

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110413

Docket: A-367-10

Citation: 2011 FCA 133

**CORAM: EVANS J.A.
DAWSON J.A.
STRATAS J.A.**

BETWEEN:

**MUSHKEGOWUK COUNCIL and
STAN LOUTTIT**

Appellants

and

**THE ATTORNEY GENERAL OF CANADA,
THE MINISTER OF NATURAL RESOURCES
(THE HON. GARY LUNN P.C., M.P.) and
THE NUCLEAR WASTE MANAGEMENT ORGANIZATION**

Respondents

Heard at Toronto, Ontario, on April 13, 2011.

Judgment delivered from the Bench at Toronto, Ontario, on April 13, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

EVANS J.A.

Federal Court
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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on April 13, 2011)

EVANS J.A.

[1] We are not persuaded that in her decision, dated September 24, 2010 (2010 FC 959), the Federal Court Judge erred when she deferred to the exercise of discretion by the case management Prothonotary to refuse leave to the Appellants to file and serve a supplementary affidavit containing eight additional documents.

[2] In a decision dated April 15, 2010, the Prothonotary had refused leave to the Appellants to adduce two of the documents because they had been available earlier, and they had given no reasonable explanation for not having included them with their original affidavit material. The other six, which were published after the date of the report that is the subject of the Appellants' underlying application for judicial review, the Prothonotary found to be not relevant to the issues in the underlying application for judicial review, to be of little or no assistance to the Court, and likely only to confuse the issues.

[3] The Prothonotary identified and applied the correct, multi-factor, legal test for granting leave to file and serve a supplementary affidavit under rule 312 of the *Federal Courts Rules*. An appellate court will only interfere with a Prothonotary's application of the factors relevant to the exercise of discretion if satisfied that the Prothonotary had committed an error of principle or misapprehended the facts.

[4] We are not satisfied that either kind of error occurred here. We note that "relevance" is not in itself a factor that must be considered independently for the purpose of rule 312. Rather, it is included as part of the broader factor, "assistance to the Court". Whether, in this context, the documents were relevant was a question of mixed fact and law on which the Prothonotary was entitled to deference.

[5] We would also emphasize that this Court is particularly reluctant to interfere with discretionary decisions made on non-vital issues, such as those raised here, by Prothonotaries or Federal Court Judges in the course of case managing a matter.

[6] For these reasons, the appeal will be dismissed with costs payable by the Appellants to the Respondents.

“John M. Evans”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-367-10

(APPEAL FROM A DECISION OF THE HONOURABLE JUSTICE ELIZABETH HENEGHAN, DATED APRIL 15, 2010, DOCKET NO. T-1305-07)

STYLE OF CAUSE: Mushkegowuk Council and Stan Louttit v. The Attorney General of Canada, The Minister of Natural Resources (The Hon. Gary Lunn P.C., M.P.), and The Nuclear Waste Management Organization

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 13, 2011

REASONS FOR JUDGMENT OF THE COURT BY: EVANS, DAWSON AND STRATAS JJ.A.

DELIVERED FROM THE BENCH BY: EVANS J.A.

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NUCLEAR WASTE
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