

COURT OF APPEAL FOR YUKON TERRITORY

Citation: *Heynen v. Yukon Territory (Government)*,
Citation Number 2010 YKCA 1

Date: 20100105
Docket: 07-YU588

Between:

Klaas Heynen and Kusawa Outfitters Ltd.

Appellants
(Plaintiffs)

And

**Government of the Yukon Territory and The Honourable Dale Eftoda,
(Former) Minister of Renewable Resources**

Respondents
(Defendants)

Before: The Honourable Madam Justice Newbury
The Honourable Madam Justice Saunders
The Honourable Mr. Justice Chiasson

Supplementary Reasons to: Court of Appeal for the Yukon Territory,
October 6, 2008 (*Heynen v. Yukon Territory (Government)*),
2008 YKCA 14, Docket No. 07-YU-588)

Counsel for the Appellants:

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P. Gawn
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Place and Date of Hearing:

Vancouver, British Columbia
June 19, 2008

Place and Date of Judgment:

Vancouver, British Columbia
October 6, 2008

Date of Supplementary Judgment:

January 5, 2010

Supplementary Reasons by the Court

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**COURT OF APPEAL
REGISTRY**

Supplementary Reasons for Judgment of the Court:

- [1] On October 6, 2008 in reasons for judgment indexed as 2008 YKCA 14, we allowed the appeal of Mr. Heynen and Kusawa Outfitters Ltd. The form of the order is in dispute.
- [2] The appellants would include in the order a term quashing the decision of the Minister revoking the outfitting concession in issue, and in addition a provision that the matter of renewal of the outfitting concession be remitted to the Minister for consideration. The respondents say this additional phrase should not be included.
- [3] On the matter of costs, the parties agree the appellants are entitled to costs of the appeal (except as to the application to adduce fresh evidence) and costs in the Yukon Supreme Court. They disagree, however, on the scale of costs in the Yukon Supreme Court. The appellants seek double costs after a certain date on the basis of an offer to settle; the respondents say the usual scale should apply.
- [4] In our reasons at para. 25, we said "the appellants should obtain the relief sought". In para. 26 of our reasons we said we would "set aside the order and grant an order quashing the Minister's decision of March 27, 2002, revoking the Concession in issue".
- [5] The matter should have been commenced by a petition for a prerogative writ, but was not. Nonetheless it proceeded through to us. In the statement of claim the appellants sought an order that "the revocation of the concession by the Minister be reviewed and set aside" and "the current Minister of the Environment be directed to issue an Outfitting Concession to the Plaintiff for Wildlife Area 17".
- [6] By the reasons for judgment, we quashed the decision to revoke the concession, as sought in the petition, that is, the claim for *certiorari* succeeded, but we did not order relief in the nature of *mandamus*. The order should therefore be in these terms:
- ... the appeal be allowed and that the Minister's decision of March 27, 2002 revoking the outfitting concession for Yukon Outfitting No. 17, be quashed.

[7] In reciting the order in this fashion, we do not mean to say the renewal application should not go ahead. In our view the order made restores the *status quo*, thereby putting the parties in the position they were in just prior to the impugned decision.

[8] On the question of costs, it is our view that this is not an appropriate case for double costs. The action was wrongly commenced by writ and statement of claim. As we have indicated, given the nature of the relief sought, it should have been commenced by petition for prerogative writs. In such a case, an award of double costs is not appropriate because of the special nature of the proceeding and the absence of a true *lis* between the parties.

[9] Accordingly, the order for costs should read:


... the appellants do recover the costs of the appeal, except costs in respect of the appellants' fresh evidence application, and of the proceedings in the court below from the respondents forthwith after assessment.



The Honourable Madam Justice Newbury



The Honourable Madam Justice Saunders



The Honourable Mr. Justice Chiasson