

Federal Court of Appeal



Cour d'appel fédérale

A-304-97

OTTAWA, ONTARIO, THIS 15TH DAY OF MAY 1997.

**CORAM:** THE HONOURABLE MR. JUSTICE HUGESSEN  
THE HONOURABLE MR. JUSTICE STONE  
THE HONOURABLE MR. JUSTICE LINDEN

**BETWEEN:**

IMPERIAL OIL LIMITED  
and its subdivision PARAMINS

Appellant  
(Defendant)

- and -

THE LUBRIZOL CORPORATION  
and LUBRIZOL CANADA LIMITED

Respondents  
(Plaintiffs)

**ORDER**

The appeal is adjourn sine die.

James K. Hugessen

J.A.

Federal Court of Appeal



Cour d'appel fédérale

A-304-97

CORAM: HUGESSEN J.A.  
STONE J.A.  
LINDEN J.A.

BETWEEN:

**IMPERIAL OIL LIMITED  
and its subdivision PARAMINS**

Appellant  
(Defendant)

- and -

**THE LUBRIZOL CORPORATION  
and LUBRIZOL CANADA LIMITED**

Respondents  
(Plaintiffs)

Heard at Ottawa, Ontario, Thursday, May 15, 1997.

Order rendered from the Bench, May 15, 1997.

REASONS FOR ORDER OF THE COURT  
DELIVERED BY:

HUGESSEN J.A.



A-304-97

CORAM: HUGESSEN J.A.  
STONE J.A.  
LINDEN J.A.

BETWEEN:

**IMPERIAL OIL LIMITED  
and its subdivision PARAMINS**

Appellant  
(Defendant)

- and -

**THE LUBRIZOL CORPORATION  
and LUBRIZOL CANADA LIMITED**

Respondents  
(Plaintiffs)

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A-306-97

**THE LUBRIZOL CORPORATION  
and LUBRIZOL CANADA LIMITED**

Appellants  
(Plaintiffs)

- and -

**IMPERIAL OIL LIMITED  
and its subdivision PARAMINS**

Respondent  
(Defendant)

REASONS FOR ORDER OF THE COURT  
(Delivered from the Bench at Ottawa, Ontario,  
Thursday, May 15, 1997)

HUGESSEN J.A.

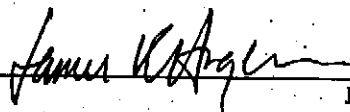
These two appeals were set down for hearing together. They attack two preliminary rulings by the Trial Division, the first refusing Imperial's request for documents, the second refusing Lubrizol's request for particulars. All this was in the context of an application under Rule 1733 to set aside a judgment based, *inter alia*, on serious allegations of fraud. In preparing for the hearing we all came to the view that, given the nature of the allegations, it was almost inconceivable that the Rule 1733 application could be decided without a trial.

Rule 327 makes provision for precisely this kind of situation:

*Rule 327.* Upon any motion the Court may direct the trial of any issue arising out of the motion, and may give such directions with regard to the pre-trial procedure, the conduct of the trial and the disposition of the motion as may seem expedient.

*Règle 327.* Sur toute requête, la Cour pourra prescrire l'instruction d'un point litigieux soulevé à l'occasion de la requête, et pourra donner, au sujet de la procédure préalable à l'instruction, de la procédure d'instruction et la décision sur la requête, les directives qu'elle estime opportunes.

At the opening of the hearing we raised this matter with counsel who, after a brief adjournment, agreed that they should indeed approach the trial judge and seek appropriate directions. That being so, the hearing of these appeals will be adjourned *sine die* so that the parties may act accordingly.

  
I.A.

FEDERAL COURT OF APPEAL

A-304-97

BETWEEN:

**IMPERIAL OIL LIMITED**  
and its subdivision **PARAMINS**

Appellant  
(Defendant)

- and -

**THE LUBRIZOL CORPORATION**  
and **LUBRIZOL CANADA LIMITED**

Respondents  
(Plaintiffs)

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REASONS FOR ORDER OF THE COURT

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