

# COURT OF APPEAL FOR YUKON

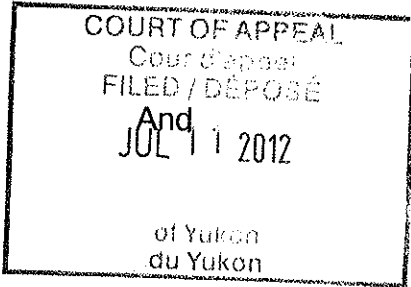
Citation: *Toquero v. Ramirez*  
2012 YKCA 7

Date: 20120606  
Docket: CA11-YU688

Between:

**Benjamin Sarmiento Toquero**

Respondent  
(Plaintiff)



**Evangeline Ramirez**

Appellant  
(Defendant)

Before: The Honourable Mr. Justice Groberman

On appeal from: Supreme Court of the Yukon Territory, November 2, 2011,  
(*Toquero v. Ramirez*, Whitehorse registry No. 10-D4253)

## Oral Reasons for Judgment

Counsel for the Appellant:	In Person
Counsel for the Respondent:	Norah Mooney
Place and Date of Hearing:	Whitehorse, Yukon Territory June 6, 2012
Place and Date of Judgment:	Whitehorse, Yukon Territory June 6, 2012

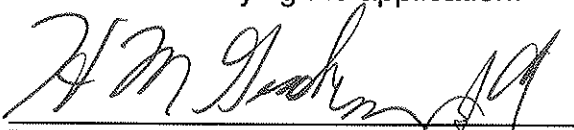
[1] **GROBERMAN J.A.:** This is an application for a stay of judgment given by Gower J. cited as 2011 YKSC 81. That judgment dates from November of 2011.

[2] The main grounds of appeal appear to be factual in nature. There is also a ground of appeal suggesting that Gower J. ought to have recused himself on the basis that his former law partner of many years ago was involved in the litigation. There is also an interesting question of interpretation with respect to the *Family Property and Support Act*, R.S.Y. 2002 c. 83.

[3] The first hurdle that Ms. Ramirez must satisfy in this kind of a case is to show that there is a meritorious appeal in the sense of an appeal that is arguable or has a good prospect of success. For most of the grounds of appeal, I am not convinced that she is able to meet this requirement. The statutory interpretation question may be an arguable ground, but it affects only a small part of the order.

[4] From my standpoint, the most important question on the current application is that of whether the appellant is pursuing the appeal with due diligence. I have already said that the judgment dates from November 2011. There have been no documents filed other than the notice of appeal. There is no appeal record. Although there is, apparently, some hope that this matter can be put on the November sitting of the Court of Appeal, I see no sign that that is a likelihood at this stage. Without even appeal records or transcripts having been filed. I am not convinced that the appeal is being proceeded with on an expeditious basis.

[5] I am also not convinced that a stay is necessary either to preserve the subject matter of the appeal or to prevent hardship. The law is, generally, that a respondent is entitled to the fruits of a judgment, pending appeal. In this case, in my view, the grounds for a stay have not been made out and I am denying the application.

  
The Honourable Mr. Justice Groberman