

**IN THE SUPREME COURT OF THE YUKON TERRITORY**

BETWEEN:

SUSAN BURTON

Plaintiff

AND:

WESTFAIR FOODS LTD.  
dba THE REAL CANADIAN SUPERSTORE

Defendant

Daniel Shier

For the Plaintiff

Keith Parkkari

For the Defendant

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**MEMORANDUM OF RULING  
DELIVERED FROM THE BENCH**

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[1] GOODWIN J. (Oral): Considering the arguments of both sides, I find the plaintiff's counsel did not give proper notice as required under Rule 40A and alluded to in the Yukon *Evidence Act*, R.S.Y. 1986. c. 57.

[2] The defence counsel, on the other hand, neglected to complain.

[3] The consequence of this situation is that both counsel are in default of respecting Rule 1(5) and have forgotten to take into consideration the fact that judges have taken the time to hold a pre-trial conference and scheduled a pre-settlement

conference and have frozen three days for this hearing, which could have the consequence of depriving other people of trial time if a postponement was requested.

[4] I repeat that both parties have the right to be heard in a timely fashion. This procedural matter being raised at this time, as I have said, does not respect Rule 1(5), which states:

The object of these rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits.

[5] However, in consideration for the parties and in respect of the objectives of the rules, I declare that Rule 40A must prevail. The defendant's objections are accepted as they relate to expert opinion in each of the documents.

[6] However, I direct counsel to look at each of these documents tonight, and to report tomorrow with a new set of documents showing what is acceptable in these documents; because documents are part facts and are part opinion.

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GOODWIN J.