

The motions are allowed in part and the parties are ordered to answer the questions to the extent indicated in these reasons **and in the supplemental reasons**. Success is divided.

The parties will bear their own costs.

Signed at Toronto, Ontario, this 25th day of October 2006.

“D.G.H. Bowman”

Bowman, C.J.

Docket: 2003-1073(IT)G

BETWEEN:

MICHAEL DE PENCIER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard together with the motions of *Charles B. Loewen*
(2001-3839(IT)G) and of *Andrew Pringle* (2003-446(IT)G)
on August 21, 2006 at Toronto, Ontario.

Before: The Honourable D.G.H. Bowman, Chief Justice

Appearances:

Counsel for the Appellant: Stephen Yoker
 A. Christina Tari

Counsel for the Respondent: Elizabeth Chasson
 Annie Paré

AMENDED ORDER

Upon motion made by counsel for the respondent for an order compelling the appellants to answer certain questions that were refused on discovery;

And upon motion made by the appellant to compel the respondent's representative to answer certain questions;

And upon hearing what was alleged by the parties;

The motions are allowed in part and the parties are ordered to answer the questions to the extent indicated in these reasons **and in the supplemental reasons**. Success is divided.

The parties will bear their own costs.

Signed at Toronto, Ontario, this 25th day of October 2006.

“D.G.H. Bowman”

Bowman, C.J.

Citation: 2006TCC586
Date: 20061025
Docket: 2001-3839(IT)G

BETWEEN:

CHARLES B. LOEWEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2003-446(IT)G

AND BETWEEN:

ANDREW PRINGLE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2003-1073(IT)G

AND BETWEEN:

MICHAEL DE PENCIAER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

ADDENDUM TO REASONS FOR ORDER

Bowman, C.J.

[1] Counsel for the Respondent has drawn to my attention that in my reasons dated September 8, 2006 I did not specifically mention question 422 in Mr. DePencier's examination for discovery and question 156 in Mr. Pringle's

discovery. Counsel for the appellants refused to answer the questions and the respondent moved to compel answers.

[2] Although separate orders were issued for each of the appellants, one set of reasons was issued for all three appellants dealing with both the appellants' and the respondent's motions to compel. The orders in all three cases incorporated by reference the reasons for order and I believed that this was broad enough to encompass all of the questions to which answers were sought. It seems this was not sufficiently specific in the case of the two questions mentioned above.

[3] Question 422 in the case of Michael DePencier was: "To indicate what fact in issue the document located at Tab #10 of the Appellant's productions related to." For the reasons given in paragraphs 8 and 9 of the reasons for order I think the appellant should answer the question and the words "DePencier discovery Question 422" should be added to paragraph 6(b) of the reasons.

[4] With respect to question 126 of the Pringle discovery, that was a request to produce all written correspondence with Mr. Loewen with respect to the partnership venture. I do not think that any basis has been made out for refusing to produce this material on the ground of litigation privilege. If there is such correspondence and provided it does not contain any material that is subject to solicitor-client privilege, it should be produced. If counsel for the appellant wishes to assert solicitor-client privilege, they should communicate with the court to arrange to argue the point. Otherwise, paragraph 9(i) of the reasons should be amended to add a reference to the Pringle discovery, question 156.

Signed at Toronto, Ontario, this 25th day of October 2006.

"D.G.H. Bowman"

Bowman C.J.