

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

**ARIE KEPPEL**

Applicant

- and -

**THE ASSOCIATION OF PROFESSIONAL ENGINEERS, GEOLOGISTS,  
AND GEOPHYSICISTS OF THE NORTHWEST TERRITORIES**

Respondent

**MEMORANDUM OF JUDGMENT**

The Applicant was successful on his application for an order prohibiting the Respondent from proceeding with a discipline hearing against him. Reasons for Judgment were issued in that regard on August 7, 1996.

Costs on a solicitor-client basis are now sought by the Applicant. In the alternative, he seeks costs on the basis of a multiple of Column 6 of the tariff in the Rules of Court so as to bring him within the range of his actual costs.

The Respondent argues that I should exercise my discretion against the Applicant and instead award costs to the Respondent.

The basic principles relating to costs which appear to be applicable in this case are as follows (from Orkin, The Law of Costs, 2nd ed., Canada Law Book Inc., 1995):

- a) a successful litigant has by law no right to costs, but rather a reasonable expectation of receiving them, subject to the Court's discretion, which is in turn subject to any statutory provisions and the Rules of Court;
- b) the discretion of the Court to deprive a successful litigant of his or her costs is a discretion which must be exercised judicially and upon proper material connected with the case or having relation to the subject matter of the action;
- c) in exercising its discretion, the Court may consider the conduct of a party during, prior to and leading up to or contributing to the litigation;
- d) the degree of success achieved by a party is relevant to the Court's discretion as to costs;
- e) a successful party is entitled to costs and ought not to be deprived of same except for good reason, such as misconduct of the party, use of the wrong procedure, oppressive and vexatious conduct of proceedings or other cause such as where the question involved is a new one not previously decided by the courts;
- f) the Court has discretion to award solicitor-client costs to a successful party, although it should not do so absent special grounds. In *Young v. Young*, [1993] 8 W.W.R. 513, a majority of the Supreme Court of Canada approved the following principle with respect to solicitor client costs:

Solicitor-client costs are generally awarded only where there has been reprehensible, scandalous or outrageous conduct on the part of one of the parties.

In this case, the Applicant was successful only on the issue of the Respondent's jurisdiction to discipline him for conduct engaged in when he was not registered as a member. This was really the threshold issue. It took up very little time in argument and much, if not most, of the factual material placed before the Court was irrelevant to this particular issue, although relevant to the other four issues which the Applicant raised. Most of the argument centred on those other issues.

The Applicant has admitted throughout this matter that he used his engineering stamp unlawfully during the time when he was not in fact a member of the Respondent Association.

The Respondent considered various options before making the decision to re-admit the Applicant as a member and then institute discipline proceedings against him for conduct when he was not a member. A concern was raised, when the Respondent met to consider its options, that under the governing legislation, the Respondent did not have a discretion to refuse admission to the Applicant. The minutes of a meeting held by the Respondent on March 1, 1995 (at Tab 10 of the Record filed on the application) show that the Respondent recognized that whether it reinstated the Applicant and then attempted to discipline him or simply refused to admit him, its actions might be challenged in court by the Applicant.

The Applicant and the Respondent each point to the conduct of the other party as grounds upon which I should exercise my discretion in favour of their respective positions.

This was not a trial. I did not have the opportunity of hearing witnesses and assessing their credibility. I am not therefore in a position to make findings as to the motives of the Respondent in choosing the course of action it did. The material before me does not convince me, as the Applicant urges, that the Respondent wanted to re-

admit the Applicant to membership simply so that it could discipline him and perhaps terminate his membership. There is no indication that the Respondent misled the Applicant as to its intention to pursue the complaints at the time it was considering whether to re-admit him.

Similarly, there is not a sufficient or proper basis in the material for me to find that the Applicant deliberately, rather than inadvertently, practised his profession while not a member of the Respondent.

Counsel for the Respondent submits that this matter involved a question of law which had not previously been decided in the Northwest Territories and that there is caselaw from other jurisdictions (referred to in the Reasons for Judgment filed August 7, 1996) which arguably supports the Respondent's position that it had jurisdiction to discipline the Applicant for conduct occurring when he was not a member. I am not convinced, however, that the point was so novel or that this was truly a test case such as would justify no award of costs to the successful party.

Having considered the conduct of both parties, both before and during the litigation, that the specific issue of jurisdiction had not previously been decided by this Court and that the Applicant was successful on that threshold issue, although not on the other issues raised, I see no reason to deny the Applicant costs. I do not, however, consider that there are any special grounds which would justify an award of solicitor-

client costs or costs in a multiple of Column 6.

Accordingly, the Applicant will have his costs pursuant to the applicable tariff in the Rules of Court.

Dated this 30th day of October, 1996.

V. A. Schuler

J.S.C.

To: Austin Marshall  
Applicant Counsel

Gerard Phillips  
Respondent Counsel

---

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

---

BETWEEN:

**ARIE KEPPEL**

Applicant

- and -

**THE ASSOCIATION OF PROFESSIONAL  
ENGINEERS, GEOLOGISTS, AND  
GEOPHYSICISTS OF THE NORTHWEST  
TERRITORIES**

Respondent

---

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

---