Counsel for the Appellant: D.V. Tomkins
Counsel for the Respondent: S.L. Cooper



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