



Partner George Macintosh, Q.C., leads the litigation group at Farris and features in this article.

About George Macintosh, Q.C.

George Macintosh leads the litigation group at Farris and practises as general counsel specializing in civil litigation, at trial and on appeal, appearing before many provincial and federal tribunals, including the Supreme Court of Canada. George can be contacted by phone (604) 661-9332 or email: gmacintosh@farris.com

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\$600,000 damage award faces appeal

Cambie merchants still seeking compensation in class action lawsuit



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Cambie Street maternity wear merchant Susan Heyes won \$600,000 in damages in British Columbia Supreme Court May 27 after a multi-year battle to get compensation for lost business during Canada Line construction. But, the Hazel & Co. owner will likely have to wait through an appeal before ever seeing a dime.

"We will be advising the client that there are grounds for appeal," confirmed Farris, Vaughan, Wills & Murphy LLP partner George Macintosh, Q.C., who acted for a range of defendants including TransLink, its subsidiary Canada Line Rapid Transit Inc. and private consortium InTransit BC LLP, which was set up to build and operate the line. Macintosh believes Justice Ian Pitfield's judgment contains errors in law although Macintosh wanted to discuss the errors with his clients before elaborating.

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Pitfield's judgment would have wide-ranging consequences were it to stand. In November 2008, Park Theatre owner Leonard Schein and the Cambie Village Business Association filed a class action lawsuit that relies on similar arguments. They are waiting for court certification to allow that action to proceed. "I assess the loss of business income sustained by Hazel & Co., as a consequence of cut-and-cover tunnel construction, at \$600,000," Pitfield wrote in his judgment.

Pitfield held that defendants used the cut-and-cover construction method because it was cheaper than boring a tunnel. He didn't question the defendants' motives, though. Pitfield said exemplary damages against the defendants were not warranted because "defendants believed they were acting in the public interest in relation to a project of considerable complexity." He also absolved several defendants (Canadian government, the Attorney General of British Columbia and the City of Vancouver) from liability. Heyes had told the court that the trench outside her shop cost her \$900,000 in business and forced her to move her shop to Main Street. Still, Heyes' lawyer, A. Cameron Ward & Company principal Cameron Ward, told Business in Vancouver that he was pleased with Pitfield's judgment. "The line could have been built as originally contemplated, a bored tunnel, without causing a legal nuisance," he said. "Big business and big government must be more sensitive to those impacted by projects like these."

Fellow merchants, who similarly moved their enterprises, also cheered. Tomato Fresh Food Café owner Christian Gaudreau said Canada Line construction forced him to move his 17-year-old café from its Cambie Street location to West Broadway and Bayswater Street. "It would be nice to get something," he said. "It's not a point to be greedy and all that but it cost me a fortune to move my restaurant." He estimates that he lost at least \$300,000 in business and had to spend a similar amount to move to his new location. Many regulars have not followed Gaudreau and business has not been as profitable as it was on Cambie Street before the construction started, he said.