

SUPREME COURT OF YUKON

Citation: *Knol v. Tamarack Inc.*,
2013 YKSC 47

Date: 20130605
S.C. No.: 12-AP0004
Registry: Whitehorse

Between:

LUCAS KNOL

Petitioner

And

TAMARACK INC.

Respondent

Before: Mr. Justice L.F. Gower

Appearances:

Lucas Knol
André W.L. Roothman

Self-represented
Counsel for the Respondent

RULING ON COSTS

[1] This ruling follows my reasons for judgment in this matter cited at 2013 YKSC 27. In that decision I granted Mr. Knol's application for *certiorari*, and quashed a discharge following a preliminary inquiry on a charge of fraud contrary to s. 380(1) of the *Criminal Code* (the "Code"). I also made a further order of *mandamus* that the preliminary inquiry judge commit the accused to stand trial as charged.

[2] Mr. Knol is privately prosecuting the offence and is now attempting to settle the terms of the order resulting from those reasons. The issue in dispute is that he is seeking costs against the accused for the successful *certiorari* application. The accused,

Tamarack Inc., submits that no such costs should be ordered as this matter is criminal in nature. Mr. Knol submits that this is a civil matter, because the application was governed by Rule 54 of the Yukon *Rules of Court* for civil matters, and that pursuant to Rule 60(9), costs of and incidental to a proceeding follow the event, unless the court otherwise orders. Since I did not order otherwise in my reasons for judgment, Mr. Knol maintains that he is entitled to costs.

[3] Mr. Knol is not entitled to costs. This is a criminal proceeding. The jurisdiction to conduct the judicial review of the discharge following the preliminary inquiry arises from s. 774 in Part XXVI of the *Code*. Because the *Code* does not provide for the procedure to conduct such a judicial review, it was necessary to resort to Rule 54 of the Yukon *Rules of Court*. The use of civil rules of procedure to guide the conduct of a criminal proceeding does not, however, serve to convert that criminal proceeding into a civil matter: see *Newfoundland and Labrador v. Canadian Broadcasting Corp.*, 2006 NLCA 21, at para. 12.

[4] Further, costs in criminal matters are only awarded in exceptional and remarkable circumstances, and usually against the prosecution where there has been a marked and unacceptable departure from reasonable standards of conduct: see *R. v. 974649 Ontario Inc.* [2001] 3 S.C.R. 575, at paras. 85 and 87.

[5] Finally, whether costs are ever available against an accused appears to be undecided. To the extent that a Superior Court may have inherent jurisdiction to make such an award, exceptional and remarkable circumstances would still be required: see *R. v. Chapman*, (2006), 78 O.R. (3d) 778 (CA), at para.15. No such circumstances exist in this case.

[6] The order resulting from my reasons for judgment shall be settled as follows:

“THIS COURT ORDERS that:

1. The discharge ordered by the preliminary inquiry judge on September 10, 2012 is quashed; and
2. This matter is remitted back to the preliminary inquiry judge together with an order of *mandamus* directing that he commit the accused to stand trial as charged.”

Gower J.