

Date: 19980730  
Dockets: CV06806, CV06807 & CV06808

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

---

THE HONOURABLE MR. JUSTICE HOWARD L. IRVING

---

IN THE MATTER OF the *Property Assessment and Taxation Act*,  
R.S.N.W.T. 1988, c.P-10

BETWEEN:

THE MUNICIPAL CORPORATION OF THE CITY OF YELLOWKNIFE

Applicant

- and -

ESTATE OF MARIE VYNA RUMAN

Respondent

- and -

IN THE MATTER OF the *Property Assessment and Taxation Act*,  
R.S.N.W.T. 1988, c.P-10

BETWEEN

THE MUNICIPAL CORPORATION OF THE CITY OF YELLOWKNIFE

Applicant

- and -

ESTATE OF MARIE VYNA RUMAN AND FRANK RUMAN

Respondents

**REASONS FOR JUDGMENT**

COUNSEL:

Y.M. MacNeill  
For the Applicant

K.A. Ruman  
as Administrator of the Estate of Marie Vyna Ruman deceased  
appearing on her own behalf.

---

## REASONS FOR JUDGMENT

---

[1] The City of Yellowknife applies for judgment in respect of Certificates of Tax Arrears outstanding on three parcels of land located in Yellowknife being:

- (a) Lot 14, Block 34, Plan 65 (Yellowknife) owned by the late Marie Vyna Ruman, in fee simple, for outstanding tax arrears for the years from 1984 through 1995.
- (b) Lot 2, Block 502, Plan 900 (Yellowknife) owned by the late Marie Vyna Ruman and Frank Ruman, in fee simple, as tenants-in-common, for outstanding tax arrears for the years 1989 through 1995.
- (c) Lots 11 and 12, Block 14, Plan 98 (Yellowknife) owned by the late Marie Vyna Ruman and Frank Ruman, in fee simple, as tenants-in-common, for outstanding tax arrears for the years 1987 through 1995.

[2] Kathleen Ruman is the daughter of the Marie Vyna Ruman (hereinafter called the deceased Ruman) and of Frank Ruman, and is the administrator of her mother's estate and as such opposes the City's application on the grounds set out below, some of which are filed in her defence and counterclaim, and others were advanced during argument. These grounds are:

- a) That this Court is without jurisdiction to hear this application because the deceased Ruman was an aboriginal person, being a descendent of members of the Cahiloo band, a group of 48 Indian families which adhered on September 28, 1878 to Treaty No. 6 and were granted Reserve No. 132 located near Edmonton, Alberta, on the Sturgeon River. Ms. Ruman asserts that the Federal Court of Canada is the only court with jurisdiction to consider the City's claim for outstanding tax arrears.
- b) That as an aboriginal person and a descendent of members of the Cahiloo band, the deceased Ruman was exempt from any taxation, particularly municipal taxation, in Yellowknife, or elsewhere in Canada.

- c) That the imposition of taxes upon the deceased Ruman affects her aboriginal rights, and is thus beyond the scope of the ***Property Assessment and Taxation Act (P.A.T.A.)*** (R.S.N.W.T. 1988, c.P-10)
- d) That the six year limitation period set out in ss. 11 and 13 of the ***Limitation of Actions Act*** (R.S.N.W.T. 1988, c.L-8) proscribes any liability for an interest component of the outstanding taxes arising more than six years before the commencement of these proceedings.
- e) That the deceased Ruman was a disabled person within the meaning of the ***Senior Citizens and Disabled Persons Property Tax Relief Act*** (N.W.T. Stats., 1989 c.50), and was thereby entitled to a reduction of 50% of the taxes otherwise owing after that statute came into effect.
- f) That the calculation of outstanding taxes claimed by the City are in error, and the interest claimed for some of the years exceeds the interest which the City was entitled to claim pursuant to the provisions of ***P.A.T.A (supra)***.

### **ANALYSIS OF THE ISSUES**

#### **a) Jurisdiction of this Court**

[3] Ms. Ruman, during her argument, urged me to stay this action and refer it to the Federal Court of Canada which, she argued, had exclusive jurisdiction to decide whether aboriginal persons such as the deceased Ruman, are sheltered from the imposition of municipal taxes. Ms. Ruman argued that s. 17(1) and (2) of the ***Federal Court Act***, (R.S.C. 1985, c.F-7), required such a result. Section 17(1) and (2) provides:

“17. (1) The Trial Division has original jurisdiction in all cases where relief is claimed against the Crown and, except where otherwise provided, the Trial Division has exclusive original jurisdiction in all of those cases.

(2) Without restricting the generality of sub-section (1), the Trial Division has exclusive original jurisdiction, except where otherwise provided, in all cases in which

- (a) the land, goods or money of any person is in the possession of the Crown;
- (b) the claim arises out of a contract entered into by or on behalf of the Crown; or
- (c) there is a claim against the Crown for injurious affection.”

[4] No relief is claimed here against the Crown, nor does the City’s claim for outstanding taxes fall in any way within s. 17. Accordingly, I find no merit in the argument that this Court is without jurisdiction to hear and consider the City’s claim.

b) **Was the deceased Ruman exempt from municipal taxation in Yellowknife as an aboriginal person?**

[5] The affidavit evidence, supplemented by factual submissions made before me orally by Ms. Ruman during her argument, (these were not objected to by the City), proved that the deceased Ruman was the granddaughter of Maxine Whiteford and Adelaide Campbell, who were members of the Michel Calihoo Band, consisting of about 48 families who adhered to Treaty No. 6 on September 28, 1878 being granted Indian Reserve No. 132 located near Edmonton, Alberta, on the south bank of the Sturgeon River.

[6] The deceased Ruman was the daughter of Baptiste Savard, and Emma Whitford, both of whom were said also to be Indians registered as such under the **Indian Act** (R.S.C. 1927, c.98).

[7] The deceased Ruman (nee Savard) was born on April 4, 1928 in Hay Lakes, Alberta; she married Frank Ruman, an immigrant from Czechoslovakia on August 16, 1949 at Edmonton, Alberta, and she died at Yellowknife on February 29, 1992.

[8] It is not known whether the deceased Ruman was ever registered as an Indian under the **Indian Act (supra)**, or whether she sought re-registration after the 1985 **Indian Act** amendments; indeed as Ms. Ruman pointed out, had she been so registered, her marriage to Frank Ruman, a non-Indian, in 1949, would have deprived her of that status pursuant to the then s. 12(1)(b) of the **Indian Act (supra)**. Parliament amended that provision in 1985 by permitting the registration under the **Indian Act (supra)** of a woman

who had been omitted or deleted from the Indian Register or from a Band list under s. 12(1) of the **Indian Act** 1985, c.27, s. 6(1)(c).

[9] However, assuming that the deceased Ruman should be regarded as having an Indian status under the provisions of the **Indian Act**, the question is whether that status would have exempted her from liability for municipal taxes in Yellowknife.

[10] No authority has been cited that such an Indian person is exempt from municipal taxes arising from his ownership, in fee simple, of sub-divided land within a municipality other than the exemption pursuant to s. 87 of the **Indian Act** which provides:

“87. (1) Notwithstanding any other Act of the Parliament of Canada or any Act of the legislature of a province, but subject to sub-section (2) and to section 83, the following property is exempt from taxation, namely,

(a) the interest of an Indian or a band in reserve or surrendered lands; and

(b) the personal property of an Indian or band situated on a reserve;

and no Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (a) or (b) or is otherwise subject to taxation in respect of any such property; and no succession duty, inheritance tax or estate duty is payable on the death of any Indian in respect of any such property or the succession thereto if the property passes to an Indian, nor shall any such property be taken into account in determining the duty payable under the *Dominion Succession Duty Act*, being chapter 89 of the Revised Statutes of Canada, 1952, or the tax payable under the *Estate Tax Act*, on or in respect of other property passing to an Indian. R.S., c. 149, s. 86; 1958, c. 29, s. 59; 1960, c. 8, s.1.”

[11] The three parcels of land owned or co-owned by the deceased Ruman in Yellowknife were not in any way Indian reserves or land reserved for Indians. These parcels, like any other privately owned parcels of land, are available generally to be bought or sold or used like any other parcels of land in Yellowknife.

[12] From the late 1800's, until 1951, the various Indian Acts couched this immunity from taxation provision in terms such as:

“No Indian or non-treaty Indian shall be liable to be taxed for any real or personal property, unless he holds, in his individual right, real estate under a lease or in fee simple, or personal property outside of the reserve or special reserve, in which case he shall be liable to be taxed for such real or personal property at the same rate as other persons in the locality in which it is situate. R.S., c.81, s. 99.”

(R.S.C. 1927, c.98, s. 102)

[13] In 1951, in the general revision of the **Indian Act** (1951 Stats. Of Canada, c.29), the taxation immunity provision was reworded in s. 86(1) to virtually the same wording as in the current s. 87 (*supra*).

[14] The City of Yellowknife submits that even if the deceased Ruman had Indian status she was nevertheless subject to general provincial laws referred to in s. 88 of the **Indian Act** which provides:

“88. Subject to the terms of any treaty and any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that such laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that such laws make provision for any matter for which provision is made by or under this Act. R.S., c.149, s.87.”

[15] The Supreme Court of Canada considered the purpose of the taxation exemption contained in s. 87 of the **Indian Act** in the case of **Mitchell v. Peguis Indian Band** [1990] 2 S.C.R. 85, where La Forest, J. in giving the judgment of the Court stated at p. 131:

“In summary, the historical record makes it clear that ss. 87 and 89 of the *Indian Act*, the sections to which the deeming provision of s. 90 applies, constitute part of a legislative “package” which bears the impress of an obligation to native peoples which the Crown has recognized at least since the signing of the Royal Proclamation of 1763. From that time

on, the Crown has always acknowledged that it is honour-bound to shield Indians from any efforts by non-natives to dispossess Indians of the property which they hold *qua* Indians, i.e., their land base and the chattels on that land base.

It is also important to underscore the corollary to the conclusion I have just drawn. The fact that the modern-day legislation, like its historical counterparts, is so careful to underline that exemptions from taxation and distraint apply only in respect of personal property situated on reserves demonstrates that the purpose of the legislation is not to remedy the economically disadvantaged position of Indians by ensuring that Indians may acquire, hold, and deal with property in the commercial mainstream on different terms than their fellow citizens. **An examination of the decisions bearing on these sections confirms that Indians who acquire and deal in property outside lands reserved for their use, deal with it on the same basis as all other Canadians.**”

[My emphasis added]

[16] The Supreme Court of Canada has referred to this general principle in cases concerned with the situs of personal property of Indians, (i.e. on or off reserve) including *Williams v. The Queen* [1992] 1 S.C.R. 877 at 885 (whether unemployment insurance benefits are non-taxable under s. 87); *Minister of Finance of New Brunswick v. Tomah, et al*, June 18, 1998 (whether Indian Band members must pay provincial sales tax). The Federal Court of Appeal has discussed a similar issue of whether investment earnings are exempted from income tax liability by s. 87 (*supra*) - see *Recalma v. The Queen*, 1998 (158 D.L.R. (4<sup>th</sup>) p. 59).

[17] It follows that s. 87 (*supra*) did not exempt the deceased Ruman from the obligation to pay municipal taxes to the City of Yellowknife. She acquired and dealt with the Yellowknife properties on the same basis as other residents of Yellowknife.

[18] Ms. Ruman also referred me to *P.A.T.A. (supra)* which provides:

“3. Nothing in this Act shall be interpreted so as to affect aboriginal rights.”



[19] Having concluded that the exemption from taxation provided in s. 87 of the *Indian Act (supra)* is not applicable here, there is no other aboriginal right which would exempt the deceased Ruman from municipal taxes.

c) **Does s. 13 of the *Limitation of Actions Act, R.S.N.W.T. 1988, c.L-8, as amended, restrict the City's claim for the interest component on the outstanding taxes to six years?***

[20] The *Act* provides:

“11(1) **No proceedings shall be taken to recover**  
(a) **a rent charge or sum of money secured by a mortgage or otherwise charged on or payable out of any land, or rent charge,**

....

except within 10 years after a present right to recover it accrued to a person capable of giving a discharge for it or a release of it, unless before the expiration of the 10 years.”

[My emphasis added]

....

13. (1) **No arrears of rent or of interest in respect of any sum of money to which section 11 or 12 applies** or any damages in respect of such arrears shall be recovered by any proceeding, except within **six years after a present right to recover it accrued to a person capable of giving a discharge for it** or a release of it unless, before the expiration of the six years

(b) some acknowledgment in writing of the right to the arrears signed by a person so bound or entitled or his or her agent in that behalf has been given to a person entitled to receive the arrears or his or her agent.”

[My emphasis added]

[21] *P.A.T.A. (supra)* N.W.T. Stats., 1989, c.101 provides:

“Section 1: - **‘property tax’** means a tax payable under Part III **and any interest payable on that tax;**

[My emphasis added]

....

81. (1) - Subject to paragraph 87(b), property taxes shall be deemed to have been imposed on taxable property

- (a) on January 1 of the year in which they become payable; and
- (b) in respect of the whole of the calendar year.

(2) Property taxes payable in respect of taxable property are a debt owed by

- (a) the assessed owner shown on the assessment roll, final revision for the calendar year in which the property tax is payable; and
- (b) any person who subsequently becomes the assessed owner of the assessed property and who is liable to taxation under this Act.

82.(1) Subject to subsection (9), **property taxes** and supplementary property taxes **constitute a continuing special lien** on the estate or **interest of a person**

- (a) **in any parcel, in respect of which the property taxes are due**, and the improvements on it;

[My emphasis added]

....

83. Subject to this Act, the council of a municipal taxing authority may make by-laws

- (c) respecting the imposition of interest on amounts outstanding, but the rate of interest must not exceed 24% per year;

....

84. (1) **Interest that becomes payable on property taxes** or supplementary property taxes shall be considered to be part of the

property tax or supplementary property tax payable in respect of taxable property.

[My emphasis added]

....

97. For all purposes in a municipal taxation area,

- (a) property taxes,
- (b) local improvement charges,
- (c) other taxes, levies, expenses or charges that may be recovered as a tax on property, property tax or arrears of property tax, and
- (d) **interest payable on any taxes**, charges, levies or expenses,

**shall be deemed to be municipal taxes.”**

[My emphasis added]

[22] The sections quoted from *P.A.T.A. (supra)* make it clear that “interest” on unpaid taxes is deemed to be property tax and I therefore conclude that the interest component of the outstanding property taxes are a charge on the lands and accordingly the limitation period is the ten year period set out in s. 11.1 of the *Limitation of Actions Act (supra)*.

d) **Was the deceased Ruman entitled to tax relief pursuant to the Senior Citizens and Disabled Persons Property Tax Relief Act (N.W.T. 1990 c.22)?**

[23] The *Act* empowered the City to provide tax relief from municipal taxes, *inter alia*, for a disabled person for a percentage of municipal taxes up to a maximum of 50% in relation to the residential property of the disabled person.

[24] The City did not pass such an enabling by-law exempting such property of seniors or disabled persons until 1995. Ms. Ruman submits that the *Act*, properly interpreted, obliged the City to pass a enabling by-law and its failure to do so deprived the deceased Ruman of tax relief on her residential property (Lot 14, Plot 34, Plan 65) for the years 1991 and 1992.

[25] Thus the issue is whether the *Act* obliged the City to pass such a tax relief by-law or whether the *Act* was enabling only.

[26] Ms. Ruman placed the draft Bill before the Court, together with the Minister's opening remarks when he introduced the Bill before the territorial legislature on October 25, 1989 where he said in part:

“I wish to emphasize that property tax relief for senior citizens and for disabled persons who are home-owners would be a responsibility shared, in municipalities which are municipal taxing authorities, by the Government of the Northwest Territories and by municipal governments. The option and the responsibility is on the municipal council by by-law to exempt eligible property from property tax. The Minister of Municipal and Community Affairs would then pay 50 per cent of the foregone taxes to the municipal corporation.”

[27] The Bill was not amended and was finally passed and consented to on November 2, 1989.

[28] The **Act** provides:

“‘disabled person’ means an individual who at any time within the relevant taxation period

- (b) produces a medical certificate satisfactory to the Minister responsible for municipal and community affairs indicating that the person suffers from a severe or prolonged disability and setting out the nature and extent of the disability;

...

‘eligible property’ means

- (a) a mobile unit, or
- (b) a single family dwelling unit or a mobile unit, and the parcel of land within the meaning of the *Property Assessment and Taxation Act* upon which it is situated, where the land is owned by the same person who owns the single family dwelling unit or the mobile unit;

...

‘Exemption from tax’

2. (1) A council of a municipal taxing authority may, by by-law, exempt the eligible property of a senior citizen or a disabled person from a part of the taxes where the senior citizen or disabled person is the owner or part owner of the eligible property and ordinarily resides on it.

(2) A by-law made under subsection (1) must set out the percentage of the taxes to be exempted, up to a maximum of 50%.

(3) An exemption made under subsection (1) is subject to the conditions stipulated in the by-law.

...

‘Payment of taxes’

3. (1) Where a council of a municipal taxing authority has by by-law provided for an exemption under subsection 2(1), the Minister responsible for municipal and community affairs may pay to a municipality on behalf of a senior citizen or a disabled person an amount equal to that specified in the by-law.

(2) Where the Minister responsible for municipal and community affairs makes a payment under subsection (1), the senior citizen or disabled person taxpayer has no tax liability with respect to the amount paid.”

[29] On June 19, 1991, the deceased Ruman wrote to the Mayor of Yellowknife requesting what steps the City of Yellowknife were taking to implement tax relief for her as a disabled person, and his reply was to the effect that the matter was under study.

[30] Ms. Ruman’s argument is that the word “may” in s. 2 of the **Act** means “shall” and that the City was obliged to pass the enabling by-law granting 50% tax relief on residential properties to seniors or disabled persons.

[31] However, s. 3 enables the City to exempt taxes “up to a maximum of 50%” and sub-section 3 provides that any such tax exemption “is subject to the conditions

stipulated in the by-law". In my view, these provisions make it clear that tax relief set out in the **Act** is enabling and not obligatory on the part of the City.

### **PROPER CALCULATIONS OF THE AMOUNT OWING**

[32] The Applicant, the City of Yellowknife, has sought leave to file Certificates of Tax Arrears for the three parcels of land, as of December 21, 1995, as judgments of the Court relying on a supporting Affidavit by Robert Charpentier, the Director of Finance of the Applicant, sworn in the 31<sup>st</sup> day of October, 1996.

[33] Thereafter, the Respondent took issue with the accuracy of the City's tax records and the calculation that went into the Certificate of Tax Arrears prepared by Mr. Charpentier. Additionally, the Respondent engaged the services of one Kevin MacIntyre, a Chartered Accountant in the Northwest Territories who practised in Yellowknife, and who has filed a number of Affidavits in which he has been critical of the calculations done by Mr. Charpentier in his various Affidavits. (Mr. MacIntyre was not called as a witness). Accordingly, Mr. Charpentier reviewed and reworked his calculations of the outstanding taxes for the three parcels as explained in his Affidavit of July 29, 1997. This caused Mr. MacIntyre, after reviewing the new calculations, to provide a further written report (annexed to his Affidavit of September 15, 1997) where he again took issue with some details of the calculations. Mr. Charpentier filed a further Affidavit detailing his calculations on October 9, 1997 and one John Laratta, a Chartered Accountant practising in Yellowknife, reviewed Mr. Charpentier's calculations to determine if the interest calculated on those accounts was correctly calculated, and confirmed their accuracy in his Affidavit of October 10, 1997.

[34] During the hearing of the City's application, Ms. Ruman sought, and was given the opportunity of cross-examining Mr. Charpentier about the quantum of the outstanding taxes.

[35] The various affidavits of Messrs. Charpentier and MacIntyre make it clear that many corrections and changes were necessarily made by the City in its computation of the quantum of the outstanding taxes. Additionally, for the years 1988 and 1989 the City tax by-law used an interest rate on outstanding taxes in excess of the 24% permissible, but this error has now been corrected in the calculations and I adopt and apply the decision of de Weerd, J. in **Cunningham v. Fort Smith** [1990] N.W.T.R. 158, where he said at p. 162:

“As counsel for the respondent very fairly pointed out at the hearing, s. 55(2) of the Cities, Towns and Villages Act governs as follows

(2) Where a by-law is inconsistent with an Act or regulation, the by-law is of no effect to the extent of the inconsistency.

This incorporates the common law to which I referred in reference to s. 293(5) and s. 293(6) of the Municipal Act and by-law 3-81.

The effect of these statutory provisions is to put a cap on the amount of interest which could lawfully be charged on unpaid taxes and charges, in effect restoring the position which the respondent’s council had attempted to establish under by-law 3-81.

In other words, I do not read the provisions of s. 84(c) of the Property Assessment and Taxation Act and of s. 55(2) of the Cities, Towns and Villages Act as having the effect in law of voiding by-law 263 or by-law 339. What these provisions do is to require those by-laws to be read and applied in conformity with those Acts, as of 1<sup>st</sup> January 1998.”

**CONCLUSION**

[36] I accept Mr. Charpentier’s final calculations about the quantum of the outstanding taxes and grant judgment to the City as follows:

	<b>Amount Due December 31, 1995</b>
Lot 14, Block 34 Plan 65	94,877.45
Lot 2, Block 502, Plan 900	32,681.25
Lot 11 & 12, Block 14, Plan 98	35,698.57

[37] If sought by either party, costs may be spoken to. If costs become an issue then the City of Yellowknife should recognize that its tax records and

calculations relating to the Ruman properties were in some respects wanting and disorganized, and fully justified the Respondent in seeking the assistance of the accountant, Mr. MacIntyre.

JUDGMENT DATED at YELLOWKNIFE, NORTHWEST TERRITORIES  
this 30<sup>th</sup> Day of July  
A.D. 1998

---

IRVING, J.A.  
DEPUTY JUDGE



#CV06806, CV06807 & CV06808                      A.D.  
1998

---

IN THE SUPREME COURT OF  
THE NORTHWEST TERRITORIES

---

BETWEEN:

THE MUNICIPAL CORPORATION OF THE CITY  
OF YELLOWKNIFE

Applicant

- and -

ESTATE OF MARIE VYNA RUMAN

Respondent

- and -

BETWEEN

THE MUNICIPAL CORPORATION OF THE CITY  
OF YELLOWKNIFE

Applicant

- and -

ESTATE OF MARIE VYNA RUMAN AND  
FRANK RUMAN

Respondents

---

REASONS FOR JUDGMENT OF THE  
HONOURABLE MR. JUSTICE H.L. IRVING

---