

SUPERIOR COURT OF JUSTICE

B E T W E E N:

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 - Voir Dire - Request to Admit Further Documents)

BEFORE THE HONOURABLE JUSTICE J. R.  
HENDERSON on Tuesday, November 24, 2009, at  
WELLAND, Ontario.

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APPEARANCES:

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

Counsel for the plaintiff

A. Lenczner  
L. Lowenstein  
L. Fric  
R. Stephenson

Counsel for the defendant

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TUESDAY, NOVEMBER 24, 2009

R U L I N G

HENDERSON, J. (Orally):

I want to set out some ground rules as to how we deal with admissibility of documents within a voir dire to determine admissibility of documents.

We are currently in a voir dire to determine the admissibility of some documents which were prepared by Vito Cavallo. Generally, in my view, no new documents should be introduced as exhibits at the trial, during the course of a voir dire to determine the admissibility of documents. The simple reason is that if documents are tendered at a voir dire to determine admissibility of documents, then we could quite simply end up having voir dires within voir dires, within voir dires. It is as if one is looking into multiple mirrors at a fun house; there is a never ending stream of voir dires. So, that is the general rule.

In this case there are three documents that have been tendered; being the Integris Brief - Volume One and Volume Two, and a one page summary regarding 805 Steele Street. After some discussion, defence counsel has agreed that these three documents could be presented to Mr. Cavallo on the voir dire and he could be cross examined on them. That, in my view, is all that needs to be done at this point.

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I would like to set out a procedure though. The three documents that I have referred to will be given lettered exhibits for identification. The three documents may be presented to Mr. Cavallo for cross examination or further cross examination, as is the case. If the plaintiff wishes to have these three documents formally made exhibits at the trial, the plaintiff may call the person who produced or authored the documents, as a witness during the plaintiffs' case and that person may give evidence about the preparation of the documents. If the admissibility of those documents is contested, I will make a ruling at that time. That way, we do not have voir dires within voir dires, but we may have voir dires within the trial.

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There is an alternative if the parties consent. In that case the documents can be made exhibits at the trial on consent.

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That is all I want to say about it.

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3.  
Certification

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. 4521-1-0157-2009, which has been certified in Form 1.

.....  
Date

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

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