

IN THE SUPREME COURT OF THE YUKON TERRITORY

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BETWEEN:

SUPREME COURT OF THE

JUN 01 2001

YUKON TERRITORY

SIMON EDWARD GRENNAN, ADMINISTRATOR OF  
THE ESTATE OF MARY-ANN GRENNAN, DECEASED

Plaintiff

- and -

DR. SUSAN ALTON, DR. LYLE GALLOWAY,  
DR. DANUSIA KANACHOWSKI, DR. ALAN REDDOCH,  
WHITEHORSE GENERAL HOSPITAL, NURSE JANE DOE 1,  
NURSE JANE DOE 2, NURSE JANE DOE 3, NURSE JANE DOE 4,  
NURSE JANE DOE 5, NURSE JANE DOE 6, NURSE JANE DOE 7

Defendants

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DIRECTIONS AS TO COSTS AND TO AN INTEREST ADJUSTMENT  
OF THE HONOURABLE MR. JUSTICE IRVING

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COUNSEL:

R.D. Gibbens and Robert Garson  
For the Plaintiff

C.E. Hinkson, Q.C. and N.L. Trevenhan  
For the Defendant - Dr. Reddoch

J.C. Grauer  
For the Defendant - Whitehorse General Hospital

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**DIRECTIONS AS TO COSTS AND TO AN INTEREST ADJUSTMENT  
OF THE HONOURABLE MR. JUSTICE IRVING**

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[1] The Plaintiff seeks a direction that its taxable costs should be calculated on Scale 4 (for matters of more than ordinary difficulty or importance) instead of Scale 3 (for matters of ordinary difficulty or importance).

[2] The Defendant Reddoch contends that the costs should be calculated on Scale 3, and the Defendant Hospital urges that costs assessed against it should be calculated on Scale 2 (matters of less than ordinary difficulty or importance).

[3] While the trial of the action lasted for several weeks, I do not consider that it involved issues beyond Scale 3 (for matters of ordinary difficulty or importance); the trial was clearly important to the parties, but did not involve issues of general public importance. Nor do I think that the claim against the Hospital was other than one of ordinary difficulty or importance (Scale 3).

[4] The Plaintiff also submitted that a pre-trial application before Moreau, J. on a question of law about the *Yukon Survival of Actions Act* and as to whether the Alberta Court of Appeal decision in *Duncan Estate v. Baddely* (1997), 196 A.R. 161 represents the Law of the Yukon was an important and difficult issue which should justify costs on Scale 4. Moreau, J. apparently directed that costs of the application should be costs in the cause. Whatever importance and difficulty was involved in that pre-trial application, it did not make the trial before me of greater difficulty and importance beyond that contemplated in Scale 3.

**Interest Adjustment**

[5] The actuary, whose calculations I had accepted, had computed the damages according to the principles set out in *Duncan Estate v. Baddely, supra*, up to the time of trial. All parties agree that the damages should be updated from the start of the trial (September 5, 2000) to the date when the Reasons for Judgment were filed (February 28, 2001).

[6] The Plaintiff submits that the loss of earning capacity should be adjusted at the registrar's rates from September 5, 2000 to February 28, 2001.

[7] Both Respondents submit that the adjustment should be at the registrar's rates, less one-half of one percent (-½%), pursuant to *Unruh v. Webber* [1994] B.C.J. No. 467 (B.C.C.A) which stated:

“... However, both Mr. Justice Shaw and Mr. Justice Low used the registrar's rate of interest and did not require actuarial evidence.

Mr. Berardino objects to that course on the basis that the actuarial evidence would yield a lower return.

Assuming that to be accurate, we would allow interest at the registrar's rate for the period in question less one-half of one percent."

[8] On this issue, counsel for the Defendants submit:

"...because the amount of interest claimed by the plaintiff would unquestionably exceed the kind of adjustment the actuary would have made..."

[9] Counsel for the Plaintiff challenges this statement saying:

"It is not clear how the actuarial calculations in this case would be overvalued by the use of registrar's rates. The defendants have not even attempted to offer any argument in that regard. Unruh was argued at the appellate stage, the defendants in this case are still at the trial stage and they have chosen not to put any evidence before the Court to suggest that the use of registrar's rates would overvalue the claim. Registrar's rates reflect the cost of money. A loss of \$1 on June 1 is brought to a monetary equivalent on June 14 by adding two weeks of interest at the registrar's rates."

[10] No material has been provided to me to suggest that the use of the registrar's rates would overcompensate the Plaintiff.

[11] Accordingly, I direct that the Plaintiff's damages for loss of earning capacity should be adjusted at the registrar's rates for the period after the start of trial until Reasons for Judgment were filed.

DATED at WHITEHORSE, YUKON  
this Day of JUNE, 2001

*H. L. Irving*

IRVING, J.A.  
DEPUTY JUDGE