

CANADA / JUDGMENT

Wieler v. Bercier

2004 BCSC 752

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Supreme Court of British Columbia

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2004 BCSC 752 Wieler v. Bercier

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wieler v. Bercier

2004 BCSC 752

Date: 20040603

Docket: S17042/02

Registry: Prince George

Between:

James David Wieler

Plaintiff

And

Leon Lloyd Bercier

Defendant

Before: The Honourable Mr. Justice Chamberlist

Reasons for Judgment

Counsel for the plaintiff:

D.J. Daley

Counsel for the defendant:

S.M. Katalinic

Date and Place of Hearing:

April 16, 2004

Prince George, B.C.

INTRODUCTION

- [1] In these proceedings, the plaintiff appeals the interlocutory order of Master Baker, made pursuant to R. 26(11) of the Rules of Court, pronounced March 22, 2004. In so doing he followed the form suggested in *Jones v. Nelson* (1980), 24 B.C.L.R. 109 (B.C.C.A.), ordering production of third party records directly to the solicitor for the applicant defendant rather than in the form suggested by *Halliday v. McCulloch* (1986), 1 B.C.L.R. (2d) 194 (B.C.C.A.).
- [2] The plaintiff submits that the form of order which ought to have been made is that suggested in *Halliday*, *supra*, which would permit production of the third party records to the solicitor for the plaintiff to review for relevancy and litigation privilege before being forwarded to the solicitor for the defendant. This format, the plaintiff submits, would protect his discovery, privacy and privilege interests.
- [3] The plaintiff submits that the learned master, in making his decision, did so without first addressing the issue of relevance of the documents in question. The documents in question were those maintained by his employer and the Medical Service Plan records. The plaintiff submits that the learned master erred in failing to follow current authority represented by the decision of Mr. Justice Metzger in *Amos v. Virk*, [2002] B.C.J. No. 106, and cases that followed it.
- [4] The plaintiff submits that the learned master erred in failing to consider that production of documents in the hands of a third party is, by virtue of case law and by virtue of R. 26, a step-by-step process. The plaintiff says that that process is the one correctly set out by Metzger J. in his decision of *Amos v. Virk*, *supra*, and relies on para. 10 of that decision, which provides as follows:
- [10] The process contemplated by the Rules of Court in a case such as this one is as follows:
1. If medical records are not listed in the party's list of documents, the defendant asks for production of documents in the possession of the third parties.
 2. The plaintiff's counsel normally obtains those documents.
 3. When the records are received, the plaintiff's counsel reviews them to ensure that the documents are relevant and there is no privilege attached to them. It is counsel, not the party, who determines relevance and privilege.
 4. The plaintiff's counsel complies with any obligations under Rule 26, including preparation of a further list of documents pursuant to Rule 26(1), subject to any stated grounds of privilege pursuant to Rule 26(2).

5. The plaintiff's counsel is required to produce copies of relevant records over which there is no privilege. The plaintiff's counsel is required to advise the defendant's counsel of any editing done to the records on grounds of relevance or privilege.

6. If the defendant's counsel is not satisfied with the disclosure, he then may seek an order pursuant to Rule 26(11).

[11] Rule 26(11) provides:

(11) Where a document is in the possession or control of a person who is not a party, the court, on notice to the person and all other parties, may order production and inspection of the document or preparation of a certified copy that may be used instead of the original. An order under Rule 41(16) in respect of an order under this subrule may be made if that order is endorsed with an acknowledgment by the person in possession or control of the document that the person has no objection to the terms of the proposed order.

[5] The defendant submits that the learned master was correct in his perception of the evidence and in his application of the law in exercising the discretion he did in refusing to order production of documents in a Halliday form of order. The defendant further submits that on the evidence before the master he was clearly right in not ordering production pursuant to Halliday, noting that there is no right to a form of production order in Halliday format and that the burden of proof is on the plaintiff when seeking to have an order for production made pursuant to the decision in Halliday, and that, in this case, the evidence of the plaintiff failed to establish any basis for granting a Halliday form of order.

DISCUSSION

[6] There is no contest between the parties that this is an appeal from a purely interlocutory decision of the master and therefore following *Abermin Corp. v. Granges Exploration Ltd.* (1990), 45 B.C.L.R. (2d) 188 (B.C.S.C.), the test is whether or not the master's order was clearly wrong.

THE CONCEPT OF CLEARLY WRONG

[7] In reviewing a master's exercise of discretion the deferential "clearly wrong" standard will be met if the exercise of the master's discretion was unreasonable or if it was found, on appeal, that the master had failed to consider relevant evidence in exercising that discretion.

BACKGROUND

[8] This action relates to a motor vehicle accident which occurred on the 10th of August 2000. Liability for the accident has been admitted and the only issue outstanding is assessment and quantum of damages. At the time the matter came before the learned master, the trial of this matter was set to proceed in June, however I am advised by counsel that the trial has now been adjourned.

- [9] In the action, the plaintiff claims that because of multiple personal injuries allegedly sustained as a result of the motor vehicle accident he has suffered a loss of income and will lose income in the future. He also claims a loss of opportunity for advancement and a loss of capacity to earn income in the future.
- [10] At para. 3 of his reasons, the learned master noted the complexity of the case and the multiple aspects of the future wage loss claim when he said:
- [3] . . . But I shouldn't imply simplicity or any reduction in the complexity of the case in my comments in that respect because future wage loss is claimed, loss of opportunity, loss of opportunity for advancement. There are, and I acknowledge Ms. Randall's submissions in this respect, several facets to the wage loss claim.
- [11] In the affidavit of Oliver Hui, sworn February 19, 2004, he deposes that the learned master also had before him evidence that demonstrated that the plaintiff's physical health was also in issue. In addition, Mr. Hui deposes that the learned master had before him evidence that the plaintiff's family physician had reported anxiety and depression post-accident and the fact that the plaintiff had deposed, at discovery, that he had experienced significant stress and anxiety related to changes in his employment after the accident.
- [12] That information, together with the pleadings, says Mr. Hui, further made it apparent that the plaintiff would possibly, at some point in the future, amend his pleadings to include a claim for depression and thereby place his mental health into issue in addition to his physical health.
- [13] Thus, it is apparent that the master had before him the pleadings and evidence that the state of the plaintiff's health prior to the motor vehicle accident was a relevant issue.
- [14] Mr. Hui, in his affidavit, referred to an affidavit filed by the plaintiff in response to interrogatories wherein the plaintiff had stated the following -
- (a) from the time of the accident to the present his occupation had been a technical systems specialist;
 - (b) his employer is the City of Prince George;
 - (c) he has worked for the City of Prince George since September 1996;
 - (d) since the accident his full time position with the R.C.M.P. had been filled by another support person and he has been moved to work at the City office, which he finds to be unsatisfying;
 - (e) he has been moved to the bottom of the seniority list as a result of being moved to the City computer services department;
 - (f) working at the City has lessened his opportunities for advancement; and
 - (g) he is claiming a loss of earnings as a result of the accident as well as loss or impairment of earning capacity beyond his future loss of wages from his employment.

[15] Mr. Hui also made reference to the clinical records of the plaintiff's family physician which had previously been disclosed. Those records indicate a history of some stress and conflict related to the plaintiff's employment -

(a) October 12, 2001:

Always stressed out over last 5 months. Work-related. He is computer support person at RCMP. Very over worked. Renovations so stuck in crowded, hot small room. Keep more to himself . . . Skips lunch a lot - too busy . . . used to look forward to going to work - now dreads it. Twice as many computers now as when he started no-one to help him. Always behind. Seems tired and stressed. Stress re: work. Discussed options (including counselling, try again to get more help, take stress leave, change jobs).

(b) October 18, 2001:

Had a weekend off with the guys - it was nice but now back at work and things are no better. Many examples of how overworked he is and how impossible to keep up . . . frequent sighing, seems dejected. . . . job related stress/burnout.

(c) February 12, 2002:

Personal, re: job. He had told supervisor that he needed help. So they've stationed him at City Hall, to go out to RCMP, but other workers will also go out. He is very stressed about this. If it doesn't work after 3 months, they will put him back in his old job. He feels that he will be blamed (by RCMP) if things don't go well. Gets waves of anxiety . . . appears anxious, taking deep breaths. Acute situational anxiety.

(d) January 21, 2003:

Stress +++ re: work - doesn't get along with boss, feels he can't do anything right; trouble sleeping; anxious; appears down; situational stress/sleep disturbance.

[16] An examination for discovery of the plaintiff was conducted by Mr. Hui on January 8, 2004. At the examination for discovery, the plaintiff deposed, inter alia, that the reason he moved to a different job description at the City from his posting at the RCMP station was due to his inability to cover his job requirements as a result of his frequent absences from work. The plaintiff deposed that his new supervisor was not at all supportive and objective to the plaintiff's request to take time off during the day for work-outs, which dispute caused the plaintiff significant stress and anxiety.

[17] As a result of the reply to interrogatories and the results of the examination for discovery, the defendant sought production of the employment records from the City of Prince George from September 1996 and the M.S.P. printouts.

[18] At the time the matter came before the learned master the only affidavit filed in response to the defendant's application was that of Stacey Robinson, legal secretary in the office of the solicitor for the plaintiff, sworn March 3, 2004. There was no affidavit evidence from the

plaintiff specifying why any portion of his employment records should be considered irrelevant or establishing a claim of privilege over any portion of those records. Also, there was no position taken, in the affidavit material filed by Stacey Robinson, that touched on issues of relevance or privilege, rather it merely attached correspondence between the solicitors and the plaintiff's sworn answers to interrogatories.

[19] The learned master ordered production of the employment records and the M.S.P. printouts directly to the applicant defendant.

[20] With respect to whether or not the order should go in the form of a Halliday form of order, the learned master said this, at para. 18 of his reasons:

... I come down on the side of the argument [whether there is a basis for a Halliday order] that says there must be at least some indication of the potential or likelihood of embarrassment consequent on unnecessary intrusion into people's personal affairs, and intrusion that may exceed what is reasonable in the circumstances of a lawsuit. I do not see that in these circumstances at this time.

[21] In *Sullivan v. Lockhart* (July 12, 2002) Vancouver Registry M001857, Master Donaldson had occasion to deal with an application for an order of employment records. In that decision, he reviewed the then recent decision of Master Horn in *Smith v. Funk*, 2002 BCSC 747. In *Smith v. Funk*, Master Horn dealt with the defendant's contention that in the absence of any direct sworn evidence that raises concerns on the grounds of privacy or relevancy, the order should go in the form of a *Jones v. Nelson*[1] order. He referred to his decision in *Hope v. Brown*, [1991] 2 W.W.R. 638, wherein he had made a Halliday form of order in a case where there was no sworn material alleging privilege or irrelevancy. He also referred to another decision, *Murray v. Hough* 2002 BCSC 339, where the documents sought were employment records predating the accident, sometimes by several years, and quoted what he said at p. 9, para. 9 of that decision in para. 43 of *Smith v. Funk*:

9. The defendants are only entitled to documents relating to a matter in question in this action. They are casting a wide net by requiring disclosure by former employers of unidentified documents in their possession. The unidentified documents may have nothing to do with this action. Strangers to litigation cannot be expected to determine what is relevant to the issues in an action. It is a small price to pay for such a wide order that the documents be first delivered to the plaintiff. It will then be left to the plaintiff and her legal advisers to consider what is relevant and what is not.

[22] In *Smith v. Funk*, Master Horn attempted to reconcile other production of documents decisions. At paras. 44, 45 and 46, he said this:

[44] The difference between the line of cases referred to by Scarth J. in *Lutsiak v. Morton* and those which have applied my decision in *Hope v. Brown* is not, I believe, one of principle, but of degree. The results are fact-driven.

[45] In my view, the onus upon a respondent to show that a Halliday order should be preferred to a Jones v. Nelson order is not a heavy one and it can be discharged by reference to facts other than the direct statement of a witness upon oath. Whether that onus is discharged will depend upon the breadth of the documents sought. It will depend upon whether the respondent can be expected to know, or find out, what is in the documents. It will depend on whether the documents were created pre-accident or post-accident. It will, in short, be dependant upon a lot of things, the least of which may be the bare assertion by a respondent that he or she believes that there may be privileged or irrelevant or private material contained in the documents.

[46] Turning to the facts of this case, I conclude that it has been shown that in respect of some of the classes of documents sought there is a real possibility that there will be irrelevant or private material included.

[Emphasis added]

[23] At para. 7 of the Sullivan decision, Master Donaldson said this:

[7] I was then referred somewhat extensively by counsel on behalf of the plaintiff to the recent decision of Master Horn in Smith v. Funk and her reliance upon the comments made by Master Horn upon the necessity to look at the matter in a balanced way and that based upon the nature of some documents they will require more or less information relating to relevance than others. That is responded to, if you will, by counsel for the defendant pointing out that what is sought are post motor vehicle records which relate to employment and that the pleadings are very broad and include the loss of earning capacity claim. He points out the decisions such as Peruvian Guano make reference to discovery casting a wide net and that while some documents may or may not be relevant or rather be admissible based upon their relevance at trial, at the discovery stage there are more lax, if you will, strictures so far as the production of records are concerned.

[24] Master Donaldson then went on to say that he was satisfied that the likelihood of there being a relevant and/or prejudicial documentation in the employment records were quite remote and "certainly that the material necessary to establish such is simply not present in that filed by the plaintiff in opposition to the request of the defendant".

[25] Master Donaldson, in Birch v. Sabbagh, [1999] B.C.J. No. 3197 (February 26, 1999), Vancouver Registry No. B975413, also had occasion to deal with the decision of Master Horn in Hope v. Brown, supra.

[26] Recognizing that Hope v. Brown dealt with medical records, His Honour said at para. 7:

I am satisfied that the extension of the Halliday process beyond medical records may well be appropriate in many circumstances. I am satisfied, however, that it must be incumbent upon a person opposing the production of documents to provide some basis for concluding that there are or may be documents of a prejudicial or private nature which are not relevant to the issues in the action, and that has not been provided in this instance, so the order will go as sought.

[27] By analogy the decision of *Fiege v. Rupitz*, 2001 BCCA 482, is on point. In that case, the defendant applicant had sought before Preston J., in chambers, an order that the plaintiff execute authorizations for release of his banking and financial statements among other records. On an appeal of Preston J.'s order granting that relief, Levine J.A. noted the plaintiff had made a claim for financial loss and was subject to the Rules of Court, which required him to disclose all the documents that relate to that claim. At para. 10 of her Ladyship's decision, she held:

. . . There is no authority of which I am aware that provides the plaintiff a right to privacy with respect to his own financial records when he has made a claim for financial loss in these courts. . . .

And at para. 15:

. . . Neither the plaintiff or the respondent here has provided any authority and I know of none that has extended a Halliday order to cases involving disclosure of financial records and it seems to me there is good reason for that. At the risk of repeating myself, where a plaintiff makes a claim for financial loss, it seems to me that his financial records must be said to relate to an issue in question in that matter.

[28] A similar decision was reached by Master Doolan in another analogous matter in *Fletcher v. Palmer* (January 18, 2002), Vancouver Registry B994615 (B.C.S.C.). In that case the plaintiff had commenced a Family Compensation Act action and the defendant sought production of the deceased's Ministry of Social Development and Economic Security records, as well as school and counselling records. The plaintiff, the mother of the deceased, opposed production of such records, unless in Halliday form, out of concern that the records could be of a sensitive nature and potentially embarrassing to the family. At para. 4, the learned master said this:

. . . I am of the view that this kind of case opens the door wide with respect to the stability of and conduct of the deceased with respect to his relationship with his family, his school, his employers and fellow workers. The order should go as sought not in Halliday form. . . .

[29] In the case at bar, the learned master agreed the records may be relevant and the request for full employment records were reasonable "but within a reasonable ambit". As a result, he limited their production to a little over two years pre-accident to the date of his order "with liberty to apply further if there is demonstrable information or evidence in those records arguably justifying further inquiry"[2].

- [30] In making the order he did, the learned master had before him the pleadings, the responses to interrogatories and reference to the evidence given by the plaintiff at his discovery in January.
- [31] He had before him no evidence from the plaintiff indicating privacy issues, privilege or irrelevance. This was not a case for production of medical records as was the primary issue in *Smith v. Funk*. As Master Horn had said in that decision, each case will turn on its own facts.
- [32] Mr. Justice Metzger decision in *Amos v. Virk* was appealed; however the Court of Appeal held that the issues were moot. Notwithstanding that the doctrine of mootness was applied, Low J.A., on the appeal (2003 BCCA 449), said this, admittedly in obiter, at para. 4:

Nor am I persuaded that there is any need for us to rule on the issues raised in order to settle the law for the guidance of litigants and judiciary. The law is well settled by the three cases I have cited. The application of the law so settled depends upon the facts and circumstances in each case and the proper exercise of judicial discretion. Therefore, in the absence of this Court undertaking a review of the law in this area of procedure by convening a five-judge panel, which was requested and denied, we are not in a position to change the law, nor are we asked so to do. All we could do is determine whether there was a reviewable error in any of the three cases now before us. That exercise would have no practical purpose in the particular action and would not likely be of assistance in other cases.

- [33] The three cases that his Lordship referred to were *Jones v. Nelson*, *Halliday v. McCulloch*, and *Dufault v. Stevens* (1978, 6 B.C.L.R. 199 (B.C.C.A.)).

- [34] In *Dufault v. Stevens*, it should not be forgotten that there the Court of Appeal said, at the last paragraph on p. 203 and continuing on p. 204:

The intent of R. 26(11) is to provide any party to an action with the means of obtaining the production and inspection of a document if the applicant is able to satisfy the judge that the document contains information which may related to a matter in issue, and of obtaining a copy of the document to use in lieu of the original in the event that a document does contain information which may relate to a matter in issue. No party has priority to an order for production and inspection over any other party or any paramount right to an order for production and inspection. A party applying for an order under R. 26(11) must satisfy the court that the application is not in the nature of a "fishing expedition": *Rhoades v. Occidental Life Ins. Co. of California*, supra. He must show that a person who is not a party to the action has a "document" or "documents" in his possession which relate to a matter in issue. The comments of Brett L.J. in *Cie Financière du Pacifique v. Peruvian Guano Co.* (1882), 11 Q.B.C. 55 at 63 (C.A.), as to what constitutes a document relating to a matter in question have been quoted by this court on several occasions.

"It seems to me that every document relates to the matters in question in the action, which not only would be evidence upon any issue, but also which, it is reasonable to suppose, contains information which may - not which must - either directly or indirectly enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary. I have put in the words either directly or indirectly because, as it seems to me, a document can properly be said to contain information which may enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary, if it is a document which may fairly lead him to a train of inquiry, which may have either of these two consequences".

It follows from this that an applicant need not show that a document is admissible in evidence at the trial as the condition of his obtaining an order under this rule. If a party seeking the order is able to satisfy the judge that the document, or information in a document, may relate to a matter in issue, the judge should make the order unless there are compelling reasons why he should not make it, e.g., the document is privileged or "grounds exist for refusing the application in the interest of persons, not parties to the action, who might be embarrassed or affected adversely by an order for production" (per McFarlane J.A. in *Rhoades v. Occidental Life Ins. Co. of California*, supra, at p. 630), including the custodian of the document.

[Emphasis in original]

[35] I have considered para. 10 of Metzger J.'s decision in *Amos v. Virk* and I note that as in *Halliday* that order dealt with medical records.

[36] While I appreciate that his Lordship was dealing with a medical records issue, I do not see his decision as rejecting the line of cases which have followed *Jones v. Nelson*.

[37] Mr. Justice Low, in the obiter already referred to, made it clear that the *Jones v. Nelson* form of order is still an appropriate order to be made by a judge in chambers ordering production of third party documents.

[38] It is important to recognize that these are production applications and have nothing to do with the admissibility of the documents so produced at trial. That is a matter for the trial judge. At this stage of the litigation the comments of Lord Brett, approved by Craig J.A. in *Dufault v. Stevens*, are more appropriate.

[39] In the end result, I see nothing to conclude that the learned master was clearly wrong in making the production order he did. In *Amador v. Mo* (12 September 2000) Vancouver Registry B972159 (B.C.S.C.), Mr. Justice Hood said this at para. 10:

It is of the utmost importance in our adversarial system that the defendant be provided with all relevant documents which may advance his case and impinge on the defendant's case. Here there was, in my view, no evidence before the Master which would justify restricting this right in favour of some privacy or embarrassment notion which the plaintiff feels should be protected at the expense of those he has brought into court. The plaintiff is not entitled to a *Halliday* order as of right. To grant him such an order, on the evidence before the Court, would, in my view, make it so and would work an injustice. . . .

- [40] That comment, in my view, was as good a statement of the law existing when the master made his order in this case as can be found anywhere and further, would appear to find some approval in the references made by Justice Low in his obiter in the *Amos v. Virk* appeal.
- [41] I would therefore dismiss the applicant's appeal with respect to the production of the City of Prince George documents.

MSP DOCUMENTS

- [42] The significance of the MSP printouts arises specifically from the fact that the plaintiff had deposed at his examination for discovery that he had "in the 1990's" had an earlier motor vehicle accident. Without the plaintiff being able to provide any greater specificity under oath, Master Baker could not see how the defendant properly could examine his background. Master Baker commented on this at para. 6 to 7 of his reasons, where he said:
- [6] There are two principle points in the evidence that compel me in my decision. The first is the entry, and I don't have it right at my fingertips, in I think it was January of 1999 in the records of Mr. Wieler's treating physician relating to back injuries or back pain which, and this is the second point, in discovery he acknowledged that he had had an earlier motor vehicle accident, and I quote, "in the 1990s". That's how it was given to me. I don't know if that's a fair or exactly accurate, verbatim description of his response.
- [7] It's sufficient to leave it at this. That the plaintiff has acknowledged, firstly, that he had an earlier motor vehicle accident in the 1990s, he apparently is unable to put greater specificity or accuracy to it. I don't know how counsel are able to properly examine his background with that generality. Secondly, there is, as I say, an objective indication that he has had complaints prior to this motor vehicle accident which may well be, and I'm not saying they are, but may be connected to or explained by his earlier accident.
- [43] It is hard to believe that there could be any issue relating to privilege or privacy issues when it is more than likely that the MSP records would not be admissible at trial. They would, however, allow the defence to nail down with better preciseness the date of the accident and the injuries sustained. It is noteworthy that MSP printouts have been ordered produced in non-Halliday form in various cases, including *Brown v. ICBC* (26 September 2000), New Westminster Registry S050393 (B.C.S.C.); *Bhagat v. Sharma* (6 February 2001), New Westminster Registry S062234 (B.C.S.C.); *Hynes v. Peters* (20 November 1990), Vancouver Registry B894184 (B.C.S.C.); *Brookes v. Matiets* (28 August 2001), New Westminster Registry S049332 (B.C.S.C.).
- [44] Again, no grounds were put forward by or on behalf of the plaintiff to warrant an order for production of the MSP printout.

- [45] I am again satisfied that the learned master exercised his discretion judicially and his order was consistent with authorities that support the production of MSP printouts directly to the applicant on a R. 26(11) application.
- [46] Again, I find that based on the evidence before the learned master the order made was the result of a judicial exercise of discretion and the master was not clearly wrong in making the orders he did.
- [47] In coming to this conclusion I have also considered the decision of Madam Justice D. Smith in *Grewal v. Hospedales*, 2003 BCSC 1624. In that case the plaintiff had appealed an interlocutory order of a master made pursuant to R. 26(11) which had been made regarding pre and post-accident clinical records in the form suggested in *Jones v. Nelson*, and not the Halliday form of order. Her Ladyship found that as there was evidence before the learned master which raised privacy and relevancy concerns, the master had failed to consider relevant evidence and that, as a result, the learned master's exercise of discretion was unreasonable and she substituted a production order in Halliday form. In her concluding paragraph her Ladyship said:
- [27] In this case, I am satisfied the plaintiff met the evidentiary threshold for a Halliday order in her particularization of what she considered to be irrelevant medical information to her claims. Prima facie those records appear to be unrelated to the multiple injuries she allegedly sustained in the accident and to the nature of her claims. The Halliday format would permit her solicitor to review the requested records in order to ensure that any information which might be relevant, and was not subject to litigation privilege, would be produced. At the same time, it would also protect the plaintiff's privacy interests in possible embarrassing and confidential records that are not relevant to the litigation. Such a format would ensure that the plaintiff's clinical records would not be subject to an unreasonable search.
- [48] Clearly, that decision is distinguishable from the case at bar where no such evidence existed at the time the learned master made his order.

CONCLUSION

- [49] In the end result, the appeal from the order of the learned master is dismissed with costs to the defendant.

"E.G. Chamberlist, J."

The Honourable Mr. Justice E.G. Chamberlist

[1] (1980) 24 B.C.L.R. 109.

[2] Para. 16 and 17, Reasons of March 22, 2004

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