Docket: 98-1659(IT)G

BETWEEN:

ALLAN MCLARTY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard by telephone conference call on May 11, 2009 at Ottawa, Canada

Counsel for the Appellant:	Jehad Haymour
Counsel for the Respondent:	Josee Tremblay Martin Beaudry

ORDER

The motion by the Respondent to amend its Reply to the Notice of Appeal is allowed with costs in the cause.

Signed at Vancouver, British Columbia, this 1st day of June 2009.

"V.A. Miller"

V.A. Miller, J.

Citation: 2009TCC294
Date: 20090529
Docket: 98-1659(IT)G

BETWEEN:

ALLAN MCLARTY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

V.A. Miller, J.

[1] This is a motion by the Respondent to amend its Reply to Notice of Appeal ("Reply") to withdraw one of the grounds that it had relied on and to bring forward an alternative reason for maintaining the reassessments. A copy of the proposed Amended Reply to Notice of Appeal is attached to these reasons as Appendix A.

[2] This motion has been brought as a result of a decision by the Supreme Court of Canada in *R. v. Mc Larty*, 2008 SCC 26, an appeal which was related to the present case. In that appeal, Justice Rothstein found that a promissory note, similar to the one which exists in the present case, was not contingent in nature. He wrote:

> [75] The Minister has numerous basis for challenging the deductions taken by a taxpayer. He may rely on sham or the *GAAR* to name just two. He did not do so in this case. In reassessment cases, the role of the court is solely to adjudicate disputes between the Minister and the taxpayer. It is not a protector of government revenue. The court must decide only whether the Minister, on the basis on which he chooses to assess, is right or wrong. In this Court, the Minister relied on contingent liability and non-arm's length dealing. The liability incurred by McLarty was not contingent and there was no basis to interfere with the findings of the trial judge that McLarty's dealings with Compton were at arm's length.

[3] The Respondent now seeks to amend its Reply to withdraw its plea that the promissory note at issue is contingent in nature and she brings forward additional grounds for upholding the reassessments. Those additional grounds are:

a) The expense at issue is not deductible pursuant to paragraph 20(1)(*b*) of the Act as the expense was not incurred for the purpose of generating income from a source; and,

b) The transactions which led to the Appellant's claim for a CEE deduction were shams with a view to deceive the Minister of National Revenue ("the Minister").

[4] A brief summary of the facts as gleaned from the pleadings is as follows. The Appellant, together with other individuals, entered into a joint venture agreement on December 31, 1993. The Appellant purchased his interest in the joint venture for $110,000 which was comprised of $20,000 cash and a promissory note in the amount of $85,000 and an additional debt of $5,000.

[5] In his Notice of Appeal, the Appellant pled that he, through the joint venture, carried on a petroleum and natural gas exploration and development business. He added the amount of $110,000 to his cumulative Canadian exploration expense ("CCEE") account and claimed a deduction in 1993 and 1994.

[6] By notices dated May 1, 1997, the Appellant was reassessed for his 1993, 1994 and 1995 taxation years to include an amount in income and to disallow the deduction of a Canadian exploration expense ("CEE").

[7] In reassessing the Appellant, the Minister made numerous assumptions. Several of those assumptions questioned whether various transactions actually occurred. In the Reply, the Respondent used the word "purportedly" to describe the transactions.

[8] The grounds relied on by the Respondent in its Reply were:

a) The expense in question was not incurred by the Appellant for the purpose of determining the existence, location, extent or quality of petroleum or natural gas within the meaning of subparagraph 66.1(6)(*a*)(i) of the *Income Tax Act* ("the Act"). Therefore the Appellant is not entitled to a CEE deduction, but he is entitled to an eligible capital expenditure in the amount of $20,000.

b) In the alternative, if the Appellant was entitled to a CEE, it was limited to $20,000.

c) The $85,000 promissory note given by the Appellant to Carlyle was contingent in nature, and the Appellant did not incur that amount as an expense within the meaning of subparagraph 66.1(6)(*a*)(i) of the Act.

d) The promissory note was not worth its face value, and the Appellant is not entitled to the amount of CEE deduction claimed.

e) The amount of the expense incurred by the Appellant is unreasonable in the circumstances, and his CEE deduction is limited pursuant to section 67 of the Act.

[9] The history of events in this appeal is as follows:

a) The Notice of Appeal was filed on June 23, 1998 in respect of the 1993, 1994 and 1995 taxation years. The Reply was filed on October 13, 1998.

b) The Appellant filed its list of documents on October 15, 1999 and the Respondent filed its list on November 6, 1998.

c) On December 7, 1998, the Respondent attempted to join this appeal to a "Related Appeal" that was already before this court. The motion was denied.

d) Both the present appeal and the Related Appeal were held in abeyance pending the outcome of *Global Communications v. The Queen.*

e) The Respondent brought a motion pursuant to section 58 of the Rules, to dismiss the Related Appeal on the basis that, with respect to the issue of contingent liability, the decision from the Federal Court of Appeal in *Global Communications v. The Queen* applied. This motion was heard on October 31, 2000.

f) The Rule 58 motion was decided in favour of the Respondent in this court and in favour of the Appellant at the Federal Court of Appeal.

g) On June 14, 2002, the present appeal was held in abeyance pending the outcome of the Related Appeal.

h) Trial of the Related Appeal took place in September 2003. The Related Appeal was resolved fully in favour of the Appellant by the Supreme Court of Canada by decision dated May 22, 2008.

i) On February 18, 2009, the Appellant filed a supplemental list of documents.

j) By Order dated February 20, 2009, the parties have until July 31, 2009 to complete their examinations for discovery.

Position of the Parties

[10] I gather from the submissions made by counsel for the Appellant, at the hearing of this motion, that he does not oppose the withdrawal of the plea that the promissory note was contingent in nature. However, the Appellant does oppose the motion on the grounds that the Respondent has not presented evidence to establish that the proposed alternative reason relates to a triable issue, and, the proposed amendment is prejudicial and contrary to the interests of justice in the circumstances of this case.

[11] The Respondent's counsel asserts that:

a) The documents and transactions referred to in the Amended Reply were already included in various paragraphs of the original Reply and formed the basis of the Appellant's reassessments;

b) The Amended Reply does not refer to new facts; it only recharacterizes the transactions;

c) The amendments do not cause prejudice to the Appellant;

d) The Appellant has been informed of these amendments in a timely fashion as discovery has not been held; and,

e) The amendments are permitted by subsection 152(9) of the *Income Tax Act ("the Act").*

[12] For the reasons that follow I am of the opinion that the Respondent should succeed in her motion.

[13] Where a party makes a motion to amend pleadings, it is not necessary that the party present evidence to establish that the proposed amendment relate to a triable issue. In *Andersen Consulting v. R.*[1], the respondent opposed the appellant's motion to amend the pleadings as the appellant did not provide evidence in support. The court wrote:

> 15 The material filed by the Respondent lies at the core of the debate between the parties and will have to be assessed by the trial judge at trial to determine the validity of the Respondent's lawsuit. It would be most undesirable, in our view, to embark at this stage of the proceedings upon a mini trial to determine whether the evidence allegedly required to be filed with the motion to amend supports or not the new amendments. We agree with Taylor J.A. in *La v. Le* "that if the courts do not permit admissions to be withdrawn when new facts are unexpectedly brought to light thereafter, parties will inevitably be discouraged from making what seemed at the time to be proper admissions, to the considerable disadvantage of litigants and the administration of justice generally"[6]. We must ensure that the procedure to withdraw admissions is not made so complex and so stringent that virtually no admissions will be made by defendants.
>
> 16 Indeed, the desirable flexibility in matters of amendment to pleadings, including, in our view, the withdrawal of admissions, was stated by our colleague Décary J.A. in the following terms in the *Canderel* case:
>
> > While it is impossible to enumerate all the factors that a judge must take into consideration in determining whether it is just, in a given case, to authorize an amendment, the general rule is that an amendment should be allowed at any stage of an action for the purpose of determining the real questions in controversy between the parties, provided, notably, that the allowance would not result in an injustice to the other party not capable of being compensated by an award of costs and that it would serve the interests of justice[7].
>
> 17 Applying this test to the present case, there is, in our view, no doubt that the proposed amendments relate to a triable issue that should be decided at trial and that, for the purpose of determining the real questions in controversy between the parties, it is in the interest of justice that the amendments be authorized.

[14] The proposed amendments in the present appeal relate to a triable issue that should be decided at trial.

[15] The Federal Court of Appeal, in *Walsh v. R.*[2], stated that the following conditions apply when the Minister seeks to rely on subsection 152(9) of the Act:

> 1) the Minister cannot include transactions which did not form the basis of the taxpayer's reassessment;
>
> 2) the right of the Minister to present an alternative argument in support of an assessment is subject to paragraphs 152(9)(a) and (b), which speak to the prejudice to the taxpayer; and
>
> 3) the Minister cannot use subsection 152(9) to reassess outside the time limitations in subsection 152(4) of the Act, or to collect tax exceeding the amount in the assessment under appeal.

[16] The amendments proposed by the Respondent do not introduce new transactions. They recharacterize the transactions which had been referred to in the Reply.

[17] Counsel for the Appellant has submitted that the proposed amendments are prejudicial and contrary to the interests of justice in the circumstances of this case. His argument is based on the fact that the events at issue occurred in 1993 and the Appellant will have to incur significant costs to refute the assertion of sham.

[18] Where the Respondent has plead an alternative argument, that was not assumed by the Minister when he made the reassessment, the onus is on the Respondent to bring forth evidence to prove that alternative. Any prejudice that the Appellant may suffer can be compensated by an award of costs. The following was provided by the Federal Court of Appeal in *Canderel Ltd. v. R*[3]*:*

> 10. With respect to amendments, it may be stated, as a result of the decisions of this Court in *Northwest Airporter Bus Service Ltd. v. The Queen* (1978), 23 N.R. 49 (F.C.A.); *The Queen v. Special Risks Holdings Inc.*, [1984] C.T.C. 71, 84 D.T.C. 6054 (F.C.T.D.); aff'd [1984] C.T.C. 563, 84 D.T.C. 6215 (F.C.A.); *Meyer v. Canada* (1985), 62 N.R. 70 (F.C.A.); *Glisic v. The Queen*, [1988] 1 F.C. 731, 80 N.R. 39 (F.C.A.); and *Francoeur v. Canada*, [1992] 2 F.C. 333, 140 N.R. 389 (F.C.A.) (and of the decision of the House of Lords in *Ketteman v. Hansel Properties Ltd.*, [1987] A.C. 189, [1988] 1 All E.R. 38 (H.L.), which was referred to in *Francoeur*), that while it is impossible to enumerate all the factors that a judge must take into consideration in determining whether it is just, in a given case, to authorize an amendment, the general rule is that an amendment should be allowed at any stage of an action for the purpose of determining the real questions in controversy between the parties. Provided, notably, that the allowance would not result in an injustice to the other party not capable of being compensated by an award of costs and that it would serve the interests of just.

[19] Paragraphs 152(9)(*a)* and (*b*) of the Act are not applicable in the circumstances of this appeal because discovery has not yet been held.

[20] The motion is allowed with costs in the cause.

Signed at Vancouver, British Columbia, this 1st day of June 2009.

"V.A. Miller"

V.A. Miller, J.

[1] [1998] 1 F.C. 605 (FCA)
[2] 2007 FCA 222 at paragraph 18
[3] [1993] 2 C.T.C. 213 (FCA) at paragraph 10

Appendix A

98-1659(IT)G

TAX COURT OF CANADA
(GENERAL PROCEDURE)

BETWEEN:

~~ALLEN~~ ALLAN MCLARTY

Appellant

-and-

HER MAJESTY THE QUEEN

Respondent

AMENDED REPLY TO NOTICE OF APPEAL

In reply to the Notice of Appeal with respect to the Appellant's 1993, 1994 and 1995 taxation years, the Deputy Attorney General of Canada, on behalf of Her Majesty the Queen, says:

A. STATEMENT OF FACTS

1. He admits the facts stated in paragraphs 1, 2, 3, 4, 7, 11, 20, 21, 22 and 23 of the Notice of Appeal.

2. He denies the facts alleged in paragraphs 13, 15, 17 and 19 of the Notice of Appeal.

3. He has no knowledge of, and puts in issue, the facts alleged in paragraphs 14, 16 and 18 of the Notice of Appeal.

4. He admits the facts stated in paragraph 5 of the Notice of Appeal, but says that the Appellant has already appealed the reassessment for the 1994 taxation year in court file 97-3628(IT)G.

5. In answer to paragraph 6 of the Notice of Appeal, he admits only that the Appellant and others (one being a corporation) entered into the Joint Venture Agreement on 31 December 1993. He denies the remaining facts alleged therein, in particular that a petroleum and natural gas business was carried on.

6. In answer to paragraph 8 of the Notice of Appeal, he denies that the total consideration was $6.5 million, and that the transaction was at arm's length. He admits the remaining facts stated therein.

7. In answer to paragraph 9 of the Notice of Appeal, he admits only the 507326 received three appraisals of seismic data which purported to estimate the fair market value of the Technical Data Base as follows:

Curts Seismic Consultants Ltd.	$ 8,718,546
Solid State Geophysical Inc.	$10,343,048
Citidal Engineering Ltd.	$10,318,000

He has no knowledge of, and puts in issue, the remaining facts alleged therein.

8. In answer to paragraph 10 of the Notice of Appeal, he denies that the total consideration was $6.5 million. H admits the remaining facts stated therein.

9. In answer to paragraph 12 of the Notice of Appeal, he denies that the consideration was $110,000, and that the promissory note was in favour of 507326. He admits the remaining facts stated therein.

10. In reassessing the Appellant's 1993, 1994 and 1995 taxation years as described in paragraph 23 of the Notice of Appeal, the Minister of National Revenue (the "Minister") assumed the following facts:

(a) On 20 April 1993, Probe Exploration Inc ("Probe") entered into negotiations with Chevron Canada Resources ("Chevron") to acquire a proprietary interest in seismic data sets ("seismic") consisting of a minimum of 1,000 kilometers.

(b) Probe proposed to have some of Chevron's seismic appraised (taking into account such factors as replacement cost, quality, technical parameters and area activity), and pay Chevron a cash consideration of 8% of the appraised value plus 50% of revenue earned from future sales of copies of the seismic.

(c) In previous transactions of this nature, Probe had used Citadel (sic) Engineering, Curtz (sic) Consulting (Brian Curtz), and Jaskella Resources Consulting to appraise the seismic.

(d) While Chevron was receptive to a straight cash sale of some of its seismic, it advised Probe on 31 May 1993 that it would not agree to Probe's proposal.

(e) On 21 December 1993, Carlyle Management (1993) Inc. ("Carlyle") made an offer to Chevron that Carlyle or its nominee would purchase Chevron's entire interest in the proprietary rights to approximately 5,905 kilometers of seismic (the "Manitoba Seismic", also the "Technical Data Base" and the Venture Data" in the Notice of Appeal) for $805,000 cash.

(f) Chevron accepted Carlyle's offer on 23 December 1993.

(g) Carlyle and Chevron dealt with each other at arm's length.

(h) The following events occurred on 31 December 1993:

- Chevron purportedly sold the Manitoba Seismic to Seitel, Inc. ("Seitel"), a non-resident corporation and Carlyle's nominee, for $805,000 cash;

- Seitel purportedly sold the Manitoba Seismic to Carlyle for $6.5 million, composed of $805,000 in cash and a limited recourse debenture for $5,695,000;

- Carlyle purportedly sold the Manitoba Seismic to 507326 Alberta Ltd. ("507326") as agent on behalf of the 507326 Alberta Ltd. 1993/1994 Oil and Gas Joint Venture (the "Joint Venture") for $6.5 million, composed of $975,000 in cash and a limited recourse promissory note for $5,525,000;

- 507326, Carlyle and Seitel entered into a Data Management and Sales Agreement whereby Setel was authorized as worldwide agent to license copies of the Manitoba Seismic to third parties; and

- 507326 entered into a Joint Venture Agreement with the Appellant, 30 other individuals and one corporation (the "Individual Joint Venturers") involving the purported acquisition, exploration, development and production of petroleum and natural gas.

(i) The Appellant purportedly purchased a interest in the Joint Venture for $110,000, composed of $20,000 in cash, a limited recourse promissory note to Carlyle for $85,000 (the “Promissory Note”), and an additional debt of $5,000.

(j) Repayment of the Promissory Note was by assignment of 50% of net licensing revenues due to the Appellant from future sales of licensed copies of the seismic, and 20% of the production cash flow generated from the Appellant’s interest in petroleum rights acquired by the Joint Venture, first to interest and then to principal.

(k) In the event that the Promissory Note was not paid at maturity, Carlyle had the right to force the sale of the investor’s undivided interest in the seismic and 20% of other joint venture interests by a trustee for cash only, with 50% of the proceeds going to Carlyle, the remaining 50% to the Appellant, with any shortfall being forgiven.

(l) The division of forced sale proceeds described in the previous paragraph is not in accordance with normal lending practice.

(m) The price paid by Carlyle to Seitel for the Manitoba Seismic was inflated by the use of limited recourse financing, and the true consideration was $805,000 plus 50% of net licensing revenues for nine years.

(n) The price paid by 507326 to Carlyle for the Manitoba Seismic was inflated by the use of limited recourse financing, and the true consideration was $975,000 plus 50% of net licensing revenues for nine years.

(o) The price paid by the Appellant for his interest in the Joint Venture was inflated by the use of limited recourse financing, and the true consideration was $20,000 plus 50% of net licensing revenues for nine years.

(p) There was never any intention between the parties that the holders of the limited recourse financing would receive payment of the principal sum of the debenture and the promissory notes.

(q) The purpose of the limited recourse financing was to ensure that the holders receive a revenue stream from future sales of copies of the seismic, and to provide an inflated income tax deduction.

(r) It is not necessary to acquire proprietary rights to seismic to use it for exploration purposes; a licensed copy is sufficient.

(s) Any expenses incurred by 507326 were incurred for the purpose of providing income tax deductions for the Individual Joint Venturers, and not for any of the purposes referred to in s. 66.1(6)(a)(i) of the Income Tax Act (the "Act").

(t) Expenses in the amounts of approximately $123,725, $124,625 and $54,000 (most of which were management fees based on sales of copies of the seismic) were incurred by 507326 in 1994, 1995 and 1996 respectively for the purpose of giving the impression that the Manitoba Seismic had been acquired for the purposes referred to in s. 66.1(6)(a)(i) of the Act.

(u) Any expenses incurred by the Appellant in connection with his participation in the Joint Venture were incurred for the purpose of obtaining an income tax deduction, and not for any of the purposes referred to in s. 66.1(6)(a)(i) of the Act.

(v) The expense incurred by the Appellant in connection with his participation in the Joint Venture did not exceed $20,000.

(w) Any expense incurred by the Appellant in excess of $20,000 in connection with his participation in the Joint Venture was unreasonable in the circumstances.

(x) Any expense incurred by the Appellant in excess of $20,000 in connection with his participation in the Joint Venture was a contingent liability.

(y) The Appellant had previously invested in other seismic in order to obtain income tax deductions.

(z) The three appraisals of the Manitoba Seismic obtained by 507326:

- were not independent expert valuations;
- were based on discounted replacement costs of re-shooting the seismic; and
- used erroneous methodology that produced inaccurate and overstated opinions of value

(aa) The value of the Manitoba Seismic on 31 December 1993 did not exceed $975,000.

(bb) In determining the sale price of seismic, it is industry practice to apply volume discounts on the sale of blocks in excess of 1,000 kilometers.

(cc) These volume discounts vary with the size of the block and the relative negotiating strength of buyer and seller.

(dd) An 80% volume discount on the Manitoba Seismic purchased by 507326 would have been in accordance with industry practice and reasonable in the circumstances.

11. The fair market value of the Manitoba Seismic on 31 December 1993 is irrelevant. If it is relevant, the fair market value was $805,000, the price at which it was sold by Chevron.

12. The Appellant, although purportedly a party to a contract commonly known as a joint venture, did not carry on business with respect to the sale or licensing of the seismic data at issue nor with respect to exploration for oil and gas. During the years at issue, the Appellant earned professional income generated by his law practice. The sole "activities" of the Appellant that related to his purported participation in the joint venture was the payment of an amount of $20,000 and a deduction of the CEE in computing his income for the years in issue.

13. According to the Data Management and Sales Agreement, it was Seitel which managed and licensed the data in issue. In particular, Seitel determined the terms and conditions of all licensing, marketed, sold and delivered the data, ensured the creditworthiness of the licensees, protected and insured the data.

14. The incorporation of 507326, the agreement between Chevron and Carlyle for the purchase of the Manitoba seismic data for an amount of $805,000 on December 21, 1993, the purchase of the data from Chevron by Seitel in lieu and in place or as agent of Carlyle for the amount of $805,000 on December 31, 1993, the purchase by Carlyle of the same data and on the same day from Seitel at the inflated price of $6.5 million, the sale by Carlyle of the same data to 507326 on the same day for the amount of $6.5 million, the Data Management and Sales Agreement which provides that Seitel will act as the agent of 507326 to manage and licensed copies of the data for a commission fee of 10%, the Joint Venture agreement between 507326 and 30 other individuals and one corporation and the alleged acquisition by the appellant of an interest in the Joint Venture, were steps in shams that were arranged in attempts to deceive the Minister into believing that the expenses in issue were incurred for the purpose of exploration, rather than for the purchase of income tax deductions.

B. ISSUES TO BE DECIDED

15. The Respondent does not agree with the Appellant's characterization of the issues in this appeal.

16. In response to paragraph 24 of the Notice of Appeal in which the Appellant purports to set out those issues which are not contested, he says that only subparagraph (a) is conceded by the Respondent.

17. The issues to be decided in this appeal are:

(a) What expense, if any, did the Appellant incur in respect of the purchase of seismic data?

(b) Does the expense, if any, or any part of it incurred by the Appellant, qualify as a Canadian Exploration Expense ("CEE") within the meaning of s. 66.1(6)(a)~~(i)~~ of the Act?

(c) If the expense, if any, does not qualify as CEE, whether it is deductible pursuant to s 20(1)(b) of the Act?

(d) In the alternative, whether the appeal should in any event be dismissed, as the deduction claimed by the Appellant was part of a structure designed to implement shams with a view to deceive the Minister.

C. STATUTORY PORVISIONS, GROUNDS RELIED UPON AND RELIEF SOUGHT

12. The Respondent relies upon section ~~18(1)(e)~~, 3, 4, 9, 14(5), 20(1)(b), 66(15), 66.1, 67 and 248(1) of the Act, as amended for the 1993 to 1995 taxation years.

13. He submits that the expense in issue was not incurred by the Appellant for the purpose of determining the existence, location, extent or quality of petroleum or natural gas within the meaning of s. 66.1(6)(a)~~(i)~~ of the *Act*. Therefore the Appellant is not entitled to a CEE deduction.~~, but he is entitled to an eligible capital expenditure in the amount of $20,000~~.

14. The expense in issue is not deductible pursuant to s. 20(1)(b) of the Act because the said expense was not incurred for the purpose of generating income from a source.

15. In the alternative, he submits that the transactions which led to the Appellant's claim for a CEE deduction were shams and that in any event, the appeal should be dismissed.

16. In the further alternative, if this Court finds that the expense at issue is deductible on the basis that the Appellant, as a party to the joint venture contract, carried on a business and that there is no sham, the Appellant is entitled to an eligible capital expenditure in the maximum amount of $20,000.

17. In the further alternative, ~~for the reasons described below~~, he submits that the Appellant's CEE deduction does not exceed $20,000 as any amount claimed in excess of $20,000 is unreasonable in the circumstances pursuant to s. 67 of the Act.

~~25. The $85,000 promissory note given by the Appellant to Carlyle was contingent in nature, and the Appellant did not incur that amount as an expense within the meaning of s.66.1(6)(a)(i) of the Act~~.

~~26. The promissory note was not worth its face value, and the Appellant is not entitled to the amount of CEE deduction claimed~~.

~~27. The amount of the expense incurred by the Appellant is unreasonable in the circumstances, and his CEE deduction is limited pursuant to s. 67 of the Act~~.

25. He requests that the appeal be dismissed with costs.

Originally dated at Ottawa, the 13th day of October 1998 and amended on this __ day of March, 2009.

CITATION:	2009TCC294
COURT FILE NO.:	98-1659(IT)G
STYLE OF CAUSE:	ALLAN MCLARTY AND THE QUEEN
PLACE OF HEARING:	Ottawa, Canada
DATE OF HEARING:	May 11, 2009
REASONS FOR ORDER BY:	The Honourable Justice Valerie Miller
DATE OF ORDER:	June 1, 2009

Counsel for the Appellant:	Jehad Haymour
Counsel for the Respondent:	Josee Tremblay Martin Beaudry

COUNSEL OF RECORD:

For the Appellant:

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Firm:	Fraser, Milner, Casgrain

For the Respondent:	John H. Sims, Q.C. Deputy Attorney General of Canada Ottawa, Canada