

Date: 20090429

**Dockets: A-9-09
A-10-09**

Citation: 2009 FCA 134

**CORAM: NOËL J.A.
LAYDEN-STEVENSON J.A.
TRUDEL J.A.**

A-9-09

BETWEEN:

LUNDBECK CANADA INC.

Appellant

and

THE MINISTER OF HEALTH and RATIOPHARM INC.

Respondents

A-10-09

BETWEEN:

LUNDBECK CANADA INC.

Appellant

and

THE MINISTER OF HEALTH and COBALT PHARMACEUTICALS INC.

Respondents

Heard at Ottawa, Ontario, on April 29, 2009.

Judgment delivered from the Bench at Ottawa, Ontario, on April 29, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

Date: 20090429

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Appellant

and

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on April 29, 2009)

NOËL J.A.

[1] The issue in these appeals is whether Justice Lemieux erred in striking out the appellants' applications for judicial review.

[2] In our view, Justice Lemieux committed no error in concluding that the applications were bereft of any chance of success. In so holding, we adopt the reasoning which he sets out at paragraphs 33 to 46 of his reasons.

[3] Having so concluded, it is not necessary to examine the other grounds on which Justice Lemieux struck the applications.

[4] The appeals will be dismissed with costs in favour of the respondent Cobalt Pharmaceuticals Inc. in file A-10-09, and with costs in favour of Ratiopharm Inc. in file A-9-09.

“Marc Noël”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-9-09

(APPEAL FROM A JUDGMENT OF MR. JUSTICE LEMIEUX OF THE FEDERAL COURT OF CANADA DATED DECEMBER 16, 2008, DOCKET NO. T-296-08.)

STYLE OF CAUSE: Lundbeck Canada Inc. and The
Minister of Health and Ratiopharm
Inc.

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: April 29, 2009

REASONS FOR JUDGMENT OF THE COURT BY: Noël, Layden-Stevenson, Trudel JJ.A.

DELIVERED FROM THE BENCH BY: Noël J.A.

APPEARANCES:

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(Ratiopharm Inc.)

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-10-09

(APPEAL FROM A JUDGMENT OF MR. JUSTICE LEMIEUX OF THE FEDERAL COURT OF CANADA DATED DECEMBER 16, 2008, DOCKET NO. T-1143-08.)

STYLE OF CAUSE: Lundbeck Canada Inc. and The
Minister of Health and Cobalt
Pharmaceuticals Inc.

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: April 29, 2009

REASONS FOR JUDGMENT OF THE COURT BY: Noël, Layden-Stevenson, Trudel JJ.A.

DELIVERED FROM THE BENCH BY: Noël J.A.

APPEARANCES:

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Marie Lafleur

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