

SUPREME COURT OF YUKON

Citation: *Wright v Yukon (Director of Public Safety and Investigations)*,
2023 YKSC 15

Date: 20230327
S.C. No. 20-A0113
Registry: Whitehorse

Between:

Celia Erin Bunbury Bainbridge Wright

Petitioner

And

Government of Yukon (Director of Public Safety and Investigations)

Respondent

And

Canadian Civil Liberties Association

Intervenor

Before Chief Justice S.M. Duncan

Counsel for the petitioner

Vincent Larochelle

Counsel for the respondent

Kelly McGill and
Amy Porteous

Counsel for the intervenor

Brent Olthuis and
Fraser Harland¹

ENDORSEMENT

[1] The parties cannot agree on the amount of costs to be awarded against the Yukon government after their unsuccessful application to dismiss Celia Wright's petition for lack of standing. That decision was issued on October 22, 2021².

¹ As the intervenor is not entitled to costs, counsel did not participate in this matter.

² *Wright v Yukon (Director of Public Safety and Investigations)*, 2021 YKSC 54.

[2] Costs against the Yukon government were ordered to be paid forthwith, in any event of the cause, on a party and party basis. This was decided by the Court on August 22, 2022, after written submissions³.

[3] The parties are currently unable to agree on the following points:

- a) the applicable tariff
- b) the scale on which costs should be assessed
- c) the appropriate numbers of units
- d) whether costs can be claimed for work done by support staff.

The parties have provided written submissions. I will address each point below.

a. Applicable tariff

[4] Amendments to the *Rules of Court* of the Supreme Court of Yukon (the “*Rules*”), including the costs tariff which is set out in Appendix B to the *Rules*, came into effect on October 31, 2022 (OIC 2022/168). The amounts under the amended tariff are higher than the previous tariff, which was in place since 2009 (OIC 2009/65) [2009 – Scale A – \$60, Scale B – \$110, Scale C – \$170; and 2022 – Scale A – \$70, Scale B – \$130, Scale C – \$200].

[5] The relevant transitional provisions in OIC 2022/168 say the Appendix B from OIC 2009/65 applies to:

(a) orders for costs made before the updated *Rules* come into force;

... and

(d) all assessments related to those orders, settlements and costs.

³ *Wright v Yukon (Director of Public Safety and Investigations)*, 2022 YKSC 38.

[6] Counsel for Celia Wright says because there was no order for costs and no assessment, the Appendix B tariff under OIC 2022/168 must apply.

[7] Counsel for the Yukon government says there was an order for costs in the decision dismissing the application to dismiss on October 22, 2021, and in the follow-up decision about the nature and timing of costs in August 2022, when the Appendix B tariff under OIC 2009/65 was in place. The failure of the parties to agree on the quantum of costs before the Appendix B tariff under OIC 2022/168 came into effect is insufficient to allow the 2022 tariff to apply.

[8] Here, the wording of the transitional provisions is clear – the OIC 2009/65 applies to orders for costs made before OIC 2022/168 came into effect. I agree with the Yukon government that orders for costs were made by the judgment in October 2021 that determined who would be paying costs to whom, and by the additional orders in August 2022 about the nature and timing of payment of the costs. Both of these were made before the amendments to the Appendix B tariff came into effect under OIC 2022/168.

[9] The 2009 tariff will be applied in this case.

b. Scale of Costs

[10] Counsel for Celia Wright says the costs should be calculated on the basis of Scale C (\$170/hour), to be applied to a matter of more than ordinary difficulty. His reasons are: the complexity was evident from the Court's decision; he prepared a significant number of affidavits, even though they were ultimately ruled inadmissible; and this kind of application was the first of its kind in the Yukon, requiring research from outside the Territory.

[11] Counsel for Yukon government says Scale B, to be applied to a matter of ordinary difficulty, should be used for two reasons: first, Celia Wright did not request or obtain an order for Scale C costs when the matter was before the Court in August 2022 and should not be able to do so now. Section 2(d) of Appendix B (under both OIC 2009/65 and OIC 2022/168) provides that where an order for costs is made without fixing a particular scale, Scale B applies. Second, the application to dismiss was based on one question – that is, whether Celia Wright had standing. The hearing lasted just over ½ a day.

[12] I agree with the Yukon government. This was a matter of ordinary difficulty. The decision was limited to an analysis of the standing issue, where the law was clear and it required primarily the application of the law to the facts. The preparation of affidavits does not make the matter more than of ordinary difficulty. Further, there are many legal issues that have been decided elsewhere and not yet in the Yukon. It is common to rely on authorities from outside the Yukon and this does not make a matter complex. Finally, counsel should and could have requested Scale C costs earlier than at this stage.

[13] Costs shall be calculated on the basis of Scale B.

c. Appropriate Units

[14] The Yukon government objects to the following units:

- 1A – correspondence, conferences, instructions, investigations, or negotiations before the proceeding commenced – 10 units.

Ruling: No units. 10 units is excessive as the costs here relate to the application to dismiss and there was nothing for Celia Wright or her counsel to do until they received the Yukon government's application.

- 1B – correspondence, conferences, instructions, investigations or negotiations occurring between the commencement of the proceeding and its completion not otherwise covered – 20 units.

Ruling: 10 units to cover the preparation of the outline for the hearing.

- 1C – costs to enforce “any final order obtained in a trial or hearing” – 3 units.

Ruling: No units. There is nothing for Celia Wright or her counsel to do after a dismissal of an application to strike her petition.

- Lines 20 and 21 – one day’s attendance before a clerk to assess costs – 4 units; and preparation for that attendance – 2 units.

Ruling: Two units. There was no assessment before a clerk, but there were written submissions for costs that can be considered under preparation.

- Lines 22 and 23 – preparing for June 4, 2021 case management conference – 4 units; and attending same case management conference – 7 units.

Ruling: 3 units, for preparation and attendance at the case management conference. This case management conference was scheduled for one hour.

- Line 29 – process for payment in and out of court – 1 unit.

Ruling: 1 unit, as counsel will need to spend some time in receiving payment of the costs.

d. Work Done by Support Staff

[15] Counsel for Celia Wright has claimed a disbursement of \$112.50 for paralegal work (draft consent order, orders, bind, print, and file materials).

[16] I agree with the Yukon government that these are not recoverable under the tariff. There is no provision for support staff costs.

Conclusion

[17] Costs shall be calculated on the basis of the 2009 tariff and Scale B.

[18] The adjustments to 1A, 1B, 1C, Lines 20, 21, 22, 23, and removing the paralegal disbursement in the bill of costs prepared by counsel for Celia Wright as noted above will be made. Lines 18 and 19 will remain as prepared by counsel.

DUNCAN C.J.