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IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF THE ARBITRATION ORDINANCE,

AND IN THE MATTER OF AN ARBITRATOR REQUIRED  
PURSUANT TO THE TERMS OF THE NORTHWEST TERRITORIES  
PUBLIC SERVICE ORDINANCE

B E T W E E N :

THE NORTHWEST TERRITORIES PUBLIC SERVICE  
ASSOCIATION AND THE PUBLIC ALLIANCE OF CANADA

APPLICANTS

- and -

THE COMMISSIONER OF THE NORTHWEST TERRITORIES  
AND THE GOVERNMENT OF THE NORTHWEST TERRITORIES

RESPONDENTS

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Application for an Order appointment an Arbitrator

Heard at Yellowknife July 7th, 1978

Preliminary objection of respondents dismissed.

Reasons for Judgment filed: July 12th, 1978.

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Reasons for Judgment by:

The Honourable Mr. Justice C.F. Tallis

Counsel on the Hearing:

Mr. James R. Scott for the Applicant

Mr. A. Brien for the Respondent

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TERRITORIES  
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RESPONDENTS

Counsel on the Hearing: Mr. James R. Scott for the Applicant

Mr. A. Brien for the Respondent

REASONS FOR JUDGMENT OF THE HONOURABLE  
MR. JUSTICE C. F. TALLIS

This is an application for an order appointing an  
arbitrator pursuant to section 12 of the Arbitration Ordinance,  
R.O.N.W.T. 1974 Ch. A-4 and Section 42(3) of the Public Service  
Ordinance, R.O.N.W.T. 1974 Ch. P-13.

In support of this application the applicants filed  
the affidavit of one Ed McRae:

"I, ED McRAE, of the City of Yellowknife,  
in the Northwest Territories, Executive Secretary  
Treasurer, MAKE OATH AND SAY:

1. THAT I am Executive Secretary Treasurer to the Northwest Territories Public Service Association and as such have a personal knowledge of the matters hereinafter deposed to except where stated to be upon my information and belief.

2. THAT the parties to this matter are parties to a Collective Agreement dated the 1st day of August, A.D. 1976 which has a term from the 1st day of April, A.D. 1976 to and including the 31st day of March, A.D. 1978. In addition, the said Collective Agreement contains Article 42 which purports to continue the terms of the Collective Agreement as follows:-

'42.04 Where a notice to commence collective bargaining has been given under clause 42.03, the employer shall not without consent by or on behalf of the employees affected, increase or decrease salaries or alter any other term or condition of employment of employees in the bargaining unit which was in force on the day in which the notice was given until a renewal or revision of the Agreement or a new Collective Agreement has been concluded, or an arbitral award has been handed down in accordance with subsection 3 of Section 42A of the Public Service Ordinance.'

And the Applicants beg leave of this Honourable Court to place a copy of the same before the Court.

3. THAT on or about the 17th day of January, A.D. 1978, the Applicants gave notice in writing to the Respondents pursuant to Article 42.00 of the said Collective Agreement to commence collective bargaining.

4. THAT subsequent to the 17th day of January, A.D. 1978 and from time to time thereafter collective bargaining did take place.

5. THAT during the course of collective bargaining it became necessary to cause a Statement of Claim to be issued to continue collective bargaining the same being issued in the Supreme Court of the Northwest Territories as Action #4273.

6. THAT during or about the month of June, A.D. 1978, it became apparent that collective bargaining was failing.

7. THAT now shown to me and marked as Exhibit "A" to this my Affidavit is a copy of a letter dated the 14th day of June, A.D. 1978 by myself and delivered

to the Defendant, S.M. Hodgson, Commissioner,  
Government of the Northwest Territories.

8. THAT now shown to me and marked as Exhibit "B" to this my Affidavit, is the reply I received with respect to Exhibit "A" herein, and received from Commissioner S.M. Hodgson.

9. THAT now shown to me and marked as Exhibit "C" to this my Affidavit is a copy of a letter dated the 22nd day of June, A.D. 1978 which I caused to be written and delivered to the Respondent, S.M. Hodgson, Commissioner, Government of the Northwest Territories.

10. THAT now shown to me and marked as Exhibit "D" to this my Affidavit is correspondence dated the 23rd day of June, A.D. 1978 which I received in reply to the previous mentioned pieces of correspondence.

11. THAT known shown to me and marked as Exhibit "E" to this my Affidavit is a copy of my letter dated the 26th day of June, A.D. 1978 again addressed and delivered to Commissioner S.M. Hodgson, Government of the Northwest Territories.

12. THAT to the date of execution of this Affidavit there has been no arbitrator agreed upon by the Government of the Northwest Territories, or our association.

13. THAT we propose that the Court doth appoint one of those arbitrators named at page 5 of our Exhibit "A" or alternatively, appoint one of the following:-

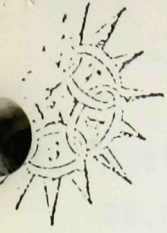
1. Fred Laux  
Barrister & Solicitor  
University of Alberta  
Law School,  
Edmonton, Alberta
2. John Baigent  
Barrister & Solicitor  
Vancouver, British Columbia
3. Collin E. Taylor  
Barrister & Solicitor  
Edmonton, Alberta

14. THAT, as indicated, the Respondents herein have refused to agree and continue to refuse to agree to appoint an arbitrator.

15. THAT the parties herein have been without a Collective Agreement since March of 1978 and the employees have been deprived of the terms of the Collective Agreement. I do verily believe that there is some great urgency to have this matter concluded.

16. THAT I make this my Affidavit in support of the application herein contained."

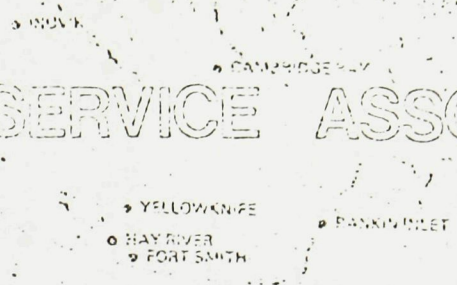
The exhibits to this affidavit are as follows:



# THE NORTHWEST TERRITORIES

## PUBLIC SERVICE ASSOCIATION

115  
YKKNIFE, N.W.T.  
33-873-5868



DATE: 14 June 1978

OUR FILE: 4

Mr. S.M. Hodgson  
Commissioner  
Government of N.W.T.  
Yellowknife, N.W.T.

Dear Sir:

Please be advised that because the parties to the current Agreement have been unable to reach agreement through collective bargaining process, please accept this letter as our formal notice of placing all the outstanding items before an Arbitrator, pursuant to Section 42(3) of the Public Service Ordinance for final determination.

It is our understanding that the outstanding items consist of the following:

- 1. Article 18 - Vacation Leave:
  - 18.01
  - 18.02
  - 18.04
  - 18.05
  - 18.06
  - 18.07
  - 18.10
  - 18.11 (entirety except 3(b))
  - 18.12
- 2. Article 20 - Sick Leave
  - 20.10 (ours)

*This is Exhibit "A" referred to in the letter off the coast of Ed. 10/10/78  
 sworn the 4th day of July 1978.  
 [Signature]*

14 June 1973

3. Article 22 - Hours of Work-General

- 22.01
- 22.02
- 22.03
- 22.04
- 22.05
- 22.06
- 22.07
- 22.08

4. Article 23 - Overtime:

- 23.01
- 23.02
- 23.03
- 23.04
- 23.05
- 23.06
- 23.07
- 23.08

5. Article 24 - Pay:

- 24.01
- 24.02
- 24.03
- 24.04
- 24.05
- 24.07
- 24.08
- 24.09

6. Article 29 - Standby:

29.01 (entirety except (1))

7. Article 31 - Travel on Day of Rest or Designated Paid Holiday:

31.01

## 8. Article 37 - Adjustment of Disputes:

37.01	37.15
37.02	37.16
37.03	37.17
37.04	37.18
37.05	37.19
37.06	37.20
37.07	37.21
37.08	37.22
37.09	37.23
37.10	37.24
37.11	37.25
37.12	37.26
37.13	37.27
37.14	

## 9. Article 40 - Joint Consultation:

40.01  
40.02  
40.03

## 10. Article 42 - Duration and Renewal:

42.01  
42.02  
42.03  
42.04

11. Appendix A2 - Hours of Work and Overtime -  
Correction Officers

## 12. Appendix A7 - Casual Employees

13. Appendix A8 - AVTC Instructors, Community Adult  
Education Instructors, Home  
Management Development Officers

## 14. Appendix A9 - Agreed except A9.03



- 15. Appendix A10 - Penalogical Factor
- 16. Appendix C1 - Appeals Procedure
- 17. Appendix C2 - Settlement Allowance
- 18. Appendix C3 - Removal Expenses
- 19. Appendix C4 - Rental Rates and Rental Conditions
- 20. Appendix C5 - Duty Travel Expenses
- 21. Appendix C6 - Employer Accommodation Policy
- 22. Appendix C7 - Ration Policy
- 23. Appendix C8 - Provision of Work Clothing and Uniforms
- 24. Appendix C9 - Safety and Health
- 25. Appendix C10 - Education Leave
- 26. Letter of Understanding - Travel Insurance Indemnity
- 27. Industrial First Aid Certificate Premium
- 28. Appendix D1 - Pay Schedules & Rates
- 29. Appendix D2 - Pay Schedules & Rates
- 30. Appendix D3 - Pay Schedules & Rates
- 31. Appendix D4 - Pay Schedules & Rates

14 June 1978

Pursuant to the terms of the Arbitration Ordinance, we propose that the Arbitrator be one of the following:

1. Peter M. Owen, Q.C.  
c/o Law Courts Building  
Edmonton, Alberta
2. Kenneth Norman  
c/o Faculty of Law  
University of Saskatchewan  
Saskatoon, Sask.
3. Marguerite E. Jackson  
Rosenbloom and Jackson  
410 - 198 W. Hasting St.  
Vancouver, B.C. V6B 1H2
4. Timothy J. Christen  
310, 10310 - 102 Avenue  
Edmonton, Alberta
5. R.A. Gallagher  
135 Garry Street  
Winnipeg, Manitoba
6. Thomas J. Walsh, Q.C.  
c/o Walsh, Young & Co.  
1500, 727 - 7 Avenue S.W.  
Calgary, Alberta
7. Clive McKee  
Clive McKee Limited  
5931 Marine Drive  
West Vancouver, B.C.

In the event that you cannot, or will not, agree to the appointment of one of the above, it is our intention to instruct our solicitors to make the necessary applications pursuant to section 12(2) of the Arbitration Ordinance.

Commissioner

14 June 1978

Would you please respond within ten (10) days to our office in Yellowknife, N.W.T.

Yours truly,

*E. McRae*

E. McRae  
Executive Secretary-Treasurer  
N.W.T. Public Service Association

EM/jp

cc: R. Bates  
G. Mullins

*[Faint, mostly illegible typed text follows, appearing to be a letter body or a series of notes.]*

Yukon Library



OFFICE OF THE COMMISSIONER  
NORTHWEST TERRITORIES  
CANADA



Yellowknife, N.W.T.,  
X1A 2L9  
20 June 1978.

HAND DELIVERED

Mr. E. McRae,  
Executive Secretary-Treasurer,  
The Northwest Territories Public  
Service Association,  
P.O. Box 1116,  
Yellowknife, N.W.T.

*This is Exhibit B  
referred to in the affidavit  
of Mr. McRae  
by me the 4th party  
K. Con*

Dear Mr. McRae:

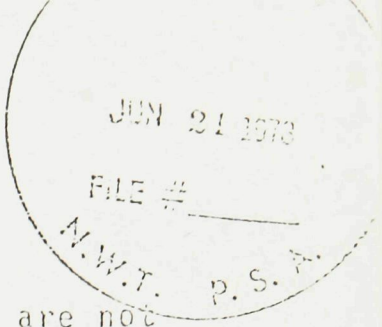
Your letter giving notice to arbitrate puzzles and disappoints me.

I do not understand why you have chosen to go this route when only a week ago both parties were attempting to find a mutually acceptable day to resume negotiations. Nothing has occurred in the interim to prevent this return to the table.

The long list of unsettled items included in your letter is evidence to me that the bargaining process should continue. As I understand it, some of these points have barely been mentioned in negotiations. To bring in a third party at this point is unnecessary and, worse, would amount to an admission of the failure of the parties to sincerely work at overcoming the obstacles that separate us.

I believe that it is in the best interests of the employees of the Government, and of the Government itself, that our negotiating teams be instructed to get on with their work to deal openly and fairly and to use all of their skills and abilities to reach an agreement. The questions with respect to certification and the outstanding court hearing will proceed apace and ought not to distract us from our primary process.

I have faith in the collective bargaining process, and with good will on both sides I sincerely believe it will work. The Government is prepared to negotiate, but it can't be and never

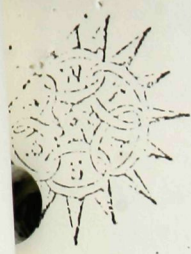


is a one way street. We are not always right, but we are not always wrong. There has to be give and take on both sides. Therefore, I sincerely believe that both parties should get together and get back to the bargaining table. I have instructed our negotiators to do just this, as it is my opinion that we have not exhausted, by any stretch of the imagination, all avenues for settlement.

Yours sincerely,

A handwritten signature in cursive script, which appears to read "S. M. Hodgson", is written above the typed name.

S. M. Hodgson,  
Commissioner.



# THE NORTHWEST TERRITORIES

## PUBLIC SERVICE ASSOCIATION

115  
YELLOWKNIFE, N.W.T.  
03-873-5868

*This is Ed [unclear]  
referred to [unclear]  
Official [unclear]  
Michael [unclear] 1978  
[unclear] 14/6/78  
[unclear]*

DATE: 22 June 1978  
OUR FILE: 4-1

HAND DELIVERED

Mr. S.M. Hodgson  
Commissioner  
Government of N.W.T.  
Yellowknife, N.W.T.

Dear Sir:

Please be advised that your letter of 20 June 1978 has been received, and the following comments seem warranted.

It is indeed unfortunate that our Association has been forced into a position of having no alternative but to proceed to arbitration on the outstanding items. The climate surrounding the current round of Negotiations has put us in a position where a return to the Bargaining Table is impossible.

While we certainly understand and appreciate your views on the collective bargaining process, we do not feel that you have been fully appraised as to the extent of animosity that has been generated by your Negotiating Team.

The display of arrogance and contempt of the collective bargaining process demonstrated by your Negotiating Team has hardened our Team's position into one of inflexibility. While we appreciate your attempt to intercede and your comments in relation to collective bargaining, we are afraid that your intervention has come too late.

.....2

22 June 1978

We are prepared to put our positions before any one of the seven persons suggested in our letter of 14 June 1978. If for some reason you cannot, or will not, agree to any of the persons so suggested, we are prepared to instruct our solicitors to take the appropriate legal action.

If we do not hear from your office as to the acceptance of one of the persons named on or before 29 June 1978, please be advised that we will instruct our solicitors to commence proceedings to have an arbitrator appointed.

Yours truly,



E. McRae  
Executive Secretary-Treasurer  
N.W.T. Public Service Association

EM/jp



OFFICE OF THE COMMISSIONER  
NORTHWEST TERRITORIES  
CANADA



Yellowknife, N.W.T.,  
X1A 2L9  
23 June 1978.

HAND DELIVERED

Mr. E. McRae,  
Executive Secretary-Treasurer,  
The Northwest Territories  
Public Service Association,  
P.O. Box 1116,  
Yellowknife, N.W.T.

*This is Exhibit D of the  
Affidavit of St. John  
sworn by me the 24th  
day of July 10 1978  
E. Cor*

Dear Mr. McRae:

Thank you for your June 22nd letter. I would not normally answer but it does seem to me that you should be apprised of the situation and the opinions expressed as a result of the negotiations.

First of all, it doesn't seem to me that anyone can be construed as being forced into any particular position when it comes to negotiations. As you know, I have had many years' experience in the art of negotiations in much much bigger situations than the present one, while of course each and every negotiation is important whether it be for four people or 40,000 as was the case in my previous responsibilities.

When one finds a situation where there are so many outstanding items, then of course one soon concludes there has been relatively little negotiation. Negotiating is an art--some have it and some don't--but it seems to me that surely to goodness there are a number of items that could be worked out with good will on both sides. There is nothing to be gained by either the Union or the Government becoming involved in a lot of acrimony.

I have noted your feelings that the Government negotiators have displeased you and that in your words "has placed your position into one of inflexibility". It is strange that you should say that, because the impression given is that you are the problem and that it is impossible to do anything in negotiations as long as you are at the bargaining table.



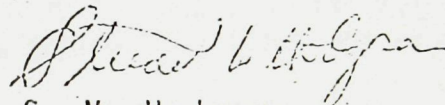
The other side feels that without your presence an agreement could soon be reached. Of course I hasten to add, whether or not there is any more truth to this impression than there is to the impression you state is something I am not able to judge.

You mentioned that I am attempting to intercede and that any intervention on my part is too late. I must say that is the second surprise, as experience has persuaded me that nothing is too late given good will on both sides. Perhaps one of the solutions is for both sides to change their negotiating teams. If your negotiators can't get along with our people and they can't get along with you, then it has become a matter of personalities.

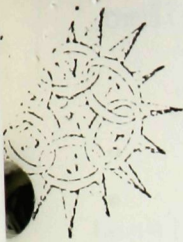
The people of the north have a tremendous stock in their Government and their public servants. I have spent the best years of my life building this institution and I think I have looked after the welfare of the staff to the best of my ability. I certainly take a very dim view of seeing it all go down the tube because of personalities. Consequently I feel there has been little negotiation, and believe that both sides should get back to the bargaining table, and perhaps with some new faces. I have no intention of playing games with anyone but I am not going to sit idly by and see anyone, regardless of who they represent, cause major upheavals which in the long run will be injurious to the people of the Territories.

If that isn't frank enough, then perhaps I should be a little more frank by simply saying that there is no need for an arbitrator, as in my opinion the negotiating process has yet to be fully instituted. It has worked for years with the Public Service Association, and continues to work with the Teachers' Association, so consequently I do not support arbitration at this time.

Yours sincerely,



S. M. Hodgson,  
Commissioner.



# THE NORTHWEST TERRITORIES

## PUBLIC SERVICE ASSOCIATION

1115  
YELLOWKNIFE, N.W.T.  
803-873-5868

YELLOWKNIFE  
HAY RIVER  
FORT SMITH

DATE: 26 June 1978

HAND DELIVERED

OUR FILE: 4

Mr. S.M. Hodgson  
Commissioner  
Government of N.W.T.  
Yellowknife, N.W.T.

*This is Exhibit E to  
the Affidavit of Ed McLean  
sworn by me the 26th day  
July 1978*

Dear Mr. Hodgson:

This will acknowledge receipt of your letter of 23 June 1978. Although we see little value in further dialogue with regard to this situation, several points raised by your letter demand our response. In keeping with the frankness of your letter, our comments will be frank and to the point.

It is clear that there are two differing points of view on these negotiations and how they have progressed. I should point out that neither myself nor Dave Dunn are voting members of our Team. Our role is one of support, and we give advice which may or may not be accepted. Our elected senior executive comprise the voting members of our Team, and their decisions are guided by the desires and best interests of our entire membership.

As you well know from your previous experience, a Trade Union's responsibility is to negotiate a contract acceptable to its members, be they 4 or 40,000. That is precisely what we are attempting to do.

Granted, there are a great number of outstanding issues, but as we have said in the past, if the Employer is willing to put his positions in writing and stand behind them, we are willing to consider them prior to Arbitration. We bear the Employer no acrimony but simply feel the Chief Negotiator has built up such a climate of mis-trust and animosity that nothing further can be accomplished at the table.

Despite the fact both parties feel that personalities on the other's team are a contributing factor to not reaching a settlement, the fact remains that the apparent unyielding positions adopted by the parties has been the only factor our Association has considered.

Perhaps the situation would be different if your Team's spokesman did not make offers in writing and later withdraw them when we accept; or make statements to the effect that if things did not progress more speedily, he would withdraw additional positions. This is not the art of negotiating as we know it.

Perhaps the situation would be different if your Team's spokesman did not write to all our members announcing new rents, etc. stating that agreement to these changes had been reached at Joint Consultation when, in fact, no such consultation had taken place.

Perhaps the situation would be different if your Team's spokesman had signed off those Clauses not in dispute. Our list of outstanding issues would certainly be shorter.

Perhaps the situation would be different if your Team's spokesman had met the conditions laid out in Mr. Dyck's telex of 13 June 1978.

If the Ordinance or the Collective Agreement had provided alternative avenues of resolving disputes during negotiations, ie: mediation, conciliation, we would have suggested one of these avenues. Unfortunately, neither of these options were contemplated by the Legislators and thus, we have only the route of Arbitration.

We are at a loss to understand the Government's intransigent position in refusing to go before an independent third party. It is our understanding that this is the next logical step.

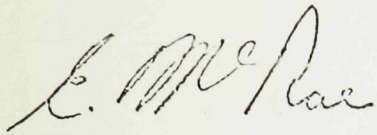
As stated in our letter of 20 June 1978, we are prepared to put all of our positions in front of an Arbitrator. The reluctance of the Government to do the same raises questions in our mind as to the ability of the Government to defend the positions that they have taken.

Commissioner

26 June 1978

We have given you ample opportunity to proceed with arbitration. We have suggested several acceptable arbitrators. We have extended the time required under the law. Since you refuse to proceed, we have, accordingly, today advised our solicitors to commence the necessary legal action to have an Arbitrator appointed.

Yours truly,



E. McRae  
Executive Secretary-Treasurer  
N.W.T. Public Service Association

EM/jp

Cont Library

Section 12 of the Arbitration Ordinance, R.O.N.W.T.

1974 Ch. A-4 reads as follows:

"12. (1) In any of the following cases:

- (a) where a submission provides that the reference is to a single arbitrator and the persons whose concurrence is necessary do not, after differences have arisen, concur in the appointment of an arbitrator;
- (b) where an arbitrator or an umpire is to be appointed by any person and that person does not make the appointment; and
- (c) where an arbitrator or umpire refuses to act or is incapable of acting or dies and the person having the right to appoint a person to fill the vacancy has not made the appointment;

a party may serve the other party or the arbitrators or the person who has the right to make the appointment, as the case may be, with a written notice to concur in the appointment of a single arbitrator or to appoint an arbitrator or umpire.

(2) Where an appointment is not made within seven clear days after the service of the notice referred to in subsection (1), a judge may, on application by the person who gave notice, appoint an arbitrator or umpire.

(3) An arbitrator or umpire appointed under subsection (2) has the like powers to act in the reference and to make an award as if he had been appointed by consent of all parties."

Section 42(3) of the Public Service Ordinance, R.O.N.W.T.

1974 Ch. P-13 reads as follows:

"(3) Where the parties to collective bargaining have bargained collectively in good faith with a view to concluding a collective agreement but have been unable to reach agreement on any term or condition of employment, the parties shall agree to submit their differences to arbitration pursuant to the Arbitration Ordinance."

This matter came before me on Friday, July 7th, 1978 at the court house in Yellowknife. At that time Mr. Brien, counsel for the respondents took a preliminary objection and it was agreed by counsel that this objection should be dealt with before proceeding any further.

Learned counsel for the respondents contended that the applicants should have proceeded by way of originating notice rather than by way of notice of motion. In making this submission Mr. Brien candidly acknowledged that he was not asking to have the application dismissed on this footing but feels that proceeding by way of originating notice would have given the respondents additional time between the service of the motion and the hearing of the application.

Learned counsel for the respondents referred to Part 30 of the Rules of Court and in particular Rule 394 and Rule 395 (1), (2) and (3). These Rules provide as follows:

"394. This Part applies

- (a) where by a statute or regulation the court or a judge is designated as having authority to issue any certificate or make any direction or order (otherwise than in any action), and
- (b) no procedure for an application to the court or a judge is provided.

395. (1) In any such case it is not necessary to file any document commencing proceedings, but the applicant shall, on an affidavit of the facts, apply ex parte to a judge, who may

- (a) proceed to determine the matter, ex parte, or
- (b) direct that the matter be set over for hearing on notice, in which case the judge shall designate what persons are to be served with notice, and may prescribe the nature of the notice, and the time for and mode of service.

(2) The directions given shall either be endorsed upon the affidavit of facts or set forth in an order.

(3) Subject to any such directions, the form and content of the notice and the procedure applicable shall be as provided in Part 33, mutatis mutandis.

It was accordingly submitted that the proper procedure shall be by way of originating notice as set forth in Part 33 of the Rules of Court.

After carefully considering this matter I am of the opinion that the notice of motion served by the applicants constitutes a sufficient compliance with the statutory provisions dealing with the application for an appointment of an arbitrator. If Rule 395 is applicable it would be open to the applicants to apply ex parte to a judge and under those circumstances I am satisfied that a Supreme Court judge would direct that notice be served on the respondents. Such a notice could quite properly take the form of a notice of motion if the court so directed.

I would also observe that under Rule 410 of the Rules of Court there is no suggestion that such an application of this nature must be brought by way of originating notices.

If I am in error in this disposition I would grant relief to the applicants by way of amendment so that the matter can properly be before the court. In my opinion, procedural irregularities can be readily cured under the provisions of Part 43 of the Rules of Court and I refer particularly to the philosophy of the law as enshrined in Rules 558, 559, 560 and 561 which provide as follows:

"558. Unless the court so directs non-compliance with the Rules does not render any act or proceeding

void, but the act or proceeding may be set aside either wholly or in part as irregular or amended or otherwise dealt with.

559. An application to set aside any process or proceedings for irregularity shall be made within a reasonable time and shall not be allowed if the party applying has taken a fresh step after knowledge of the irregularity.

560. An action improperly begun by statement of claim, originating notice or petition may be treated as an irregularity and the action may be continued upon such terms and subject to such conditions as the court may impose.

561. No pleading or other proceedings shall be defeated on the ground of an alleged defect of form."

In interpreting the above Rules I adopt with respect the statement of Chief Justice Culliton in Coulthard v. Coulthard (1952) 5 W.W.R. (NS) 662 at pages 673 to 674 where learned justice of appeal states as follows:

"Consideration too must be given to R. 551. This Rule reads as follows:

'Non-compliance with any of these rules shall not render any proceeding void unless the court shall so direct but such proceeding may be set aside either wholly or in part as irregular \* \* \* or otherwise dealt with in such manner and upon such terms as the court may think fit.'

This Rule gives to the court almost complete discretion to relieve against any irregularity in complying with the Rules of court. In the exercise of this discretion the guiding principle must be to see that justice is done.

In disposing of matters of practice and procedure the court should keep in mind the statement of Armour, C.J. in Bank of Hamilton v. Baine (1888) 12 PR 439, at 442:

'Having regard to modern ideas and modern legislation in matters of practice and procedure, such rules must now be applied only in the interest of and for the advancement of justice, and not in support of ancient technicality.'



And also the statement of Lord Eldon in Wales (Princess) v. Liverpool (Earl) (1818) 1 Swanst 114, at 125, 36 ER 320:

'There is no general rule with respect to the practice of this Court that will not yield to the demands of justice.'

The court, in relieving against an irregularity, or in exercising remedial discretion, is not bound by hard and fast rules or precedents, but may exercise its powers in the light of the facts and circumstances surrounding each particular case: Eggerson v. Smith (1913) 5 W.W.R. 579, 6 Sask. L.R. 150, 26 W.L.R. 198; In re Price (1912) 2 W.W.R. 394, 5 Sask. L.R. 318, 21 W.L.R. 299.

My own feelings in this case are similar to those expressed by Middleton, J. in Re Arthur and Meaford (Town) (1915) 34 O.L.R. 231, at 234:

'I feel that I should sin against light and reason if I should hold that the Court had no power to relieve against this unfortunate slip, and that I was bound to cast upon the litigant a great burden of costs and deny him a hearing on the merits because a law student forgot to file the papers on the day they were given him for that purpose.'

In this connection I also refer to the following, inter alia, authorities: Fenchurch Export Corporation v. Sitka Spruce Lumber Company Limited (No. 1) /T947/ 1 W.W.R. 182 at page 186; Williams v. Racey (1952-53) 7 W.W.R. (NS) 496; Fieldbloom v. Olympic Sport Togs Limited (No. 2) (1955) 14 W.W.R. 26, affirmed (1955) 15 W.W.R. 205; John Doe v. Attorney General of British Columbia /T974/ 4 W.W.R. at page 1.

Under the circumstances I accordingly dismiss the preliminary objection of the respondents and leave is granted to counsel to apply for a date for the resumption of this application.

Learned counsel for the respondents indicated that material would be filed and the court recognizes the fact that adequate time must be allowed for so doing.

It is desirable that matters of this kind be resolved as quickly as possible and under the circumstances counsel may apply for an early date for the hearing.

DATED at the City of Yellowknife, in the Northwest Territories, this 11th day of July, A.D. 1978.



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C.F. TALLIS  
J.S.C.

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NO. 4407

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IN THE SUPREME COURT OF THE  
NORTHWEST TERRITORIES

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IN THE MATTER OF THE ARBITRATION  
ORDINANCE,

AND IN THE MATTER OF AN ARBITRATION  
REQUIRED PURSUANT TO THE TERMS OF  
NORTHWEST TERRITORIES PUBLIC SERVICE  
ORDINANCE

B E T W E E N :

THE NORTHWEST TERRITORIES PUBLIC  
ASSOCIATION AND THE PUBLIC ALLIANCE  
OF CANADA

APPLICANTS

- and -

THE COMMISSIONER OF THE NORTHWEST  
TERRITORIES AND THE GOVERNMENT OF  
NORTHWEST TERRITORIES

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REASONS FOR JUDGMENT OF THE  
HONOURABLE MR. JUSTICE C.F.

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