COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Bea v. The Owners, Strata Plan LMS 2138,* 2015 BCCA 31

Date: 20150127
Docket: CA041895

Between:

Cheng-Fu Bea and Huei-Chi Yang Bea

Appellants
(Petitioners)

And

The Owners, Strata Plan LMS 2138

Respondents
(Respondents)

Before: The Honourable Madam Justice Garson
The Honourable Madam Justice MacKenzie
The Honourable Mr. Justice Goepel

On appeal from: An order of the Supreme Court of British Columbia, dated May 12, 2014 (*Bea v. The Owners, Strata Plan LMS 2138*, 2014 BCSC 826, New Westminster Docket S116228).

Counsel for the Appellant:	K. Deane-Cloutier
Counsel for the Respondent:	P.J. Dougan
Place and Date of Hearing:	Vancouver, British Columbia October 20, 2014
Place and Date of Judgment:	Vancouver, British Columbia January 27, 2015

Written Reasons by:
The Honourable Madam Justice Garson
The Honourable Madam Justice MacKenzie

Dissenting Reasons by:
The Honourable Mr. Justice Goepel (p. 33, para. 93)

Summary:

The appellants appeal from an order of the Supreme Court of British Columbia, ordering the seizure and sale of the appellants' strata property as a remedy to put a stop to the appellants' continuing contempt of court. The appellants launched numerous frivolous actions against the respondents. The appellants were subsequently found to be vexatious litigants and ordered to stop filing claims in respect of this matter. The appellants repeatedly disobeyed that order and were subsequently found in contempt of court. The respondents had obtained numerous orders for special costs against the appellants and had registered numerous judgments against the title to the strata property. The chambers judge determined that the only curative remedy available was the immediate seizure and sale of the strata property, with conduct of the sale to be carried out by the respondents. The appellants allege that there was no jurisdiction to make the order, and in the alternative that it was not an appropriate order in the circumstances.

Held: Appeal dismissed. The majority (per Garson and MacKenzie J.A.) held that the chambers judge had jurisdiction to make an order for seizure and sale of property, as such an order is analogous to the historical power to use sequestration as a remedy for contempt. This power is constitutionally protected as a core aspect of a superior court's inherent jurisdiction to punish for contempt, and therefore the language of the Supreme Court Civil Rules pertaining to available powers in contempt must be read as non-exhaustive. The chambers judge's discretionary decision to grant the order deserves deference in the circumstances, and it cannot be shown to be inappropriate in this case.

Goepel J.A. dissented. In his opinion the court's inherent jurisdiction to sentence for contempt was limited by the provisions of the Supreme Court Civil Rules and the chambers judge did not have the jurisdiction to order the sale of the appellant's property.

Reasons for Judgment of the Honourable Madam Justice Garson:

I. Introduction

[1] Cheng-Fu Bea ("Mr. Bea") and Huei-Chi Yang Bea ("Mrs. Bea"), appeal a Supreme Court chambers judge's order in which, having found Mrs. Bea to be in contempt of court (a finding that is not under appeal), the chambers judge ordered as a remedy for the contempt that Mrs. Bea deliver up vacant possession of Strata Lot One in Strata Plan LMS2138 ("the Strata Unit") to the respondents, the owners of strata units (the "Owners"), and that it be immediately sold.

[2] The underlying dispute between the Beas and the Owners relates to the assignment of parking stalls. The dispute began after the strata council passed a parking bylaw in August 2006. The Beas objected to the change in the parking bylaws. They filed a petition challenging the bylaw in the Supreme Court of British Columbia. The judge hearing the petition dismissed it. What followed was six years of multiple proceedings, all essentially asserting the same cause of action against the Owners, in this Court and the court below. Both courts have since found the Beas to be engaged in an abuse of the litigation process while pursuing vexatious claims against the Owners: see *Bea v. Strata Plan LMS 2138*, 2009 BCSC 783; *Bea v. The Owners, Strata Plan LMS 2138*, 2010 BCCA 463.

[3] This appeal focuses on two questions. First, whether the order selling Mrs. Bea's Strata Unit as a remedy for contempt of court was one that is available to the chambers judge given that Rule 22-8(1) of the *Supreme Court Civil Rules* provides that the court "must impose a fine, committal or both" as punishment for contempt. The Beas argue it is not.

[4] Second, even if the judge did have the inherent jurisdiction to make such an order, was it appropriate in the circumstances. Again, the Beas argue it is not.

[5] For the reasons that follow, I would dismiss the appeal.

II. Background to the Dispute

[6] The chambers judge set out the long and complicated background to this dispute at paras. 2−35 of his reasons for judgment (indexed at 2014 BCSC 826 [*Bea*]). I shall not repeat that background here. What follows is a brief summary of events particularly relevant to this appeal.

[7] Mrs. Bea is the owner of the Strata Unit. On October 27, 2008, after the commencement of the first of these multiple proceedings, Mrs. Bea authorized Mr. Bea to act on her behalf in the proceedings between her and the Strata council. As will be made clear the court below determined that this authorization did not mean Mrs. Bea was not aware of and involved with the proceedings that followed.

As such, for convenience and clarity, I will often refer to the subsequent judicial proceedings as having been conducted by the Beas together.

[8] Following the dismissal of the first petition objecting to the amendment to the parking bylaws, the Beas commenced a second petition claiming the same relief. The second petition was dismissed as *res judicata*. No appeal was taken from the dismissal of the second petition. A third petition advancing the same claim was commenced by the Beas and dismissed by Master Taylor as an abuse of process. Various orders as to costs have been made against the Beas, but have not been complied with, or have been appealed.

[9] On August 23, 2010, following another application by the Beas, this time seeking to prevent the Owners from executing their judgments for costs, Grauer J. issued a vexatious litigant order under s. 18 of the *Supreme Court Act*, RSBC 1996, c. 443. The order prohibited the Beas from filing, without leave**,** any document related to the dispute. The order was made in the following terms:

> THIS COURT ORDERS THAT:
>
> 1. The Petitioner's Application is dismissed.
> 2. Mr. or Mrs. Bea, and anyone acting on their behalf, shall not file or attempt to file, by any means whatsoever, any document in any registry of the Supreme Court of British Columbia pertaining to or in any way connected with the subject matter of the proceedings in Supreme Court Registry File Nos. S113052, S114949, S116228 without leave of this Court.
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> . . .

[10] This Court subsequently issued another vexatious litigant order described in the reasons for judgment released October 21, 2010, indexed at 2010 BCCA 463. In issuing the vexatious litigant declaration, Smith J.A., writing for the Court, described the relentless campaign the Beas had waged against the Owners as follows:

> [24] The respondent is a small strata corporation. The appellant, through his litigation in the court below and in this Court, has drawn the respondent into court more than 30 times on the substantive issue of the *vires* of the respondent's parking bylaw. This is at a considerable cost to the respondent owners who are paying the legal fees to defend what amounts to an abuse of both courts' processes. The respondent owners are also faced with the appellant's attempt to insulate himself from enforcement proceedings by having no assets in his name.

> [25] It is evident from the two appeals and multiple applications brought by the appellant in this Court on frivolous and unmeritorious issues, that the combined effects of s. 9(6) and s. 29 of the *Act,* absent something more, are insufficient to halt this ongoing abuse of the Court's process. In this regard, Mr. Justice Frankel offered the resolution for such a litigant in *Houweling*:
>
> > [40] What, then, can a court do to bring to an end the misuse of the litigation process caused by the repetitive filing of unmeritorious applications that result in the needless expenditure of judicial resources and, in some cases, unnecessary expense to the other parties? The answer lies in the ancillary (inherent) jurisdiction that every court has to prevent its process from being abused. As Madam Justice Arbour stated in *United States of America v. Schulman,* 2001 SCC 21, [2001] 1 S.C.R. 616, an appellate court "like all courts, [has] an implied, if not inherent, jurisdiction to control its own process, including through the application of the common law doctrine of abuse of process": para. 33. See also: *United States of America v. Cobb,* 2001 SCC 19, [2001] 1 S.C.R. 587 at para. 37.
>
> [26] I am persuaded that the time has come for this Court to grant the respondent an order similar to the one made in *Houweling.* The effect of such an order will be to limit the appellant's access to the courts. While such an order is to be made sparingly and only in "the clearest of cases" (*Houweling* at para. 44), in my view this is one of those cases.

[11] In breach of Grauer J.'s vexatious litigant order, both Mr. and Mrs. Bea filed further proceedings leading to the order under appeal. The documents filed in breach of the August 23, 2010 order, as described by Grauer J., were:

- In December 2010, the Beas applied for leave to commence a further petition, the application for which was inadvertently accepted by the Supreme Court registry before being brought to the attention of Grauer J. and dismissed.

- On January 27, 2013, Butler J. dismissed another application brought by the Beas without leave and awarded special costs.

- On March 27, 2013, Groves J. dismissed another petition commenced by the Beas against the Owners and awarded costs payable forthwith.

- In September 2013, another application for leave was brought by the Beas to commence a petition against the Owners (the fifth brought seeking the same remedy). This application was brought to the attention of Grauer J.,

> who issued a memorandum denying the leave application and warning the Beas that they have exposed themselves to contempt proceedings.

[12] At least one additional request for leave was brought by the Beas in December 2013 and denied. On January 28, 2014, the Owners applied before Koenigsberg J. for an order holding the Beas in contempt of Grauer J.'s order of August 23, 2010. Mr. Bea appeared at this hearing but Mrs. Bea did not. However, Koenigberg J. was satisfied that Mrs. Bea had been properly served.

[13] On January 31, 2014, in an order following the application made on January 28, 2014, Koenigsberg J. held both Mr. and Mrs. Bea in contempt. As a remedy for that contempt, the Owners sought orders that the Strata Unit be sold as well as a fine and, in default, imprisonment. Madam Justice Koenigsberg declined to make the order for sale of the Strata Unit as sought by the Owners, as she considered that she did not have jurisdiction to make such an order. Instead, she fined the Beas each $10,000. The terms of her order are as follows:

> THIS COURT ORDERS THAT:
>
> 1. Mr. Cheng-fu Bea and Mrs. Huei-Chi Yang Bea be fined $10,000.00 for contempt.
> 2. The fine be paid by Mrs. Huei-Chi Yang Bea by 4pm Friday February 7, 2014.
> 3. That if the fine is not paid by the appointed time, a warrant issue for the arrest of Mrs. Huei-Chi Yang Bea, and she be brought before the court on the next court day following the arrest to be dealt with on an inquiry to determine whether she has committed a breach of the order granted.
> 4. The inquiry into any such alleged breach should first be conducted before Mr. Justice Grauer if he is available, sitting in Vancouver; otherwise, the inquiry may be before any Judge of this Court sitting in Vancouver.
> 5. Special costs payable by Mrs. Huei-Chi Yang Bea in the amount of $2,500.00;
> 6. The signature of the Petitioner for approval as to the form of this order is dispensed with.

[14] The nature of the Bea's contemptuous conduct is described by Koenigsberg J. in her oral reasons for judgment pronounced on January 31, 2014. As these oral reasons are unreported, I quote from her judgment:

> [7] Before making any findings of contempt against both Mr. and Mrs. Bea on January 28, 2014—and I note that Mrs. Heui-Chi Yang Bea was not present in this courtroom then although clearly served with notice of the hearing and clearly knowing that Mr. Bea could not represent her—I asked Mr. Bea, who did appear on his own behalf, what he wished to say as to why I should not find him in contempt on the basis of the clear evidence of several court orders which had been flagrantly disregarded.
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> [8] Among other things Mr. Bea denied that he was ever in breach of any court orders. I eventually was provided with Mr. Bea's written response which I advised him I would attach to these reasons, as Mr. Bea did not believe that I was allowing him to be heard. I did read those submissions and Mr. Bea made further oral submissions. I gathered that at least one reason he submitted he was never in breach of Grauer J.'s order is because he claimed he had obtained leave to bring subsequent applications complained of. When I inquired where such orders granting leave were, he said, among other things, that he had not been allowed to file his leave application. . . .
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> [9] I find that Mr. Bea either so determined to reach his goal of defeating the strata council's ability to pass bylaws he does not like and defeat its ability to collect on the judgments it has obtained from the court that he is unable or more likely unwilling to hear or read what he does not want to hear or read. He never obtained leave to file an application and he knew full well that that is true. He has nothing of any merit to say as to why he should not be found in contempt, and I so find him and Mrs. Bea.
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> [10] Mrs. Heui-Chi Yang Bea did not appear and Mr. Bea could not and did not purport to represent her in this contempt hearing. That Mrs. Bea is clearly in contempt for defiance of court orders, one needs only to read her notice of assignment of powers and duties of strata lot owner. She is the owner on title of the strata lot. She authorized Mr. Bea to act on her behalf as owner as of October 22, 2008, and he did so in each and every hearing, except this one before me. . . .
>
> [11] The contempt in question is longstanding and persistent. Every step a court can take to prevent a litigant to continue to abuse its process and cause very significant stress and damage to his neighbours, in this case, all other members of the Strata Plan, has been flouted by Mr. and Mrs. Bea. Not one order as to costs has been paid, including security for costs. There have been in excess of 40 applications to this Court and the Court of Appeal, including hearings to challenge each and every cost award where it was not made specific, and probably attempts to challenge those, but I do not actually know that.

[15] The fines imposed by Koenigsberg J. against the Beas were not paid. Subsequently, on application of the Owners, Mrs. Bea was brought before Grauer J.

on February 17, 2014. At the hearing before Grauer J., questions arose as to whether Mrs. Bea had been properly served with the application for the previous contempt hearing before Koenigsberg J. On a cross-examination of the process servers at a subsequent hearing on March 3, 2011, Grauer J. determined that he could not be fully satisfied that Mrs. Bea had been properly served with the application for contempt heard before Koenigsberg J. Consequently he set aside the previous orders finding her in contempt and fining her $10,000. He did not set aside the orders against Mr. Bea. Mr. Justice Grauer then proceeded to re-consider the application for contempt against Mrs. Bea. After reviewing the same sequence of events as Koenigsberg J., Grauer J. concluded that Mrs. Bea was in contempt of court and a remedy was required to put an end to the contemptuous conduct. It is the result of that proceeding that is now under appeal.

[16] The terms of Grauer J.'s order are as follows:

> 1. The Order of the Honourable Madam Justice Koenigsberg pronounced January 31, 2014, is set aside insofar as it finds Mrs. Huei-Chi Yang Bea in contempt of court, but remains in force in relation to the Petitioner.
> 2. Mrs. Huei-Chi Yang Bea is hereby found to be in contempt of this court.
> 3. Mrs. Huei-Chi Yang Bea's strata unit, #1- 2378 Rindail Avenue, Port Coquitlam, B.C., legally described as Strata Lot 1, District lot 289, Group 1, New Westminster District Strata Plan LMS 2138 (the "Unit"), shall be sold as soon as is practicable, with the respondent having sole conduct of sale;
> 4. Mr. Cheng-fu Bea and Mrs. Huei-Chi Yang Bea shall provide vacant possession of the Unit to the respondent on or before June 15, 2014;
>
> …

[17] As I have already said, the actual finding that Mrs. Bea is in contempt is not under appeal. It is only the sanction, namely the immediate order for sale of the Strata Unit, that is under appeal.

III. Discussion

[18] Rule 22-8 of the *Supreme Court Civil Rules* deals with applications for contempt. I reproduce the pertinent sub-sections of the Rule:

> (1) The power of the court to punish contempt of court must be exercised by an order of committal or by imposition of a fine or both.
>
> …
>
> **Security**
>
> (2) Instead of or in addition to making an order of committal or imposing a fine, the court may order a person to give security for the person's good behaviour.
>
> …

[19] On appeal, the Beas argue that Rule 22-8(1) is cast in mandatory language. It provides that the court "must" impose as a remedy for contempt the punishment of imprisonment, a fine, or both. The Beas argue that the court has no inherent jurisdiction to impose a punishment other than those three enumerated.

[20] The Owners argue that a superior court's contempt power is an inherent power of the court, one that has existed for many centuries and is not proscribed or limited as the Beas would argue based on Rule 22-8(1).

[21] Alternatively the Beas argue that the remedy, that is the sale of the Strata Unit, is not focussed on ensuring compliance with the orders that were breached, but rather appears designed to redress a civil wrong. Accordingly, the Beas argue the order for sale is not a fit punishment.

[22] As I will explain, in my opinion, the remedy ordered is available as a response to contempt of court in extraordinary circumstances and the chambers judge did not err in ordering it in this case. To explain why such an order is available despite a lack of similar precedents in this Province, I will first discuss how a superior court's inherent jurisdiction to punish for contempt is protected by the *Constitution Act, 1867*, and cannot be limited by legislation, including the *Supreme Court Civil Rules*. Next, I will discuss how the historical remedy of a writ of sequestration was and is a part of this protected inherent jurisdiction to punish for contempt. I will then discuss how the English High Court has, in recent years, determined that a writ of sequestration ordered as a coercive remedy to cure contempt can lead to a sale of real property owned by the contemnor, and how the reasoning used by the English

High Court equally leads to the conclusion that in British Columbia, an order for sale of the contemnor's property is an available remedy for contempt of court in extraordinary circumstances. Finally, I will discuss how the chambers judge was correct to conclude that such an order was required in this case to prevent an injustice.

A. Can a Rule or Statute Limit the Inherent Jurisdiction of the Court to Punish for Contempt?

[23] I turn first to a consideration of the nature and origins of the court's inherent jurisdiction in order to determine if a Rule can limit the inherent power of the court to punish for contempt.

[24] The Beas argue that Rule 22-8(1) exhaustively codifies the court's power to punish for contempt and therefore removes any historical inherent jurisdiction to fashion and apply alternative remedies for contempt.

[25] This issue was considered by the Supreme Court of Canada in *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 S.C.R. 725. In *MacMillan*, the Court concluded that the portions of the *Constitution Act, 1867* enshrining a legal system similar in principle to that of the United Kingdom, including ss. 96–101 and the preamble, prevents the Legislature from limiting the core of a superior court's inherent jurisdiction, including the power to punish for contempt. *MacMillan* was most recently cited by the Supreme Court of Canada in *Trial Lawyers Association of British Columbia v. British Columbia*, 2014 SCC 59, where McLachlin C.J.C. stated, "neither level of government can enact legislation that abolishes the superior courts or removes part of their core or inherent jurisdiction": at para. 30 [emphasis added].

[26] In *MacMillan* the Court had before it the question of whether it was within the jurisdiction of Parliament to grant exclusive jurisdiction to youth courts (as opposed to superior trial courts) over contempt proceedings involving a young person. Chief Justice Lamer for the majority stated that "the power [of a court] to control its process and enforce its orders, through, in part, punishing for contempt, is within [the

protected inherent] jurisdiction": at para. 33 [emphasis added]. He concluded that "no aspect of the contempt power may be removed from a superior court without infringing all those sections of our Constitution which refer to our existing judicial system as inherited from the British, including ss. 96 to 101, s. 129, and the principle of the rule of law recognized both in the preamble and in all our conventions of governance": at para. 41. In determining what constituted the scope of a superior court's inherent jurisdiction to punish for contempt, he endorsed I.H. Jacob's "The Inherent Jurisdiction of the Court" (1970), 23 Current Legal Problems 23, as a "starting point for many discussions of the subject": at para. 29.

[27] Chief Justice Lamer explained the reasoning for such constitutional protection of a court's inherent jurisdiction to punish for contempt as follows:

> The seminal article on the core or inherent jurisdiction of superior courts is I. H. Jacob's "The Inherent Jurisdiction of the Court" (1970), 23 Current Legal Problems 23. Jacob's work is a starting point for many discussions of the subject, figures prominently in analyses of contempt of court, and was cited with approval by Dickson C.J. in *B.C.G.E.U. v. British Columbia (Attorney General)*, [1988] 2 S.C.R. 214. While the particular focus of Jacob's work is the High Court of Justice in England, he notes that "[t]he English doctrine of the inherent jurisdiction of the court is reflected in most, if not all, other common law jurisdictions, though not so extensively in the United States" (p. 23, fn. 1). Moreover, the English judicial system is the historic basis of our system and is explicitly imported into the Canadian context by the preamble of the *Constitution Act, 1867*. The superior courts of general jurisdiction are as much the cornerstone of our judicial system as they are of the system which is Jacob's specific referent.
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> Discussing the history of inherent jurisdiction, Jacob says (at p. 25):
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> > . . . the superior courts of common law have exercised the power which has come to be called "inherent jurisdiction" from the earliest times, and . . . the exercise of such power developed along two paths, namely, by way of punishment for contempt of court and of its process, and by way of regulating the practice of the court and preventing the abuse of its process.
>
> Regarding the basis of inherent jurisdiction, Jacob states (at p. 27):
>
> > . . . the jurisdiction to exercise these powers was derived, not from any statute or rule of law, but from the very nature of the court as a superior court of law, and for this reason such jurisdiction has been called "inherent." This description has been criticised as being "metaphysical" [cite omitted], but I think nevertheless that it is apt to describe the quality of this jurisdiction. For the essential character of a superior court of law necessarily involves that it should be invested with a power to maintain its

> > authority and to prevent its process being obstructed and abused. Such a power is intrinsic in a superior court; it is its very life-blood, its very essence, its immanent attribute. Without such a power, the court would have form but would lack substance. The jurisdiction which is inherent in a superior court of law is that which enables it to fulfil itself as a court of law.
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> While inherent jurisdiction may be difficult to define, it is of paramount importance to the existence of a superior court. The full range of powers which comprise the inherent jurisdiction of a superior court are, together, its "essential character" or "immanent attribute". To remove any part of this core emasculates the court, making it something other than a superior court.
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> . . .
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> The core jurisdiction of the provincial superior courts comprises those powers which are essential to the administration of justice and the maintenance of the rule of law. It is unnecessary in this case to enumerate the precise powers which compose inherent jurisdiction, as the power to punish for contempt *ex facie* is obviously within that jurisdiction. The power to punish for all forms of contempt is one of the defining features of superior courts. . . . .
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> . . .
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> . . . . The full panoply of contempt powers is so vital to the superior court that even removing the jurisdiction in question here and transferring it to another court with judges appointed pursuant to s. 96 would offend our Constitution.
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> [*MacMillan* at paras. 29, 30, 38, and 41. Emphasis added.]

[28] As noted by Lamer C.J.C. in *MacMillan* at para. 29, the English judicial system was explicitly imported into the Canadian legal system. The *Constitution Act, 1867* provides for such, in part, in the following language taken from the preamble:

> Whereas the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom.
>
> [Emphasis added.]

[29] *MacMillan* determined that the *Constitution Act*, *1867* protects the entirety of the "core" of a superior court's inherent jurisdiction from legislative interference. To limit a court's powers to punish for contempt takes away the court's jurisdiction to control its own process in circumstances in which those powers would provide the only workable remedy. This is equivalent to the legislative removal of jurisdiction to punish for contempt in certain circumstances that was at issue in *MacMillan*. The

Supreme Court of Canada applied *MacMillan* in this way most recently in *Trial Lawyers*, where the Court determined that the Legislature's mandatory imposition of "hearing fees" interfered with a superior court's "core" inherent jurisdiction to provide access to the superior courts to persons who could not afford said hearing fees. This was not a wholesale legislated removal of any part of the court's inherent jurisdiction, but was rather unconstitutional legislation because it imposed mandatory procedural requirements that interfered with what would otherwise be part of a court's "core" inherent jurisdiction to grant exemptions: *Trial Lawyers* at paras. 46–48. This is analogous to the case at bar, where the regulations at issue allegedly impose mandatory procedural requirements that interfere with what would otherwise be part of the court's "core" inherent jurisdiction to punish for contempt in these circumstances.

[30] Jacob provides a useful analysis of the inherent jurisdiction of the court. He emphasizes that a court's inherent jurisdiction is part of procedural law not substantive law: at 24. Inherent jurisdiction must also be distinguished from judicial discretion. These concepts—that is, judicial discretion and inherent jurisdiction—may overlap but are vitally distinct: at 25. He notes that the powers conferred by the Rules of Court are in addition to and not in substitution for the powers arising from the inherent jurisdiction of the court: at 25.

[31] Historically, inherent jurisdiction can trace its roots to a way of punishing an individual for contempt of court and "by way of regulating the practice of the court and preventing the abuse of its process": at 25. Jacob notes further that "the essential character of a superior court of law necessarily involves that it should be invested with a power to maintain its authority and to prevent its process being obstructed and abused": at 27. This power to maintain its authority includes that power to "prevent a litigant from taking multiple or successive proceedings which are frivolous or vexatious or oppressive" as is the case here: at 43. As part of its inherent jurisdiction, a court may compel observance of its own process. Jacob notes that these coercive powers include either fining or imprisoning the offender and, importantly for the purposes of this appeal, seizing his or her property: at 45.

[32] Jacob writes that "The powers of the court under its inherent jurisdiction are complementary to its powers under the Rules of Court; one set of powers supplements and reinforces the other": at 50. He emphasizes that the inherent powers may fill any gaps left by the rules: at 50. Jacob's summary provides a useful background for understanding the core of inherent jurisdiction the Supreme Court of British Columbia inherited from the English tradition.

1. Cases Relied on by the Beas

[33] In their argument that the rules are exhaustive, the Beas rely on *Evans v. Jensen*, 2011 BCCA 279, and *Cridge v. Harper Grey*, 2005 BCCA 33, in which this Court held that the Rules pertaining to formal settlement offers and their implications for costs constitute a complete code permitting no discretion to the chambers judge to relieve against a possibly unjust result of the application of the double costs Rule (these Rules have since been amended to include an element of discretion: see Rule 9-1(5)). I disagree that these cases are applicable in this context. *Evans* and *Cridge* are clearly distinguishable. First, the double costs Rule and its incorporation of exigent settlement offers is a statutorily created regime that is not traced to a court's inherent jurisdiction. Second, judicial discretion, as was emphasized by Jacob, is distinguishable from the court's inherent jurisdiction to punish for contempt and may be limited by statute. The fact that judicial discretion to award costs may be limited by statute is not the same as, and must be distinguished from, the core of a superior court's inherent jurisdiction as discussed in *MacMillan*.

[34] The Beas also cite *Baxter Student Housing Ltd. v. College Housing Co-operative Ltd.*, [1976] 2 S.C.R. 475, for the proposition that a court may not rely on its inherent jurisdiction where doing so conflicts with a statutory provision. Again, I do not agree that this case is applicable.

[35] In *Baxter*, Dickson J. cited *Montreal Trust Company v. Churchill Forest Industries*, [1971] 4 W.W.R. 542 at 547 (Man C.A.), in which Freedman C.J.M. said:

> Inherent jurisdiction cannot, of course, be exercised so as to conflict with a statute or Rule. Moreover, because it is a special and extraordinary power, it should be exercised only sparingly and in a clear case.

In my view, *Baxter* and *Montreal Trust* do not conflict with and are distinguishable from the Supreme Court of Canada's reasons for judgment in *MacMillan*, discussed above.

[36] First, *Montreal Trust* dealt with an exercise of a court's inherent jurisdiction to fill gaps in statutorily granted powers. In that case, the Manitoba Court of Appeal determined that a superior court had the inherent jurisdiction to grant a receiver powers that were not enumerated by statute, but were necessary in the circumstances in order to effect the powers that were enumerated by statute. It was in this context that the court stated such inherent jurisdiction could not be used in contravention of the very statute the court was trying to fill gaps in. The court expressly distinguished this form of inherent jurisdiction from a court's inherent jurisdiction to prevent an abuse of its process or punish for contempt: *Montreal Trust* at 547.

[37] In *Baxter*, the plaintiff was a university housing co-op involved in a dispute with a construction and building management company (Baxter Housing) over which party should bear the cost of fixing a moisture problem that had accumulated in student residence buildings. Baxter Housing had substantially completed construction on the buildings the previous year, and the plaintiff was alleging the moisture problems were due to a breach of contract.

[38] There was some temporal urgency in resolving the situation, as the plaintiff did not have access to the funds required to pay for the repairs, and there was some suggestion that a failure to engage in needed repairs immediately might produce substantial damages. There were funds in a holdback account from the original contract between the plaintiff and Baxter Housing, and the plaintiff sought an order from the court appointing a receiver to use the funds to make the necessary repairs while the parties litigated who would bear the eventual responsibility. Importantly, Baxter Housing had previously placed a lien on the property pursuant to the previous construction contract. The Manitoba court appointed the requested receiver, and the appointment was upheld on appeal.

[39] The Supreme Court of Canada (see para. 34 above), allowed the appeal and overturned the order appointing a receiver. In doing so, Dickson J. cited *Montreal Trust* for the proposition that "inherent jurisdiction cannot, of course, be exercised so as to conflict with a statute or Rule". In *Baxter*, the appointment of the receiver was in contravention of s. 11 of the *Mechanics' Lien Act*, by which Baxter Housing's registered lien had priority over any receivership order.

[40] In my opinion, when Dickson J. quotes *Churchill Forest* in *Baxter* for the proposition that "inherent jurisdiction cannot, of course, be exercised so as to conflict with a statute or Rule", it was in the context of filling gaps in an express legislated power to appoint a receiver. Justice Dickson was saying that a court could not bolster the powers of a receiver through inherent jurisdiction, as happened in *Montreal Trust*, when such expanded powers would result in a direct contravention of statute. *Baxter* did not involve a procedural dispute over whether the authority to appoint a receiver pursuant to statute or inherent jurisdiction existed, but rather a dispute over the use of the funds in the holdback account. Granting a receiver access to the funds in this way was in express contravention of the *Mechanics' Lien Act*, which was why the funds were being held in the holdback account in the first place.

[41] Justice Dickson's comments in *Baxter* are therefore similar to those of Freedman C.J.M in *Montreal Trust* in that they stand for the proposition that when a court is using its inherent jurisdiction in order to <u>further</u> the purposes of certain statutory powers (gap filling, so to speak), the inherent jurisdiction cannot then be used in contravention of the express language of that statute. In my opinion, this principle has nothing to do with a court's inherent power to punish for contempt, and Baxter is distinguishable from this appeal.

2. Conclusion on Whether Rule 22-8 Can Be Read as an Exhaustive Codification

[42] In summary, in consideration of the statements in *MacMillan* quoted above, I conclude that the legislature's rule-making power cannot detract from or limit the

court's inherent jurisdiction to punish for contempt. Rule 22-8 cannot therefore be read as an exhaustive codification and limitation of this power, but must instead be read as complimentary of a superior court's inherent jurisdiction in order to be constitutionally compliant.

[43] It remains to be examined whether that protected inherent jurisdiction includes the power to seize and sell the contemnor's property. As mentioned, Jacob is of the view that a court's inherent jurisdiction to punish for contempt does include the power to seize a contemnor's property.

[44] In the discussion below, I examine the historical development of the inherent jurisdiction power to seize property in England. I then turn to the application of that English law to British Columbia. In doing so I will also consider the historical development of the British Columbia *Supreme Court Civil Rules*.

B. Inherent Jurisdiction to Seize Property as a Remedy for Contempt

[45] I begin by noting two relatively modern English cases in which courts in England used the inherent jurisdiction of the court to seize, and in one case sell, the contemnor's property as a coercive measure. While these English decisions are not binding on the courts of this Province, the inherent jurisdiction of the Supreme Court of British Columbia shares an origin with the inherent jurisdiction of English courts, and the scope of the English jurisdiction may assist in determining the scope of inherent jurisdiction in this Province.

[46] Both of these cases deal with an order for sequestration. Sequestration, as defined in Black's Law Dictionary, is a "judicial writ commanding the sheriff or other officer to seize the goods of a person named in the writ." As a remedy for contempt of court, sequestration developed in England to include the sale of property after it had been seized by the officers. The details and history of sequestration will be discussed in further detail below.

[47] In *Webster v. Southwark London Borough Council*, [1983] 1 Q.B. 698, the plaintiff was a politician who had been refused the use of a meeting hall to hold a

political meeting in contravention of a statute. The Queen's Bench court made a declaratory order that the plaintiff be permitted to use the meeting hall. The declaratory order was said to have been made because, as the defendant was a "responsible authority", it was thought "inconceivable" that a declaratory order would not result in the defendant complying: at 708. However, even after the declaratory order was made, the defendant would not permit the plaintiff to use the hall.

[48] The plaintiff returned to court, this time seeking an order of sequestration granting him the use of the property. The court determined that sequestration was historically only issued upon a finding of contempt. In this case, because the court's order was declaratory, the defendant could not be found in contempt for failing to comply with it: at 706. However, Forbes J. went on to find that the use of a declaratory order, rather than an injunctive one was primarily due to the fact that the court was misled into thinking that the defendant would comply with a declaratory order: at 708. He said it would create an injustice if the plaintiff were forced to acquire a new, injunctive order and wait for the defendant to breach that order, because temporal exigencies required the political meeting to be held immediately. Importantly, Forbes J. determined that the court had, regardless of the language of the rules or tradition, "an inherent jurisdiction to enforce its orders where justice demands that those orders should be enforced": at 709–10.

[49] Despite the fact the defendant was not technically in contempt, Forbes J. issued an order of sequestration to force the defendant to comply with the court's previous order that the plaintiff was legally allowed the use of the meeting hall. Although much of this judgment concerned the question of whether a party could be in contempt of a declaratory order (a point not pertinent to this case), there was no question about the court's inherent jurisdiction to use its sequestration powers to seize the hall as a coercive measure to remedy contempt of court.

[50] The second modern English case to which I shall refer is *Mir v. Mir*, [1992] 1 All E.R. 765, in which the court ordered that property be seized as a remedy for contempt concerning a child custody order. In *Mir*, the defendant had left England for

Pakistan with his "ward", in contravention of the court's custody order. His former spouse had him declared in contempt of court and obtained an order for sequestration of his real property with leave to let it and use it as security for a loan. When the sequestration failed to coerce the defendant to return to England and discharge the contempt, the former spouse sought a variation of the order permitting her to sell the real property and use the proceeds to fund further litigation in Pakistan. In considering the availability of such a remedy, Baker J. reviewed the case law in England, which held provided an order for sequestration following a finding of contempt could not be used to sell real property, as opposed to personal property. He determined those historical cases were predicated on the fact that when they were decided there was no practical way for a court to effect a legitimate transfer of title without the compliance of the owner.

[51] In considering the current state of English law regarding the writ of sequestration, Baker J. referred to a similar case he had decided, *Richardson v. Richardson*, [1989] 3 All E.R. 779 at 783, where he had observed:

> Sequestration is an ancient tool of the law used as a last resort for enforcing orders of the court. Ancient tools need if possible to be adapted for use in modern conditions. In my judgment where otherwise the whole purpose of the sequestration would be defeated, the court is not constrained by ancient practice . . .

[52] Baker J. concluded that he had the power to order the real property to be sold as a remedy for contempt and its proceeds provided to the opposing party. In doing so, he said, "[i]t appears that the underlying reason why the courts in earlier times would not make an order for sale of freehold property was the absence of any procedure whereby good title could be given to the purchaser. It has been pointed out to me that difficulty no longer exists today": at 767–68. In contrast to the historical powers available to the courts, the *Senior Courts Act 1981*, c. 54, s. 39, gave the High Court of England and Wales the power to order a conveyance be executed by a person nominated by the court. In using the inherent jurisdiction to punish for contempt, Baker J. stated "the court does everything it can to secure compliance of its orders": at 767.

[53] *Mir v. Mir* was cited with approval as setting out the scope of sequestration orders in contempt proceedings in England in *Re HM (A Vulnerable Adult: Abduction*), 2010 EWHC 870. Thus, the English High Court has interpreted its contempt powers as permitting a judge to order a contemnor's real property be sold, and the proceeds distributed to the opposing party, as a remedy for contempt.

[54] I shall now very briefly discuss the evolution of the ancient writ of sequestration to the result described in *Mir* and other modern English cases to examine how the common law in British Columbia might be said to have similar, protected inherent powers.

1. The Historical Use of Sequestration as a Remedy for Contempt

[55] The power to seize and sell property as indirect coercion over parties subject to the court's jurisdiction arose in the English chancery courts: see Charles Andrew Huston, *The Enforcement of Decrees in Equity*, (Cambridge, Mass: Harvard University Press, 1915) at 71–86. This power was initially often used to compel a debtor to pay his debts. Huston, translating William West's *Symboleography*, published in 1611, describes the indirect coercion powers available to chancery courts in the late sixteenth century:

> 'If', West tells us, 'the decree be in a suit for land and the defendant abide by all the said process of contempt and still detain the possession of the land from the plaintiff contrary to the said decree: then upon a motion thereof made in the court a commission is usually granted to the sheriff and some others near adjoining to the lands in question to put the plaintiff in possession, and to keep him in possession according to the said decree.
>
> [Huston at 78]

[56] According to Huston, this practice later evolved into the writ of assistance, which would be used in a suit for the possession of land to put the successful party in possession of the disputed land "and maintain him there": Huston at 80. Huston goes on to say "[w]hile [the writ's] primary purpose is an indirect compulsion of the defendant to make him perform the decree, it provide[d] at the same time for a

certain measure of specific execution of the decree": Huston at 80 [emphasis added].

[57] The writ of assistance later evolved, in part, into the writ of sequestration, which involved the direction of commissioners to sequester the personal and real property of the defendant. Personal property of the contemnor could be sold, and real property could be put to use in benefit of the opposing party: see e.g. *Pope v. Ward* (1785), 29 E.R. 1125. Importantly, despite the writ's corollary effect of sometimes providing the substantive remedy sought by a party seeking the use of disputed land in the first place, sequestration was broadly used as a last resort to cure or end any continued contempt of court, including refusals to obey court orders pertaining to procedure: see e.g. *Trigg v. Trigg* (1759), 21 E.R. 294 (where the court ordered sequestration of a contemnor's assets in mesne process for the refusal to comply with what were, essentially, disclosure requirements).

[58] The importance of the sequestration power to the courts of chancery was emphasized in *Hide v. Pettit* (1667), 22 E.R. 709, where the Lord Keeper, in defending sequestration from the argument that it was beyond the powers of the chancery courts and "destructive to trade and commerce" agreed that, "[i]f you should take away Sequestrations, the Justice of the Court would be elusory" and it was "not unreasonable that so great a court as this should have an effectual means of bringing suitors to the fruit of their suit, which without a sequestration cannot be done": at 710. He declared that sequestration was a necessary process of the chancery courts in contempt proceedings. However, it should be noted that this necessity of sequestration as a remedy for contempt was predicated upon a comparative lack of execution writs available to the chancery courts compared to the common law courts (such as, for example, a writ of *fieri facias*).

[59] The importance of maintaining a broad view of these sequestration powers to coerce contemnors was also emphasized in *Guavers v. Fountain* (1687), 22 E.R. 1083, where the court said, in reference to the writ of sequestration in contempt

proceedings, “the jurisdiction of the court of equity would be to little purpose, if the court had not sufficient authority to see their decrees executed”: at 1083.

[60] Sequestration remained an important remedy available to courts of equity to punish for contempt at the time of Confederation and British Columbia’s entrance into Canada, in 1867 and 1871 respectively. In 1889, it was said in *Pratt v. Inman*, 43 Ch. D. 175, that, “sequestration unquestionably was and is a process of contempt”: at 179 [emphasis added].

[61] Therefore, in 1871, when British Columbia joined confederation, a court of equity, which included a superior court of British Columbia, had the inherent jurisdiction to punish for contempt using sequestration of the contemnor’s personal and real property. This “core” aspect of the courts inherent jurisdiction was thereafter protected from legislative removal by all the sections of the *Constitution Act, 1867* that enshrined a judicial system similar to that of England, including ss. 96–101 and the preamble: see *MacMillan* at para. 29. Thus, sequestration found its way into British Columbia law.

[62] In 1879, eight years after British Columbia joined the Canadian Confederation, England passed the *Judicature Act, 1879*, which granted the authority to create “Civil Rules” for the recently merged common law and equity courts. The newly drafted English “Civil Rules” were copied almost entirely for use in British Columbia as the *Supreme Court Rules* (1880). Prior to 1880, the Supreme Court of British Columbia drafted its own rules for internal use: see Thea Schmidt and Susan Caird, “B.C. Rules of Court” (2002) 27:5 Canadian Law Libraries 218 at 219.

[63] The 1880 rules contained various references to the use of sequestration as a remedy for both contempt (O. 47, r. 1, M.R. 345) and execution (e.g., O. 42, r. 2, M.R. 308). For example, Marginal Rule 345 read as follows:

> Where any person is by any judgment directed to pay money into Court or to do any other act in a limited time, and after due service of such judgment refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment or order shall, at the expiration of the time

> limited for the performance thereof, be entitled, without obtaining any order for that purpose, to issue a writ of sequestration against the estate and effects of such disobedient person. Such writ shall have the like effect as a writ of sequestration had heretofore had, and the proceeds of such sequestration may be dealt with as the proceeds of writs of sequestration have heretofore been dealt with.

[64] Essentially equivalent language from the corresponding English rule, from which Marginal Rule 345 was derived, was applied by the English Court of King's Bench in 1913 in the case of *R. v. Wigand*, [1911-13] All E.R. Rep. 820. In *Wigand*, a husband in a custody dispute was ordered to deliver a child to its mother and ordered not to remove the child from the jurisdiction. The father did not comply with the order and took the child to Germany. The King's Bench Court found him in contempt for failing to comply with the order and issued a sequestration pursuant to Order 43, r. 6 of the *Rules of the Supreme Court*. Avory J., in concurring with the judgment, emphasized that "it was for contempt in disobeying the order" of the court that the sequestration was being issued: at 822. Thus, the English origins of Marginal Rule 345 saw the remedy in this context as one rooted in contempt.

[65] It should be noted that there were no rules expressly pertaining to contempt of court in the *B.C. Supreme Court Rules* (1880). This suggests that many contempt proceedings were largely intended to be brought pursuant to the court's inherent jurisdiction at the time.

[66] Marginal Rule 345 was removed from the B.C. Rules in 1890, when it appears to have been effectively replaced with the similarly drafted Marginal Rule 492. However, in the revised 1890 rules, Marginal Rule 492 was included in an Order devoted to writs of *fieri facias* and methods of execution (that being Order 43). In essence, this revision captures the apparent historical evolution of the writ of sequestration. When it developed in the courts of chancery, sequestration as a remedy for contempt also doubled as a method of execution, since chancery courts did not have access to what are now the traditional writs of execution. When the English courts of common law and chancery were united, sequestration became an order with two possible interpretations; it could be seen as both a remedy for

contempt, and a method of execution similar to *fieri facias*. When the rules developed in British Columbia, these interpretations split into separate paths.

[67] The "contempt" path of the development of sequestration was evidenced through the inclusion of Order 42, Rule 31 (Marginal Rule 609), which was added to the *Supreme Court Rules* in 1906. Marginal Rule 609 read:

> Any judgment or order against a corporation wilfully disobeyed may, by leave of the Court or a Judge, be enforced by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by writ of sequestration against their property.
>
> [Emphasis added.]

[68] Subsequent cases in British Columbia considered this rule allowing for sequestration to be a remedy applicable in the context of contempt: see e.g. *Re Amalgamated Transit Union and Ken Mar Handi Cabs Ltd*. (1971), 23 D.L.R. (3d) 220 (B.C.S.C.); *Re Arpeg Holdings Ltd.* (1968), 64 W.W.R. 93 (B.C.S.C.); *Skeena Kraft Ltd. v. Pulp & Paper Workers of Canada Local No. 4* (1970), 17 D.L.R. (3d) 17 (B.C.S.C.); and *S.G. & S. Investments (1972) Ltd. v. Golden Boy Foods, Inc.* (1991), 84 D.L.R. (4th) 751 (B.C.C.A., where this Court acknowledged that historically in British Columbia "[t]he ultimate weapons for the enforcement for a decree of specific performance were contempt proceedings followed by a writ of sequestration"). In *Skeena*, for example, a case involving a union (the "Guild") charged with contempt for illegal picketing, Wilson J. noted that Dohm J. had, in an earlier ruling in a related proceeding "made an order of sequestration of the assets of the Guild for contempt of Court": *Skeena* at 19.

[69] In *Twinriver Timber Ltd. v. International Woodworkers Local I-71* (1970), [1971] 1 W.W.R. 277, aff'd (1970), 14 D.L.R. (3d) 704, Aikins J. interpreted Marginal Rule 609 as being expressly limited to use as a remedy for contempt against corporations. Relying on Marginal Rule 609, Aikins J. was asked to enforce by sequestration an order against the assets of a union as punishment for the union's contempt. Aikins J. determined that as Marginal Rule 609 was expressly limited to remedies against corporations, he could not make the order sought because the

union was not a corporation. He rejected the argument that he had inherent jurisdiction to make the order sought holding:

> Assuming that I am correct in the conclusion that I have stated that sequestration lies only where authorized by Rule so that sequestration is not available to the plaintiff in this application because the matter is not within M.R. 609, I should not, I think, usurp a Rule-making or legislative function, and grant leave for sequestration simply because I might think, and I express no opinion on the matter one way or the other, that the law should be that wilful disobedience of an order of the Court by persons other than a corporation should in the discretion of the Court, be enforceable by sequestration, which after all, is a special and perhaps rather drastic means of enforcing an order or judgment. So, I conclude, assuming that the Court has as contended an inherent jurisdiction to enforce its orders, such as the order in the present case, that that inherent jurisdiction to enforce may not be exercised by sequestration because, put shortly, I think to hold otherwise would be to act outside the Rules and in effect usurp the Rule-making function.
>
> [At 283–84]

[70] The reasoning of Aikins J. is inconsistent with the reasoning in *MacMillan*. Therefore, in my view, *Twinriver* should be considered overruled by *MacMillan*. It will be clear from the preceding discussion that I am of the view that a superior court has the protected inherent jurisdiction to punish for contempt, including seizing assets, regardless of the legal character of the entity in contempt. It therefore should have been acknowledged as an available remedy against non-corporations in *Twinriver.*

[71] In 1976, Marginal Rule 609 was replaced with Rule 56(2), which read:

> An order against a corporation wilfully disobeyed may be enforced by one or more of the following:
>
> a) imposition of a fine upon the corporation,
>
> b) committal of one or more directors or officers of the corporation, and
>
> c) imposition of a fine upon one or more directors or officers of the corporation.

[72] Equivalent language remains in the Rules today. There are therefore no remaining references to sequestration interpreted as a remedy for contempt in the *Supreme Court Civil Rules*.

[73] In summary, British Columbia's *Supreme Court Rules* contained, between 1880–1890, and 1906–1976, provisions for the use of sequestration in certain circumstances that were interpreted as a remedy for contempt. This review of the history of the rules is intended to show that for many years following Confederation, B.C. courts continued to acknowledge sequestration as a remedy for contempt, and it is only in more recent history that this aspect of the contempt remedy has essentially disappeared.

[74] However, in my opinion, the inclusion or absence of rules pertaining to the use of sequestration is not determinative of whether such an order is within a court's inherent jurisdiction as a remedy for contempt. English courts have not considered their inherent jurisdiction to issue a writ of sequestration as limited by the language of court rules when the interests of justice demanded it; rather, a superior court has "an inherent jurisdiction to enforce its orders where justice demands that those orders should be enforced": *Webster* at 709. This principle is persuasive. *A fortiori*, a British Columbia superior court must have a similar scope of inherent jurisdiction because any legislated limitation imposed on this jurisdiction would be unconstitutional for the reasons discussed above.

[75] I pause here to note that the preceding discussion has largely revolved around the remedy of sequestration, which was not specifically ordered by the chambers judge in the case at bar. In my opinion, the order of Grauer J. was, in effect, equivalent to an order for sequestration by the Owners along with a power to sell the property. I do not think the specific language used was determinative if the order was, in substance, an available remedy.

[76] In conclusion, it is my opinion that an order of sequestration, or its equivalent power to seize and sell property, should be seen as a protected part of the core of the British Columbia Superior Court's inherent jurisdiction, which cannot be legislatively limited without breaching the *Constitution Act*, *1867.* Therefore, in my opinion, the order made by the chambers judge in the case at bar was within the court's jurisdiction.

[77] That leaves the question of whether the order was necessary to avoid an injustice or embarrassment of the court, such as further cost for the innocent defendants from a continued abuse of the court's process by the Beas.

[78] The chambers judge determined that no alternative would be effective, and a failure of the court to act would not only allow an injustice, but would perpetuate that injustice through the continued abuse of the court's process and the consequent expense suffered by the Owners.

C. Was the order for sale an appropriate use of the contempt power in this case?

[79] In *United Nurses of Alberta v. Alberta (Attorney General)*, [1992] 1 S.C.R. 901, the Court discussed the nature of a trial court's inherent jurisdiction to exercise its contempt power. The issue concerned the liability of the union, an unincorporated association, to be punished for criminal contempt. Although the case at bar concerns only civil contempt, nevertheless, the majority judgment of McLachlin J. (as she then was) provides some helpful analysis of the source of the court's jurisdiction in which she described the nature of contempt as emphasizing that the object of orders for civil contempt is compliance not punishment:

> Both civil and criminal contempt of court rest on the power of the court to uphold its dignity and process. The rule of law is at the heart of our society; without it there can be neither peace, nor order nor good government. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect. To maintain their process and respect, courts since the 12th century have exercised the power to punish for contempt of court.
>
> [At 931]

[80] In his reasons in *United Nurses*, (dissenting but on a different point), Sopinka J. contrasted the nature of civil contempt as opposed to criminal contempt. He emphasized that punishment for contempt is aimed at securing compliance:

> The criminal law of contempt must be distinguished from civil contempt. The purpose of criminal contempt was and is punishment for conduct calculated to bring the administration of justice by the courts into disrepute. <u>On the other hand, the purpose of civil contempt is to secure compliance with the process of a tribunal including, but not limited to, the process of a court. . . .</u>

> . . .
>
> . . . . In order to secure compliance in a proceeding for civil contempt, a court may impose a fine or other penalty which will be exacted in the absence of compliance. However, the object is always compliance and not punishment.
>
> [At 943–44. Emphasis added.]

[81] In *Larkin v. Glase*, 2009 BCCA 321, this court emphasized that civil contempt is not a private matter between the contemnor and a party. Mr. Justice Chiasson, writing for this Court, stated:

> [8] Contempt of court is an issue between a party and the court. It is not concerned with the merits of the dispute between parties to litigation (*Frith v. Frith,* 2008 BCCA 2 at para. 36, 47 R.F.L. (6th) 286). Although the issue is pursued by the respondent, the court's determination that Mr. Glase is in contempt only indirectly affects her interests. As was stated in *Ontario (Attorney General) v. Paul Magder Furs Ltd.* (1992), 10 O.R. (3d) 46 at 53, 94 D.L.R. (4th) 748 (C.A.), a finding of contempt of court "transcends the dispute between the parties; it is one that strikes at the very heart of the administration of justice . . .".
>
> [9] A court's ability to punish for contempt is at the core of its jurisdiction (*MacMillan Bloedel Ltd. v. Simpson,* [1995] 4 S.C.R. 725, 130 D.L.R. (4th) 385). It is a jurisdiction that must be exercised *strictissimi juris*, that is, the court must ensure no one is found to have transgressed without a full consideration of all the relevant information, including any explanations for the conduct of persons accused of violating court orders (*Frith; Claggett v. Claggett* (1945), 61 B.C.R. 238 (C.A.)).

[82] What I take from these authorities is that the focus of the contempt power is both a coercive and punitive power meant to be used as a means to address the conduct in breach of a court order. The power is not to be used as a means of providing a civil remedy to the underlying dispute.

[83] Therefore, determining if the appealed order was an appropriate remedy for contempt in this case involves two main considerations: First, was the remedy's primary purpose the coercion of the contemnor and the cessation of the contemptuous behaviour? Second, was the remedy necessary and was a less drastic remedy unavailable?

[84] The order under appeal provides for the sale of Mrs. Bea's Strata Unit. As the chambers judge said, it is Mrs. Bea's ownership interest that fuels her ability "to frustrate and abuse the court's process and afflict her fellow owners": *Bea* at para. 66. The chambers judge considered punishment by fine or imprisonment would not secure the necessary compliance with his order not to file at the registry any further applications or other documents. At para. 49 of his reasons for judgment, the chambers judge wrote:

> . . . I am limited to imprisoning Mrs. Bea since a fine clearly is impracticable; she cannot pay it. Yet that would prevent her from earning her living without any prospect of changing her behaviour. If the former, then I must still decide whether the sanction sought by the respondent is appropriate in the circumstances.

[85] The chambers judge concluded that the sale of the Strata Unit was the only appropriate sanction:

> I conclude from this review that in the very rare circumstance where the traditional punishments of fine or imprisonment offer no reasonable prospect of bringing a halt to the contemnors' abuse of the court's process, of ending their affront to the court, and preventing the injustice that continues to flow from their behaviour, the court is not to be rendered feckless by the *Supreme Court Civil Rules*. They must be taken to be procedural. Other penalties may be considered. See also *Canada Post Corp v CUPW* (1991), 61 BCLR (2d) 120 (SC); *Westfair Foods Ltd v Naherny* (1990), 63 Man R (2d) 238 (CA); and *Health Care Corp of St John's v Newfoundland and Labrador Assn of Public and Private Employees* (2000),196 Nfld & PEIR 275 (SCTD).
>
> . . .
>
> Normally, a person's property rights would be irrelevant to the question of an appropriate sanction for contempt of court. This case is not normal. Here, the property interest in question is precisely what fuels the Beas' contemptuous acts and gives rise to the injustice that results. I conclude that a forced sale is the only appropriate and meaningful sanction for Mrs. Bea's contempt of court. In the unique circumstances of this case, it is a proportional response to the manner in which Mrs. Bea has used her ownership interest to frustrate and abuse the court's process, and afflict her fellow owners.
>
> As I have noted more than once, this represents a departure from precedent insofar as punishment for contempt of court is concerned. It is, however, as I see it, an appropriate evolution that is in line with sanctions that have been imposed in analogous circumstances for similarly egregious behaviour.
>
> In this case, it appears certain that Mrs. Bea is destined to lose her property in any event through the enforcement of the many judgments for costs registered against it. The question is whether the owners should be put through the additional expense and frustration of proceeding in that way in

> the face of the Beas' unremitting pattern of abuse of the court process, and the ever mounting costs of dealing with them. I think not. The time to end their abuse of the court's process is now.
>
> [At paras. 54, 66–68. Emphasis added.]

[86] This Court was informed by counsel during oral arguments that the strata LMS 2138 is a smallish strata consisting of about 35 units occupied by about 70 individuals. The units are modest and the owners as a group are (according to counsel) of modest means. Apart from the first petition challenging the strata's ability to modify the parking by-law, all the other proceedings could fairly be described as an abuse of the court's process. The various orders of costs made against the Beas have been registered as encumbrances against the title to the Strata Unit, although we are told they will not come close to fully compensating the Owners for their own solicitor's fees.

[87] We are told that separate proceedings are underway to execute against the title of the Strata Unit to realize on the costs judgments against Mrs. Bea, although Mrs. Bea's counsel advises the court that she expects to re-finance the property to satisfy these judgments. The sale of the unit would efficiently effect execution of the judgments registered against title; however, this should not be the motivation for crafting such an order as a remedy for contempt of court. Any remedy for civil contempt must be selected for coercive purposes to put an end to the contempt. In the context of a remedy as drastic as a forced sale of property, the judge must have confidence that no less drastic alternative is available.

[88] Mrs. Bea has shown a contemptuous disregard for court orders both by her own conduct and the conduct she authorized Mr. Bea to pursue. The history of this litigation illustrates that she is unlikely to obey orders restraining future vexatious filings. Imprisonment is an available punishment, but it is time limited and I agree

with the chambers judge, unlikely to effect compliance. A fine is unlikely to be paid voluntarily.

[89] With this in mind, in my opinion, while the forced sale of the property may have salutary benefits for the Owners beyond the cessation of the contemptuous behaviour, the primary effect would be to remove the Beas' connection to the Owners and the Strata Council against which the Beas have developed such a destructive animus. As the chambers judge found, it is Mrs. Bea's continued ownership of the Strata Unit that fuels her vexatious court applications. He was of the view that forcing a sale was the only way to finally end these vexatious proceedings. The chambers judge's discretionary decision to grant the order deserves deference in the circumstances, and it cannot be shown to be inappropriate in this case. I do not see any error in his conclusion.

[90] As I have already discussed, courts must focus clearly on the question of compliance when crafting a remedy for contempt. The protected core of a superior court's inherent jurisdiction to punish for contempt exists to prevent a court from being rendered feckless in the face of continued abuse of its process. A court must not allow itself to be used as an instrument of continuing injustice as innocent bystanders are put to continued expense and inconvenience for no legitimate purpose. While the powers of a superior court to punish for contempt are no doubt limited, as I have shown in these reasons, they include the power to order a forced sale of property when the circumstances demand it.

IV. Conclusion

[91] I see no error in the judge's decision that sale of the Strata Unit is the only remedy that would ensure compliance with the previous orders prohibiting the Beas from bringing further proceedings.

[92] I would dismiss the appeal.

"The Honourable Madam Justice Garson"

I agree:

"The Honourable Madam Justice MacKenzie"

Reasons for Judgment of the Honourable Mr. Justice Goepel:

I. Introduction

[93] I have had the privilege of reading, in draft form, the reasons of Madam Justice Garson. I have reached, however, a different conclusion on the authority of the chambers judge to order the sale of Mrs. Bea's strata unit. For the reasons that follow, I am of the opinion that the sale of Mrs. Bea's strata unit was not a remedy for contempt of court that was available to the chambers judge. I would allow the appeal and refer the matter back to the lower court to impose a sanction in accordance with R. 22-8 of the *Supreme Court Civil Rules* (the "*Rules*").

II. Background

[94] The background of the dispute between Mrs. Bea and the Respondents (the "Strata") has been set out in the reasons of Madam Justice Garson and in those of the chambers judge. I need not refer to them further.

[95] The genesis of the present proceeding is an application brought by the Strata on December 19, 2013. The Strata sought the following orders:

1. The Respondent seeks the Petitioner and Mrs. Huei-Chi Yang Bea be found in contempt of court, and fined $10,000 or be committed to a term of imprisonment or both. [Rule 22-8(1)]

2. Further, that a warrant issue for the arrest of Mrs. Huei-Chi Yang Bea, the owner and real litigant in these proceedings if any fines ordered are not paid on time. [Rule 22-8(5)]

3. In the alternative, an order pursuant to the inherent jurisdiction of the court, and / or s.173 of the *Strata Property Act,* prohibiting the Beas from harassing the Owners, Strata Plan LMS 2138 and causing a nuisance for all the other owners.

4. An order providing vacant possession of the Bea's home; legally described as Strata Lot 1, District Lot 289, Group 1, New Westminster District Strata Plan LMS 2138 (the "Unit").

5. An order for conduct of sale of the Unit.

6. An order for the assistance of the RCMP or any other peace officer to enforce the orders for vacant possession and conduct of sale.

7. Special costs payable by Mrs. Huei-Chi Yang Bea.

8. Punitive costs payable by Mrs. Huei-Chi Yang Bea.

[96] The initial contempt proceedings took place before Madam Justice Koenigsberg. She found both Mr. and Mrs. Bea in contempt of court and fined them $10,000. She further ordered, as requested in paragraph 2 of the notice of motion, that a warrant be issued for Mrs. Bea if the fines were not paid on time.

[97] When the fines were not paid, Mrs. Bea was brought before the chambers judge on February 17, 2014. An issue then arose as to whether Mrs. Bea had been properly served with the original contempt applications. The chambers judge was not satisfied that she had been served and vacated the order finding Mrs. Bea in contempt. The chambers judge conducted a new hearing.

[98] At the new hearing, the chambers judge found Mrs. Bea guilty of contempt. Having made that finding, the chambers judge then considered the matter of the appropriate sanction. The Strata urged the judge to order the sale of Mrs. Bea's strata unit. He agreed. While acknowledging that he was not aware of any case in which a court had seen fit to sell a person's property to remedy contempt of court, he found that he had such a power under the court's inherent jurisdiction. He further concluded that, in the circumstances of this case, it was appropriate that he order a sale. He awarded the Strata special costs of the contempt proceedings. He assessed those costs at $17,000 which were a little less than 90% of actual costs.

III. Issue On Appeal

[99] The finding of contempt was not challenged on the appeal. What is at issue, instead, is whether the chambers judge had the authority to order, as a remedy for contempt, the sale of Mrs. Bea's residence. Mrs. Bea submits that the judge was limited to the remedies set out R. 22-8 of the *Rules.*

[100] The question for determination on this appeal is whether the judge, pursuant to his inherent jurisdiction, could order the sale of the strata unit notwithstanding the provision in R. 22-8 that mandates that the Court must punish contempt by an order of committal or by the imposition of a fine. The relevant provisions are:

> **Power of court to punish**
>
> (1) The power of the court to punish contempt of court must be exercised by an order of committal or by imposition of a fine or both.
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> **Corporation in contempt**
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> (2) If a corporation wilfully disobeys an order against the corporation, the order may be enforced by one or more of the following:
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> (a) imposition of a fine on the corporation;
>
> (b) committal of one or more directors or officers of the corporation;
>
> (c) imposition of a fine on one or more directors or officers of the corporation.
>
> **Security**
>
> (3) Instead of or in addition to making an order of committal or imposing a fine, the court may order a person to give security for the person's good behaviour.
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> …
>
> **Suspension of punishment**
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> (15) The court at any time may direct that the punishment for contempt be suspended for the period or on the terms or conditions the court may specify.

IV. Limits On Inherent Jurisdiction

[101] Superior courts possess inherent jurisdiction to ensure that they can function as courts of law and fulfil their mandate to administer justice: *R. v. Cunningham*, 2010 SCC 10 at para. 18. The seminal article on the inherent jurisdiction of superior courts is I.H. Jacob "The Inherent Jurisdiction of the Court" (1970), 23 Current Legal

Problems 23. As noted by Madam Justice Garson, the article provides a useful analysis of the scope of the inherent jurisdiction of the courts.

[102] The courts' inherit jurisdiction is not, however, unlimited. As noted by Jacob himself at 24 "the court may exercise its inherent jurisdiction even in respect to matters which are regulated by statue or by rule of court, so long as it can do so without contravening any statutory provision." [Emphasis added.]

[103] This fundamental limit on the exercise of inherit jurisdiction has long been recognized. In *Montreal Trust Co. v. Churchill Forest Industries (Manitoba) Ltd.*, [1971] 4 W.W.R. 542 (Man. C.A.) Chief Justice Freedman, after considering the broad scope of inherent jurisdiction, cautioned at 547:

> Inherent jurisdiction cannot, of course, be exercised so as to conflict with a statute or Rule. Moreover, because it is a special and extraordinary power, it should be exercised only sparingly and in a clear case.
>
> [Emphasis added.]

[104] Justice Dickson J. (as he then was), speaking for the Court in *Baxter Student Housing Ltd. v. College Housing Co-operative Ltd.*, [1976] 2 S.C.R. 475, specifically approved the analysis of Freedman C.J.M. in *Montreal Trust.* In my view, the comments in *Montreal Trust* and in *Baxter* are of general application; they are not limited to the specific facts or the issues in either case.

[105] In her reasons in *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 S.C. 725, McLachlin J., (as she then was), dissenting on other grounds, discussed at paras. 78-80 how Parliament and legislatures can limit the ways in which superior courts can exercise their powers (including their inherent powers):

> … [I]t has long been settled that under the rule of law Parliament and the legislatures may limit and structure the ways in which the superior courts exercise their powers. These inherent powers of superior courts are simply innate powers of internal regulation which courts acquire by virtue of their status as courts of law. The inherent power of superior courts to regulate their process does not preclude elected bodies from enacting legislation affecting that process …
>
> … [T]he superior courts of this country are controlled by an elaborate matrix of statute and regulation limiting the way they exercise powers over their own

> process. Legislation intrudes on a number of areas traditionally within the domain of the court's inherent power, including matters such as contempt of court, testimonial compulsion, the attendance of spectators, hours of sitting and the imposition of publication bans over court proceedings. Parliament and the legislatures routinely make rules limiting the scope for the exercise of the court's inherent powers in these and other areas. In every province Rules of Court limit and define the ways in which superior courts can exercise their inherent powers. The *Income Tax Act* restricts the circumstances in which courts may exercise their inherent jurisdiction to order the Minister of National Revenue to release confidential information ... In the criminal sphere, s. 486(4) of the *Criminal Code* … removes the discretion a judge would have at common law to refuse a publication ban upon the request of a complainant or prosecutor where the accused is charged with one of the listed offences. How a court must deal with contempts arising in certain circumstances is now prescribed in some detail (see, e.g., ss. 127(1), 708(1), 605(2), 484, 486(1) and (5)). Interestingly, in order to preserve the court's jurisdiction over contempt in s. 9, the Code specifically excludes that offence from the general withdrawal of jurisdiction over the common law offences. The drafters clearly recognized the competence of Parliament to remove an aspect of inherent jurisdiction, and consequently the need to segregate contempt from the general provision eradicating those offences if the courts were to retain this power.
>
> All of this is simply to restate the general principle that courts must conform to the rule of law. They can exercise more power in the control of their process, in different ways, than is expressly provided by statute, but must generally abide by the dictates of the legislature. It follows that Parliament and the legislatures can legislate to limit the superior courts' powers, including their powers over contempt, provided that the legislation is not otherwise unconstitutional …
>
> [Emphasis added.]

[106] Inherent jurisdiction cannot be exercised in a manner inconsistent with the well-settled principles of the rule of law. In *Ontario v. Criminal Lawyers Association of Ontario*, 2013 S.C.C. 43 [*Criminal Lawyers*], Justice Karakatsanis emphasized that inherent jurisdiction is not unlimited and that the manner of its exercise may be regulated by legislative action. She specifically approved of the analysis of McLachlin J. from para. 78 of *MacMillan Bloedel*:

> [22] In spite of its amorphous nature, providing the foundation for powers as diverse as contempt of court, the stay of proceedings and judicial review, the doctrine of inherent jurisdiction does not operate without limits.
>
> [23] It has long been settled that the way in which superior courts exercise their powers may be structured by Parliament and the legislatures (see *MacMillan Bloedel*, at para. 78, *per* McLachlin J., dissenting on other grounds). As Jacob notes (at p. 24): "... the court may exercise its inherent jurisdiction even in respect of matters which are regulated by statute or by

> rule of court, so long as it can do so without contravening any statutory provision" (emphasis added) (see also *Caron*, at para. 32).
>
> [Emphasis added.]

[107] Rules of Court are, for the purpose of determining limits on inherent jurisdiction, in the same position as formally enacted statutes dealing with the courtroom process. It is well-settled that the Rules of Court, and in particular the current *Rules*, have the force of statute: *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia*, 2013 SCC 42 at para. 50 [*Conseil scolaire*].

[108] The issue in *Conseil scolaire* was whether French language exhibits attached to an affidavit could be considered by the courts without English translations. Rule 22-3 required that exhibits attached to affidavits and filed in court had to be in English. The Supreme Court rejected a submission that a superior court could admit the documents in a language other than English pursuant to its inherit jurisdiction because doing so would contravene R. 22-3:

> [63] There is no doubt that the British Columbia Supreme Court has the inherent jurisdiction and discretion to fulfill its judicial function, but as this Court noted in *R. v. Caron*, 2011 SCC 5, [2011] 1 S.C.R. 78, at para. 32, they are subject to the requirement that the court exercise them without contravening any statutory provision. In the case at bar, Rule 22-3 limits the court's discretion to admit documents in languages other than English.
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> [Emphasis added.]

[109] This Court has also commented on the limits to inherent jurisdiction. In *Lines v. W & D Logging Co. Ltd.*, 2009 BCCA 107 Saunders J.A. for the Court commented as follows:

> [23] Inherent jurisdiction was described by Chief Justice Freedman in *Montreal Trust Co. v. Churchill Forest Industries (Manitoba) Ltd.* (1971), 21 D.L.R. (3d) 75 at 81, [1971] 4 W.W.R. 542 (Man. C.A.):
>
> > Inherent jurisdiction is derived not from any statute or rule but from the very nature of the court as a superior court of law: "The jurisdiction which is inherent in a superior court of law is that which enables it to fulfil itself as a court of law." [I.H. Jacob, "The Inherent Jurisdiction of the Court" (1970) 23 Curr. Legal Probs. 23 at 27] Inherent jurisdiction cannot, of course, be exercised so as to conflict with a statute or rule.

> Moreover, because it is a special and extraordinary power, it should be exercised only sparingly and in a clear case.

[24] The Manitoba Court of Appeal again usefully added to the comment on inherent jurisdiction in *Gillespie v. Manitoba (Attorney General)*, 2000 MBCA 1, 185 D.L.R. (4th) 214:

> [17] Although many instances can be found in which the inherent jurisdiction of the Queen's Bench (or equivalent court in other jurisdictions) has been invoked to justify an order, no satisfactory definition of inherent jurisdiction has been enunciated. That is perhaps because inherent jurisdiction has never been conferred on a court expressly, but exists as an auxiliary power to be invoked when necessary for the court "to fulfil itself as a court of law" (to use the words of Master I.H. Jacob, in his article "The Inherent Jurisdiction of the Court" (1970), 23 Curr. Legal Probs. 23 at p. 27).
>
> [18] I have chosen the word "auxiliary" to describe the power in order to emphasize the power's supportive role. "Auxiliary" is defined in *Webster's New World Dictionary, Third College Edition*, 1988, as "giving help or aid; assisting or supporting" and as "acting in a subsidiary, or subordinate, capacity". Inherent power, as I understand it, is the power a judge may draw upon to assist or help him or her in the exercise of the ordinary jurisdiction of the court. It does not generally stand alone waiting to be exercised on the judge's own initiative without a suit or application or without parties.
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> [19] The auxiliary nature of inherent jurisdiction is reflected in the words of Lord Morris of Borth-y-Gest in *Connelly v. Director of Public Prosecutions*, [1964] A.C. 1254 (H.L.). In *obiter* comments, he said (at p. 1301):
>
> > There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. I would regard them as powers which are inherent in its jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process.

[25] I refer as well to *Borkovic v. Laurentian Bank of Canada*, 2001 BCSC 337, wherein Mr. Justice Smith endorsed this passage from *Halsbury's Laws of England* at para. 9:

> [the Court] has an inherent power to regulate its own procedure, save in so far as its procedure has been laid down by the enacted law, and it cannot adopt a practice or procedure inconsistent with rules laid down by statute or adopted by ancient usage.

[Emphasis added.]

[110] In summary, it is now well-established that the way in which superior courts exercise their powers may be regulated by the provincial legislature.

V. Evolution Of The Rules Of Court

[111] This case concerns civil contempt. Civil contempt was defined in Sir G. Borrie and N. Lowe, *Borrie and Lowe on the Law of Contempt*, 3d ed. (London: Butterworths, 1996) at 655-656 [Borrie and Lowe], which passage was approved by the Ontario Court of Appeal in *Kopaniak v. MacLellan* (2002), 212 D.L.R. (4th) 309 at para. 26:

> Civil contempts … are committed by disobeying court judgments or orders either to do or to abstain from doing particular acts, or by breaking the terms of an undertaking given to the court, on the faith of which a particular course of action or inaction is sanctioned, or by disobeying other court orders (e.g. not complying with an order for interrogatories, etc.). Civil contempts are therefore essentially 'offences' of a private nature since they deprive a party of the benefit for which the order was made. … [T]he courts' jurisdiction in respect of civil contempts is primarily remedial, the basic object being to coerce the offender into obeying the court judgment or order …

[112] Civil contempt in British Columbia has, since 1880, been regulated by the *Rules*. The *Rules* governing such contempt, understood as defiance or disobedience of a civil order, were initially found in Rules 307-311 of the *1880 Supreme Court Rules*. They read as follows:

> **307** A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money might have been enforced at the time of the passing of the Act.
>
> **308** A judgment for the payment of money into Court may be enforced by writ of sequestration, or in cases in which attachment is authorised by law, by attachment.
>
> **309** A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession.
>
> **310** A judgment for the recovery of any property other than land or money may be enforced:
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> By writ for delivery of the property;
>
> By writ of attachment;
>
> By writ of sequestration.
>
> **311** A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal.
>
> [Emphasis added.]

[113] Rule 311 concerned breaches of mandatory or prohibitory orders other than the payment of money, which are precisely the type of breaches contemplated in the definition of civil contempt as explained by Borrie and Lowe at 655-656. A breach of such orders was an act of contempt, which was remedied by way of a writ of attachment or committal.

[114] In *Golden Gate Mining Co. v. Granite Creek Mining Co.* (1896) 5 B.C.R. 145, which was decided prior to the creation of the Court of Appeal by the appeal division of the Supreme Court, called the Full Court, McCreight J. at 149 explained the differences in the remedies of attachment and committal:

> This is a case in which committal and not attachment is the appropriate remedy. Where the injunction is mandatory the defendant is attached and brought into Court to explain why he has not done what was required of him, and the process is for the contempt, of which he is given an opportunity of purging himself by compliance, and the proceeding is tentative in its nature. But where the injunction directs that something shall not be done and it is proved that in disobedience thereof it has been done, then the process is punitive, and an order to commit the delinquent to prison for that misconduct is the proper course.

[115] The *Rules* remained in identical language through to, and including, the 1961 revision of the *Rules*. In 1890, Rules 307 to 311 became Rules 458 to 461. From 1906 to 1976 they were set out in Marginal Rules 581 to 585. In 1976, Marginal Rules 581 through 585, in somewhat different language, were incorporated into Rule 42. Today they are found in R. 13-2.

[116] The *1880 Supreme Court Rules* contain separate provisions concerning writs of attachments and sequestration. Rule 345 set out when a writ of sequestration could issue:

> **345** Where any person is by any judgment directed to pay money into Court or to do any other act in a limited time, and after due service of such judgment refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment shall at the expiration of the time limited for the performance thereof, be entitled, without obtaining any order for that purpose, to issue a writ of sequestration against the estate and effects of such disobedient person. Such writ shall have the effect as a writ of sequestration has heretofore had, and the proceeds of such sequestration have heretobefore been dealt with. [*See Form No.* 80.]

[117] In 1890, R. 345 became R. 492 and in 1906 it became Marginal Rule 618. It remained so until the 1976 Rule revision when in revised form, it became R. 42(2). A similar Rule is presently found in R. 13-2(13).

[118] In 1906, Marginal Rule 609 was added to deal with circumstances where a corporation failed to obey an order. Among the potential penalties was sequestration. That Rule read:

> Any judgment or order against a corporation willfully disobeyed may, by leave of the Court or a Judge, be enforced by sequestration against the corporate property, or by attachment against a director or other officers thereof, or by writ of sequestration against their property.

[119] The historical manner by which Court orders were enforced and the reason that the remedy of sequestration was introduced in the case of corporate contempt was explained by Taggart J. A. in his dissenting reasons in *Twinriver Timber Ltd. v. International Woodworkers of America, Local 1-71*, (1970) 14 D.L.R. (3d) 704 (B.C.C.A.):

> When one examines the history of the development of the rules relating to sequestration it is apparent that from the earliest times Courts of Equity and later of common law recognized the distinction between those cases involving breaches of orders requiring acts to be done and those cases involving breaches of Court orders prohibiting the commission of acts. If an individual was required to perform an act and failed to do so then the Courts did not hesitate to authorize the issuance of writs of sequestration. On the other hand, if an individual was prohibited from doing an act and continued to do the act in breach of the order, then the effective remedy was to attach the person of the offender whereupon the acts prohibited ceased, at least for so long as the offender remained in custody. That logical approach to the enforcement of orders could not apply in the case of a corporation for corporations have only a notional existence in law and can not be attached. Consequently the Courts authorized the issuance of writs of sequestration against corporations not only when a corporation failed to comply with an order directing an act to be done, but also in cases where the order prohibited the commission of an act for in the latter case it was impossible for the Court to attach the person of the corporation and thus cause a cessation of the prohibited act.
>
> [Emphasis added.]

[120] In 1976, Marginal Rule 609 was incorporated into R. 56(2) and is presently found in R. 22-8(2). Since 1976, the *Rules* have no longer authorized the issuance

of writs of sequestration against corporations for breach of a court order. The *Rules* have, however, allowed for the committal of corporate officers and directors.

[121] The *Rules of Court* underwent a wholesale revision in 1976: P. Fraser "New Rules of Court: The Background" (1976) 34 The Advocate 117. Other than Marginal Rule 609, the existing enforcement provisions became part of R. 42. Rule 56 was adopted which dealt specifically with the penalties and procedures governing contempt. Those provisions were carried forward into the new *Rules* and are now found in R. 22-8.

VI. Discussion

[122] As can be seen from the historical review, the Supreme Court has long had, and continues to have, various powers to enforce the orders it makes. Those powers did not include the power to sell the property of a person in contempt.

[123] In *Twinrive*r, this Court specifically rejected a submission that the court's inherent jurisdiction allowed it to create a remedy for contempt not contained in the *Rules*. *Twinriver* concerned an application for a writ of sequestration directed to a union as a result of its contempt of court. The applicant relied on Marginal Rule 609, which dealt with circumstances in which a corporation had disobeyed an order.

[124] The application for sequestration was heard before Atkins J. (as he then was). He concluded that the Marginal Rule did not apply to a union because a union was not a corporation. Moreover, he specifically rejected an argument that the court could exercise its inherent jurisdiction to order sequestration:

> [28] Before proceeding further I should, I think, amplify my understanding of Mr. Giles' argument. Mr. Giles took the position, as I understood him, that the only redress available to the plaintiff was sequestration, that is that the only way in which the plaintiff could bring the defendant union before the Court so that the defendant union's disobedience of the order, if proved, might be dealt with or the plaintiff's rights protected was by application for leave to enforce the order by sequestration. This being so, Mr. Giles argued, because the Court must have inherent jurisdiction to enforce an order which it has lawfully made, the Court must have inherent jurisdiction to enforce by sequestration because it is the only way in the instant case, in which the matter may be brought before the Court. Assuming that I am correct in the conclusion that I have stated that sequestration lies only where authorized by

> Rule so that sequestration is not available to the plaintiff in this application because the matter is not within M.R. 609, I should not, I think, usurp a Rule-making or legislative function, and grant leave for sequestration simply because I might think, and I express no opinion on the matter one way or the other, that the law should be that wilful disobedience of an order of the Court by persons other than a corporation should in the discretion of the Court, be enforceable by sequestration, which after all, is a special and perhaps rather drastic means of enforcing an order or judgment. So, I conclude, assuming that the Court has as contended an inherent jurisdiction to enforce its orders, such as the order in the present case, that that inherent jurisdiction to enforce may not be exercised by sequestration because, put shortly, I think to hold otherwise would be to act outside the Rules and in effect usurp the Rule-making function.
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> [Emphasis added.]

[125] The Court of Appeal upheld the decision. The majority judges, Maclean and Branca J.J.A., both said that they were doing so for the reasons given by the judge below. Justice Taggart dissented. In his view, the court had an inherent jurisdiction to grant leave to issue the writ of sequestration notwithstanding the provision of the *Rules*.

[126] *Twinriver* remains, in my opinion, binding authority. It is consistent with the principle set out in the decisions discussed above: legislatures may limit and structure the ways in which the superior courts exercise their inherent jurisdiction and inherent jurisdiction is subject to and must yield to provisions set out in the *Rules of Court* and in statues. In reaching this conclusion, I have reviewed and considered the majority judgment in *MacMillan Bloedel*. In my respectful opinion *MacMillan Bloedel* has not directly or impliedly overruled *Twinriver*.

[127] The central issue in MacMillan Bloedel was whether Parliament, pursuant to its criminal law power, could confer the exclusive jurisdiction of a superior court general jurisdiction over *ex facie* contempt to a statutory court. The constitutional question facing the Supreme Court of Canada was phrased as follows by Lamer C.J.C. in his majority reasons:

> Is it within the jurisdiction of Parliament to grant exclusive jurisdiction to youth courts, through the operation of s. 47(2) of the Young Offenders Act, R.S.C. 1985, c. Y-1, over contempt of court committed by a young person against a superior court otherwise than in the face of court?
>
> [Emphasis added.]

[128] The discussion in *MacMillan Bloedel* regarding the constitutionally protected scope of the "core" or "inherent" jurisdiction of a superior court of general jurisdiction was predicated entirely on the question of whether the wholesale removal of that core power was a constitutionally permissible legislative or parliamentary action:

> To determine whether either Parliament or a provincial legislature may remove part of the superior court's jurisdiction, we must consider the contours and contents of the "core" or "inherent" jurisdiction of the superior courts. On the facts of this appeal, the British Columbia Supreme Court being the superior court involved, we need only consider whether this jurisdiction can be removed from superior courts of general jurisdiction …
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> … The full range of powers which comprise the inherent jurisdiction of a superior court are, together, its "essential character" or "immanent attribute". To remove any part of this core emasculates the court, making it something other than a superior court.
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> ….
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> … [A]n inferior court of record has inherent jurisdiction to punish summarily for *in facie* contempt, but jurisdiction to punish for *ex facie* contempt must be conferred explicitly by statute. This point is important in framing the issue before the Court in this case, for the problem with s. 47(2) of the *Young Offenders Act* is not the grant of jurisdiction to the youth court but the removal of jurisdiction from the superior court.
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> [*MacMillan Bloedel* at paras. 28-31. Emphasis added.]

[129] In the course of his analysis, Lamer C.J.C. makes reference to the decision of the Supreme Court of Canada in *Crevier v. Attorney General of Quebec,* [1981] 2 S.C.R. 220. In that case, the Supreme Court held that it was constitutionally impermissible for the provincial legislatures to immunize administrative tribunals from judicial review because, in essence, this would remove the power of s. 96 courts to conduct judicial review. In his view, *Crevier* "establishes … that powers which are 'hallmarks of superior courts' cannot be removed from those courts." The Chief Justice also referred to *Attorney General of Canada v. Law Society of British Columbia*, [1982] 2 S.C.R. 307, which held that Parliament lacked the authority to wholly remove the power of superior courts to rule on the validity of federal statutes.

The question, in each case, was whether it was within the jurisdiction of Parliament or the provincial legislatures to wholly remove an area of jurisdiction (either judicial review of administrative decisions or constitutional judicial review of federal statutes) by way of an absolute transfer of jurisdiction to a statutorily created adjudicative body (either a statutory court or administrative tribunal).

[130] The eventual conclusion of Lamer C.J.C., at para. 41, on the scope of the constitutional provisions breached by the transfer of jurisdiction over *ex facie* contempt from the superior courts to the statutory youth courts, was predicated on his conclusion that such a transfer of jurisdiction is tantamount to its wholesale removal:

> In light of its importance to the very existence of a superior court, no aspect of the contempt power may be removed from a superior court without infringing all those sections of our Constitution which refer to our existing judicial system as inherited from the British, including ss. 96 to 101, s. 129, and the principle of the rule of law recognized both in the preamble and in all our conventions of governance. I agree with Macdonald J. who [in *Columbia (Attorney-General) v. Mount Currie Indian Band* (1991), 64 C.C.C. (3d) 172 at 177-178)] made the following statement in dealing with the identical issue:
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> > In this case, the question should be whether parliament can remove from this court its inherent jurisdiction to maintain its authority by contempt proceedings. I would have no difficulty with a concurrent jurisdiction in the youth court in that regard in so far as young persons are concerned. The philosophy which underlies the Act is entitled to support, and has certainly received it from the Supreme Court of Canada. Just as adult offenders could be charged in the provincial courts under the *Criminal Code* for failure to comply with a court order, so young persons should be subject to being charged under the Act and dealt with in youth court.
> >
> > It is quite another thing to deny this court the right to maintain its own authority.
>
> [Emphasis added.]

[131] Given the context in which the case was decided, it is important to delineate between the comments made by the Lamer C.J.C. pertaining to the contempt power (understood to reflect the authority of courts to coerce compliance with their orders) and the options available to the courts to enforce compliance. When Lamer C.J.C. referenced the “full panoply of contempt powers”, he did so with regard to the distinction between *ex facie* and *in facie* contempt. The reference to the full panoply

of contempt powers, in other words, was not a reference to the peculiar historical options that were available to the English courts to sanction contempt and coerce compliance with court orders. It was, instead, a reference to the scope of jurisdiction of the courts over all forms of contempt of court (i.e., both *in facie* and *ex facie*). As he explained at paras. 38 and 42:

> The core jurisdiction of the provincial superior courts comprises those powers which are essential to the administration of justice and the maintenance of the rule of law. It is unnecessary in this case to enumerate the precise powers which compose inherent jurisdiction, as the power to punish for contempt *ex facie* is obviously within that jurisdiction. The power to punish for all forms of contempt is one of the defining features of superior courts. The *in facie* contempt power is not more vital to the court's authority than the *ex facie* contempt power. The superior court must not be put in a position of relying on either the provincial attorney general or an inferior court acting at its own instance to enforce its orders. Furthermore, *ex facie* contempt is not limited to the enforcement of orders. It can include activities such as threatening witnesses or refusing to attend a proceeding (see *R. v. Vermette*, [1987] 1 S.C.R. 577). In addition, the distinction between *in facie* and *ex facie* contempt is not always easily drawn … increasing the difficulty of saying one is more essential to the court's process than the other.
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> …
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> While it will in most instances be preferable for the youth court to try and punish a youth in *ex facie* contempt of a superior court, the provincial superior court's jurisdiction cannot be ousted. It will always be for the superior court to elect whether to hold contempt proceedings against a youth in order to exert control over its process, or to defer to the youth court. In addition, in cases where the youth court does proceed against a youth for contempt *ex facie* of a superior court, the provincial superior court retains its supervisory power to ensure that the lower court's disposition of the matter is correct. The full panoply of contempt powers is so vital to the superior court that even removing the jurisdiction in question here and transferring it to another court with judges appointed pursuant to s. 96 would offend our Constitution.
>
> [Emphasis added.]

[132] Chief Justice Lamer was, to put it another way, solely concerned with whether the absolute removal of an area of jurisdiction falling within the "essential character" of a superior court of general jurisdiction, which removal was effected by way of a transfer of power to a statutory court, was constitutionally permissible under ss. 96-101, s. 129 and the general and foundational principles of the rule of law. The focus on *ex facie* contempt of court as being part of the "core" or inherent jurisdiction of the court is consistent with the analysis of the court in other cases dealing with the

concurrent grant of jurisdiction over *in facie* contempt to inferior tribunals or courts: see e.g., *Chrysler Canada Ltd. v. Canada (Competition Tribunal*), [1992] 2 S.C.R. 394. In my view, it is essential to bear this jurisprudential context in mind when considering the general comments made by the Chief Justice in *McMillan Bloedel*.

[133] Justice McLachlin, as she then was, took a different view of the constitutional issue. She agreed with the Chief Justice that the effect of the impugned legislation was to remove an entire sphere of jurisdiction (namely, the jurisdiction over *ex facie* contempt of a superior court) from the superior courts. Her view, however, was that this ouster of jurisdiction was simply the typical consequence of any transfer of power from a s. 96 court, which was in itself nothing but an application of well-settled principle that under the rule of law Parliament and the legislatures may limit and structure the ways in which superior courts of general jurisdiction exercise their powers.

[134] While the majority of the Supreme Court of Canada rejected that the complete ouster of jurisdiction over a particular area of inherent jurisdiction was equivalent to the aforementioned well-settled rule of law principle, McLachlan's J. articulation of that principle of the rule of law from paras. 78-80 of *MacMillan Bloedel* was, as noted above, adopted in *Criminal Lawyers* at para. 23.

[135] In this case, R. 22-8(1) does not purport to wholly remove the power of the Supreme Court to sanction contempt by, for example, transferring that power to a statutory court. Instead, the *Rules* simply structure how the civil contempt power, over which the court retains exclusive jurisdiction, ought to be exercised.

[136] In my opinion, it is now well-established that, as a fundamental principle of the rule of law, Parliament and the provincial legislatures have the authority to structure and circumscribe how the courts will exercise their inherent jurisdiction so long as their legislative actions do not go so far as to wholly remove an area of such jurisdiction from the purview of the courts. The reasons of Lamer C.J.C. from *MacMillan Bloedel*, which were concerned with the general and wholesale removal of the jurisdiction of the superior courts of general jurisdiction over *ex facie* contempt

of a superior court by a young offender, are not applicable to the present case. There is no basis to conclude that R. 22-8(1) removes the jurisdiction of the Supreme Court of British Columbia to punish civil contempt. That the *Rules* limit the options available in sanctioning civil contempt does not mean that they have the effect of removing jurisdiction over it.

[137] The chambers judge recognized that that the Court's inherent jurisdiction could not be exercised in the contravention of a statute. However, his attention was apparently not directed to the decision in *Conseil scolaire* that confirmed that the *Rules* have the force of statute law.

[138] The principles of statutory interpretation apply to the *Rules*: *A.E. (Litigation Guardian of) v. D.W.J,* 2011 BCCA 279. The modern approach to statutory interpretation is set out in *Rizzo & Rizzo Shoes Ltd (Re),* [1998] 1 S.C.R. 27 at para. 21: "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."

[139] The plain language of R. 22-8(1) provides:

> **Power of court to punish**
>
> (1) The power of the court to punish contempt of court must be exercised by an order of committal or by imposition of a fine or both.
>
> [Emphasis Added.]

[140] The rule makes specific reference to the inherent power of the court to punish contempt, and then sets out the manner in which that power must be exercised (that is, by way of either or both of a fine or committal). In my view, this provision is a particular instance of the well-settled principle that the Legislature may limit and structure the ways in which the superior courts exercise their inherent powers: *Criminal Lawyers* at para. 23.

[141] Based on its plain language, R. 22-8 provides a complete, comprehensive and exhaustive articulation of the options available to the courts in sanctioning civil contempt. Those options do not include an order of sale.

[142] In this case, the Strata brought an application to have Mrs. Bea held in contempt. The chambers judge so found. Having found Mrs. Bea in contempt, the *Rules* mandated that the punishment be by fine or incarceration or both, albeit the judge had the power to suspend the sentence under R. 22-8 (15). The judge did not have the authority to fashion a remedy for contempt outside of those set out in R. 22-8. In particular, he could not order the sale of Mrs. Bea's unit.

VII. Disposition

[143] In the result, I would allow the appeal and refer the matter back to the trial court to impose a penalty authorized by law. I would not disturb the cost order of the chambers judge. Given the history of this matter I would make no order for costs in this Court.

"The Honourable Mr. Justice Goepel"