Date: 20030709

Docket: A-494-02

Citation: 2003 FCA 301

CORAM: **STONE J.A.**
EVANS J.A.
MALONE J.A.

BETWEEN:

XWAVE SOLUTIONS INC.

Applicant

and

PUBLIC WORKS & GOVERNMENT SERVICES CANADA

Respondent

Heard at Ottawa, Ontario, on April 30, 2003.

Judgment delivered at Ottawa, Ontario, on July 9, 2003.

REASONS FOR JUDGMENT BY: EVANS J.A.

CONCURRED IN BY: STONE J.A.
MALONE J.A.

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REASONS FOR JUDGMENT

EVANS J.A.

A. INTRODUCTION

[1] This is an application for judicial review by xwave solutions inc. to set aside a decision of the Canadian International Trade Tribunal, dated July 31, 2002, rejecting a complaint by xwave under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, 1985 R.S.C. (4th Supp.), c. 47 ("*CITT Act*"). The Tribunal held that xwave had not established that a requirement in a Request for Procurement ("RFP") for certain computer applications was discriminatory under the *Agreement on Internal Trade* ("*AIT*"). Consequently, Public Works and

Government Services ("PWGS"), which had issued the RFP, had not acted improperly in disqualifying xwave's bid for failure to comply with the requirement.

[2] The procurement was for the supply of a security and military police information system ("SAMPIS") for use by the Department of National Defence ("DND"). SAMPIS is a software/hardware application with two components: an occurrence management system ("OMS") and a computer aided dispatch system ("CAD").

[3] The fielding requirements in the RFP stipulated that the components must have been used successfully by a minimum of three police forces, at least two of which were in Canada. Xwave's CAD met this requirement, but its OMS did not because it had been field tested only once in Canada. Accordingly, PWGS disqualified xwave's bid as non-compliant with the RFP.

[4] In this application for judicial review xwave challenges on two grounds the Tribunal's determination that the fielding requirements did not contravene Article 504 of the *AIT* and that PWGS's disqualification of xwave's bid was consequently not improper. First, xwave says that the Tribunal breached the duty of fairness because it did not hold an oral hearing, even though the Tribunal regarded as the key issue in its disposition of xwave's complaint the question of whether DND knew that Versaterm Inc. was the only source of a compliant OMS. Xwave alleges that if DND had this knowledge, it must thereby have intended to discriminate in favour of Versaterm's OMS and against all others, and that this constitutes unequal treatment contrary to Article 504 of the *AIT*.

[5] Second, the Tribunal erred in law when it interpreted Article 504(3) of the *AIT* as requiring a complainant to prove that DND knew that only Versaterm's OMS satisfied the fielding requirements, rather than as presuming knowledge, and hence an intent to discriminate, from the fact that the product of only one supplier could satisfy the RFP. The relevant provisions of Article 504 are as follows:

504. (1) Subject to Article 404 (Legitimate Objectives), with respect to measures covered by this Chapter, each Party shall accord to: *a*. the goods and services of any other Party, including those goods and services included in construction contracts, treatment no less favourable than the best treatment it accords to its own such goods and services; and *b*. the suppliers of goods and services of any other Party, including those goods and services included in construction contracts, treatment no less favourable than the best treatment it accords to its own suppliers of such goods and services.	504. (1) Sous réserve de l'article 404 (Objectifs légitimes), en ce qui concerne les mesures visées par le présent chapitre, chaque Partie accorde : *a*. aux produits et aux services des autres Parties, y compris aux produits et services inclus dans les marchés de construction, un traitement non moins favorable que le meilleur traitement qu'elle accorde à ses propres produits et services; *b*. aux fournisseurs de produits et de services des autres Parties, y compris aux produits et services inclus dans les marchés de construction, un traitement non moins favorable que le meilleur traitement qu'elle accorde à ses propres fournisseurs de tels produits et services.
(2) With respect to the Federal Government, paragraph 1 means that, subject to Article 404 (Legitimate Objectives), it shall not discriminate: *a*. between the goods or services of a particular Province or region, including those goods and services included in construction contracts, and those of any other Province or region; or *b*. between the suppliers of such goods or services of a particular Province or region and those of any other Province or region.	(2) Sous réserve de l'article 404 (Objectifs légitimes), le paragraphe 1 a pour effet d'interdire au gouvernement fédéral d'exercer de la discrimination : *a*. entre les produits ou services d'une province ou d'une région, y compris entre ceux inclus dans les marchés de construction, et les produits ou services d'une autre province ou région; *b*. entre les fournisseurs de tels produits ou services d'une province ou d'une région et les fournisseurs d'une autre province ou région.
(3) Except as otherwise provided in this Chapter, measures that are inconsistent with paragraphs 1 and 2 include, but are not limited to, the following:	(3) Sauf disposition contraire du présent chapitre, sont comprises parmi les mesures incompatibles avec les paragraphes 1 et 2 : *a*. l'application soit de conditions

a. the imposition of conditions on the invitation to tender, registration requirements or qualification procedures that are based on the location of a supplier's place of business or the place where the goods are produced or the services are provided or other like criteria;	dans le cadre d'un appel d'offres, soit d'exigences en matière d'enregistrement ou encore de procédures de qualification fondées sur l'endroit où se trouve l'établissement d'un fournisseur, sur l'endroit où les produits sont fabriqués ou les services sont fournis, ou sur d'autres critères analogues;
b. the biasing of technical specifications in favour of, or against, particular goods or services, including those goods or services included in construction contracts, or in favour of, or against, the suppliers of such goods or services for the purpose of avoiding the obligations of this Chapter;	*b*. la rédaction des spécifications techniques de façon soit à favoriser ou à défavoriser des produits ou services donnés, y compris des produits ou services inclus dans des marchés de construction, soit à favoriser ou à défavoriser des fournisseurs de tels produits ou services, en vue de se soustraire aux obligations prévues par le présent chapitre;
...	...
g. the unjustifiable exclusion of a supplier from tendering.	*g*. l'exclusion injustifiable d'un fournisseur du processus d'appel d'offres.

B. ISSUES THAT THESE REASONS DO NOT RESOLVE

[6] Before addressing the grounds of review upon which xwave relies, I should note at the outset that, in response to xwave’s allegations, counsel for PWGS took issue with two aspects of the Tribunal’s reasons for decision, while also maintaining that its decision should be upheld. First, he submitted that other trade treaties within the Tribunal’s jurisdiction, including the *North American Free Trade Agreement* and the *World Trade Organization - Agreement on Government Procurement*, require the federal Government’s tendering procedure to be non-discriminatory. In contrast, Article 504(3) of the *AIT* only prohibits discrimination on the ground of the regional or provincial origin of either the goods or services in question, or their supplier.

[7] Accordingly, since xwave did not allege discrimination on this ground, whether PWGS knew that Versaterm was the sole source of a compliant OMS was irrelevant to the Tribunal's inquiry. Hence, counsel argued, xwave's application for judicial review is misconceived to the extent that it assumes that it was relevant for the Tribunal to determine whether DND knew that Versaterm was the sole source of the OMS.

[8] Second, counsel for PWGS alleged that the Tribunal had no jurisdiction to pursue the issue of discrimination on grounds analogous to Article 504(3)(*b*) because it was not raised in xwave's complaint. When conducting an inquiry under section 30.11, the Tribunal must limit itself to "the subject-matter of the complaint": subsection 30.14(1).

[9] I have concluded that xwave's application for judicial review must fail, even if the Tribunal correctly concluded that it was relevant to the validity of xwave's complaint for the Tribunal to decide if DND knew that only Versaterm's OMS complied with the fielding requirements. Hence, it is not necessary to resolve the more fundamental issue raised by counsel for PWGS about the scope of the grounds of discrimination in Article 504 of the *AIT*. Another opportunity will no doubt arise for settling this important question. Meanwhile, although I have assumed for the purpose of these reasons that Article 504 is not limited to prohibiting discrimination based on regional or provincial origin, I do not intend to express any view on the scope of the grounds of discrimination under the *AIT*.

[10] Similarly, without expressing a view one way or the other, I have assumed that the allegation that the fielding requirements biased the RFP in favour of Versaterm in breach of Article 504(3) fell within the subject-matter of xwave's complaint, and that therefore the Tribunal could investigate it.

C. ISSUES AND ANALYSIS

Issue 1: Did the Tribunal breach the duty of fairness when it refused to grant xwave an oral hearing on whether DND knew that only one OMS complied with the fielding requirements of the RFP?

(i) legal and factual contexts

[11] The starting point in the analysis is subsection 30.13(1) of the *CITT Act*, which gives the Tribunal a discretion as to whether to hold an oral hearing, as opposed to conducting a paper inquiry into the complaint. The subsection provides as follows:

30.13 (1) Subject to the regulations, after the Tribunal determines that a complaint complies with subsection 30.11(2), it shall decide whether to conduct an inquiry into the complaint, which inquiry may include a hearing.	30.13 (1) Après avoir jugé la plainte conforme et sous réserve des règlements, le Tribunal détermine s'il y a lieu d'enquêter. L'enquête peut comporter une audience.

[12] This provision reflects the common law in that the duty of fairness does not always require an administrative decision-maker to hold an oral hearing in order to be procedurally fair: *Nicholson v. Haldimand-Norfolk Regional Board of Police Commissioners*, [1979] 1 S.C.R. 311 at 328. In some circumstances, however, only an in-person hearing will suffice to ensure that an affected person has a reasonable opportunity of presenting her case or meeting the case against her: *Khan v. University of Ottawa* (1997), 34 O.R. (3d) 535 (Ont. C.A.). Similarly, since

Parliament is presumed not to authorize agencies to breach the duty of fairness, a refusal by the Tribunal to hold an oral hearing when fairness so requires would be an abuse of its discretion under subsection 30.13(1).

[13] In determining whether on particular facts the Tribunal was required by the duty of fairness to hold an oral hearing, the Court should have regard to the fact that Parliament has expressly entrusted the Tribunal with the discretion to make a procedural choice, which the Tribunal has exercised: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 27.

[14] In *Cougar Aviation Ltd. v. Canada (Minister of Public Works and Government Services)* (2000), 264 N.R. 49 at para. 62 (F.C.A.), this Court concluded that, when reviewing the Tribunal's exercise of discretion to determine if its refusal to hold an oral hearing breached the duty of fairness, the Court "should not lightly substitute its judgment for that of the Tribunal". The Tribunal's procedural choice involves balancing considerations of administrative effectiveness and efficiency, against individuals' claims to full participation in a decision-making process involving the largely economic interests of tenderers and the public.

[15] The core of xwave's argument is that fairness required that it be afforded an oral hearing because the Tribunal's decision turned on whether DND officials knew that only Versaterm's OMS was compliant. Since no evidence on this issue was adduced by PWGS, and all relevant information was in the possession of DND or PWGS, it was not xwave practically possible for

xwave to prove knowledge without an opportunity both to require officials to produce documents and to cross-examine them. I must now set out some of the factual and legal background to this issue in order to determine if xwave had a reasonable opportunity to participate effectively in the decision-making process, even though it had not been granted an oral hearing.

[16] In a previous decision relating to this procurement the Tribunal rejected xwave's complaint against PWGS's determination that its tender was non-compliant with the fielding requirements. This Court allowed in part xwave's application for judicial review from that decision and remitted the matter to the Tribunal to determine whether the fielding requirements breached Article 504(3). The decision is reported as *Xwave Solutions Inc. v. Canada (Public Works and Government Services*) (2001), 284 N.R. 252, 2001 FCA 337.

[17] Even before the Tribunal recommenced the second inquiry on December 10, 2001, pursuant to the decision of the Federal Court of Appeal, xwave repeated the request for an oral hearing that it made during the first inquiry. PWGS opposed the request. In a letter dated December 11, 2001, the Tribunal responded to xwave's request by saying: "The Tribunal has decided not to hold an oral hearing for now." Instead, it asked xwave to make written submissions on specified matters relating to Article 504(3). Xwave heard no more from the Tribunal about its request for an oral hearing.

[18] Counsel said that xwave was astonished that the Tribunal had rejected its complaint on the ground that it had not provided sufficient evidence to support its allegation that officials of PWGS knew that Versaterm's OMS was the only compliant product available. If xwave had been able to demonstrate that DND officials had this knowledge, counsel argued, it could have established that PWGS was in breach of Article 504(3) of the *AIT* by biasing the requirement in order to favour Versaterm's product.

[19] Counsel submitted that, at least when it became apparent to the Tribunal that the crucial issue was the knowledge that only Versaterm's product was compliant, fairness required the Tribunal either to grant xwave's request for an oral hearing, or to advise the parties that the intention of DND was now the central issue in the inquiry and to invite submissions on whether an oral hearing should be held.

[20] Indeed, counsel for xwave noted, while counsel for PWGS made written submissions to the Tribunal on DND's knowledge, he produced no evidence, in the form of affidavits for instance, on whether officials knew that there was only one source for the OMS. Nor did the Tribunal ever ask xwave for any evidence in its possession respecting the knowledge of DND officials. Further, having requested PWGS to provide information and submissions relating to the issue, the Tribunal did not press the matter when PWGS objected because an inquiry into whether the fielding requirements were discriminatory was outside the subject-matter of xwave's complaint and therefore not subject to investigation by the Tribunal. Hence, counsel for xwave concluded, without an oral hearing at which DND officials could be cross-examined on their

knowledge and required to produce relevant internal documents, xwave could not effectively establish DND's intention to discriminate and was thereby denied procedural fairness.

(ii) was DND's knowledge relevant?

[21] In response to xwave's submissions, counsel for PWGS said that xwave's argument was misconceived because the Tribunal did not base its decision on a finding that the DND officials concerned knew that the only compliant OMS was produced by Versaterm. Rather, he submitted, the Tribunal found that, since PWGS had relaxed some of the technical specifications and the fielding requirements in the draft RFP in order to expand the number of potential product sources, PWGS had not biased the fielding requirements in order to avoid its obligations under Article 504.

[22] I have not found the Tribunal's reasoning altogether easy to follow on this question, but I have concluded that the intention of DND was material to the Tribunal's decision. Whether the Tribunal should have been inquiring into a complaint of discrimination on grounds unrelated to the regional or provincial origin of the products, or of their supplier, is a question which, as I have already indicated, I do not propose to decide.

[23] The question of whether DND knew that only Versaterm's OMS complied with the fielding requirements seems to have arisen in this way. First, having found that only Versaterm's product was compliant, the Tribunal considered whether the fielding requirements were compatible with Article 506(6), that is, whether they were "directly related to the procurement" and "consistent with Article 504." Article 506(6) provides as follows:

506. (6) <u>In evaluating tenders, a Party may take into account</u> not only the submitted price but also quality, quantity, delivery, servicing, the capacity of the supplier to meet the requirements of the procurement and <u>any other criteria directly related to the procurement that are consistent with Article 504.</u> The tender documents shall clearly identify the requirements of the procurement, the criteria that will be used in the evaluation of bids and the methods of weighting and evaluating the criteria.	506. (6) <u>Dans l'évaluation des offres, une Partie peut tenir compte</u> non seulement du prix indiqué, mais également de la qualité, de la quantité, des modalités de livraison, du service offert, de la capacité du fournisseur de satisfaire aux conditions du marché public et <u>de tout autre critère se rapportant directement au marché public et compatible avec l'article 504.</u> Les documents d'appel d'offres doivent indiquer clairement les conditions du marché public, les critères qui seront appliqués dans l'évaluation des soumissions et les méthodes de pondération et d'évaluation des critères.

[24] The Tribunal found that the requirement that the components of SAMPIS must have been successfully used by two law enforcement agencies in Canada was reasonably related to the procurement since the system was to be used in Canada by DND for military law enforcement purposes. The Tribunal then considered if the requirement satisfied the second limb of Article 506(6) by complying with the non-discrimination provisions of Article 504.

[25] After rejecting xwave's submission that the fielding requirements breached some of the specific provisions of Article 504(3), the Tribunal ruled that these were not exhaustive of the kinds of discrimination prohibited by Article 504. Thus, although the "anti-biasing" provision in Article 504(3)(*b*) applies only to the technical specifications of an RFP, the Tribunal held that it should be extended by analogy to fielding requirements. Counsel for PWGS responded by submitting that, since this allegation was not part of the subject-matter of xwave's original complaint, the Tribunal should not have investigated it. He did not dispute the proposition that the discriminatory practices specified in Article 504 are not exhaustive.

[26] The Tribunal concluded that the fact that the effect of the fielding requirements was that there was a single source for a compliant OMS did not itself constitute "biasing". It went on to find that there was no "biasing" in this case because PWGS had not framed the requirement "for the purpose of avoiding the obligations of the Chapter". The Tribunal supported this conclusion by referring to the fact that, in response to concerns expressed by potential bidders, PWGS had relaxed some of the technical specifications and fielding requirements before the RFP was issued in order to expand the available sources of the components.

[27] In response to a submission from xwave, the Tribunal went on to find that DND officials were not aware that the fielding requirements for the OMS component could only be satisfied by Versaterm's product, and that DND did not intend to discriminate in favour of Versaterm, even though the requirements were reasonably related to the procurement and were not discriminatory on their face. It seems to have been the Tribunal's view that, if xwave had proved that DND knew when the RFP was issued that a compliant OMS was available only from a single source, the procurement would have been in breach of Article 504, unless PWGS could have established that the fielding requirements were legitimate and justifiable under Article 404, a more demanding test than the "reasonably related" criterion in Article 506(6).

[28] Counsel for PWGS submitted that, since the Tribunal had stated that PWGS had not biased the requirement in order to avoid its obligations under this part of the *AIT*, its subsequent consideration of DND's knowledge was mere *obiter dicta*. On reading the reasons in their

entirety, I am satisfied that the Tribunal regarded the question of whether DND knew that the fielding requirements could only be met by a product from a single source as relevant to its decision.

(iii) conclusion

[29] Even though I accept that DND's knowledge was material to the Tribunal's inquiry, I do not agree that fairness required the Tribunal to depart from its normal practice of determining complaints on the basis of written submissions, and to hold an oral hearing on the issue of DND's knowledge.

[30] First, the Tribunal stated that it was satisfied that it could make a decision on the basis of the written materials before it. Given the Tribunal's expertise in matters of trade treaties and procurement, the importance of minimizing delay in public contract decisions, the inquisitorial process which enables the Tribunal to make its own inquiries, and the largely economic nature of the interests at stake, only in the clearest of cases should the Court be prepared to set aside a decision by the Tribunal that an oral hearing was not necessary for it to decide the validity of a complaint.

[31] Second, while an oral hearing may well have assisted xwave in the pursuit of its complaint, this is not the test of procedural unfairness on judicial review. More relevant is whether other means were available to xwave to establish the knowledge of DND officials.

[32] For example, xwave could have informed the Tribunal that, when the RFP was published, it advised DND officials that only Versaterm's OMS met the fielding requirements. Xwave could also have adduced evidence that the existence of a single source for the OMS was common knowledge in the industry at that time and that, in view of DND officials' familiarity with the relevant market, they, too, must have been aware that only Versaterm's product was compliant. On the basis of evidence of this kind, the Tribunal might well have decided to hold an oral hearing if PWGS's written response left the Tribunal in doubt.

[33] Third, xwave should not have been taken by surprise that DND's knowledge became a prominent issue in the Tribunal's inquiry, since it submitted to the Tribunal that DND officials knew or ought to have known that the fielding requirements would have discriminatory effects. Moreover, in advising xwave that it had decided not to hold an oral hearing "for now", the Tribunal was not postponing a decision on xwave's request, as counsel suggested. Rather, it was informing xwave that its request had been denied, but was leaving open the possibility of revisiting it in light of future developments. Consequently, the Tribunal did not create a legitimate expectation that it would advise xwave before finally deciding not to hold an oral hearing.

[34] For these reasons I am not satisfied that the Tribunal's refusal to accede to the request for an oral hearing denied xwave a reasonable opportunity of establishing the validity of its complaint. The function of procedural fairness is to set minimum standards, not to enable a reviewing court to determine how it would have exercised the Tribunal's discretion as to when to

hold an oral hearing. Balancing the considerations relevant to determining whether to hold an oral hearing engages the expertise of the Tribunal, and the Court should only intervene to prevent manifest unfairness.

Issue 2: Did the Tribunal err in law by imposing on xwave the burden of proving that DND knew that there was only one compliant source for the OMS?

[35] Counsel for xwave argued that the Tribunal erred in law when it dismissed the complaint because xwave had not adduced sufficient evidence to prove that DND knew that Versaterm was the sole source of an OMS that complied with the fielding requirements. He argued that the evidence necessary to prove knowledge was held by DND and that the purpose of the *AIT* is to protect the public interests in promoting fairness, transparency and value for money in procurement. Consequently, once xwave established that only Versaterm's OMS complied with the fielding requirements, the Tribunal ought to have presumed that DND officials knew this. PWGS should thus have been required by the Tribunal to prove that DND was not aware that there was a single source for a compliant OMS.

[36] In addressing this issue, I must first determine the standard by which to review the Tribunal's allocation of the burden of proving whether or not DND's officials knew that only Versaterm's OMS complied with the fielding requirements. Generally, questions of law within its expertise that are decided by the Tribunal in the course of a procurement complaint are reviewed on the standard of patent unreasonableness: *Profac Facilities Management Services Inc. v. FM One Alliance Corp.* (2001), 284 N.R. 236, 2001 FCA 352 at para. 14. However, when the Court is as well placed as the Tribunal to decide a question of law that has high precedential

value, a standard of unreasonableness has been used: *Canada (Attorney General) v. Georgian College of Applied Arts and Technology*, 2003 FCA 199.

[37] It is a question of law whether xwave had the burden of proving DND's knowledge that Versaterm was the sole source of a compliant OMS. It involves the interpretation of Article 504(3) of the *AIT*. The interpretation of the provisions of the trade treaties that it administers is within the expertise of the Tribunal: *National Corn Growers Assn. v. Canada (Import Tribunal)*, [1990] 2 S.C.R. 1324; *Canada (Attorney General) v. McNally Construction Inc*., [2002] 4 F.C. 633, 2002 FCA 184 at para 21. Further, since administrative tribunals are normally not bound by the law of evidence as applied by the courts, the question of which party bears the burden of proof on a particular issue is not a question of general law on which the Tribunal's expertise is less than that of the reviewing court. Consequently, the applicable standard of review is patent unreasonableness.

[38] In civil proceedings, the party who alleges unlawful conduct must normally prove each and every element of it. Accordingly, it hardly seems patently unreasonable that the Tribunal placed the burden on xwave, the complainant, of proving that DND officials knew that only Versaterm's OMS complied with the fielding requirements and hence intended to discriminate.

[39] There are, of course, exceptions in the law of evidence to the general rule that he who alleges must prove. Thus, in some circumstances the burden of proof may be imposed on a party against whom the allegation is made because that person has access to the relevant evidence and the other does not : Sopinka, Lederman and Bryant, *Law of Evidence in Canada***,** 2nd. edn.

(Butterworths: Toronto, 1999) at 85. However, since the Tribunal is not in any event bound by the law of evidence, it is not for a reviewing court to require it to slavishly follow the law as applied in the courts: *Cadillac Fairview Corp. Ltd. v. Retail, Wholesale and Department Store Union* (1989), 64 D.L.R. (4th) 267 (Ont. C.A.). However, if the Tribunal's decision on the issue were manifestly inimical to the purposes of the statutory scheme and placed on a complainant a burden that was effectively impossible to discharge, the decision could be set aside as patently unreasonable.

[40] Determining which party should bear the burden of proof on a given issue may well engage a specialist tribunal's understanding of, for instance, the dynamics of the process and the parties' access to information. Counsel for xwave did not argue that the Tribunal's allocation of the burden of proving that the DND officials had the relevant knowledge was patently unreasonable.

[41] While xwave may well have experienced some difficulty in discharging the burden of proving knowledge on the part of DND officials, it was not patently unreasonable for the Tribunal to have applied the general rule that those who allege must prove. After all, as I indicated when dealing with the oral hearing issue, xwave had access to information that was relevant to DND's knowledge.

[42] For example, a tenderer can be expected to be familiar with the relevant market and able to show that it and other market participants were well aware when the RFP was issued that a

compliant product was only available from a single source. Similarly, xwave could have informed the Tribunal that it brought to the attention of DND the fact that only Versaterm's OMS complied with the Canadian content aspect of the fielding requirements. If xwave had been able to adduce evidence of this kind, the Tribunal might well have concluded that the evidential burden had been shifted to PWGS.

D. CONCLUSIONS

[43] For these reasons, I would dismiss the application for judicial review with costs.

"John M. Evans"
J.A.

"I agree
A.J. Stone J.A."

"I agree
B. Malone J.A."

<u>FEDERAL COURT OF APPEAL</u>

<u>NAMES OF COUNSEL AND SOLICITORS OF RECORD</u>

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