

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20100413

Docket: A-66-10

Citation: 2010 FCA 97

Present: STRATAS J.A.

BETWEEN:

**SYLVIE LAPERRIÈRE, in her capacity as Senior Analyst –
Professional Conduct of the Office of the
Superintendent of Bankruptcy**

Appellant

and

ALLEN W. MACLEOD AND D. & A. MACLEOD COMPANY LTD.

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on April 13, 2010.

REASONS FOR ORDER BY:

STRATAS J.A.

Federal Court
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REASONS FOR ORDER

STRATAS J.A.

[1] The appellant moves for an order of this Court determining the content of the appeal book.

[2] The facts and procedural history of this matter can be found in my earlier reasons concerning a motion for an interlocutory stay in this matter: 2010 FCA 84. In the court below, the Federal Court granted the application for judicial review in part. The practical effect of this was bifurcation: one set of professional disciplinary charges was sent back to a delegate of the Superintendent of Bankruptcy, while another set of professional disciplinary charges now forms the

subject matter of an appeal to this Court. The main legal issue in the appeal in this Court concerns the Federal Court's conclusion that the respondent had exercised due diligence.

[3] The appellant contends that the appeal book should comprise only the material that is strictly relevant to the matters in this Court. As a result, the appellant contends that only material relevant to the professional charges before this Court should be included. For the most part, none of the material relevant to the charges sent back to the delegate should be included, says the appellant.

[4] The respondents disagree. In their view, the appeal book should also include material that is relevant to the charges that have been sent back to the delegate. The respondents contend that some of the evidence of due diligence that will be relevant to the appeal is found in this material.

[5] There is some merit to the appellant's submissions. Rule 343(2) of the *Federal Courts Rules*, SOR/98-106 requires the parties to include in an appeal book "only such documents, exhibits and transcripts as are required to dispose of the issues on appeal." This rule is phrased as a mandatory requirement. The evident purpose is to avoid waste and reduce expense.

[6] However, this Court has made it clear that a motion judge must err on the side of including additional materials in the appeal book where a party "has a reasonable basis for believing that it may wish to rely on that document to support one of its arguments on appeal": *Bojangles' International, LLC v. Bojangles Café Ltd.*, 2006 FCA 291, 55 C.P.R. (4th) 192 at paragraph 6. The respondents have established such a reasonable basis.

[7] Therefore, the appeal book shall comprise the material required under rule 344 and, in particular, with respect to rule 344(1)(e), may include the material described by the respondents in their letter of March 15, 2010, which appears as exhibit “A” to the affidavit of Julia J. Martin, filed in this motion. I note, incidentally, that Ms. Martin, as a deponent, cannot act as counsel for the respondents on this motion and so I shall amend the list of counsel on this motion to reflect that.

[8] Just because the respondents “may” include this material into the appeal book does not mean that they have to include it. The obligation to minimize the material in the appeal book remains mandatory. The respondents should consider their position carefully. If they do not make use of this material in their memorandum of fact and law or oral argument and if this material is quite unnecessary to this Court’s consideration of the appeal, the respondents will be responsible for a breach of the obligation to minimize the material in the appeal book. This may be addressed when this Court considers the matter of costs at the conclusion of the appeal.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-66-10

STYLE OF CAUSE: Sylvie Laperrière, in her capacity as
Senior Analyst – Professional
Conduct of the Office of the
Superintendent of Bankruptcy v.
Allen W. MacLeod and D. & A.
MacLeod Company Ltd.

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: Stratas J.A.

DATED: April 13, 2010

WRITTEN REPRESENTATIONS BY:

Bernard Letarte
Benoît de Champlain

FOR THE APPELLANT

J. Alden Christian

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE APPELLANT

Julia J. Martin
Barrister and Solicitor
Ottawa, Ontario

FOR THE RESPONDENTS

Doucet McBride LLP
Ottawa, Ontario