

Date: 2018 04 18  
Docket: S-1-CV-2014-000-056

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

BETWEEN:

THE COMMISSIONER OF THE NORTHWEST TERRITORIES

Plaintiff

-and-

923115 N.W.T. LIMITED o/a PIN/TAYLOR ARCHITECTS, AMEC AMERICAS LIMITED o/a AMEC EARTH AND ENVIRONMENTAL, AMEC EARTH AND ENVIRONMENTAL, a division of AMEC AMERICAS LIMITED, ENCOMPASS INC. o/a ARCTIC FOUNDATIONS OF CANADA, ARCTIC FOUNDATIONS OF CANADA INC., IGOR HOLUBEC, IGOR HOLUBEC CONSULTING INC., EBA ENGINEERING CONSULTANTS LTD., JOHN ARMSTRONG, BRAD R. NELSON, JOHN ARMSTRONG and BRAD R. NELSON, carrying on business as a partnership under the firm name of ARMSTRONG AND NELSON ENGINEERS AND LAND SURVEYORS, 851791 N.W.T. LTD. o/a ROWE'S CONSTRUCTION and DOWLAND CONTRACTING LTD.

Defendants

**MEMORANDUM OF JUDGMENT**

[1] The defendants, Igor Holubec and Igor Holubec Consulting Inc.<sup>1</sup> apply for summary judgment.

[2] No other parties participated in the application.<sup>2</sup>

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<sup>1</sup> For clarification, Igor Holubec deposed in an affidavit that this is a misnomer. The name of the corporation through which he produced his work is I. Holubec Consulting Inc.

<sup>2</sup> Counsel for AMEC Americas Limited ("AMEC") and Arctic Foundations Canada Inc. ("AFC") appeared but did not make substantive submissions or take a position on the application.

## **FACTS AND BACKGROUND**

[3] The Plaintiff provided evidence through its officer, Mike Burns. Igor Holubec provided affidavit evidence on behalf of both himself and I. Holubec Consulting Inc. (“IHC”). Both Mr. Burns and Mr. Holubec were cross-examined on their affidavits.

[4] Mr. Holubec is a professional engineer. From his résumé it appears he has extensive experience with design and construction in permafrost. At the relevant time he operated IHC and he was licensed as an engineer in the Northwest Territories.

[5] This lawsuit stems from the construction of the Chief Albert Wright School in Tulita, Northwest Territories (the “school”). In particular, it is about structural damage resulting from alleged deficiencies in the design and construction of the school’s thermosyphon foundation.

[6] The school’s construction was completed in 2008. In August of 2012 the Plaintiff’s employees observed deterioration in the school, including significant cracks in the flooring.

[7] The Plaintiff hired a professional engineer, D.W. Hayley, to identify the reasons for the school’s deterioration. Mr. Hayley provided a number of reports, including one dated April 21, 2014 in which he opines that the foundation was not designed properly for the conditions. Specifically, the gravel pad was too thin to accommodate the summer thaw and maintain the permafrost. He also noted significant deficiencies in water drainage. The result was heaving and settling and consequently, damage to other parts of the building.

[8] Distilled down to basics, a thermosyphon is a device used to maintain permafrost. It does this by removing sufficient heat to refreeze the thawing that happens under the building in the warmer months. This ensures the permafrost below the gravel pad remains stable, thereby preventing the foundation from heaving or shifting.

[9] There was no contractual relationship between the Holubec defendants and the Plaintiff. The Plaintiff claims damages against both of them in tort. Following are the Plaintiff’s allegations:

18. The Plaintiff states that AFC [Arctic Foundations of Canada Inc.] engaged the Defendant Holubec to provide geotechnical engineering services for the purposes of the design, manufacture and installation of the Project's thermosyphon foundation and gravel pad. Holubec reviewed and approved the foundation and gravel pad design. Holubec also provided advice regarding site drainage. The Plaintiff states that it relied on Holubec to perform his duties in accordance with the standards of a reasonably competent professional engineer.

[...]

20. The Plaintiff states that it relied on Holubec and [another defendant] to professionally review AFC's designs and work product with respect to the Project, and to design and install an appropriate and fully functional thermosyphon foundation and gravel pad.

[10] The Plaintiff began the process for the school's design and construction in 2004. In August of that year it hired AMEC Americas Limited ("AMEC") to provide testing, quality assurance and consulting services before and during the school's construction. AMEC was also required to consider options and make recommendations for the design and construction of a foundation and monitor the foundation's installation.

[11] In September of 2004 the Plaintiff hired Pin/Taylor Architects ("PTA") to provide design services for the project.

[12] In November of 2004 Mr. Keith Barnes, a permafrost engineer with AMEC, presented the Plaintiff with a report entitled "Geotechnical Investigation Proposed Chief Albert Wright School Tulita, NT". It is included as Exhibit "E" to Mr. Burns' affidavit.

[13] Mr. Barnes confirms at the beginning of the report that AMEC conducted a geotechnical assessment of the proposed construction site for the purpose of assessing subsurface conditions and providing recommendations for the foundation. This included measuring soil temperature at certain depths for a period of approximately one month.

[14] Three options for a foundation were presented, including a thermosyphon foundation. As part of his advice on this option, Mr. Barnes writes (at pp 7 and 8):

The thermosyphon suppliers typically provide the design of the thermosyphons. All installation details should be in accordance with the manufacturers [sic] specification. It

is recommended that an independent engineering company registered in the Northwest Territories approve final design of the thermosyphon spacing and insulation thickness.

[...]

AMEC recommends conducting a detailed geothermal analysis to determine the optimum insulation and gravel pad thickness and achieve the most cost effective design.

[15] There is no evidence that the Plaintiff or any other party conducted a detailed geothermal review as recommended by AMEC.

[16] The Plaintiff says that PTA was responsible for recommending the foundation system. PTA recommended the thermosyphon system manufactured by Arctic Foundations of Canada Inc. (“AFC”). PTA then wrote to the Plaintiff and asked that it contact AMEC to obtain recommendations for, *inter alia*, the depth of the gravel pad, the location of the thermosyphons, the insulation thickness and location for the thermosyphons and the thickness of the concrete pad.

[17] In July of 2005 the Plaintiff contracted with Rowe’s Construction (“Rowe’s”) to construct the thermosyphon foundation and the gravel pad. It was a term of the contract that Rowe’s was responsible for the design, supply and assembly of all materials for the installation of thermosyphons under the school. The contract also required that the design was to be “certified by a professional Engineer familiar with the concept of thermosyphon operation and registered in the Northwest Territories.” The contract specified the design criteria, including a floor temperature of 20°C.

[18] Rowe’s hired AFC to design the thermosyphon foundation system which was ultimately installed.

[19] AFC designed the foundation. It hired EBA Engineering Consultants Ltd. (“EBA”)<sup>3</sup> to provide advice on the design. The scope of that retainer was not in evidence; however a letter of March 8, 2005 from Ed Hoeve, an engineer with EBA, to John Jardine, the president of AFC, suggests EBA conducted a preliminary review of the concept based on sketches and geothermal information that AFC provided. It did not conduct a geotechnical review. EBA concluded that subject to site drainage being addressed, and based on certain assumptions set out in its letter, the thermosyphon foundation concept was “an appropriate solution”. On May 25, 2005 EBA provided a further letter to AFC clarifying certain aspects

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<sup>3</sup> The Plaintiff has discontinued against EBA since this application was heard.

of the advice in its earlier letter respecting drainage and how the risk of frost heave due to moisture could be minimized.

[20] AFC shipped the foundation materials to the construction site at some point between June and mid-August of 2005.

[21] On August 19, 2005, Mr. Barnes, on behalf of AMEC, wrote the following to Simon Taylor of PTA:

As construction of the foundation is about to begin, I assume that you have stamped drawings of the thermosyphon layout. Could you email me them.

The drawing S102, states, "Themistor location, type and details are to be determined by the supplier".

THIS IS NOT WHAT I AGREED TO. EBA was supposed to provide the layout, spacing, type, etc.

[22] Later that day Mr. Jardine wrote the following to Mr. Hoeve at EBA:

I had a call from Simon at Pin/Taylor asking for stamped drawings . . . Apparently AMEC is giving him static. The way we did it in the past was for you to review the layout and provide a stamped report. I am attaching our drawings and calcs.

Can you give me an estimate of when you could provide the report and the cost. The materials are on site and are expected to be installed the first week in Sept. We just received our contract last week and had to ship immediately to catch the last barge.

[23] Mr. Hoeve replied on August 25, 2005:

I've reviewed this with our guys in Edmonton. Based on the jobs stacked up there, even mid-September is not realistic. An October 7 deadline is reasonable.

I know this will be after construction. I figure the way that this could be handled is that the thermosyphons go in as you have configured them. If we recommend any changes as a result of our analysis, we would try to achieve them with insulation and gravel, which presumably could be tweaked early next year . . .

However, one qualification on that. We note that all the evaporator loops converge into a single radiator group. AMEC's recommendation for [another project] was to split up the radiator groups, reasoning that they'd observed a "supercooling" in the areas where the evaporator pipes are concentrated. The push towards a single radiator group is probably more aesthetically driven than anything, but we believe that the recommendation to split the radiator groups is reasonable and so are inclined to support AMEC's position on the

point. While we would intend to look into this further during our analysis, you may wish to debate this with the rest of the design team now, rather than get a surprise on October 7<sup>th</sup>.

Our estimated fee to do the analysis is \$10,000.

[24] Mr. Jardine then wrote to both PTA and EBA on August 26, 2005, indicating that changing the foundation design at that point would represent significant change and that he did not feel it was necessary. With respect to the suggestion that the gravel pad could be adjusted the following year, Mr. Jardine said it would be difficult. Finally, with respect for the need to provide stamped drawings, Mr. Jardine wrote:

The problem we are faced with during the design phase is that most times there is no geotechnical engineer as part of the design team. We have always provided layouts for purposes of estimating and for the architect/designer to use to compare the costs of alternate foundations. We welcome the process of having our thermosyphon design reviewed by an engineer. The question is who should hire that engineer. The review should obviously be done prior to going out for tender. As a supplier, we are not assured of a contract until after the tender has been awarded and we receive a PO. If the tender is not awarded, we do not receive a contract. If we are responsible for the review of the thermosyphons we are now out that money while all other engineering services have been paid by the owner. If the review is done after the tender, there can be a long delay in getting the materials shipped.

[25] In his reply, Mr. Taylor said:

As pointed out to Bill, the requirement to have the drawings stamped by an engineer registered in the NWT was identified in the tender documents. We realize that your firm shipped material in order to meet shipping deadlines and so this issue can be discussed further.

[26] Copies of these emails are appended to Mr. Burns' affidavit as Exhibit "N".

[27] By this time, the foundation's construction was already underway, having started on or about August 23, 2005.

[28] The Plaintiff has no evidence about the scope of work AFC asked Mr. Holubec to perform. Mr. Holubec offered evidence on this, however.

[29] According to Mr. Holubec, Mr. Jardine contacted him on or about August 28, 2005 and the two met on August 30. The work he was asked to do was limited. He states in his affidavit that:

12. [...] I was advised by John Jardine . . . that before I was consulted, both the thermosyphons and the foundation were already designed and construction was well underway . . .

13. I was asked . . . to consider some conceptual features of the thermosyphon system used in the foundation that was under construction. I was not asked to design a thermosyphon system or a foundation or conduct a full design review of an existing design of either. There was a very limited scope to my retainer which I carried out.

[30] On cross-examination Mr. Holubec expanded on this. At one point he stated:

. . . [AFC] asked me to review what type of temperatures, air temperatures, ground temperatures, should be modeling, what they should be, what type of protection for water getting into it, what are the thickness. Basically, the input into their model. I was confirming that the geotechnical input into their calculation was the *[sic]* appropriate.

*Transcript of cross-examination of Igor Holubec on affidavit*  
p. 21, ll 1-8

[31] Mr. Holubec confirmed several times during cross-examination that he was not asked to design a thermosyphon foundation system, nor to conduct a full design review. He was not asked to visit the site before or after producing the report and he was not asked to conduct either a ground thermal analysis or a detailed geothermal analysis.

[32] Mr. Holubec produced a report on behalf of IHC. The report is dated September 8, 2005 and entitled “Re Geotechnical Review Thermosyphon Foundation, Tulita School NT”. Mr. Holubec’s engineer’s stamp is affixed to the report.

[33] On the first page of the report is a list of the documents provided to Holubec by AFC and upon which Holubec relied for the review. These are: a geotechnical investigation report prepared by AMEC in November of 2004; the letters from EBA dated March 8 and May 25, 2005; two drawings from AFC depicting the thermosyphon layout and the radiator section; and drawings produced by PTA and its structural engineers. It should be noted that in cross-examination Mr. Burns deposed that these were not design documents.

[34] The report refers to a discussion between Mr. Holubec and Mr. Jardine regarding the site conditions and states “It appears that the excavation for the granular pad below the evaporator pipes was excavated and the backfill operation was well underway ... The ground excavation was quite wet, and the base of the excavation was covered with non-woven geotextile before the granular pad was placed and compacted.”

[35] The second page of the report contains the following statements:

Tulita is located in a discontinuous permafrost region with the permafrost being relatively warm and the maintenance of frozen condition is sensitive to construction disturbance and climate warming. AMEC site investigation showed the natural ground being a sandy silt that extends to at least a depth of about 9m, the depth reached during the site investigation, and the ground temperature, at about 9m being about  $-0.5^{\circ}\text{C}$  ... In the opinion of the writer, the frozen foundation design provided by the thermosyphon is an appropriate foundation concept for the existing sandy silt foundation, ‘warm’ permafrost ground temperature and climate warming.

During our meeting we discussed several design assumptions that were used in developing the proposed thermosyphon design. The result of the discussion showed that the thermosyphon design is based on conservative assumptions and should provide a stable foundation for the school.

[36] Mr. Holubec was asked what was meant by “design assumptions” and “conservative assumptions” during cross-examination on his affidavit. He stated that one of these assumptions was that for the purposes of the foundation design that the floor temperature would be specified as  $23^{\circ}\text{C}$ , rather than the  $20^{\circ}\text{C}$  specified in Rowe’s contract. Mr. Holubec also stated that he was commenting on the data AFC used in its model, including air and ground temperature. His opinion was also based, in part, on AFC’s calculations. He was comfortable relying on them for his report because of his knowledge and experience with AFC’s other foundation work.

[37] In-floor heating was installed in parts of the school during construction. Mr. Holubec was not told this. He states this would have changed his opinion completely.

[38] Most of the report is focused on the need for adequate drainage to minimize heave in the foundation. Mr. Holubec provides options for swales and French drains for this purpose. Diagrams of these options are appended to the report. They are marked “DRAFT” and labelled as “Approximate location of Swale and French Drain”; “Schematic design for French Drain”; “Alternate Design –



Approximate location of Swale and French Drain”; and “Alternate Schematic design for French Drain with Silty Gravel”, respectively.

[39] At page 3 of the report Mr. Holubec writes:

Two alternate designs are given because the site conditions for the swale construction and the type and quality of granular available at the site are not known.

The design and final location of the swale needs to be a field design/fit since detailed ground survey is not available and the final surface grading is not known. The two issues that should be considered in the design and location of the swale is that it should be located close to the school perimeter to maximize the interception of the surface water and that this water should be discharged in low ground beyond the school.

[40] On August 29, 2005, Mr. Barnes wrote to Mr. Taylor at PTA:

Hi Simon,  
we talked about a drainage system within the pad previously. I can't seem to see one on the current plan. can you confirm that you have incorporated a drainage system into the pad?

thx  
Keith

[41] Some weeks later, on September 21, 2005, Mr. Taylor sent the following to the Plaintiff's project officer, Tracy Thorson, copied to Mr. Barnes and another engineer:

Tracy,

Please see attached copy of the electronic shop drawings with letter from Arctic Foundations and certified by I. Holubec Consulting.

This would have been sent sooner but our e-mail has only just returned to working status.

[42] In cross-examination Mr. Burns stated he did not know what plans Rowe's and others would have been relying on in constructing the foundation between August 23 and September 21, 2005.

[43] IHC charged AFC \$1,800.00 for Mr. Holubec's report.

## LEGAL FRAMEWORK

[44] Summary judgment engages rr.175 and 176 of the *Rules of the Supreme Court of the Northwest Territories*:

175. A defendant may, after delivering a statement of defence, apply with supporting affidavit material or other evidence for summary judgment dismissing all or part of the claim in the statement of claim.

176. (1) In response to the affidavit material or other evidence supporting an application for summary judgment, the respondent may not rest on the mere allegations or denials in his or her pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue for trial.

(2) Where the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence, the Court shall grant summary judgment accordingly.

[45] The Supreme Court of Canada's decision in *Hryniak v Mauldin*, 2014 SCC 7 (CanLII), [2014] SCC 7, [2014] 1 SCR 87, 2014 CarswellOnt 640 guides the interpretation and application of these rules, as well as the overall approach of this Court to summary judgment. The inquiry is not focussed on whether there is a genuine issue for trial but rather, whether a full-blown trial is required to resolve the issue and reach a fair and just result. *Leishman v Hoechsmann et al.*, 2016 NWTSC 27 (CanLII), [2016] CarswellNWT 37 and *Callidus v Deepak International et al.*, 2016 NWTSC 71 (CanLII), [2016] CarswellNWT 71. As stated in *Hryniak*,

[49] There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

## ANALYSIS

[46] The Plaintiff argues that there are significant disputes about the facts which cannot be resolved without *viva voce* evidence and the benefit of cross-examination. It also says it has not had an opportunity to examine other parties

respecting, *inter alia*, their knowledge of and reliance on the report. Thus, it argues the evidentiary record is insufficient for the Court to make the necessary factual findings and to apply the law to the facts. Accordingly, summary judgment should be denied.

[47] Certainly, this case involves numerous contracts, parties and contested facts. Determining the cause of the building's deterioration will likely call for several expert opinions. There are also several areas of disagreement between the Plaintiff and Mr. Holubec, including the reasons for the foundation's failure, whether appropriate ameliorative steps were taken once building deterioration was detected, the lines of communication amongst the various project participants and the overall project management. For the purpose of this application, however, the issues are relatively narrow.

[48] The first matter to be determined is what IHC was hired to do. If IHC was hired to approve AFC's final design thermosyphon foundation design, as required by Rowe's contract and recommended by AMEC, then negligence would be a live issue requiring more evidence than is currently before the Court to resolve.

[49] The evidence about what IHC, through Mr. Holubec, was hired to do comes from Mr. Holubec and it seems clear that he understood AFC retained him to provide an opinion on the soundness of the assumptions that AFC used its model. He provided geotechnical advice, primarily about how to prevent water from entering the foundation.

[50] Mr. Holubec was not part of the school's design team. He formed his opinion based on information he received from AFC. He said he was comfortable with the soundness of that information, given his experience in permafrost construction. He was not, in my view, required to reach beyond that information and "double check" what AFC provided. He was entitled to rely on what AFC provided. Notably, that information did not include the fact that the building would have in floor heat which, Mr. Holubec said, would have changed his opinion completely.

[51] Mr. Holubec was *not* asked to design a thermosyphon foundation system, nor was he asked to conduct a full design review. He was not asked to visit the site before or after producing the report and he did not do so. He was not asked to conduct ground thermal analysis or to undertake a detailed geothermal analysis.

[52] The limited nature of Mr. Holubec's advice is apparent from the report he produced. The contents of the report are highly qualified. For example, at page two he writes:

... It is *postulated* that the frozen condition extends *likely* for the full depth of the soil overburden. In the opinion of the writer, the frozen foundation design provided by the thermosyphon *is an appropriate foundation concept* for the existing sandy silt foundation, 'warm' permafrost ground temperature and climate warming. [Emphasis added]

[53] That the drawings attached to the report include depictions of the foundation does not mean Mr. Holubec conducted a full design review, or approved the design, of the foundation. The proposed foundation had to be represented in his diagrams in some form to provide context for the location and design of the swale and the drains. Otherwise, the diagrams of the drainage systems would make little sense.

[54] The four diagrams attached to the report are clearly intended to depict *design options* for the swale and drains. That they are marked "DRAFT" supports the conclusion that they are conceptual only. Further, Mr. Holubec identifies issues that "should be" taken into account in the design and location of the swale in the body of the report. He also writes that "Two alternate designs are given *because the site conditions for the swale construction and the type and quality of granular available at the site are not known*"; and that "The design and final location of the swale *needs to be a field design/fit since detailed ground survey is not available and the final surface grading is not known.*" [Emphasis added]

[55] The fee Holubec charged AFC for the report is telling. It will be recalled that AFC first approached EBA to review the drawings and calculations. EBA advised it would charge \$10,000.00 for the geotechnical review. This is over five times more than what Mr. Holubec's firm charged. The difference is obviously significant and it is reasonable to conclude that it is because AFC asked Mr. Holubec for far more limited advice.

[56] The Plaintiff has no evidence about which parties relied on Mr. Holubec's report and to what extent. In my view, it can be assumed that no reliance was placed on it. Alternatively, relying on the Mr. Holubec's report as evidence of final design approval would not have been reasonable.

[57] Construction started August 23, 2005. AFC retained IHC on or about August 28. On August 29 Mr. Barnes of AMEC indicated to PTA that the “plan” did not provide information on drainage. Mr. Holubec’s report was produced September 8. As noted, it is highly qualified and the proposals for swales and drains are clearly not final. It is uncertain when PTA received the report, but it was not shared with the Plaintiff and AMEC until September 21, 2005, nearly a month after construction had started.

[58] As noted, Mr. Holubec’s evidence is not contradicted. In fact, Mr. Burns stated during cross-examination that the Plaintiff has no evidence about the instructions AFC provided to Mr. Holubec. In fairness, it may have been represented to the Plaintiff by others involved in the project that Mr. Holubec was asked to – and did – certify the final design. This does not, however, change the fact that the Plaintiff can offer no evidence to reasonably support that conclusion.

[59] That the Plaintiff has not yet conducted examinations for discovery of a number of other parties, including AFC, is not a reason to deny summary judgment and force Mr. Holubec and IHC to continue to participate in the action.

[60] This suit was filed on April 9, 2014. AFC filed a defence on September 30, 2015 and a Statement as to Documents on January 16, 2017. This application was filed in April of 2017 and scheduled for hearing the following September. I appreciate that civil litigation can move slowly, particularly where, as here, there are multiple parties and highly technical issues; however, the Plaintiff is responding to a summary judgment application and it is thus required “to put its best foot forward”. *Arctic Environmental v Northern Mgmt. & Komaromi et al*, 2000 NWTSC 53 (CanLII) at para 23. It is not enough for the Plaintiff to simply state that the litigation has not progressed or that there may be a better evidentiary record sometime in the future.

[61] On this issue I agree entirely with the comments of Master Schulz in *Nixon v Gruschynski*, 2017 ABQB 135:

[13] Counsel for Gruschynski takes the position that the evidence has not been sufficiently developed to permit a final disposition based on the record before the Court. Questioning has not occurred, just an examination on the Bougie Affidavit, and accordingly it is premature to allow summary dismissal when all of the information with respect to the negligence of the Bougie Parties is in the possession of the other parties.

[14] This argument is contrary to the position taken by the Court in *Lameman* as referenced in paragraph 11 of *Ostrowercha*: a summary dismissal application is based on the evidence before the Court, not on the evidence that one party *hopes* to find or discover. Here, there was no application before the Court for Part 6 Questioning, no application for the production of records in the possession of other parties or entities that might prove the case for Gruschynski or at least raise a meritorious issue that requires a trial, and no request for an adjournment to obtain same. There is just the bald assertion that there is evidence in the possession of other parties or entities that would be relevant. . .

## CONCLUSION

[62] The application for summary judgment is granted.

[63] The applicants prevailed and shall have costs on a party-and-party basis.

*Order accordingly.*

K. M. Shaner  
J.S.C.

Dated at Yellowknife, NT, this  
18<sup>th</sup> day of April, 2018

Counsel for the Applicants/Defendants  
Igor Holubec and Igor Holubec Consulting Inc.: Alan R. Regel

Counsel for the Respondent/Plaintiff: Tricia Ralph and  
Christopher Buchanan

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

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BETWEEN:

THE COMMISSIONER OF THE NORTHWEST  
TERRITORIES

Plaintiff

-and-

923115 N.W.T. LIMITED o/a PIN/TAYLOR  
ARCHITECTS, AMEC AMERICAS LIMITED o/a  
AMEC EARTH AND ENVIRONMENTAL, AMEC  
EARTH AND ENVIRONMENTAL, a division of  
AMEC AMERICAS LIMITED, ENCOMPASS INC.  
o/a ARCTIC FOUNDATIONS OF CANADA,  
ARCTIC FOUNDATIONS OF CANADA INC.,  
IGOR HOLUBEC, IGOR HOLUBEC CONSULTING  
INC., EBA ENGINEERING CONSULTANTS LTD.,  
JOHN ARMSTRONG, BRAD R. NELSON, JOHN  
ARMSTRONG and BRAD R. NELSON, carrying on  
business as a partnership under the firm name of  
ARMSTRONG AND NELSON ENGINEERS AND  
LAND SURVEYORS, 851791 N.W.T. LTD. o/a  
ROWE'S CONSTRUCTION and DOWLAND  
CONTRACTING LTD.

Defendants

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MEMORANDUM OF JUDGMENT OF  
THE HONOURABLE JUSTICE K.M. SHANER

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