IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *540967 BC Ltd. v. Honey,*
2024 BCSC 1446

Date: 20240612
Docket: S136624
Registry: Kelowna

Between:

540967 BC Ltd.

Plaintiff

And

Anita Honey, Larry Gerard Anderson and Carol Janine Andrews

Defendants

- and -

Docket: S136914
Registry: Kelowna

Between:

Anita Honey, Larry Anderson, and Carol Andrews

Petitioners

And

540967 BC Ltd.

Respondent

Before: The Honourable Madam Justice Hardwick

Oral Reasons for Judgment

Counsel for 540967 BC Ltd.:	M.S. Moorhouse
Counsel for the Defendants and the Respondents:	A.P. Prior

Place and Date of Trial/Hearing:	Kelowna, B.C. April 17, 2024
Place and Date of Judgment:	Kelowna, B.C. June 12, 2024

[1] **THE COURT:** These are my oral reasons for judgment in respect of what I will describe as the cross-relief sought by Anita Honey, Larry Anderson, Carol Andrews and 540967 BC Ltd. I use that somewhat generic term because there are somewhat duplicate proceedings, but ultimately they all involve the same factual matrix. I will thus only briefly summarize the background to the cross-relief for the benefit of the record.

[2] The duplicity, to be clear, is not the fault of counsel. It is a simple practical reality of how a dispute of this nature needs to be properly pled. I will also be referring to, for the record, 540697 BC Ltd. as the "corporate respondent". I do so, recognizing that this entity is also a corporate plaintiff. I simply chose that as my preferred defined term for the purposes of drafting the reasons for clarity.

[3] Turning to the issue at its core. All of the relief sought before me concerns two properties situated on Mabel Lake in the North Okanagan area of the Province of British Columbia. The original notice of civil claim was filed on March 3, 2023. The petition was filed on March 23, 2023. Responsive pleadings were filed respectively in July of 2023 and November of 2023. The matters were ultimately heard before me in April of 2024.

[4] The relief sought in the petition is as follows:

> 1. A declaration that the Petitioners, on making compensation to the Respondent that the Court determines just, have an easement over the property owned by the Respondent, being legally described as PID: 004-045-475, Lot 58, District Lot 3945 Osoyoos Division Yale District Plan 7720 ("**Lot 58**"), so as to accommodate the Petitioner's encroaching cabin (the "**Cabin**").
> 2. An order that the parties have leave to apply for further directions.
> 3. Costs of this proceeding, if opposed.

[5] The respondent corporation's notice of civil claim filed November 22, 2023, seeks the following relief:

> 1. An order pursuant to section 36(c) of the *Property Law Act*, RSBC 1996, c 377, that the Cabin Encroachment be removed at the cost of the defendants.

2. Further, or in the alternative, a mandatory injunction requiring the defendants to remove the Cabin Encroachment from the 165 Property forthwith.
3. General damages.
4. Special damages.
5. Interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79.
6. Costs.

. . .

[6] There are certain defined terms in the relief sought described above that I will return to when addressing the factual background.

Suitability

[7] Whether by petition or summary trial application, I am satisfied that the relief sought under the *Property Law Act* is suitable for determination on the basis of the presented affidavit evidence. As neither party asserts to the contrary, I am not going to engage in a detailed review of the now well-established law. I am simply satisfied to say I am able to find on the documentary evidence, and without any notable issues about credibility or reliability, the necessary facts.

[8] Where this matter does become more challenging is on the evidence as it relates to remedy. However, for reasons that I will articulate, I do not conclude that the narrow scope of the concern requires these parties to undertake a full trial with *viva voce* evidence or even a hybrid process as contemplated under *Cepuran v. Carlton*, 2022 BCCA 76.

Factual Overview

[9] The petitioners are the registered owners of the lands legally described as PID 009-951-709, Lot 59, District Lot 3945, Osoyoos Division Yale District, Plan 7720. This is referred to above as “Lot 58”, or “the Cabin”. Anita Honey (“Ms. Honey”), owns a one-half interest in Lot 59, and it is acknowledged that her spouse has a 50 percent beneficial interest in Ms. Honey's legal interest in Lot 59. However, he is not on title, so he is not formally a party to these proceedings. Larry

Anderson and Carol Andrews own the other one-half interest in Lot 59 in joint tenancy.

[10] The decision as to how to structure the ownership of family property as between spouses or the nuances of joint tenancy and the rights of survivorship are not material to the petition, or the other relief sought. I simply raise it to put into context some further facts that I will return to shortly.

[11] The petitioners bought Lot 59 together in 1994. They did not obtain a survey at that time, and the vendor said nothing about any encroachment onto Lot 58. The petitioners have used the Cabin for summer vacations only as a recreational property. Like most in the area, the Cabin is not winterized, which accords with my below finding which is that they are primary accessible by boat.

[12] I accept that the Cabin is a well-loved place for the petitioners which, after owning for some 30 years, is an integral part of their recreational pursuits, vacation planning, and general family life. There is no doubt there have been many happy memories spent at the Cabin and on Mabel Lake (as described below).

[13] The respondent is a corporation incorporated properly pursuant to the laws of British Columbia. The respondent corporation owns Lot 58. Daniel and Rita Bostock (the “Bostocks”) are the shareholders of the respondent. Daniel Bostock is a director of the corporate respondent. The central fact to this petition is that Lot 59 is adjoining to and directly south of Lot 58. The Cabin on Lot 58 was also built in or about 1965.

[14] Both Lot 59 and Lot 58 are waterfront properties on the west shore of Mabel Lake and within the boundaries of the Regional District of the North Okanagan (“RDNO”).

[15] I understand from the evidence, as alluded to above, that the cabins on the West side of Mabel Lake are almost exclusively accessed by boat. It is possible, the evidence supports, to theoretically get to Lots 58 and 59 by way of logging roads over the mountains behind the respective properties, but that means of access is by

far the exception and not the norm. These are generally “boat in and boat out” cabins. This is consistent with the petitioner’s summer use only of the Cabin.

Lot 59–The Cabin

[16] With the benefit of the above overview, I move to the Cabin itself. The Cabin is an A-frame structure, which I accept is fully furnished in the interior. The ground under the Cabin slopes downward towards Mabel Lake. The Cabin rests on timber posts, which are supported by concrete footings in the ground. There is no engineering evidence tendered, but I accept the petitioners’ lay evidence that to their knowledge there has never been any structural issues noted with the Cabin during their ownership. Having regard to the fact that the Cabin has been in place for some almost 60 years, it clearly must have been well built at first instance. There is also no evidence tendered on behalf of the respondent which contradicts this assertion.

[17] The Cabin has lawful non-conforming use as it relates to riparian setbacks. The current RDNO zoning bylaw number 1888 provides at s. 170(3)(b) that the applicable flood plain setback from the natural boundary of Mabel Lake is 15 metres. Both the Cabin and the structure on Lot 58 have, I accept from the evidence before me, little to no setback from the natural boundary.

The Encroachments

[18] The Cabin was clearly already built when the petitioners bought Lot 59 in 1994. It was indeed approximately 30 years old. With one exception, which I will turn to regarding a roof overhanging, I accept that while the petitioners had made cosmetic renovations to the Cabin, the petitioners have never altered the location of the Cabin, its foundation, or its main roofline. Said another way, they have “buffed and fluffed” the Cabin as needed over the years, but the bones remain the same.

[19] Like other neighbouring cabins, the Cabin was built to squarely face Mabel Lake and parallel to the other neighbouring lots. Namely, the Cabin is not built on an angle. As has now been identified, the actual property lines are oriented slightly

differently. Consequently, the Cabin's northwest corner encroaches on Lot 58 by 2.09 metres at its farthest point (the "Cabin Encroachment").

[20] The Cabin Encroachment includes a concrete pillar sunk into the ground. The pillar and the resting point are the foundation for that corner of the Cabin periodically referred to hereinafter as the "northwest foundation". The property line between Lot 58 and Lot 59 runs to the interior of the concrete pillar. That means, I accept, that the concrete pillar and its resting point are entirely on Lot 58. Unfortunately, the interior of the Cabin Encroachment is the Cabin's master bedroom, which the evidence confirms is one of only two bedrooms in the Cabin.

[21] Additionally, as alluded to above, the petitioners added a roof over the rear landing of the Cabin in or about 2009. The overhang of the roof, as rebuilt, encroaches onto Lot 58 by the width of the eave by 0.73 metres at its farthest point. I have elected at this point to use the "Eave Overhanging Encroachment" as the defined term, but recognize the respondent refers to it as a "deck encroachment" in its submissions. They are one and the same, and the defining term has no legal significance.

[22] The petitioners did not learn of the Eave Overhanging Encroachment until 2021. Similarly, I accept a set of wooden stairs that runs square to the water for the benefit of Lot 58 encroaches on Lot 59 (the "Stairs Encroachment"). The petitioners state they are prepared to grant an easement to the respondent for the Stairs Encroachment as part of the relief sought.

[23] Prior to 2021, the petitioners and the former owner of Lot 58 had become aware of the Cabin Encroachment and the Stairs Encroachment. The exact timing of when is not clear from the affidavit material, but I glean that it was sometime after 1994 but well before 2021. Notwithstanding this, the petitioners and the former owners of Lot 58 did not consider either encroachment to be a concern which impacted their respective uses of the respective property, and no legal steps were taken by either owner/owners to remedy the issue or issues.

[24] With the benefit of hindsight, it would have been prudent to consensually agree to document a mutually beneficial easement for the known encroachments such that it was appropriately recorded on title for each property. That would have left only the Eave Overhanging Encroachment, which was not identified until 2021 and which is some approximately 2 feet 5 inches when converted from metric to imperial for context.

The Respondent's Ownership of Lot 58

[25] Daniel Bostock has owned a cabin in close proximity to Lots 58 and 59 since 1996. It is not disputed that is "a few doors down". As a result, the petitioners have known the Bostocks since least the latter portion of the 1990s, as the Mabel Lake community is not, I conclude, a busting metropolitan hub. Hard to not know your neighbours on a boat in/boat out community for something now close to approaching 30 years.

[26] The respondent corporation purchased Lot 58 in the spring of 2021. Given their long-time ownership of property in close proximity to Lots 58 and 59 and presence in the community generally, I find it quite obvious that the Bostocks were very likely aware of the encroachment by the Cabin onto Lot 58. It is quite simply obvious from the photographs included in the evidence in the petition record before this Court. The exact extent of the encroachment could not be identified by the naked eye but is readily apparent to me, and I have not walked, boated, and driven by Lots 58 and 59 for many years, which the evidence confirms the Bostocks have.

[27] Despite what I conclude was a known or at least strongly suspected encroachment, the Bostocks, through the corporate respondent, did not obtain a survey of Lot 58 as a subject condition prior to completing their purchase of said property. There is also no evidence of a property disclosure statement being provided by the former owner of Lot 58 as a condition of sale, which I strongly suspect would have identified the Cabin Encroachment and the Stair Encroachment given that these issues had been identified some years prior, and failing to disclose in the property disclosure statement could have been exposed the former to

litigation, including *inter alia*, possible claims of negligent or even fraudulent misrepresentation.

[28] Consistent with this, I refer to paragraph 9 of the affidavit of Daniel Bostock sworn October 31, 2023, wherein he confirms, “When I purchased the Bostock property, I did so without subjects”. This, when placed in context, refers to Lot 59.

[29] Mr. Bostock did not actually purchase Lot 59. The corporate respondent did. However, the important part of that evidence is not who is on title. The Land Title Office records confirm that. The significance that it is conceded that it was, in fact, a subject-free offer.

[30] Thus, I accept that the Bostocks wanted to purchase Lot 58 and made, through the corporate respondent, an offer to purchase without a survey and without a property disclosure statement at their own peril. Both would have been quite simple due diligence.

[31] The respondent corporation thereafter did, however, obtain a survey after taking possession of Lot 58 and demanded that the petitioners remove the Cabin Encroachment and the Eave Overhanging Encroachment from Lot 58. The surveyor retained ultimately rendered a report in August of 2022.

[32] The corporate respondent has not to date removed the Stairs Encroachment, and according to the petitioners, the Bostocks and their invitees continue to use the encroaching stairs. No relief is sought in this regard in the petition about the Stairs Encroachment, but the concession to simply allow the encroachment without the requirement of an easement is proffered by the petitioners as part of the overall equities of the situation.

[33] In this regard, it is the position of the petitioners that the removal of the Cabin Encroachment and the Eave Overhanging Encroachment would inflict disproportionate hardship on the petitioners and would be inequitable in all of the circumstances.

Snowfall

[34] A major point in the evidence tendered on behalf of the respondent corporation is a concern regarding snowfall from the roof of the Cabin onto Lot 58. However, as I have concluded, I find neither Lot 58 nor Lot 59 are in regular use during the winter months. Accessing either property in December or January, for example, would require driving down a likely very snowy forest service road or having an unwinterized boat available to haul in for use when Mabel Lake is not frozen over. I make the last comment on the basis of judicial notice as a member of the judiciary who was born and raised in the Okanagan.

[35] Climate conditions obviously vary, and I am certainly not taking judicial notice this is always the case, but I cannot ignore my practical knowledge of the fact that this is a fairly common occurrence and which is consistent with the petitioners' evidence that these structures are primarily used in late spring, summer and early fall as recreational properties, and the Cabin is not winterized. More significantly than my judicial notice comments on the practicality of winter use to Lots 58 and 59 is the actual evidence of the petitioners is that snow unloading off the roof of the Cabin has never caused damage to Lot 58. This not withstanding how long the cabins have been in place.

Cost of Removal

[36] Daniel Raible, professional engineer, namely a civil structural engineer, has provided a report in this proceeding about the options available to the petitioners for removing the petitioners' encroachments. This expert evidence is properly before the Court for the purposes of this petition, having been tendered in accordance with the *Supreme Court Civil Rules*. There was no attempt under what I will refer to as the "*Cepuran* approach" to cross-examine Mr. Raible.

[37] In his expert evidence, Mr. Raible identifies that in addition to the significant costs, the petitioners would face numerous risks and obstacles from a zoning perspective to remove the Cabin Encroach and the Eave Overhanging Encroachment.

Legal Analysis

[38] The petitioners rely upon s. 36 of the *Property Law Act* [*PLA*] which states as follows:

> **Encroachment on adjoining land**
>
> 36 (1) For the purposes of this section, "owner" includes a person with an interest in, or right to possession of land.
>
> (2) If, on the survey of land, it is found that a building on it encroaches on adjoining land, or a fence has been improperly located so as to enclose adjoining land, the Supreme Court may on application
>
> (a) declare that the owner of the land has for the period the court determines and on making the compensation to the owner of the adjoining land that the court determines, an easement on the land encroached on or enclosed,
>
> (b) vest title to the land encroached on or enclosed in the owner of the land encroaching or enclosing, on making the compensation that the court determines, or
>
> (c) order the owner to remove the encroachment or the fence so that it no longer encroaches on or encloses any part of the adjoining land.

[39] I accept that the purpose of s. 36 of the *PLA* is to "provide a basis on equitable grounds for resolving disputes over encroachments": *Taylor v. Hoskin*, 2006 BCCA 39, at para. 52. This is binding authority on this Court.

[40] Moreover, I accept from *Taylor* that the test to be applied under s. 36 is well established. It requires an assessment of the balance of convenience, having regard to three predominant considerations:

a) The comprehension of the property lines. Were the parties cognizant of the correct property line before the encroachment became an issue? There are three degrees of knowledge: honest belief, negligence, or fraud. The party seeking the easement should have an honest belief to be awarded this remedy.

b) The nature of the encroachment. Was the encroachment a lasting improvement? What is the effort and cost involved in moving the

improvement? What is the effect on the properties in question? The more fixed the improvement and the more costly and cumbersome it would be to move it, the more these considerations will be weighed in favour of the petitioner.

c) The size of the encroachment. How does the encroachment affect the properties in terms of both their present and future value and costs?

These questions serve to balance the potential losses and gains of the creation of an easement: *Taylor* at para. 50.

[41] Nevertheless, s. 36 provides for an equitable remedy, and the test is not intended to be applied rigorously. Instead, the facts and the equities of each individual case ought to determine the court's exercise of its discretion rather than the application of a one size fits all test: *Taylor* at para. 51.

[42] The petitioners submit that a just and equitable result consistent with s. 36(2)(a) would be for an easement order sought to be granted in favour of the petitioners in exchange for the payment of just and equitable compensation. As indicated, the petitioners are agreeable to granting a reciprocal easement for the corporate respondent's encroaching stairs in the context of the just and equitable analysis set forth in *Taylor*, or to simply allow the encroachment to continue in accordance with the long standing *status quo*.

Element 1— Comprehension of the Property Lines

[43] I accept that the Cabin Encroachment has been present since long before the petitioners owned Lot 59 and very likely since the Cabin was first built. There is no evidence to the contrary. For the reasons I have identified above, at the time they purchased the Cabin, the location of the structures on Lots 58 and 59 ought to have given rise to some common-sense concern that they appear to be situated far too close to each other, even for recreational properties.

[44] However, the petitioners were not at that point intimately familiar with the Mabel Lake community, and there is no evidence that they were advised of the possible encroachment from a legal perspective, as the property disclosure form requirement only became mandatory in 2003 with respect to residential listing pursuant to the British Columbia Real Estate Association, and I have no evidence that the encroachment was included on any such property disclosure statement.

[45] In any event, I accept that the petitioners had an honest belief that there were no encroachments in this particular case. When the petitioners learned of the Cabin Encroachment, they had already owned Lot 59 for some years. As indicated, I do not know when, but it was some years, and as noted, both the petitioners and the then owners of Lot 58 consented to effectively maintain the *status quo* of permitting the then-known mutual encroachments.

[46] Similarly, at the time that the petitioners added the roof to the rear landing of the Cabin, I accept that the petitioners had an honest belief that it did not encroach on Lot 58, and there is again no evidence to the contrary. Specifically, there is no evidence that the prior owner raised any concern which would have alerted them to an issue about the Eave Overhanging Encroachment, unlike the mutual decision as between the neighbours to simply ignore the Cabin Encroachment and the Stairs Encroachment and simply continue the *status quo*. The petitioners did not learn otherwise regarding the Eave Overhanging Encroachment until after the respondent corporation purchased Lot 58 in 2021.

[47] By contrast, I conclude that the respondent corporations' operating mind knew or suspected that possible encroachments existed when they bought Lot 58 and made a conscious decision not to investigate that until after the purchase had completed, either through a property disclosure statement or a condition precedent of a survey confirming the property boundaries. The Bostocks' likely prior suspicion, I find, is confirmed by the fact that quite soon after the purchase of Lot 58 completed, the respondent corporation obtained a survey which confirmed all of the encroachments in issue.

Element 2—Nature of the Encroachment

[48] The petitioners' encroachments, namely the Cabin Encroachment and the Eave Overhanging Encroachment, are, I accept, permanent and long-standing improvements. In particular, the Cabin Encroachment cannot be removed without replacing the foundation located on the northwest corner as above defined. This results in the loss of a bedroom, which effectively precludes the petitioners from using the Cabin together as it would become a one-bedroom structure, which is not conducive to accommodating two couples.

[49] Additionally, I accept that because the Cabin is an A-frame structure, altering the main roof line is necessarily a structural alteration. The more permanent nature of the improvement, the more this factor will rule in favour of the party seeking to obtain rights to the encroachment area. In this regard, I refer to the decision in *Oyelese v. Sorensen*, 2013 BCSC 940, at para. 51.

[50] There are also identified uncertainties as to the costs associated with removing the Cabin Encroachment and the Eave Overhanging Encroachment, and uncertainties regarding necessary zoning and permitting requirements. I accept the latter as being particularly significant, given the Cabin has been on Lot 59 since 1965 and has, as I indicated, been grandfathered as non-conforming status. I say this notwithstanding the petitioners' submission that s. 529 of the *Local Government Act*, R.S.B.C. 2015, c. 1 technically allows for the alteration of a building which is non-conforming if the alteration does not increase the degree of non-conformity. The potential application of this provision of the *Local Government Act* is relevant but hypothetical at this juncture. I refer to the authority that I was directed to, which is *Gueldner v. Nichele*, 2013 BCSC 2354, at paras. 15 and 63.

Element 3—Size of the Encroachment

[51] The petitioners' Encroachments are, I accept, nominal in size. The Cabin Encroachment, which is the longest standing and most complicated to remove, is the majority of the encroachments. It occupies 6.95 square metres of the respondent's 687.5 square metres lot. The Eave Overhanging Encroachment is a total of 0.85

square metres. I thus further accept that the two subject encroachments do not affect the respondent corporation's future use of Lot 58, as it is, I have concluded, primarily a recreational property. The snow fall issue, I conclude, has been brought forward to buttress the respondent corporation's position which is, to quote the correspondence exchanged relative to this dispute, "non-personal" but "about business". I say this despite considering that this factor weighs in favour of removing an encroachment where the encroachment prevents an individual from fully realizing the full utility of their property: *Robertson v. Naramata Resorts Ltd.*, 2005 BCSC 467, at paras. 5 and 19.

Compensation

[52] Where a petitioner seeks vesting of land encroached under s. 36(2)(b) of the *PLA*, the loss is to the value of the land encroached. Whereas here the petitioners seek only an easement under s. 36(2)(a). The loss is the loss of the use of the encroached land, which is the value of the easement: *Lalli v. Eng*, 2000 BCSC 686, at para. 24.

[53] In this case, the question of the loss of value brings the Court back to the earlier conclusions that through the Bostocks' personal knowledge, the corporate respondent was very likely aware of the Cabin Encroachment at the time of purchase. The corporate respondent elected not to use quite standard due diligence in the purchase, which would have identified these issues and informed them accordingly if they wanted to complete the transaction or not. Rather, via the respondent corporation, they chose to purchase Lot 58 without these safeguards. This, in my view, significantly undermines their position that there is a significant loss in value as a result of the Lot 59 encroachments.

[54] This is where the evidence, in my view, ceases at the present time to be satisfactory, however, for determination on present affidavit evidence. I contemplated the possibility of referring the issue to the registrar, but I concluded that this would be an unwieldy complicated referral, which would not be for the benefit of these parties. I have thus concluded that the appropriate way to address

the matter is to have it come back before me with additional affidavit evidence and submissions on the compensation issue, with the benefit of these reasons which make clear that I am prepared to grant the easement sought by the petitioners under the *PLA* and am not prepared to grant the order seeking the removal of the encroachments.

[55] I am not, however, in a position to formally grant that relief since the granting of the easement is conditional upon compensation being paid. There is also the corollary issue of whether the Stairs Encroachment has some collateral benefit to the corporate respondent even though it is not specifically pled but is just part of the evidentiary record.

[56] Having regard to the particular circumstances of the case, and the long-standing nature of the encroachments, I am going to grant a significantly longer timeframe for the parties to file their materials than would usually be expected, and if the parties wish to extend those deadlines by written agreement further, they are at liberty to do so and can advise Supreme Court Scheduling accordingly.

[57] Failing such other arrangements, the schedule will be as follows:

a) Anita Honey, Larry Anderson and Carol Andrews shall have 60 days from the date of these reasons to provide supplementary affidavit material and, if sought, written submissions as to the issue of compensation for the easement which I will grant upon on conclusion.

b) The corporate respondent shall have 60 days from receipt of the materials from Anita Honey, Larry Anderson and Carol Andrews to file response materials and if so desired written submissions.

c) Any reply materials on behalf of Anita Honey, Larry Anderson and Carol Andrews shall be filed within 10 days of receipt of the corporate respondent’s materials.

[58] Thereafter, this matter will be brought back before me at a date to be arranged through Supreme Court Scheduling unless the parties are able to negotiate a solution. I would anticipate two hours would be more than sufficient, but I will leave it in capable counsel's hands to determine the duration for final determination of compensation as required by this Court.

[59] Having regard to my above conclusions regarding the petitioners' encroachments as I have here above defined, I am dismissing all the relief sought by the respondent corporation.

Costs

[60] With respect to the issue of costs, costs are awardable under the *Supreme Court Civil Rules* at the discretion of the presider. The general rule, of course, is that the party that is substantially successful should receive their costs. The petitioners received the relief they sought, and the corporate respondent did not. However, this is, in my view, a somewhat nuanced situation. The corporate respondent is correct that there are encroachments. That is confirmed by survey evidence referred to above.

[61] In my view, the appropriate order in these circumstances is for the parties to bear their own costs of both proceedings to date. The issue of the costs on the determination of compensation shall remain open for further determination unless the parties are able to negotiate that issue without further involvement of the Court. Otherwise, that shall be a live issue when the matter returns before me.

[62] Those are my reasons for judgment.

[63] CNSL M. MOORHOUSE: Justice Hardwick, just one point of clarification. [Indiscernible] the stairs encroachment, I believe this was addressed in my friend's written submissions, but those have actually already been removed.

[64] THE COURT: Oh, all right. Well, then that is helpful to know, Ms. Moorhouse, but that does not change the decision.

[65] CNSL M. MOORHOUSE: I figured not. I just wanted it to be clear.

[66] THE COURT: Yes.

[67] CNSL M. MOORHOUSE: For the record.

[68] CNSL A. PRIOR: Thank you, Justice Hardwick. Nothing—I agree with Ms. Moorhouse that it is in there, they have been removed. No other comment—

[69] THE COURT: Sorry, I did miss that, but in any event, it does not change the substance of my ruling. Thank you. We stand adjourned.

"Hardwick J."