

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20140528**

**Docket: A-298-13**

**Citation: 2014 FCA 142**

**CORAM: SHARLOW J.A.  
GAUTHIER J.A.  
MAINVILLE J.A.**

**BETWEEN:**

**APOTEX INC.**

**Appellant**

**and**

**ASTRAZENECA CANADA INC. AND  
AKTIEBOLAGET HÄSSLE**

**Respondents**

Heard at Toronto, Ontario, on May 28, 2014.  
Judgment delivered from the Bench at Toronto, Ontario, on May 28, 2014.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**GAUTHIER J.A.**

Federal Court of Appeal



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APOTEX INC.

Appellant

and

ASTRAZENECA CANADA INC. AND  
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**REASONS FOR JUDGMENT OF THE COURT**  
(Delivered from the Bench at Toronto, Ontario, on May 28, 2014).

**GAUTHIER J.A.**

[1] This is an appeal from the order of Kane J. of the Federal Court (2013 FC 926) upholding the order of Prothonotary Aronovitch granting leave to Astrazeneca to add certain paragraphs to their Third Amended Statement of Claim in their patent infringement action (file T-1409-04).

These amendments relate to the Astrazeneca's standing and to damages sought by Astrazeneca in

respect of the compensation it will have to pay under the section 8 of the *Patented Medicines (Notice of Compliance) Regulations*, SOR/93-133 proceeding instituted by Apotex (file T-2300-05).

[2] The judge was satisfied that the prothonotary had not erred and that even if the matter had to be reviewed on a *de novo* basis, she would have arrived at the same conclusion. She noted that the merits of the section 8 damages claims were best left to the trial judge.

[3] Having reviewed the record and the parties' submissions, and considering their oral arguments, we have not been persuaded that the judge committed an error that would justify this Court's intervention, particularly in a file of such complexity where the case manager had such an intimate knowledge of all the relevant proceedings and of the uniqueness of the circumstances.

[4] Obviously, our decision should not be understood as endorsing the validity of the claims which have yet to be determined by the trial judge.

[5] Accordingly, the appeal will be dismissed with costs

"Johanne Gauthier"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-298-13

**APPEAL FROM AN ORDER OF THE HONOURABLE JUSTICE KANE OF THE  
FEDERAL COURT OF CANADA, DATED AUGUST 30, 2013, DOCKET NO. T-1409-04**

**STYLE OF CAUSE:** APOTEX INC. v. ASTRAZENECA  
CANADA INC. AND  
AKTIEBOLAGET HÄSSLE

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** MAY 28, 2014

**REASONS FOR JUDGMENT OF THE COURT BY:** SHARLOW J.A.  
GAUTHIER J.A.  
MAINVILLE J.A.

**DELIVERED FROM THE BENCH BY:** GAUTHIER J.A.

**APPEARANCES:**

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FOR THE RESPONDENTS

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FOR THE RESPONDENTS