Federal Court of Appeal  Cour d'appel fédérale

Date: 20170301

Docket: A-561-15

Citation: 2017 FCA 41

CORAM: **PELLETIER J.A.**
SCOTT J.A.
DE MONTIGNY J.A.

BETWEEN:

P. & S. HOLDINGS LTD. AND THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 170

Appellants

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, INTERNATIONAL HERBS MEDICAL MARIJUANA LTD. AND 8015376 CANADA LTD.

Respondents

Heard at Vancouver, British Columbia, on November 29, 2016.

Judgment delivered at Ottawa, Ontario, on March 1, 2017.

REASONS FOR JUDGMENT BY: DE MONTIGNY J.A.

CONCURRED IN BY: PELLETIER J.A.
SCOTT J.A.

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Respondents

REASONS FOR JUDGMENT

DE MONTIGNY J.A.

[1] The respondent International Herbs Medical Marijuana Ltd. (the Proponent or International Herbs) sought approval from Health Canada (or the Minister, on behalf of Her Majesty The Queen in Right of Canada) to become a licensed medical marijuana producer

pursuant to the *Marihuana for Medical Purposes Regulations*, S.O.R./2013-119 (the Regulations, as repealed by *Access to Cannabis for Medical Purposes Regulations*, S.O.R./2016-230, s. 281), and to establish a production facility in Delta, British Columbia (Delta or the Municipality). The appellants, a corporation and a union who conduct business on an adjacent property of the proposed production facility, opposed the application and requested to make submissions to Health Canada before the licence could be issued. The Minister having failed to respond to their request, the appellants filed a Notice of Application for judicial review and sought a *mandamus* order compelling the Minister to grant them participatory standing. The Federal Court, per Justice Mactavish (the Judge), dismissed the application, being of the view that neither the Regulations nor the common law provide the appellants with a right to participate in the licensing process for medical marijuana production. It is from that decision (Reasons for Judgment) that the appellants appeal.

[2] Underlying these legal proceedings are complex and sensitive social policy issues. As will be more fully explained below, the appellants genuinely believe that the proximate operation of a marijuana cultivation site will be detrimental to the health, safety and security of their members and employees, and will have a particularly negative impact on the students attending the trade school operating within their facilities. They are also concerned that a medical marijuana growing site located in close proximity to their property will send the wrong message to their membership and will negate their efforts to develop a culture of workplace sobriety and a zero-tolerance policy towards impairment on the job.

[3] The respondents argue that they have a no less compelling mandate to ensure that medically registered persons can have access to marijuana. Indeed, Canadian courts have determined that individuals who have demonstrated a medical need for marijuana have a constitutional right to reasonable access to a legal source of marijuana for medical purposes (see for example *R. v. Parker*, 49 O.R. (3d) 481, [2000] O.J. No. 2787 (C.A.); *Hitzig v. Canada*, 231 D.L.R. (4th) 104, [2003] O.J. No. 3873 (C.A.); *Sfetkopoulos v. Canada (Attorney General)*, 2008 FC 33, 163 A.C.W.S. (3d) 556, aff'd 2008 FCA 328, 382 N.R. 71). It appears from the Regulatory Impact and Analysis Statement (RIAS) that the purpose behind the Regulations was to provide for the steady supply of reasonably-priced, high-quality medicinal marijuana, while reducing the risks to safety and security of Canadians that had arisen with the previous regulatory scheme (see *Marihuana Medical Access Regulations*, S.O.R./2001-227, as repealed by the Regulations) which allowed individuals to grow their own marijuana for medical purposes. Such an objective is clearly a legitimate one.

[4] It is with this backdrop in mind that this appeal must be decided. That being said, it is not for courts to second-guess the policy choices made by Parliament. There being no constitutional challenge to the Regulations, our limited task in the case at bar is to determine whether the process followed by the Minister in issuing the licence is in conformity with the law, and more particularly, whether the appellants are entitled to have their views heard and considered by the Minister. For the reasons that follow, I am of the view that the Judge was correct in answering the latter question in the negative.

I. Background

[5] In 2013, the Proponent submitted an application to Health Canada to become a licensed medical marijuana producer under the Regulations. As required by the Regulations, the proposed production site in Delta, which the respondent 8015376 Canada Ltd. (376 Canada Ltd.) owns, was attached to the application. International Herbs and 376 Canada Ltd. are part of the same conglomerate (collectively referred to as the respondents).

[6] In December 2013, Health Canada advised the Proponent that the licence application was generally in order and indicated that once the production facility was completely built, Health Canada would arrange for a pre-licence inspection. Health Canada indicated that the pre-licence inspection was intended to confirm that the security of the cultivation and storage areas are in compliance with the Regulations and Health Canada's Directive on Physical Security Requirements for Controlled Substances.

[7] The appellant P&S Holdings Ltd. owns the neighbouring property to the proposed production site. This building houses the offices of the other appellant, the United Association of Journeymen and Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada, Local Union 170 (the Union, collectively referred to as the appellants). In addition to its union activities, the property is also home to a trade school where instruction is provided in six different trades to more than 200 students, and also to a restaurant which holds a banquet hall and catering facility.

[8] Both appellants object to the Minister's potential decision to grant the production licence on essentially three grounds. They argue that the production facility will likely cause an increased potential for criminal activity, a persistent marijuana odour, and a degraded environment quality in the vicinity of the proposed site and the neighbouring property.

[9] Apparently in anticipation of the coming into force of the Regulations as of April 2014, Delta introduced in January 2014 a Bylaw amendment to prohibit medical marijuana production in all land use zones under Delta's planning authority. The objective was to allow the municipality to control the location of medical marijuana production facilities by way of site-specific approval.

[10] In March 2014, the Proponent submitted an application to Delta to rezone the proposed production site for medical marijuana production. On March 10 and May 27, 2014, the Union's business manager wrote to Delta to voice the appellants' concerns regarding the proposed rezoning. The Municipality's Community Planning and Development Department acknowledged these concerns, but nevertheless supported the proposed rezoning.

[11] At a public hearing concerning the Proponent's rezoning application held on May 27, 2014, the Union again made the same submissions orally and in writing. The minutes of that meeting summarize the essence of the Union's objections:

> [Joe Shayler] shared concerns regarding the application on behalf of United Association Local 170 noting that the subject property is next door to the union, training school, and restaurant. Mr. Shayler advised that UA Local 170 has invested millions of dollars in their building and it is considered one of the top facilities in North America. Over 200 students attend the facility and this proposal will have an adverse effect on them. In the collective agreement, there is a no

> drug and alcohol policy and it is therefore not conducive to have a marihuana production facility next door. Concern was expressed regarding the potential odour emanating from the facility.
>
> Appeal Book, Exhibit "G" to the Affidavit of Monty Sikka at p. 186.

[12] Having heard those concerns from the Union (it being the only party opposing the rezoning application), Delta's municipal council (Delta Council) decided to follow the Community Planning and Development Department's recommendation by proceeding with the proposed rezoning, subject to the registration of certain restrictive covenants on the title of the proposed site which required, among other things, compliance with the Regulations. The final reading of the proposed rezoning Bylaw will take place once Health Canada has issued the producer's licence to the Proponent.

[13] On the basis of their view that their interests stood to be affected by the outcome of the licensing process, the appellants applied to the Minister by letter dated July 3, 2014, for participatory standing in the licensing process. Having received no reply to their request, they sent two follow-up letters to the Minister on August 19 and September 24, 2014. As no response to any of the letters was received from the Minister, the appellants took the position that their request had been implicitly denied. As a result, they brought an application for judicial review whereby they sought a declaration that, "as a matter of natural justice and procedural fairness, [they] are entitled to be heard as to how their interests stand to be impacted by the licensing of a marijuana growing operation adjacent to their property". They also sought an order of *mandamus* directing the Minister to grant their request for participatory standing and the opportunity to be heard in the licensing process.

II. The impugned decision

[14] After having identified the two issues raised in the application as being 1) whether the appellants (applicants in the decision below) have standing to bring the application for judicial review, and 2) whether the appellants have a common law right to be heard in the course of the Minister's decision to grant the licence, the Judge noted that there was considerable overlap between the two questions. Relying on a decision of this Court (*Irving Shipbuilding Inc. v. Canada (Attorney General)*, 2009 FCA 116, 314 D.L.R. (4th) 340 [*Irving Shipbuilding*]), she found that the question of the appellants' standing must be resolved in the context of the ground of review on which they rely. In other words, if the appellants are found to be entitled to participate in the licensing process, they must also have the corresponding right to bring the matter before a court of law to determine whether the process followed violated their procedural rights. Accordingly, the issues to be resolved are 1) whether the Minister owes a duty of procedural fairness to the appellants such that they are entitled to participate in the licensing process, and 2) whether the deemed refusal of the Minister to allow the appellants to make submissions constituted a breach of that duty. On appeal, both parties agreed with this analytical framework.

[15] The Judge also found that the standard of review is correctness, given that the central issue to be resolved involves a question of procedural fairness.

[16] The appellants having conceded that the Regulations do not contemplate a role for third parties in the licensing process, the Judge then turned her mind to the nature and purpose of the

regulatory scheme to determine whether the appellants were entitled to any common law rights to procedural fairness. She stressed, in particular, that the purpose of the new Regulations was to treat medicinal marijuana like any other prescription drug and to ensure, through stringent conditions, that it is produced in a safe and secure environment. She also stressed the role given to local authorities under the Regulations, and the requirement that the zoning of a proposed marijuana production facility permit such a use.

[17] With this understanding of the regulatory process, the Judge then asked herself whether the Regulations impliedly exclude parties such as the appellants from participation in the licensing process. After providing several examples of participatory rights granted to those parties expressly named by the Regulations, she made the following critical finding (at paragraph 53 of her Reasons for Judgment):

> The Regulations thus contemplate that their application may affect the rights of various parties directly implicated in the licencing process, specifically producers of medicinal marijuana and their employees, and patients who have been prescribed medical marijuana. Such parties are afforded a right to be heard in relation to decisions that have a direct impact on them. No such participatory rights are afforded to strangers to the licencing process such as the applicants, as the Regulations do not contemplate any role for such parties in the licencing process. Strangers to the licencing process are thus excluded from entitlement to participation in the process by necessary implication.

[18] Finally, the Judge gave much significance to the zoning process. Reviewing the grounds upon which the appellants object to the licensing of the respondents' marijuana production facility, the Judge made another crucial observation: the appellants' objections are not directed to one particular applicant, but are rather of a more generic nature. As the Judge stated (at paragraph 68 of her Reasons for Judgment):

> […] the applicants' concerns are more general in nature: that is, they have concerns about *anyone* building a marijuana production facility next to their property. Thus applicants' concerns do not actually relate to the medical marijuana licencing process *per se*, but relate instead to the uses to which the adjoining property may be put. The compatibility of uses is ultimately a question of land use planning, and the administrative avenue available to the applicants to express their concerns in this regard was, and remains, the municipal zoning process. [emphasis in the original]

[19] In the result, the Judge found that the appellants had a right (which they exercised) to participate in the municipal zoning process if they had concerns (mostly unsubstantiated, in her view) regarding a proposed use for a neighbouring property. They had no right (statutory or common law based), however, to participate in the licensing process.

III. Issues

[20] The central issue in this appeal is whether the Judge erred in finding that the Minister did not owe the appellants a duty of procedural fairness and therefore did not have to grant them participatory rights in the licensing process. Alternatively, the question arises as to whether the Judge could find that any common law duty of procedural fairness had been ousted by the regulatory scheme.

IV. Analysis

[21] The law is well-settled with respect to the applicable standard of intervention on appeal from an application for judicial review. Adopting the approach set out by this Court in *Canada Revenue Agency v. Telfer*, 2009 FCA 23 at paragraph 18, 386 N.R. 212, the Supreme Court confirmed that the proper approach is to determine whether the court below identified the

appropriate standard of review and applied it correctly (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-46, [2013] 2 S.C.R. 559). In other words, the appellate court must "step into the shoes" of the lower court and focus on the administrative decision being challenged (*Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para. 247, [2012] 1 S.C.R. 23).

[22] There is no issue between the parties that the Judge did not err when she selected the correctness standard of review. Whether the appellants have a right to participate in the medical marijuana production licensing process is clearly an issue of procedural fairness, and such issues must be reviewed against the exacting standard of correctness (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 43, [2009] 1 S.C.R. 339).

[23] The appellants have submitted that the Judge erred in finding that they will have a further opportunity to participate in Delta's municipal rezoning process. To the extent that such a finding of fact was not in the nature of an *obiter dictum* and was material to the Judge's ultimate determination that the Minister did not owe the appellants a duty of procedural fairness, it should only be displaced if it does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47, [2008] 1 S.C.R. 190).

[24] The appellants contend that the Judge erred in employing the wrong test for determining whether they have a common law right to be heard in the course of the Minister's decision to licence a marijuana growing operation. Specifically, they submit that she erroneously conflated

the test for establishing the content of the duty of fairness and in determining the application of that duty. According to the appellants, they are entitled to some degree of procedural fairness since the Minister's decision in the course of the licensing process affects their rights, privileges or interests. This would translate, at a minimum, in the right to make written submissions to the Minister, to have those submissions considered, and to receive timely notice of the Minister's decision.

[25] This argument, in my view, is mistaken and is based on a false premise. The appellants focus on one paragraph of the Judge's decision (see Reasons for Judgment at para. 32) where, in addressing the overlap between the issue of standing and the question of whether the appellants have a common law right to be heard, reference is made to the *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 174 D.L.R. (4th) 193 [*Baker*] factors. But a careful reading of her reasons as a whole reveals that she was well aware of the distinction between the application of the duty of fairness and its content in a particular setting. Indeed, she frames the first question to be answered as being "whether the Minister owed a duty of procedural fairness to the applicants such that they are entitled to participate in the licencing process" (Reasons for Judgment at para. 39) and found that the appellants do not have such a right (Reasons for Judgment at para. 73). It is therefore incorrect to claim, as the appellants do, that the Judge made no finding as to whether the Minister's decision affected their rights, privileges or interests.

[26] In addressing that question, the Judge was entitled to look at the nature and purpose of the statutory scheme. As this Court noted in *Irving Shipbuilding* (at para. 45), the common law

duty of fairness is not free-standing and reviewing courts must therefore examine the scheme according to which the impugned administrative decision is taken. Having considered the nature and purpose of the regulatory scheme, she could (and she did) find that the appellants were strangers to that process and therefore not entitled to even a minimum degree of participation. The Judge did not assess the factors enumerated in *Baker*, and there was no need for her to do so in light of her conclusion.

[27] The appellants put much emphasis on paragraph 26(1)(*h*) of the Regulations, pursuant to which the Minister must refuse to issue the licence if it "would likely create a risk to public health, safety or security". They submit that their interests stand to be affected by the outcome of the Minister's determination, since they are in the most proximate position in relation to the proposed site and the most likely to be exposed to the risks contemplated under paragraph 26(1)(*h*).

[28] To assess the merit of that argument, a careful review of the regulatory scheme is in order. It is clear from a reading of the licensing scheme put in place by the Regulations and of the RIAS that security was a key concern for Health Canada. The conditions to be met before a licence can issue reflect that preoccupation. For example, the licensed producer has to designate key personnel under its licence: one senior person in charge who has the overall responsibility for management of the activities carried out at the licensed site, and one person responsible (and one or more alternate responsible persons) for the supervision of all activities being carried out involving marijuana (s. 22). Key personnel, along with directors and officers in the case of a corporation, have to hold a valid security clearance issued by the Minister (s. 24). Those

applying for a production licence also have to provide written notification of their application to the local police force, local fire authority and local government (para. 23(4)(*g*)). The notice has to specify the activities for which the licence is being sought, and the address of the site at which activities are to be conducted (s. 38).

[29] Applicants must also provide information that allows the Minister to assess whether they have certain key measures in place, including a detailed description of the physical security measures that would be put in place at the site, a detailed description of how the records of their activities would be kept, a copy of the notices provided to the local authorities, and floor plans of the site (s. 23). Finally, the Minister must refuse to issue a licence (or revoke it if it has been granted) in a number of cases relating to security issues: where there are grounds to believe that false or misleading information has been provided with the application; where the issuance or continuation of the licence would likely create a risk to public health, safety or security, including diversion; and where key personnel do not hold a valid security clearance (ss. 26 and 36).

[30] On the basis of the foregoing, and of the security measures more fully described in Division 3 of the Regulations which the licensed producer must carry out, it is absolutely clear that the Minister's foremost concern when deciding whether or not to issue a licence must be to ensure the security and safety of the commercial production and distribution of marijuana for medical purposes. It could hardly be otherwise. It is well-established that the production, possession and sale of illicit drugs can only be dealt with by Parliament through its jurisdiction to legislate with respect to criminal law, under section 91(27) of the *Constitution Act*, *1867* (U.K.),

30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5. The Supreme Court, in *R. v. Malmo–Levine; R. v. Caine*, 2003 SCC 74 at para. 77, [2003] 3 S.C.R. 571, clearly stated that "…the control of a 'psychoactive drug' that 'causes alteration of mental function' clearly raises issues of public health and safety, both for the user as well as for those in the broader society affected by his or her conduct". Indeed, the Court went as far as saying that if marijuana was to be decriminalized, the criminal law basis for the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 "might well be questioned" (at para. 72, though leaving open the question of whether there could be some "residual authority to deal with drugs in general (or marihuana in particular) under the POGG power"; see also *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 at para. 52, [2011] 3 S.C.R. 134). Such being the case, Parliament would exceed its jurisdiction and trench upon provincial heads of power if it were to delegate to the Minister, either directly or indirectly, the power to determine where marijuana production facilities may be geographically located. This is a pure zoning issue, one that falls either within the power of the provincial legislatures to make laws in relation to municipal institutions or in relation to local or private matters (see s. 92(8) and (16) of the *Constitution Act, 1867*).

[31] No doubt in recognition of these constitutional constraints, and in the spirit of cooperative federalism, the two levels of government have harmonized their legislation and deferred to one another for those matters that do not squarely fall within their jurisdiction. As previously noted, an applicant must provide written notice to the local government, local fire authority and local police force or the RCMP detachment that is responsible for providing policing services to that area before submitting an application, and the Minister must refuse to issue or amend a producer's licence if this requirement has not been met. Conversely, Delta Council gave first and

second reading of the Bylaw which would permit a medical marijuana production facility identified by the respondents in their licence application on May 12, 2014. Delta Council then referred the matter to a public hearing which took place on May 27 of that same year. The fourth and final reading, being the last step in the adoption of the Proposed Rezoning Bylaw, will occur only once the Minister has issued the licence to the respondents.

[32] The appellants submit that their concerns relate to health, safety and security, and therefore fall squarely within the confines of paragraph 26(1)(*h*). I disagree. In his various emails and in his oral submissions to Delta Council, Mr. Shayler, Business Manager for the Union, stated that the appellants were concerned that the proposed licensing of a marijuana production site adjacent to their building would have the following potential negative impacts: decrease the value of their property and limit the enrollment of students at the appellants' training facility; be incompatible with the appellants' anti-drug message to their workers and students; affect the business of the appellants' restaurant; endanger public safety due to possible increases in crime and loitering; and reduce the air quality as a result of the odour emissions from the production facility.

[33] In their first letter to the Minister sent by counsel on July 3, 2014, the only paragraph of substance with respect to the interests of the appellants is to the following effect:

> The large-scale production, processing and packaging of marijuana in an industrial building in a very close proximity to the building that houses the Complainants' school, restaurant and offices, would constitute a noxious and offensive business activity that stands to interfere with the business operations of the Complainants and to be detrimental to the welfare of the Complainants and would result in the reduction in value of their Neighbouring Property.
>
> Appeal Book, Exhibit "F" to the Affidavit of Joe Shayler at p. 67.

[34] In his oral representations before Delta Council on May 27, 2014, a summary of which is found in the Minutes of the Public Hearing quoted at paragraph 11 of these Reasons, Mr. Shayler put forward similar arguments.

[35] Not only have the appellants not substantiated their concerns with any hard evidence, but more importantly, their concerns are generic in nature and pertain essentially to the location of the proposed production site. They have nothing to do with a risk to public health, safety or security that would be created by the issuance of a licence to the Proponent. Accordingly, the Judge was perfectly justified to find that the appellants' objections had nothing to do with a licence being granted to an applicant in particular, but were rather general in nature, relating to anyone building a marijuana production facility next to their property.

[36] The appellants counter that their complaint relates to the location of the proposed production site as opposed to the appropriateness of the Proponent because the licence application is itself site-specific. In their view, the determination of the likelihood of risk to public health, safety or security must necessarily be made in relation to the specific site that is the subject of the licence application. This argument, however, is flawed and turns paragraph 26(1)(*h*) of the Regulations on its head. The licence is site-specific because the Minister defers to the local authority as to the location of the site. It substantiates, rather than detracts from, the obligation of the Minister to focus his enquiry on the security and safety of the production site. Concerns pertaining to location are primarily dealt with, as they must, by local authorities (including the police and local fire departments) in the exercise of their jurisdiction with respect to zoning and other local matters.

[37] Once again, this is not to say that the appellants' concerns are not legitimate and should not be addressed. Quite the contrary. They certainly warrant serious consideration, which appears to have been done as part of the municipal rezoning process. Whether the appellants will have any further opportunity or right to participate in that rezoning process is immaterial to the issue raised in this application for judicial review, that is whether the appellants have a right to participate in the medical marijuana production licensing process. This regulatory licensing scheme cannot be used to bypass or second-guess a decision that has been delegated to the municipal authorities and to broaden impermissibly the Minister's mandate. If the appellants are dissatisfied with the decision made by Delta Council, they have the option to seek judicial review of that decision before the British Columbia Supreme Court.

[38] This would be more than sufficient to dismiss the appeal and to uphold the decision of the Judge. I wish, nevertheless, to say a few words with respect to the implications to be drawn from the Regulations' silence as to the participatory rights of third parties. To the extent that the Judge's decision turns on her interpretation of the Regulations, the standard of review to be applied is that of reasonableness.

[39] It is well-established (and counsel for the appellants do not deny) that common law rules of procedural fairness can be ousted by clear statutory language or by necessary implication (see *Kane v. University of British Columbia*, [1980] 1 S.C.R. 1105, 110 D.L.R. (3d) 311). In the case at bar, there is clearly no express language abrogating the participatory rights of third parties. However, as noted by the Judge, the Regulations do address explicitly the participatory rights of those directly affected by the licensing scheme. After providing several examples of such

provisions at paragraph 52 of her Reasons for Judgment, she found that no similar participatory rights are afforded to strangers to the licensing process (Reasons for Judgment at para. 53, as reproduced above at para. 17).

[40] I could not agree more with that analysis. The Regulations are not only silent as to the participatory rights of opponents to a licence like the appellants, but they also specifically grant such rights to a number of individuals: to an applicant or licence holder whose licence or permit the Minister proposes to refuse to issue, amend or renew (s. 7); to a producer (s. 33); to import permit holders (s. 80); to export permit holders (s. 87); to security clearance applicants (s. 94); to security clearance holders (s. 97); and to clients (ss. 114, 117, 123 and s. 133(1)). It is clear from these sections that the Governor in Council and the Minister, in drafting the Regulations, knew exactly to whom they sought to offer procedural fairness rights; the omission of third parties like the appellants is certainly not an oversight. This is entirely different from the situation described in the two cases relied upon by the appellants, where the legislative and regulatory provisions at stake were silent as to participatory rights and where the concerns of the interested parties fell squarely within the mandate of the decision-maker (see *Harvie v. Calgary (City) (Regional Planning Commission)*, 94 D.L.R. (3d) 49, [1978] 3 A.C.W.S. 373; *Crestpark Realty v. Canada (Minister of Transport)*, [1987] 1 F.C. 577, 2 A.C.W.S. (3d) 57). The construction of the Regulations by the Judge, therefore, was entirely reasonable.

V. Conclusion

[41] For all of the foregoing reasons, I am therefore of the view that this appeal ought to be dismissed, with costs.

"Yves de Montigny"
J.A.

"I agree
J.D. Denis Pelletier J.A."

"I agree
A.F. Scott J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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