Canada

PROVINCE OF BRITISH COLUMBIA

In the Provincial Court of British Columbia

(BEFORE THE HONOURABLE JUDGE L. NIMSICK)

PORT COQUITLAM, B.C.

APRIL 5, 2000

REGINA

V.

CAROLYN JAN NAUDI and PYRENEE EQUITIES INC.

EXCERPT FROM PROCEEDINGS

(Ruling)

APPEARANCES:

P. RILEY	for the Crown
F. NAUDI	for the Defence
G.TURNER	Court Recorder
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P. NEUMANN

Transcriber

THE COURT: To say that this is a very vexing situation would be to understate very clearly the problem.

I have to start off on the day that this matter commenced, when Mr. Riley announced that the Crown would be producing one witness. Of course, having said that, he is not bound by that statement, if in fact he perceives at some point one or more other witnesses may be required. As we got into the evidence of Ms. Dube, and we dealt with the issue of the statements allegedly made by Ms. Naudi to Ms. Dube and the comments Ms. Dube made. I found them to be a threat and therefore excluded the statements. As the evidence continued to come out I became quite concerned about what had been the unwillingness of the Crown and the Department of National Revenue, as it then was, to accede to the reasonable requests made by the defendant for information.

Now, I do not say that all the requests were reasonable; they were not. There was some frustration, obviously, and I perceive from that a certain arrogance, and I think that that perception is still there, if I read the letters correctly. It seemed to me that Crown was just simply saying, and the Department was simply saying, "Sorry, you've got all you're going to get and we're not going to provide you with any more."

The next problem that arose that gave me some concern was when Ms. Dube's evidence disclosed that her credentials had been prepared by her and to which she had affixed a rubber stamp signature, and I questioned that. I still do not know whether or not there is some provision in the statute that allows that to happen, but it is not for me to check it out. It is for Crown to put before me the necessary law and evidence for me to make a finding. I had not made a finding at that point, but I questioned it.

The next issue that arose, and this is what prompted me to call the meeting, was the question that was put to Ms. Dube as to whether or not the defendants had ever refused to provide the information that was being requested, and Ms. Dube's answer was that they had not.

Now, I have not put my mind to the possibility that there may have been a constructive refusal that was for argument if we ever got to that point but those are issues I felt I should bring to the attention of both the Crown and the Defence and, by the way, it is not unusual, though Mr. Riley seemed to think it was unusual,

for the judge to meet with the parties, as long as everybody was there, to discuss the direction of the case. Had one or other refused to come, there would have been no meeting.

The issue now is whether or not what was said by me at any particular time, whether it was here in the open courtroom or in chambers, would have raised a perception of bias on my part. I can say that in many years of doing this job, this is the first time it has ever been suggested. But I can see that Mr. Riley may very well have come to that conclusion, and obviously did, otherwise he would not be making the application.

I think it necessary to read two or three paragraphs from the case of *R. v. Ontario Corporation 844781*, specifically on page 3, because this really puts it in perspective. Many times there are pre-trial issues that have to be dealt with and they are usually dealt with by the trial judge before the trial opens. What the judge in that case said was:

"The matter before me was not at the pre-trial stage."

Which is where we are at.

"Part way through the Crown's case, the trial judge was clearly called upon to be in his adjudicative role. Adjudication requires a disciplined neutrality and a suspension of decision until opposing evidence and arguments are understood."

Now, in that case the issue was whether or not the Crown had placed sufficient evidence before the Court to prove beyond a reasonable doubt the issue. In this case, that was not the issue. The issue was a number of questions that had arisen. I continue:

"During a trial, I am persuaded that the judicial responsibility to promote resolution and effectively manage the court's time, must take a secondary importance to the preservation of an attitude of neutrality.

"That is not to say that a trial judge may not create an opportunity for the parties to reconsider the possibility of resolution. Nor

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is a trial judge prevented from inquiring of the parties their responsible comments on how the case is expected to proceed. This is all part of the daily routine of a trial judge. However, where a trial judge ventures into a discussion of issues that he or she may yet be called upon to adjudicate, great care must be taken to avoid comment that suggests a predetermination of the issue."

I thought I had done that.

"Litigation is a tough enterprise. It is not a discipline for the faint-hearted or very sensitive. Careful discussions of possible resolution, even mid-trial, would not necessarily give rise to a reasonable apprehension that the judge might not decide the case fairly or impartially if such discussions are conducted with an expressed emphasis on the judge's resolve to maintain a willingness to adjudicate on all of the evidence and argument to be heard."

Well, at the time of the meeting, I was raising the issues to give Mr. Riley an opportunity at least to give me some answers. I had hoped at that time that maybe he would have gone away and considered the situation and, if he had the answers, we would proceed. If he does not have the answers, he stops. That was the whole situation in a nutshell.

He obviously is much more sensitive than most Crown counsel that I have met. Most Crown counsel would have gone away and made a determination as to whether or not he had the evidence to close the holes that I perceived were there. He chose not to do that, or if he did and found out that he could not and now we are here, that would be a very unfortunate outcome, in my opinion.

I have been at this business a long time, and I can say that this is not the first nor will it be the last meeting I will have with counsel in chambers, or the parties, as in this case, if I believe that it is going to move the trial ahead. It is my responsibility to preserve the time of the court if I can. If the Crown, after having had the discussions with the judge, or the Defence for that matter, because it could go both ways, perceive that there is no place to go and there should be

some other determination, then I would expect they would do that. That did not happen in this case, and obviously we are here with a situation that is not all that comfortable.

The cases are pretty clear.

Mr. Riley certainly feels that there is some apprehension of bias on my part, and nothing I can do, I think, at this point, to change his mind. But I say again, if in fact this is just another way to get out of an embarrassing situation, he has succeeded.

I am declaring a mistrial.

(PROCEEDINGS CONCLUDED)

Nimsick, L., P.C.J.

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