

Federal Court of Appeal



Cour d'appel fédérale

Date: 20010629

Docket: A-233-01

Neutral citation: 2001 FCA 221

OTTAWA, ONTARIO, FRIDAY, JUNE 29, 2001

PRESENT: LÉTOURNEAU J.A.

BETWEEN:

THE MINISTER OF ENVIRONMENT CANADA

Appellant

AND:

THE INFORMATION COMMISSIONER OF CANADA

Respondent

- and -

ETHYL CANADA INC.

Added Respondent

REASONS FOR ORDER

[1] The appellant and the respondents cannot agree on the contents of the appeal books. The appellant invokes Rule 343(2) of the *Federal Court Rules, 1998* to limit the contents to some of the material that was before the Motions judge whose decision is the subject of the appeal, namely the

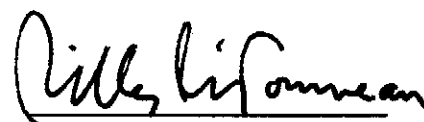
material referred to by the parties in their Memoranda filed with the Trial Division. He asserts that a large amount of material put before the motions judge was not used and even referred to. He proposes that a party who wishes to include material that was not referred to at the Trial Division do it in a supplemental appeal book.

[2] The Information Commissioner who is a respondent objects to this proposal. He submits that the appeal books should include all of the material that was placed before the Motions judge. I should add that the Application Record of the Information Commissioner filed before the Motions judge consisted of 22 volumes totalling over 3,800 pages of material. The table of contents of the appeal books proposed by the Information Commissioner is 39 pages in length. The Commissioner alleges that the decision of the Motions judge was based on extensive documentary evidence which should be put before the Court of Appeal for a proper assessment of that decision. Finally, the Commissioner mentions the lack of prejudice to the appellant since he is willing to assume the preparation of the appeal books and share their costs.

[3] While I am satisfied that the position taken by the appellant with respect to the issue may be too narrow, although there is some flexibility in the form of supplementary appeal books, I am, at the same time, after a perusal of the table of contents proposed by the Information Commissioner, not sure that everything that was before the Motions judge will be needed. For example, I am not sure that, in the list of documents, every letter and attachment from G.F. Osbaldeston to various

individuals will be of use. Counsel for the Commissioner might want to review his position in this regard with respect to all documents and exhibits.

[4] This illustrates the dilemma in which a Motions judge of this Court finds himself or herself when confronted with these issues. It is simply impossible to appreciate, at this stage of the appeal, the relevancy and usefulness of each and every piece of material. Experience tells me that it is very rare indeed that the parties on appeal refer to all the material in the appeal books, especially when there are so many. In fact, for convenience, and the Commissioner is known for resorting to this useful practice, the parties often prepare a Compendium of the material that they intend to use. It is true that the appeal books remain available to supplement these Compendiums. Prudence and wisdom also advise me, if I have to err, that it is preferable to err on the safe side. Therefore, I will accede to the Information Commissioner's request, but impose upon the Commissioner an obligation to have another look at the material with a view to eliminating what is not required to dispose of the issues on appeal. I will reserve to the panel hearing the appeal the right to adjudicate on the costs of the appeal books irrespective of the decision on the merits of the appeal.


J.A.

FEDERAL COURT OF CANADA
APPEAL DIVISION

NAMES OF SOLICITORS AND SOLICITORS ON THE RECORD

COURT FILE NO.: A-233-01

STYLE OF CAUSE: THE MINISTER OF THE ENVIRONMENT CANADA
- and -
THE INFORMATION COMMISSIONER OF CANADA
- and -
ETHYL CANADA INC.

MOTION DEALT WITH IN WRITING WITHOUT THE APPEARANCE OF PARTIES

REASONS FOR ORDER OF LÉTOURNEAU J.A.

DATED: June 29, 2001

WRITTEN REPRESENTATIONS BY:

Mr. David Sgayias, Q.C.	FOR APPELLANT
Mr. Daniel Brunet Mr. Marc-Aurèle Racicot	FOR RESPONDENT, THE INFORMATION COMMISSIONER OF CANADA
Mr. Tim Gilbert	FOR ADDED RESPONDENT, ETHYL CANADA INC.

SOLICITORS OF RECORD:

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Lenczner Slaght Royce Smith Griffin Toronto, Ontario	FOR ADDED RESPONDENT, ETHYL CANADA INC.