

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Salt Spring Island Local Trust Committee*  
*v. B & B Ganges Marina Ltd.,*  
2009 BCCA 48

Date: 20090210  
Docket: CA035244

Between:

**Salt Spring Island Local Trust Committee**

Respondent  
(Petitioner)

And

**B & B Ganges Marina Ltd., 622782 B.C. Ltd. and 616416 B.C. Ltd.**

Appellants  
(Respondents)

And

**Attorney General of British Columbia**

Respondent  
(Respondent)

Before: The Honourable Mr. Justice Low  
The Honourable Mr. Justice Smith  
The Honourable Mr. Justice Chiasson

L.J. Alexander

Counsel for the Appellants

F.V. Marzari

Counsel for the Respondent

B. Mackey

Counsel for the Respondent,  
Attorney General of British Columbia

Place and Date of Hearing:

Vancouver, British Columbia  
21 and 22 April 2008

Place and Date of Judgment:

Vancouver, British Columbia  
29 December 2008

Written submissions received:

14, 15 and 16 January 2009

Date of Supplementary Reasons:

10 February 2009

**Supplementary Reasons of the Court:**

**VANCOUVER**

FEB 10 2009

**COURT OF APPEAL  
REGISTRY**

**Supplementary Reasons for Judgment of the Court:**

**Introduction**

[1] The parties bring two applications. The appellant Marina seeks to settle the order on the appeal and the respondent Trust seeks costs on Scale 3, or in the alternative at Scale 2.

**This Court's order**

[2] Para. 2 of the order of the chambers judge stated the Marina must, "... either alter the [F]loating [S]tructure to make it comply with the Land Use Bylaw or remove the Floating Structure from the Ganges Marina".

[3] The Marina contends that it did not seek to set aside the alteration order and, since the respondents did not cross appeal, this order should remain in effect. The Marina submits the order should state simply that the appeal is dismissed. The Trust disagrees.

[4] One of the Marina's grounds of appeal was as follows:

The Court erred in making an order requiring the Registered Vessel to be removed from the marina and erred in granting a remedy requiring modification of the vessel which was not sought in the Petition or argued before the Court.

[5] On appeal, both parties contended the order should not have included the alteration provision. In paras. 46-49, 79 and 81 of this Court's reasons, Chiasson J.A. stated:

[46] The second order made by the judge states that the Marina must "... either alter the [F]loating [S]tructure to make it comply with the Land Use Bylaw or remove the Floating Structure from the Ganges Marina." The Marina asserts that the judge's second order was not sought by the Trust and should be eliminated insofar as it provides for the alteration of the Floating Structure to comply with the Bylaw.

[47] The provision has led to disagreement between the parties: the Marina says the Floating Structure has been altered and now complies; the Trust contends the Floating Structure still does not comply.

[48] It appears to be the case that no request for an opportunity to modify the Floating Structure was made. The Trust sought its removal.

[49] Although the provision is not mandatory and would appear to be for the benefit of the Marina, I would accede to its request and direct that paragraph 2 of the order be revised to read:

The Respondent owners and operators of the Ganges Marina must remove the Floating Structure from the Ganges Marina.

...

[79] As there was no request for an order permitting the Marina to modify the Floating Structure to comply with the Bylaw, that part of the judge's order should be deleted

...

[81] I would allow the appeal to the extent of deleting that part of the order permitting the Marina to modify the Floating Structure and otherwise would dismiss this appeal.

Smith J.A., with whom Low J.A. concurred, wrote in para. 82:

I also agree with [Chiasson J.A.] that the order directing the appellants to comply with the Bylaw should be struck – the order was not requested and moreover it is vague and unenforceable.

[6] The issue whether the remedial provision should have been included in the judge's order was a ground of appeal and was canvassed thoroughly in the appeal. All members of the division that heard the appeal agreed the remedial provision

should not have been included and should be set aside. We would not accede to the Marina's submission.

[7] The order of this Court should state that the appeal is allowed to the extent of deleting that part of the order of the chambers judge permitting the Marina to modify the Floating Structure, but otherwise is dismissed.

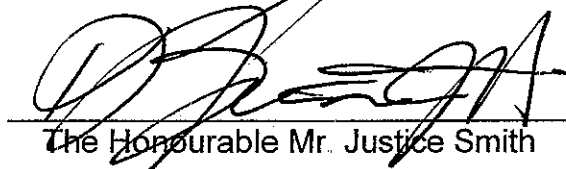
**Costs**

[8] The chambers judge ordered costs pursuant to Scale C under Appendix B of the *Rules of Court*. The Trust states this Court also should order costs higher than usual due to the importance and difficulty of the case.

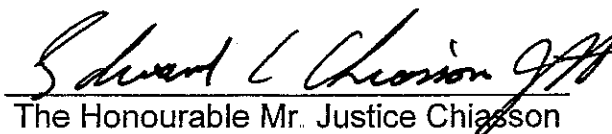
[9] An order for costs on an increased scale is not usual in this Court. It is the nature of the appellate process that many appeals are important and difficult. In our view, such an order is not warranted in this case. We consider it appropriate that costs should be on the usual basis.



The Honourable Mr. Justice Low



The Honourable Mr. Justice Smith



The Honourable Mr. Justice Chiasson