

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER of an application by Chief Francois Paulette et al to lodge a certain caveat with the Registrar of Titles of the Land Titles Office of the Northwest Territories.

Summary of judgment given by Mr. Justice Morrow on April 5, 1973, on an application by the City of Yellowknife for the exclusion of certain lands from the Order made April 3, 1973, in the above noted cause.

On April 2, 1973, Mr. Sutton on behalf of certain persons described as Chiefs, who had signed a Caveat, applied to register that Caveat. The Registrar, Mr. Carter, having doubts as to the registrability of that Caveat, made a reference to this Court as is provided in the Land Titles Act. As a result of that reference, I made an Order. I did not give an injunction or a restraining order in the normal legal sense. I allowed an adjournment so that the Crown could prepare its case. As a condition of the adjournment, I ordered that if anyone attempts to register certain documents, those documents are registered subject to the Caveat. If the Caveat is subsequently upheld, then such documents would not be valid as against the claims on which the Caveat is based.

Now, the City of Yellowknife is in the process of implementing certain proposed land development, and other such developments in various stages undoubtedly exist. So, I must give direction.

I have some discretion in this matter. As I made the condition, so may I vary that condition.

Normally in order for an application for an injunction or a restraining order to succeed, there must be two elements present: (1) a prima facie claim, and (2) irreparable damage will result if an order is not made; e.g., you can't give back hunting lands suitable for hunting after other use has been made of the lands. But there is normally a condition, there must be a bond of indemnity deposited in case those requesting the order are liable to action in damages because their claims are found to be not valid. In the original instance, I did not require the caveators to put up security.

But I want to make it clear - there must be a quid pro quo.

Each decision on future applications of this type will be made on the particular facts and circumstances of each case. On this application, because the City has been proceeding with these developments in good faith, and has proceeded virtually to a point of no return, the loss to the City will be greater than any possible loss to the caveators.

Accordingly, title to the five parcels referred to in this application will be permitted to be filed and registered clear of the Caveat. There is one condition, the City will deposit \$10,000.00 with the Clerk of the Court, to be deposited at interest, as security for the caveators.

I am going on circuit for about ten days. If any emergency arises, I will be available, and will make known my whereabouts to the Court staff, every evening for "telephone chamber applications".

Mr. Sutton is awarded \$35.00 costs on this application against the City.

Dated at Yellowknife, the 5th day of April, 1973.



J. S. C.