

**Staufen**  
**Versus**  
**Attorney General Of British Columbia**  
**2001 BCSC 779 (CanLTT)**

**(A Case Study)**

**By**

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**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN

PHILIP STAUFEN

PETITIONER

AND:

THE ATTORNEY GENERAL OF BRITISH COLUMBIA

RESPONDENT

**REASONS FOR JUDGMENT OF THE**  
**HONOURABLE MR. JUSTICE SCARTH**

**(IN CHAMBERS)**

The petitioner, Philip Staufen:

In person

Amicus Curiae:

Manuel Azevedo

Counsel for the Respondent,

The Attorney General of British

Jeffrey M. Loenen

Columbia:

Date and Place of Hearing:

May 16, 2001 Vancouver, BC

### **LAWS INVOLVED IN THIS CASE:**

- 1) Inherent Powers of the Court.
- 2) Application of Concept of “Legal Fiction” – deeming clause
- 3) Not filling in “Lacunas or gaps” in law as per principles of interpretation of statute.

### **Judgment abridged, edited and summarized by the present author.**

“Philip Staufen, the name by which the petition goes, was diagnosed in November 1999, by a medical doctor in Toronto to be suffering from post concussion global amnesia. To this date, nearly 18 months later, Mr. Staufen has not recovered his memory. He deposes in his affidavit sworn on February 15<sup>th</sup>, 2001 that he has no memory of any events prior to waking up in the hospital in Toronto in November, 1999 where, according to what he was told by hospital staff he had lain unconscious for several days, unable to walk or speak. He does not know whether Philip Staufen is his real name, where he was born, or whether his correct date of birth is June 7<sup>th</sup>, 1975 as indicated on his Ontario hospital card.”

“In essence the petitioner wants this court to provide him with an identity. (emphasis added) He applies by way of Amended Petition to the court for a declaration that he, the petitioner Philip Staufen, was born in Vancouver, British Columbia on the 7<sup>th</sup> day of June 1975, and for an order that the Attorney General of British Columbia issue a birth certificate in the name of Philip Staufen born in Vancouver, British Columbia on June 7, 1975.”

### **Authors’ Note:**

There is No Evidentiary Basis for the Above Facts.

“In his affidavit Mr. Staufen deposes that he has no identity documents whatsoever except for an Ontario hospital card. He does not know the source of the date of birth shown on the card or who assigned the name Philip Staufen to him although the date of birth **seems to be right.**”

**“As defined by the Oxford Canadian Dictionary a “legal fiction” is “an assertion accepted as true (though probably fictitious) to achieve a useful purpose, esp. in Legal matters”. In the Historical Introduction to English Law**

**and its Institutions (3<sup>rd</sup> Edition)**\_by Harold Potler, the learned author, at p. 302, groups the Fictions used into three classes: (1) Fiction used to increase the jurisdiction of the courts; (2) Fictions designated to avoid cumbersome and archaic form of action; (3) Fictions having a false assumption of fact in order to extend the **remedy the court could grant.**”

“Jowitt’s Dictionary of English Law (2<sup>nd</sup> Edition) at p. 787 provides two examples in order to illustrate how the former practice and jurisdiction of the courts rested largely on fictions. Thus, the King’s Bench acquired jurisdiction in actions for debt by “surmising” “feigning” that the defendant has been arrested for a trespass which he had never committed and then allowing the plaintiff to proceed against him for debt. In the second example the court of Exchequer acquired jurisdiction by permitting the plaintiff in certain actions to plead that he was a debtor to the King and that by reason of the cause of action pleaded he has become less able to pay his wholly fictitious debt to the King.”

“Although fictions have been used extensively over the centuries to expand the jurisdiction of the courts and the nature of the relief, they can grant, I have not been referred to, and have not in my own research found, an instance where a fiction has been used by a court to invent the facts necessary to decide the very issue before it. Judges are frequently told by appellate courts not to speculate on the evidence. What is sought here would require the court to do more than speculate.” (Emphasis Added)

Two basic laws of Canada are directly attracted to the facts and circumstances of the present case which deal with the registering of births, deaths and marriages. The laws are:

- i. Vital Statistics Act
- ii. Vital Statistics Act Regulation

There has been a lot of discussion on the various provisions of these two laws by the Hon’ able Mr. Justice Scartch. Finally the judge came to the following conclusion/decision:

**“It is not for the courts to over ride the clear intention of the legislature on the pretext of finding a “gap: in the legislation.”**

The application must be dismissed.”

“W.B.Scartch j.”

After such a long intellectual exercise, the judge took resort in the basic principle of the Interpretation of Statue. The courts are not to fill in the gaps in legislation.