Citation: Pausche v. B.C. Hydro et al. 2000 BCSC 1556

Date: 20001024
Docket: C976377
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ALBERT PAUSCHE, as representative plaintiff,

PLAINTIFF

AND:

BRITISH COLUMBIA HYDRO & POWER AUTHORITY and DISTRICT OF MAPLE RIDGE

DEFENDANTS

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE BAUMAN

Counsel for the Plaintiff	D.A. Klein and J.G. Pearce
Counsel for the Defendant, B.C. Hydro	M.S. Oulton
Counsel for the Defendant, District of Maple Ridge	S.J. Berezowsky
Date and Place of Hearing/Trial:	13 October 2000 Vancouver, B.C.

[1] On 29 November 1995 the South Alouette River in the District of Maple Ridge overflowed its banks.

[2] A number of private properties within the river's floodplain were inundated and property damage ensued.

[3] The flooding was allegedly caused by the defendant, B.C. Hydro, spilling water over the Alouette Dam which was maintained by the utility as part of its undertaking.

[4] Albert Pausche is a landowner who alleges property damage from the flood. He commenced this action under the ***Class Proceedings Act***, R.S.B.C. 1996, c. 50.

[5] Mr. Pausche alleges negligence in the operation of the Alouette Dam by B.C. Hydro and on the part of the District of Maple Ridge, the local municipal government. As to the latter, Mr. Pausche alleges that the District - through its employees, servants or agents - was negligent in failing to warn, or adequately warn, he and the proposed class members of the impending flood and that this failure caused or exacerbated the damages suffered in the flood.

[6] The plaintiff proposes that the class be divided into two subclasses: the Resident Subclass, being all persons or entities who are residents of British Columbia on the date of certification and who sustained damages as a result of the

flood, and the Non-resident Subclass, being comprised of all other persons or entities who suffered damage.

[7] The plaintiff proposes that the common issues be resolved in the first stage of the action. These include the issues of the negligence of B.C. Hydro and of the District of Maple Ridge.

[8] The second stage will deal with issues individual to each class member, including his or her right to membership in the class and the amount of damages sustained.

[9] The District brings this Rule 18A application alleging that the individual plaintiff's claim against it is barred by the provisions of ss. 285 or 286 of the ***Local Government Act***, R.S.B.C. 1996, c. 323.

[10] These sections provide:

> **Limitation period for actions against municipality**
>
> **285** All actions against a municipality for the unlawful doing of anything that
>
> (a) is purported to have been done by the municipality under the powers conferred by an Act, and
>
> (b) might have been lawfully done by the municipality if acting in the manner established by law,
>
> must be commenced within 6 months after the cause of action first arose, or within a

> further period designated by the council in a particular case, but not afterwards.
>
> **Immunity unless notice given to municipality after damage**
>
> **286** (1) A municipality is in no case liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained, is delivered to the municipality within 2 months from the date on which the damage was sustained.
>
> (2) In case of the death of a person injured, the failure to give notice required by this section is not a bar to the maintenance of the action.
>
> (3) Failure to give the notice or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the Court of Appeal, believes
>
> (a) there was reasonable excuse, and
>
> (b) the defendant has not been prejudiced in its defence by the failure or insufficiency.

[11] The plaintiff's primary position in opposition is the submission that it is premature to consider the District's application. The plaintiff suggests that the applicability of any limitation or notice provision to individual claims ought properly to be considered, possibly summarily, in the second stage of the proceeding, after the trial or other disposition of issues common to the class.

[12] The plaintiff says that it will avail the District little to strike the action against it by Pausche, because counsel will simply substitute a new plaintiff, not exposed to any limitations infirmity under which Pausche might labour, and thereafter carry on.

[13] Alternatively, Pausche might still carry on and seek certification of the proceeding against both B.C. Hydro and the District.

[14] This latter submission is somewhat novel, given that it presupposes that the District has an answer based on ss. 285 or 286 of the ***Local Government Act*** to Pausche's claim. It is based on the decision in ***Harrington v. Dow Corning Corp.,*** [1996] 8 W.W.R. 485; 22 B.C.L.R. (3d) 97; 31 C.C.C.T. (2d) 48; 48 C.P.C. (3d) 28.

[15] Turning to ss. 285 and 286, it will be seen that s. 285, to the extent that it applies to the cause of action, becomes an issue common to the class if it be shown that no one commenced an action against the District within the six month period.

[16] To determine that, I granted the District leave to file a further affidavit, and that affidavit discloses that no such actions have been commenced.

[17] As to s. 286, the plaintiff says that because of the "reasonable excuse" proviso, its applicability comes to be determined on an individual claim basis.

[18] I turn first to consider whether the s. 286 defence advanced against Pausche should be adjourned until after the certification hearing and if the action is certified, further adjourned to the second stage of the action.

[19] The plaintiff says that this procedural question is one of first impression, at least in British Columbia in the context of class proceedings.

[20] The plaintiff has properly brought to my attention Justice Montgomery's decision in ***Burke v. American Heyer-Schulte Corp.*** (1994), 25 C.P.C. (3d) 177 (Ont. C.A. Gen. Div.).

[21] Prior to the certification hearing, Montgomery J. gave effect to the defendant's motion to strike the action based on a limitations defence found to apply against the proposed class plaintiff.

[22] It was a pyrrhic victory for the defendants because a new action was immediately started by another representative plaintiff who was not susceptible to the limitations defence.

[23] The plaintiff here says that such machinations are neither necessary nor to be encouraged. He points to this court's decision in ***Harrington*** (*supra*). There, Justice Mackenzie (then of this court) was considering the certification of proceedings by Helen Harrington against certain manufacturers of breast implants.

[24] Under the heading "***Helen Harrington as Representative of the Class***", Mackenzie J. said this (at para. 51):

> 51 Turning to the requirements of s. 4(1)(e), I am satisfied that Ms. Harrington does not have, on the common issues, an interest which is in conflict with other class members. I find that she will fairly and adequately represent the interests of the class, with one possible qualification. Ms. Harrington does not allege personal experience with breast implants of several manufacturers and some defendants contend that she cannot represent claims against those manufacturers. The primary cause of action to which the common issue relates is negligent manufacture and distribution. Negligence is a cause of action which involves the manufacturers severally and it may be appropriate to divide the class into subclasses by manufacturer, with separate representatives for each subclass. That appears to have been the procedure adopted in *Bendall*. I will hear further submissions on this aspect of class representation after counsel have had an opportunity to consider their position in the light of the common issue set.

[25] It will be seen that the learned judge certified a proceeding in which the representative plaintiff was

acknowledged not to have a cause of action against certain of the defendants.

[26] That is authority here, says the plaintiff, for eventually certifying this proceeding against B.C. Hydro and Maple Ridge and for accordingly leaving the s. 286 issue for resolution during the individual issues stage.

[27] In considering the timing of the consideration of the s. 286 issue, I have considered the decision of then Justice Brenner in ***Edmonds v. Actton Super-Save Gas Stations Ltd.***, (1996), 5 C.P.C. (4th) 101. There my colleague considered the interplay between the ***Rules of Court***, in particular, Rule 34, and the ***Class Proceedings Act*** (at paras. 11 to 15 inclusive):

> 11 The real issue to be decided is whether, as contended by the plaintiff, in an action commenced as a class proceeding the first step of the action must be a certification hearing. The plaintiff argues in response to these applications that at the certification hearing the plaintiff is obliged to show that, *inter alia*, the pleadings disclose a cause of action. The plaintiff further says that for that reason the defendants will be at liberty to advance the arguments that they would advance on a Rule 34 motion at the time of the certification hearing and if the defendants are successful, in the words of plaintiff's counsel, the Rule 34 question or issue "will be it."
>
> 12 In my view an action commenced as an intended class proceeding is, prior to certification, an ordinary action governed by the *Rules of Court*. The Act defines "class proceeding" as a proceeding certified as a

> class proceeding. Therefore until so certified, the action is an ordinary proceeding to which the *Rules of Court* apply. I note that even after certification section 40 provides that the *Rules of Court* continue to apply to the extent they are not in conflict with the Act. The defendants say that the pleadings do not as a matter of law disclose a cause of action and to establish this seek a Rule 34 hearing.
>
> 13 In my view, there is no inconsistency and indeed it is preferable to have the Rule 34 application argued prior to the certification hearing.
>
> 14 Notwithstanding the fact that this is an intended class proceeding, it is nonetheless important not to lose sight of a very basic objective of our litigation process in British Columbia. Rule 1(5) states that the object of the *Rules of Court* is to "secure the just, speedy and inexpensive determination of every proceeding on its merits". This Rule applies even after certification to the extent that it does not conflict with the Act.
>
> 15 Rule 34 exists to achieve this object in appropriate cases. However I do not believe there is any reason to suspend the operation of Rule 34 simply because the action is filed as an intended class proceeding. In my view parties ought to be actively encouraged to bring applications under Rule 34 prior to certification hearings in appropriate cases.

[28] It is to be noted that in ***Edmonds,*** the proposed question of law for disposition under Rule 34 was, in any event, an issue common to all within the proposed class, and this is potentially not the case with respect to the s. 286 issue in the proceedings before me.

[29] Two cases decided in this court suggest that it is not inappropriate to consider individual limitations defences in the second stage of the proceeding.

[30] In ***Chace v. Crane Canada Inc.*** (1996), 26 B.C.L.R. (3d) 339; 32 C.C.L.T. (2d) 316; 5 C.P.C. (4th) 292 (S.C.), appeal dismissed (1997) 44 B.C.L.R. (3d) 264; 14 C.P.C. (4th) 197 (C.A.), the plaintiffs sued in negligence for damages after they suffered water damage to their homes when toilet tanks manufactured by the defendant cracked. The certification application was allowed. The court was of the view that the negligence issue offered a sufficient degree of commonality to be characterized as a common issue.

[31] Justice Mackenzie concluded (at para. 23):

> 23 Section 4(2) of the *Act* directs that the court must consider all relevant matters including certain specific factors therein listed. These include "whether questions of fact or law common to the members of the class predominate over any questions affecting only individual members" and, "whether other means of resolving the claims are less practical or less efficient". I have discussed above the relative importance of the common issue - negligence, compared to the individual issues of causation and damages. There is no evidence of a significant number of potential class members wishing to prosecute separate actions or that claims involved in other proceedings will be significantly affected. I am not satisfied that other more practical or efficient means of resolving the claims of prospective class members are available or that

> class proceedings would create greater difficulties than relief sought by other means. I conclude that a class proceeding which determines the negligence issue for persons who are the members of the proposed class is the most practical and efficient means of determining that issue for those persons. It will resolve an important issue. If the negligence issue is decided in the plaintiffs' favour, remaining issues of causation, limitations and damages should be capable of summary disposition in most instances.

[32] In ***Endean v. Canadian Red Cross Society,*** [1997] 10 W.W.R. 752; 148 D.L.R. (4th) 158; 36 B.C.L.R. (3d) 350; 37 C.C.L.T. (2d) 242; 11 C.P.C. (4th) 368 (S.C.) Justice K. Smith considered the certification of proceedings against the society and the provincial and federal governments on behalf of a class who had received tainted blood products.

[33] My colleague referred to the society's submission that individual issues, including the determination of the effect of limitation periods, in individual cases heavily predominated over the common issues.

[34] He then stated (at para. 54):

> 54 In my view, the intention behind these provisions of the *Act* is to put more emphasis on the goal of access to justice than on that of judicial economy. That was the approach taken in *Harrington*, *supra*, where a class proceeding was certified despite the many unresolved, difficult, individual issues associated with establishing claims arising out of allegedly defective breast implants. Accordingly, the undoubted predominance of

> individual issues here is not in itself fatal to the application.

[35] If the need to determine the effect of limitation periods in individual cases is not fatal to a certification application, it seems to me to follow that it is appropriate to address such an issue in the second stage of the proceeding, not as urged here, before the certification application and the trial of the common issues (if the proceeding is certified).

[36] On this point, I do not overlook the Court of Appeal's decision in ***Rumley v. British Columbia*** 1999 BCCA 689.

[37] There, in refusing to certify issues unrelated to sexual abuse claims by students at Jericho Hill School, Justice Mackenzie held (at para. 47) :

> [47] While not in itself decisive in my opinion, the individual dimension of the limitation issue is an additional factor weighing against certification of common issues related to causes of action that face a limitations defence.

[38] If the limitations issue is not by itself decisive in the context of certification in a particular case, it follows that it is a matter that can properly be considered later on an individual basis, after the disposition of the common issues.

[39] I have concluded that it is appropriate to adjourn the s. 286 argument generally. It can be revived in the event that the certification is refused or determined after trial or other disposition of any common issues certified for trial.

[40] That brings me to a consideration of the District's submission under s. 285 of the ***Local Government Act***.

[41] Again, that section provides:

> **Limitation period for actions against municipality**
>
> **285** All actions against a municipality for the unlawful doing of anything that
>
> (a) is purported to have been done by the municipality under the powers conferred by an Act, and
>
> (b) might have been lawfully done by the municipality if acting in the manner established by law,
>
> must be commenced within 6 months after the cause of action first arose, or within a further period designated by the council in a particular case, but not afterwards.

[42] To appreciate the argument on this issue it is necessary to reproduce two paragraphs from the Statement of Claim particularizing the District's alleged negligence:

> 15. Under the *Emergency Program Act*, S.B.C. 1993, c. 41, and amendments thereto, the municipal council [*sic*] of Maple Ridge, or the head of the municipal council of Maple Ridge, have the power to declare a state of local emergency.

> Further, subsequent to such declaration, the municipal council has the power to take appropriate steps to prevent, respond to, or alleviate the effects of the emergency. Maple Ridge had a duty of care to declare a state of local emergency in a timely manner and to take appropriate steps to prevent, respond to, alleviate and/or minimize the effects of the Flood in a timely manner.
>
> …
>
> 17. Maple Ridge had a common law duty of care to warn the Plaintiff and other Class Members. Maple Ridge had the information, resources, and powers to do so in sufficient time to save the Plaintiff and other Class Members personal injury and/or damage to property, and Maple Ridge was negligent in failing to do so at all or in a timely manner.

[43] The duty of care alleged, then, arises under statute and common law.

[44] The District relies upon a series of decisions in this court which purport to interpret and apply the Court of Appeal's decision in ***Grewal v. Saanich (Dist.)*** (1989), 60 D.L.R. (4th) 583; 38 B.C.L.R. (2d) 250; 45 M.P.L.R. 312 (B.C.C.A.).

[45] It will serve if I discuss three of the cases in this line of authority, applying what is now s. 285 of the ***Local Government Act***. They are:

> ***Antoniak v. Kamloops (City)*** (29 January 1996), Kamloops 22954; B.C.J. No. 214 (Q.L.) (B.C.S.C.);

Mulholland v. Zwietering (1998), 49 M.P.L.R. (2d) 304 (B.C.S.C.); and

Gringmuth v. North Vancouver (District) 2000 BCSC 807

[46] In ***Antoniak***, the plaintiff commenced an action against the city for flood damage arising out of a broken water main.

[47] The plaintiff alleged that his loss resulted from a municipal inspector's negligent inspection of the plaintiff's plumbing.

[48] Justice Hunter referred to ***Grewal*** (at paras. 7-8):

> [7] "It seems to me that the law is as set out in *Grewal*. In *Grewal* the defendant municipality did not have a legislated duty to inspect soil conditions and therefore was not acting pursuant to an enactment when it was allegedly negligent. In the case at bar, the municipal inspector [acted] pursuant to the enactment which is By-law 11-27, which in turn has adopted the *B.C. Plumbing Code* and the *National Building Code*, had a duty to inspect the plaintiff's plumbing. The allegation is that in performing these duties, the inspector failed to act in a manner prescribed by the By-law and those Codes.
>
> [8] I am satisfied that Section 754 applies to this claim and that the learned Provincial Court Judge reached the correct conclusion in dismissing Antoniak's claim against the City of Kamloops, because that action was commenced outside the six month limitation. Accordingly the appeal is dismissed with costs."

[49] It will be seen that my colleague applied the protection (I would call a six month limitation period at least that) of s. 285 to a case where a municipal employee was alleged to have not acted in a manner prescribed by an enactment - in that case, the applicable plumbing bylaw.

[50] That is, s. 285 was applied to a case of the allegedly negligent performance of a duty cast on the inspector by the bylaw.

[51] In my respectful opinion that is not a proper application of s. 285 of the ***Local Government Act*** and it serves to extend the six month limitation period to a broad class of cases not properly within its reach.

[52] In ***Mulholland***, Burnyeat J. simply assumed that the six month limitation period set out in s. 285 was applicable to a case of negligent building inspection by the municipality. No analysis like that undertaken in ***Antoniak*** was offered.

[53] In ***Gringmuth***, my colleague, Justice Harvey, said in the case of alleged negligence in a building inspection (at para. 11):

> 11 What is alleged here amounts to a breach of a common law duty arising under a statute. The Statement of Claim alleges negligent inspection by the District, including approval of the foundation for the buildings, and allowing construction of the

> residence which did not meet certain codes. An allegation of failure to inspect on the part of a municipal inspector with a statutory duty to inspect will fall under s. 285 (*Grewal v. Saanich (Dist.)*, *supra*. Likewise, an allegation of negligence in inspecting a building project as to conformity with building codes will fall under that section (*Mulholland v. Zwietering*, [1998] B.C.J. No. 2698. The limitation provisions of the *Municipal Act* apply here.

[54] Although he does not cite ***Antoniak***, Justice Harvey adopts a similar view of the meaning of ***Grewal***.

[55] In my respectful view, my colleagues have overlooked the crucial words in s. 285, which limit its compass. The section refers to actions against a municipality "for the unlawful doing of anything that … might have been lawfully done by the municipality if acting in the manner established by law."

[56] In each of these cases, the "unlawful doing" is the performance of a negligent inspection under the building or plumbing bylaw.

[57] What must be asked in each of these cases, but was not, is this:

> Might a negligent inspection have been lawfully done by the municipality if acting in the manner established by law?

[58] And, the answer, is clearly "no".

[59] Bylaws cannot purport to authorize the doing of negligent acts.

[60] The error has sprung from a misreading of the Court of Appeal's decision in ***Grewal***.

[61] In ***Grewal***, the plaintiffs received a building permit from the municipality and built their home on their property. Owing to unsuitable soil conditions, the home settled and the Grewals suffered damages.

[62] The municipality was found to be negligent, but the trial judge dismissed the claim on the basis of the six month limitation period set out in s. 754 of the ***Local Government Act*** (now s. 285).

[63] In holding that the section did not apply, the court said (at 254):

> Section 754 is intended to apply to actions of the municipality that purport to be done pursuant to an enactment but that fail to comply with the requirements of the enactment. The section does not apply to acts, such as the negligent driving of a motor vehicle causing injury, for which no existing legislative authority is available to make the act lawful. As long ago as 1917 Mr. Justice Murphy in *Kilby v. Point Grey*, 24 B.C.R. 107, [1917] 2 W.W.R. 206 (S.C.), drew the distinction we have made when he said at p. 108:
>
> > I agree that section 484 [now s. 754] does not apply, because if defendants did allow water to escape from their

> drains upon plaintiff's lot, such act was not one that might have been lawfully done by them if acting in manner prescribed by law.
>
> In this case, the failure to warn was not something that existing legislative authority was available to make the act lawful.
>
> [Emphasis added.]

[64] What this extract clearly shows, is that the municipality must be able to point to existing legislative authority which makes the impugned conduct, that is the negligent act, lawful.

[65] I would illustrate the proper application of the section by suggesting a case where the municipality purports to enact a bylaw under the ***Local Government Act*** expropriating land for a municipal purpose.

[66] The municipality purports to comply with the various statutory requirements and then enters the land and destroys the home on it in preparation for the municipal project.

[67] It transpires that the municipality has not properly complied with the statutory prerequisites to a valid expropriation. (There are a number under the ***Act***, the details are not important.)

[68] The expropriation bylaw is successfully attacked by the landowner and it is declared void.

[69] Setting aside considerations of colour of right, the municipality has in law trespassed and converted the landowner's property.

[70] The limitation period of six months, however, properly applies to that cause of action, because if the municipality had acted in the "manner prescribed by law" in adopting the expropriation bylaw, what would otherwise have been an unlawful act - trespass and conversion - might have been lawfully done. [This indeed was exactly the case in ***Cameron Investment & Securities Co. and Bailey v. City of Victoria***, [1920] 3 W.W.R. 1043 (B.C.S.C.). See also ***Timpany v. Revelstoke (City)*** (1986), 35 D.L.R. (4th) 729 (C.A.).]

[71] But that is not the case with the negligent inspection cases and it is not the case with the facts at bar.

[72] The point is buttressed by reference to the decision of Justice Aikins (then of this court) in ***Bergloff et al. v. District of Terrace*** (1963), 41 D.L.R. (2d) 285.

[73] There the municipality held a water licence under the then ***Water Act***, R.S.B.C. 1960, c. 405 authorizing it to divert a certain quantity of water per day. It diverted a larger quantity and thereby flooded the plaintiff's lands.

[74] It was held that the six month limitation did not apply.

[75] Justice Aikins referred to s. 738(1) of the ***Local Government Act*** (1960) (now s. 285) and said (at 287-289):

> …
>
> The next step in the argument is this: It is contended for the defendant that the diversion of water in excess of 500,000 gals. a day by the defendant municipality was something (I here quote from the latter part of s. 738(1) of the *Municipal Act*) "which might have been lawfully done by such municipality if acting in the manner prescribed by law," because it was open to the defendant municipality to have applied to the Comptroller of Water Rights under s. 15(1)(*i*) of the *Water Act* to amend its water licence to increase the maximum quantity of water which it was entitled to divert to an amount equal to or in excess of the amount of water which in fact it did divert, and if such amendment had been granted then what it did would have been lawfully done.
>
> …
>
> The fallacy in the defendant's argument is that while it is obvious that the defendant might have diverted the excess water lawfully if it had applied to Comptroller of Water Rights, and if the Comptroller had amended the defendant's water licence, it is equally obvious that the defendant might not have been able to divert the excess water lawfully if on application to the Comptroller, the Comptroller had refused to amend the licence. The real position is that the defendant might have been able to do lawfully what it did do, or it might not have been able to do lawfully what it did do, depending on whether or not the Comptroller would have granted or refused an application by the defendant to amend its licence to permit a daily diversion of water equal to or greater than the quantity of water which the defendant actually diverted. Whether or not the defendant municipality might have been able to lawfully divert the excess water which it did divert if it had acted in the manner prescribed by law and applied to the

> Comptroller, is entirely a matter of conjecture. The Comptroller might or might not have granted an amendment to the licence if such an application had been made by the defendant. Section 738(1) does not say: "which might or might not have been lawfully done by such municipality if acting in the manner prescribed by law." In my opinion what the words "which might have been lawfully done by such municipality if acting in the manner prescribed by law" mean is that the municipality properly availing itself of the processes of existing statute law could without question have done lawfully that which it did unlawfully. In the present case there is no assurance whatsoever that the municipality could have lawfully diverted the excess water which it did divert if it had applied to the Comptroller for an amendment to its licence because such amendment might have been refused.
>
> …

[76] Again, to borrow Justice Aikins' words, the question at bar is, as it should have been in the negligent inspection cases:

> If the municipality properly availed itself of the processes of the existing statute law, could it without question have done lawfully that which it did unlawfully, that is, through its negligence?

[77] And the answer is "no".

[78] The question is not simply whether it purported to perform a duty prescribed by law. (I interject to note that in any event municipal inspections under the authorizing legislation are invariably the exercise of a discretionary

power, not a mandatory duty: see for example ss. 695(1)(a)(c) and (e) of the ***Local Government Act***, R.S.B.C. 1996, c. 323.)

[79] ***Grewal*** was considered by Master Chamberlist (as he then was) in ***Cross Atlantic Developments Ltd. v. Prince George (City)*** (1996), 31 M.P.L.R. (2d) 232 (B.C.S.C.). The learned Master held (at para 17):

> 17 I believe that such is the case at bar. The alleged act of permitting water to escape from the municipality's reservoir and pump house upon the lands in question was not an act that might have been lawfully done by them if acting in a manner prescribed by law as contemplated by Section 754. In my view, the provisions of Section 754 do not apply and therefore there is no limitation issue for this court to deal with under Section 754 of the *Municipal Act*. The only limitations that would apply would be the limitation set forth in the *Limitation Act* [R.S.B.C. 1979, c. 236] and there would appear to be no problem with any limitations defence.

[80] That, in my view, makes the same point which I am endeavouring to make, at more excruciating length, here. That, I conclude, is a proper application of ***Grewal***.

[81] In light of these conflicting authorities, and the conclusions to which I personally have come when I have unburdened myself of the decisions in ***Antoniak, Mulholland*** and ***Gringmuth***, I believe that, consistent with the principles of comity discussed in ***In re Hansard Spruce Mills Limited (In Bankruptcy)*** (1954), 13 W.W.R. (N.S.) 285 (B.C.S.C.), ***Cairney***

v. Queen Charlotte Airlines Limited and MacQueen (No.2) (1954), 12 W.W.R. (N.S.) 459 and ***Leischiner v. West Kootenay Power & Light Co.*** (1983), 45 B.C.L.R. 204, (1986), 70 B.C.L.R. 145 (C.A.), I am free to say that Master Chamberlist was correct in ***Cross Atlantic Developments*** and I apply it here.

[82] In the result, I hold that s. 285 has no application to the facts of this case.

[83] The District's Rule 18A application is otherwise adjourned generally to be revived by the defendant as it may be advised in accord with these reasons.

"R.J. Bauman, J."
The Honourable Mr. Justice R.J. Bauman

24 October 2000
Vancouver, B.C.