

SUPERIOR COURT OF JUSTICE

B E T W E E N:

ELLEN SMITH

Plaintiff

- and -

INCO LIMITED

Defendant

P R O C E E D I N G S A T T R I A L

(Ruling - Admissibility of Questions Regarding Lead Content)

BEFORE THE HONOURABLE JUSTICE J. R.
HENDERSON on Tuesday, December 1, 2009, at
WELLAND, Ontario.

APPEARANCES:

E. Gillespie
K. Baert
C. Poltak
J. Croome

Counsel for the plaintiff

L. Lowenstein
L. Fric
L. Tomasich
S. Millar

Counsel for the defendant

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TUESDAY, DECEMBER 1, 2009

R U L I N G

HENDERSON, J. (Orally):

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First of all, publicity regarding lead is relevant to this trial. It was raised specifically by Ms. Fric in cross examination of Ellen Smith. So, it is on the table and the effect of publicity with respect to lead is interwoven with publicity regarding nickel. Somehow I need to figure out what relevance to make of that. I will allow you to ask questions about lead in Port Colborne.

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What is not on the table and not relevant to this case is the presence of lead, or nickel, or any other substance in communities other than Port Colborne and I am going to rule that you can

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MR. GILLESPIE: Your Honour, before you make that ruling

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THE COURT: I am in the middle of a ruling Mr. Gillespie. You do not ...

MR. GILLESPIE: I understand that Your Honour.

THE COURT: ... stand up and interrupt me.

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MR. GILLESPIE: I apologize. Mr. Lowenstein, in his reply, raised for the first time this concept of the other communities. I did not understand his objection that way. I have one very brief submission. There have been many times where the other side has been permitted some additional - and I only make one very brief submissions.

THE COURT: Go ahead.

MR. GILLESPIE: Welland and Fort Erie are the

comparator communities and, in my respectful submission, it is relevant whether they have issues and whether they have nickel issues, because that is what makes them either comparable or not. So, in my respectful submission, it would be appropriate to confine my questions to that. That would be my only submission.

THE COURT: All right, if you had let me finish my ruling, I would have added that Mr. Gillespie.

MR. GILLESPIE: I apologize Your Honour.

THE COURT: That ends my ruling.

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. 4521-1-0171-2009, which has been certified in Form 1.

Dec 7/09
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Date

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