

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  
(Scheduling Plan)

BEFORE THE HONOURABLE JUSTICE J. R.  
HENDERSON, on Thursday, November 26, 2009,  
at WELLAND, Ontario.

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APPEARANCES:

E. Gillespie  
K. Baert  
J. Croome

Counsel for the plaintiff

L. Lowenstein  
L. Fric  
R. Stephenson

Counsel for the defendant

(ii)  
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Comments Regarding Scheduling

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Transcript Ordered:    November 26, 2009

Transcript Completed:   November 27, 2009

Ordering Party Notified:   November 27, 2009

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THURSDAY, NOVEMBER 26, 2009

(Comments Regarding Scheduling - After Case Management Meeting)

THE COURT: Let me just put on the record what we have resolved, as opposed to what we have not resolved.

With respect to motions and scheduling of those motions, I am aware from our discussion that there is a proposed motion that the defendant will be bringing for decertification. There is also a proposed motion from the plaintiffs' perspective for summary judgment. There is also a preliminary issue as to the effect of the defendant's motion for decertification, with respect to the defendant's ability to call evidence.

After discussing the matter in chambers, I have come up with a schedule. It is a loose schedule, if I can put it that way, that has three parts to it. I want to put that on the record.

The first part of the schedule is that we will not be deciding any of those issues until the plaintiff has completed their case. Given what I can see, it appears that the plaintiffs' case will go well into next week and I am not going to deal with any formal scheduling in terms of exact dates, until the plaintiff has completed their case.

The second part of the schedule will be for me to determine the issue as to whether or not the defendant will be put to an election to not call

2.  
Ruling - Henderson, J.

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further evidence before the defendant may bring a  
motion for decertification. I am hoping that counsel  
can actually agree on a better wording for that  
question and, if not, I will specifically define the  
question. But, that issue needs to be defined and I  
intend to hear submissions on that and make a  
10 decision within the next two weeks; in other words,  
before we break for Christmas.

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The third part of the schedule is to then set a  
schedule for the delivery of motion material with  
respect to whatever motions remain; being the summary  
judgment and/or decertification motion. That  
schedule, subject to comment by counsel, will target  
the week of January 18th for argument.

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I think that is all I want to say about that  
particular point now. We will tentatively try to  
follow that schedule.

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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. 4521-1-0163-2009, which has been certified in Form 1.

Dec 21 09 .....  
Date

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