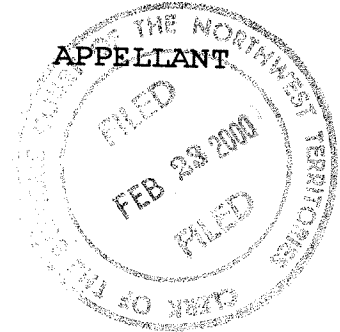


IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES
IN THE MATTER OF:

THE MUNICIPAL CORPORATION OF
THE CITY OF YELLOWKNIFE

- and -

YELLOWKNIFE INN LTD.



RESPONDENT

Transcript of a Ruling on an Appeal heard before Justice
R.P. Foisy, in Yellowknife, in the Northwest Territories,
on the 21st day of February, A.D. 2000.

APPEARANCES:

MS. E. HELLINGA:	On behalf of the Appellant
MR. J. BRYDON:	On behalf of the Respondent

1 THE COURT: This is an appeal from a decision of
2 the Assessment Appeal Tribunal of the Northwest
3 Territories whereby the Tribunal held that certain
4 equipment in the Yellowknife Inn Ltd. should be
5 assessed and depreciated at a different rate than the
6 hotel building itself.

7 In this case the decision of the Tribunal is not
8 protected by a privative clause, but rather there is a
9 right of appeal under Section 69(2) of the Property
10 Assessment and Taxation Act, R.S.N.W.T. 1988, c. P-10,
11 as amended. This section states in part:

12 There is an appeal on the grounds that the
13 Tribunal has made an error of law on the face of
14 the record of proceedings conducted by the
15 Tribunal.

16 The error of law alleged by the appellant, The
17 Municipal Corporation of the City of Yellowknife, is
18 that the Tribunal erred in holding that certain pieces
19 of equipment installed within the hotel do not
20 constitute improvements within the definition of
21 "improvement" as defined in Section 2(c) of this Act.

22 Section 2(c) defines an improvement as "any
23 machinery, equipment, appliance or other thing forming
24 an integral part of any activity on or use of the
25 land..." The pieces of equipment in question here are
26 sprinklers, air conditioner units, elevators, and food
27 and liquor processing equipment.

1 At first blush, the appellant's position would
2 seem to have some strength. It would seem that the
3 equipment is indeed an improvement as defined.
4 However, the matter does not end there. Section 11(b)
5 of the Act provides:

6 Where the regulations do not provide for the
7 manner in which, or the method by which, an
8 assessed value is to be given to

9 (b) an improvement, the assessor shall
10 assess the improvement in a manner
11 that to the assessor appears fair,
12 having regard to any similar
13 improvements in the same vicinity.

14 Thus, assuming that the equipment in question
15 constitutes an improvement, unless the regulations
16 provide for the manner in which, or the method by
17 which, an assessed value is to be given, there is a
18 discretion in the assessor which same discretion is
19 given to the Tribunal via Sections 45(2)(g) and
20 66(1)(b) of the Act, provided that regard is had to
21 similar improvements in the same vicinity.

22 While the Tribunal had before it assessments from
23 other Northwest Territories and Nunavut
24 establishments, it did not, it appears, have evidence
25 of other assessments of similar improvements in
26 Yellowknife (for example, the Explorer Hotel) or in
27 the vicinity of Yellowknife. Error here does not
result automatically because of the lack of evidence
of similar improvements in the vicinity. It would be

1 up to the appellant to provide such evidence.

2 The appellant points to the Property Assessment
3 Regulations, R.R.N.W.T. 1990, c. P-7, as amended, and
4 argues that Regulation 10(4) incorporates Schedule 1
5 of the Alberta Assessment Manual and thus provides the
6 manner or method of assessment referred to in Section
7 11 of the Act.

8 Regulation 10(4) reads as follows:

9 Sections 1.200.035 to 1.200.037, 1.200.040,
10 1.200.045, 1.200.061 and 1.200.080 to
11 1.200.097 of Alberta Schedule 1 must be
12 used as a guide in determining the amount
13 of depreciation attributable to normal
14 physical deterioration and normal functional
15 obsolescence.

16 Firstly, it must be noted that the Alberta
17 Assessment Manual, specifically those sections
18 referred to in subsection (4), were not before the
19 Tribunal and thus do not form a part of the record.
20 Neither was the manual presented to me. In any event,
21 counsel agree that I cannot take judicial notice of
22 this manual, nor would it be admissible before me at
23 this stage of the proceedings.

24 Secondly, by way of obiter only, if this manual
25 did form part of the record, it would show, I am
26 advised by counsel, that certain businesses and/or
27 manufacturers have had their equipment specifically
assessed and depreciated separately and differently
than the building. It appears that hotels are not

1 included in this list. Thus it is argued by
2 implication, the equipment in a hotel, so long as it
3 is an improvement, cannot be assessed, valued and
4 taxed separately from the building.

5 On the wording of Section 11 of the Act, I am not
6 certain that a separate assessment of hotel equipment
7 results in an automatic error of law. The Alberta
8 Manual must be used as a "guide", but does not seem to
9 be binding in every particular on the assessor or the
10 Tribunal. At least an argument could be made that the
11 discretion found in Section 11 is not eliminated by
12 the use of the word "guide" in the manual. However,
13 that remains to be decided on another day and I do not
14 purport to do so here.

15 In this case and on this record, I cannot say
16 that the Tribunal erred in law. Accordingly, the
17 appeal must be dismissed.

18 On the question of costs, I am not satisfied that
19 costs ought to be awarded on a solicitor/client basis
20 as sought. Costs are awarded to the respondent on a
21 party/party basis to be calculated in accordance with
22 Column 5.

23 Unless there is anything else, we'll adjourn.
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Certified pursuant to Rule 723 of
the Rules of Court

Annette Wright

Annette Wright, RPR, CSR(A)
Court Reporter