

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

(Rulings - re: Cross Examination on Conclusions of Expert
at the Qualifications Voir Dire (Todd Hilsee)

BEFORE THE HONOURABLE JUSTICE J. R.
HENDERSON on Wednesday, November 4, 2009,
at Welland, Ontario.

APPEARANCES:

K. Baert
C. Poltak
D. Rosenfeld
J. Croome

Counsel for the plaintiff

A. Lenczner
L. Lowenstein
L. Fric
L. Tomasich

Counsel for the defendant

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WEDNESDAY, NOVEMBER 4, 2009

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R U L I N G

HENDERSON, J. (Orally):

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There seems to me, in a case like this, to be an overlap between qualifications and merits. I think the option that I put to Mr. Lenczner a few moments ago about simply hearing everything on qualifications and merits and making a determination on admissibility at the end of the day is on the table. I certainly believe that I could make that order. I hope not to do that. I hope to make a two part order.

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Because there is some overlap, I am going to allow the specific question that was asked of this witness but I am not going to allow extensive examination on the merits. It may be that I have to hear the answer to the question and perhaps some followup with respect to this particular article.

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The question I will allow is the one that was put to this witness several minutes ago; - namely, can a judge look at this article that is in front of us and determine what has been communicated. I will allow that and I will allow some brief followup questions but I am not going to allow extensive examination on the merits, without taking the route that I suggested earlier.

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R U L I N G

5 (Re: - Putting conclusions from Hilsee Report to Todd Hilsee)

HENDERSON, J. (Orally):

10 Let me give you my direction on that. If you would like to do that, then I think Mr. Baert will stand up and say he has been prejudiced because I have kept him from asking about Hilsee's conclusions. If you cross examine on one conclusion, Mr. Baert is going to say there are many, many, many more and then I am going to order what I told you I was going to order, that we simply open the door and allow all the evidence in; and then I will decide at the end of the day, (1) whether he is qualified, and (2) whether I agree or disagree with his opinion. So if you want to go that route, I will at least think about it but I can tell you where we will probably end up.

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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. 4521-1-0133-2009, which has been certified in Form 1.

Nov 9/09
Date

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