

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120326

Docket: A-205-11

Citation: 2012 FCA 99

**CORAM: BLAIS C.J.
NOËL J.A.
GAUTHIER J.A.**

BETWEEN:

**ALFRED T. FRASER, PAUL J. FRASER,
and FRASER SEA FOODS CORPORATION**

Appellants

and

**JANES FAMILY FOODS LTD.; TRIDENT SEAFOODS CORPORATION;
CONAGRA FOODS, INC.; CONAGRA FOODS CANADA INC./ALIMENTS
CONAGRA CANADA INC.; BLUEWATER SEAFOODS INC.; GORTON'S INC.;
GORTON'S FRESH SEAFOOD, LLC; ROCHE BROS INC.; ROCHE BROS.
SUPERMARKETS, INC.; ROCHE BROS SUPERMARKETS, LLC; HIGH
LINER FOODS INCORPORATED; COMEAU'S SEA FOODS LIMITED;
PINNACLE SEAFOODS LTD.; PINNACLE FOODS CANADA CORPORATION;
PINNACLE FOODS GROUP LLC; SOBEYS INC.; SOBEYS CAPITAL
INCORPORATED; LOBLAWS INC.**

Respondents

Heard at Toronto, Ontario, on March 20, 2012.

Judgment delivered at Ottawa, Ontario, on March 26, 2012.

REASONS FOR JUDGMENT BY:

NOËL J.A.

CONCURRED IN BY:

BLAIS C.J.
GAUTHIER J.A.

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Respondents

REASONS FOR JUDGMENT

NOËL J.A.

[1] The issue to be decided in this appeal is a moving target. In deciding that the appellants ought to post security for costs, Prothonotary Aalto found that the conditions set out in paragraphs (a), (b) and (f) of Rule 416 of the *Federal Courts Rules*, S.O.R./98-106 (the Rules) had been met.

Rule 416 provides:

416. (1) Where, on the motion of a defendant, it appears to the Court that

(a) the plaintiff is ordinarily resident outside Canada,

(b) the plaintiff is a corporation, an unincorporated association or a nominal plaintiff and there is reason to believe that the plaintiff would have insufficient assets in Canada available to pay the costs of the defendant if ordered to do so,

(c) the plaintiff has not provided an address in the statement of claim, or has provided an incorrect address therein, and has not satisfied the Court that the omission or misstatement was made innocently and without intention to deceive,

(d) the plaintiff has changed address during the course of the proceeding with a view to evading the consequences of the litigation,

(e) the plaintiff has another proceeding for the same relief pending elsewhere,

(f) the defendant has an order against the plaintiff for costs in the same or another proceeding that remain unpaid in whole or in part,

416. (1) Lorsque, par suite d'une requête du défendeur, il paraît évident à la Cour que l'une des situations visées aux alinéas *a*) à *h*) existe, elle peut ordonner au demandeur de fournir le cautionnement pour les dépens qui pourraient être adjugés au défendeur :

a) le demandeur réside habituellement hors du Canada;

b) le demandeur est une personne morale ou une association sans personnalité morale ou n'est demandeur que de nom et il y a lieu de croire qu'il ne détient pas au Canada des actifs suffisants pour payer les dépens advenant qu'il lui soit ordonné de le faire;

c) le demandeur n'a pas indiqué d'adresse dans la déclaration, ou y a inscrit une adresse erronée, et il n'a pas convaincu la Cour que l'omission ou l'erreur a été faite involontairement et sans intention de tromper;

d) le demandeur a changé d'adresse au cours de l'instance en vue de se soustraire aux conséquences du litige;

e) le demandeur est partie à une autre instance en cours ailleurs qui vise la même réparation;

(g) there is reason to believe that the action is frivolous and vexatious and the plaintiff would have insufficient assets in Canada available to pay the costs of the defendant, if ordered to do so, or

(h) an Act of Parliament entitles the defendant to security for costs,

the Court may order the plaintiff to give security for the defendant's costs.

f) le défendeur a obtenu une ordonnance contre le demandeur pour les dépens afférents à la même instance ou à une autre instance et ces dépens demeurent impayés en totalité ou en partie;

g) il y a lieu de croire que l'action est frivole ou vexatoire et que le demandeur ne détient pas au Canada des actifs suffisants pour payer les dépens s'il lui est ordonné de le faire;

h) une loi fédérale autorise le défendeur à obtenir un cautionnement pour les dépens.

[My emphasis]

[2] He also found that the appellants did not bring themselves within the exception set out in Rule 417 because they had failed to demonstrate their impecuniosity. Rule 417 provides:

417. The Court may refuse to order that security for costs be given under any of paragraphs 416(1)(a) to (g) if a plaintiff demonstrates impecuniosity and the Court is of the opinion that the case has merit.

417. La Cour peut refuser d'ordonner la fourniture d'un cautionnement pour les dépens dans les situations visées aux alinéas 416(1)a) à g) si le demandeur fait la preuve de son indigence et si elle est convaincue du bien-fondé de la cause.

[3] On appeal, Rennie J. of the Federal Court (the Federal Court judge) confirmed that security for costs was properly exigible, and that Prothonotary Aalto did not err in finding, on a balance of probabilities, that the appellants had failed to demonstrate that they were impecunious.

[4] In support of their appeal from the decision of the Federal Court judge, the appellants now argue that beyond the issue of impecuniosity, only Rule 416(1)(a) remains in play (memorandum of the appellants, para. 47) and that in this last respect the issue to be decided is whether (memorandum of the appellants, para. 27):

27. [...] being ordinarily resident in the United States rather than Canada [is] a valid basis for ordering a plaintiff to post security for costs in a patent infringement action considering the provisions on equal treatment of nationals in multilateral trade agreements including the *North American Free Trade Agreement* [...] and the *Agreement on Trade-Related Aspects of Intellectual Property Rights, being Annex 1C of the Agreement Establishing the World Trade Organization* [...]?

[5] This question was not raised in the proceedings below. However, the appellants maintain that the landscape has now changed and that the issue whether Rule 416(1)(a) is contrary to the *North American Free Trade Agreement*, Can. T.S. 1994 No. 2 (NAFTA) and the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, 1869 U.N.T.S. 299 (TRIPS), as implemented by the *North American Free Trade Agreement Implementation Act*, S.C. 1993, c. 44 and the *World Trade Organization Agreement Implementation Act*, S.C. 1994, c. 47 (the Implementing Act(s)) must now be addressed.

[6] In particular, they assert that Rule 416(1)(b) is no longer in issue since the corporate plaintiff has been removed from the style of cause in the underlying action. Rule 416(1)(f) is also said to be no longer in issue because the appellants were twice authorized to file fresh evidence on appeal and the evidence filed pursuant to the latest order issued by this Court on March 12, 2012 establishes that the outstanding costs – more precisely sanctions imposed by the U.S. District Court for the District of Massachusetts – have now been paid. More will be said later about the circumstances in which these sanctions were paid.

[7] Although the respondents take issue with this contention, the appellants appear to have been successful in taking Rules 416(1)(b) and (f) off the table. The only remaining ground for the order granting the motion for security for costs is Rule 416(1)(a). The appellants therefore ask that we address the novel argument that they have raised.

[8] It is not clear to me that the premise on which this argument rests – *i.e.* that Rule 416(1)(a) accords U.S. nationals a treatment that is “less favourable” than that which it accords Canadian nationals (NAFTA, article 1703(1); TRIPS, article 3(1)) – has been established, since on a plain reading of this Rule, a Canadian national who is not “ordinarily resident” in Canada could be compelled to post security for costs the same way as the individual appellants were in this case.

[9] While the expression “ordinarily resident” as it is used in Rule 416(1)(a) is undefined, its meaning is well understood; it applies to the same extent and in the same manner whether the person concerned is a “national” of Canada or of another country under NAFTA or TRIPS (see art.

201, NAFTA which defines a “national” as meaning a natural person that is a citizen or permanent resident of a Party State and art. 1, para. 3, footnote 1, TRIPS according to which “national” is *inter alia* a person domiciled within the territory of the Party State). The notion of “ordinarily resident” is distinct and separate from the notion of “citizenship”. “domicile” or “permanent residence” in that it essentially calls for a determination of the country where a person’s general mode of life unfolds:

Thomson v. Minister of National Revenue, [1946] S.C.R. 209 per Rand J. at page 224:

It is held to mean residence in the course of the customary mode of life of the person concerned and it is contrasted with special or occasional or casual residence. The general mode of life is, therefore, relevant to its application.

[10] In particular, the application of this notion is not a matter of simply counting a number of days of physical presence in a given jurisdiction – as would be the case in determining “permanent resident” status – or determining where a person is domiciled (other examples of the application of this notion can be found in *Rogers v. Inland Revenue*, (1879) 1 T.C. 225; *Cooper v. Cadwalader*, 5 T.C. 101; *Loewenstein v. De Salis*, (1926) 10 T.C. 424; *Reid v. Inland Revenue*, (1926) 10 T.C. 673; *Levene v. Inland Revenue Commissioners*, (1928) 13 T.C. 486; *Inland Revenue Commissioners v. Lysaght*, (1928) 13 T.C. 511; *Lord Inchiquin v. IR Comrs*, (1948) 31 T.C. 125; *Ford v. Hart*, (1873) L.R. 9, C.P. 273; *Russell v. M.N.R.*, [1949] Ex. C.R. 91; *Re Halliday*, [1945] O.L.R. 233; *Beament v Minister of National Revenue*, 51 D.T.C. 489).

[11] It would therefore seem that a “national” of Canada could establish his or her general mode of life elsewhere so as to cease being “ordinarily resident” in Canada in which case he or she could be ordered to post security pursuant to Rule 416(1)(a) the same way as the appellants were in this

case. From this perspective, Rule 416(1) does not subject foreign nationals to a treatment that is different from that which is accorded to nationals of Canada.

[12] Counsel for the appellants correctly pointed out that it would be highly unusual for a Canadian national to be subjected to Rule 416(1)(a) that way. In his view, this is not the proper perspective for the analysis. As I understood his position, the issue is not whether the appellants are being treated less favourably than Canadian nationals who are in the same situation as the appellants – *i.e.* Canadian nationals who like the appellants do not ordinarily reside in Canada – but whether the appellants are being treated less favourably than Canadian nationals generally. As in the normal course, Canadian nationals ordinarily reside in Canada and foreign nationals do not, Rule 416(1)(a) subjects foreign nationals to a less favourable treatment.

[13] It is not necessary to resolve this issue because even if Rule 416(1)(a) subjects foreign nationals to a less favourable treatment, neither the NAFTA nor the TRIPS can counter the operation of this rule.

[14] An argument similar to the one now being advanced was made before this Court in *Baker Petrolite Corp. v. Canwell Enviro-Industries Ltd.*, 2002 FCA 158 [*Baker Petrolite*]. The issue in that case was whether article 1709(8)(a) of the NAFTA required that section 78.4 of the *Patent Act*, R.S.C. 1985, c. P-4, as amended by R.S.C. 1985, c. 33 (3rd Supp.), brought into force on October 1, 1989 (the 1989 Act), or the *Patent Act* as amended by S.C. 1993, c. 15, brought into force on

October 1, 1996 (the 1996 Act), be read in a manner different from what Parliament intended in enacting this provision so as to be compliant with the NAFTA.

[15] The Court rejected the argument for two reasons, the first of which is relevant (*Baker Petrolite*, para. 25):

I do not accept this argument for two reasons. First, article 1709(8) is a provision of the NAFTA. The NAFTA has been approved by an Act to Implement the North American Free Trade Agreement, S.C. 1993, c. 44, s. 10. However, this does not give the provisions of the NAFTA themselves the force of an Act of Parliament. I accept that an international treaty may, where relevant, be used to assist in interpreting domestic legislation. See, for example, *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paragraphs 69 and 70. However, the international treaty cannot be used to override the clear words used in a statute enacted by Parliament. Section 78.4 is plain and obvious. *Petrolite*, I think, is relying on article 1709(8) of the NAFTA to give a restricted meaning to section 78.4 which its words cannot bear.

(To the same effect, see the decision of the Ontario Court of Appeal in *Council of Canadians v. Canada (Attorney General)*, [2006] O.J. No. 4751 [leave to appeal refused, [2007] S.C.C.A. No. 48] at para. 25; and the underlying decision by the Ontario Court of Justice [2005] O.J. No. 3422 at paras. 33 to 37).

[16] This reasoning applies with equal force to the TRIPS given that it was approved by Parliament the same way (TRIPS Implementing Act, section 8). Indeed, this is the conclusion that was reached by the Federal Court a few years earlier in *Pfizer Inc. v. Canada*, [1999] 4 F.C. 441 at paragraphs 44 to 48 [*Pfizer*].

[17] The appellants appear to recognize that the NAFTA or the TRIPS cannot be used to “override” Rule 416(1)(a). They submit however that Rule 416(1)(a) should be interpreted in a manner that conforms with the principles set out in the NAFTA and the TRIPS. They rely in this respect on the recent decision of the Supreme Court in *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 [*Merck*] where Justice Cromwell, writing for the majority stated (para. 117):

... I accept, of course, that to the extent possible domestic legislation should be interpreted so that it is consistent with Canada’s international obligations:
(citations omitted) ...

[18] Relying on this passage, the appellants submit that the word “may” in Rule 416 allows a decision-maker to decline giving effect to Rule 416(1)(a), and that this provision should be construed as not applying where, as here, doing so would produce a result that is contrary to the principles set out in the NAFTA and the TRIPS.

[19] In my view, “interpreting” Rule 416(1)(a) as not applying in these circumstances would amount to “overriding” its application. The proposition set out by Justice Cromwell in *Merck* is simply that where a legislative enactment is open to two constructions, one which is consistent with Canada’s treaty obligation and one which is not, the former should be preferred. It does not put into question the conclusion reached in *Baker Petrolite* that the NAFTA cannot “override” a clear legislative enactment.

[20] In this respect, Rule 416(1)(a) could not be any clearer. It provides for the discretion to award costs when a person is not ordinarily resident in Canada, and construing the exercise of this

discretion as being preempted by the NAFTA or the TRIPS would give these treaties an effect which they cannot have.

[21] The appellants also rely on Rule 1.1(2) of the Rules which provides:

1.1 ...

(2) In the event of any inconsistency between these Rules and an Act of Parliament or a regulation made under such an Act, that Act or regulation prevails to the extent of the inconsistency.

1.1 [...]

(2) Les dispositions de toute loi fédérale ou de ses textes d'application l'emportent sur les dispositions incompatibles des présentes règles.

They argue that the NAFTA and the TRIPS, having been approved by an Act of Parliament, the principles which they enshrine take precedence over the Rules in the event of a conflict.

[22] Again as was stated in *Baker Petrolite* and *Pfizer*, the fact that a treaty is approved by an Act of Parliament does not give the provisions of the treaty the force of law. The only way in which Rule 1.1(2) could assist the appellants is if they could show that Rule 416(1)(a) is inconsistent with the Implementing Acts themselves.

[23] In this respect, counsel for the appellants referred us to the introductory "whereas" clause of the NAFTA Implementing Act and in particular the recognition by the treaty partners of their "resolve" to:

...

strengthen the special bonds of friendship and cooperation among their

[...]

renforcer les liens privilégiés d'amitié et de coopération entre leurs nations,

nations,	[...]
...	établir une réglementation claire et mutuellement avantageuse de leurs échanges commerciaux,
establish clear and mutually advantageous rules governing their trade,	assurer un environnement commercial prévisible propice à la planification d'entreprise et à l'investissement,
ensure a predictable commercial framework for business planning and investment,	[...]
...	favoriser la créativité et l'innovation et encourager le commerce de produits et de services faisant l'objet de droits de propriété intellectuelle,
Foster creativity and innovation, and promote trade in goods and services that are the subject of intellectual property rights,	[...]
...	

[24] The resolve so expressed leaves the matter of the steps to be taken to achieve the stated objectives entirely within the hands of the treaty partners. It is up to Canada (and its treaty partners) to determine what domestic legislative changes will be made in the furtherance of their resolve, and this extends to delegated legislation. Rule 416(1)(a) has remained in force without modification despite the implementation of NAFTA almost 20 years ago. It is apparent that a modification of Rule 416(1)(a) in line with what the appellants suggest is not a way in which Canada opted to express its resolve. It follows that there is no inconsistency between Rule 416(1)(a) and the NAFTA Implementing Act.

[25] No arguments were made by reference to the specific wording of the TRIPS Implementing Act. The appellants' contention that the operation of Rule 416(1)(a) is countered by the NAFTA and the TRIPS must accordingly be dismissed.

[26] Going back to the order that was issued Prothonotary Aalto noted, beyond the fact that the individual appellants were not ordinarily resident, that they had no assets in Canada (reasons of Prothonotary Aalto, p. 4). This factor although not specified in Rule 416, was also relevant to the exercise of discretion that he made in this case.

[27] I only wish to add that the behaviour of the appellants surrounding the payment of the U.S. sanctions provides added justification for the order that was issued. These sanctions, despite their token nature (\$2,000 in total in circumstances where the evidence suggests that the actual costs incurred by the successful parties greatly exceeded this amount), remained outstanding for close to four years and payment was not made until it became apparent to the appellants that failure to do so could prove fatal to their attempt to resist posting security in the present case.

[28] That is the context in which this Court on September 9, 2011 (Pelletier J.A.) granted the appellants leave to show that they had paid the outstanding sanctions. The order authorized the production of the cheques drawn in payment but requested that evidence that the cheques had been negotiated also be produced. Although the appellants produced the cheques drawn in payment of these costs, they indicated when they filed this evidence that the cheques had yet to be negotiated.

What they did not explain is that the cheques were accompanied by a letter insisting that the cheques not be negotiated on the basis that there was no entitlement to the payment.

[29] It was obviously improper for the appellants to lead evidence suggesting that the payment of the outstanding sanctions was no longer in issue without bringing this letter to the Court's attention. The letter in question has since been produced, because the respondents compelled its production by appending it to their memorandum of fact and law. As a result of this development, the appellants have now produced, with leave, the letter in question as well as a subsequent letter written a few weeks before the hearing of the appeal reversing the direction contained in their earlier letter that the cheques not be cashed.

[30] By refusing to pay the outstanding sanctions for some four years and by representing to the Court that the outstanding sanctions had been paid while simultaneously taking steps to insure that the cheques not be negotiated, the appellants have exhibited a conduct which supports Prothonotary Aalto's overall assessment that the payment of costs, in the event that the appellants are unsuccessful in their action, is likely to be problematic and that the posting of security is in order.

[31] I now turn to the issue of impecuniosity. According to the appellants, the Federal Court judge's decision not to alter Prothonotary Aalto's conclusion that the appellants failed to demonstrate that they were impecunious is based on both a factual and a legal error. As to the factual error, the appellants refer to paragraph 32 of the reasons of the Federal Court judge where he states that "No particular finding of fact was urged as incorrect" by the appellants nor did they direct

the Court's attention "to facts or aspects of the financial statements that were overlooked or misunderstood".

[32] The appellants contend that in so saying, the Federal Court judge blatantly ignored eight pages of elaborate submissions pointing out specific errors of fact, precisely along those lines.

[33] There is a presumption that the Federal Court judge considered all the material before him. In making this submission, the appellants read paragraph 32 of the reasons in isolation. When regard is had to the preceding paragraph, it seems clear that the opinion expressed is that the findings of fact made by Prothonotary Aalto were open to him on evidence.

[34] Moreover almost all of these eight pages take issue with the weight that was given by Prothonotary Aalto to the evidence before him. There is only one element that Prothonotary Aalto is alleged to have misunderstood or overlooked: *i.e.* that the period covered by the financial statements of the corporate appellant and the other company owned by the individual appellants (Fraser Fish Inc.) did not coincide. This would have an impact on the extent of the gap in revenues identified by the Prothonotary Aalto, but it does not alter the fact that there was a gap (reasons of Prothonotary Aalto, p. 11) .

[35] Even if I assume that Prothonotary Aalto overlooked the fact that the two companies had different year ends, this would not amount to an overriding error justifying this Court's intervention.

[36] Turning to the error of law, the appellants contend that they succeeded in establishing that they were impecunious on a balance of probabilities and that Prothonotary Aalto placed the bar too high when he held that they failed to make this demonstration. They submit that this is an error of law which should have compelled the Federal Court judge to intervene.

[37] This argument must also be rejected. Contrary to what the appellants assert, Prothonotary Aalto's description of the appellants' onus as requiring "robust particularity" so that "there be no unanswered material question" (reasons of Prothonotary Aalto, p. 9) is not indicative of an error as to the standard of proof. As explained by the Federal Court judge at paragraph 25 of his reasons, these words address the scope of the proof that had to be produced. For example, Prothonotary Aalto pointed to the fact that Fraser Fish Inc. is an active company, but that when questioned about whether this company could fund the litigation or provide collateral, the appellants (by their witness Alfred T. Fraser) indicated that this was not explored because Fraser Fish Ltd. "has nothing to do with [this litigation]" (reasons of Prothonotary Aalto, pp. 9 to 11).

[38] There is no question that in order to demonstrate their impecuniosity, the individual appellants had to show that they did not have access to funding. By refusing to consider Fraser Fish Ltd. as a potential source, the appellants left open a material question which they had to address if they hoped to establish that they were impecunious. A reading of Prothonotary Aalto's decision shows that this is the type of situation that he had in mind when he used the language with which the appellants take issue.

[39] I would add along the same lines that if the appellants have a good chance of succeeding in their claim as they assert with conviction (memorandum of the appellants, paras. 14 to 25), their right of action represents a significant asset from which financing could potentially be obtained. According to counsel for the appellants, the upside of their action should they succeed, could reach \$100,000,000. This is another avenue that does not appear to have been explored.

[40] I can detect no error in the Federal Court judge's refusal to intervene with respect to Prothonotary Aalto's conclusion that the appellants failed to demonstrate their impecuniosity.

[41] Finally, the appellants made all their arguments on the basis that they have in effect been ordered to post security in the amount of \$150,000. No such order has been made as Prothonotary Aalto chose to deal solely with liability for security for costs, deferring his decision with respect to quantum to a time when the issue of liability has been settled. It will be open to the appellants to bring forth whatever argument they may have on the issue of quantum when the matter returns before Prothonotary Aalto in his case management capacity.

[42] I would dismiss the appeal with costs which I would fix at \$3,000.

“Marc Noël”

J.A.

“I agree
Pierre Blais C.J.”

“I agree
Johanne Gauthier J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-205-11

APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE RENNIE OF THE FEDERAL COURT DATED MAY 19, 2011, DOCKET NO. T-1583-09.

STYLE OF CAUSE:

Alfred T. Fraser, Paul J. Fraser, and Fraser See Foods Corporation v. Janes Family Foods Ltd.; Trident Seafoods Corporation; Conagra Foods, Inc.; Conagra Foods Canada Inc./Aliments Conagra Canada Inc.; Bluewater Seafoods Inc.; Gorton's Inc.; Gorton's Fresh Seafood, LLC; Roche Bros Inc.; Roche Bros. Supermarkets, Inc.; Roche Bros Supermarkets, LLC; High Liner Foods Incorporated; Comeau's Sea Foods Limited; Pinnacle Seafoods Ltd.; Pinnacle Foods Canada Corporation; Pinnacle Foods Group LLC; Sobeys Inc.; Sobeys Capital Incorporated; Loblaws Inc.

PLACE OF HEARING:

Toronto, Ontario

DATE OF HEARING:

March 20, 2012

REASONS FOR JUDGMENT BY:

Noël J.A.

CONCURRED IN BY:

Blais C.J.
Gauthier J.A.

DATED:

March 26, 2012

APPEARANCES:

Samuel Kazen

David Turgeon

FOR THE APPELLANTS

FOR THE RESPONDENTS
(Blue Water Seafood Inc., Gorton's
Fresh Seafood, LLC, Roche Bros. Inc.,
Roche Bros. Supermarkets, Inc.,
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FOR THE RESPONDENTS
(Blue Water Seafood Inc.,
Gorton's Inc.,
Gorton's Fresh Seafood, LLC,
Roche Bros. Inc.,
Roche Bros. Supermarkets, Inc.,
Roche Bros. Supermarkets, LLC)

FOR THE RESPONDENTS
(James Family Foods Ltd.,
Trident Seafoods Corporation;
ConAgra Foods, Inc.,
II Conagra Foods Canada
Inc./Aliments Conagra Canada Inc.,
Pinnacle Seafoods Ltd.,
Pinnacle Foods Canada Corporation,
Pinnacle Foods Group LLC,
Sobeys Inc.,
Sobeys Capital Incorporated)