

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150204

Docket: A-383-14

Citation: 2015 FCA 38

Present: STRATAS J.A.

BETWEEN:

SYNCRUDE CANADA LTD.

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on February 4, 2015.

REASONS FOR ORDER BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR ORDER

STRATAS J.A.

[1] The appellant moves for an order settling the contents of the appeal book, and for related relief.

[2] The main point of difference between the parties concerns whether certain exhibits and a couple of orders should be included in the appeal book. The appellant considers it necessary to include these materials in the book; the respondent disagrees.

[3] The respondent points out that Rule 342(2) of the *Federal Courts Rules*, SOR/98-106 provides that “only such documents, exhibits and transcripts as are required to dispose of the issues on appeal” should be included in an appeal book.

[4] At this stage of the appeal, I am loath to second-guess the evaluation of counsel for the appellant as to what is necessary to include in the appeal book. In clear cases, I can intervene. But here, I would afford counsel for the appellant a good margin of appreciation.

[5] If it turns out that counsel for the appellant has included unnecessary material and, as a result, has incurred unnecessary expense, the appellant will bear the costs in an adverse costs award if it loses. If the appellant wins, the respondent has a remedy:

If they do not make use of this material [including in the appeal book] in their memorandum of fact and law or oral argument and if this material is quite unnecessary to the Court’s consideration of the appeal, [they] will be responsible for a breach of the obligation to minimize the material in the appeal book. This may be addressed when this Court considers the matter of costs at the conclusion of the appeal.

(*Canada (Superintendent of Bankruptcy) v. MacLeod*, 2010 FCA 97, 402 N.R. 347 at paragraph 8.)

[6] Given the availability of that remedy – a remedy that might not even be necessary – this dispute does not make sense.

[7] But here, it makes even less sense. The appellant has proposed a course of action that would minimize any prejudice. It asks to file the record in electronic form. And it proposes that

before the hearing the parties file compendia in paper form containing materials referenced in their memoranda.

[8] If the appellant's proposal were accepted, the filing of unnecessary orders and exhibits would mean that, perhaps, a few unnecessary gigabytes would reside on the terabyte servers of the Department of Justice. And the Court and the parties would have, in paper form, the essential material for the appeal.

[9] But the respondent opposes in part the appellant's proposal. It agrees to the idea of compendia in paper form. It agrees to an electronic record. But it insists on receiving one copy of the entire record in paper form, even the portions it says are unnecessary for the appeal and the portions that will be received in paper form in the parties' compendia. It does not explain why it needs a single paper copy of the entire record. At the same time, as noted above, the respondent points its finger at the appellant for injecting unnecessary material into this appeal.

[10] From the foregoing reasons, I largely agree with the appellant's position on this motion. The appellant's position needs to be modified somewhat, bearing in mind that paper copies of some basic documents, such as the reasons below, are preferred by some of the judges of this Court.

[11] Having read and considered the material before me, I shall make the following order:

- (1) The appellant shall prepare, serve and file an electronic record recorded on electronic media (in the number of copies specified in Rule 345) within the times required under Rule 343. The electronic record shall contain only the table of contents under Rule 344(1)(a) and the documents under Rule 344(1)(e). The appellant shall arrange and label the electronic materials in a manner analogous to that in Rule 344 in order to facilitate accurate, quick and easy access to the material.
- (2) Simultaneous with the serving and filing of the electronic record, the appellant shall serve and file a Book of Essential Documents in paper form (in the number of copies specified in Rule 345) containing the documents in Rule 344(1)(a)-(d) and Rule 344(1)(f)-(i) and formatted and printed in accordance with Rule 344.
- (3) The materials in the electronic record and in the Book of Essential Documents shall collectively comprise the materials set out in the “Agreement as to Content of the Appeal Book” in Schedule “A” to the appellant’s notice of motion.
- (4) Simultaneous with the serving and filing of their memoranda of fact and law, the parties shall serve and file compendia in paper form, consisting of the specific materials or portions of materials referenced in their memoranda and found in the electronic record in paragraph 1.

- (5) The deadline for the filing of the electronic record in paragraph 1 shall be forty days from the date of this order. The remaining deadlines shall follow in accordance with the *Federal Courts Rules*.

[12] The appellant shall have its costs of the motion.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-383-14

STYLE OF CAUSE: SYNCRUDE CANADA LTD. v.
THE ATTORNEY GENERAL OF
CANADA

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: STRATAS J.A.

DATED: FEBRUARY 4, 2015

WRITTEN REPRESENTATIONS BY:

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