

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: **Amos et al v. Virk et al,**
2003 BCCA 449

Date: 20030812

Docket: CA029433

Between:

Evy Amos

Respondent
(Plaintiff)

And

Amandeep Singh Virk

Appellant
(Defendant)

- and -

Docket: CA030221

Between:

Sean Smith by his Guardian Ad Litem Michelle Hampsey

Respondent
(Plaintiff)

And

Ronald Henry Funk

Appellant
(Defendant)

- and -

Docket: CA30447

Between:

Elan Falvai

Respondent
(Plaintiff)

And

Randal Morawetz and Debra MartinAppellants
(Defendants)

Before: The Honourable Mr. Justice Low
The Honourable Madam Justice Levine
The Honourable Mr. Justice Hollinrake

Oral Reasons for Judgment

M. Skorah	Counsel for the Appellants
S. Katalinic	
D.J. Daley	Counsel for the Respondent, E. Amos
P.J. Roberts	Counsel for the Respondent, S. Smith by his guardian <i>ad litem</i> M. Hampsey
S.A. Griffin	Counsel for the Intervenors, Women's Legal Education Fund & B.C. Coalition of Peoples with Disabilities
Place and Date:	Vancouver, British Columbia August 12, 2003

[1] **LOW, J.A.:** Before us are three appeal from orders of chambers judges, two of them by way of appeal from orders made by masters, dealing with production of documents by third parties under Rule 26 (11) of the Rules of Court. The rule reads:

26 (11) Where a document is in the possession or control of a person who is not a party, the court, on notice to the person and all other parties, may order production and inspection of the document or preparation of a certified copy that may be used instead of the original. An order under Rule 41 (16) in respect of an order under this subrule may be made if that order is endorsed with an acknowledgment by the person in possession or control of the document that the person has no objection to the terms of the proposed order.

[2] Each of these cases involves a claim for damages arising out of injuries sustained in a motor vehicle accident. In each case the contest in chambers was whether an order should be made as suggested in **Jones v. Nelson** (1980), 24 B.C.L.R. 109 (C.A.), or as suggested in **Halliday v. McCulloch** (1986) 1 B.C.L.R. (2d) 194 (B.C.C.A.), both decisions of this Court that deal with different aspects of the application of R. 26(11). Also under consideration was what this Court said in **Dufault v. Stevens** (1978), 6 B.C.L.R. 199 (B.C.C.A.) concerning the production of documents in the possession or control of third parties.

[3] We are told that in each of the three cases before us the documents in question have been produced to the defendant requesting them, thereby rendering each appeal moot. It became increasingly clear to me as these appeals were argued yesterday and today that, because the issues were moot, we ought to exercise our discretion against resolving them. The issues are academic at this stage. Determination of them is not necessary to advance any of the cases.

[4] Nor am I persuaded that there is any need for us to rule on the issues raised in order to settle the law for the guidance of litigants and the judiciary. The law is well settled by the three cases I have cited. The application of the law so settled depends upon the facts and circumstances in each case and the proper exercise of judicial discretion. Therefore, in the absence of this Court undertaking a review of the law in this area of procedure by convening a five-judge panel, which was requested and denied, we are not in a position to change the law, nor are we asked so to do. All we could do is determine whether there was a reviewable error in any of the three cases now before us. That exercise would have no practical purpose in the particular action and would not likely be of assistance in other cases.

[5] For these reasons, it is my opinion that each of the appeals ought to be dismissed with costs to the two respondents who appeared and without costs to the intervenor.

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

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

[8] **LOW, J.A.:** Each appeal is dismissed with costs to the respondents in the ***Amos v. Virk*** appeal and in the ***Smith v. Funk*** appeal and no costs to the intervenor.

"The Honourable Mr. Justice Low"