

15-52686
Vancouver Registry

In the Provincial Court of British Columbia
(BEFORE BRYAN BAYNHAM, Q.C., ADJUDICATOR)
Civil Division

Vancouver, B.C.
January 27, 2016

BETWEEN:

CALUM COUPLAND

CLAIMANT

AND:

BRITISH COLUMBIA HYDRO & POWER AUTHORITY

DEFENDANT

PROCEEDINGS AT TRIAL

COPY

Appearing on his own behalf:

C. Coupland

Counsel for the Defendant:

K. Johnson

INDEX

EXHIBITS

NIL

RULINGS

[REASONS FOR JUDGMENT] 22

Proceedings

1 Vancouver, B.C.
2 January 27, 2016
3

4 THE COURT: Yes, Coupland and B.C. Hydro.
5 MR. JOHNSON: Yes. That's us.
6 THE COURT: Okay, and let's see.
7

8 (OTHER MATTERS SPOEKN TO)
9

10 THE COURT: I didn't get introductions from you.
11 MR. JOHNSON: Kyle Johnson, I'm counsel for B.C. Hydro
12 in the Coupland matter.
13 THE COURT: Oh, I see.
14 MR. JOHNSON: And [indiscernible] Petrie here, who's a
15 representative of B.C Hydro.
16 THE COURT: And where is -- any sign of Mr. Coupland?
17 MR. JOHNSON: I wouldn't recognize him. I could
18 potentially ask for him in the hall, but. . .
19 THE COURT: All right, if you wouldn't mind going out
20 and asking if he's here.
21

22 (OTHER MATTERS SPOKEN TO)
23

24 MR. JOHNSON: Your Honour, this is Mr. Coupland.
25 THE COURT: All right. I'm sorry, I didn't get your --
26 I didn't write down your name.
27 MR. JOHNSON: Kyle Johnson.
28 THE COURT: Kyle Johnson. Mr. Johnson, I see you
29 didn't file a trial statement, is there a reason
30 for that?
31 MR. JOHNSON: No, we attempted to do one today, I was
32 late. But unfortunately there was an issue
33 with -- it's a technicality of it. We never
34 received one from Mr. Coupland, but I understand
35 you would require one from us as well and it was
36 an oversight as for not doing it earlier.
37 THE COURT: Well it's a pretty important part of the
38 process --
39 MR. JOHNSON: Yes.
40 THE COURT: -- to have a trial statement in a -- the
41 way it works is I read everything beforehand and I
42 don't know what your defence is and you don't know
43 what Mr. Coupland's is.
44 MR. JOHNSON: Yes. If it does clarify --
45 THE COURT: There -- he, I should say Mr. Coupland
46 doesn't know what your defence is.
47 MR. JOHNSON: I believe a reply does cover the majority

Proceedings

1 of defence. As far as additional documents, we do
2 not have any of those. Mr. Petrie [phonetic] will
3 be speaking to what happened and in addition to
4 that we have audio statement which --
5 THE COURT: But -- but we wouldn't know that he was
6 going to give -- we don't know what he is going to
7 say.
8 MR. JOHNSON: Yes.
9 THE COURT: So I have a pretty strict rule that --
10 MR. JOHNSON: Okay.
11 THE COURT: -- if people don't file a trial statement,
12 they don't get to call a defence. So anyway,
13 these other people had their case bumped before,
14 so I'm afraid you're going to have to take -- sit
15 back and listen to the first trial.
16 MR. JOHNSON: Okay.
17 THE COURT: Unfortunately, Mr. -- do you pronounce it
18 Coup --
19 CALUM COUPLAND: Coupland, sir. Yes.
20 THE COURT: Coupland. All right, I apologize for that.
21 MR. JOHNSON: If I may, Your Honour, has Mr. Coupland
22 filed a trial statement? I haven't received
23 anything from him either.
24 THE COURT: Did you?
25 CALUM COUPLAND: I -- I did -- I did two -- two things.
26 I filed the trial statement, we originally had the
27 date in November and I filed it to -- to the
28 [indiscernible] -- what do I call you?
29 MR. JOHNSON: You can call me Mr. Johnson.
30 CALUM COUPLAND: Mr. Johnson. I filed it to
31 Mr. Johnson and what I did is I mailed it to them
32 also and it was mailed to them on October 28th and
33 the courthouse has received their copy and the
34 copy -- trial statement was received November
35 10th, 2015.
36 MR. JOHNSON: Yeah, I'm afraid I haven't received
37 anything.
38 CALUM COUPLAND: I find it unfortunate when that is
39 said because I'm not --
40 THE COURT: All right, well can you give it to him now?
41 CALUM COUPLAND: Of course I can.
42 THE COURT: All right, and you'll have a chance to
43 review --
44 MR. JOHNSON: And I do have a copy of the trial
45 statement for you as well. Again, it was not
46 filed [indiscernible/overlapping speakers].
47 CALUM COUPLAND: If you don't -- don't get me wrong

Proceedings

1 when I say this, I'm a lay person and the trial
2 statement was supposed to be given seven days ago
3 so I could research it. And for it to be given to
4 me at the time of trial, it puts me in an
5 impossible position.
6 THE COURT: All right, we'll let's -- please exchange
7 trial statements.
8 CALUM COUPLAND: Okay.
9 THE COURT: And I'm going ahead with the other case.
10 CALUM COUPLAND: Okay.
11 THE COURT: We'll deal with your issues once this case
12 is over, okay.
13
14 (PROCEEDINGS ADJOURNED)
15 (PROCEEDINGS RECONVENED)
16
17 THE COURT: Calling the case of Coupland versus B.C.
18 Hydro and Power Authority. I'm sorry, counsel,
19 you're going to have to tell me your name again.
20 I didn't write it down.
21 MR. JOHNSON: The name is Kyle Johnson.
22 THE COURT: Kyle is --
23 MR. JOHNSON: It's J-o-h-n-s-o-n.
24 THE COURT: K-y. . .
25 MR. JOHNSON: -- l-e.
26 THE COURT: Okay.
27 MR. JOHNSON: And the last name is Johnson, J-o-h-n-s-
28 o-n.
29 THE COURT: Have we sorted out how it is that the --
30 you did not receive Mr. Coupland's --
31 MR. JOHNSON: I don't believe we did. I'm not sure
32 that I know exactly what happened with that
33 whatsoever. We hadn't received anything and
34 that's all that I know about.
35 THE COURT: Have you received it now?
36 MR. JOHNSON: I do have it, now I have a chance to
37 review it and I've also given it to Mr. Coupland a
38 copy of my trial statement.
39 THE COURT: All right.
40 CALUM COUPLAND: Your Honour, the trial statement was
41 sent to Mr. Johnson at the same time it was sent
42 to the courthouse.
43 THE COURT: Well, Mr. Johnson, you're with Murray
44 Jamieson, are you?
45 MR. JOHNSON: Yes, I am.
46 THE COURT: Okay. And where did -- what address did
47 you use for -- to send it to Mr. Jamieson?

Proceedings

1 CALUM COUPLAND: It was Suite 200 - 1152 Mainland
2 Street, Vancouver, B.C. V6B 4X2.
3 THE COURT: Okay. I wondered about that, because it
4 shows that the initial reply was filed by
5 apparently Azeen [phonetic] Alani. What's that?
6 MR. JOHNSON: Aniz Alani. He's counsel for B.C. Hydro
7 in-house.
8 THE COURT: Right.
9 MR. JOHNSON: So the address that Mr. Coupland sent the
10 trial statement to appears to be the correct one.
11 I do not understand why we wouldn't have received
12 it. And if we did, I --
13 THE COURT: Well, how would he --
14 MR. JOHNSON: -- would have received a copy of it.
15 THE COURT: How would he even have that address?
16 MR. JOHNSON: In -- we filed an --
17 THE COURT: Oh, because you applied for --
18 MR. JOHNSON: -- application for an adjournment.
19 THE COURT: Right.
20 MR. JOHNSON: And the address is in there and --
21 THE COURT: Okay. Fair enough.
22 MR. JOHNSON: -- we also did file a Notice of Change of
23 Solicitor, as well.
24 THE COURT: All right. Well, how much do you say is in
25 dispute here, Mr. Johnson?
26 MR. JOHNSON: As far as the actual number?
27 THE COURT: Yes.
28 MR. JOHNSON: The entirety of the claim is in dispute.
29 THE COURT: The entirety. Originally they billed more?
30 There was originally -- the bill went out for a
31 larger amount of money, and then it was reduced
32 over time to --
33 CALUM COUPLAND: Is it okay to --
34 THE COURT: -- \$862.93.
35 CALUM COUPLAND: It's okay if I speak up now and then,
36 give the numbers?
37 THE COURT: Okay. But the amount that you're seeking
38 back is \$682.93 [sic].
39 CALUM COUPLAND: That's correct, yes, Your Honour.
40 THE COURT: All right. And you paid -- and you paid
41 that -- and why did you pay that again?
42 CALUM COUPLAND: Is I'm in business. I own a lot of
43 properties and I buy real estate and I can't have
44 an outstanding debit on my credit statement
45 because if I do, I can't get any mortgages from
46 the bank and that's the reason for that.
47 THE COURT: All right.

Proceedings

1 CALUM COUPLAND: In -- in the information I dealt to
2 the courthouse also I put a note in there saying
3 to B.C. Hydro that I'm going to go ahead and pay
4 the bill, just strictly because of the credit
5 report reasons.

6 THE COURT: All right. So I know how much is in issue.
7 I don't quite understand what happened here.
8 Maybe we can sort this out, the factual thing,
9 but --

10 CALUM COUPLAND: Okay.

11 THE COURT: -- you had a tenant. The tenant moved out
12 and gave notice to B.C. Hydro to cut off the
13 hydro.

14 CALUM COUPLAND: That is correct.

15 THE COURT: Is that correct?

16 CALUM COUPLAND: That is correct, Your Honour.

17 THE COURT: And then the premises were vacant for
18 several months. Have I got that right?

19 CALUM COUPLAND: That is correct. They were vacant
20 until November of 2014, when I went and took a
21 look at it. It's in Port Alberni. And I --

22 THE COURT: What sort of a -- what sort of a facility
23 was it?

24 CALUM COUPLAND: It's a duplex, just --

25 THE COURT: Duplex. And you didn't -- like, people
26 live there, a resident? It was a resident?

27 CALUM COUPLAND: It's -- it's two sides. One is
28 rented, at that time, the other one vacant and the
29 tenant told them to turn off hydro and it was
30 vacant because Port Alberni is a very slow real
31 estate market and I couldn't get it rented out and
32 I have a property manager over there and so I went
33 over in November to do -- see what renovations I
34 could do to get it rented out and that's when I
35 seen the power was not --

36 THE COURT: So it's unfurnished, an unfurnished duplex?

37 CALUM COUPLAND: Correct, yes.

38 THE COURT: And -- all right. And on what basis -- did
39 the -- like, why was there a charge for hydro
40 during that period of time?

41 MR. JOHNSON: Your Honour, if I may, initially there is
42 a threshold issue of jurisdiction that B.C. Hydro
43 does want to address.

44 THE COURT: Well, I want to get the facts straight
45 before you give me --

46 MR. JOHNSON: I just wanted to make sure you're aware
47 of that before we got too far into the facts. My

Proceedings

1 understanding is that the power was -- B.C. Hydro
2 was notified by the previous tenant that they were
3 vacating the premises and so their account was
4 severed.

5 THE COURT: Right.

6 MR. JOHNSON: However, when that happens, the power is
7 not completely terminated. There is still power
8 going to the house and power continued to be
9 somewhat drained from B.C. Hydro's facilities and
10 as a result, Mr. Coupland was ultimately charged
11 for the power that was going to his premises at
12 that time.

13 When the tenants were leaving, they indicate
14 they are leaving. They sever the account. The
15 process that actually terminates power entirely is
16 a different process and requires a landlord's
17 actual permission to do so. And that was never
18 received by B.C. Hydro. Instead, their procedures
19 noted that the power was low ultimately in July,
20 but it wasn't that low initially and then once
21 that happened, they did send notice to the
22 property indicating that they would be
23 discontinuing the service.

24 THE COURT: And where is that?

25 MR. JOHNSON: As far as the document?

26 THE COURT: Yes.

27 MR. JOHNSON: I'm afraid we do not have that document
28 present. I can -- Mr. Petrie, who can speak to
29 it.

30 THE COURT: No, he can't. I mean, B.C. Hydro is the
31 biggest -- one of the biggest corporations in
32 British Columbia and they can't get around to
33 filing a trial statement with the evidence that
34 you say is crucial to this case? I mean, it's
35 just not acceptable.

36 MR. JOHNSON: I understand that. I -- unfortunately,
37 we've had some issues getting documents and that
38 was why --

39 THE COURT: No, no. No.

40 MR. JOHNSON: Yeah.

41 THE COURT: Maybe you didn't hear me about B.C. Hydro
42 being one of the biggest corporations in British
43 Columbia and this is a court process and you're
44 coming and saying you -- B.C. Hydro had better
45 things to do. They didn't give any priority to
46 this. That's what I take from what you said. Am
47 I missing something?

Proceedings

1 MR. JOHNSON: It was definitely oversights that
2 happened in regards to the lack of documents that
3 we have today.

4 THE COURT: All right. And you've come from Vancouver
5 Island?

6 CALUM COUPLAND: No, I -- I live in Langley.

7 THE COURT: Okay.

8 CALUM COUPLAND: It's --

9 THE COURT: Well, that's better.

10 CALUM COUPLAND: It's better. And I took transit, so I
11 didn't have to drive in the rain.

12 THE COURT: Fair enough. All right. You say there's a
13 jurisdiction issue. What's the jurisdiction
14 issue?

15 MR. JOHNSON: Yes, there is a jurisdiction issue. This
16 is indicated in the reply, as well, if I can take
17 you to that.

18 B.C. Hydro is a Crown corporation that's
19 continued under the *Hydro Power and Authority Act*
20 and as such, it's administrated by the Utilities
21 Commission pursuant to the *Utilities Commission*
22 *Act*.

23 THE COURT: Okay.

24 MR. JOHNSON: The Utilities Commission has entered an
25 order, which is the *Electric Tariff*, which
26 indicates how B.C. Hydro must run its affairs and
27 how it must charge its customers. Section 63 of
28 the *Utilities Commission Act* indicates that a
29 public utility must follow those procedures by the
30 letter. It:

31

32 ... must not, without the consent of the
33 commission, directly or indirectly, in any
34 way charge, demand, collect or receive from
35 any person for a regulated service provided
36 by it, or to be provided by it, compensation
37 that is greater than, less than or other than
38 that specified in the subsisting schedules of
39 the utility applicable to that service and
40 filed under this Act.

41

42 THE COURT: Okay. Fair enough. But if somebody
43 doesn't pay their bill, can B.C. Hydro sue them in
44 Small Claims Court? Or do they have to go -- do
45 you have to go to the Utilities Commission?

46 MR. JOHNSON: If I can turn you to Section --

47 THE COURT: No. Answer the question. Can B.C. Hydro

Proceedings

1 sue somebody in Small Claims Court?

2 MR. JOHNSON: It's the conduct of B.C. Hydro --

3 THE COURT: No, did -- no. Can B.C. Hydro sue somebody

4 in Small Claims Court if they don't pay their

5 bill?

6 MR. JOHNSON: To my awareness, I don't know whether

7 that's actually been adjudicated. I don't believe

8 that would be covered under Section 72 of the

9 *Utilities Commission Act* which says that the

10 activities of the utility --

11 THE COURT: So you don't know. You don't know whether

12 B.C. Hydro can -- how does B.C. Hydro collect its

13 bills?

14 MR. JOHNSON: I'm not aware of any case law to that

15 effect.

16 THE COURT: Okay. Well --

17 MR. JOHNSON: It is my --

18 THE COURT: -- how does -- how does B.C. -- how does

19 B.C. Hydro collect from somebody if they don't

20 pay?

21 UNIDENTIFIED SPEAKER: Maybe I can interject. From

22 B.C. Hydro. What we would do is we would send out

23 this notification that power still wasn't paid

24 for. We would cut the power. And we would then

25 try to get the money from the customer provided

26 they're still accessible and --

27 THE COURT: Okay.

28 UNIDENTIFIED VOICE: -- we still have an address for

29 them. If not, it would go to a collections agency

30 and they -- that customer, depending on the amount

31 owing, the timeframe, they would have -- they

32 would not be able to reapply and have new service

33 with B.C. Hydro until that past debt was taken

34 care of.

35 THE COURT: All right. But if the person doesn't pay,

36 can B.C. Hydro sue in Small Claims Court? I think

37 they can.

38 MR. JOHNSON: I believe they can --

39 THE COURT: Okay.

40 MR. JOHNSON: -- based upon that individual's actions.

41 THE COURT: Okay.

42 MR. JOHNSON: B.C. Hydro, as a regulated entity, is

43 regulated differently and as per Section 72 of the

44 *Utilities Commission Act*:

45

46 The commission has jurisdiction to inquire

47 into, hear and determine an application by or

Proceedings

1 on behalf of any party interested,
2 complaining that a person constructing,
3 maintaining, operating or controlling a
4 public utility service or charged with a duty
5 or power relating to that service, has done,
6 is doing or has failed to do anything
7 required by this Act or another general or
8 special Act, or by a regulation, order, bylaw
9 or direction made under any of them.

10
11 The *Electric Tariff* is an order made by the
12 Utilities Commission in regards to B.C. Hydro.
13 THE COURT: If you -- if -- I see it a lot differently.
14 I see if he's -- B.C. Hydro wanted to collect this
15 money and he hadn't voluntarily paid it, you'd
16 have to sue him for it. And he'd say well, I
17 never agreed to -- I never agreed to -- entered
18 into a contract for services from B.C. Hydro. My
19 tenant cut off the services and you don't have any
20 basis to make a claim against me.

21 MR. JOHNSON: With respect, Your Honour, the way that
22 the process worked is that the *Electric Tariff* did
23 institute reasons for him to be charged and he is
24 disputing those reasons for him to be charged.
25 And as such, the jurisdiction argument applies and
26 this should be taken before the *Utilities*
27 *Commission Act* -- I'm sorry, the Utilities
28 Commission.

29 THE COURT: I don't see that at all. I don't -- I
30 don't read that Act the same way you do. And I,
31 quite frankly, I don't understand the reply.

32 MR. JOHNSON: Well, I would like you to be able to
33 understand the reply, so I will attempt to do so,
34 Your Honour.

35 Mr. Coupland is alleging that he was charged
36 incorrectly.

37 THE COURT: No. He's saying that you -- "I didn't ask
38 for any services to be provided to that facility.
39 You did and I don't have to pay for them and the
40 only reason I did pay for them, so I wouldn't get
41 a bad credit rating."

42 MR. JOHNSON: Well, then, if I will take you to
43 paragraph 7 of the reply, which refers to
44 Section 2.1 of the *Electric Tariff*, and -- which
45 indicates that [as read in]:

46
47 B.C. Hydro service customers solely in

Proceedings

1 accordance with the *Electric Tariff* and the
2 terms and conditions --

3
4 And the bolded paragraph towards the end of that
5 on page 2:

6
7 ...except where a theft of service has
8 occurred, a contractual relationship shall be
9 established by the taking of electricity in
10 the absence of an application for service or
11 signed service agreement.

12
13 In this circumstance --

14 THE COURT: Okay. And what evidence is there that he
15 took any -- he took any electricity?

16 MR. JOHNSON: If I can -- in his own trial statement
17 where he does provide his bill, there is a record
18 of when electricity was found at this -- at his
19 premises.

20 THE COURT: No, is -- that's a bill that B.C. Hydro
21 says we're charging you. It's not proof of
22 anything.

23 MR. JOHNSON: I don't believe Mr. Coupland has alleged
24 that he wasn't charged -- that there was no power
25 going to the premises. He's alleged that he asked
26 -- that someone asked for power to be turned off
27 and that it wasn't.

28 THE COURT: Well, do you know what -- was there -- was
29 there something that took electricity at the
30 premises, Mr. Coupland, that used electricity?

31 CALUM COUPLAND: I never used electricity there, but I
32 would gather the duplex has electric heat and the
33 fridge and the stove that -- and the lights. I
34 was unaware that the power was on, under any
35 circumstances, like, I'm usually very organized
36 that -- and the tenant told them to turn it off
37 and they told them twice. B.C. Hydro has said,
38 hey, yeah, they told us to turn it off. In the
39 notes I sent in, one was when I complained that --

40 THE COURT: Okay. We don't know -- he doesn't know
41 whether electricity was on and B.C. Hydro hasn't
42 put any evidence before me that the electricity
43 was on.

44 MR. JOHNSON: I understand that the lack of a trial
45 statement is an issue in this; however, I do have
46 Mr. Petrie here, who can potentially speak to some
47 of these issues.

Proceedings

1 THE COURT: No. But you were under an obligation to
2 provide all the documents and all the facts you
3 rely on. You haven't provided one fact --
4 MR. JOHNSON: Yes, Your Honour.
5 THE COURT: -- and now you come forward with a witness
6 who hasn't -- wasn't disclosed and we have no idea
7 what his evidence is going to be.
8 MR. JOHNSON: Yes, I understand that, Your Honour.
9 THE COURT: So there is no evidence before me at all,
10 right? There's no evidence of any -- any
11 electricity was provided to this residence, is
12 there?
13 MR. JOHNSON: Apart from what Mr. Coupland --
14 THE COURT: Well, he says he doesn't know.
15 MR. JOHNSON: -- has indicated.
16 THE COURT: He didn't think there was any there.
17 MR. JOHNSON: And that he indicated that there was
18 power on --
19 THE COURT: No, he didn't say that. He said, "I didn't
20 know. I thought it was turned off. I went
21 there." That's all the evidence we've got. So we
22 don't know whether or not there's any electricity
23 supplied to this building.
24 MR. JOHNSON: If I can return to the jurisdiction
25 issue.
26 THE COURT: But the jurisdiction has to be based on
27 some facts and there are no facts before me that
28 B.C. Hydro ever supplied any electricity to this
29 facility, correct? Is there any evidence before
30 me?
31 MR. JOHNSON: No, there is not, Your Honour.
32 THE COURT: Okay. Then how can they then have sent a
33 bill to him if there's no evidence that there was
34 any electricity supplied?
35 MR. JOHNSON: If I turn you again to 2.1 of the
36 *Electric Tariff*, it says B.C. Hydro serves
37 customers solely in accordance with the *Electric*
38 *Tariff* and thus also indicates how they are going
39 to be charged.
40 THE COURT: Okay. And who's the customer here? Who's
41 the customer?
42 MR. JOHNSON: I believe Mr. Coupland is the customer,
43 though --
44 THE COURT: And what --
45 MR. JOHNSON: -- and he has provided a --
46 THE COURT: Well, he received a bill from you. The
47 fact that B.C. Hydro sent out a bill to somebody

Proceedings

1 doesn't prove that he's a customer.

2 MR. JOHNSON: He has indicated that he owned the
3 property.

4 THE COURT: Right.

5 MR. JOHNSON: And if I turn you to *Electric Tariff* 2.2
6 at paragraph 8 of the reply:

7
8 ...in the case of already connected
9 Premises, on the day the Customer's
10 right to possession of the Premises
11 commences.

12
13 That's 2.2(b) [as read in]:

14
15 ...the term of service and obligation to pay
16 the rates under the applicable rate schedules
17 and any charges pursuant to these terms and
18 conditions shall commence.

19
20 And I read that a little backwards, but that does
21 indicate that Mr. Coupland, as the possessor of
22 the premises in question, was a customer of B.C.
23 Hydro and thus was responsible for paying the
24 rates as determined by the *Electric Tariff* and as
25 -- under the jurisdiction of the Utilities
26 Commission.

27 THE COURT: All right. Well, that would be the case,
28 if there was any evidence before me, that would
29 support that.

30 MR. JOHNSON: That is in Mr. Coupland's own statement
31 of facts.

32 THE COURT: No. He says -- he says, "I received a
33 bill."

34 MR. JOHNSON: He also says I've bought this property in
35 2007.

36 THE COURT: Right.

37 MR. JOHNSON: And as there was no other tenant at the
38 time, as Mr. Coupland has indicated. He would be
39 in possession of the premises.

40 THE COURT: Okay.

41 MR. JOHNSON: And as he's in possession of the
42 premises, under s. 2.2 of the *Electric Tariff* he
43 is responsible for paying the rates under the
44 applicable rate schedules.

45 And insofar as his objection to paying those
46 rates or to how B.C. Hydro calculated those
47 rates --

Proceedings

1 THE COURT: Well, he's not objecting. He just says the
2 tenant told B.C. Hydro to shut off the power,
3 right?
4 MR. JOHNSON: That is --
5 THE COURT: And I understood the power was off.
6 CALUM COUPLAND: That was confirmed by a complaint I
7 made to the BBB about B.C. Hydro.
8 THE COURT: Okay. But -- but -- that's fine.
9 CALUM COUPLAND: Okay.
10 MR. JOHNSON: And even if Mr. Coupland is submitting
11 that the power was turned off, he's still making
12 objection regarding the amounts charged to him and
13 the rates charged to him as per the *Electric*
14 *Tariff*. And he's indicating that contrary to
15 s. 72 of the *Utilities Commission Act* that the
16 public utility service, that being B.C. Hydro,
17 which has been charged with the duty or power
18 relating to that service, has failed to do
19 something required by this Act. He's indicating
20 that B.C. Hydro has failed to charge him
21 appropriately as per the *Electric Tariff*.
22 CALUM COUPLAND: I --
23 THE COURT: No, he's not. He's saying. "I didn't -- my
24 tenants told B.C. Hydro to shut off the power and
25 I thought the power was shut off and the next
26 thing I know, I get a bill from B.C. Hydro." And
27 that's all we know.
28 MR. JOHNSON: Yes. And he's saying that bill was
29 incorrect.
30 THE COURT: No, he's not saying it's incorrect. He
31 says I shouldn't have been billed and I don't know
32 whether any electricity was provided or not.
33 UNIDENTIFIED VOICE: May I make --
34 THE COURT: No. You have counsel.
35 UNIDENTIFIED VOICE: Right. It's my counsel.
36 THE COURT: If you want to talk to your counsel, feel
37 free to talk to your counsel.
38 MR. JOHNSON: Nonetheless, Your Honour, I submit that
39 even if he's saying that B.C. Hydro is sending him
40 a bill that he's not responsible for paying, he is
41 still objecting to B.C. Hydro's actions as B.C.
42 Hydro was ordered to act under the *Electric*
43 *Tariff*. Either that, or he's disputing the means
44 to -- by which B.C. Hydro calculated the rate
45 charges for that time period in question, as
46 indicated in the bill in his documents, and under
47 either of those circumstances, this would fall

Proceedings

1 under the jurisdictions of the Utilities
2 Commission.
3 THE COURT: Okay. That's your submission?
4 MR. JOHNSON: Your Honour, at the risk of repeating
5 myself, and I understand again that we have some
6 evidentiary issues here; however, from what I
7 understand of Mr. Coupland's complaint, he is
8 alleging that he received a bill that he does not
9 believe he ever consented to power being turned on
10 and he does not say now --
11 THE COURT: No, he's not saying that. He's saying the
12 tenants terminated their service. Okay?
13 MR. JOHNSON: He said, I believe, that they called B.C.
14 Hydro and asked --
15 THE COURT: Well --
16 MR. JOHNSON: -- for their service to be terminated.
17 THE COURT: Well, if -- yes.
18 MR. JOHNSON: To be disconnected.
19 THE COURT: And B.C. Hydro, by their defence, must be
20 taken to acknowledge that they don't have any --
21 they don't have any ability to claim against the
22 former tenants for electricity that was apparently
23 supplied after they left. Okay?
24 MR. JOHNSON: Sorry, I don't follow you there, Your
25 Honour.
26 THE COURT: Well, the tenants -- you say the -- we
27 didn't turn the electricity off, even though the
28 tenants gave notice that they were vacating the
29 premises and wanted the power turned off.
30 MR. JOHNSON: Yes, Your Honour.
31 THE COURT: B.C. Hydro, as I understand it, says that
32 they're compelled to continue to provide service.
33 Do they say that?
34 MR. JOHNSON: Absent a direction from the landlord
35 itself or him or herself.
36 THE COURT: All right. But B.C. Hydro doesn't have any
37 ability to seek payment for the electricity that
38 was provided after the tenants left from the
39 tenant?
40 MR. JOHNSON: From the tenants, no.
41 THE COURT: Okay. The only person they could go to is
42 the owner?
43 MR. JOHNSON: Yes, Your Honour.
44 THE COURT: And based on the evidence before me, no
45 bills were sent to him until October?
46 MR. JOHNSON: Yes, Your Honour.
47 THE COURT: And then a bill was sent to him which was

Proceedings

1 for --
2 CALUM COUPLAND: \$1988.
3 THE COURT: -- \$1988, so it's -- the wrong amount was
4 claimed, the objective of that was reduced to --
5 MR. JOHNSON: Yes, Your Honour.
6 THE COURT: Eventually reduced down to --
7 CALUM COUPLAND: \$862.93.
8 THE COURT: Right. So I don't understand, if he was a
9 customer, why B.C. Hydro didn't send him monthly
10 bills, if they thought he was the person
11 responsible for it. That troubles me too. But we
12 don't know because B.C. Hydro didn't file any
13 statement responding to the trial statement.
14 MR. JOHNSON: Your Honour, regardless of whether a bill
15 was sent late, I don't believe that removes any
16 responsibility from Mr. Coupland to actually
17 paying that bill. He was still in possession --
18 THE COURT: You may be right about that, but I find it
19 troubling that B.C. Hydro doesn't bill anybody for
20 many months and then sends a bill on December 2nd,
21 2014 for \$1900, grossly overcharges him, has no
22 contact with him and then he pays a lesser amount,
23 only because his credit's going to be at risk, and
24 they say well, you had to go before the Utilities
25 Commission.
26 MR. JOHNSON: Yes, because that's the appropriate venue
27 for billing disputes with B.C. Hydro as per the
28 *Utilities Commission Act*.
29 THE COURT: This isn't a billing dispute. This is him
30 paying a bill because his credit's at risk under
31 protest. So it's not a billing dispute and I
32 don't know where you or the lawyer at B.C. Hydro
33 gets the idea it's a billing dispute that has to
34 go before the --
35 MR. JOHNSON: Your Honour, if Mr. Coupland had not paid
36 the amount in question --
37 THE COURT: Right.
38 MR. JOHNSON: -- and was looking at the bill and
39 saying, "I don't owe this," would that not then be
40 a billing dispute?
41 THE COURT: No. It's a debt -- it's a debt and the
42 debts are enforceable in the Supreme Court and in
43 the Small Claims Court for lesser amounts. It's a
44 debt owing. It's an invoice that's sent out and
45 you can sue on the invoice.
46 I don't think it has anything to do with the
47 Utilities Commission. And if it does, then if you

Proceedings

1 say all the billing disputes -- if B.C. Hydro
2 sends out a bill and it isn't to be paid, then
3 B.C. Hydro takes the individual to the Utilities
4 Commission and gets a judgment against them for
5 the amount of the debt? Is that -- is that what
6 you're saying? I mean, you can't have it both
7 ways.

8 MR. JOHNSON: No.

9 THE COURT: You can't have somebody suing to get the
10 money back. They could surely come to the same
11 court that B.C. Hydro would come to if they were
12 going to sue for payment of the debt that's owing.

13 MR. JOHNSON: Your Honour, it's B.C. Hydro's actions
14 that are under the jurisdiction of the Utilities
15 Commission.

16 THE COURT: Exactly.

17 MR. JOHNSON: It's their -- their -- how well they have
18 faithfully followed the orders of the
19 commission --

20 THE COURT: Oh, there's no question --

21 MR. JOHNSON: -- and whether they have failed to do
22 so --

23 THE COURT: There's no question they kept supplying
24 electricity. Good for them. But this isn't about
25 supply of electricity. It's about payment of a
26 debt.

27 MR. JOHNSON: And in the *Electric Tariff* there are many
28 directions to B.C. Hydro about how they will bill
29 customers.

30 THE COURT: Right.

31 MR. JOHNSON: And how they will bill people for whom
32 power has been directed to their homes.

33 THE COURT: Exactly. I don't have any problem with
34 that at all. They have to comply with the
35 Utilities Commission and the Act and whatever
36 about how they bill people.

37 But this is -- this is about payment of an
38 invoice and B.C. Hydro sends out an invoice and if
39 somebody doesn't pay, then B.C. Hydro can sue that
40 individual in Small Claims Court for the amount
41 that's owing. And the person can dispute it.

42 He chose not to dispute it because his credit
43 would be at risk and he wants the money back that
44 he would have disputed otherwise.

45 MR. JOHNSON: And in the event that the dispute is over
46 whether the bill was appropriate or not, the
47 invoice --

Proceedings

1 THE COURT: No, he's --
2 MR. JOHNSON: -- was appropriate or not, it falls under
3 the *Electric Tariff* as --
4 THE COURT: All right. I've -- you've told me that
5 multiple times and --
6 MR. JOHNSON: I understand, we're rehashing --
7 THE COURT: -- I think you're wrong.
8 MR. JOHNSON: -- arguments, I understand, yes.
9 THE COURT: I think you're wrong and you have a remedy
10 and that's to appeal it to the Supreme Court.
11 So. . .
12 MR. JOHNSON: In terms of other issues, I would submit
13 that B.C. Hydro's actions in terms of this actual
14 events that happened, B.C. Hydro's actions were in
15 accordance with the *Electric Tariff* and as,
16 again --
17 THE COURT: What actions? What actions?
18 MR. JOHNSON: Basically just actions of billing
19 Mr. Coupland. And again, I turn to s. 2.1, where:
20
21 ... a contractual relationship shall be
22 established by the taking of electricity in
23 the absence of an application for service or
24 signed service agreement.
25
26 THE COURT: Well, we don't have any evidence about what
27 happened here. We don't have any evidence of any
28 electricity was ever supplied.
29 MR. JOHNSON: We also don't have any evidence to the
30 contrary.
31 THE COURT: Well, they send him a bill.
32 MR. JOHNSON: yes.
33 THE COURT: He says, "I don't know whether electricity
34 was ever supplied or not."
35 MR. JOHNSON: And --
36 THE COURT: That's the only evidence before me.
37 MR. JOHNSON: I believe he said, "I don't know," which
38 is not to say that it was or was not. It's in --
39 THE COURT: Well, it's for B.C. Hydro to establish on
40 the evidence that electricity was supplied to this
41 -- this duplex and we don't know because
42 Mr. Coupland says he wasn't there and B.C. Hydro
43 had the ability to explain that electricity was
44 supplied and how it was measured and how it was
45 calculated. They didn't do that.
46 MR. JOHNSON: Your Honour, I understand that the lack
47 of a trial statement in this circumstance is a

Proceedings

1 grave issue and that point causes us to have
2 evidentiary concerns; however, I submit to Your
3 Honour that the error on that part was my error
4 and my client should not be prejudiced for the
5 lack of it. And insomuch as we have some evidence
6 here to present to the court, I think it would be
7 unfair to my client if my client was not able to
8 present that evidence to the court.

9 THE COURT: Well, the simplified trial process is
10 intended to allow people to have relatively minor
11 disputes handled quickly and efficiently and it
12 requires the parties to comply with the *Rules*.
13 The *Rules* are pretty simple. The parties are
14 required to put before the opposite party all the
15 evidence they're going to rely on, both written
16 and oral, and identify the witnesses they're going
17 to call 14 days beforehand.

18 This matter was -- the action was commenced
19 June of 2015 and B.C. Hydro filed a legal response
20 which didn't set out one fact. There's no facts
21 in the response. It's --

22 MR. JOHNSON: There are, Your Honour.

23 THE COURT: Well --

24 MR. JOHNSON: I can direct you to them. Or at least
25 there's --

26 THE COURT: It says -- well, it says B.C. Hydro is --
27 deny every allegation, it's a Crown corporation
28 and it distributes electricity, delivers
29 electricity in accordance with these various Acts.
30 But there's no -- there's no facts that apply --
31 that respond to the claim made by Mr. Coupland.
32 So it's not just a trial statement. It's a --
33 it's a reply that doesn't address the issues.

34 MR. JOHNSON: Paragraph 11 of the reply, it does
35 indicate that the physical supply of electricity
36 to the premises was disconnected. And I admit
37 it's a small point that would indicate that there
38 was electricity flowing to the property
39 beforehand, before that was actually physically
40 disconnected.

41 THE COURT: Well, here are the facts. I'm glad you
42 brought it to my attention [as read in]:

43

44 On March 31st a meter reading was taken
45 indicating consumption rate of --

46

47 "X".

Proceedings

1
2 On 19 B.C. Hydro caused the physical supply
3 of electricity to the premises to be
4 discontinued.
5
6 And then it says:
7
8 At all material times and in particular
9 between April 1st, 2014 and September 18th,
10 the claimant was in possession of the
11 premises.
12
13 I don't know what that means, "in possession of
14 the premises" means, but he says there was nobody
15 there and he wasn't there.
16 MR. JOHNSON: He was the registered owner of the
17 premises at that time.
18 THE COURT: All right. Well. . . All right. So there
19 are those limited facts there.
20 MR. JOHNSON: Sorry?
21 THE COURT: There are those limited facts at
22 paragraphs --
23 MR. JOHNSON: There are those limited facts. And I do
24 submit, Your Honour, that the invoice that
25 Mr. Coupland has provided does indicate kilowatt
26 hours and time periods for them, and I believe
27 that is evidence that power was taken at that
28 time.
29 THE COURT: No, all that's evidence is that B.C. Hydro
30 sent a bill. He doesn't know. I mean, he doesn't
31 know what the bill said. He has no -- he has --
32 he doesn't know whether or not electricity was
33 supplied because he wasn't there. Right?
34 MR. JOHNSON: It provides numerical --
35 THE COURT: No, no, it's just --
36 MR. JOHNSON: -- calculations.
37 THE COURT: It -- all this is is he -- all he can say
38 about this document is I received it, and B.C.
39 Hydro charged me and I object to the -- to paying
40 the bill. He has no knowledge, and you can't
41 introduce evidence about -- support your case
42 through that bill. You have to call --
43 MR. JOHNSON: Yes.
44 THE COURT: -- evidence from B.C. Hydro.
45 MR. JOHNSON: I understand that, Your Honour.
46 THE COURT: Okay. You said you had some other points
47 you wanted to raise.

Proceedings

1 MR. JOHNSON: Well, a lot of my other points involve
2 evidence that Your Honour is preventing us, given
3 the lack of trial statement, from providing at
4 this point.

5 THE COURT: No, I'm not preventing you. You and your
6 client did not put any evidence before the court
7 and I'm not preventing you from doing -- you had
8 every opportunity to do it and you didn't do it.

9 MR. JOHNSON: Then I don't have any further points to
10 address anything that Mr. Coupland has so far
11 stated, Your Honour.

12 THE COURT: All right. Mr. Coupland?

13 CALUM COUPLAND: Yes, sir?

14 THE COURT: You've put evidence before the court in the
15 form of your trial statement. This is evidence
16 that I can rely on.

17 CALUM COUPLAND: Yeah.

18 THE COURT: Mr. Coupland, you say, "I am now willing to
19 have the reconnection fee taken out of the claim."

20 CALUM COUPLAND: That's right. In the circumstances
21 are with that, when I filed the Small Claims
22 action, I asked for the complete amount of the
23 second bill, but in hindsight, I think it's fair
24 for me to pay the reconnection fee and the GST on
25 that. I shouldn't have asked for that in the
26 Small Claims Court matter.

27 THE COURT: And so you're seeking the sum of \$730.10?
28 And that's what you say at the end of your claim,
29 plus \$100 plus \$80 service fee.

30 CALUM COUPLAND: Yes, that's right. Yes, it is.
31 That's right.

32 THE COURT: All right. I accept what is in your trial
33 statement is evidence before me that I can rely on
34 and I need not hear evidence from you. I am --
35 B.C. Hydro has not filed a trial statement, nor
36 did they put forth any evidence responsive to your
37 claim in the original reply that was filed. And
38 accordingly, I am prepared to give judgment based
39 on the evidence before me in your trial statement.

40 MR. JOHNSON: Your Honour, if I may make one additional
41 statement?

42 THE COURT: Okay.

43 MR. JOHNSON: I'd refer to the invoice, as well, and
44 there is an additional charge there for the 731
45 from November --

46 THE COURT: Where -- which document are you looking at?

47 MR. JOHNSON: This is --

Proceedings

1 CALUM COUPLAND: What's the date on it, my friend?
2 MR. JOHNSON: December -- pay by December 16th, 2014.
3 CALUM COUPLAND: Okay.
4 MR. JOHNSON: And on the second page, a portion of the
5 charge is for November 5th to November 6th.
6 CALUM COUPLAND: Yes, that's correct.
7 MR. JOHNSON: And I believe that was when the power was
8 turned back on.
9 CALUM COUPLAND: That is correct.
10 MR. JOHNSON: And I don't believe that should be part
11 of any judgment in this matter.
12 CALUM COUPLAND: I think I addressed that -- yes, on
13 the amount claimed, Document B, that's off the
14 bill, 862, the service reconnection, 125, hydro
15 usage from November --
16 THE COURT: I'm having trouble finding -- where are you
17 now?
18 CALUM COUPLAND: We were talking about how much I --
19 THE COURT: No, but which -- which page are you on? I
20 don't --
21 CALUM COUPLAND: I'm at Document B, "amount claimed".
22 And that's where I wanted to pay the service
23 reconnection fee.
24 THE COURT: Right.
25 CALUM COUPLAND: And then also on there I said I wanted
26 to pay for the hydro from November 3rd till
27 November 6, when it was hooked back up and I felt
28 that was fair also.
29 THE COURT: Okay. So there's November 3rd to November
30 6th, how much is that?
31 CALUM COUPLAND: It was -- usage charge a buck-fifty.
32 THE COURT: A dollar-fifty?
33 CALUM COUPLAND: Please. And a basic charge of 33
34 cents. And this is on page 2 of that November
35 24th bill.
36 THE COURT: The usage is one-fifty and GST is --
37 CALUM COUPLAND: Thirty -- well, there would be GST on
38 the buck-fifty and the 33 cents. What they have,
39 they have the basic charge, two days, 33 cents,
40 usage charge, a dollar-fifty.
41 THE COURT: Oh, I see. So the total is \$123 and you've
42 deducted that from the eight-sixty-two-ninety-
43 three, coming up with the seven-thirty-ten; is
44 that right?
45 CALUM COUPLAND: The total would be the 150 plus the 33
46 plus the GST on that. And plus a reconnection fee
47 of 125 and GST on that.

Proceedings

1 THE COURT: All right. Okay. All right. I am
2 prepared to give judgment. You can both sit down.

3 CALUM COUPLAND: Thank you.

4

5 [REASONS FOR JUDGMENT]

6

7 CALUM COUPLAND: Thank you, Your Honour.

8 MR. JOHNSON: Thank you, Your Honour.

9

10 (PROCEEDINGS CONCLUDED)

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12

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14 Transcriber: S. Osborne

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