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TERRITORIAL COURT CIVIL CLAIMS

BETWEEN:

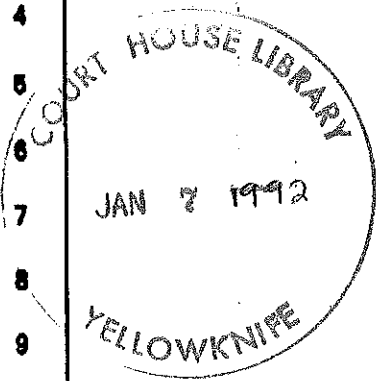
LORRI JEANNE GRANUM

Plaintiff

and

STEVEN KAKFWI in his capacity
as Minister of Personnel for the
Government of the Northwest
Territories

Defendant



Heard at Fort Smith on 10 May, 1991

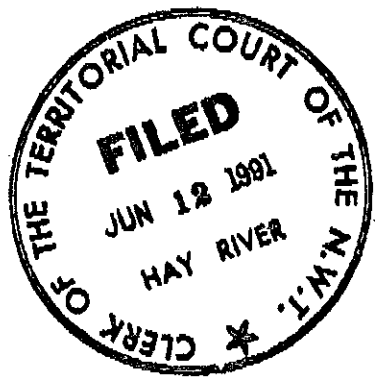
Judgment filed: June 10, 1991

REASONS FOR JUDGMENT OF HIS HONOUR

JUDGE R.M. BOURASSA

Ms. Lorri Jeanne Granum Plaintiff

Ms. J. Perry, Counsel for Defendant



JUDGMENT

1
2 This matter first came before the Territorial Court by way
3 of Notice of Motion and supporting affidavit seeking an order of
4 this Court, in the nature of specific performance (or some other
5 equitable relief), compelling the defendant to make good certain
6 promises allegedly made to the plaintiff. The defendant was
7 cited as the Government of the Northwest Territories, Department
8 of Personnel.

9 At the outset, Ms. Perry, counsel for the defendant fairly
10 and properly consented to an order amending of the Style of Cause
11 to name the proper defendant, and furthermore, consented to the
12 Notice of Motion and Affidavit being treated as a claim within
13 the rules, upon a contract or such other grounds as the evidence
14 might disclose.

15 The defendant was, of course, afforded an opportunity to
16 file a defence to the claim and did so.

17 No procedural objection has been raised by the defendant to
18 this Court making any other necessary modifications and
19 amendments as required and in accordance with the spirit and
20 intent of the Territorial Court Civil Claims Rules, S.2

21 2. (1) The Judge shall hear and determine in a
22 summary way all questions of law and fact and may
23 make such order or judgment as appears to him to be
just and equitable.

24 (2) These Rules shall be construed liberally so as
25 to secure an inexpensive, expeditious and just
determination of every proceeding.

26 (3) Any procedural defect including the failure to
27 comply strictly with these Rules shall be treated
as an irregularity and shall not render the
proceedings a nullity and all necessary amendments

1 or other relief may be granted upon proper terms to
2 secure the just determination of the real matters
in dispute.

3 The jurisdiction of this Court to deal with the issues
4 raised is found in S. 16 of the Territorial Court Act:

5 16. (1) Subject to subsection 2 and unless the
6 Commissioner otherwise provides in his appointment
7 every Territorial Court Judge is vested with civil
8 jurisdiction in
9 (a) actions arising out of contract express or
implied and actions of debt where the debt, demand
or damages claimed do not exceed \$5,000;
(b) personal actions in tort where the damages do
not exceed \$5,000;

10 (2) A Territorial Judge is not vested with civil
11 jurisdiction in
12 (a) actions in which the title to land or to an
interest in land is brought in question;
13 (b) actions in which the validity of any devise,
bequest or limitation is disputed;
14 (c) actions for malicious prosecution, false
imprisonment, libel, slander, criminal
15 conversation, seduction or breach of promise of
marriage; or
16 (d) actions against a Justice of the Peace for
anything done by him in the execution of his
office.

17
18 With reference to the above, I conclude that, prima facie I
19 have jurisdiction to deal with the subject matter at hand.

20
21 FACTS

22 The facts and circumstances leading to the plaintiff's claim
23 are found in the documents filed, and the evidence of both the
24 plaintiff, her witnesses and the defendant's witnesses. There is
25 basically no conflict in the evidence presented.

26 The evidence discloses that the plaintiff made application
27 for employment as a teacher at P.W. Kaiser High School, Fort

1 Smith, N.W.T. At that time, June of 1990, the plaintiff was a
2 resident of the Province of British Columbia. She had never
3 visited Fort Smith nor did she have any information as to the
4 cost of living, life style or living conditions in the N.W.T. -
5 all of which were of concern to her.

6 Sometime that month the plaintiff was interviewed for the
7 position. The interview was conducted by way of a telephone
8 conference call: the participants were the plaintiff of course,
9 and Mr. Malanchuk, Principle of P.W. Kaiser High School, Ms.
10 Linda Martin, representative of the Department of Personnel of
11 the Government of the Northwest Territories and Ms. Joy Herron,
12 Recruitment Officer for the Government of the Northwest
13 Territories.

14 The interview took place - presumably led by the panel,
15 eliciting the information they needed to make an assessment and
16 arrive at a decision to offer a contract or not.

17 The plaintiff specifically raised the question of accom-
18 modation, the availability and costs thereof. In her words "I
19 was concerned about the cost of accommodation and the cost of
20 living." She was assured by the panel, without reservation, that
21 the G.N.W.T. would provide housing at a fixed rate including
22 utilities for a one year period at a cost to her of about \$600;
23 that after one year she would be responsible to obtain her own
24 housing at her own cost. This concern voiced by the plaintiff
25 was, on the evidence of all, including the defendant's witnesses,
26 a common one for all new hires. Furthermore, the evidence
27 discloses that housing issues - viz allocation, rent, utilities,

1 term, were always discussed with potential employees although not
2 always written into their employment contracts.

3 A few days later, the plaintiff received a telephone call
4 from Ms. Martin advising her that the interview was successful
5 and that the plaintiff was "hired". At that time the salary was
6 'set', her position as a teacher confirmed and representations
7 with respect to housing reconfirmed. In the words of the
8 plaintiff ... "A big consideration for me."

9 The plaintiff requested time to think. A few days later she
10 was in telephone contact with Ms. Herron and accepted the verbal
11 offer. Again housing at about \$600 monthly rent including
12 utilities for a one year period was confirmed.

13 On July 9, 1990 a written confirmation of the offer was
14 mailed to the plaintiff (Exhibit 1) signed by Ms. Herron on
15 behalf of the defendant. There is no mention of housing therein
16 - but on the evidence, not an uncommon practice.

17 As directed, the plaintiff arranged her move to Fort Smith
18 with the assistance of Ms. Martin and Mr. L.L. Wilson, (on site)
19 Administrative Officer, Department of Personnel, Government of
20 the N.W.T.

21 She was allocated a three bedroom house (nothing else was
22 available) and provided with a document confirming a base rent of
23 \$457 per month plus utilities at \$134 per month for a total of
24 \$591 per month (Exhibit 5). This document reflected, at least in
25 the plaintiff's mind, her previous oral agreement.

26 After a period, the plaintiff was moved into a house and
27 attended upon by Ms. Lorena Mabbit, a G.N.W.T. Property Manager

1 trainee, who 'checked her in'. Ms. Mabbit presented a previously
2 prepared lease form (Exhibit 4) to the plaintiff and they both
3 signed it. Rent, excluding utilities was stipulated at \$591 per
4 month on a month-to-month basis.

5 The plaintiff did not study the lease as a lawyer might and
6 note that it differed significantly from her understanding based
7 on the previous conversations. This failure is perhaps under-
8 standable given the excitement of a new job, the move from B.C.,
9 a new environment, and simple good will. The failure of the
10 document to reflect the defendant's representations and promises
11 was not noted by the defendant either.

12 In the course of the trial a second version of this document
13 surfaced. It bears the photocopied signatures of the plaintiff
14 and defendant, carries the same date as Exhibit 4, but otherwise
15 differs yet again: it recites a lease payment of \$754 rent per
16 month, a utilities liability clause and has attached to it an
17 "Appendix B" - "Landlords Rules and Regulations". In other
18 respects it is the same as Exhibit 4.

19 No one was able to explain the existence of the two
20 conflicting leases.

21 Ms. Martin produced a computer generated record (Exhibit 8)
22 entitled "Employee Accommodation Allowance and Rent Information"
23 record. Column 100, specific to the plaintiff, indicates (at
24 least for G.N.W.T. records) an occupancy start of September 24,
25 1990; an "occupancy review" date of September 24, 1991 (one year)
26 and a rent of \$591 per month.

27 On January 3rd, 1991 the plaintiff received a document

1 (Exhibit 3) from the Deputy Minister, Department of Personnel,
2 G.N.W.T., purporting to increase the plaintiff's rent to \$726.50
3 per month and advising that the plaintiff would be responsible
4 for all utility charges. These changes were to take effect April
5 1, 1991. (I note at this point that the leases clearly stated
6 that utilities were to be paid by the plaintiff. The Deputy
7 Minister by his letter confirms that they had until then been
8 paid by the G.N.W.T. - as agreed.)

9 The plaintiff calculates, based on her experience in the
10 housing unit to date, a total utility cost of about \$337 per
11 month over a 12 month period. Since April 1 she has been paying
12 the increased rent vis \$134.50 per month.

13 Utilities have not yet been transferred to the plaintiff's
14 name, nor has she paid for them. Ms. Perry has undertaken to
15 direct the defendant not to bill for those utilities pending
16 these reasons.

17 The plaintiff seeks relief stating that the rental increase
18 and pending charge for utilities is not in accordance with her
19 agreement and terms of employment with the defendant.

20 The defendant argues that this is a matter that should
21 properly fall under the umbrella of the Collective Agreement
22 between the Northwest Territories Teachers Association of which
23 the plaintiff is a member, and the Minister of Personnel and in
24 that the Collective Agreement makes no provision with respect to
25 housing, there is no basis for the claim.

26 Secondly, that the matter is under the jurisdiction of the
27 Rental Officer pursuant to the Residential Tenancies Act and

1 should be dealt with in that forum.

2 Thirdly, that government housing policy is determined by the
3 Executive Council which is subject to change from time to time
4 unfettered in any way.

5 Finally, that the plaintiff is seeking an equitable remedy
6 of specific performance which cannot be granted by the
7 Territorial Court.

8 Issue: On the evidence and facts before me, the issue is
9 first whether or not there was a binding contract between the
10 parties for the provision of housing upon certain terms and,
11 second, whether or not any bars exist to the enforcement of such
12 an agreement.

13 This may be determined by the application of basic contract
14 law.

15 The Collective Agreement: Article 1, paragraph 1.01, sets
16 out the purpose of the Collective Agreement between the Northwest
17 Territories Teachers Association and the Minister of Personnel
18 and in particular, "... to set forth certain terms and conditions
19 of employment relating to remuneration, work period, employee
20 benefits and general working conditions affecting members of the
21 bargaining unit." The Collective Agreement of course is binding
22 upon both the employer and employee and represents a contract of
23 employment with the plaintiff. Grievance procedures are set out
24 in S.21.01 which state, inter alia, "The grievance process is
25 designed to allow for a timely and thorough investigation of
26 disputes arising out of an alleged violation of the Collective
27 Agreement or dismissal from the public service ...". A failure

1 of the grievance procedure may lead to arbitration, and a
2 mechanism is provided for appeal. There is no other process
3 indicated for the resolution of disputes between the employer and
4 the Association.

5 There is no provision in the Collective Agreement (Exhibit
6 7) for housing.

7 The Public Service Act R.S.N.W.T. 1988, p.16, s.41 (7)
8 recites:

9
10 No collective agreement shall deal directly or
11 indirectly with

- 12 (a) the rents payable by employees or any other
13 conditions of tenure of premises let or to be
14 leased to them by, or held by them under licence
15 from the Government of the Northwest Territories;
16 or
17 (b) payment to or in respect to employees relating to
18 owner-occupied premises or premises rented or
19 leased from persons or bodies other than the
20 Government of the Northwest Territories.

21 It is argued that this section combined with the Collective
22 Agreement precludes any binding contract or agreement with
23 respect to housing and the rates payable therefor. However, as I
24 read the section applying the Interpretation Act, and giving a
25 fair and liberal and, in my view, ordinary meaning to the words,
26 this section of the Public Service Act simply states that no
27 collective agreement may deal with the question of housing -
however, that is not the same as providing that there can be no
agreement or contract with respect to housing nor is it the same
as argued by counsel, that the Minister or his delegates may not
enter into a separate contract with respect to housing with

1 individuals. That option is open.

2 On my interpretation, the issue of housing, housing
3 allowances, and the like, is not a proper subject of a collective
4 agreement but may be the subject of an individual contract
5 between the Government and an employee. The discretion to enter
6 into such contracts remains with the Minister and the employee
7 involved.

8 The Residential Tenancies Act provides in

9 S.8(1), subject to this section this Act applies only
10 to rental premises and to tenancy agreements,
11 notwithstanding any other Act or any agreement or
12 waiver to the contrary, and further, in S.8, subject to
13 this Act, this Act binds (a) the Government of the
14 Northwest Territories and its agents, whether as a
15 landlord or a tenant of rental premises, and (b) a
16 housing association and housing authority as defined in
17 the Northwest Territories Housing Corporation Act.

18 However, filed in another claim, Bryant v. G.N.W.T., which
19 is based upon similar facts and pending the outcome of this case,
20 the Rental Officer has declined jurisdiction stating:

21 "This matter would appear to fall outside the
22 jurisdiction of the Residential Tenancies Act and
23 squarely within the area of employee relations."

24 In light of these facts, and upon reviewing the law of
25 contract, I have come to the following conclusions.

26 The plaintiff was offered employment by the defendant as a
27 teacher for which she would receive remuneration and certain
benefits covered by the Collective Agreement plus other benefits
with respect to housing. Relying upon the representations of the
defendant, the plaintiff accepted the offer. In my view, there
were two elements as it were to the offer: a contract consistent

1 with the Collective Agreement and a collateral contract with
2 respect to housing benefits. The latter providing for
3 accommodation at a fixed rate, including utilities, not to exceed
4 \$600 per month for a term of one year.

5 The oral collateral contract offer was made by persons who
6 had the ostensible authority to act; the plaintiff's belief and
7 reliance upon their authority and representations was reasonable
8 and in such reliance now finds herself prejudiced by the
9 defendant's attempt to resile.

10 There was an offer, an acceptance and consideration.

11 Notwithstanding that the leases purport to contain 'the
12 entire agreement' of the parties, and to 'supercede oral
13 representations' I conclude that first, the lease(s) do not
14 reflect either parties' real intentions or the agreement of the
15 parties, therefore neither may rely upon them as a representation
16 of their true relationship, and secondly that in any event their
17 format does not preclude the Court from giving effect to the
18 parties' obligations.

19 Chitty on Contracts at p.853 et seq; (see also Lake Ontario
20 Cement Co. v. Golden Eagle Oil Co. (1974) 30 R (2d) 739).

21 While the collateral contract deals with housing and rents
22 the Residential Tenancies Act has no application insofar as the
23 issues I have to deal with. The pith and substance of the matter
24 before this Court is the law of contract which only indirectly
25 involves the Residential Tenancies Act. I am not dealing with a
26 problematic residential tenancy matter but with a contract of
27 employment. In any event, as I noted earlier, the Rental Officer

1 has declined or refused jurisdiction in this matter potentially
2 leaving the plaintiff without any remedy.

3 Significant oral representations were made to the plaintiff
4 with respect to anticipated costs of living as they related to
5 her housing costs. These representations were made on a
6 continuing basis either actively made or acquiesced to by all
7 levels of the Territorial bureaucracy that the plaintiff dealt
8 with. Those representations, I find, were to the effect that the
9 plaintiff was entitled to one year's occupancy at an agreed rate
10 including utilities of \$600 ultimately refined to \$591 per month;
11 that the oral representations were made by individuals who had
12 the ostensible and apparent authority to bargain on behalf of the
13 defendant and make those representations. These individuals were
14 throughout the most senior members of the Government of the
15 Northwest Territories that the plaintiff dealt with. If they did
16 not have the real authority to make those representations they
17 certainly held themselves out as having that authority under
18 circumstances in which the plaintiff could reasonably rely upon
19 them.

20 I find further that in fact in making her decision to come
21 to the Northwest Territories and take up her teaching position in
22 Fort Smith that she did rely upon those representations and
23 further that her reliance was reasonable and under all of the
24 circumstances a very important consideration for her in
25 ultimately deciding to move North.

26 Having found the existence of an oral contract involving an
27 aspect of the plaintiff's employment, I turn now to the question

1 of damages.

2 In my view the defendant clearly breached its contractual
3 relationship with the plaintiff by unilaterally purporting to
4 change the terms and conditions of the collateral contract by
5 raising rents on April 1st, 1991 and purporting to make the
6 plaintiff liable for the utility cost at a rate of approximately
7 \$300 per month to this date. The damages as a result of this
8 breach of contract amount to the difference in rent paid since
9 April 1st, that is to say the difference between \$591 and \$724.50
10 being \$132.50 multiplied by the number of months such increase
11 was paid (3). As of June 1st, therefore, the plaintiff's damages
12 total \$397.50. She shall have judgment for that amount.

13 In my view, the defendant has a continuing obligation to
14 provide the accommodation currently occupied by the plaintiff at
15 a rate of \$591 per month including utilities until September 24,
16 1991. Failure to comply with its contractual obligations will
17 entitle the plaintiff to file additional claims for damages as
18 she may be advised.

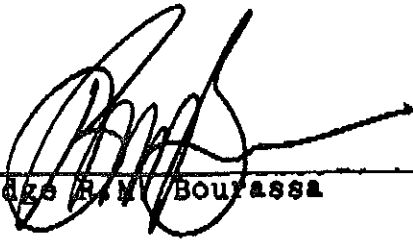
19 Finally, the defendant has argued that the plaintiff's
20 action is in the nature of one for specific performance and
21 beyond the jurisdiction of this Court. In light of my rulings,
22 it is not necessary to address this issue, nor do I wish to
23 volunteer an opinion based upon what would have to be independent
24 research. Such a matter would best be explored by counsel for
25 both sides making full argument before the Court.

26 The plaintiff shall have her costs.

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Judgment accordingly.



Judge R. M. Bourassa