COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: ***Ribeiro v. Vancouver (City),***
2004 BCCA 482

Date: 20040915

Docket: CA032058

Between:

Jose Augusto Ribeiro

Respondent
(Plaintiff)

And

The City of Vancouver, Police Sergeant Lacon, Police Sergeant Boutin, Police Constable Dimock, Police Constable Bezanson, Police Constable Gibson, Police Constable Chu, Police Constable Stewart, Police Constable Scally, Police Constable Jackson, Police Constable Alfred, Police Inspector Greer, and Police Acting Staff Sergeant S. Miller

Appellants
(Defendants)

Before: The Honourable Madam Justice Southin
The Honourable Madam Justice Ryan
The Honourable Mr. Justice Thackray

Oral Reasons for Judgment

B.S. Parkin	Counsel for the Appellants
F.G. Potts and K. Leung	Counsel for the Respondent
Place and Date:	Vancouver, British Columbia 15 September 2004

[1] **SOUTHIN, J.A.:** This is an appeal leave having been granted by Mr. Justice Donald, from an order of Mr. Justice Powers pronounced the 17th June 2004 in these terms:

THIS COURT ORDERS that:

1. the Plaintiff is permitted to videotape the Examinations for Discovery of the Defendants in this proceeding;

2. any use of the video recording of the Examinations for Discovery of the Defendants is subject to the direction of the Trial Judge;

3. if the Plaintiff wishes to use any portions of the video recording of the Examination for Discovery of the Defendants at trial, he shall advise the Defendants of the portions he intends to use at least sixty (60) days before the commencement of the trial, with leave to the parties to apply to the trial judge for directions as to which other portions, if any, ought to be synchronized with the official transcript;

4. the video recording of the Examination for Discovery of the Defendants is not the official record of those discoveries and the official record shall be the written transcript;

5. proceedings on this Order are stayed for eight (8) weeks from the date of pronouncement of this Order with leave to the Defendants to seek an extension of this Stay;

> 6. the Plaintiff is entitled to any cancellation fee and to the costs of this application as costs in the cause at Scale 3.

[2] In his reasons for judgment the learned judge followed a judgment in the case called ***Ramos*** [***v. Stace-Smith*** (2004), 24 B.C.L.R. (4th) 333, 2004 BCSC 109] and did so on the footing of the classic expression of "*stare decisis*": ***Re Hansard Spruce Mills Ltd.***, [1954] 4 D.L.R. 590. Might I digress to say that I should think that Wilson J. (as he then was) would be surprised at the use to which ***Hansard Spruce Mills*** was put in this case.

[3] There is no provision in the ***Rules of the Supreme Court of British Columbia*** for the order which was pronounced in this case. Since time immemorial, that is to say since examinations for discovery were first permitted in this province which I think now is about 80 or 90 years ago, they have never been filmed by any method at all. If they are to be, there must be a change in the ***Rules of the Court*** to permit or authorize such a practice, or, in my view, there must be at least a practice direction emanating from the whole of the Supreme Court of British Columbia on the point. In making the latter remark, I am not saying that a practice direction would necessarily be valid in such circumstances. Matters of practice and procedure in the court below must be governed by its ***Rules***, and those ***Rules*** must be duly enacted under the ***Court Rules of Practice Act***. It is certainly open to the Lieutenant Governor in Council to permit what Mr. Potts says is a very good idea but she has not done so. It is not appropriate for a single judge of the court below to engage in matters of practice and procedure in what I call judicial individualism. The course of the court below is the law of the court and the course has never been to engage in such a practice.

[4] For that reason, and without making any comment at all on whether Mr. Potts' theories about the importance of being able to have this technological advance used in the courts, without any comment on that at all, I would allow this appeal and set the order below aside. In doing so, I wish to make it clear that I consider both the judgment of Mr. Justice Powers and the judgment which he followed to have been wrongly decided. They should not be followed in the court below and are overruled.

[5] I would therefore allow the appeal accordingly.

[6] **RYAN, J.A.:** I agree.

[7] **THACKRAY, J.A.:** I agree.

[8] **SOUTHIN, J.A.:** The appeal is allowed accordingly.

“The Honourable Madam Justice Southin”