> 20. The location and preparation of all sumps and pits shall be such as to avoid long-term erosion and seepage problems *to the satisfaction of the Land Use inspector.* (emphasis added)

What has then occurred is a further delegation by the engineer to his inspector.

But starting at the beginning, first there is a delegation from Parliament to the Governor in Council (s. 3 of the Act), then there is a delegation from the Governor in Council to the engineer (ss. 20 & 21 of the Regulations), and finally there is a delegation from the engineer to the land use inspector (condition 20). The issue is what delegation, if any, is authorized?

It is the author's suggestion that, in the absence of statutory authority, discretionary power vested in a subordinate body such as either the Governor in Council or the engineer, cannot in turn be sub-delegated by either of them. As support for this view, we cite the cases: *Vic Restaurant Inc.* v. *City of Montreal*[10] and *Bridge* v. *The Queen ex rel. Skalinski.*[11]

Based on the foregoing, there is little doubt that the delegation from the engineer to the land use inspector is *ultra vires*, but as well, it is submitted that what is missing is a provision in the Act authorizing the Governor in Council to confer on the engineer the right to decide what conditions may be placed on any permit.

Should a company succeed on the basis of the foregoing argument, the implications are obvious. At the very least, certain conditions of land use permits would be *ultra vires*, if not all of the permits in their entirety, leaving no regulations as to the use of the surface of the land.

—DAVID SEARLE, Q.C.*

---

[10] (1959) 17 D.L.R. (2d) 81, 94.

[11] (1953), D.L.R. 305.

* B.A., LL.B. (Alta.), of the firm of Searle Sigler, Yellowknife, N.W.T.

SOME THOUGHTS ON THE DRAFTING OF CONDITIONS IN CONTRACTS FOR THE SALE OF LAND

Contracts for the sale of land are frequently, if not usually, conditional in nature. Conditional contracts are contracts in which the ultimate promise of performance on one or both sides is made to depend upon the happening or non-happening, or upon the existence or non-existence of some specific event or state of affairs. Most frequently conditions in contracts for the sale of land relate to the obtaining of finance by the purchaser or the obtaining of some necessary approval for a development of the property which the purchaser has in mind and for which reason he is buying. They may, however, be concerned with a variety of other matters and may and do take many different forms. For example, some contracts are made simply "subject to the purchaser obtaining satisfactory finance" while others may specify the nature of the finance to be obtained in considerable detail, or may set out the steps for obtaining planning approval or the like and lay down a timetable for

the process. Some provisions may do no more than condition the offer or the agreement without spelling out the consequences which will flow from fulfilment or non-fulfilment of the condition, while others may spell those consequences out fully. Conditions in contracts are usually spoken of as being precedent or subsequent; either preventing or suspending insistence upon performance of the conditional promise, or, having the effect of bringing to an end the existing obligation to perform the conditional promise. Most often Canadian courts regard conditions of the types mentioned as precedent rather than subsequent; however, the cases do not always make it clear what the significance of that distinction is, nor are they consistent with respect to the consequences which flow from characterizing a condition as the one rather than the other.

It is fairly apparent from the cases that when a condition is characterized as being precedent there are three possible meanings. It may be precedent in the sense that until the condition is fulfilled there is no contractual obligation at all between the parties, or in the sense that while there are certain contractual obligations between the parties neither can be called upon to perform his primary obligation under the contract unless and until the condition is satisfied, or finally, in the sense that fulfilment of the condition is a necessary prerequisite to the enforceability of the primary obligation against one of the parties.

The decided cases exhibit considerable differences of approach in the treatment of conditions in contracts. However, the Supreme Court of Canada has, in *Barnett* v. *Harrison*,[1] firmly reasserted its adherence to the principle laid down some seventeen years ago in *Turney* v. *Zhilka*.[2] It is perhaps time to give some consideration to the drafting of conditions in contracts for the sale of land in the light of these and other Supreme Court decisions.[3] It will be recalled that in *Turney* v. *Zhilka*, Judson J. said[4] that where the obligations under a contract, on both sides, depend upon a future, uncertain event, the happening of which depends entirely upon the will of a third party, that condition is a true condition precedent. It is an external condition upon which the existence of obligation depends and consequently it cannot be unilaterally waived.

This statement of principle is open to both interpretation and criticism as is revealed in *Barnett* v. *Harrison*, in which Laskin C.J.'s strong dissent is supported by Spence J. Nevertheless the purpose of this comment is to discuss methods of formulating conditions which will achieve the legitimate aims of the parties without running afoul of the Supreme Court's doctrine and not to criticize the doctrine itself. Some brief discussion of this doctrine is, nevertheless, necessary as a background to what is to be suggested with respect to the drafting of conditions.

It should be noted that Judson J. appeared to find in *Turney* v. *Zhilka*, as a threshold determination, that the obligation of both parties did, in that particular case, depend upon the future uncertain event. In subsequent cases, however, such as *F.T. Developments* v. *Sherman*[5] and

---

[1] (1975) 57 D.L.R. (3d) 225.

[2] (1959) S.C.R. 578.

[3] *F.T. Developments* v. *Sherman*, (1968) 70 D.L.R. (2d) 426; *O'Reilly* v. *Marketers Diversified Inc.* (1969) 6 D.L.R. (3d) 631; *Beauchamp* v. *Beauchamp* (1974) 40 D.L.R. (3d) 160.

[4] *Supra*, n. 2 at 583-584.

[5] *Supra*, n. 3.

O'Reilly v. *Marketers Diversified*,[6] not to mention decisions in the Supreme Courts of the provinces such as *Lestrange* v. *Juda*[7] and *Grier* v. *Krivak*,[8] it appears to have been simply assumed that if a third party was involved in the fulfilment of the condition it necessarily affected the obligations of both parties.

It has been held that conditions such as the following cannot be unilaterally waived by a purchaser with a view to enforcing specific performance:

(i) providing the property can be annexed to the Village of Streetsville and a plan is approved by the Village Council for subdivision.[9]

(ii) purchaser being able to purchase Lot No. 8 (described as adjacent to Lot 7, James Bay, Prevost Island), owned by Mr. de Bergh on terms and conditions satisfactory to purchaser prior to September 1, 1966.[10]

(iii) This offer is conditional upon the purchaser obtaining the rezoning of the said lands on an M-5 zoning basis. Such rezoning to be obtained within 6 months from the date of the acceptance of the offer. Providing re-zoning be approved by the Municipality of the Township of North York, and should it be before the Municipal Board within a six-month period, a further extension for the approval of the Municipal Board will be given for a period of 90 days, if the Municipal Board has not had an opportunity of giving its approval prior to the said extension date.

(iv) This offer is subject to the following conditions (if any).

(v) Subject to financing within 10 banking or working days from June 26, 1972.[12]

(vi) Subject to acquisition of adjoining property making in all 100 feet by 125 feet building site by November 24, 1973.[13]

(vii) This offer shall be conditional for 30 days from the date of acceptance upon the purchasers being able to obtain an acceptable offer on their property for sale at 16 Cedar Avenue, in the City of Toronto, listed through H. Daller Real Estate; otherwise this offer shall be null and void and the deposit money returned to the purchasers without deduction.[14]

On the other hand, it has been stated that this difficulty with respect to waiver can be overcome if there is inserted into the contract a clause expressly giving the right to waive the condition.[15] The insertion of such a clause will seemingly not merely give the right to waive but will convert what would otherwise be a true condition precedent into one that is not.

A further preliminary point to consider is that in *Beauchamp* v. *Beauchamp*,[16] a case which involved a condition with respect to the obtaining of mortgage financing. The Supreme Court appeared to adopt a rather different approach, although not at all clearly, as no reasons for judgment were given. If this is so it has implications for the lawyer or the layman drafting conditions. Therefore the case will be briefly examined.

The condition in *Beauchamp* v. *Beauchamp* read as follows:

---

[6] *Supra*, n. 3.

[7] (1973) 31 D.L.R. (3d) 684.

[8] (1973) 31 D.L.R. (3d) 381 (Man. Q.B.).

[9] *Turney* v. *Zhilka*, *supra*, n. 2.

[10] *O'Reilly* v. *Marketers Diversified, Inc.*, *supra*, n. 3.

[11] *F.T. Developments* v. *Sherman*, *supra*, n. 3.

[12] *Grier* v. *Krivak*, *supra*, n. 8.

[13] *Matrix Construction Ltd.* v. *Chan Go See et al.* (1976) 2 W.W.R. 764.

[14] *Lestrange* v. *Juda* (1973) 31 D.L.R. (3d) 684.

[15] *O'Reilly* v. *Marketers Diversified Inc.*, *supra*, n. 3 at 633; *Genern* v. *Bach* (1969) 1 O.R. 694; 3 D.L.R. (3d) 611, 616-617; *Gaywood Hall Developments* v. *Wilkes* (1972) 23 D.L.R. (3d) 505, 507.

[16] *Supra*, n. 3.

> This sale is conditional for a period of 15 days from date of acceptance of same upon the Purchaser or his Agent being able to obtain a first mortgage in the amount of Ten Thousand Dollars ($10,000.00) bearing interest at the current rate otherwise, this offer shall be null and void and all deposit monies shall be returned to the Purchaser without interest or any other charge. This offer is also conditional for a period of 15 days from date of acceptance of same upon the Purchaser or his Agent being able to secure a second mortgage in the amount of $2,500.00 for a period of five (5) years, bearing interest at the current rate, otherwise, this offer shall be null and void and all deposit monies returned to the Purchaser without interest or any other charge.

The purchaser did not comply precisely with the condition in that he did not obtain a second mortgage at all but arranged a first mortgage of $12,000.00 and wrote to the vendor notifying him that the condition had been met and that the transaction would proceed to closing as originally agreed. The vendor objected that the condition had not been strictly complied with and refused to complete, whereupon the purchaser sued for specific performance. The Ontario Court of Appeal,[17] through Gale C.J.O., rejected the vendor's argument that the plaintiff could not succeed because he had not complied with a condition precedent. The Court said that the condition was solely for the protection of the purchaser and that the vendor's sole legitimate interest was in receiving the amount of $15,500.00. It was said that the purchaser had either met the condition or was waiving it and that he was in either case entitled to specific performance. *Turney* v. *Zhilka* was dismissed as not being appropriate to the circumstances, but it was not explained why.

The case was appealed to the Supreme Court of Canada but there the appeal was simply dismissed,[18] without hearing argument from counsel for the purchaser, on the ground that the Court of Appeal's conclusion was proper. Which conclusion? That the purchaser had met the condition or that he had properly waived it? Or would either analysis do? The Supreme Court did not deign to supply the answer.

Dickson J. in *Barnett* v. *Harrison*, explained[19] *Beauchamp* v. *Beauchamp* as being a case in which the condition precedent was satisfied rather than waived, and thus choosing between the bases for decision put forward by the Ontario Court of Appeal. It is suggested that this explanation of the *Beauchamp* decision is not entirely satisfactory; however, assuming that it does lay down the law, what is this law? Is it that substantial compliance, even with a condition precedent, is sufficient to entitle a party to specific performance? Is it that the vendor's concern with respect to the purchase price is simply to receive it, no matter how it is raised? Or is it that substantial compliance with a finance condition is sufficient where the full purchase price is tendered?

A subsequent decision of the Ontario High Court in *Brooks* v. *Aiken*[20] treated as indistinguishable from the condition in *Beauchamp* the following:

> Notwithstanding the aforesaid it is made a condition of this Offer that if the Purchaser is unable at his own expense within 10 business days from the date of acceptance hereof to obtain a first mortgage on the property herein wherein the principal amount is not less than ninety per cent of the pruchase price and the interest rate does not exceed 9¼% per annum, then in this event the Contract herein is to become null and void and the deposit is to be returned without any deduction whatsoever.

---

[17] [1973] 2 O.R. 43.

[18] *Supra*, n. 3.

[19] *Supra*, n. 1 at 248.

[20] (1975) 60 D.L.R. (3d) 577 (Ont. H.C.).

The learned judge rejected the view that it was a condition precedent whose failure voided the contract, saying that it was solely for the benefit of the purchaser. The purchaser had notified the vendor that he would not rely upon the condition and would pay the balance in full on closing. As His Lordship pointed out, "This was what the vendors were entitled to receive by way of performance by the purchaser . . ."[21] The Court in *Beauchamp* v. *Beauchamp* was said to have held that the failure of the purchaser to fulfil the condition did not excuse performance by the vendor. Is that really what was said? Is this what Dickson J. said in *Barnett* v. *Harrison*?

It can be seen that a number of unanswered questions exist and that clarification will undoubtedly be required. However, the immediate task is to determine what steps may be taken in drafting conditions in contracts for sale which will fairly protect the parties' interests while avoiding the pitfalls presented by the decided authorities.

The first task is to identify the interests which the parties may wish to protect by way of condition. Most obviously the purchaser will want a finance condition inserted in order to protect against liability under the contract in the event that adequate financing cannot be obtained. A purchaser who needs funds from a third party source will ordinarily be unable to obtain a commitment to supply such funds until he has entered into a contract. On the other hand, it would be dangerous for him to enter into an unconditional obligation to purchase until that commitment is obtained. Hence the desire to make a contract which allows him to escape the obligation to complete, if, notwithstanding honest efforts on his part, he is unable to obtain the finance he needs.

Similarly if the purchaser is contemplating purchase with a view to putting the land to some particular use he will not wish to be bound to complete if that particular use is foreclosed through inability to obtain the requisite permission from the appropriate authorities. Consequently, such a purchaser will want to be protected against liability to complete in those circumstances.

What interest may the vendor have in the inclusion of conditions? In many cases he may have no interest at all and would perhaps be a good deal happier if the contract was unconditional. However, given that a finance condition, for example, is to be inserted at the instance of the purchaser, the vendor may well be interested in limiting the time during which he must remain uncertain of the ultimate completion of the contract. Similarly, he may also wish to provide that the purchaser shall give him written notice of success or failure with respect to obtaining the finance mentioned in the condition.

In the case of conditions relating to development approvals and the like, it is possible that the vendor may have a real and substantial interest. He may be willing to sell only if development approval is obtained because he may see some advantage accruing to him from the granting of approval. He may, for example, have other land in the vicinity which he may then find easier to develop. On the other hand, the question of development approval may be one which concerns the purchaser solely and in respect of which the vendor's only interest may be, once again, that a reasonable time period is established for the obtaining of the approval so that his period of uncertainty is limited

[21] *Id.* at 581.

and, perhaps, so that the purchaser is not in the position of a speculator who is waiting to see whether the land appreciates considerably in value before deciding whether or not to complete the transaction.

This leads to the question as to whether conditional contracts should as a general rule contain rights of waiver. Clearly, it is a desirable right from the purchaser's point of view. For his own safety he may well condition his obligation to complete upon his ability to obtain finance from probable sources. However, the possibility of obtaining finance elsewhere always exists and he may well want to be able to take advantage of the realization of such a possibility.

In the same way, a purchaser who has bought land for development purposes of one particular kind may decide, notwithstanding his inability to obtain the required approval, that the land can profitably be used for some other purpose. It will be advantageous to him to be able to make such a decision and proceed to completion of the contract.

But what of the vendor? If he has a real and substantial interest in the manner or source of the purchaser's obtaining finance or the success of the purchaser in obtaining a rezoning or a development approval, he will obviously not wish to allow the purchaser an unrestricted right of waiver. In circumstances where these considerations do not apply there does not appear to be any reason why the vendor should object to the inclusion of a right of waiver. Perhaps it might be objected that the purchaser is being placed in the position of a speculative optionee who can wait to see whether the land increases or decreases in value.[22] However, any vendor who allows a lengthy period for satisfaction of a condition is creating a situation in which the purchaser may reap some windfall benefit from appreciation in value, whether or not there is a waiver clause. Furthermore, such factors should surely be reflected in the purchase price. Lastly, the possibility always remains that the property will decline in value, though the experience of recent years has been decidedly to the contrary.

Some Possible Clauses

One possibility is simply to insert an express waiver clause in favour of the purchaser.

> The purchaser may at any time, up to and including the ..... day of ..... 19....., waive the protection of the above clause in whole or in part by giving notice to that effect to the vendor in writing at ..... (address)

As already noted, such a clause has the effect of taking the condition out of the category of true conditions precedent. It enables the purchaser to complete even if the condition is unsatisfied if by some other means he has obtained finance or if he decides he can in some other manner put the property to profitable use notwithstanding failure to obtain rezoning, planning approval or whatever.

So far as the vendor is concerned, it enables him to set a reasonable time limit upon the right to waive. This time limit may or may not be coterminous with the period for satisfying the condition. The requirement of written notice seems a sensible one which could be further refined by specifying either that the notice must have been sent by a given date or

[22] See Dickson J. in *Barnett* v. *Harrsion, supra*, n. 1 at 247.

that it must have been waived by the given date or some other specified subsequent date.

Obviously, this clause operates in conjunction with and must be compatible with the condition itself. Two examples of fairly common forms of condition are as follows:

(1) This offer and agreement is subject to the following conditions: The purchaser obtaining within 14 days of the inception of this offer first mortgage financing in the amount of $30,000.00 at an interest rate not exceeding 11½% per annum, calculated semi-annually not in advance; principal and interest to be paid in monthly instalments amortized over 25 years.

(2) This offer and agreement shall be null and void in the event that the purchaser is unable to obtain within 14 days of the acceptance of this offer first mortgage financing in the amount of $30,000.00 at an interest rate not exceeding 11½% per annum calculated semi-annually not in advance; principal and interest to be paid in monthly instalments amortized over 25 years.

The first form differs from the second in that it does not specify the consequences which will flow from the purchaser failing to obtain the financing. Nevertheless, the Canadian authorities indicate that the results would be the same in both cases. The contract would be void upon the expiration of fourteen days without fulfilment of the condition. The express waiver clause does not alter that of itself. It merely permits the purchaser to render the condition no longer truly precedent. If he fails to give written notice of waiver within the time specified his contract will be avoided.

Another way of handling the situation is to frame the condition so that the purchaser (or in appropriate cases, the vendor) has the option of declaring the contract null and void, as follows:

> This agreement may be declared null and void at the option of the purchaser (vendor) if the purchaser (vendor) is unable to obtain by the ..... day of ..... 19....., financing upon the following terms (rezoning of the said property from ..... to ....., etc.) and the deposit shall be returned to the purchaser without deduction.

This clause produces a very different situation. The condition can no longer be regarded as a true condition precedent. The agreement remains fast until it is declared null and void by the appropriate party. If no action to avoid is taken the agreement will be enforceable by either party once the prescribed date has passed, even though the condition has not been fulfilled. Thus, for example, if the purchaser fails to obtain finance and wants to escape his obligations under the contract he must take positive steps to declare the contract null and void; inaction will leave him liable. The vendor is certain that if he hears nothing from the purchaser by the prescribed date, or perhaps within a reasonable time thereafter, he has an enforceable contract.[23] This clause makes it clear that if the purchaser does opt to end the contract upon finding himself unable to succeed in fulfilling the condition he will be entitled to the return of the deposit in full. The previous clauses did not say that but it would probably be hled to be implicit in the conditional nature of the contract.

In order to remove uncertainties to the greatest degree possible it would be advisable to provide in the clause that the purchaser should exercise his option by giving notice in writing to the vendor at a stated address, and further, the time period within which such notice is to be given could be prescribed.

[23] In Alberta, because of the Judicature Act R.S.A. 1970, c. 193, that may mean no more than loss of the deposit.

A variation upon this theme is provided by the following clause:

> In the event that the purchaser (vendor) is unable to obtain by the ..... day of ..... 19....., financing upon the following terms (rezoning of the said property . . . etc.) then either party shall be at liberty to declare the agreement null and void by notice in writing to the address of the other party as stated in this agreement, provided that such written notice shall have been postmarked within two business days of the expiration of the period stipulated above for satisfaction of the condition.

This last clause gives the parties mutually coextensive rights to determine the contract. It will not therefore suit the purchaser who wishes to have the option of completing even if the condition is not satisfied. On the other hand it should be favoured by the vendor who believes that the property may increase in value significantly during the period allowed for fulfilment of the condition.

Conclusions

Which form of clause or combination of clauses is to be preferred? The answer must, of course, depend upon the respective interests of the parties and for which of them one is acting.

The difference between the express right of waiver clause and the purchaser's option clause is, of course, that in the former the purchaser will not, simply through inaction, be burdened with a contract he cannot handle, as may happen in the latter case. On the other hand, he may lose a contract which, despite his inability to fulfil the condition, he can complete and really wants. Probably the former consideration is likely to weigh more heavily.

If, however, the Supreme Court of Canada were to alter its approach to conditions and to adopt a construction similar to that adopted by courts in England and throughout the Commonwealth, the latter two forms would be preferable. The approach taken in those jurisdictions is that the words "null and void" will ordinarily be taken to mean voidable at the option of a party not in default, provided that the clause was inserted for the benefit of that party. Some may find them preferable in any event as they avoid the jungle that is the law of conditions precedent.

—GWILYM J. DAVIES*

* Associate Professor of Law, Faculty of Law, University of Alberta, Edmonton.

FINANCIAL ASSISTANCE GRANTED BY COMPANY FOR PURCHASE OF ITS OWN SHARES:

MT. VIEW CHAROLAIS RANCH LTD. v. *HAVERLAND (1974) 2 W.W.R. 289, AND MURRAY AND MURRAY* v. *C. W. BOON & COMPANY LIMITED (1974) 2 W.W.R. 620*

The above two referenced cases recently reported in the same volume of the Western Weekly Reports highlighted a problem which has not often been discussed in legal periodicals,[1] but which is a common

[1] For some literature on this subject see a comment by H. Shandling in [1964] 43 Can. Bar Rev. 502; G. R. Bretton, *Financial Assistance in Share Transactions* 32 The Conveyancer 6, and F. P. Hennessy, *Provision of Financial Assistance by a Company for the Purchase of its Own Shares* [1951] 25 Aust. L.J. 394. Also, the article, *supra*, at 324.

problem facing practitioners in Alberta—whether a private company can validly give financial assistance in the form of security on its assets for the purchase of its shares. The companies acts of most jurisdictions contain a provision which prohibits a company from making loans to shareholders or giving, directly or indirectly, any financial assistance for the purpose of assisting in the purchase of its shares. The Alberta provisions[2] however, unlike most of the other statutes, merely prohibits such assistance in connection with the purchase of shares of public companies, thus, in the case of private companies leaving the question of the validity to be governed by common law principles.

In essence there really are two problems which always must be examined in determining whether the giving of such security is valid. The first is whether the transaction is *ultra vires* in the proper sense of that phrase—that is, whether such action is within the objects of the company as amplified by the powers granted by the governing statute. The second is whether such a transaction is *ultra vires* in the sense of being illegal as contrary to the principle established in *Trevor* v. *Whitworth*.[3] The first question is primarily one of construction and will not be pursued herein;[4] rather it is the second question which will be examined. In *Mt. View Charolais Ranch Ltd.* v. *Haverland*[5] and *Murray and Murray* v. *C. W. Boon & Company Limited*[6] two separate Alberta courts examined this problem, and came to opposite conclusions as to the applicability of the principle of *Trevor* v. *Whitworth*.[7]

In *Mt. View* the appellant Lynch purchased from the respondent, for $251,000, all of the shares of Mt. View Charolais Ranch Ltd., and the company's $87,000 note payable to the respondent. $81,000 of the purchase price was paid down and the unpaid portion of the purchase price was secured by a chattel mortgage granted by the company on certain of its assets. Default in payment by the appellant occurred and the respondent[8] moved to realize upon the security and the validity of the chattel mortgage arose. Prowse J.A. (with Smith C.J.A. concurring) reviewed *Trevor* v. *Whitworth*[9] and stated that the basic objection raised by such case to a purchase by a company of its shares was that it effected a reduction of capital in a manner not authorized by the Act, but ignored the concept of trafficking contained in that case.[10] He then reviewed and relied on *Hughes* v. *Northern Electric & Manufacturing Co.*[11] to conclude there was no common law rule that prohibited a company from giving financial assistance for the purchase of its shares. In the *Hughes* case the company was overwhelmed with debts and the shareholders were involved in disagreements with the result that effective administration of the company was impossible. Two of the shareholders purchased the shares of the third and the company

---

[2] The Companies Act R.S.A. 1970, c. 60, Sec. 14.

[3] [1887] App. Cas. 409.

[4] In *Mt. View Charolais Ranch Ltd.* v. *Haverland* [1974] 2 W.W.R. 289 (Alta. C.A.) the majority gave a very liberal construction of the corporate objects and the powers contained in Section 20 of The Companies Act.

[5] *Id.* This case is referred to as the *Mt. View* case.

[6] [1974] 2 W.W.R. 620. This case is referred to as the *Murray* case.

[7] *Supra*, n. 3.

[8] It may not be without significance to the outcome of the case that the respondent was a widow who was unable to manage the company herself and who was for some time seriously ill with cancer.

[9] *Supra*, n. 3.

[10] While the writer has always had problems understanding what is meant by trafficking it is presumed it means dealing or buying and selling, and if this is a proper meaning it is not stretching a point to suggest that such assistance amounts to trafficking.

[11] [1915] 21 D.L.R. 258 (S.C.C.). This case is referred to as the *Hughes* case.