Date: September 18, 1997
Docket: CV 06790

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF an application pursuant to s.68
of the *Cities, Towns and Villages Act*, R.S.N.W.T. 1988, c. C-8;

BETWEEN:

SIVULLIIK DEVELOPMENT CORPORATION

Applicant

- and -

THE MUNICIPAL CORPORATION OF THE TOWN OF IQALUIT

Respondent

Application to quash Resolutions of the Respondent Municipal Corporation.

REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE V. A. SCHULER

Heard at Yellowknife, Northwest Territories
on April 23, 1997

Reasons filed: September 18, 1997

Counsel for the Applicant: Garth Malakoe

Counsel for the Respondent: Sheila MacPherson and Heather Potter

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REASONS FOR JUDGMENT

[1] The Applicant is an unsuccessful tenderer with respect to the Respondent Town's tender call for purchase of the "Kativik Building" and redevelopment of the lot on which it is located.

[2] The Applicant asks this Court to quash the following resolutions passed by the Respondent relating to this matter:

1) Resolution 96-226 of August 13, 1996, which rejected the Applicant's tender;
2) Resolution 96-228 of August 13, 1996, which approved the tender of Tumiit Development Corp.;
3) Resolution 96-270 of October 8, 1996, which reaffirmed the two August resolutions.

[3] The Applicant says that the Resolutions are illegal because they were passed in bad faith.

Facts

[4] The facts were presented by way of affidavit material. In late 1995, the Respondent decided to demolish the Kativik Building and redevelop the lot on which it is located. A Proposal Call was published in the newspaper for that purpose. One week later, a Tender Call was published. The Tender Call was in identical terms to the

Proposal Call and even referred to a proposal at certain points where it was obviously meant to refer to a tender.

[5] Both the Proposal Call and the Tender Call provided as follows:

> The following criteria will be used to evaluate the proposal
>
> A) Submission of plans for the removal and demolition of the existing building will be reviewed by the Town Engineer for approval.
>
> B) Most intensive or complete use of the land.
>
> C) Conformity to existing Town By-Laws.
>
> D) Overall benefit to the community.
>
> E) No proposal will be accepted from any person/company with any account with the Town that is overdue in excess of ninety (90) days.
>
> F) The highest bid price and/or proposal will not necessarily be accepted.
>
> The Development Committee will review the proposals and their recommendations will be submitted to Council for final approval.

[6] Responses ("tenders") were received from the Applicant, from Tumiit and from a third tenderer, the Co-op. At the direction of the Respondent's Town Council, the responses were reviewed by the Development and Public Works Committee, which heard submissions from representatives of both the Applicant and Tumiit. The Co-op's response was not considered because it involved the purchase of additional lots occupied by the Government of the Northwest Territories.

[7] The Development and Public Works Committee prepared a report recommending to Council that the tender submitted by the Applicant be approved and accepted.

[8] On August 13, 1996, Council considered the report of the Development and Public Works Committee. There was discussion about the tenders. Councillor Hellwig, who had been the Chairperson at the Development Committee meeting, moved for approval of the Applicant's tender. The motion was seconded. Councillor Hellwig then spoke against the motion. He expressed the view that Council should encourage commercial

rather than residential use in the centre of town. The focus of the Tumiit tender was commercial use, while the Applicant's tender included residential use in the form of apartments.

[9] Councillor Hellwig also expressed the view that the Council should encourage new companies, such as Tumiit, and a mix of business organizations in the centre town area. He noted that the Applicant's tender provided for payment to the Respondent of $42,888.00, in addition to the lot price, whereas Tumiit's tender provided for no such payment, but he argued that making money was not the Town's only concern.

[10] Councillor Uniuqsaraq then spoke in favour of the Tumiit tender. He agreed that Council should encourage commercial use in the centre of town. He made the following remarks (as revealed by a tape of the meeting and translated from Inuktitut to English):

> "Yes to me, my feeling is with them (Tumiit) after hearing what was in the proposal call. I was always in favor of that and because from what I heard, it is more in line with the Council's feeling for the central town and rather than just apartments and so but the other one is that there were some pictures that were used that were old and don't forget that the other proposal is by a non-Inuk. I think we all feel that his only focus is to make tons of money which is not quite the mandate of the Council of Iqaluit which is to provide proper town planning and the proper growth of the community and the Town of Iqaluit. We must remember that we are elected by the town, the residents of Iqaluit.

[11] There followed brief discussion about whether a vote should be taken. There was no further discussion of the remarks made by Councillor Uniuqsagak. One other councillor referred to the importance of the issue of town growth.

[12] A vote was taken and the motion was defeated, meaning that the Applicant's tender was rejected (Resolution 96-226).

[13] Then a motion was made to accept Tumiit's tender. That motion was carried (Resolution 96-228).

[14] The matter came up again before Council on October 8, 1996. The Mayor had obtained and read to Council a legal opinion on issues arising from the tender process. It appears that the opinion was sought because of concerns raised by a representative of the Applicant.

[15] After some discussion, Council voted to re-affirm Resolutions 96-226 and 96-228. The motion to do so was carried (Resolution 96-270).

[16] During the discussion, Councillor Uniuqsaraq referred to his comments made at the August 13, 1996 meeting (again, as translated):

> This has been an issue for quite sometime. I was talking in reference of Inuit Corporation, I was trying to emphasize what I've been hearing under the Land Claims Agreement that Inuit Corporations should be given first priority in accordance with the agreement, base ob (sic) what I have been reading in that Land Claims Agreement, I just feel compel (sic) to emphasize and promote that idea, and that's basically the way I understand and that's basically what I was trying to say and my apologies I'm not trying to fight any organization, I'm just trying to emphasize the fact that I was not against any other organization as Kenn (Councillor Harper) indicated, but...

Availability of Review by the Court

[17] The Applicant clearly has standing to bring this application pursuant to s.68 of the *Cities, Towns and Villages Act*, R.S.N.W.T. 1988, c. C-8, which reads as follows:

> 68 (1) Any person
>
> (a) resident in the municipality, or
>
> (b) adversely affected by a resolution or by-law,
>
> may apply, by way of originating notice, to a judge of the Supreme Court for an order quashing a resolution or by-law of the municipal corporation.

[18] The Act does not set out the grounds upon which the Court may quash a resolution.

[19] Some of the argument before me centred on whether the Resolutions in this case should be characterized as business decisions, as submitted by the Respondent or as policy decisions, as submitted by the Applicant. The Respondent says that if they are business decisions, they are not subject to review by the court except to determine whether they are within the jurisdiction of the municipality to take.

[20] The Respondent relies on the majority judgment in *Shell Canada Products Limited v Vancouver (City)* [1994] 3 W.W.R. 609 (S.C.C.). I do not, however, read that judgment as restricting review of a municipality's exercise of its business powers to whether its actions are *intra vires*. The judgment clearly states that that is a basis for review, but does not rule out that there may be others. In *Shell* the issues was, as stated by Sopinka J., whether the municipality had the authority to pass the resolutions in question.

[21] McLachlin J., speaking for the minority in *Shell*, agreed that the issue was as stated by Mr. Justice Sopinka. She also addressed the availability of review and specifically the jurisprudence in favour of government contractual powers having immunity from judicial review and said the following (at p.632):

> On the balance, it is my view that the doctrine of immunity from judicial review of procurement powers should not apply to municipalities. If a municipality's power to spend public money is exercised for improper purposes or in an improper manner, the conduct of the municipality should be subject to review.

[22] In dealing with the standard of review, McLachlin J. suggested that judicial review of municipal decisions should be confined to clear cases for the following reasons (at p.637):

> The elected members of council are discharging a statutory duty. The right to exercise that duty freely and in accordance with the perceived wishes of the people they represent is vital to local democracy. Consequently, courts should be reluctant to interfere with the decisions of municipal councils. Judicial intervention is warranted only where a municipality's exercise of its powers is clearly ultra vires, or where council has run afoul of one of the other accepted limits on municipal power.

[23] In my view, therefore, there is no bar to the court reviewing the decision of a municipality, whether that decision is characterized as business or otherwise, in accordance with what is stated in *Shell*.

[24] The statutory basis for review in this case is s.68 of the *Cities, Towns and Villages Act*, set out above. The ground upon which a court may quash a resolution was described by Vertes J. in *Duesterhus v Yellowknife (City)*, [1993] N.W.T.R. 144 (S.C.):

> It has long been held that the sole ground upon which a court may quash a by-law or resolution is for "illegality": *Howard v Toronto (City)* (1928), 61 O.L.R. 563 (C.A.).

> "Illegality", however, comes in many different forms. The term encompasses bad faith, the preference of a private interest over a public one, uncertainty and vagueness, acting in excess of jurisdiction, and non-observance of statute. "Illegality", within one or more of its forms, is the legal standard that the applicant must establish to succeed on this application. Further, there is a presumption of validity which casts the burden on the applicant to establish the grounds for quashing this resolution: see I.M. Rogers, *The Law of Canadian Municipal Corporations*, 2nd ed., p. 983, and authorities noted therein.

Allegations of Bad Faith

[25] The Applicant argues that the Respondent acted in bad faith in passing the Resolutions and they are therefore illegal.

[26] I would adopt the same definition of "bad faith" as was used in *Duesterhus*: a municipal corporation will have acted in bad faith if it "acted unreasonably and arbitrarily and without the degree of fairness, openness and impartiality required of a municipal government" {as quoted from H.G. Winton Ltd. v North York (Borough) (1978), 20 O.R. (2d) 737 (Ont. Div. Ct.)}.

[27] The Applicant points to several "badges" of bad faith which, it says, viewed in combination make this one of those clear cases requiring judicial intervention. The alleged badges of bad faith will be examined individually, as follows.

[28] The Applicant argues that suspicion is raised because the Applicant's tender offered $42,888.00 in addition to the lot price of $41,375.00, whereas Tumiit's bid was for the lot price only. Had the tenders otherwise been the same, the discrepancy in the amounts offered might indeed raise suspicion. However the tenders were different in that one was for commercial development only (Tumiit's) and the other for a mix of commercial and residential (the Applicant's). The difference in amounts does not, therefore, on its own, raise suspicion. I note also that the tender notice included the provision that "the highest bid price and/or proposal will not necessarily be accepted".

[29] The Applicant also points to the fact that the Respondent went ahead with the tender evaluations despite the error in having one advertisement go out as a "Proposal Call" and the second as a "Tender Call". There is evidence (hearsay only, contained in the Applicant's affidavit material) that the third tenderer found this discrepancy confusing. That tenderer has not, however, joined in this application.

[30] There is no evidence that either the Applicant or Tumiit was confused about the discrepancy or that it affected their tender in any way. Nor is there evidence that the error affected the way in which the tenders were evaluated. It is clear on the evidence that the third tenderer's bid was not considered because it involved the acquisition of other lots not occupied by the Respondent Town.

[31] In those circumstances, I do not view the fact that the Respondent evaluated the tenders despite the errors in the notices or advertisements as evidence of bad faith.

[32] The Applicant also points out that in rejecting the Applicant's tender, the Respondent rejected the advice of its Municipal Engineer and Development Officer, who had recommended the Applicant's tender. It rejected the same recommendation from its Development Committee.

[33] To assess that argument, I have to consider first what evidence there is about the recommendations made.

[34] Attached to the Applicant's affidavit is a report on the tenders received dated July 8, 1996 from the Municipal Engineer and the Development Officer to Council. That report does not comment on the merits of commercial use as opposed to residential use.

[35] The material before me is not clear about the extent to which that report was considered. It appears that the Town Council met on July 9, 1996, at which time it referred the tenders to its Development Committee. That Committee met on August 7, 1996. There were no minutes and no transcript of what was discussed at that meeting before me. It appears from the affidavit material that representatives of both the Applicant and Tumiit spoke at that meeting and that the Applicant's representative (according to his notes exhibited to his affidavit) spoke about a need for more housing in the town and the existence of unused office space as the basis for the Applicant's proposed commercial and residential mix.

[36] The recommendation from the Development Committee to Council was worded simply:

> Approve the tender/proposal submitted by Suvullik (sic) Development Corporation for bid price of $42,888.00 for the Kativik Building.

[37] It is not clear from the evidence before me whether, at the Development Committee level, there was any discussion of or consideration given to whether

commercial use was preferable to residential use. It is not clear whether the recommendations of the Municipal Engineer and the Development Officer and the Development Committee were made after any consideration of that issue or were based solely on the bid amount. Since the commercial versus residential issue is what seems to have led Mr. Hellwig, Chair of the Development Committee, to change his mind when the matter was back before Council on August 13, 1996, I find it difficult to see how bad faith can be attributed in these circumstances.

[38] Nothing in the tender or proposal notices obliged council to accept the recommendation of its Engineer or the Development Committee. Reference in the notices that "The Development Committee will review the proposals and their recommendations will be submitted to Council for final approval" in my view mean nothing more than that the Development Committee would make recommendations but that Council would have the final say.

[39] The Applicant alleges that bad faith (in the sense of a lack of fairness and impartiality) also arises from the comments made by Councillor Uniuqsaraq about the Applicant's tender being from a non-Inuk who only wanted to make money.

[40] In its tender, the Applicant represented itself as a company 51% owned by Inuit shareholders and 49% owned by Grinnell Properties Ltd.. Kenn Harper, a Town Councillor, is the Secretary of the Applicant and has a minority ownership in Grinnell Properties Ltd. He declared a conflict of interest in the meetings relating to the Resolutions.

[41] The evidence indicates that in its tender Tumiit represented itself as incorporated in the Northwest Territories in 1996 and totally owned by Iqaluit residents with a 51% Inuit ownership. In fact, when Tumiit submitted its tender it was not yet incorporated, although it became incorporated by registration with the Companies Registry in Yellowknife approximately one week after the August 13, 1996 Council meeting. The Applicant's affidavit material indicates that the two subscribing shareholders were not Inuit and that no other information about shareholders was available.

[42] At the August 7, 1996 Development Committee meeting, at which both Mr. Hellwig and Mr. Uniuqsaraq were present, the representations made were that both the Applicant and Tumiit were companies with a majority Inuit ownership.

[43] Both Mr. Hellwig and Mr. Uniuqsaraq were present and voted at the Town Council meeting on August 13, 1996. The two other councillors who voted at the August 13, 1996 meeting were not at the Development Committee meeting.

[44] The affidavit filed on behalf of the Applicant suggests that the reference made by Mr. Uniuqsaraq at the August 13, 1996 meeting to the Applicant's proposal being by a "non-Inuk" whose focus is to make money was a reference to Kenn Harper. It is suggested that Mr. Uniuqsaraq should have known that the Applicant was 51% Inuit owned (because he was present at the Development Committee meeting where that was stated) and that he may have been confused and his remarks may have misled the two councillors who were not present at the Development Committee meeting.

[45] The tender document submitted by the Applicant clearly states that the Applicant is 51% Inuit owned. Unfortunately, it is not clear from the material whether that document was before Council on August 13.

[46] In my view the most that can be said is that there is a possibility that on August 13, 1996 the two councillors who were not at the Development Committee meeting were left with the impression that the Applicant was not Inuit owned and Mr. Uniuqsaraq may also have been under that impression.

[47] There is no evidence, however, that even if Mr. Uniuqsaraq's comments were interpreted that way by the two councillors, they affected the vote. In my view what little discussion there was at the August 13 meeting indicates that the focus was on commercial rather than residential use in the downtown core, a mix of business organizations in the downtown core and a concern for the proper growth of the community rather than financial benefit.

[48] Indeed, Mr. Okpik, the only councillor other than Mr. Hellwig and Mr. Uniuqsaraq who spoke to what was at issue, stated that "our town is growing real fast and all of us are going to be affected by that growth".

[49] To the extent that the councillors put any emphasis on new business organizations or a mix of business organizations, did they take into account irrelevant considerations or criteria not disclosed in the tender/proposal notices as submitted by the Applicant? I think not. One of the criteria set out in the tender/proposal notices was "overall benefit to the community". That would allow a number of considerations. I do not think it can be said that seeking to encourage a mix of business organizations, in other words, a

variety of organizations, to operate in a community is irrelevant to the benefit of the community.

[50] It is interesting that the Applicant also makes the argument that whether a company is Inuit or not was not a relevant consideration for Council in awarding the tender. The Applicant submits that if any preference was to be given to Inuit bidders, that should have been disclosed in the tender/proposal notices. If Council considered undisclosed criteria, it did not treat all tenderers fairly, says the Applicant, relying on *Martselos Services Ltd. v Arctic College*, [1994] N.W.T.R. 36 (C.A.). The Applicant cannot succeed with this argument. The Applicant very clearly put forward its Inuit ownership for consideration by Council. Both the Applicant's tender and its presentation to the Development Committee referred to its Inuit majority ownership. The Applicant obviously felt it was important, so it cannot be heard to characterize it as undisclosed criteria or to complain if it was considered.

[51] The more difficult issue is whether, if Inuit ownership was considered, Council was misled about what the reality was in the case of both the Applicant and Tumiit. As I have already said, there is a possibility that at the August 13, 1996 Council meeting three councillors had the impression that the Applicant was not Inuit owned. It seems likely that Council thought Tumiit was Inuit owned based on the representations Tumiit had made in its tender, although nowhere in the transcript of the August 13 meeting is there reference to Tumiit as an Inuit company.

[52] What happened after the August 13 meeting is important. On August 26, 1996, after Council had voted in favour of Tumiit's bid, the Applicant's President wrote to the Mayor of Iqaluit setting out in detail information indicating that Tumiit was not incorporated when it said it was and did not have a majority Inuit ownership. He also confirmed the Applicant's majority Inuit ownership and set out in detail the relative merits of the Applicant's tender and problems in Tumiit's tender. The August 26 letter was followed up by a September 4, 1996 letter confirming his information about Tumiit.

[53] The Applicant's affidavit indicates that Council met to discuss the matter on September 10, 1996. It decided to get a legal opinion. That opinion was obtained and read to Council at its meeting on October 8, 1996.

[54] The Respondent argued that I should not consider the legal opinion, that it is irrelevant and in any event reflects only the opinion of the lawyer and not that of Council. The Applicant urges me to consider the legal opinion as relevant to bad faith in that how Council did or did not deal with the opinion may indicate bad faith on its part.

[55] No claim of privilege was argued with respect to the opinion and there was an acknowledgement by counsel for the Respondent in her submissions that privilege had inadvertently been waived.

[56] In my view, the legal opinion is relevant because it is information that Council had at the time it voted at the October 8, 1996 meeting. Whether Council acted in bad faith has to be considered in light of the information Council had at the time it acted. The legal opinion is a part of that information.

[57] The solicitor who wrote the legal opinion stated at the beginning of it that she did not have and therefore did not review minutes of Council meetings. It appears that she did review certain unspecified written material, some verbal information, a CBC radio presentation and the tender/proposal notices. The problems highlighted by the solicitor with what Council had done up to that point may be summarized as follows.

[58] First, the solicitor stated that the Respondent may have considered improper or irrelevant considerations in not disclosing what percentage ownership a company must have to be considered Inuit owned.

[59] Second, she stated in the letter that it is improper to consider whether one company is more profit oriented than another. She went on to say that Mr. Uniuqsaraq's comments reported on CBC radio (which I understand to be the comments he made about the "non-Inuk" at the August 13 Council meeting) showed that he was influenced by both of the improper considerations - that is, Inuit ownership and profit motive.

[60] Third, the legal opinion referred to confusion in that both a tender call and a proposal call went out. The solicitor advised, "I think your best bet in this case is to advertise again, and this time to state clearly that you are seeking proposals (or tenders if you prefer)". She advised that in reviewing bids only relevant factors should be considered or discussed.

[61] After the legal opinion was read to Council on October 8, 1996, Mr. Hellwig stated to the other Councillors that he understood the issue better and that his support for Tumiit's bid was based on his belief that it was better for the Town as well as Council's mandate for the Town. He then moved that the previous Resolutions 96-226 and 96-228 be reaffirmed.

[62] Mr. Uniuqsaraq then made the comments referred to earlier in these reasons, explaining that he made his August 13 comments because he felt that priority should be given to Inuit corporations and that he was not against any other organization. He seconded the motion. The motion to reaffirm the August 13 Resolutions was passed.

[63] As I have indicated, the legal opinion is relevant as being information in the hands of Council when it acted on October 8. Council was free to accept the advice in the opinion or not. The opinion stated that "the Court has not provided clear guidelines on tendering". The advice that the "best bet" was to re-advertise is not stated in terms suggesting that that was Council's only reasonable option.

[64] I see the circumstances in this case as similar to those in *Re Cadillac Development Corp. Ltd. et al and the City of Toronto* (1973), 1 O.R. (2d) 20 (H.C.J.), albeit in that case the City Council was dealing with repeal of a zoning by-law. In *Cadillac*, the Council had a solicitor's opinion that repeal of the by-law would involve the City in litigation with substantial risks. The Court held that Council's decision to proceed with repeal notwithstanding was not in itself indicative of bad faith:

> ...[Council's] role was to determine policy and to legislate in the public interest as they saw it as elected representatives. The legal opinion was merely a factor to be weighed in making their decision. If risks were involved they could decide to accept those risks and apparently did so.... Council's action was not bad faith so as to attribute either improper motive or illegality to the step that they took....

[65] The considerations may be somewhat different when a municipal council is dealing with legislation as opposed to a particular tender call. Be that as it may, in the end a council must act in accordance with what it perceives to be in the public interest.

[66] I note that the legal opinion in this case recommended that the tender process be done over again in part because of the confusion over whether it was a tender call or a proposal call. But the only actual confusion on the part of any tenderer that was referred to in the legal opinion was confusion on the part of the third tenderer, the Co-op, as to whether it was to bid an amount for the building. Council knew, however, that the third tenderer's bid was not recommended because it involved the acquisition of other lots that were not available.

[67] In my view, Council was entitled to accept or reject the advice of its solicitor and in doing so to take into account what it knew of the background of the matter. Council was also entitled to consider Mr. Uniuqsaraq's explanation for his August 13 remarks in

considering the solicitor's characterization of those remarks as involving improper considerations.

[68] In all the circumstances, I do not consider Council's failure to take the advice of its solicitor as an indication of bad faith.

[69] It is true in this case that there was little discussion of the merits of the Resolutions at issue by the councillors present on either August 13 or October 8. I was not presented with affidavit or *viva voce* evidence of any of the councillors as to what they understood or believed. But such discussion as there was at the meetings, as revealed by the transcripts provided, leads me to conclude that the reasons for the rejection of the Applicant's bid were as stated by Councillor Hellwig: a preference for commercial development and a mix of business organizations.

[70] To the extent that Mr. Uniuqsaraq's comments at the August 13 meeting might be taken to attribute a profit motive to the Applicant, I do not view those comments as comparing the Applicant unfavourably to Tumiit in that respect. Rather, I view the comments as expressing the opinion that Council's motivating concern should not be a financial one. I am not convinced that the comment was improper.

[71] The "non-Inuk" aspect of the comment is indeed unfortunate because, standing alone, it is susceptible of different interpretations. But taken in context and in light of Mr. Uniuqsaraq's explanation on October 8, 1996, it reveals only that Mr. Uniuqsaraq felt that Inuit ownership was important. Clearly the Applicant understood it to be important too, because it included the fact of its 51% Inuit ownership in its tender. Had reference been made to a factor which was clearly irrelevant - for example, to a tenderer's religion - the situation would be different. But in my view it would be ignoring reality to say that whether a company was perceived as Inuit or non-Inuit was irrelevant. It would also be ignoring what both the Applicant and Tumiit clearly perceived: that Inuit ownership was an important factor.

[72] If Mr. Uniuqsaraq was under the impression that the Applicant did not have Inuit ownership whereas Tumiit did, then that impression was corrected by the time of the October 8 meeting when Council had the letters from the Applicant about the true state of ownership and the legal opinion which also referred to that issue. The same applies to the other councillors. Absent some evidence that they were under a misapprehension about this issue when they voted on October 8, I decline to draw the conclusion that there was any such misapprehension. Further, if Council has been misled by Tumiit as

to its ownership, Council may have remedies against Tumiit, which was not made a party to this application.

[73] Finally, the Applicant points to the Respondent's failure to follow its By-Law No. 318, the "Contract Procedures By-Law", as a badge of bad faith. However that by-law appears to me to apply to the purchase of municipal services or goods and management of on-going contracts. I am not satisfied that it is applicable to the disposal of a lot as in this case.

[74] In conclusion, I find that the Applicant has not satisfied the onus of showing that the Respondent acted in bad faith. The badges of bad faith that are alleged do not, whether viewed individually or collectively, lead me to the conclusion that the Applicant asks be drawn. This is not a clear case requiring intervention by the court.

[75] Accordingly, the application to quash the Resolutions is dismissed. If counsel are unable to agree on costs they may apply to speak to that issue within 30 days of the date these Reasons for Judgment are filed.

[76] I wish to thank counsel for their presentations and the very helpful materials filed.

V. A. Schuler
J.S.C.

Dated at Yellowknife, Northwest Territories
this 18th day of September, 1997

Counsel for the Applicant: Garth Malakoe

Counsel for the Respondent: Sheila MacPherson
and Heather Potter

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