

CV 06289  
CV 06298

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

**BETWEEN:**

**KARANINA FERNANDES and MICHELLE FERNANDES,  
by their next friend, TERENCE FERNANDES**

**Plaintiffs**

**- and -**

**SPORT NORTH FEDERATION, ARCTIC WINTER GAMES INTERNATIONAL  
COMMITTEE, NORTHWEST TERRITORIES FIGURE SKATING ASSOCIATION**

**Defendants**

**MEMORANDUM OF JUDGMENT**

The defendant, Arctic Winter Games International Committee, seeks costs from the plaintiffs for the unsuccessful interlocutory injunction application brought by the plaintiffs last February. At that time I invited counsel to speak to costs if that becomes necessary. Written submissions have been filed by the plaintiffs and this defendant (the other defendants having advised me, through their counsel, that they are not seeking costs and not taking a position on this application).

Rule 649 provides that, unless otherwise ordered, costs of an interlocutory proceeding are costs in the cause. This is a "default" rule that merely sets the mode for dealing with costs if nothing is said about them. It does not direct the judge as to when or how to award costs of an interlocutory motion.

In this matter I have decided to exercise my discretion by directing that costs be in the cause. I do so for three reasons.

First, the plaintiffs are apparently continuing with their action for damages against all defendants. It may yet turn out that there is no cause for including this defendant in the action. At least that was the position taken by this defendant on the motion, that it had only a "peripheral role" in the events underlying these proceedings, and should not be involved. If that turns out to be the case, either by a discontinuance or a dismissal of the action (or a summary dismissal on motion), this defendant will be entitled to tax its costs of the entire proceeding including the interlocutory hearing. If, on the other hand, there is some liability found on the part of this defendant, it may be argued that there was good reason to make it part of the interlocutory proceeding.

Second, this defendant, in advancing its "peripheral role", took only a peripheral part in the interlocutory hearing. It filed no material or submissions and its counsel's argument was limited to a denial of liability. While this may have been an appropriate stance to take at the hearing, it was not a substantive role in the hearing.

Third, while it may be argued that the interlocutory motion was a discrete step in the proceedings, it may eventually be argued that it was a logical step to take (especially if the plaintiffs are successful in their claim for damages). As such, any entitlement to costs, or the use of costs as a sanction, can best be assessed with the benefit of knowing the final outcome of the action.

For these reasons, costs will be in the cause.

Dated this 12th day of September, 1996.

A handwritten signature in black ink, appearing to read "John Vertes", with a horizontal line extending to the right.

**J. Z. Vertes  
J.S.C.**

**To: Katherine R. Peterson, Q.C.  
Counsel for the Plaintiffs**

**Adrian C. Wright,  
Counsel for the Defendant,  
Arctic Winter Games International Committee**

**Karan M. Shaner,  
Counsel for the Defendants,  
Sport North Federation & N.W.T. Figure Skating Association**

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

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**BETWEEN:**

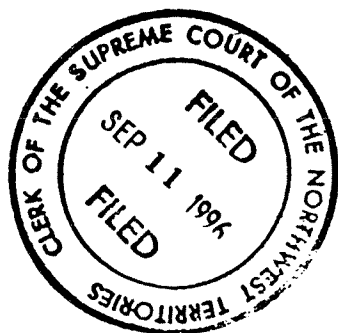
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MICHELLE FERNANDES, by  
their next friend,  
TERENCE FERNANDES**

**Plaintiffs**

**- and -**

**SPORT NORTH FEDERATION,  
ARCTIC WINTER GAMES  
INTERNATIONAL COMMITTEE,  
NORTHWEST TERRITORIES FIGURE  
SKATING ASSOCIATION**

**Defendants**



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**Memorandum of Judgment of the  
Honourable Justice J. Z. Vertes**

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