

CANADA / JUDGMENT

N.E.T. v. British Columbia

2018 BCCA 22

COURT

British Columbia Court of Appeal

DECIDED

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2018 BCCA 22 N.E.T. v. British Columbia

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

N.E.T. v. British Columbia,

2018 BCCA 22

Date: 20180112

Docket: CA44844

Between:

N.E.T.

Appellant

(Plaintiff)

And

Government of British Columbia, Interior Health Authority, Royal Inland Hospital, Kamloops
Mental Health & Substance Use, Dr. Kurt Buller and Dr. James Mabee

Respondents

(Defendants)

A publication ban was ordered on September 30, 2016, in the Supreme Court of British Columbia - no person may publish, broadcast or otherwise divulge the appellant's name, or other information tending to reveal his identity as connected with this action.

Before:

The Honourable Mr. Justice Fitch

(In Chambers)

On appeal from: an order of the Supreme Court of British Columbia, dated

September 29, 2017 (N.T. v. British Columbia, 2017 BCSC 1742,

Kamloops Registry No. 53209)

Oral Reasons for Judgment

Appellant appearing In Person:

N.T.

Counsel for the Respondent, Government of British Columbia:

F. de Lima

Counsel for the Respondent, Interior Health Authority

A.C. Fraser

Counsel for the Respondents, Dr. Mabey and Dr. Buller:

K. Rose

Place and Date of Hearing:

Vancouver, British Columbia

January 12, 2018

Place and Date of Judgment:

Vancouver, British Columbia

January 12, 2018

Summary:

The appellant makes various applications in relation to his appeal from an order dismissing his claim against the defendants as statute-barred. In the underlying action, the appellant alleged the defendant doctors committed negligence in relation to his certifications under the Mental Health Act, R.S.B.C. 1996, c. 288. Held:

Leave to appeal: Leave to appeal is not required. The notice of application for leave to appeal will stand as the notice of appeal.

Application for no fee status: allowed. The merit threshold for a no-fee application is low. It cannot be said on the basis of the material filed that the appeal is bound to fail.

Application for publicly funded transcripts, appeal record and appeal book: dismissed. Even if a judge in chambers has jurisdiction to make the order sought, such an order is only appropriate in civil cases if the appeal is very meritorious. It has not been shown that the appeal meets this test.

Application for publication ban: the appellant already has the relief he seeks. The court below made a publication ban with respect to the appellant's identity in 2016. Nothing suggests the ban was varied or set aside. The ban therefore endures.

Application for sealing order: dismissed. Even if a judge in chambers has jurisdiction to make a permanent order for the sealing of the Court's file, the order is unnecessary in this case. Court records are presumptively open to the public. Orders restricting public access to court records must be justified by a public interest that prevails over the public interest in open courts. The appellant adduced no convincing evidence to demonstrate that a public interest in confidentiality justifies a sealing order in this case. He provided no evidence that the absence of a sealing order will frustrate his ability to access the courts. The existing publication ban is sufficient to protect the appellant's privacy interests.

Application to have the appeal heard in camera: The division hearing the appeal, not a justice in chambers, should decide whether the appeal will be heard in camera.

I. Introduction

- [1] FITCH J.A.: The appellant, N.T., makes application for the following orders: leave to appeal the September 29, 2017, order of Justice Meiklem dismissing the action against all of the defendants as being barred by the Limitation Act, R.S.B.C. 1996, c. 266 (the "former Act"); that no fees be payable by him under Schedule 1 of Appendix C to the Court of Appeal Rules in connection with his appeal; that transcripts of the proceedings below be provided to him at no cost on or before January 31, 2018; and that the Court impose a ban on the publication of his identity or information that could disclose his identity, seal the Court file, and direct that the appeal be heard in camera.
- [2] The Province takes no position on any of the applications.
- [3] The other defendants concede that leave to appeal is not required. They oppose the making of a "no fees" order on grounds that the appeal is devoid of merit and bound to fail. They take no position on the appellant's other applications for relief.

II. Background

- [4] The action, which was commenced on July 12, 2016, concerned N.T.'s certifications under the Mental Health Act, R.S.B.C. 1996, c. 288 [MHA] between November 1, 2000, and February 19, 2013.
- [5] Dr. Mabee was the appellant's family physician until his retirement from practice on June 30, 2010. He referred the plaintiff to Dr. Buller, a psychiatrist, in October 1999 and signed one of the required medical certificates on the original certification on October 30, 2000.

The appellant was certified on multiple occasions between 2002 and 2012, although he was frequently released on extended leave subject, as I understand it, to a condition that required him to ingest his medication under the supervision of a pharmacist. He was eventually discharged from involuntary patient status by Dr. Buller on February 19, 2013.

- [6] The defendants in the underlying action applied pursuant to R. 9-7 of the Supreme Court Civil Rules for dismissal of the appellant's action by way of summary trial on the basis that it was statute-barred by the former Act. The summary trial proceeded on the footing that the former Act governed as a result of the transition provisions found in s. 30 of the Limitation Act, S.B.C. 2012, c. 13 (the "current Act").
- [7] The reasons for judgment of the court below, indexed as 2017 BCSC 1742, reflect that the parties agreed that the matter was suitable for disposition by way of summary trial.
- [8] The appellant's claim against the defendants was summarized by Meiklem J. as follows:
- [3] The plaintiff claims that Dr. Mabey and Dr. Buller were both negligent in their diagnosis and treatment of him, which consisted principally of prescribing the anti-psychotic medication Olanzapine, and enforcing his consumption of same by maintaining involuntary patient certification under the MHA. The plaintiff has consistently asserted that he does not suffer from any mental illness or infirmity. He faults these defendants for concluding that he was delusional without first investigating the veracity of his reported interventions in his life by various entities.
- [4] The Notice of Civil Claim refers to Dr. Buller and Dr. Mabey "holding", "fiduciary responsibility", as well as "duty of care responsibility". The claims against the Government of British Columbia, Interior Health Authority ("IHA"), RIH, and Kamloops Mental Health and Substance Use ("MHSU") are somewhat obscure. The claim against IHA, MHSU and RIH seems to be based on the proposition that they are vicariously liable for "permitting" injurious conduct on the part of "medical personnel". The relief sought against the Government of British Columbia is the expunging of records of "Medical Billing Services", and the plaintiff claims that the Government is jointly liable with the other institutional defendants for damages because it has failed to respond to his "requests for remedy", and because it "facilitates and abets faulty process in the form of the BC Mental Health Act's administration which wrongfully effected the plaintiff's detention and caused grievous and irreparable injury".
- [9] As the plaintiff's claims were determined to be principally medical negligence claims against the named doctors, the judge below found that, absent postponement, the limitation period is two years from the occurrence of the alleged negligent conduct.
- [10] The earliest date upon which the plaintiff's right to bring an action could be said to arise was October 30, 2000, when he was first certified and compelled to take medication. The defendants submitted that the latest date by which the limitation period could have commenced was the appellant's discharge date of February 19, 2013.

- [11] Dr. Mabey submitted that, because he retired on June 30, 2010, no cause of action against him in medical negligence could have arisen after that time. Dr. Buller submitted that his last interaction with the plaintiff was February 19, 2013, which was the latest date upon which any cause of action could have arisen against him.
- [12] The appellant advanced a number of arguments and alternative arguments below supported by voluminous written submissions.
- [13] First, he argued that the limitation period did not commence until the Interior Health Authority and the Kamloops Mental Health & Substance Use clinic closed their file in relation to him on September 1, 2015.
- [14] Alternatively, the appellant argued that he did not "discover" his claim until March 2016, when he experienced an epiphany in which he says he "came to the full realization of injuries incurred, throughout the process there was an insidious and continuous erosion of my person, but clear realization of all injuries occurred at this time". The defendants responded to this alternative position by noting that it is apparent from the appellant's conduct since 2000 that he was cognizant of the existence of a duty of care and expressed, in consistent and vigorous terms, his belief that the defendant doctors had misdiagnosed him, misapplied the MHA, and caused him injury by requiring him to take a pharmaceutical for the treatment of a diagnosed delusional disorder.
- [15] In the further alternative, the appellant argued that he was entitled to a postponement of the limitation period pursuant to s. 6(6) of the former Act. Relying on *Novak v. Bond*, [1999] 1 S.C.R. 808, the appellant argued that his circumstances were so serious, significant and compelling that it could not reasonably be said that he could bring an action within the prescribed limitation period. In this regard, the appellant said that he felt emotionally overwhelmed and unable to bring the action within the two-year limitation period.
- [16] The defendants responded to this further alternative argument by noting that the appellant pursued his complaints not only to the doctors, but also by engaging in a letter campaign in 2008 directed at MLAs and by advocating changes to the MHA. In addition, the defendants noted that the appellant filed a petition in the Supreme Court of British Columbia in 2012, prepared a 52-page affidavit in support of that petition and argued it on his own behalf. In that petition, the appellant sought an order discharging him from Royal Inland Hospital, along with ancillary orders expunging from his medical records all information associating him with a mental disorder and requiring Dr. Buller to write a letter stating that the appellant did not suffer from a mental disorder. An application for leave to appeal from the dismissal of the petition was initiated by the appellant but apparently abandoned after his discharge from involuntary patient status by Dr. Buller on February 19, 2013. The defendants also noted that, in December 2012, the appellant prepared a 42-page submission on legislative reform for the Attorney General of British Columbia and the Minister of Health. In April and May 2014, the appellant corresponded with and met the then Minister of Health to advocate for legislative reform and to advance his request that his personal health records

be purged of any reference to being diagnosed with a delusional disorder.

- [17] The record before me is unclear as to whether the appellant sought to rely on s. 7 of the former Act, which provided that if, at the time the right to bring an action arises, a person is under a disability, the running of time with respect to the limitation period is postponed so long as that person is under a disability. The appellant argues before me that he did rely on s. 7 of the former Act and there is some support for this in the material that appears to have been before the judge below. The judge did not understand the appellant to be relying on s. 7 of the former Act and held, in any event, that the appellant failed to discharge his burden of bringing himself within the provisions of that section.
- [18] In the further alternative, the appellant argued that s. 3(1)(k) of the current Act applied to his case. This provision states that the Act does not apply to claims relating to assault or battery, whether or not the claimant's right to bring the court proceeding was at any time governed by a limitation period, if the assault or battery occurred while the claimant was in a relationship of dependency with a person who performed, contributed to, consented to or acquiesced in the assault or battery. As I understand the appellant's submission, he says that, when he was forced to ingest medication, he was in a relationship of dependency with the defendant physicians and, in particular, Dr. Buller. The judge did not address this argument in his reasons for judgment.

III. The Reasons for Judgment

- [19] The judge considered that two issues arose for determination on the summary trial: (1) the commencement dates of the applicable two-year limitation periods in respect of each defendant; and (2) whether the plaintiff proved he is entitled to a postponement of the limitation periods so as not to bar his action commenced on July 12, 2016.
- [20] In dismissing the action as being time-barred, Meiklem J. made these findings:
- Dr. Mabee's last certification of the appellant occurred on March 10, 2004;
 - The last date upon which Dr. Buller renewed the appellant's certification was October 4, 2012. That renewal was set to expire on April 9, 2013, but the appellant was discharged by Dr. Buller on February 19, 2013;
 - The appellant's cause of action arose, and the basic limitation period commenced, in respect of Dr. Mabee on March 10, 2004, and in respect of Dr. Buller, on October 4, 2012;
 - The action against Dr. Mabee would be barred even if the basic two-year limitation period had been postponed to a date six years after his alleged actionable negligence. This is because the action was commenced six years after Dr. Mabee's retirement from medical practice on June 30, 2010;

- As the plaintiff's claims did not rely on the conduct of any actors other than Dr. Mabey and Dr. Buller, the limitation period in respect to the other defendants also commenced on October 4, 2012;
- The evidence respecting the extent to which the appellant pursued his grievances refuted his suggestion that he was unaware of the existence of a duty owed to him by the defendant doctors or unaware that he had suffered the alleged damages as a result of a breach of that duty. He was aware of the identity of the defendants and was possessed of the facts referenced in s. 6(5)(b) of the former Act. The appellant's contention that he only came to discover his injuries in March 2016 was rejected as being inconsistent with his course of conduct. Thus, the first two components of s. 6(4) set out in *Ounjian v. St. Paul's Hospital*, 2002 BCSC 104 at para. 21, were met before July 12, 2014. As for the third component (a person knowing those facts, and having taken the appropriate advice a reasonable person would seek on those facts, would regard the facts as showing that an action would have a reasonable prospect of success), Meiklem J. found this was satisfied prior to July 12, 2014 - two years before the action was commenced. With respect to the appellant's reliance on Novak and the fourth component, Meiklem J. held that the appellant "offered no evidence of serious, significant and compelling personal circumstances in any way comparable to those of Mrs. Novak that could be considered sufficient to explain why he could not reasonably have commenced an action prior to July 12, 2014";
- In the face of these findings, Meiklem J. held that "none of the bases set out in s. 6(4) of the former Act on which I could find postponement of the commencement of the applicable limitation period have been established by the plaintiff";
- Even if the appellant had raised s. 7 of the former Act as a defence to the application of the limitation period, he failed on the evidence to discharge the burden of bringing himself within the terms of this provision.

[21] Against this background, I turn to address the appellant's applications for relief.

IV. The Orders Sought

Leave to Appeal

[22] In my view, the appellant does not require leave to appeal. Accordingly, I would direct that the notice of application for leave to appeal filed October 24, 2017, stand as the notice of appeal.

No Fees Application

[23] Rule 56 of the Court of Appeal Rules (the "CA Rules") confers jurisdiction on a justice to order that a person need not pay fees:

Justice may order that no fees are payable

56 (1) Subject to subsection (2), if a justice, on application made in accordance with Rule 38 before or after the commencement of an appeal or application, finds that a person cannot afford to pay the fees under Schedule 1 of Appendix C without undue hardship, the justice may order that no fees are payable under that Schedule.

(2) A justice may not make an order under subsection (1) respecting a person if the justice considers that the position being argued by that person

- (a) lacks merit,
- (b) is scandalous, frivolous or vexatious, or
- (c) is otherwise an abuse of the process of the court.

[24] Under R. 56, a chambers judge must consider two criteria: the financial position of the appellant and the likelihood of success on appeal: *J.W.M. v. J.L.M.*, 2016 BCCA 453 at para. 20 (Chambers).

[25] The merits threshold for a no fees application is not high: *Hasham v. Reach Centre Association*, 2017 BCCA 104 at para. 9 (Chambers); *BH v. JH*, 2015 BCCA 475 at para. 10 (Chambers). The order will not, however, be granted where the appeal is bound to fail: *Hasham* at para. 9; *Kohlmaier v. Campbell*, 2003 BCCA 61 at para. 3 (Chambers).

[26] I am satisfied that the appellant cannot afford to pay filing fees without undue hardship. Can it be said that the appeal is doomed to failure?

[27] The appellant will advance what I understand to be four grounds of appeal: (1) the judge improperly precluded a review of all the facts on the summary trial, including facts going to the issue of whether his cause of action sounded in assault, such that s. 3(1)(k) of the current Act might apply; (2) the judge incorrectly admitted hearsay evidence; (3) the judge erred by failing to find that the postponement provisions of the former Act applied given the appellant's serious, significant and compelling circumstances; and (4) the judge erred by failing to find that the appellant's cause of action continued beyond his February 19, 2013, discharge date.

[28] I accept that the appellant will likely face significant challenges in successfully advancing these grounds of appeal.

[29] With respect to the second ground of appeal, the appellant appears to be saying that the judge erred by relying on hearsay evidence and, further, that it was incumbent on the respondents to adduce evidence establishing his mental illness. I have not been directed by the appellant to any hearsay evidence improperly relied on by the judge. Further, on my preliminary assessment of the matter, I do not see how evidence concerning the diagnosis of mental illness has any bearing on the resolution of the issues that arose for determination on the summary trial. As I see it, the appellant's mental health diagnosis was only relevant to

whether his circumstances were so serious, significant and compelling as to meet the test for postponement set out in Novak, and whether it could be said that he suffered from a disability pursuant to s. 7 of the former Act.

- [30] With respect to the third ground of appeal, as the majority of the Court noted in Novak at para. 86, whether individual circumstances would be regarded by a reasonable person as preventing a plaintiff from commencing an action is a case-specific assessment. In this case, the judge found that the appellant offered no evidence of serious, significant and compelling personal circumstances that could reasonably be characterized as sufficient to explain why he could not have commenced an action by July 12, 2014 - the date that was two years prior to the commencement of the action. To succeed on this ground, it seems to me that the appellant will be obliged to establish palpable and overriding error.
- [31] With respect to the fourth ground of appeal, I have difficulty, on a preliminary assessment of the matter, seeing merit in the appellant's contention that the delayed closing of his file or any other action taken by any of the defendants after his discharge caused him continuing harm such as to constitute actionable negligence. I note that the judge dealt with this issue at para. 57 of his reasons for judgment.
- [32] The appellant's position that s. 3(1)(k) of the current Act ought to have been applied to the circumstances of his case stands, in my mind, on a somewhat different footing. As mentioned earlier, this argument was advanced by the appellant but not addressed by the judge below. I accept that there may well be challenges associated with successfully advancing this argument on appeal. Counsel for the Interior Health Authority, Royal Inland Hospital and Kamloops Mental Health & Substance Use urges upon me the proposition that the legislature could not have intended that the conduct contemplated by this subsection, when committed by a mental health professional in relation to an involuntarily certified patient, should be subject to no limitation period. While this may, as counsel suggest, be a difficult argument for the appellant to meet, I am not prepared to hold on the very limited submissions I have heard on this point that there is no merit in this ground of appeal and that it is bound to fail.
- [33] As I am unprepared to say on the material before me that the appeal is bound to fail, I grant the appellant "no fee" status in relation to his appeal.

The Provision of Transcripts

- [34] The order that the appellant be excused from paying filing fees in connection with this appeal does not relieve him of the obligation to prepare and file an appeal record, transcripts and appeal books absent further order of this Court or a judge thereof: Jong v. Jong, 2002 BCCA 322 at para. 11.
- [35] Assuming that I have jurisdiction to make the order sought (see, on this point, Barbeau-Lafacci v. Holmgren, 2002 BCCA 553 at para. 20 (Chambers)), I would not make an order in this case that the appellant be provided with the appeal record, transcripts and appeal books

at public expense. In *Cutts v. Alterra Property Group Ltd.*, 2014 BCCA 264 at paras. 13-17 (Chambers), Stromberg-Stein J.A. canvassed the authorities on this point and concluded that such an order is rarely, if ever, made on civil appeals and would only be considered where the underlying appeal has been shown to be "very meritorious". While I am not prepared to say that the appellant's appeal is bound to fail, neither has it been shown to be possessed of the sort of merit that might conceivably justify the making of such an order.

The Publication Ban

- [36] A non-publication order was made in the court below on September 30, 2016. The terms of the order provided that "no person may publish, broadcast or otherwise divulge [the appellant's] name, or other information tending to reveal his identity as connected with this action." The order appears to be permanent.
- [37] A permanent publication ban made in a lower court generally endures until varied by a court with jurisdiction to do so: *R. v. V.K.* (1992), 68 C.C.C. (3d) 18 at 21 (B.C.C.A.); *I.J. v. J.A.M.*, 2013 BCCA 430 at para. 3. The order has not, to the best of my knowledge, been varied or set aside. Since a publication ban is already in place, the appellant already has the relief he seeks. For clarity, the parties are directed to file further written submissions using only the appellant's initials.

The Sealing Order

- [38] As neither the appellant nor the defendants have addressed in any detail the law in this area, I will keep my discussion of this issue relatively short.
- [39] By way of background, it is my understanding that the file in the Supreme Court of British Columbia is not subject to a sealing order. While temporary sealing orders were granted to permit argument and proper notice of an application that the appellant brought for an order sealing the Supreme Court file, those orders have expired. When the publication ban was imposed in the Supreme Court of British Columbia on September 30, 2016, the presiding judge declined to make a further sealing order, evidently being of the view that the appellant's privacy interests were sufficiently protected by the publication ban order.
- [40] Applications for a non-statutory publication ban or confidentiality order, such as a sealing order, are guided by the framework developed in *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835, *R. v. Mentuck*, 2001 SCC 76, and *Sierra Club of Canada v. Canada* (Minister of Finance), 2002 SCC 41.

- [41] As stated by the Supreme Court of Canada, "every court has a supervisory and protecting power over its own records": *A.G. (Nova Scotia) v. MacIntyre*, [1982] 1 S.C.R. 175 at 189. Court records are presumptively open to the public in accordance with the open court principle, which is linked to freedom of expression: *Sierra Club* at para. 36. The onus is on the party seeking to restrict public access to show that some superordinate public interest prevails over the public interest in open courts: *Dagenais* at 891.
- [42] The *Dagenais/Mentuck* framework involves a two-step test for determining whether a publication ban or confidentiality order is justified (see *Sierra Club* at para. 53):
1. Is the order necessary to prevent a serious risk to an important interest? This first question involves three elements: (a) whether the risk is real and substantial, well-grounded in the evidence, and poses a serious threat to the interest in question; (b) whether the interest can be expressed in terms of a public interest in confidentiality, as opposed to an interest that is merely specific to the party requesting the order; and (c) whether reasonable alternatives are available to the order sought and, if not, how the court may restrict the order as much as reasonably possible.
 2. Do the salutary effects of the confidentiality order outweigh its deleterious effects, including effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings?
- [43] At the first stage of the analysis, the importance of the open court principle requires an applicant to adduce convincing evidence justifying a restriction on public access: *Out-of-Home Marketing Association of Canada v. Toronto (City)*, 2012 ONCA 212 at para. 56 per Epstein J.A., leave to appeal ref'd [2012] S.C.C.A. No. 249; *M.E.H. v. Williams*, 2012 ONCA 35 at para. 34.
- [44] If restrictions on the open court principle are justified, the *Dagenais/Mentuck* framework requires courts to craft orders that are minimally restrictive. For example, if initialization will protect adequately an individual's privacy interests when coupled with a publication ban order, a sealing order is unlikely to be justified: *C.L.B. v. J.B.* (2009), 97 O.R. (3d) 544 (Sup. Ct. J.). Even if an applicant establishes that a sealing order is justified, the court may make the sealing order applicable only to part of the file, such as certain affidavits: see, e.g., *Sahlin v. The Nature Trust of British Columbia*, 2010 BCCA 516 (Chambers).
- [45] The appellant has filed in this Court materials detailing his mental health history. He seeks to prevent any public access to this information, relying on the social stigma he says he has experienced as an individual diagnosed with a mental health problem and involuntarily certified under the MHA.
- [46] Assuming I have jurisdiction to make what appears to be a permanent sealing order sought by the appellant, I would decline to make the order in this case. In my view, the appellant has failed to satisfy the first branch of the *Dagenais/Mentuck* framework. He has not adduced convincing evidence to demonstrate that a superordinate public interest in

confidentiality justifies infringing the open court principle. Further, the appellant has adduced no evidence demonstrating that the absence of a sealing order will effectively frustrate his ability to access the courts.

- [47] The Dagenais/Mentuck framework requires courts to impose measures that minimally impair the open court principle. As discussed above, the court below made a publication ban, which continues to govern proceedings in this Court. I agree with the court below that initialization of the style of cause and the publication ban are sufficient to protect the appellant's privacy interests in this case. The application for a permanent sealing order over the entirety of this Court's file is, accordingly, dismissed.

In Camera Hearing of the Appeal

- [48] I am doubtful that I have jurisdiction to make an order that the appellant's appeal be heard in camera. Even if I have jurisdiction under s. 10(2)(a) of the Court of Appeal Act, R.S.B.C 1996, c. 77, to make the order sought, I would not have been inclined to grant the application for two reasons. First, as should be apparent from the foregoing, I am of the view that the appellant's privacy interests are protected adequately by the existence of an order prohibiting the publication of his identity or information that could disclose his identity. Second, and more to the point, the order the appellant seeks goes in a fundamental way to the management of the appeal itself and, in my view, should be brought to the division of this Court assigned to hear the appeal, not to a judge in chambers. To be clear, I have not resolved this issue. If the appellant is so minded, he may renew this application before the division assigned to hear the appeal.

[discussion with counsel re. dispensing of appellant's signature on the form of order]

- [49] FITCH J.A.: Mr. [T.], do you understand what they are asking for?

- [50] MR. N.E.T.: That I needn't sign the order, I believe, for it to be processed.

- [51] FITCH J.A.: Correct. In other words, they will prepare the order reflecting the disposition of all of the applications that have been put before me today, that your approval of the order be dispensed with and that it come directly to me for approval. Of course, I will make sure it is correct.

- [52] I will make that order.

"The Honourable Mr. Justice Fitch"

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