

IN THE SUPREME COURT OF CANADA

**(APPEAL FROM THE COURT OF APPEAL FOR THE
PROVINCE OF BRITISH COLUMBIA)**

Between

George Ernest Hunt,

**Appellant
(Plaintiff),**

and

**Lac D'Amiante du Quebec Ltee, formerly
known as Lake Asbestos Company Ltd.,
Asbestos Corporation Limited,
Atlas Turner Inc.,
Bell Asbestos Mines Limited,
JM Asbestos Inc.,
The Quebec Asbestos Mining Association,
and National Gypsum Co.,**

**Respondents
(Defendants),**

and

**T&N, plc, Carey Canada Inc., formerly known as
Carey-Canadian Mines Ltd., Flintkote Mines Limited,
and The Flintkote Co.,**

Defendants,

and

**Workers' Compensation Board, and Henfrey
Sampson Belair Ltd., Receiver-Manager for
Victoria Machinery Depot Company Limited,**

Third Parties.

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INDEX

	PAGE
PART I	
STATEMENT OF FACTS	1
PART II	
POINTS IN ISSUE	13
PART III	
ARGUMENT	15
PART IV	
NATURE OF ORDER SOUGHT	34
PART V	
TABLE OF AUTHORITIES	35
APPENDIX "A"	TAB A
APPENDIX "B"	TAB B

PART I

STATEMENT OF FACTS

Introduction

1. This appeal raises the issue of the effect of a "blocking statute" enacted by one province of Canada on the obligation of a party resident in that province to give evidence in a civil action in another province.

2. On June 6, 1991 the British Columbia Court of Appeal upheld an order of Esson, C.J.S.C. to the effect that the defendants Lac D'Amiante du Quebec Ltee ("Lac"), Atlas Turner Inc. ("Atlas"), Bell Asbestos Mines Limited ("Bell"), Asbestos Corporation Limited ("ACL"), JM Asbestos Inc. ("JM") and the Quebec Asbestos Mining Association (the "QAMA") were not required in this action in the Supreme Court of British Columbia to deliver lists of documents in their possession or control in Quebec.

3. The basis for the decisions of Esson C.J.S.C. and the Court of Appeal was that the respondents, which carry on business in Quebec, were prohibited by s.2 of the Quebec Business Concerns Records Act, L.R.Q. 1977, c.D-12 (the "QBCRA"), from sending any documents, or lists of documents, outside Quebec in response to demands for discovery of documents served on them in this action

1 and therefore had a "lawful excuse" under Rule 2 of the British
Columbia Rules of Court for failing to produce documents as
required by those Rules.

10 Reasons for Judgment of Esson, C.J.S.C. pronounced
February 23, 1990, now reported: (1990), 43
B.C.L.R. (2d) 390 ("Supreme Court Reasons"); Case
on Appeal, p.591-607

Reasons for Judgment of British Columbia Court of
Appeal, pronounced June 6, 1991, now reported:
(1991), 56 B.C.L.R. (2d) 365 ("Court of Appeal
Reasons"); Case on Appeal, p.612-621

20 4. The QBCRA is attached as Appendix "A" to this factum.
Section 2 prohibits the removal from Quebec pursuant to any
requirement of any legislative, judicial or administrative
authority outside Quebec of any document, or resume or digest of
any document, relating to any business concern in Quebec.

30 5. Rules 26 and 27 of the B.C. Rules of Court, dealing
with documentary and oral discovery, and Rule 2, dealing with
potential sanctions for failure to comply with the Rules, are
attached as Appendix "B".

40 **History of Litigation and Discovery of Documents**

6. This action was commenced in the Supreme Court of
British Columbia on October 28, 1988. The plaintiff claims
damages for personal injury as a result of contracting
mesothelioma, a form of cancer, from the inhalation of asbestos

1 fibres. The plaintiff alleges negligent manufacture and
negligent failure to warn in respect of products mined and
manufactured by the defendants, and a conspiracy to suppress
information regarding the dangers of asbestos. The plaintiff's
right to maintain the claim in conspiracy was upheld by this
10 Court in Hunt v. Carey Canada Inc., [1990] 2 S.C.R. 959.

Amended Statement of Claim; Case on Appeal,
p.6-13.

Jurisdictional Challenge

20 7. The defendants' jurisdictions of incorporation are
Quebec (4), Canada (3), United Kingdom (1), Massachusetts (1),
and Delaware (1). On June 30, 1989, the defendants Lac, the
QAMA, Atlas, Bell, ACL, and others, applied in this action for a
30 declaration that the Supreme Court of British Columbia had no
jurisdiction over them, or alternatively for an order that the
Court decline jurisdiction. That application was dismissed.
Leave to appeal to the British Columbia Court of Appeal was
refused. Among the bases for these decisions were the
application by the Supreme Court of the test set out by this
40 Court in Moran v. Pyle National (Canada) Ltd., [1975] 1 S.C.R.
393, and the finding that there is a real and substantial

1 connection between this action and British Columbia within the
meaning of that test.

Hunt v. T&N, plc (30 June 1989), Vancouver
Registry, No. C885383 (S.C.B.C.); leave refused
(26 July 1990), Vancouver Registry, No. CA011075
(B.C.C.A.); Case on Appeal pp.560-3 and 564-7

10
8. These defendants unsuccessfully argued on their
jurisdictional challenge that, if the Supreme Court took
jurisdiction and the defendants were served with demands for
discovery of documents, they would be faced with either
20 responding to the demands in violation of the QBCRA and risking
criminal sanctions in Quebec, or refusing to respond and risking
default judgments being taken against them in British Columbia.
This argument failed when the plaintiff demonstrated that another
Quebec business concern and defendant in this action, Carey
30 Canada Inc., had, in a previous asbestos-related personal injury
action in the United States, initially refused to produce
documents on the basis of the QBCRA but had subsequently
permitted plaintiff's counsel to review the documents in Quebec,
and had ultimately produced the documents voluntarily in the U.S.
40 action, without any formal demand for documents being served.

Affidavit of Stephen Antle, affirmed October 3,
1989, para.4 and Ex. "B"; Case on Appeal,
p.221-2 and 231.

1 Deliberate Courting of Legal Impediments

9. After the defendants' jurisdiction application was dismissed, counsel for the plaintiff contacted counsel for Atlas, Bell, ACL and the QAMA and suggested that they produce documents without the necessity of formal demands for discovery of documents, with a view to avoiding any potential application of the QBCRA. Counsel for those defendants did not respond. Instead the defendants took steps which Esson, C.J.S.C. described as "deliberately courting legal impediments to production" of their documents. Those steps are described below.

20 Antle affidavit, October 3, 1989, para.7; Case on Appeal, p.222-3.

Supreme Court Reasons; Case on Appeal, p.600.

10. On September 11, 1989 the plaintiff served demands for discovery of documents under Rule 26(1) of the B.C. Rules of Court on Atlas, Bell, ACL and the QAMA. That required the defendants to deliver to the plaintiff, within 21 days, lists of all documents in the defendants' possession or control relating to any matter in question in this action.

40 Affidavit of Nicola M. Hands, sworn October 10, 1989, para.2-3; Case on Appeal, p.244-5

Antle affidavit, October 3, 1989, Ex. "C", "E", "F", "G", "H", and "I"; Case on Appeal, p.237-243.

Rule 26(1); Appendix "B"

1 11. The obligations of the defendants, and their counsel,
under the B.C. Rules of Court to produce relevant documents was
summarized by McEachern, C.J.S.C. (as he then was) in Boxer v.
Reesor (1985), 43 B.C.L.R. 352, at 357-8:

10 The responsibility of a solicitor in
connection with the preparation of a list of
documents has often been stated. I regard
the following extract from Fraser and Horn,
The Conduct of Civil Litigation in British
Columbia (1978), vol. 1, pp.276-77, to be an
accurate statement of the law except that in
this province we do not require an order for
production and lists of documents are no
longer verified by affidavit:

20 "Nowhere in civil procedure is the
responsibility of the lawyer greater
than in the area of discovery of
documents."

...

30 A leading authority, and almost the only
authority required on this application, is
Cie Fianciere du Pacifique v. Peruvian Guano
Co. (1882), 11 Q.B.D. 55 (C.A.), where Brett
L.J. said at p.63:

40 "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..."

1 12. These defendants did not deliver lists of documents as
required by Rule 26(1). One defendant, the QAMA, took the
position that the QBCRA prevented it from doing so. The other
defendants simply did not respond to the demand.

10 13. On October 2, 1989, the principal shareholders of
Atlas, Bell and ACL petitioned the Quebec Provincial Court,
without notice to the plaintiff, for orders under s.4 of the
QBCRA prohibiting Atlas, Bell and ACL's directors, officers and
20 employees from producing documents in this action. Those orders
were granted on October 3, 1989.

Affidavit of Stephen Antle, affirmed February 9,
1990, Ex. "B", "C", "D" and "E"; Case on Appeal,
p.444-476.

30 14. Also on October 2, 1989, Bell petitioned the Quebec
Provincial Court to make an essentially identical order against
the QAMA, of which it is a member. That order was granted on
October 4, 1989.

Antle affidavit, February 9, 1990, Ex. "F" and
"G"; Case on Appeal, p.477-485

40 15. On October 3, 1989, the plaintiff served on Atlas,
Bell, ACL and the QAMA a notice of motion in the Supreme Court of
B.C., returnable October 6, 1989, seeking an order that those
defendants deliver lists of documents. On October 5, 1989,

1 counsel for the plaintiff agreed to adjourn the application at
the request of counsel for Atlas, Bell, ACL and the QAMA. In
requesting the adjournment, those defendants did not inform the
plaintiff of the orders under the QBCRA they had obtained in the
Quebec Provincial Court.

10 Notice of Motion, October 3, 1989; Case on
Appeal, p.47-49

Hands affidavit, October 10, 1989, Ex. "S"; Case on
Appeal, p.300-301

20 16. On October 12, 1989 counsel for Atlas, Bell and ACL
delivered "lists of documents" but no documents were listed.
Atlas, Bell and ACL took the position that the orders of the
Quebec Provincial Court, made under the QBCRA on October 4, 1989,
prevented them from disclosing any documents.

30 Affidavit of Stephen Antle, affirmed October 12,
1989, Ex. "A", "B", "C" and "D"; Case on Appeal,
p.304-314

40 17. The plaintiff served a demand for discovery of
documents on Johns-Manville Amiante Canada Inc. (JM was later
substituted for this defendant) on June 23, 1989. Johns-Manville
Amiante Canada Inc. delivered a list of documents on September
15, 1989, also listing no documents. JM subsequently took the
position that it might possess relevant documents but that the
QBCRA precluded their disclosure.

1 Hands affidavit, October 10, 1989, Ex. "B"; Case
on Appeal, p.252-3

18. On October 10, 1989 the plaintiff served on JM a notice
of motion returnable October 13, 1989, seeking an order
10 compelling JM to deliver a further list of documents and an
affidavit verifying that list. That application was adjourned at
the request of JM's counsel.

Notice of Motion, October 10, 1989;
Case on Appeal, p.50-51

19. On November 17, 1989 Jeffrey Mine Holdings Ltd., the
principal shareholder of JM, petitioned the Quebec Provincial
Court, without notice to the plaintiff, to make an order against
JM essentially identical to those earlier obtained by Atlas,
Bell, ACL and the QAMA. That order was granted on
30 November 22, 1989.

Antle affidavit, Feb. 9, 1990, Ex. "H" and "I";
Case on Appeal, p.486-504

20. These defendants took these steps to obtain orders
40 under the QBCRA after they had been served with demands for
discovery of documents in this action and while the plaintiff's
applications to compel the delivery of lists of documents were
pending. The plaintiff was given no notice of the petitions.
The petitions were not resisted. The defendants obtained
adjournments of the plaintiff's applications until their orders

1 under the QBCRA were in hand, without revealing their intentions
to the plaintiff. Esson, C.J.S.C., held:

10 "The plaintiff says that these defendants
come precisely within the language of the
judgment of the Supreme Court in Soc. Int. at
p.1265 (2 L. Ed.) as having "deliberately
courted legal impediments to production of
the ... records, and who thus cannot now be
heard to assert [their] good faith after this
expectation was realized." I find it
impossible, in the absence of any evidence
from the defendants which could overcome the
obvious inference that the applications were
procured by the companies, to resist the
inference that this was a case of
20 deliberately courting legal impediments to
production."

Supreme Court Reasons; Case on Appeal, p.599-600

The Lac Order

21. An order under s.4 of the QBCRA was made by the Quebec
30 Provincial Court against Lac in 1980 on application by the
Attorney General of Quebec in American asbestos litigation in
which Lac was named as a defendant. The order remained
outstanding at commencement of this action. On April 26, 1989,
after the defendants' jurisdictional challenge was dismissed, Lac
40 appealed the order to the Quebec Court of Appeal. On May 16,
1989 that Court dismissed the appeal. No explanation has been
given why Lac appealed at this time. The Plaintiff received no
notice of and was given no opportunity to participate in the
appeal. Lac's application for leave to appeal to this Court was

1 dismissed on November 23, 1989. Lac did not raise on the appeal
or the application for leave to appeal the issues in this appeal.

Antle affidavit, February 9, 1990, Ex. "L" and
"M"; Case on Appeal, p.543-559; Caron affidavit,
February 9, 199, Ex. "E"; Case on Appeal
pp.404-409

10 The Applications to Compel Discovery

22. The plaintiff's applications for orders compelling
delivery of lists of documents by Atlas, Bell, ACL, the QAMA and
JM were heard by Esson, C.J.S.C. on February 14, 1990 and
dismissed on February 23, 1990. No order was sought against the
20 defendants Lac or National Gypsum Co. but they appeared and
opposed the plaintiff's applications.

23. Esson, C.J.S.C. proceeded on the basis that the QBCRA
was constitutionally valid. He concluded that the defendants'
30 deliberate courting of legal impediments to document production
did not deprive the defendants of a lawful excuse because the
prohibition in s.2 of the QBCRA itself constituted a lawful
excuse for their refusal to produce documents.

40 Supreme Court Reasons; Case on Appeal,
p.600 and 605-6

24. On June 6, 1991 the Court of Appeal dismissed the
plaintiff's appeal, agreeing substantially with Esson, C.J.S.C.'s
reasons.

Court of Appeal Reasons; Case on Appeal, p.612-621

1 25. On January 16, 1992 this Court granted the plaintiff
leave to appeal, and on June 2, 1992 stated the following
constitutional question:

10 "Is section 2 of the Quebec Business Concerns
Records Act, L.R.Q. 1977, c. D-12, ultra
vires the National Assembly of Quebec or
constitutionally inapplicable because its
pith and substance is a derogation from
extra-provincial rights?"

Order, June 2, 1992; Supplementary Case
on Appeal, p.1-3

PART II

POINTS IN ISSUE

1
26. Is the prohibition in s.2 of the QBCRA a "lawful
excuse" for the defendants' refusal to comply with the provisions
10 of Rule 26 of the B.C. Rules of Court, requiring discovery of
documents in a civil action in the Supreme Court of British
Columbia?

27. The plaintiff says "no", for the following reasons:

- 20 A. the QBCRA does not prohibit a Quebec company responding
to a demand for discovery of documents from another
province of Canada;
- 30 B. if the QBCRA does purport to prohibit a Quebec company
responding to a demand for discovery of documents from
another province of Canada, it is to that extent ultra
vires the National Assembly of Quebec;
- 40 C. if the QBCRA does purport to prohibit a Quebec company
responding to a demand for discovery of documents in
civil litigation in the Supreme Court of British
Columbia, it is contrary to the public policy of Canada
and British Columbia and should not, under principles
of interprovincial comity, be recognized as a lawful
excuse by the Supreme Court of British Columbia; and

1 D. even if the QBCRA does purport to prohibit a Quebec
 company responding to a demand for discovery of
 documents from another province of Canada, it cannot be
 a lawful excuse in this case because of the defendants'
10 failure to make good faith efforts to comply with
 Rule 26.

28. In response to the constitutional question stated by
this Court on June 2, 1992, it is the position of the plaintiff
20 that s.2 of the QBCRA is constitutionally inapplicable or
 alternatively ultra vires. This Court should answer the
 constitutional question in the affirmative.

PART III

ARGUMENT

1
10
A. The QBCRA does not prohibit a Quebec company responding to a demand for discovery of documents from an another province of Canada.

20
29. The courts below erred in interpreting the QBCRA as applying to prohibit the defendants responding to demands for discovery of documents in this action in the Supreme Court of British Columbia, thus creating a conflict between the public policy of British Columbia, as reflected in Rule 26 (discovery of documents) of the B.C. Rules of Court, and Quebec, as reflected in the Quebec courts' interpretation of the QBCRA.

30
30. If the QBCRA is properly interpreted, there is no such conflict because the QBCRA does not apply interprovincially. The caselaw, the historical record and principles of conflicts of laws and constitutional law all support this interpretation.

40
The Caselaw

31. In Renault v. Bell Asbestos Mines Ltd., the Quebec Court of Appeal agreed with the Quebec Provincial Court's opinion that "the main purpose of the Business Concerns Records Act is to

1 protect Canadian firms or subsidiaries against the implementation
of American or foreign antitrust laws." (emphasis added)

Renault v. Bell Asbestos Mines Ltd. (13 August 1980)
District of Quebec, No. 09-000654-41 (Que. C.A.) p.4-5

10 32. In Benesh v. Insurance Management Services Inc. the
Quebec Superior Court held that:

20 "The objective sought by the Business
Concerns Records Act is generally conceded to
be the protection of Quebec businesses from
foreign judicial interference such as anti-
trust prosecutions of the recent suits taken
in U.S. courts because of what was described
as the artificial increase by Canadian firms
of the price of uranium. In these latter
cases Canadian courts have protected Canadian
businesses from what was considered to be
excessive requests from the foreign courts
because of Canadian public policy ..."
(emphasis added)

Benesh v. Insurance Management Services Inc., [1986]
C.S. 790, at 793 (Que. S.C.)

30 The Historical Record

33. The historical record shows that the purpose of the
QBCRA was to protect Quebec companies from demands for discovery
from the United States. Esson C.J.S.C. described the QBCRA as
40 follows:

"The act is an example of what is known in
the United States as a 'blocking statute'.
It is a virtual copy of the Ontario Business
Records Protection Act, R.S.O. 1980, ch.56
which was first enacted in 1947. As a matter
of historical interest, not as an aid to
interpretation, I observe that the purpose of
these statutes appears to have been to
frustrate the efforts of American

1 legislators, courts and regulatory bodies to
investigate business dealings outside the
United States which, for one reason or
another, were thought to be inimical to
American interests. Again as a matter of
historical interest, I set out the account of
Premier Duplessis' remarks in introducing the
Bill, found in the Quebec City newspaper
10 l'Evenement of February 21, 1958:

(Translation)

'American Harassment

20 The House votes definitively on Bill 51;
its object is to prevent a foreign
administration or tribunal from causing
the transport out of the province of
documents relating to Quebec businesses.

A similar law has existed in Ontario now
for several years. Mr. Duplessis
declares that Bill No. 51 is not aimed
at any particular case and explains:

30 "Certain persons in the United
States take pleasure in harassing
Canadian companies and arrogate
unto themselves rights which should
be reserved to Quebec tribunals
..."

40 The leader of the government notes that
these persons have too much of a
tendency to translate 'U.S.A.' by 'Us
Always', and that perhaps the harassment
coming from them is done with a view to
inciting businesses to establish
themselves on the other side of the
border.

No supplementary elucidation was shed on this
matter during the study of the Bill; but let us
recall that certain Quebec paper companies have
already been invited to testify before a Senate
Committee in the United States ... example which

1 serves to illustrate the attitude of the American
administration vis-a-vis Canadian business.'" "

Supreme Court Reasons; Case on Appeal,
p.595-6

10 34. This evidence is admissible to demonstrate the purpose
of the QBCRA.

Churchill Falls (Labrador) Corporation Ltd.
v. A.G. Newfoundland (1984), 8 D.L.R. (4th)
1, at 19 (S.C.C.)

20 35. Except where deliberately courted as an impediment by
the defendants in this action the QBCRA has never been invoked to
prevent a Quebec company sued in another province from disclosing
its documents in such an action or to sanction it for doing so.
Civil litigation has abounded, both by and against Quebec
30 companies, in the rest of Canada since the QBCRA was enacted.
The only cases in which the QBCRA has been invoked are where the
requests for discovery came from American courts. Nor are there
any cases applying the similar Ontario Business Concerns Records
Act.

40 Re Inter-City Truck Lines and A.-G. U.S.A.
(1982), 133 D.L.R. (3d) 134 (Ont.H.C.)

Conflicts of Laws Principles

36. This Court, in Morquard Investments Ltd. v. DeSavoye,
recognized the distinction between interprovincial and

1 international relationships and held that within Confederation
the provincial courts should enforce judgments of other provinces
so long as the original court properly exercised its
jurisdiction. This Court recognized that provincial courts
10 should not make excessive claims to jurisdiction in respect of
acts done outside their provinces. The principles underlying the
decision in Morquard Investments should inform the interpretation
of the QBCRA.

Morquard Investments Ltd. v. De Savoye (1990), 76
D.L.R. (4th) 256, at 270-272

20 37. As noted by LaForest J. in Morquard Investments:

"If it is fair and reasonable for the courts
of one province to exercise jurisdiction over
a subject matter, it should as a general
principle be reasonable for the courts of
another province to enforce the resultant
judgment." (p. 267)

30 38. The only valid purpose of a blocking statute is to
protect against the extravagant extraterritorial exercise of
jurisdiction by a foreign court. Within Confederation as long as
the provincial courts take jurisdiction only where there is a
40 real and substantial connection between the action and their
province, as required by Moran and Morquard Investments, their

1 exercise of jurisdiction will not be such as to justify the use
of blocking statutes to thwart it.

British Airways Board v. Laker Airways Ltd., [1983]
All E.R. 375, at 391 (Q.B.) rev'd on other grounds
[1983] 3 All E.R. 396 (C.A.); trial judgment partially
restored [1984] 3 All E.R. 39 (H.L.)

10 39. Once it was determined that the taking of jurisdiction
by the Supreme Court of British Columbia in this case was proper
(by the dismissal of the defendants' jurisdictional challenge),
British Columbia law should be recognized throughout Canada as
20 applicable to procedural issues in this action. It is well
established that the "law of the jurisdiction in which the legal
proceedings take place always governs procedural matters."

Block Bros Realty Ltd. v. Mollard and Delta
Holdings Ltd. (1981), 27 B.C.L.R. 17, at 20
(B.C.C.A)

30 40. As noted in Morquard Investments, supra, at p.274:

"... fair process is not an issue within the
Canadian federation." (see also p.271-2)

The defendants cannot and do not argue that there is anything
unfair in the discovery requirements of the B.C. Rules of Court.

40 41. No other province has a plausible claim to regulate the
procedure of this action. Fairness to the parties can be assured
by the taking of jurisdiction according to the principles of
Moran and Morquard Investments. This approach allows the courts,
at the choice of jurisdiction phase, to recognize and accommodate

1 the differing rules of law of other provinces. Where
jurisdiction has been properly taken the forum's procedural law
should apply. This Court, with reviewing and controlling
authority over the courts of all provinces, must ensure uniform
application of these principles throughout Canada.

10 Bushell v. Bell Asbestos Mines Ltd. (25 May 1992)
Vancouver Registry, Appeal No.CA014785 (B.C.C.A.)
p.20-21

20 42. Any other interpretation of the QBCRA results in a
purported nullification of the B.C. Rules of Court on discovery
by giving impermissible extraprovincial effect to the QBCRA, an
effect which was not intended within Canada.

30 43. Discovery is an integral element of civil procedure,
necessary to enable the parties to prepare fully for trial with
knowledge of the facts and issues. This Court should not
interpret the QBCRA in a manner allowing Quebec to nullify such
an essential characteristic of British Columbia's civil
procedure.

40 44. It would be inimical to Canadian justice to allow the
defendants to cause harm in B.C., violate B.C. laws, and then
resist accountability by claiming immunity from discovery under
Quebec law. It would be equally unfair if the defendants have,
as they argue they do, good defences they are prevented by the

1 QBCRA from advancing in this action in B.C. As noted by
LaForest J. in Morquard Investments:

"It seems anarchic and unfair that a person should be able to avoid legal obligations arising in one province simply by moving to another province." (p.273)

10 **Constitutional Principles Limit the Scope of the QBCRA**

45. This interpretation of the QBCRA is also
constitutionally correct. As noted in Morquard Investments,
within Confederation there is a substantial connection between
20 conflicts of law and constitutional principles. This Court
should interpret the QBCRA in accordance with constitutional
principles which limit the scope of the QBCRA to avoid giving it
extraprovincial effect.

30 46. As Beetz J. has pointed out:

"Many statutes are drafted in terms so general that it is possible to give them a meaning which makes them ultra vires. It is then necessary to interpret them in light of the Constitution, because it must be assumed the legislator did not intend to exceed his authority:

40 There is a presumptio juris as to the existence of the bona fide intention of a legislative body to confine itself to its own sphere and a presumption of similar nature that general words in a statute are not intended to extend its operation beyond the territorial authority of the Legislature.

1 (Fauteux, J. - as he then was - in
Reference re The Farm Products Marketing
Act, at 311.)

10 In order to give effect to this principle a
Court may, in keeping with the constitution,
limit the apparently general scope of an
enactment, even when the constitutionality of
the provision has not been disputed and the
Attorney-General has not been impleaded."
(emphasis added)

Canadian Broadcasting Corp. v. Quebec Police
Commission, [1979] 2 S.C.R. 618, at 641

20 47. This Court should limit the scope of the QBCRA to avoid
any extraprovincial effect, in keeping with the territorial
limitation of provincial legislative power to "property and civil
rights in the provinces" (emphasis added).

Constitution Act, 1867, s.92(13)

Churchill Falls, supra, at 30

30 Interprovincial Co-operatives Ltd. v.
Manitoba (1975), 53 D.L.R. (3d) 321, at
355-358 (S.C.C.)

40 48. For these reasons s.2 of the QBCRA is constitutionally
inapplicable as a "lawful excuse" under the B.C. Rules of Court.
This Court should answer that portion of the constitutional
question stated on June 2, 1992 in the affirmative.

Supplementary Case on Appeal, p.2

1 B. If the QBCRA does purport to prohibit a Quebec company
 responding to a demand for discovery of documents from
 another province of Canada, it is to that extent ultra
 vires the National Assembly of Quebec.

10 49. If this Court concludes that the QBCRA should be
 interpreted to prohibit responses to requests for discovery from
 other provinces, this Court should declare the QBCRA ultra vires
 to that extent.

20 50. So interpreted, the pith and substance of the QBCRA
 would be the derogation from, or elimination of, extraprovincial
 rights.

30 51. A province may legislate with respect to
 extraprovincial matters only if the legislation is in relation to
 a legitimate provincial object, the extraprovincial application
 is necessary for the attainment of the object and there is some
 nexus with the province.

40 Churchill Falls, supra, at 30

Ladore v. Bennett, [1939] A.C. 468,
 at 482 (P.C.)

Royal Bank of Canada v. The King, [1913] A.C. 283, at
 298 (P.C.)

1 52. The QBCRA has no legitimate provincial object. The
broad form of the legislation and its legislative history
disclose that the QBCRA was enacted to immunize Quebec
corporations from the need to comply with discovery obligations
10 in American courts. The impetus for the QBCRA was a perception
of the impropriety of certain American laws. The legislation
creates sanctions to enable a Quebec company to create the
illusion of potential sanctions to dissuade foreign courts from
ordering discovery.

20 53. In contrast, where legislation with extraterritorial
effect has been enforced it has had a close connection with its
enacting jurisdiction. For example:

30 Minpeco S.A. v. Conticommodity Services Inc. (1987),
116 F.R.D. 517 (S.D.N.Y.) (Swiss bank secrecy laws)

Cosmopolitan Insurance Co. Ltd. v. Life Funds of
Australia (1978), 3 A.C.L.R. 707, at 712 (S.C. Vict.)
(winding-up procedures of New South Wales corporations)

In re Westinghouse Electric Corporation Uranium
Contracts Litigation (1977), 563 F. 2d 992, at 998-9
(10th Cir.) (Canadian regulations controlling and
supervising atomic energy)

40 54. The QBCRA's only effect is on the discovery rights of
extraprovincial residents. The constitutional principles which
should inform the interpretation of the QBCRA limit that effect
to residents of foreign countries and prevent its application
within Canada.

1 55. If the QBCRA were interpreted to apply
interprovincially, the deprivation of the rights of parties to
actions in the provinces other than Quebec to full discovery of
relevant documents of Quebec companies carrying on business
10 outside Quebec would not be incidental to the QBCRA, it would be
its sole purpose and effect. If this extraprovincial effect of
the QBCRA were taken away there would be nothing left. For these
reasons if s.2 of the QBCRA is interpreted in this way it is
ultra vires the National Assembly of Quebec to the extent it
20 purports to apply to other provinces.

Churchill Falls, supra, at 30

Interprovincial Co-operatives Ltd., supra, at
355-358

Ladore v. Bennett, supra, at 482

Royal Bank of Canada v. The King, supra, at 298

30 56. "The Constitution of Canada is the supreme
law of Canada, and any law that is
inconsistent with the provisions of the
Constitution is to the extent of the
inconsistency, of no force and effect."

40 Charter of Rights and Freedoms, s.52

This Court should then answer that portion of the
constitutional question stated on June 2, 1992 in the affirmative
and declare the QBCRA of no force and effect to the extent it
purports to have extraprovincial effect.

1 c. If the QBCRA does purport to prohibit a Quebec company
 responding to a demand for discovery of documents in
 civil litigation in the Supreme Court of British
 Columbia, it is contrary to the public policy of Canada
10 and British Columbia and should not, under principles
 of interprovincial comity, be recognized as a lawful
 excuse by the Supreme Court of British Columbia.

20 57. Extraprovincial statutes need only be recognized where
 consistent with fundamental public policies of the province. In
 Morquard Investments, supra, at p.269, and in Re Spencer and The
 Queen (1985), 21 D.L.R. (4th) 756, at 759, this Court adopted
 this definition of comity:

30 "'Comity' in the legal sense is neither a
 matter of absolute obligation, on the one
 hand nor of mere courtesy and good will, upon
 the other. But it is the recognition which
 one nation allows within its territory to the
 legislative, executive or judicial acts of
 another nation, having due regard both to
 international duty and convenience, and to
 the rights of its own citizens or of other
 persons who are under the protection of its
 laws ..."

40 58. The defendants argued before the British Columbia
 courts that principles of interprovincial comity required Esson,
 C.J.S.C. to recognize the QBCRA and give effect to it as a lawful
 excuse. Interprovincial comity means more than the provinces
 demanding recognition of their own legislation; it means the

1 provinces restraining that legislation to matters within the
provinces and not seeking to reach beyond their constitutional
limits to affect residents of other provinces. As in the field
of the recognition of extraprovincial judgments, where judgments
10 of other provinces should only be recognized if the courts of
those other provinces took jurisdiction according to the
constitutional principles discussed in Morguard Investments, so
in the field of the recognition of extraprovincial legislation,
legislation of other provinces should only be recognized and
20 given effect if it is enacted respecting the limits placed on the
legislative power of the provinces by the Constitution.

59. In Gulf Oil Corporation v. Gulf Canada Ltd. (1980), 111
D.L.R. (3d) 74, this Court held at p.88:

30 "It is also fundamental that comity will not
be exercised in violation of the public
policy of the state to which the appeal is
made or at the expense of justice to its
citizens ..."

see also: Block Bros supra, at 24-5

40 Kleinwort, Sons & Company v. Ungarische Baumwolle
Industrie Aktiengesellschaft, [1939] 2 K.B. 678, at 689
and 694-5 (C.A.)

Castel, Canadian Conflict of Laws (2d ed.; 1986)
p.152-5

60. In Gulf Oil, supra, this Court held that the public
policy represented by the federal Uranium Information Security
Regulations prevented it from enforcing letters rogatory from

1 American courts requesting the production of documents by a
Canadian subsidiary of an American defendant in actions in those
courts.

10 61. In Re Spencer and The Queen (1983), 145 D.L.R. (3d) 344
at 351-352 (Ont. C.A.), affirmed (1985), 21 D.L.R. (4th) 756
(S.C.C.), this Court held that Canadian courts should not
recognize foreign laws inconsistent with fundamental Canadian
policy. This Court held it was part of that Canadian public
20 policy that the state and the parties to litigation are entitled
to the evidence of witnesses. Hence, a Bahamian blocking statute
did not excuse a Canadian non-party witness from testifying in a
criminal action in Ontario. MacKinnon A.C.J.O. said at p.357 of
the decision upheld by this Court:

30 "In my view, the aspect of public policy, as
already defined, involved in the instant case
applies to all cases whether they be civil or
criminal and foreign laws cannot exempt
witnesses, otherwise competent, compellable
and present, from giving evidence within
their knowledge in our courts."

40 62. In Comexter Inc. v. Cassady, (July 17, 1987), Vancouver
Registry No. CA007975, the B.C. Court of Appeal held a Swiss
blocking statute did not excuse a Panamanian plaintiff with a
Swiss business address from refusing to produce documents in
civil action in B.C. The public policy of B.C. is the same as
that of Canada in this respect.

1 63. In Comaplex Resources International Ltd. v.
 Schaffhauser Kantonalbank (1990), 42 C.P.C. (2d) 230, an Ontario
 Supreme Court Master held a Swiss blocking statute did not excuse
 a Swiss defendant from refusing to produce documents or answer
10 questions on examination for discovery in a civil action in
 Ontario (Upheld on appeal to the Ontario Court of Justice -
 General Division, (1991), 84 D.L.R. (4th) 343 (Ont.Ct.Gen.Div.)).

20 64. These cases correctly set out the public policy of
 Canada and British Columbia that the interests of justice require
 that a party to a civil action is not able to rely on a foreign
 blocking statute as a lawful excuse for refusing to make
 discovery or to testify, even where he resides in the foreign
 jurisdiction. The QBCRA is inconsistent with this public policy
30 and should not have been recognized as a lawful excuse by the
 B.C. courts.

1 D. Even if the QBCRA does purport to prohibit a Quebec
 company responding to a demand for discovery of
 documents from another province of Canada, it cannot be
 a lawful excuse in this case because of the defendants'
10 failure to make good faith efforts to comply with
 Rule 26.

65. Even if this Court considers the QBCRA applicable
interprovincially and intra vires the province of Quebec, it
20 should still allow this appeal and order the defendants to comply
with the B.C. Rules of Court regarding discovery.

66. The courts below assumed there were only two options
open to the defendants when faced with demands for discovery.
30 The first was to comply and risk criminal sanctions in Quebec
under the QBCRA; the second was to refuse and risk the striking
out of their statements of defence in B.C.

 Court of Appeal Reasons; Case on Appeal,
 p.617

40 67. This assumption was incorrect. Had the defendants
acted in good faith they could have avoided their dilemma.
First, it was open to the defendants, other than Lac, to accept

1 the plaintiff's offer to voluntarily disclose their documents.
This would have been a good faith effort to comply with Rule 26
of the B.C. Rules of Court without violating the QBCRA.

QBCRA, s.2, Appendix "A" to this factum

10 Affidavit of Stephen Antle, affirmed
October 3, 1989, para.4 and Exhibit "B"; Case
on Appeal, p.221-2 and 231

20 68. Second, rather than actively seeking, without notice to
the plaintiff, orders under the QBCRA prohibiting their
disclosure of documents, the defendants could have asked the
Quebec Provincial Court for directions on how to proceed, naming
the plaintiff as respondent in their petitions and allowing him
to put before the Quebec courts the arguments raised in this
factum as to why the QBCRA should not prohibit the defendants'
30 disclosure of documents in this action.

69. The defendants' lack of good faith efforts to comply
with Rule 26 despite the QBCRA should prevent them relying on the
QBCRA as a lawful excuse for their refusal to comply. This Court
40 should order discovery to take place.

Societe Internationale v. Rogers (1958), 357
U.S. 197, at 208-212

U.S.A. v. Bank of Nova Scotia, (1982), 691
F. 2d 1384, at 1389 (11th Cir.); cert.
denied, June 13, 1983, 462 U.S. 1119.

Arthur Anderson Co. v. Finesilver (1976), 546
F. 2d 338 (10th Cir.)

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Graco Inc. v. Kremlin Incorporated (1976),
101 F.R.D. 503, at 525-527 (N.D. Illinois)

S.E.C. v. Banca Della Svizzera Italiana,
(1982), 92 F.R.D. 111, at 118-9 (S.D.N.Y.)

see also: Re Yanover and Kiroff and The Queen (1974),
6 O.R. (2d) 478, at 484 (Ont. C.A.)

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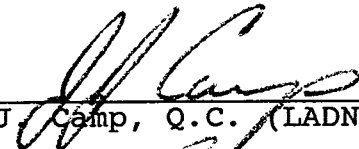
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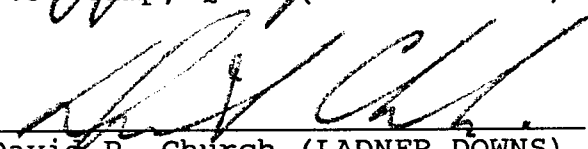
PART IV
NATURE OF ORDER SOUGHT

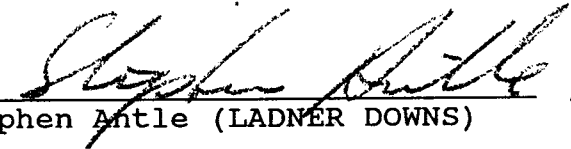
70. The appellant seeks an order allowing this appeal, with costs in this Court, the Court of Appeal and the Supreme Court of British Columbia, and requiring the respondents to produce for inspection within 30 days, in British Columbia, copies of all documents in their possession and control relating to the matters in the question in this action, regardless of whether those documents are located inside or outside of the province of Quebec.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED: JULY 6, 1992


J.J. Camp, Q.C. (LADNER DOWNS)


David P. Church (LADNER DOWNS)


Stephen Antle (LADNER DOWNS)

Counsel for the Appellant,
George Ernest Hunt

NOTICE TO THE RESPONDENTS: Pursuant to subsection 44(1) of the Rules of the Supreme Court of Canada, this appeal will be inscribed by the Registrar for hearing after the respondents' factums have been filed or on the expiration of the time period set out in paragraph 38(3)(b) of the said Rules, as the case may be.

PART V

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Arthur Anderson Co. v. Finesilver</u> (1976), 546 F. 2d 338 (10th Cir.)	32
<u>Benesh v. Insurance Management Services Inc.</u> , [1986] C.S. 790 (Que. S.C.)	16
<u>Block Bros Realty Ltd. v. Mollard and Delta Holdings Ltd.</u> (1981), 27 B.C.L.R. 17 (B.C.C.A)	20, 28
<u>Boxer v. Reesor</u> (1985), 43 B.C.L.R. 352, at 357-8 (S.C.)	6
<u>British Airways Board v. Laker Airways Ltd.</u> , [1983] All E.R. 375, at 391 (Q.B.) rev'd on other grounds [1983] 3 All E.R. 396 (C.A.); trial judgment partially restored [1984] 3 All E.R. 39 (H.L.)	20
<u>Bushell v. Bell Asbestos Mines Ltd.</u> (25 May 1992) Vancouver Registry, Appeal No.CA014785 (B.C.C.A.)	21
<u>Canadian Broadcasting Corp. v. Quebec Police Commission</u> , [1979] 2 S.C.R. 618	23
<u>Churchill Falls (Labrador) Corporation Ltd. v. A.G. Newfoundland</u> (1984), 8 D.L.R. (4th) 1 (S.C.C.)	18, 23, 24, 26
<u>Comaplex Resources International Ltd. v. Schaffhauser Kantonalbank</u> (1990), 42 C.P.C. (2d) 230 (Ont. S.C.)	30
<u>Comexter Inc. v. Cassady</u> , (July 17, 1987), Vancouver Registry No. CA007975 (B.C.C.A.)	29
<u>Cosmopolitan Insurance Co. Ltd. v. Life Funds of Australia</u> (1978), 3 A.C.L.R. 707 (S.C. Vict.)	25
<u>Graco Inc. v. Kremlin Incorporated</u> , 101 F.R.D. 503 (N.D. Illinois (1976)	33
<u>Gulf Oil Corporation v. Gulf Canada Ltd.</u> (1980), 111 D.L.R. (3d) 74 (S.C.C.)	28

<u>Hunt v. Carey Canada Inc.</u> , [1990] 2 S.C.R. 959	3
<u>Hunt v. T&N, plc</u> (30 June 1989), Vancouver Registry, No. C885383 (S.C.B.C.); leave refused (26 July 1990), Vancouver Registry, No. CA011075 (B.C.C.A.)	4
<u>In re Westinghouse Electric Corporation Uranium Contracts Litigation</u> (1977), 563 F. 2d 992 (10th Cir.)	25
<u>Interprovincial Co-operatives Ltd. v. Manitoba</u> (1975), 53 D.L.R. (3d) 321 (S.C.C.)	23, 26
<u>Kleinwort, Sons & Company v. Ungarische Baumwolle Industrie Aktiengesellschaft</u> , [1939] 2 K.B. 678 (C.A.)	28
<u>Ladore v. Bennett</u> , [1939] A.C. 468 (P.C.)	24, 26
<u>Minpeco S.A. v. Conticommodity Services Inc.</u> (1987), 116 F.R.D. 517 (S.D.N.Y.)	25
<u>Moran v. Pyle National (Canada) Ltd.</u> , [1975] 1 S.C.R. 393	3
<u>Morguard Investments Ltd. v. De Savoye</u> (1990), 76 D.L.R. (4th) 256 (S.C.C.)	18, 19, 20, 22, 27, 28
<u>Re Yanover and Kiroff and The Queen</u> (1974), 6 O.R. (2d) 478 (Ont. C.A.)	33
<u>Renault v. Bell Asbestos Mines Ltd.</u> (13 August 1980) District of Quebec, No. 09-000654-41 (Que. C.A.)	15, 16
<u>Royal Bank of Canada v. The King</u> , [1913] A.C. 283 (P.C.)	24, 26
<u>S.E.C. v. Banca Della Svizzera Italiana</u> (1982), 92 F.R.D. 111 (S.D.N.Y.)	33
<u>Societe Internationale v. Rogers</u> (1958), 357 U.S. 197	32
<u>U.S.A. v. Bank of Nova Scotia</u> , (1982), 691 F. 2d 1384 (11th Cir.)	32

APPENDIX "A"

Business Concerns Records Act, L.R.Q. 1977 C.D. -12

"1. In this act, the following words mean:

- (a) 'document': any account, balance sheet, statement of receipts and expenditure, profit and loss statement, statement of assets and liabilities, inventory, report and any other writing or material forming part of the records or archives of a business concern;
- (b) 'concern': any business concern in Quebec;
- (c) 'requirement': any demand, direction, order, subpoena or summons.

R.S. 1964, c.278, s.1.

2. Subject to section 3, no person shall, pursuant to or under any requirement issued by any legislative, judicial or administrative authority outside Quebec, remove or cause to be removed, or send or cause to be sent, from any place in Quebec to a place outside Quebec, any document or resume or digest of any document relating to any concern.

R.S. 1964, c.278, s.2.

3. The prohibition enacted in section 2 shall not apply in the case of removal or sending of a document out of Quebec

- (a) by an agency, branch, company or firm carrying on business in Quebec, to a principal, head office, affiliated company or firm, agency or branch situated outside Quebec, in the ordinary course of their business;
- (b) by or on behalf of a company or person, as defined by the Securities Act, (chapter V-1) carrying on business in Quebec, to a territory subject to another political jurisdiction in which the sale of the securities of such company or person has been authorized;

- (c) by or on behalf of any such company or person carrying on business in Quebec as a broker, security issuer or salesman within the meaning of the Securities Act, to a territory subject to another political jurisdiction in which any such company or person has been registered or is otherwise authorized to carry on business as broker, security issuer or salesman, as the case may be;
- (d) whenever such removal or sending is authorized by any law of Quebec or of the Parliament of Canada, in accordance with their respective jurisdictions.

R.S. 1964, c.278, s.3.

4. Whenever there is reason to believe that a requirement has been or is likely to be made for the removal or sending out of Quebec of a document relating to a concern, the Attorney General may apply to a judge of the court of Quebec, in the judicial district where the concern in question is located, for an order requiring any person, whether or not designated in the requirement, to furnish an undertaking or security to ensure that such person will not remove or send out of Quebec the document mentioned in the said requirement.

The application to the judge of the Court of Quebec shall be made by summary petition. In case of urgency, it may be filed and presented to the judge without prior service. The judge may however order the service thereof within such delay, in such manner and on such conditions as he may consider expedient.

Every person having an interest in a concern may exercise the rights contemplated in this section.

R.S. 1964, c.278, s.4; 1965 (1st sess.) c.17, s.2; 1988, c.21, s.66.

5. Every person who, having received notice of a petition to a judge of the Court of Quebec under section 4, infringes the provisions of section 2, shall be guilty of

contempt of court and liable to one year's imprisonment.

Every person who has furnished, or has received from the judge an order to furnish, an undertaking or security and who infringes the provisions of section 2 shall be guilty of contempt of court and liable to one year's imprisonment, without prejudice to any penalty or obligation provided by the undertaking or security furnished or ordered by the judge.

R.S. 1964, c.178, s.5; 1965 (1st sess.), c.17, s.2; 1988, c.21, s.66."