

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20230512**

**Docket: A-71-22**

**Citation: 2023 FCA 100**

**CORAM: BOIVIN J.A.  
LOCKE J.A.  
LEBLANC J.A.**

**BETWEEN:**

**CHÂTEAU D'IVOIRE STORES INC.**

**Appellant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

Dealt with in writing without appearance of parties.

Judgment delivered at Ottawa, Ontario, on May 12, 2023.

**REASONS FOR JUDGMENT BY:**

**LOCKE J.A.**

**CONCURRED IN BY:**

**BOIVIN J.A.  
LEBLANC J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT**

**LOCKE J.A.**

[1] This matter arises from a statutory appeal before the Federal Court that was brought by the appellant, Château d'Ivoire Stores Inc. (Château d'Ivoire), in respect of a decision of the Director and Chief Executive Officer (Director) of the Financial Transactions and Reports Analysis Centre (FINTRAC). The Director's decision confirmed a notice of violation that

imposed administrative monetary penalties on Château d'Ivoire pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17.

[2] In this Court, Château d'Ivoire appeals an Order of the Federal Court (2022 FC 405, *per* Justice Peter G. Pamel), which dismissed its motion under Rules 317 and 318 of the *Federal Courts Rules*, S.O.R./98-106, for disclosure of certain documents. Château d'Ivoire had brought the motion after FINTRAC denied its request under Rule 317 to provide the documents because they had not been considered by the Director, the decision-maker of the impugned decision.

[3] For convenience, I reproduce the text of Rule 317(1) here:

**Material in the Possession of a Tribunal**

**Material from tribunal**

**317 (1)** A party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party by serving on the tribunal and filing a written request, identifying the material requested.

**Obtention de documents en la possession d'un office fédéral**

**Matériel en la possession de l'office fédéral**

**317 (1)** Toute partie peut demander la transmission des documents ou des éléments matériels pertinents quant à la demande, qu'elle n'a pas mais qui sont en la possession de l'office fédéral dont l'ordonnance fait l'objet de la demande, en signifiant à l'office une requête à cet effet puis en la déposant. La requête précise les documents ou les éléments matériels demandés.

[4] Rule 350 provides that Rules 317 to 319 apply, with such modifications as are necessary, to statutory appeals of the kind brought by Château d'Ivoire before the Federal Court in this case.

[5] At the request of the parties, this appeal has been heard on the basis of the parties' respective memoranda of fact and law, and without an oral hearing.

[6] The gist of Château d'Ivoire's argument before the Federal Court (and before this Court) is that, because the Director made her impugned decision by simply accepting a recommendation that she received from her FINTRAC staff, FINTRAC should have provided all of the documents in its possession that related to the notice of violation. Château d'Ivoire argues that the document production should not have been limited to the material that was provided to the Director because she effectively delegated her decision-making authority to her staff, and simply rubber-stamped the recommendation she received. Château d'Ivoire argues that the Director, and FINTRAC, should not be able to shield relevant documents from scrutiny by engaging in such an exercise of delegation.

[7] The Federal Court concluded that Château d'Ivoire had provided little direct legal support for its position. It did concede at paragraph 23 that:

[i]t would be rather Kafkaesque for an administrative decision-maker to be able to shield the material relevant to an application for judicial review or a statutory appeal by delegating decision-making authority to staff who would then simply place limited material before the decision-maker with a draft decision, ready to be signed without question.

[8] However, the Federal Court continued by concluding that "there is no evidence to suggest that that is what happened in this case, and suggesting it does not make it so." (paragraph 23).

The Federal Court stated that the Director was entitled to rely on staff to review the matter and make a recommendation, and there was no evidence that, in doing so, she had delegated her

decision-making authority. The Federal Court concluded that the evidence indicated in fact that the Director made the impugned decision herself.

[9] The Federal Court referred to some of the abundant jurisprudence to the effect that a party requesting documents pursuant to Rule 317 is entitled only to relevant material that was before the decision-maker when the decision was made (e.g. *1185740 Ontario Ltd. v. Canada (Minister of National Revenue)*, 1998 CanLII 7910 at para. 11 (F.C.T.D.), aff'd [1999] F.C.J. No. 1432 at para. 3 (F.C.A.) (QL)). The Federal Court also noted that Rule 350 does not require a heightened standard of disclosure for statutory appeals: *Athletes 4 Athletes Foundation v. Canada (National Revenue)*, 2020 FCA 41, [2020] F.C.J. No. 557 at para. 22.

[10] The Federal Court acknowledged that Rule 317 may be broadened where a breach of procedural fairness is alleged, but it found that Château d'Ivoire had failed to establish the relevance of the documents in issue to the purported breach, which would be necessary for the Federal Court to exercise its discretion in this regard: *Gagliano v Canada (Commission of Inquiry into the Sponsorship Program and Advertising Activities)*, 2006 FC 720, [2006] F.C.J. No. 917 at paras. 51-52, aff'd 2007 FCA 131, [2007] F.C.J. No. 467.

[11] Château d'Ivoire argues that the Federal Court erred in law, and that a standard of correctness applies in this appeal. This suggests that Château d'Ivoire does not take issue with the Federal Court's factual conclusions. However, many of Château d'Ivoire's submissions suggest that it does not accept all of these conclusions. In any case, the standard of review in this appeal is as indicated by the Supreme Court of Canada in *Housen v. Nikolaisen*, 2002 SCC 33,

[2002] 2 S.C.R. 235: correctness on questions of law (see paragraph 8), and palpable and overriding error on questions of fact or of mixed fact and law in which there is no extricable issue of law (see paragraphs 10 and 36). To the extent that Château d'Ivoire takes issue with any of the Federal Court's factual findings, it must convince this Court that the Federal Court erred in making such findings in a way that is both palpable (i.e. obvious) and overriding (i.e. going to the core of the outcome): *Canada v. South Yukon Forest Corporation*, 2012 FCA 165, [2012] F.C.J. No. 669 at para. 46.

[12] I agree with the Federal Court's legal conclusion that the scope of document production under Rule 317 is generally limited to material that was before the decision-maker when the decision was made. I also agree that the Director was entitled to seek a recommendation from a FINTRAC staff member. I am not convinced that the Federal Court erred in law.

[13] I am also not convinced that the Federal Court made a palpable and overriding error on any question of mixed fact and law. I agree with the Federal Court's conclusion that the evidence in this case does not support any broader application of Rule 317. The Federal Court was entitled to conclude that the Director had made her own decision based on the documents that were provided to her, and had not delegated her decision-making authority (*Galipeau v. Canada (Attorney General)*, 2015 FC 984, 257 A.C.W.S. (3d) 587). The evidence cited at length in Château d'Ivoire's memorandum of fact and law does not compel a different conclusion. The Federal Court was also entitled to find that there was no indication of any effort to use delegation to shield documents from scrutiny. Finally, the Federal Court was entitled to find that there was

no link of relevance between the alleged breach of procedural fairness and the documents sought by Château d'Ivoire.

[14] Of course, nothing in this decision, or in the Federal Court's Order under appeal here, is determinative on the issues that are to be considered in the statutory appeal of the Director's decision. Château d'Ivoire remains entitled to argue its case, even though it is not entitled to compel production of the documents in question here.

[15] I would dismiss the present appeal with costs.

"George R. Locke"

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J.A.

"I agree.  
Richard Boivin J.A."

"I agree.  
"René LeBlanc J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:**

A-71-22

**STYLE OF CAUSE:**

CHÂTEAU D'IVOIRE STORES  
INC. v. THE ATTORNEY  
GENERAL OF CANADA

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR JUDGMENT BY:**

LOCKE J.A.

**CONCURRED IN BY:**

BOIVIN J.A.  
LEBLANC J.A.

**DATED:**

MAY 12, 2023

**WRITTEN REPRESENTATIONS BY:**

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