

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JOSEPH ANTHONY WADDEN

Plaintiff

- and -

ANTHONY J. DORAN

Defendant

MEMORANDUM OF JUDGMENT

The parties in this case have submitted a Consent Order, the relevant parts of which provide that:

1. the proceedings in this action are subject to case management as provided by the Rules of the Supreme Court of the Northwest Territories;
2. a pre-trial conference shall be scheduled by the Clerk of the Supreme Court after consultation with counsel.

The Memorandum to the Judge filed with the application states that "this order is issued pursuant to Rules 248 and 319". Those rules are not, however, relevant to case management.

The affidavit of Adrian Wright, counsel for the Plaintiff, submitted in support of this application, states that examinations for discovery were held in this matter on August 11, 1995 and that following same a Notice to Admit was filed on October 27, 1995 for the purpose of admitting into evidence various documents which counsel alleges are relevant to this action. The affidavit says that the Notice to Admit was sent to counsel for the Defendant, and that several requests were made that he return it. Mr. Wright deposes that as at June 21, 1996, he has yet to receive the Notice to Admit back from counsel for the Defendant.

Paragraph 5 of Mr. Wright's affidavit states as follows:

That I would like to know which facts and documents the Defence is prepared to admit in this matter before it is set down for trial. I would therefore like a management and settlement oriented pre-trial conference date set as soon as possible.

The Notice to Admit was filed pursuant to what was at that time (October 27, 1995) Rule 232. Subsection (2) of Rule 232 provides for deemed admissions where the opposing party does not respond to the Notice to Admit.

The Case Management Provisions in the Rules of Court should not be used as a substitute for the other procedures and relief set out in the Rules. The failure of a party to comply with the Rules with respect to a particular issue will not normally be sufficient reason to refer a matter to case management.

An application for the appointment of a conference judge pursuant to Rule 282 must be supported by proper grounds. Counsel should also refer to the Notice to the Profession re: Case Management Procedures dated June 4, 1996 and issued by the Court.

Sufficient grounds not having been shown in this case at this time, the consent order submitted is refused.

Dated this 29th day of July, 1996.

V. A. Schuler

J.S.C.

**IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES**

BETWEEN:

JOSEPH ANTHONY WADDEN

Plaintiff

- and -

ANTHONY J. DORAN

Defendant

**Memorandum of Judgment of the
Honourable Mdm Justice V.A. Schuler**
