COURT FILE NUMBERS	2401-01422
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
MATTERS	**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended** **AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF GRIFFON PARTNERS OPERATION CORPORATION, GRIFFON PARTNERS HOLDING CORPORATION, GRIFFON PARTNERS CAPITAL MANAGEMENT LTD., STELLION LIMITED, 2437801 ALBERTA LTD., 2437799 ALBERTA LTD., 2437815 ALBERTA LTD., and SPICELO LIMITED**
DOCUMENT	**BOOK OF AUTHORITIES TO THE BRIEF OF TAMARACK VALLEY ENERGY LTD.**

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TABLE OF AUTHORITIES

TAB	AUTHORITY
1.	Alberta *Rules of Court*, Alta Reg 124/2010
2.	*Gow Estate (Re)*, 2021 ABKB 305.
3.	*Dechant v. Law Society of Alberta*, 2000 ABCA 265.
4.	*Guillevin International Co v Barry*, 2022 ABCA 144.
5.	*AP v SP*, 2017 ABQB 672.
6.	*IE CA 3 Holdings Ltd. (Re)*, 2023 BCSC 2120.
7.	*CRS Forestal v. Boise Cascade Corp*.
8.	*Hansraj v. Ao,* 2004 ABCA 223

Rule contravention, non-compliance and irregularities

1.5(1) If a person contravenes or does not comply with any procedural requirement, or if there is an irregularity in a commencement document, pleading, document, affidavit or prescribed form, a party may apply to the Court

(a) to cure the contravention, non-compliance or irregularity, or

(b) to set aside an act, application, proceeding or other thing because of prejudice to that party arising from the contravention, non-compliance or irregularity.

(2) An application under this rule must be filed within a reasonable time after the applicant becomes aware of the contravention, non-compliance or irregularity.

(3) An application under this rule may not be filed by a party who alleges prejudice as a result of the contravention, non-compliance or irregularity if that party has taken a further step in the action knowing of the prejudice.

(4) The Court must not cure any contravention, non-compliance or irregularity unless

(a) to do so will cause no irreparable harm to any party,

(b) in doing so the Court imposes terms or conditions that will

(i) eliminate or ameliorate any reparable harm, or

(ii) prevent the recurrence of the contravention, non-compliance or irregularity,

(c) in doing so the Court imposes a suitable sanction, if any, for the contravention, non-compliance or irregularity, and

(d) it is in the overall interests of justice to cure the contravention, non-compliance or irregularity.

(5) The Court must not cure any contravention, non-compliance or irregularity if to do so would have the effect of extending a time period that the Court is prohibited from extending.

(6) If an order is made under this rule, the Court may also impose a penalty under *rule 10.49*.

Questioning witness before hearing

6.8 A person may be questioned under oath as a witness for the purpose of obtaining a transcript of that person's evidence for use at the hearing of the application, and

(a) *rules 6.16* to *6.20* apply for the purposes of this rule, and

(b) the transcript of the questioning must be filed by the questioning party.

Variation of time periods

13.5(1) Unless the Court otherwise orders or a rule otherwise provides, the parties may agree to extend any time period specified in these rules.

(2) The Court may, unless a rule otherwise provides, stay, extend or shorten a time period that is

(a) specified in these rules,

(b) specified in an order or judgment, or

(c) agreed on by the parties.

(3) The order to extend or shorten a time period may be made whether or not the period has expired.

Court of Queen's Bench of Alberta

Citation: Gow Estate (Re), 2021 ABQB 305

Date: 20210419
Docket: ES14 05515
Registry: St. Paul

Court File Number	ES14 05515
Court	Court of Queen's Bench of Alberta (Surrogate Matter)
Judicial Centre	St. Paul
Estate Name	George Logan Gow
Applicants	Frances Neill and Logan Gow
Respondents	Helen Millar and Sheryl Gow
Personal Representatives	Helen Millar and Sheryl Gow
Beneficiaries (Residuary)	Helen Millar and Sheryl Gow
Beneficiaries (Non-residuary)	Frances Neill, Logan Gow, Jennifer Dormady, Melissa Ruud, Garrett Gow, Cameo Gow, Tyler Millar, Christopher Neill, Morgan Millan, Brielle Dormandy, Hunter Dormandy, Hayden Boyda

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Reasons for Decision
of the
Honourable Mr. Justice K.S. Feth

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[1] The Applicants, Frances Neill and Logan Gow, are challenging the will of their late father, George Logan Gow. They ask this Court for advice and directions to determine whether

e. Other estate planning records and documents pertaining to the deceased's farming corporation, including any valuations of the corporation and the minute book; and

f. Documents relating to a power of attorney for the deceased, including any financial dealings of his property completed under a power of attorney.

[11] In objecting to questioning and to the production of records at this stage of the proceedings, the Personal Representatives submit that the *Surrogate Rules* govern the Trial Application and do not permit pre-application discovery. Until the Applicants have satisfied the Court that a hearing into the formal proof of the will is warranted, the privacy interests of the deceased must be respected, including those protecting privileged legal communications and confidential health information, and the estate should not be subjected to the delay and expense occasioned by discovery.

[12] The Applicants submit that questioning under Rule 6.8 is compatible with the *Surrogate Rules* and supports the Court's truth-seeking function. As the Applicants have an evidentiary burden imposed on them when seeking a trial to formally prove the will, questioning is permissible in trying to discharge that obligation.

The Procedural Rules

a) Questioning a witness for a court application

[13] Rule 6.8 of the *Civil Procedure Rules* permits questioning to assist with an application before the Court:

> 6.8 A person may be questioned under oath as a witness for the purpose of obtaining a transcript of that person's evidence for use at the hearing of the application, and
>
> > (a) rules 6.16 [Contents of appointment notice] to 6.20 [Form of questioning and transcript] apply for the purposes of this rule, and
> >
> > (b) the transcript of the questioning must be filed by the questioning party.

[14] Rule 6.8 is similar to its predecessor, Rule 266. The rule finds its origins in a longstanding practice in Canadian and British civil courts allowing for the collection of evidence from individuals, including parties, who cannot or will not provide affidavit evidence for motions: ***Dechant v Law Society of Alberta***, 2000 ABCA 265 at paras 12-14 [***Dechant***].

[15] Numerous principles circumscribe the scope and manner of such questioning, including:

a. The information sought must be relevant and material to the pending motion: ***Dechant*** at para 17; ***Alberta Treasury Branches v Leahy***, 1999 ABQB 842 at paras 20-26 [***Leahy***]; ***Robertson v Edmonton (City) Police Service (#6)***, 2003 ABQB 188 at para 13, aff'd 2003 ABCA 279; ***AP v SP***, 2017 ABQB 672 at para 15;

b. The questioning is not an examination for discovery and a fishing expedition is not permitted: ***Leahy*** at para 22;

c. Parties adverse in interest can be examined: Rule 6.20(2); ***Ferguson v Cairns*** (1959), 21 DLR (2d) 659 at 662, [1959] 30 WWR 276 (Alta CA) [***Ferguson***];

d. The questioning party usually conducts an examination-in-chief of the witness and cannot cross-examine, but unlike the predecessor rule, cross-examination is permitted of parties adverse in interest: ***Dechant*** at para 15; Rule 6.20(2); ***Precision Drilling Canada Limited v Yangarra Resources Ltd***, 2013 ABQB 492 at paras 30, 37-38, 49, 54;

e. The witness may also be questioned by any other party and may then be questioned again by the party who summoned the witness: Rule 6.20(1);

f. All of the evidence obtained at the questioning is placed before the judge hearing the application and forms part of the case of the party who summoned the witness: ***Dechant*** at para 15; ***Ferguson*** at 662;

g. To the extent a witness is directed to produce records for the questioning, the notice must identify the records sought with as much precision as is fair and feasible, much like a subpoena *duces tecum*, and the records must be relevant to the pending application: ***Apotex Inc v Alberta*** (1996), 182 AR 321, 38 Alta LR (3d) 153 at paras 38-39; ***Leahy*** at paras 24-26;

h. The Court may regulate the questioning for abuse of process, including whether the application itself is an abuse of process: ***Dechant*** at para 14;

i. The Court may order the witness to attend for questioning and to bring records to the questioning: Rule 6.38; and

j. The Court may provide directions in advance of the questioning on the scope of permissible questions: ***Dechant*** at para 16.

[16] Rule 6.8 applies to every application filed in this Court unless a rule or an enactment otherwise provides or the Court otherwise orders or permits: Rule 6.1(a).

b) The *Surrogate Rules*

[17] Rule 2(1) of the *Surrogate Rules* confirms that the *Civil Procedure Rules* generally apply to surrogate proceedings and applications:

> 2(1) The *Alberta Rules of Court* (AR 124/2010) apply to an application to the court if the matter is not otherwise dealt with under these Rules or the context indicates otherwise.

[18] The hearing procedure for an application respecting a contentious matter, including a request for a formal proof of will trial or summary dismissal of such a request, is addressed in Surrogate Rule 64(1), which states in relevant part:

> 64(1) The court, on hearing an application, may
>
> (a) receive evidence by affidavit or *orally;*
>
> (b) dispose of the issues arising out of the application as it considers appropriate;
>
> (b.1) direct a person to file a reply, accompanied with an affidavit, if evidence is to be submitted, or a demand for notice;
>
> (c) direct a trial of issues arising out of the application;

Dechant v. Law Society of Alberta, 2000 ABCA 265

Date: 20001006
Docket: 98-18047

IN THE COURT OF APPEAL OF ALBERTA

THE COURT:

THE HONOURABLE MADAM JUSTICE CONRAD
THE HONOURABLE MADAM JUSTICE McFADYEN
THE HONOURABLE MADAM JUSTICE BENSLER

IN THE MATTER OF THE *Legal Profession Act*, S.A. 1990, c. L-9.1, sections 51, 52, 53, 54, 55, 56, 58, 59, 61, 62 and the Regulations and *Code of Professional Conduct* thereto.

IN THE MATTER OF Complaints filed by Jeanette Dechant with the Law Society of Alberta.

IN THE MATTER OF Complaints filed with the Law Society of Alberta against Jeanette Dechant.

IN THE MATTER OF A Hearing regarding the Conduct of Jeanette Dechant.

AND IN THE MATTER OF the *Alberta Rules of Court*, Part 33 and Part 56.1.

BETWEEN:

JEANETTE DECHANT

APPELLANT/
Applicant

- and -

THE LAW SOCIETY OF ALBERTA

RESPONDENT/
Respondent

APPEAL FROM THE ORDERS OF

THE HONOURABLE MR. JUSTICE CAIRNS
DATED JUNE 19, 1998, BY CONFERENCE CALL OCTOBER 9, 1998,
FILED NOVEMBER 2, 1998 AND SERVED NOVEMBER 3, 1998

MEMORANDUM OF JUDGMENT

JEANETTE DECHANT
On her own behalf

COUNSEL:

A.W. MacDONALD, Q.C. and
K. WILKES
For the Respondent

[10] The Chambers Judge below allowed the examination of several witnesses pursuant to r. 266. Strict limitations were put on these examinations and none of those rulings are appealed here. The Chambers Judge refused to order that the application proceed with oral examinations under r. 267. He noted that the hearing judge could order *viva voce* evidence if that were deemed necessary. Further, he refused to allow examinations of Neil Wittmann or Lindsay MacDonald under r. 266, finding that to permit these examinations would be an abuse of process. In our view, the Chambers Judge did not make an error in his findings with respect to r. 267. It is always open to a hearing judge to decide that oral evidence is necessary. Further, the Chambers Judge did not make an error of principle on his decision that there was no basis to examine Neil Wittmann, nor was his decision unreasonable. The appellant has not established that Wittmann would have anything relevant to add. However, in our view the Chambers Judge erred in denying a r. 266 examination of Lindsay MacDonald and we order such examination. Our reasons follow.

[11] The relevant rules state:

> 266. A party to an action or proceeding may by service of an appointment issued by an officer having jurisdiction in the judicial district where the witness resides to issue appointments for the examination of parties for discovery, require the attendance of a witness to be examined before that officer for the purpose of using his evidence upon any motion, petition or other proceeding before the court or any judge or judicial officer in chambers; and his attendance may be procured and his examination conducted in the same manner as those of a witness at the trial.
>
> 267.(1) For the purpose of a motion, the court may order documents to be produced and witnesses to appear and be examined orally before the court or before any other person and at any place.
>
> (2) No person shall be compelled to produce under the order any writing or other document which he could not be compelled to produce at the hearing or trial.

[12] Rule 266 has a longstanding history in both the Canadian and British civil courts. In Great Britain, the Rule arose in the 19th century as a means to adduce evidence when proceedings could not be conducted on the basis of affidavits alone and witnesses could not be compelled to attend examinations for the purposes of interlocutory matters. The Rule has been adopted in Canada in various jurisdictions including Alberta to similarly provide a means to obtain evidence from individuals who cannot or will not give affidavit evidence for motions.

[13] The Rule was introduced into England by amendment to the Rules of the High Court of Chancery in 1852: *An Act to Amend the Practice and Course of Proceeding in the High Court of Chancery*, 1852, 15 & 16 Victoria, s. 40. The said amendment stated:

In the Court of Appeal of Alberta

Citation: Guillevin International Co v Barry, 2022 ABCA 144

Date: 20220421
Docket: 2103-0153AC;
2103-0158AC;
2103-0201AC

Registry: Edmonton

Between:

Guillevin International Co. and Rexel Canada Electrical Inc.

Appellants
(Plaintiffs)

- and -

Wayne Michael Barry operating as The Corvettes, Diana Lynne Barry, Charlotte Clarkson also known as Charlotte Barry, Michelle Lynne Daly also known as Michelle Lynne Barry, Daniel E. Daly, Brian Keith King, Ralph Marvin Schwanke, Daydream Development Corporation Ltd., Immoral Mortgage Corporation & Loan Services Inc., Mass Technologies Inc., Findsource Sales Ltd., Old Strathcona Accounting Services Ltd. operating as Old Strathcona Accounting Offices, Heritage Supplies Ltd., Fara Services Inc. operating as Barry & Associates Accounting and also operating as Old Strathcona Accounting Office, The Wayne Michael Barry Guaranteed Investment Corporation Inc., Preferred Enterprises Ltd. operating as Preferred Properties, 1848457 Alberta Ltd., It's A Gimme.Com Inc., Keebar Business Enterprises Inc., Paramount Home Builders Inc. operating as Genesis Foam Canada, Charlotte L. Clarkson Professional Corporation operating as Barry & Associates and also operating as Old Strathcona Accounting Offices, ABC Ltd. operating as Old Strathcona Accounting Professional Corporation, John Doe 1 operating as Old Strathcona Accounting Professional Corporation, DEF Ltd. operating as Wayne Michael Barry Old Strathcona Accounting Professional Corporation, John Doe 2 operating as Wayne Michael Barry Old Strathcona Accounting Professional Corporation, Complete Chaos Incorporated, The Alberta Financing Capital Corporation, Genisis Foam Canada Ltd., Barry and Associates, Professional Accountants, Jasper Point Developments Inc., Village on Perron Developments Inc., 972831 Alberta Ltd., and Try Services Limited

Respondents
(Defendants)

- and -

George Dockstader also known as Brian Dockstader, West Lite Consulting Ltd., and Quad Metering Services Ltd.

Not Parties to the Appeal

Corrected judgment: A corrigendum was issued on April 25, 2022; the corrections have been made to the text and the corrigendum is appended to this judgment.

The Court:

The Honourable Justice Frans Slatter
The Honourable Justice Michelle Crighton
The Honourable Justice Jo'Anne Strekaf

Memorandum of Judgment

Appeal from the Orders by
The Honourable Justice G.S. Dunlop
Dated the 10th day of June, 2021
Filed on the 26th day of November, 2021

Dated the 2nd day of July, 2021
Filed on the 8th day of October, 2021

Dated the 26th day of August, 2021
Filed on the 6th day of January, 2022

(Docket: 2003 00719)

> 6.8 A person may be questioned under oath as a witness for the purpose of obtaining a transcript of that person's evidence for use at the hearing of the application, . . .

The transcripts of an examination under R. 6.8 would all have been admissible evidence. The examiner is not permitted to just "read in" those portions of the transcript that it finds to be supportive of its case. Further, this would not just be evidence against Schwanke, but would be evidence for or against all the parties.

[35] Any party has a *prima facie* right to examine a witness under R. 6.8 without consent or court order. Obtaining evidence from a recalcitrant witness supports the court's truth-seeking function, and is exactly what the rule is for: ***Neill v Millar***, 2021 ABQB 305 at paras. 12-14, 48-49. There is no objection to examining an opposing party under the rule; a party in a civil action has no right to "stand silent": ***Wawanesa Mutual Insurance Co v Schneider***, 1995 ABCA 419 at paras. 13-14, 34 Alta LR (3d) 1, 174 AR 304; ***Ferguson v Cairns*** (1959), 21 DLR (2d) 659, 30 WWR 276 (Alta SC, App Div). While a chambers judge can set aside such an appointment if it is an abuse of process, the burden of showing an abuse is on the witness. The appointment should not be set aside unless there are no more proportionate remedies. On this record there was no sufficient reason for the chambers judge to set aside the notice under R. 6.8.

[36] Schwanke's application to set aside the R. 6.8 appointment was based on the bald assertion that it was an "abuse of process". Remarkably, the application was granted even though Schwanke had not filed an affidavit deposing to any prejudice. The argument appeared to be simply that any evidence from the examination would offend the ***Tiger Calcium*** rule, or that the examination should have been conducted earlier in the proceedings. The record suggested that Schwanke had made a "near confession" to the frauds, and Guillevin was entitled to have him confirm under oath whether that was the case. This evidence would have been highly relevant and probative, and as previously noted, it would be an error for a judge to exclude evidence before knowing what it was. There would have been no violation of the ***Tiger Calcium*** rule because Schwanke's evidence could not possibly have been available to Guillevin at the time of the *ex parte* application.

[37] Further, any delay in issuing the appointment was arguably explained. The appellants had filed a significant body of evidence tending to show that they had been defrauded. One would have thought that the respondents would have filed a reply to this evidence. It was not unreasonable for the appellants to expect that the respondents would at least file an affidavit denying the allegations of fraud. For example, if FindSource and Mass Technologies provided legitimate services for the invoices they had rendered, it would have been a simple matter for one of the respondents to file an affidavit to that effect. Instead, there was dead silence. When no response was received, the appellants finally applied to examine Schwanke. The reason that did not happen earlier was the unexpected tactics of the respondents.

[38] The chambers judge appeared to be concerned that the examination might delay the comeback hearing, but given all of the other cross examinations on affidavit that were taking place, there is nothing on the record to support that concern. Any delay could have been avoided with

Court of Queen's Bench of Alberta

Citation: AP v SP, 2017 ABQB 672

Date: 20171103
Docket: 1203 00978
Registry: Edmonton

Between:

AP and Her Majesty the Queen In the Right of Alberta

Respondents (Plaintiffs)

- and -

SP

Applicant (Defendant)

Restriction on Publication

Identification Ban – See the *Criminal Code*, section 486.4.

By Court Order, information that may identify the complainant must not be published, broadcast, or transmitted in any way.

NOTE: This judgment is intended to comply with the identification ban.

Editorial Notice: This unofficial electronic version of the judgment has been revised to comply with the court-ordered publication ban.

Reasons for Decision
of the
Honourable Madam Justice R. Khullar

- What Mr. Bataluk communicated to Ms. AP regarding how he would take care or accommodate her concerns regarding her father being present through questioning; and
- The conversation between Mr. Bataluk and Ms. AP on September 28, 2016.

[12] Not before me is the Defendant's application for contempt or the Plaintiff's cross-application to seek accommodation for how the Questioning should occur in light of the Plaintiff's discomfort with having her father present while she is questioned. In addition, the Plaintiff was cross-examined on her affidavit, and there are a number of outstanding issues related to that cross-examination, but those are not before me on this application.

[13] Lastly, as indicated the Defendant had provided the Plaintiff a list of written questions for Mr. Bataluk, apparently pursuant to an agreement. I was advised that the Plaintiff objected to all of the questions on the basis of privilege, and then resiled from the underlying agreement to proceed in this manner. I will not address whether there was an agreement, or if it has been breached, as I will be ruling on the appropriateness, or not, of the questions and the issue of the agreement of the parties is not relevant to the issue I will be deciding.

IV. Law

[14] The Defendant relies on rule 6.8 in support of its application, which states:

> A person may be questioned under oath as a witness for the purpose of obtaining a transcript of that person's evidence for use at the hearing of the application, and
>
> a) rule 6.16 to 6.20 apply for the purposes of this rule, and
>
> b) the transcript of the questioning must be filed by the questioning party.

[15] First, it is important to note that this is not a Norwich type application – where a party is seeking the right to question a person *prior* to commencing a legal action: The legal test for a Norwich application (including necessity) does not apply in these circumstances. As noted in the commentary under Fradsham's *Alberta Rules of Court Annotated 2018*, this rule and its predecessor, is similar to a subpoena *duces tecum* in that a party wishing to examine a witness must establish that the evidence from the witness may be relevant and material in order to compel the witness to attend. The onus is then on the witness to object as to why he or she does not have to attend. ***Robertson v Edmonton Chief of Police***, 2003 ABQB 188 (Clackson, J.) at para 14, aff'd 2003 ABCA 279; ***Apotex Inc. v Alberta (1966)***, 38 Alta LR (3d) 153 (at para 65) (Hutchinson, J.).

[16] The Plaintiff's position appears to be first, there is nothing Mr. Bataluk can offer in evidence that is material and relevant to an issue in the lawsuit. Alternatively any evidence that could be offered is protected by solicitor and client privilege, which has not been waived.

[17] The issue of materiality and relevance turns on whether I am considering the issues in the lawsuit, or in the application for contempt.

[18] Clearly the potential evidence is irrelevant to the underlying tort action of sexual abuse. Is it relevant and material to the contempt application? The Defendant argues the evidence would

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *IE CA 3 Holdings Ltd. (Re),* 2023 BCSC 2120

Date: 20231201
Estate No. 11-2959909
Docket: B230284
Registry: Vancouver

In Bankruptcy

In the Matter of the Bankruptcy of IE CA 3 Holdings Ltd.

- and -

Estate No.: 11-2959909
Docket: B230298
Registry: Vancouver

In Bankruptcy

In the Matter of the Bankruptcy of IE CA 4 Holdings Ltd.

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

Counsel for the Trustee, PricewaterhouseCoopers Inc.:	M. Buttery, K.C. E. Paplawski
Counsel for the Debtors, IE CA 3 Holdings Ltd. and IE CA 4 Holdings Ltd.:	K. Siddall C. Formosa
Counsel for Daniel Roberts, William Roberts, Michael Alfred, David Bartholomew, Belinda Nucifora and Chris Guzowski:	T. Curry B. Greenaway
Counsel for NYDIG ABL LLC:	C. Burr C. Hildebrand
Place and Date of Hearing:	Vancouver, B.C. November 17, 2023
Place and Date of Judgment:	Vancouver, B.C. December 1, 2023

[32] There are, however, exceptions to the need for letters of request. Two of them apply here.

[33] First, the court will acquire the requisite *in personam* jurisdiction over non-resident examinees who have attorned to the court's jurisdiction, such as by advancing substantive arguments on the merits of the dispute before the court: *Barer*. I agree with the Trustee that that is what has occurred here. By seeking to have the application resolved, even if only in part, on the basis that the Trustee has acted unreasonably in refusing to examine only William Roberts in the first instance, the proposed examinees have, albeit "begrudgingly", attorned to this court's jurisdiction.

[34] Second, the proposed examinees are directors and officers of IEL, a foreign corporation that has, without question, already attorned to this court's jurisdiction. This bankruptcy action is closely related to, and indeed, arises directly out of the receivership proceeding. IEL cannot properly seek to advance its interests in this litigation before this court and the Court of Appeal, while refusing to make its directors and officers available for examination as the law requires. I therefore agree with the Trustee that this court can, to the extent required, also invoke its *in personam* jurisdiction over IEL by ordering it to make the proposed examinees available for the proposed examinations.

[35] The jurisdictional footing for such an order is similar, but not identical, to that in *CRS Forestal*. Just as the foreign defendant in that case had a duty under the *SCCR* to make a representative available for discovery, IEL is likewise obliged, as a litigant in this forum, to ensure that that the rules of the forum that are engaged in this litigation, including s. 163 of the *BIA*, are followed by its directors and officers. However, the source of the court's jurisdiction to make the order sought here does not lie in the discovery provisions of the *SCCR*, as in *CRS Forestal*, but rather the inherent jurisdiction of the court to control its own process.

Citation: CRS Forestal et al v. Boise Cascade Corporation et al
2001 BCSC 1521

Date: 20011031
Docket: C983201
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CRS FORESTAL, A PARTNERSHIP
WOLFGANG KURT BERGELT
LARRY ARTHUR CHRISTOPHERSON
THOMAS BRUCE SHAW
DEREK GEORGE WELBOURN
DAVID FRANCIS WRIGHT

PLAINTIFFS

AND:

BOISE CASCADE CORPORATION
BOISE CASCADE CORPORATION CHILE S.A.
COMPANIA INDUSTRIAL PUERTO MONTT S.A.
DONALD EUGENE MACINNES
AKOS ZAHORAN
COMPANIA INTEGRAL DE BOSQUES S.A.

DEFENDANTS

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE WILLIAMSON

Counsel for Plaintiffs — Ronald Josephson

Counsel for Defendant, Boise Cascade Corporation — Winton Derby, Q.C. and William Veenstra

Counsel for Defendants, Donald Eugene MacInnes & Compania Integral De Bosques S.A.	Christopher Andison
Date and Place of Hearing	October 24, 2001 By teleconference Vancouver/Campbell River, BC

plaintiffs, that it had received the forwarded appointment to examine Mr. Zahoran as a representative of De Bosques. Counsel wrote:

> We have now had an opportunity to contact Mr. Zahoran. It is our understanding that Mr. Zahoran will not agree to attend in this jurisdiction to be examined...

[7] Subsequent to this there was a further exchange of correspondence between counsel for the parties. Eventually, on September 7, 2001, counsel for De Bosques wrote to counsel for the plaintiffs confirming that "De Bosques is unable to compel Mr. Zahoran to attend within this jurisdiction...".

[8] I conclude that both De Bosques and Zahoran had notice of this application.

[9] The second question is whether it is practical to make the order sought. De Bosques submits that it is not practical to make an order in circumstances where this court has no jurisdiction to enforce the order. Whatever this means, it cannot mean that the court cannot make an order compelling a person residing outside of British Columbia (outside of the jurisdiction of the court) to attend an examination for discovery. To so rule would render Rule 27(26) completely ineffective.

[10] The real issue is whether the defendant De Bosques, a company which has attorned to the jurisdiction of this court, can exert any pressure on Zahoran to attend an examination for discovery. In this regard, it is helpful to consider ***United Services Fund (Trustees of) v. Richardson*** 23 B.C.L.R. (2d) 1 at para. 6 in which Esson J.A., writing for the Court, stated:

> The attendance of present officers outside the jurisdiction could, of course, be compelled by sanctions directed against the corporate party.

[11] Is there, then, a practical method of compelling the attendance of a person living outside the province? In my view there is. De Bosques is a party. Zahoran is a general manager of, as well as a director of and shareholder in the company. On the face of it, the company can direct him to attend for examination for discovery.

[12] Mr. Andison says that De Bosques is a company which really has no function and is not operating at the present time. There is scant evidence of this in the material before me, if any, but in my view that is not determinative. The question is not what De Bosques is doing; rather the question is whether it has any power to compel Zahoran to attend. In my view, it does.

In the Court of Appeal of Alberta

Citation: Hansraj v. Ao, 2004 ABCA 223

Date: 20040628
Docket: 0203-0368-AC
Registry: Edmonton

Between:

Anthony Hansraj and Roger Hansraj

Appellants
(Plaintiffs)

- and -

Zefeng Ao

Respondent
(Defendant)

- and -

Richard Medeirus and John Doe I and John Doe II

Defendants
(Not Parties to Appeal)

Corrected judgment: A corrigendum was filed on August 11, 2004, the corrections have been made to the text and the corrigendum is appended to this judgment.

The Court:

The Honourable Chief Justice Catherine Fraser
The Honourable Mr. Justice John McClung
The Honourable Mr. Justice Jean Côté

Reasons for Judgment Reserved of the Honourable Mr. Justice Côté
Concurred in by the Honourable Chief Justice Fraser
Concurred in by the Honourable Mr. Justice McClung

Reasons for Judgment of the
Honourable Mr. Justice Côté

A. Introduction

[1] The problem here revolves around a motor vehicle statement of claim served substitutionally by newspaper advertisement, in another province, during a short renewal of the statement of claim. The chambers judge struck out that service long after.

B. Facts

[2] The full facts are set out in the judgment appealed from, which is reported at (2002) 314 A.R. 262, 2002 ABQB 385. I will use the page and paragraph numbers from the law report.

[3] The appellants are the two plaintiffs. The respondent is one of several defendants. The other defendants are not involved in this appeal. Ms. Miller and her firm were not involved in earlier stages of this suit.

[4] A chronology of the basic facts is as follows:

November 9, 1996	Motor vehicle accident
February 12, 1997	Counsel for appellants wrote to SGI (respondent's supposed insurer), asserting that the respondent was solely liable for the accident. Appellants' counsel indicated that he was gathering medical evidence, and asked SGI to forward any photographs.
March 13, 1997	SGI's adjuster faxed a note to counsel for the appellants. Probably the respondent had now signed the non-waiver agreement. The adjuster said that he was in a position to "deal with your demands".
November 3, 1998	Statement of claim issued
November 9, 1998	Limitation expired
May 5, 1999	Copy of claim sent to insurer
August 24, 1999	***Ex parte*** order for substitutional service ***ex juris.***
November 1, 1999	***Ex parte*** order renewing statement of claim

occurred, if in fact the physical statement of claim, or knowledge of its existence and contents, had come to the knowledge of the defendant in question.

[31] The court will not set aside service of a document, or set aside a later step needing service, such as default judgment, if the intended recipient (defendant) later actually got the document, or notice of it: ***Vidito v. Veinot*** (1912) 10 E.L.R. 292, 3 D.L.R. 179 (N.S.) (writ of summons); ***Hoehn v. Marshall*** (1917) 12 O.W.N. 193; ***Morozuk v. Fedorek*** [1941] 1 W.W.R. 382, 389 (Alta. C.A.); ***Cdn.-Dom. Leasing Corp. v. Corpex*** [1963] 2 O.R. 497 (M.), affd. ***id.*** at p. 499n.; ***Pettigrew v. Robb*** A.U.D. (M.) 1296, 1297-8, J.D.E. 8303-19103 (Oct. 26, 1983); ***A.-G. Can. v. Doucette*** (1992) 133 A.R. 68, 71-2, 11 C.P.C. (3d) 81 (paras. 14-16); ***Hnatyshyn Singer Thorstad v. Robson*** (1998) 33 C.P.C. (4th) 135 (Sask.).

[32] To undo the consequences of not carrying out what an official document directs the recipient to do, it is not enough that he shows that the document was not served on him. He must also show that he did not know of the document: ***Kistler v. Tettmar*** [1905] 1 K.B. 39, 74 L.J.K.B. 1 (C.A.) (defendant knew of a judgment and evaded service and knew of an order for an examination in aid and did not come); ***Fontaine v. Serben*** [1974] 5 W.W.R. 428 (Alta. D.C.), affd. (1976) (C.A.): see Note (1977) 15 Alta. L. Rev. 194 (no service, but learned later); ***Eyre v. Eyre*** [1971] 2 O.R. 744, 746-7 (M.); cf. ***Admin. of M.V.A. C.A. v. Gray*** (1986) 71 A.R. 24, 45 Alta. L.R. (2d) 172, 19 C.C.L.I. 246 (C.A.); cf. ***Golden Ocean Assce. v. Martin (The Goldean Mariner)*** [1990] 2 Ll. R. 215 (C.A.). A defect in service is curable under R. 558, if the contents of the statement of claim came to the attention of the defendant, even imperfectly: ***Clarke v. Treadwell*** [1987] A.U.D. 857, [1987] A.J. #683, Calg. 16149 (C.A. June 11). (One may compare ***Sissons v. Whiteside***, Calg. 0201-0248-AC, 2004 ABCA 96 (Mar. 9).)

[33] To set aside or nullify service of a statement of claim then would be even more unjust if the defendant were intending to argue that service now was impossible (e.g., because of expiry of the statement of claim), or if the plaintiff had in the meantime relied upon apparent service to his detriment.

[34] So a defendant moving to set aside purported service is expected to swear that neither any copy of the statement of claim, nor knowledge of its contents, was known to him. For instance, he might swear that he never saw the advertisement in the newspaper, never heard of it, and was thousands of miles away at a mining camp in Bolivia at all material times. In practice, such contents are usual in a defendant's affidavit.

[35] It is possible that this respondent is either blissfully unaware of this entire lawsuit, or only learned of it recently. Maybe he has been out of Canada for years. On the other hand, it is possible that he has been aware all along of what was going on, and read a copy of the statement