

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20111215

Docket: A-189-11

Citation: 2011 FCA 357

**CORAM: NOËL J.A.
DAWSON J.A.
TRUDEL J.A.**

BETWEEN:

CANADIAN GENERIC PHARMACEUTICAL ASSOCIATION

Appellant

and

**THE MINISTER OF HEALTH and
GLAXOSMITHKLINE INC.**

Respondents

Heard at Toronto, Ontario, on December 15, 2011.

Judgment delivered from the Bench at Toronto, Ontario, on December 15, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

Federal Court
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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on December 15, 2011)

DAWSON J.A.

[1] This is an appeal from a decision of the Federal Court (2011 FC 465) which dismissed an appeal from an order of a Prothonotary (2010 FC 1211). The Prothonotary struck out a notice of application filed by the appellant on the ground that it was plain and obvious that the appellant lacked standing to bring the application. It followed that the application was bereft of all possibility of success.

[2] We find no error of law in the reasons of the Judge or the Prothonotary of the Federal Court. Both correctly articulated the tests for determining whether a party is directly affected by an impugned decision and for determining whether a party has public interest standing.

[3] Nor do we find any error in the application of these tests to the facts before the Federal Court. We agree that the appellant is not directly affected by the decision of the Minister of Health not to remove the drug fluticasone furoate (drug) from the Register of Innovative Drugs. The appellant does not manufacture generic drugs, does not submit drug submissions, does not obtain Notices of Compliance and does not sell drugs in Canada. Neither the appellant nor any of its members has filed a drug submission for the drug or expressed any interest to manufacture the drug.

[4] We also agree that the appellant lacks public interest standing. The appellant has not established that manufacturers of generic drugs do not have a reasonable and effective means available to challenge the listing of a drug on the Register of Innovative Drugs. In view of this conclusion it is not necessary for us to consider whether the Judge erred at paragraphs 56 and 57 of his reasons by unduly confining the scope of the second prong of the three part test for public interest standing, and therefore we express no view on this.

[5] Finally, we disagree that the Judge mischaracterized the nature of the appellant's challenge. This submission is not supported by a reading of the appellant's notice of application.

[6] For these reasons, the appeal is dismissed with costs payable to GlaxoSmithKline Inc. The Minister of Health did not seek costs.

"Eleanor R. Dawson"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-189-11

APPEAL FROM THE ORDER OF THE HONOURABLE MR. JUSTICE de MONTIGNY OF THE FEDERAL COURT DATED APRIL 15, 2011, IN DOCKET NO. T-152-10.

STYLE OF CAUSE: CANADIAN GENERIC PHARMACEUTICAL ASSOCIATION v. THE MINISTER OF HEALTH and GLAXOSMITHKLINE INC.

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 15, 2011

REASONS FOR JUDGMENT OF THE COURT BY: NOËL, DAWSON AND TRUDEL J.J.A.

DELIVERED FROM THE BENCH BY: DAWSON J.A.

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FOR THE RESPONDENT
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