IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***K.P.I.N. v. K.N.N.,***
2005 BCSC 1259

Date: 20050804

Docket: E040663
Registry: Vancouver

Between:

K.P.I.N.

Plaintiff

And:

K.N.N.

Defendant

Before: The Honourable Justice Groberman

Oral Reasons for Judgment
In Chambers

August 4, 2005

Counsel for the Plaintiff	J. Cowper T. L. Jackson S. B. Jackson
Counsel for the Defendant	F. G. Potts J. C. Gopaulsingh
Date and Place of Trial/Hearing:	August 3 and 4, 2005 Vancouver, B.C.

[1] **THE COURT:** This is an application for various forms of relief flowing from allegations that the plaintiff acted improperly in obtaining or in executing an ***Anton Piller*** order.

The Anton Piller Order

[2] I granted the ***Anton Piller*** order on January 25th of this year. Unfortunately, it has not been possible for counsel to appear in front of me on this motion until now. Despite the fact that this application raises

difficult factual issues and some interesting issues of law, it is not practical for me to reserve judgment. A decision must be given without delay, so that the parties can get on with the litigation. I make this point so that a court in future is aware, should this case be cited to it, that the time for reflection has been limited.

[3] The underlying litigation is family law litigation between the plaintiff and defendant, a married couple. The case had been proceeding, I believe, for well over a year by the time it came before me in January. At the time that the application for the ***Anton Piller*** order was made, there had been extensive attempts by the plaintiff to secure compliance with the disclosure obligations under the Rules of Court, and with specific disclosure orders made by Master Groves (as he then was). I had already found the defendant to be in contempt of court for his failure to abide by a court order. A number of other applications were pending before the court, including a further application for finding of contempt before Stromberg-Stein J. Her ladyship had adjourned that application to February 2 of this year.

[4] The manner in which the application before me proceeded was unusual. On the afternoon of January 21st, Ms. Jackson, counsel for the plaintiff, appeared in chambers, seeking an order that her client be given exclusive possession of a home that was occupied by Mr. K.N.N.. Ms. K.P.I.N. already had exclusive possession of a home, and did not require Mr. K.N.N.'s residence for any purpose, other than to conduct a search of it in the hope of securing and preserving documentary and real evidence that Mr. K.N.N. was not producing.

[5] I declined to entertain that application, and indicated to Ms. Jackson that as far as I was concerned, what she was seeking was an order in the nature of an ***Anton Piller*** order. I considered that an order for exclusive possession of the home was neither appropriate – in the sense that it was not for a purpose contemplated by the ***Family Relations Act*** – nor adequate – in that it would not give the petitioner the right to search through possessions that did not belong to her. Further, such an order would not offer the protection to Mr. K.N.N. that would be offered by an ***Anton Piller*** Order.

[6] Accordingly, I indicated that the court was willing to consider an application for an ***Anton Piller*** order, but would not grant an order for exclusive possession. I was aware at that time that ***Anton Piller*** orders were very rare – perhaps even unprecedented – in matrimonial causes. Counsel have been unable to refer me to any other case in which an ***Anton Piller*** order has been granted in family litigation, either in this jurisdiction or elsewhere. It appears to me that the circumstances in which such an order will be granted in

family litigation must be exceedingly rare.

[7] The application was renewed before me on January 24, 2005, as an application for an ***Anton Piller*** order. I granted the order on January 25. A transcript of my reasons for giving that order, to which a copy of the order is attached as an appendix, has been released as 2005 BCSC 163 and reported at (2005) 7 C.P.C. (6th) 251.

Material Nondisclosure

[8] On the current application, it is alleged that the plaintiff was guilty of material nondisclosure when the order was applied for and granted. While counsel have pointed to a number of particular facts that are alleged not to have been disclosed, they resolve down to four major allegations.

[9] First, the defendant says that plaintiff's counsel failed to fairly set out Mr. K.N.N.'s position that the transfer of funds to Ireland was accomplished in order to minimize taxes.

[10] Second, it is said that I was not fully apprised of proceedings before Stromberg-Stein J., in which certain security orders were being sought, and which had been adjourned to February 2nd.

[11] Third, it is alleged that I was not fully apprised of the situation surrounding possession of the home that was to be searched under the ***Anton Piller*** order, and in particular, I was not advised that the defendant had told the plaintiff not to attend at the home.

[12] Finally, it is said that Ms. K.P.I.N. failed to disclose that she had reason to believe that Mr. K.N.N. was in Mexico at the time of her application, and that he was expected to return to Canada shortly.

[13] It is not infrequent that this court hears allegations that *ex parte* applications have been pressed without providing full, frank and fair disclosure. It is clear that the obligations of disclosure are onerous ones. There is a broad obligation on counsel applying for an order *ex parte*, particularly an order in the nature of a ***Mareva*** injunction or ***Anton Piller*** order, to disclose all matters that are material to the application. In particular, counsel must draw the court's attention to any information that may give the court pause, or reason not to issue the order. A number of cases have been cited to me in that regard, including my judgment in ***Green v. Jernigan***, 2003 BCSC 1097.

[14] It is also clear, however, that on applications for urgent *ex parte* orders, counsel frequently have

limited time to prepare, and the court has limited time to hear the application. While counsel bears the burden of disclosing all that is material, the court should not be too quick to determine that evidence that has not been disclosed is "material". The obligation on counsel is not an obligation to fully apprise the court of all details, of whatever nature. To impose such an obligation would be simply unrealistic. Counsel are not ordinarily afforded unlimited time for a hearing; indeed, it is often the case that very limited time is available for hearing an urgent application. Further, applications of an emergent nature do not allow counsel time to prepare and present voluminous affidavits. In any event, the court rarely has the luxury of carefully going through each affidavit paragraph by paragraph. Shortly put, it is completely impractical to expect every last nuance of the situation to be brought to the attention of the court.

[15] In the case at bar, I am satisfied that while I was not apprised of every detail of the situation that subsisted at the time of the application, full, frank and fair disclosure consistent with the obligations of the plaintiff was made.

[16] First, with respect to the transfer of the RRSP to Ireland, I was told that substantial RRSP funds had been transferred to Ireland, and that the defendant was in the process of taking up residence there for tax purposes. I was not told that the defendant travelled extensively for his business, nor that he had business interests outside the country. I was not specifically advised that the removal of RRSP funds to Ireland was, according to the defendant, accomplished for the purpose of minimizing tax liabilities. Given that I was told that the defendant's relocation to Ireland was in an attempt to minimize taxes, I do not find that specific reference to alleged tax reasons for transferring RRSP funds was necessary.

[17] What was material was the fact that the defendant was putting assets in Ireland, which would make it difficult for this court or the plaintiff to reach them. Further, the transfer of assets to Ireland appears to have been in clear violation of an order of Master Groves, which prohibited Mr. K.N.N. from dealing with his assets. The fact that Mr. K.N.N. may have seen some financial advantage from a tax standpoint in transferring the funds to Ireland does not seem to me to have been of particular importance to application that was in front of me.

[18] With respect to the second issue – the proceedings before Stromberg-Stein J. – counsel did disclose on the application before me that there were contempt proceedings before Stromberg-Stein J. I do not believe that I was fully aware of all of the ancillary remedies that were being sought in that proceeding, but

again, it seems to me that adequate disclosure of the material facts was made. The ancillary remedies sought in the contempt proceeding had no bearing on the remedies that were sought before me.

[19] Contempt proceedings ought not, in my view, be combined with other applications within a civil proceeding. Contempt proceedings are essentially criminal in nature, and the procedures and rules of evidence that apply to such proceedings are different from those that apply to ordinary civil applications. While there are often attempts in matrimonial proceedings to combine contempt applications with other applications, such a practice is, in my view, improper.

[20] Stromberg-Stein J. had contempt proceedings before her. It appears from the notice of motion that was in front of her that a great deal of ancillary relief was also sought, but that relief was clearly premised on a finding of contempt. It was open to the plaintiff to seek civil relief outside of the contempt application, and in particular, it was open to the plaintiff to seek an ***Anton Piller*** order or other security relief not tied to the contempt.

[21] In my view, it would not have been appropriate for Stromberg-Stein J. to address the issues that were before me in the context of the contempt proceedings before her. In the result, the fact that the contempt proceeding was going ahead on February 2 was not material to the exercise of my discretion.

[22] With respect to the third issue – possession of the home that was to be searched – Ms. Jackson made it clear to me that that home was occupied by Mr. K.N.N. and his girlfriend, although title was in the name of Mr. and Mrs. K.P.I.N.. It does not appear that there was any order or formal agreement for exclusive possession. Although it would have been preferable for counsel to indicate to me that there had been previous disagreements over Ms. K.P.I.N. attending at the home, it does not appear to me that those affected her legal rights in the property, which were important on the application. Accordingly, again, I do not find that there was a material omission in the facts put before me.

[23] Finally, the question of whether Mr. K.N.N. was in Mexico or not was not particularly germane to the application. The important factors from the standpoint of the court were that substantial assets had apparently been moved offshore, and that Mr. K.N.N. was taking up residence offshore for tax purposes. Whether or not Mr. K.N.N. travelled regularly for work, and whether or not he was in Mexico was not material to the question of whether the movement of assets tilted the balance in favour of granting of an ***Anton Piller*** order.

[24] In the result, while I do not suggest that the plaintiff's disclosure reached a standard of perfection, I do think that Ms. Jackson disclosed what was necessary, and that her judgment calls cannot be faulted in terms of material disclosure. I am not satisfied that there was any material nondisclosure, and I would not set aside the ***Anton Piller*** order on that basis.

Should the Order Be Set Aside?

[25] The defendant says that, even if there was no material nondisclosure at the time of the *ex parte* application, I should, having heard full argument, set aside the order today. In considering the question of whether the order should stand, I accept that I must consider the matter *de novo*.

[26] That said, I would observe that there is very little purpose to be served in reviewing the appropriateness of an executed ***Anton Piller*** order. To the extent that relevant documentation has been disclosed by the ***Anton Piller*** order, that documentation must, in any event, be listed. The original documents seized under the order must be returned to the defendant. Given that the disclosure has or will have to be made in any event, whether or not the order is allowed to subsist is generally of little moment.

[27] Some argument has been made that certain securities are held pursuant to the ***Anton Piller*** order. As I indicated during the course of argument, it was not the intention of that order that it be used to secure money or shares. As I indicated in the course of argument, it will be part of my order today that shares or money held under the purported authority of the ***Anton Piller*** order will have to be returned shortly. I will afford the plaintiff a short period in which to apply for a proper order to secure those shares or funds if she considers that she has a basis for such an application.

[28] If I were of the view that some purpose were served by reviewing the appropriateness of the ***Anton Piller*** order, I would find that the circumstances that prevailed at the time the application was made are such that the order ought to stand. Again, I recognize that ***Anton Piller*** orders ought to be very rarely granted in matrimonial proceedings. However, in this case I was faced with evidence, and still have evidence, of a persistent failure to comply with document disclosure requirements including explicit orders of this court. I was faced with evidence that a large amount of money had recently been moved overseas, as had the residence, for tax purposes, of the defendant. The plaintiff presented a strong case for an order which would allow her to locate and preserve evidence essential to her case.

[29] Looking at the situation that existed on January 25, it is my view that the court was justified, and would have been justified, on full argument, in granting an ***Anton Piller*** order.

[30] I agree with the defendant that certain provisions of the order, as granted, were not entirely appropriate. Were it possible to turn back the clock, I would in particular not have authorized the plaintiff's father to attend on the premises. I would also have made very explicit directions as to what was to be done with electronic data on a hard drive that was seized in the course of executing the ***Anton Piller*** order. I see no purpose to be served in modifying the order today in respect of those matters, however, as the time for doing anything useful in respect of those matters has long since passed. In the result, I would not set aside the ***Anton Piller*** order.

Execution of the Order

[31] The defendant also raises a number of allegations made with respect to the execution of the order.

A. Service

[32] First of all, it is said that the defendant's then solicitor was not properly served with the order and underlying documents. The plaintiff says that the order contemplated that service would either be on the solicitor or on the person apparently in possession of the premises. My recollection, which is confirmed by a review of the transcript, is that the intent of the order was that one or the other methods of service would be accomplished.

[33] It is unfortunate that Ms. Jackson did not make greater efforts to contact the solicitor for the defendant. The documents were delivered to his office, but he was not there. No attempt was made to underline the importance or urgency of the documents. No telephone message was left for the solicitor, and apparently no effort was made to contact him by cellular phone.

[34] I am satisfied, however, that the materials were served on the occupant of the home, and that that service resulted in as expeditious an access to legal advice as could be effected in the circumstances. In the result, there was no failure to properly serve the defendant.

B. The Role of the Supervising Solicitor

[35] The defendant also says that the supervising solicitor did not adequately fulfil his role. In particular, complaints are made as to his explanation of the situation to the occupant of the home. It is said that he did

not supervise all aspects of the search, but rather, allowed more than one person to search at once in various areas of the home. It is also said that he acted in a rude manner towards occupants of the home and people who came to the home, seeking to assist.

[36] The defendants intend to seek leave to bring an action against the supervising solicitor. Under the circumstances, and particularly as the supervising solicitor is not represented before me, I do not wish to make any findings of fact with respect to his conduct other than those necessary to resolve the issues before me. Accordingly, I will simply say that it is possible that the allegations have substance.

[37] Although I have concerns about some aspects of the supervising solicitor's apparent conduct, I do not see that any of the alleged deficiencies in his conduct at the time of the search served to prejudice the defendant in his defence of this action. The defendant was ultimately able to receive advice, and there was not, other than with respect to a computer hard drive, any serious transgression of the order in terms of material taken.

[38] I say “serious” transgression, because I understand that there were certain minor transgressions, such as the taking of certain files of expenses that included telephone bills. On the application in January, I had indicated that telephone bills were not to be taken. I considered the privacy aspects of phone numbers on those bills to be important. I consider the taking of a few telephone bills to be a minor transgression, because I am satisfied that they were taken inadvertently – they were not expected to be in the files that were taken – and because there has been no adverse affect on either the defendant’s ability to defend the action or on the privacy rights of third parties. The telephone bills were returned to the defendant in a timely manner, without copies being made. While the taking of a few telephone bills was a technical violation of the order, I do not find it to be one of substance.

C. The Computer Hard Drive

[39] The real concern with respect to the execution of the order concerns the defendant's computer. It was seized, and a copy of the hard drive was made. It is common ground that that hard drive contained, in addition to relevant documents, documents of a personal nature not relevant to the proceedings, and as well, documents subject to solicitor-client privilege.

[40] In making my order of January 25, I set out a list of some 36 items that could be searched for and taken. It included, at item 32, “any and all e-mail or electronic or other correspondence relating to financial

matters." It also included, at paragraph 21, "any and all computers", and at paragraph 22, "zip drives and other computer back-up and storage devices and information."

[41] Had I considered the matter more fully on January 25, I would not have made the order as it stands. While the order is in terms that I understand are commonly granted, I do not, now, think that they are appropriate. In particular, I do not see why the order that any computers, zip drives and other back-up drives could be seized should have allowed full copying and taking possession of the information on those drives. It would have been better, in retrospect, if the order had provided an orderly manner for an independent party to examine the data, or indeed, for the defendant's solicitor to have an opportunity to examine the data and make submissions with respect to it before it was released to the plaintiff's solicitors or to the plaintiff. Nonetheless, my order did not place those safeguards on the electronic data.

[42] In the case at bar, a computer was seized, and a mirror image of the hard drive was made. That mirror image was then examined by the plaintiff's solicitors for the purpose of determining what information it contained about the defendant's assets. Thereafter, the drive or computer was given to the plaintiff herself to take home for the purpose of retransmitting certain e-mails to the plaintiff's solicitor. Apparently this was seen as necessary because there were some printing problems in using the computer directly at the plaintiff's solicitors' offices.

[43] It is regrettable, and as I understand it, it is conceded to be regrettable that the hard drive containing the raw data was simply handed over to the plaintiff. That drive, as I have said, included matters of a distinctly personal nature which are not relevant to this litigation, and also correspondence of a solicitor-client nature. It is the taking of that hard drive by the plaintiff's solicitors, and particularly by the plaintiff herself, that is the major focus of the application today.

[44] Counsel for the defendant places particular reliance on the decision of this court in the case of ***Grenzservice Speditions Ges.m.b.H. v. Jans*** (1995), 129 D.L.R. (4th) 733 (BC SC). That case concerned an order in the nature of an ***Anton Piller*** order. There had been flagrant abuses in the execution of that order, including questioning of the occupants of the home and videotaping of the proceedings surrounding the search. On the application to set aside the order, Huddart J. (as she then was) considered that no purpose would be served by granting such a remedy. She went on to consider other remedies that might be available, and she held in the circumstances of the case that it was incumbent upon the court to disqualify

the plaintiff's counsel from further involvement in the case. She said (at p. 760):

> It is obvious from what I have said that the integrity of the judicial system is challenged whenever a solicitor authorized to supervise the execution of a court order that infringes an individual's right to privacy, permits those who seek to benefit from it to go beyond a strict interpretation of the order. In this case, a solicitor permitted conduct that betrayed a reasonable interpretation of the order. The right to confidentiality of solicitor-client communications was infringed. The only way a court can express its disapproval of such egregious behaviour is by removing counsel from the record.
>
> Only by such means can the court assure the defendants and members of the public, all of whom are potential subjects of search and seizure orders, that their rights will be protected. This statement acknowledges that plaintiffs must have appropriate remedies with which they can counter defendant's intent on thwarting court process.

The defendant says that a similar remedy should be granted in the case at bar.

[45] For her part, the plaintiff relies on more recent authority from the Ontario Court of Appeal in the case of ***Celanese Canada Inc. v. Murray Demolition Corp***. (2004), 244 D.L.R. (4th) 33. Leave to appeal that decision to the Supreme Court of Canada has been granted: [2004] S.C.C.A. No. 530. In that case, an ***Anton Piller*** order was executed, following which, through a variety of circumstances, electronic documents were viewed by the plaintiff and plaintiff's solicitors. The court was faced with an application to remove the solicitors. The application was dismissed at first instance, and the dismissal was reversed by the Ontario Divisional Court.

[46] The decision not to dismiss the solicitors was reinstated by the Ontario Court of Appeal. Mr. Justice Moldaver, speaking for the court, set out the test to be applied at p. 36:

> In the end, as I shall endeavour to explain, the test for disqualification will have been met if, upon consideration of the whole of the evidence, the moving party satisfies the court that there is a real risk that opposing counsel will use information obtained from the privileged documents to the prejudice of the moving party and the prejudice cannot realistically be overcome by a remedy short of disqualification.

At p. 44, he added:

> [T]he test I am proposing is meant to be fair to both sides.
> Under it, disqualification will result if, upon consideration of the whole of the evidence, the moving party satisfies the court that there is a real risk that opposing counsel will use information from the privileged documents to the prejudice of the moving party and the prejudice cannot realistically be overcome by a remedy short of disqualification.

[47] ***Grenzservice*** and ***Celanese*** represent the two competing considerations that exist on an application

to disqualify counsel. In ***Grenzservice***, the court emphasized confidence in the system and protection for rights to privacy, and its order can be seen as attaching substantial importance to deterring counsel and parties from improper conduct that abuses the intrusion of privacy that is inherent in an ***Anton Piller*** order.

[48] In ***Celanese***, the Ontario Court of Appeal takes a practical approach, recognizing that requiring a change of counsel in mid-litigation is a cumbersome manner of dealing with rights, and recognizing that not every inadvertent violation of privacy rights or inadvertent violation of solicitor-client privilege necessitates such a drastic measure.

[49] Mr. Potts, for the defendant, rightly says the ***Grenzservice*** case is an authority which I must follow. I agree with that proposition, but the judgment is, of course, only authority for the propositions that are necessary to the conclusions reached. In ***Grenzservice***, the violations of the terms of the ***Anton Piller*** order were knowingly perpetrated, and were in complete disregard for the protective purposes of the order and for the privacy rights of the individuals concerned. I see the case before me as far less egregious than the case of ***Grenzservice***.

[50] While ***Celanese*** is not binding upon me, much of what is said in that case is reasonable, and it is not appropriate, in this case, for this court to hamstring the litigation unnecessarily for the sole purpose of deterring counsel from careless or inadvertent violations of rights to privacy.

[51] In this case, while there is much that could have been done better, the one egregious violation of rights to privacy occurred when the computer or hard drive was given to the plaintiff for the purpose of retransmitting e-mails. It is my view that it was reckless behaviour on the part of counsel to simply allow that hard drive or computer to be given to the plaintiff. It was a serious lapse in judgment to do so.

[52] I am not, however, convinced that it was a deliberate invasion of privacy in the sense that I would characterize what occurred in ***Grenzservice*** as deliberate, nor am I satisfied on the evidence before me that there is any real prejudice to the defendant as a result. As I understand the evidence, it is that certain e-mails were forwarded to counsel for the plaintiff, including one quite inconsequential document that may have been covered by solicitor-client privilege.

[53] It is shocking that the plaintiff would have effectively untrammelled access to the hard drive, even if only overnight, but I am not satisfied that there is any likelihood that damage has been done to the defendant

thereby. Even more importantly, I am not satisfied that if there were any damage done to the defendant, it would in any way be reversed by disqualifying counsel in this case. Breach of privacy, if it occurred at all, is a breach by the plaintiff herself, and not by counsel.

[54] Particularly considering aspects of the case that were decisive in the ***Celanese*** case, I find that it is not appropriate in this case to disqualify counsel.

Order

[55] Although language that I used in granting the order in January may have misled counsel into believing that it was intended was that the ***Anton Piller*** order would serve to freeze or secure assets, that was not my intention. Share certificates and cash that were seized were to be seized only to be used for evidentiary purposes. Once cash was counted and confirmed, and once securities were photocopied, in my view there was no purpose to those documents being retained under the ***Anton Piller*** order.

[56] I understand that the language that I used in granting the order may have misled counsel, possibly counsel for both sides. In the result, I do not believe that an immediate dissolution of the order is appropriate. However, as both counsel have agreed, I am making the following order. All cash and all share certificates which are held under the purported authority of the ***Anton Piller*** order must be delivered without delay to counsel for the defendants. Counsel for the defendants will hold that cash and those share certificates until August 22, in order to allow counsel for the plaintiff to either reach agreement with the defendant as to what is to become of those pieces of property, or to make application before a judge of this court for further relief.

[57] Absent agreement or further relief being granted by this court, counsel for the defendant will be free from the close of business August 22 to dispose of the share certificates and the cash on instructions from Mr. K.N.N.. I say this without making any finding as to whether Mr. K.N.N. is the appropriate owner of the cash or certificates, but I do find that he had possession of those, and that possession ought to be returned to him, subject to any agreement or further court order.

[58] Finally, subject to anything that I may have omitted to deal with – I will ask counsel about that in a moment – there is the issue of costs. In my view, as I say, the decision by counsel for the plaintiff to simply hand over the computer or hard drive was ill-advised, and it is my view that it was entirely reasonable for this application to be brought before this court. The defendant should have costs in any event of the cause of

this application. There has been nothing untoward in the manner in which the application itself has proceeded, and I am mindful that the plaintiff has been largely successful on this application. In the result, I will not order special costs. Given the difficulty of the application, I am granting the defendant costs of this application on scale 4 in any event of the cause. I am not ordering that those costs be payable forthwith; they will be payable at the end of the litigation.

THE COURT: Counsel, is there anything I have omitted to deal with, or any ancillary orders that are sought?

MR. COWPER: Yes, just a point of clarification on the order. I think your Lordship's reference to share certificates should be broadened to include share certificates, warrants or other securities.

THE COURT: Yes, I agree.

MR. COWPER: And there should be a proviso in the order, because there is an order, I am advised by Mr. Jackson, which has directed some of the certificates to go to Mr. J.'s office because those are held pursuant to another order. They have already been sent there. That was yesterday's order, the order you pronounced yesterday with Mr. F..

[59] THE COURT: All right. That will be subject to the order made yesterday.

(SUBMISSIONS BY COUNSEL WITH RESPECT TO THE HARD DRIVE)

[60] THE COURT: Subject to any further submissions, what I am going to order is that independent counsel will be entitled to review the contents of the drive, but not to disclose the results of that review to anyone other than counsel for the defendant. The original mirror image of the drive will not be delivered to anyone other than counsel for the defendant, and disclosure of material on the drive will either be by agreement of the parties or by further order of this court.

MR. COWPER: That’s acceptable, my lord.

MR. POTTS: That’s subject, my lord, to this. We know that he has already disclosed an unknown number of documents to counsel for the plaintiff. We know that because Mr. Jackson provided us with some copies. So if we have been given copies of everything they’ve seen, then the order that you’re making is appropriate, but if there had been other documents disclosed, we want to know what they are.

MR. COWPER: I'm sure that my friend has received copies of what we have received copies of.

[61] THE COURT: Okay, if it turns out that copies have not been delivered of all documents, I'm ordering that copies be delivered.

MR. POTTS: My lord, there is one remaining matter, and it's a question of summer access. When we last appeared before you, we indicated that there had been an agreement as to that. It appears there was not. There is not going to be an opportunity to deal with that tonight, but we would like leave to be able to deal with that in front of a different judge.

[62] THE COURT: Yes. In fact, I'm going to grant leave generally to deal with any matters that counsel consider to be urgent before another judge in the event that I'm not available, because I'm unlikely to be available to you now until the end of September. I do that on the basis that I understand I'm dealing with experienced counsel, and that you know what is urgent and what isn't. You can advise the master or judge dealing with any application that I've granted leave to have matters of an urgent or pressing nature heard by other judges or by masters. I remain the case management judge; matters that are not of an urgent or pressing matter should be scheduled before me.

"H.M. Groberman, J."
The Honourable Mr. Justice H.M. Groberman

September 20, 2005 – ***Revised Judgment***
On page 3, paragraph 7, the neutral citation quoted should read:

"2005 ***BCSC*** 163"