

Legal Update - December 11, 2000

Information From Court

You may recall, from previous correspondence and information provided on this website, AFTER was granted intervenor status in the appeal by The Ontario Superintendent of Pensions to the Superior Court of Justice (Divisional Court - Ontario), in the Monsanto case. The appeal was heard by a panel of three judges, at Osgoode Hall law courts in Toronto, over three days from November 21st to 23rd, 2000.

A total of nine lawyers were present on behalf of the following groups:

- Monsanto Canada Inc. - Applicant (Respondent in Appeal) represented by Borden Ladner Gervais LLP {"BLG"} *
- Superintendent of Financial Services (FSCO) - Respondent (Appellant in Appeal) represented by Office of Attorney General of Ontario.
- The Association of Canadian Pension Management (ACPM) - Respondents (Appellants in Appeal) represented by Blake Cassels & Graydon {"BCG"}.
- Robert M. Smallhorn, Dexter G. Halsall & Stuart J. Galbraith - Intervenors (on behalf of AFTER) represented by Koskie Minsky.
- National Trust Company (now The Bank of Nova Scotia &/or Scotiabank) - Intervenor represented by Osler Hoskin & Harcourt {"OHH"} *
- Note:- To avoid a conflict, BLG, Scotiabank's original counsel, was replaced by OHH since BLG was Monsanto's counsel.

Representatives of AFTER were present on all three court days as observers. We wish to report that the appeal provided us the opportunity to have the facts of our major issues with Scotiabank presented before the Court in this precedent-setting process.

The panel of judges (Justices Gravelly, Matlow & Marchand), reserved their decision. We are hopeful a decision will be released before Christmas, however, we appreciate the judges must have the time they require to review the substantial volume of written and verbal submissions. A decision by the end of January, 2001 is more realistic.

Whatever the decision may be, we can say that it is likely to be further appealed to The Appeal Court of Ontario, and potentially to The Supreme Court of Canada, the highest court in the land. Both of these appeal courts would only hear this case "with leave", which they may not grant.

We sincerely hope Scotiabank, which as you know earned record profits of \$1.93 billion for their fiscal year ending October 31, 2000, will wish to address our concerns before that happens. After all, another year has almost passed, and the Bank's annual shareholders' meeting in Halifax will be an excellent forum to again raise our point.

We will continue to provide updates as developments occur. Meanwhile, we extend warmest Holiday Greetings to you all!