

SUPERIOR COURT OF JUSTICE

B E T W E E N:

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ELLEN SMITH

Plaintiff

- and -

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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 - Plaintiffs' Application to Qualify Troy Austrins)  
(As An Expert to Give Opinion Evidence)

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BEFORE THE HONOURABLE JUSTICE J. R.  
HENDERSON on Monday, December 7, 2009, at  
WELLAND, Ontario.

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APPEARANCES:

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E. Gillespie  
K. Baert  
C. Poltak  
D. Rosenfeld

Counsel for the plaintiff

L. Lowenstein  
L. Fric  
L. Murray  
R. Stephenson

Counsel for the defendant

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MONDAY, DECEMBER 7, 2009

R U L I N G

HENDERSON, J. (Orally):

There is no doubt that Mr. Austrins has expertise. He is an engineer; he has worked with contaminated sites and site remediation. His evidence is relevant to the proceedings, subject to the argument of the defendant arguing that remediation costs may not be appropriate to hear in this Class action.

However, in order to call expert opinion evidence before the court, certain prerequisites have to be met. Most, if not all, of those prerequisites have not been met. There was no Notice of Intention delivered to introduce expert evidence; no report has been delivered; and it could be said that the defendant is not aware of the opinion upon which the plaintiff wishes to adduce evidence.

Therefore, in my view, Mr. Austrins' evidence will not be expert opinion evidence and I am not going to qualify him to give expert opinion evidence. But, he may testify as a fact witness as to what he did and what reports were generated.

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2.  
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. 4521-1-0183-2009, which has been certified in Form 1.

Jan 19/10  
.....  
Date

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