

Federal Court of Appeal



Cour d'appel fédérale

Date: 20001221

Docket: A-102-00

CORAM: DÉCARY J.A.  
LÉTOURNEAU J.A.  
NOËL J.A.

In re Rule 373 of the Federal Court Rules  
and ss. 19, 20, 22 and 53.2 of the  
*Trade-Marks Act* (R.S.C. 1985, c. T-13)

AND IN RE an appeal from a judgment  
rendered in the Federal Court of Canada, Trial Division  
by D. McGillis J. on February 11, 2000  
in file No. T-394-98

BETWEEN: **A. LASSONDE INC.**

Appellant

AND:

**ISLAND OASIS CANADA INC.**  
**- and -**  
**ISLAND OASIS FROZEN COCKTAIL COMPANY INC.**

Respondents

Hearing held at Ottawa, Ontario on Wednesday, December 6, 2000

Judgment rendered at Ottawa, Ontario on Thursday, December 21, 2000

REASONS FOR JUDGMENT BY:

LÉTOURNEAU J.A.

CONCURRED IN BY:

DÉCARY J.A.  
NOËL J.A.

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**REASONS FOR JUDGMENT**

**LÉTOURNEAU J.A.**

[1] The appellant was denied an interlocutory injunction on the ground that it had not submitted evidence that was clear and not speculative that it would suffer irreparable harm as a result of the respondents' activities. It appealed this decision and the order of McGillis J. directing it to pay

forthwith costs taxed at a level higher than that mentioned in Rule 407 of the Federal Court Rules (1998) (“the Rules”), namely column IV instead of column III of Tariff B.

[2] The motions judge based her decision on the rules laid down by this Court in *Centre Ice Ltd. v. National Hockey League et al.* (1994), 53 C.P.R. (3d) 34. She reproduced the following passage from the reasons of our brother Heald J.A., at 52 to 54:

*Irreparable harm*

This court has spoken often on this issue in recent years. In the case of *Cutter Ltd. v. Baxter Travenol Laboratories Ltd.* (1980), 47 C.P.R. (2d) 53 (F.C.A.) at p. 57, Chief Justice Thurlow relying on the view expressed by Lord Diplock in *American Cyanamid Co. v. Ethicon Ltd.*, [1975] A.C. 397 (H.L.) at p. 408, adopted the requirement of irreparable harm, “by which I mean harm in respect of which the damages recoverable at law would not be an adequate remedy”, as an essential ingredient in establishing a claim for interlocutory injunctive relief.

The *Cutter* decision was followed by the *Imperial Chemical Industries Co.* case in 1989 where it was said: “The jurisprudence in this court establishes that the evidence as to irreparable harm must be clear and not speculative.” (*Imperial Chemical Industries PLC v. Apotex Inc.* (1989), 27 C.P.R. (3d) 345 at p. 351, [1990] 1 F.C. 221, 26 C.I.P.R. 1 (C.A.)) Coming after the decision in *Imperial Chemical* was the *Syntex* decision in 1991: *Syntex Inc. v. Novopharm Ltd.* (1991), 36 C.P.R. (3d) 129 at p. 135, 126 N.R. 114, 51 F.T.R. 299n. In *Syntex*, this court held that the finding by the trial judge that the applicant would be likely to suffer irreparable harm was insufficient to warrant the granting of an interlocutory injunction. The use of the tentative expression “is likely” was not correct in view of the court's earlier jurisprudence, *supra*. It was necessary for the evidence to support a finding that the applicant *would suffer* irreparable harm.

The next relevant decision was the *Nature Co.* case in 1992: *Nature Co. v. Sci-Tech Educational Inc.* (1992), 41 C.P.R. (3d) 359 at p. 367, 141 N.R. 363, 54 F.T.R. 240n (C.A.). In that case, Mr. Justice Stone, speaking for the court refused the request for an interlocutory injunction because “the evidence did not clearly show that [irreparable harm] would result”.

On the evidence adduced herein, the learned motions judge found that the appellant's use of the trade name Centre Ice was confusing to the public. In my view, this conclusion was reasonably open to him on this record. He then went on to state (A.B., vol. 2, p. 741 [*ante*, p. 48]):

As well, there is evidence, that this confusion has resulted in members of the public being discontent [*sic*] to find out that the plaintiff does not carry the products advertised by the defendants. Thus, it can reasonably be concluded that to allow the defendants to continue using the trade name Centre Ice will result in confusion between the litigants' products and a loss of goodwill which the plaintiff cannot be compensated for in damages.

I am unable to agree that a finding of confusion between competing products necessarily leads to a loss of goodwill for which the plaintiff cannot be compensated in damages. A similar issue was considered by the Alberta Court of Appeal in *Good Neighbour Fast Food Stores Ltd. v. Petro-Canada Inc.* (1987), 18 C.P.R. (3d) 63 at pp. 63-64, 82 A.R. 79, 7 A.C.W.S. (3d) 148. Kerans J.A. speaking for the court said:

The suit here sounds in passing off, and the first category of harm alleged is diminution of goodwill as a result of confusion of names in the minds of reasonable persons. There is evidence in the material presented by the applicant to indicate that it is reasonable for him to allege the existence of confusion. That kind of confusion, as we have said in other suits, leads to loss of "name" goodwill the loss of which in the normal course is a kind of damage which, when suffered by a commercial firm in the ordinary course, is fairly readily calculable and therefore can be fairly compensated for in damages.

On the basis of that decision, which I find persuasive, even if loss of goodwill through the use of a confusing mark was shown, a case for irreparable harm would not have been made out because such loss could be fairly compensated for in damages. However, on this record, I cannot conclude that a loss of goodwill has been established. The respondent did not adduce any evidence to show that it had lost even one single sale as a result of the activities of the appellants. The respondent filed many affidavits to the effect that it had acquired a reputation for honesty, integrity and fairness. However, none of the evidence established that this reputation had been impeached or lessened in any way by the actions of the appellants. While the record contains some evidence of confusion, there is no specific evidence that such confusion had led any customer to stop dealing or to even consider not dealing with the respondent on future occasions. The only evidence relating to irreparable harm is contained in the affidavit of Bruce Jones, a director and officer of the respondent (A.B., vol. 1, p. 31). In para. 49 of that affidavit, Mr. Jones deposed: "I believe that unless the N.H.L. is stopped from using the name "Centre Ice" within the trading area of Centre Ice here in Alberta irreparable harm to Centre Ice will result." The problem with this statement is that it appears to be unsupported by any evidence leading to a conclusion that, as a consequence of this confusion, there was a loss of goodwill and a loss of distinctiveness. The Jones' affidavit makes reference to confusion in the market-place (para. 40). However, nowhere does it refer to, let alone establish, a loss of goodwill as a result of the activities of the appellants. It appears that the allegation of irreparable harm in para. 49 is nourished only by the confusion which was established by the evidence. It cannot be inferred or implied that irreparable harm will flow wherever confusion has been shown. Accordingly, the learned motions judge erred in basing his finding of irreparable harm on this passage from the Jones' affidavit. Likewise, I believe that the learned motions judge erred in the passage quoted, *supra*, when, in effect, he *inferred* a loss of goodwill not compensable in damages from the fact that confusion had been proven. This view of the matter runs contrary to this court's jurisprudence to the effect that confusion does not, *per se*, result in a loss of goodwill and a loss of goodwill does not, *per se*, establish irreparable harm not compensable in damages. The loss of goodwill and the resulting irreparable harm cannot be inferred, it must be established by "clear evidence". On this record, there is a notable absence of such evidence.

As in the case at bar, in the *Nature* case, *supra*, there was some evidence of actual confusion. However, that evidence did not go so far as to show that the confusion would cause irreparable harm to the respondent: see the *Nature Co.* case, p. 367, *per* Stone J.A. In the court's view, the frailty of that evidence was fatal to the submission of irreparable harm. In my view, the situation here is identical.

**Appellant's arguments**

[3] On the dismissal as such of the motion for an interlocutory injunction, the appellant persuasively and ably argued that the motions judge had erred in two respects: first, as to the rule of law applicable in the case at bar, and second, as to the evidentiary force of the evidence of irreparable harm it submitted in support of its motion. On the question of costs, it added that the judge did not exercise her discretion judicially.

[4] The appellant's argument concerning the applicable rule of law is not without merit. It is owner of the registered trade mark "Oasis" which it has used for over 30 years. Its validity was not in any way disputed by the respondents. Under ss. 19 and 20 of the *Trade-Marks Act*, R.S.C. 1985, c. T-13 ("the Act"), it has the exclusive right to use this mark anywhere in Canada. A presumption of infringement also exists in its favour once it is established that the respondents are selling or distributing products or services creating confusion with its registered trade mark. The exclusivity of its right of use conferred by s. 19 of the Act and the protection offered against infringement by the presumption in s. 20, the appellant argued, meant that the infringement of a registered trade mark the validity of which is not in dispute is irreparable harm *per se*. The absence of any challenge or the recognition of its registered trade mark by the respondents, it maintained, provides a basis for distinguishing *Centre Ice Ltd.*, *supra*, where the issue turned on an unregistered trade mark.

[5] It submitted that in *Nature Co. v. Sci-Tech Educational Inc.* (1992), 41 C.P.R. (3d) 359 (F.C.A.), this Court *a contrario* approved the principle of irreparable harm in the event of infringement of a registered trade mark that is not disputed.

[6] Alternatively, it argued that the presumption created in s. 20 of the Act alleviates the burden of proof which it must discharge regarding irreparable harm. In other words, as owner of a registered trade mark it does not have to meet the same burden of proof in respect of irreparable harm as someone who is claiming under an unregistered trade mark.

[7] The appellant did not expand on the content of this alleged burden nor the extent of the alleviation. In any event, applying this concept of a reduced burden, it maintained that the motions judge should have concluded that there was irreparable harm since there was evidence of a loss of distinctiveness of its trade mark "Oasis", a dilution of that mark, a loss of goodwill and a mistaken perception by the general public and its customers that the appellant endorsed and stood behind the respondent's products.

[8] I have set out the appellant's arguments in detail so as to avoid any misunderstanding as to what was argued and what will be decided by this Court.

### **Analysis**

#### **Whether infringement of registered trade mark, validity of which not disputed, is irreparable harm**

[9] I feel that an initial argument by the appellant should be dismissed forthwith. *Nature Co. v. Sci-Tech Educational Inc.*, *supra*, adopted the burden of proof applied in *Syntex Inc. v. Novopharm Ltd.* (1991), 36 C.P.R. (3d) 129, and *Syntex Inc. v. Apotex Inc.* (1991), 36 C.P.R. (3d) 189, and concluded that with respect to irreparable harm there had to be clear proof that the victim would

suffer such damage: conjecture and speculation did not suffice. It is true that this requirement was reaffirmed in the context of a suit in which the registered trade mark was disputed. However, I do not think it is reasonable to conclude, as the appellant did, that this decision approves *a contrario* an exemption from presenting evidence of irreparable harm based on the infringement presumption contained in s. 20 of the Act. This is a far-reaching change regarding proof of an essential ingredient in the interlocutory injunction which, in my opinion, for it to apply would require a clear statement by the Court to this effect.

[10] That said, I agree with the appellant that the facts of the case at bar, in which the registered trade mark is not disputed, allow it to distinguish *Centre Ice Ltd.*, *supra*, and perhaps to dispense with the requirements made in that case regarding the burden of proof of irreparable harm. However, a fundamental question remains: is it proper to do so? After careful thought, I have come to the conclusion that it is not for the following reason.

[11] In determining this question we should not lose sight of the remedy sought and the purpose which the procedure in question seeks to achieve. The appellant applied for an interlocutory injunction, that is an injunction that would prevent it suffering irreparable harm while it is awaiting a final ruling on its rights. That is the very essence of the action taken and the remedy desired. In such circumstances, assuming that irreparable harm exists by exempting the party seeking the remedy from presenting evidence of it would be for all practical purposes to conclude that the remedy is appropriate and must be granted the moment a party alleging an infringement of its rights asks for it. This conflicts with the very nature and purpose of the interlocutory injunction, which is a

discretionary and equitable remedy the obtaining of which depends on the likelihood of irreparable harm, which it would be unfair to assume in view of the drastic consequences, namely the prohibition of any commercial activity, that will result for the party against which the injunction is issued.

[12] This specific argument by the appellant based on ss. 19 and 20 of the Act was considered and dismissed by the British Columbia Court of Appeal in *Mark Anthony Group. Inc. et al. v. Vincor International Inc.* (1998), 82 C.P.R. (3d) 541. I note in passing that this is a reported case which none of the counsel for the parties drew to the Court's attention.

[13] After noting that the appellant's position appeared to be that no competitor could use a name alleged to cause confusion pending the trial of whether such use constituted infringement, Macfarlane J.A. wrote, at 548, in concise and clear language which I endorse:

[32] The purpose of an interlocutory injunction is not to prevent competition but to provide an equitable remedy designed to protect the parties pending a final determination of a serious question. It is designed to prevent irreparable harm. It is a discretionary remedy. Whether it is granted or not is to be determined on a case by case basis with a view to providing a just and convenient result. The bare fact that the applicant has a registered trade-mark does not necessarily provide a basis for prohibiting competition pending trial.

[14] In my opinion, the exclusivity of use mentioned in s. 19 of the Act and the presumption of infringement in s. 20 may contribute, in a motion for an interlocutory injunction, to making the seriousness of the question for decision clear beyond any doubt: however, whether the registered mark is disputed or not, they cannot create a presumption of the existence or likelihood of damage, still less that there is irreparable harm within the meaning of *RJR – Macdonald Inc. v. Canada*



(*Attorney General*) (1994), 54 C.P.R. (3d) 114, namely damage that cannot be quantified in monetary terms or for which no remedy is possible. The victim must present clear evidence that it would suffer damage and that the damage would be irreparable. Similarly, the rights conferred by those sections do not reduce or diminish in any way the burden that falls on someone seeking such an injunction.

[15] In reaching this conclusion, I hasten to add that I make no ruling on cases in which an application for an injunction is brought *quia timet* when the person against whom the injunction is sought has not yet begun operating his business, so that there is no actual evidence of harm: see *Ciba-Geigy Canada Ltd. v. Novopharm Ltd.* (1994), 56 C.P.R. (3d) 289, at 325 (F.C.T.D.); *Imax Corp. v. Showmax, Inc.*, [2000] F.C.J. No. 69, at pp. 13-15 (F.C.T.D.). Different factors may apply in this type of situation. It is not necessary to consider these as, in the case at bar, the issue between the parties dates back to 1991 and the respondents have carried on their activities in Canada since at least 1997, according to the appellant, and since 1985, according to the respondents themselves.

Whether motions judge erred when she concluded that appellant had not presented evidence of irreparable harm

[16] The motions judge dealt with the appellant's allegations that the respondents' activities, if not temporarily suspended, would entail a permanent loss of market, a loss of goodwill or reputation, a loss of distinctiveness, a weakening of its mark and an actual loss of sales.

[17] Quite properly relying on the rules in *Centre Ice Ltd.* that (a) a finding of confusion between competing products does not necessarily lead to loss of goodwill, (b) the existence of confusion does

not mean there has necessarily been irreparable harm, and (c) a loss of goodwill does not *per se* establish that the victim of the loss suffered irreparable harm, she proceeded to review the evidence in the record. She concluded from that analysis of the evidence that the latter contained several allegations of irreparable harm of fear of such harm, but no specific and persuasive evidence to that effect in support of the allegations. In other words, the appellant in her opinion alleged the existence and fear of irreparable harm but did not establish it. This passage from p. 7 of her decision is a clear summary of her position:

[13] In support of his submissions on irreparable harm, counsel for Lassonde also relied on the affidavit evidence of Mr. Bastien and Jean Gattuso, the president of Lassonde. However, as in *Centre Ice*, that evidence does not establish that Island Oasis Canada's activities have "impeached or lessened" Lassonde's reputation or resulted in a loss of sales or customers. Indeed, as in *Centre Ice*, the many statements in those affidavits that Lassonde will suffer irreparable harm by a loss of permanent market share, a loss of goodwill or reputation, a loss of distinctiveness, or a dilution of its trade-mark are unsupported by any clear evidence. Despite the extensive volume of material filed by Lassonde on its motion, there is, as in *Centre Ice*, "a notable absence" of any clear evidence of irreparable harm.

[18] She came to this conclusion after also analysing and discussing the evidentiary value of certain evidence submitted by the appellant regarding the loss of distinctiveness of its mark and the loss of goodwill the appellant claimed to have suffered.

[19] Similarly I conclude that, without saying so expressly, she was not persuaded that, if damage were to result from the respondents' activities, it would be irreparable. As she said at para. 14 of her decision, there is not a scintilla of evidence in the record to indicate that the respondents were unable to pay damages.

[20] I have carefully examined and scrutinized the evidence in the record to see whether, as the appellant alleged, the motions judge erred as to the scope and evidentiary value of that evidence. I have come to the same conclusion as she did: an allegation of irreparable harm was made and repeated by the appellant, but no actual concrete evidence of harm was presented, or of the probability of such harm.

### Costs

[21] Under Rule 401, the motions judge could award costs on the motion and fix their amount. However, she had to order immediate payment if she was satisfied that the motion should not have been brought. Similarly, under Rule 407 she could order that costs be taxed at a level higher than that which would ordinarily apply under Rule 407. It is worth setting out the text of the two rules:

**401. (1) Costs of motion –** The Court may award costs of a motion in an amount fixed by the Court.

(2) Costs payable forthwith – Where the Court is satisfied that a motion should not have been brought or opposed, the Court shall order that the costs of the motion be payable forthwith.

**407. Assessment according to Tariff B –** Unless the Court orders otherwise, party-and-party costs shall be assessed in accordance with column III of the table to Tariff B.

**401. (1) Dépens de la requête –** La Cour peut adjuger les dépens afférents à une requête selon le montant qu'elle fixe.

(2) Paiement sans délai – Si la Cour est convaincue qu'une requête n'aurait pas dû être présentée ou contestée, elle ordonne que les dépens afférents à la requête soient payés sans délai.

**407. Tarif B –** Sauf ordonnance contraire de la Cour, les dépens partie-partie sont taxés en conformité avec la colonne III du tableau du tarif B.

(a) Costs payable forthwith

[22] The appellant argued that in an interlocutory injunction the rule is that the costs of the motion follow the outcome of the principal action. It based its argument on this Court's judgment in *Thurston*

*Hayes Developments Ltd. et al. v. Horn Abbot Ltd. et al.* (1985), 5 C.P.R. (3d) 124 (F.C.A.), in which Urie J.A. concluded that ordering payment of costs forthwith amounted to imposing a penalty by assuming that the defence presented to the action was not valid. At 126, he wrote: "...to make such an award at this stage, necessarily assumes that the appellants are guilty of, or are likely to be found guilty of, the infringements alleged by the respondents and, should be penalized therefor despite the fact that it is quite possible that they may successfully defend the action at trial. We do not believe that to impose such a penalty is a proper exercise of a judicial discretion. It is more appropriate, in our view, for the award to be 'costs in the cause'". See also *Coca-Cola Ltd. et al. v. Pardhan et al.* (1998), 75 C.P.R. (3d) 318 (F.C.T.D.).

[23] This rule was followed in *Toronto-Dominion Bank v. Canada Trustco Mortgage Co.* (1992), 50 F.T.R. 317 (F.C.T.D.), when as in the case at bar the application for an interlocutory injunction had been dismissed. At 318, Strayer J. dismissed as follows the defendant's attempt to distinguish *Thurston Hayes Developments Ltd., supra*:

Counsel for the defendant in the present case sought to distinguish this decision on the basis that it involved a successful plaintiff rather than a successful defendant at the interlocutory injunction stage. It appears to me that the rationale expressed in the passage quoted above would apply equally to a successful defendant namely: that to grant him costs now assumes that he is going to succeed at trial. After trial it may well turn out that the plaintiff was fully justified in complaining of the defendant's activities. The Court of Appeal in its decision was, I believe, declining to treat the merits of the request for an injunction pending trial as separate from the merits of the action itself. On the basis of that rationale then the defendant should not normally have its costs on the interlocutory injunction regardless of the outcome of the case.

[24] With respect, I do not feel that this rule relied on by the appellant is still applicable in view of the second paragraph of Rule 401. The latter imposes on the motions judge a duty to order payment

of costs forthwith if the condition mentioned is met, namely in the case at bar that the motions judge was satisfied that the motion should not have been brought. It is thus no longer correct to speak of the exercise of judicial discretion when the power to award costs has been transformed into a duty once the conditions imposed by the rule have been met.

[25] That said, I feel that in the circumstances the motions judge erred when she concluded that this was a case in which the application for an interlocutory injunction should not have been brought.

[26] The appellant's argument that in the absence of any challenge as to the validity of its registered mark an infringement constituted irreparable harm *per se* is not far-fetched and was based on several judgments of the Trial Division and of other courts: see *H.J. Heinz Co. of Canada Ltd. v. Edan Foods Sales Inc.* (1991), 35 C.P.R. 213 (F.C.); *Jercity Franchises Ltd. v. Foord* (1990), 34 C.P.R. (3d) 289 (F.C.); *Pizza Pizza Ltd. v. Little Caesar International et al.* (1989), 27 C.P.R. (3d) 525 (F.C.); *Multi-marques v. Boulangerie Gadoua Ltée*, S.C.M. No. 500-05-053479-1992, January 27, 2000 (Que. S.C.); *Year 2000 Inc. v. Brisson* (1998), 81 C.P.R. (3d) 104 (Ont. Gen. Div.). It was not clear that *Centre Ice Ltd.* and *Nature Co.*, *supra*, had reversed this previous line of authority, in which case it would have sufficed for the appellant to present evidence of sufficient confusion, as it did, to bring into play the presumption in s. 20 of the Act, and so present evidence of irreparable harm. Examining the scope of *Syntex* and *Nature Co.* the writer Diane E. Cornish, in an article titled "Clear and Not Speculative' Evidence of Prospective Harm: The Conundrum of Proving Irreparable Harm", 10 *R.C.P.I.* 589, at 592, wrote:

If validity is not an issue, or, put another way, if the plaintiff has shown a *prima facie* entitlement, irreparable harm may still be presumed from the mere infringement of the plaintiff's rights.

In view of the legal uncertainty surrounding the point and the fact that the hearing on the application for an interlocutory injunction was of short duration, the motions judge should have made the costs follow the outcome of the case.

(b) Raising level of costs

[27] By fixing and increasing the amount of the costs pursuant to Rules 401 and 407, the motions judge exercised a discretionary power which this Court will only be prepared to review if she erred in exercising that discretion either by applying an erroneous principle, taking irrelevant factors into consideration or failing to consider factors which she should have considered. The difficulty in the case at bar, in view of the appellant's opposition, lies in the fact that the motions judge gave no reason in support of her conclusions that could enable the Court to determine whether she correctly applied the law, and whether, in exercising her discretionary power, she did take all the relevant factors into account, and only those factors. I would note that a court which has to review a discretionary decision must review it in light of the information and exhibits in the records, and must not substitute its discretion for that of the trial judge, but determine the legality of the decision rendered: see *Apotex Inc. v. Eli Lilly and Company and Eli Lilly Canada Inc.*, A-204-98, June 26, 2000 (F.C.A.); *Reynolds v. Canada*, [1995] F.C.J. No. 1612 (F.C.A.), leave to appeal to the Supreme Court of Canada denied.

[28] I do not feel it was proper to depart from Rule 407 and raise the level of the costs. It is true that the appellant did not act promptly in bringing its action on the merits, but this is not a factor relevant to determining costs on an application for an interlocutory injunction, which as we have seen in order to be brought must meet tests peculiar to itself. It is also true that the appellant waited for a year after initiating its action against the respondents to make its application for an interlocutory injunction. However, in the testimony of its president it asserted that it was once the respondents began penetrating the Quebec market, where it does most of its business and where its trade mark is well-known and widespread, that the risk of irreparable harm increased to the point where preventive action seemed necessary. I am not sure that the motions judge took this relevant point into account, as explaining why the appellant might appear to have delayed in bringing such a motion. Further, this departure from Rule 407 contains a punitive element which was not justified in the circumstances.

**Conclusion**

[29] For these reasons, I would allow the appeal solely in order to vary the order by the motions judge made on February 11, 2000 so that it reads: "The motion is dismissed with costs to follow".

In all other respects, I would dismiss the appeal with costs.

**Gilles Létourneau**

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**J.A.**

I concur.

Robert Décary J.A.

I concur.

Marc Noël J.A.

Certified true translation

*Monica F. Chamberlain*

*for* Suzanne M. Gauthier, L.L.L. Trad. a.



**FEDERAL COURT OF CANADA**  
**APPEAL DIVISION**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**FILE:** A-102-00

**STYLE OF CAUSE:** A. Lassonde Inc.  
- and -  
Island Oasis Canada Inc. and Island Oasis  
Frozen Cocktail Company Inc.

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** December 6, 2000

**REASONS FOR JUDGMENT BY:** Létourneau J.A.

**CONCURRED IN BY:** Décary J.A.  
Noël J.A.

**DATED:** December 21, 2000

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