

CANADA / JUDGMENT

Chadwick v. Canada (Attorney General)

2008 BCSC 1141

COURT

Supreme Court of British Columbia

DECIDED

20 June 2008

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2008 BCSC 1141 Chadwick v. Canada (Attorney General) IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Chadwick v. Canada (Attorney General), 2008 BCSC 1141 Date: 20080620 Docket: S065491 Registry: Vancouver Between: Linda Lee Chadwick, Jeanne Ng and Douglas Stuart Chadwick Plaintiffs And Attorney General of Canada, Enstrom Helicopter Corporation, Crane Co., Mountain Aircraft Sales & Maintenance Inc., also known as A & L Aircraft Maintenance, Art Comeault, Richard Cooper and Avco Corporation Defendants And Reta G. Honour, as personal representative of the Estate of Robert David Honour, Deceased Third Party And Richard Cooper Third Party Date: 20080620 No. S065902 Registry: Vancouver Between: Reta G. Honour on her own behalf and as personal representative of the Estate of Robert David Honour, Deceased Plaintiff And Attorney General of Canada, Enstrom Helicopter Corporation, Crane Co., Mountain Aircraft Sales & Maintenance Inc., also known as A & L Aircraft Maintenance, Art Comeault, Richard Cooper and Avco Corporation Defendants And Richard Cooper Third Party Before: The Honourable Mr. Justice Myers Oral Reasons for Judgment In Chambers August 14, 2008 Counsel for the Plaintiffs: J. Fiorante J. Thornback Counsel for the Defendant, Crane Co.: S.D. Gill S.E. Fraser Date and Place of Hearing: June 20 and August 13, 2008 Vancouver, B.C.

- [1] This is an application by the plaintiffs to compel the defendant Crane Co. to produce documents.
- [2] This action arises out of a helicopter crash which occurred in Duncan, B.C., on September 17, 2005. The crash resulted in the death of Mr. Chadwick and Mr. Honour.
- [3] The helicopter was powered by a Lycoming (now known as Avco) engine equipped with a model RG17980 fuel pump manufactured by the defendant Crane Co. The plaintiffs allege that the crash was caused by a leak in the fuel pump. They claim that the pump was defectively designed and manufactured. The plaintiffs also claim failure to warn.
- [4] The issue is whether Crane ought to be ordered to produce documents relating to two fuel pump models which were not involved in the accident; models RG9080 and RG9570.

- [5] The plaintiffs adduced evidence that the fuel pump which was in the subject helicopter - model RG17980 - has a history of leakage and that models RG9080 and RG9570 have also had leakage problems.
- [6] The mere fact that leakage has occurred in different fuel pumps from the same manufacturer cannot in and of itself make production of documents for the pumps not involved in the accident producible. There must be some nexus established between the different models in order to require such production. For example, in *Beazley v Suzuki Motor Corporation*, 2008 BCSC 850 the defendant was required to produce documents relating to a car design intended to alleviate a problem with the predecessor model which was the subject of the action.
- [7] The plaintiffs rely primarily on the following to establish the necessary nexus between the various fuel pump models:
- (a) On June 10, 2002, Lycoming issued Service Bulletin No. 529B which was a reiteration of Crane/Lear Romec Service Bulletin No. 101SB020. The bulletins stated: there have been field reports of fuel leakage past the gasket on several of the above listed fuel pumps. This condition could result in a fire hazard The listed fuel pumps included model RG17980 (the one in the helicopter which crashed) as well as models RG9080, and RG9570.
 - (b) The same bulletin advises operators of engines equipped with the Crane/Lear Romec RG17980, RG9080 and RG9570 model fuel pumps to conduct a check of the torque on the fuel relief valve cover screws and to repeat that check at various intervals as a means of addressing the fuel leakage problem.
 - (c) In 1999, Crane introduced a modified design for the relief valve cover of the RG17980, RG9080 and RG9570 models which offered "enhanced resistance to fuel leakage". The modified design was the subject of an airworthiness directive issued by the United States Federal Aviation Administration ("FAA") which applied to the subject fuel pump model as well as models RG9080 and RG9570.
- [8] In response to this material, Crane relies on two affidavits filed by engineers who were or are in the employ of the company. The two main points of these affidavits are:
- (a) It is unlikely that the crash was caused by the fuel pump; and
 - (b) While the Service Bulletins and Airworthiness Directive addressed multiple fuel pump models, the main concern of Crane, and hence Lycoming and presumably the FAA, was with respect to model 9080, which was used exclusively with a Piper aircraft. That involved different operating conditions than that of the RG17980 in helicopters. The 17980 and 9570 models were included in the service bulletins and airworthiness directive out of an abundance of caution. As counsel for Crane put it, the company felt that once one model (the 9080) was being addressed, the others might as well be addressed at the same time.

- [9] It is clear - and in argument counsel for Crane acknowledged - that models 17980, 9080 and 9570 are similar in their design. If that were not the case it would have been impossible to deal with them collectively in the Service Bulletins and Airworthiness Directive.
- [10] In my view, the plaintiff has established the necessary threshold of relevancy for production of the documents. While Crane's engineers are of the view that leaks in one model are not germane to leaks in another, I do not think the plaintiffs are bound to accept this. Rather, that is something they are entitled to test in discovery and trial.
- [11] Crane argues that the documents should not be ordered to be produced because the costs of production are too high. They rely on *Park v. Mullin*, 2005 BCSC 1813 in which Dorgan J. stated:
- [15] The decision whether to grant an order requiring production under Rule 26(10) is a discretionary one. Rule 26(10) states that the court "may order" the production of a document or documents. Counsel for the defendant asserted that where the documents may be relevant to a matter at issue, the court does not have a residual discretion other than to order that privileged documents do not need to be disclosed. However, I do not agree. The court has used its discretion to deny an application for the production of documents in the following circumstances: (1) where thousands of documents of only possible relevance are in question: *Peter Kiewit Sons Co. v. B.C. Hydro* (1982), 36 B.C.L.R. 58, [1982] B.C.J. No. 1599 (S.C.); *B.C. Milk Marketing Board v. Aquilini*, [1996] B.C.J. No. 1433 (S.C.); and (2) where the documents sought do not have significant probative value and the value of production is outweighed by competing interests, such as confidentiality, and time and expense required for the party to produce the documents: *Goldman, Sachs & Co. v. Sessions*, [2000] B.C.J. No. 65, 2000 BCSC 67.
- [12] As is clear from the above quote, and from other cases in which this principle has been applied, the discretion is only to be exercised where the documents meet the low hurdle of the Peruvian Guano test but at the same time are only of tangential relevance. In the case at bar, Crane has not established that the documents sought are only of tangential relevance.
- [13] Further, Crane has not established that it would be onerous for them to produce the documents. There is simply a conclusory statement in an affidavit to that effect. No details of the potential number of documents or the required search process have been provided.
- [14] Accordingly, I find that the plaintiffs are entitled to the documents itemized in paragraph 1(b), 1(c), 1(e), and 1(g) of the notice of motion, all with respect to fuel pump models RG9080 and RG9570.
- [15] The other items sought in the notice of motion were withdrawn during the course of the hearing.
- [16] The plaintiffs are entitled to the costs of this motion. "MYERS J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/Jdb-txt/SC/08/11/2008BCSC1141.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/chadwick-v-canada-attorney-general-2008-bcsc-1141>

Prepared on 28 October 2026 · Esheria