

SUPERIOR COURT OF JUSTICE

B E T W E E N:

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ELLEN SMITH

Plaintiff

- and -

INCO LIMITED

Defendant

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P R O C E E D I N G S A T T R I A L  
(Ruling - Filing Previously Marked Identification)  
(Exhibits as Numbered Exhibits at Trial)

BEFORE THE HONOURABLE JUSTICE J. R.  
HENDERSON on Thursday, January 14, 2010, at  
Welland, Ontario.

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APPEARANCES:

E. Gillespie  
K. Baert  
D. Rosenfeld

Counsel for the plaintiff

L. Lowenstein  
L. Fric  
R. Stephenson

Counsel for the defendant

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Transcript Ordered: January 14, 2010  
Transcript Completed: January 17, 2010  
Ordering Party Notified: January 18, 2010

THURSDAY, JANUARY 14, 2010

R U L I N G

HENDERSON, J. (Orally):

Let me do this in three steps.

Regarding Exhibit "U", the purported MLS data set, I thought that Mr. Atlin did accept the MLS data in Exhibit "U" as it related to Port Colborne and Welland. I thought, whether he said it not specifically, he certainly recognized it as accurate in answering his questions. So Exhibit "U" will be given the next number and be a numbered exhibit.

That would be number?

REGISTRAR: Ninety six Your Honour.

THE COURT: Ninety six. The caveat to Exhibit "U" is that clearly Mr. Atlin said that any data in that set that was outside of Port Colborne and Welland he did not recognize and he did not use. Because of the way the data is mixed within the exhibit, I am not going to ask that it be torn apart and reorganized but I will remember that when I deal with any submissions or my decision.

With respect to Exhibit "V", I have now the table of contents that is proposed by all counsel. I accept it as accurate. The table of contents will be put into the front of Exhibit "V" and will be a list of all of the documents that are relevant and admissible. In Exhibit "V" all other documents will be either removed or marked as removed. With that

change, Exhibit "V" will be given the next number exhibit.

REGISTRAR: Ninety seven.

THE COURT: Ninety seven. And I repeat the caveat that I added with respect to Tab 12. The material in Tab 12 has been ruled by myself as inadmissible. I will leave it in Exhibit 97 at Tab 12 for identification purposes only and I will have the Registrar mark the documents in Tab 12 to the effect that they are there for identification only.

With respect to all of the other lettered exhibits that have not been made numbered exhibits, I repeat my earlier comments that exhibits were given letters until we saw at the end of the day whether those exhibits would actually be made evidence at the trial. Once they were made evidence I gave them a number. The exhibits that remain letters and never received numbers, will remain in the court file. They will remain lettered exhibits solely for identification purposes. They do not form the evidence at this trial. The letters will simply remain with those exhibits so that the documents can be identified at some point in the future, if necessary.

I will add that some portions of some of the lettered exhibits were read to various witnesses or put to various witnesses. Those portions that were read or put to various witnesses have been recorded as part of the transcript of these proceedings. That forms part of the evidence at this trial, of course subject

to the answers from the witnesses to whom the  
questions were put.

I will leave it at that.

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FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

I, Heather L. Marceau, certify that this document is a true  
and accurate transcript of the recording of Smith v. Inco in  
the Superior Court of Justice held at Welland, Ontario, taken  
from Recording No. 4521-1-0008-2010, which has been certified  
in Form 1.

Jan 19/10  
Date

H.L. Marceau  
(Signature of Authorized Person)  
Heather L. Marceau  
Certified Verbatim Court Reporter