

Date: 20060104

Docket: T-430-05

Citation: 2006 FC 4

[ENGLISH TRANSLATION]

OTTAWA, Ontario, this 4th day of January, 2006

PRESENT: THE HONOURABLE JUSTICE PAUL U.C. ROULEAU

BETWEEN:

9058-3956 QUÉBEC INC.
AND 2970-7528 QUÉBEC INC.
AND 9005-0659 QUÉBEC INC.

Applicants

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, AS THE
MINISTER RESPONSIBLE FOR THE CANADA BORDER SERVICES AGENCY AND
THE MINISTER OF NATIONAL REVENUE (AS THE MINISTER RESPONSIBLE) FOR
THE CANADA CUSTOMS AND REVENUE AGENCY

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] This application for judicial review is made pursuant to section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7 regarding a decision made by Yvan Bélanger, Trade Policy Services Officer (the officer) at the Canada Border Services Agency (CBSA), on

February 9, 2005, in which he denied the three applicants' drawback claims, which were considered incomplete.

[2] A drawback is a refund, in whole or in part, of import duties or taxes on goods that are later re-exported or used in the manufacture of other goods for export. The three drawback claims were submitted to the CBSA under subsection 113(1) of the *Customs Tariff*, S.C. 1997, c. 36 (the Tariff).

[3] The applicants are exporting vehicles that they have purchased in Canada in new, unused condition by entrusting them with customs brokers and specialized transporters. These vehicles are not, however, being imported by the applicants.

[4] These vehicles were imported into Canada by automotive manufacturers that apparently then sold them to Canadian dealerships. In recent years, manufacturers have prohibited dealerships from selling these vehicles for export or resale (see GM letter no. 2002-050, Exhibit C of Roger Boutin's affidavit, Vol. 1 of the applicants' record on page 97.2).

[5] The applicants seem to have acquired these vehicles through resellers who appear to have acquired them from dealerships.

[6] Each applicant has submitted a drawback claim to the CBSA along with a list of the new exported vehicles and a letter stating the grounds of their claim:

- On January 4, 2005, by 9058-3956 Québec Inc. in relation to 99 vehicles (Director General: Roger Boutin).
- On January 12, 2005, by 2970-7528 Québec Inc. in relation to 148 vehicles (Director General: Sarkis Minassian).
- On January 13, 2005, by 9005-0659 Québec Inc. in relation to 31 vehicles (President: Dany Lamoureux).

[7] In the explanatory letters accompanying their drawback claims, the applicants explain that they did not have certain customs information about the exported vehicles, namely:

- The import date for the vehicles included in the drawback claims;
- The point of entry into Canada of said vehicles;
- The type of currency used by the importer;
- The exact value for duty declared for each vehicle;
- The duty imposed and paid for each vehicle;
- The code for the port of entry where the vehicles were imported into Canada;
- The importer number and transaction number for said vehicles;
- The release date of the vehicles following their import and customs clearance.

[8] The applicants therefore requested that the CBSA provide them with this information.

[9] That said, the applicants did not provide a notice of waiver (form K32A) when they submitted their drawback claims, contrary to section 119 of the *Tariff*.

119. An application under section 110 or 113 must be accompanied by a waiver, in the prescribed form, from every other person eligible to claim a drawback, refund or remission of the duties in respect of which the application is made, waiving that person's right to apply for the drawback, refund or remission.

119. Les demandes présentées en vertu des articles 110 ou 113 comportent, en la forme prescrite par le ministre du Revenu national, la renonciation par laquelle toute autre personne admissible au drawback, au remboursement ou à la remise des droits y renonce.

[10] In a decision rendered by CBSA Officer Yvan Bélanger on February 9, 2005, the applicants' drawback claims were denied. That decision reads as follows:

[TRANSLATION]

I hereby acknowledge receipt of your drawback claims (**M251077 – M251078 – M251079**) dated January 27, 2005. The excise tax refunds that your clients received are outside the mandate of the CBSA, but within the mandate of the Canada Revenue Agency (CRA). The CBSA requirements under the *Customs Act* and *Customs Tariff* are different.

Given that these claims are incomplete (**lack** of supporting documentation, including the K32A forms issued by the original importers transferring the right to claim customs paid on the original values of the vehicles at the time of import to your clients, as well as the numbers and dates for the import documents for said vehicles, and the importer number of the various clients), **they have been denied**.

Given that there is no formal appeal mechanism for the drawback program at the regional level, your only recourse to appeal this decision is through the Director of the Duty Drawback Program at headquarters in Ottawa, who will review your claim and the supporting documentation provided in order to make a final decision.

[11] Form K32A is the form in which the other persons eligible for the drawback waive that entitlement. In this case, the other persons eligible for the drawback are the importers of these vehicles.

[12] The applicants argue that they are entitled to the drawback under subsection 9(1) of the *Goods Imported and Exported Refund and Drawback Regulations*, SOR/96-42 (the Regulations):

9. (1) Subject to subsection (2), a drawback may be claimed by any person who is the importer or exporter of the imported or exported goods, or is the processor, owner or producer of those goods between the time of their direct shipment to Canada and their export or deemed export.

9. (1) Sous réserve du paragraphe (2), un drawback peut être demandé par toute personne qui est l'importateur ou l'exportateur des marchandises importées ou exportées ou qui en est le propriétaire, le transformateur ou le producteur entre le moment de leur expédition directe vers le Canada et celui de leur exportation ou exportation réputée.

[13] The applicants claim that the officer erred in law by requiring the applicants to show that the original importers waived their entitlement to the drawback. In their opinion, that

entitlement was waived automatically when the original importers sold the vehicles they had imported into Canada to the dealerships.

[14] The applicants argue that by purchasing these vehicles from resellers who had purchased them from dealerships beforehand, the resellers guaranteed the applicants that the goods were tariff-free and therefore that customs duties, excise taxes or other duties or taxes imposed beforehand by any federal legislation had been paid.

[15] The applicants maintain that they could not provide the notice of waiver because they are competing with manufacturers for the sale of new vehicles on foreign markets. To prevent this competition, Canadian automotive dealerships do not have the right to sell new vehicles for export or resale and are subject to penalties imposed by manufacturers if they do. The applicants claim that it was impossible for them to ask the selling dealerships or original importers for a notice of waiver or the information they were missing, otherwise they would not have been able to acquire the vehicles. Such a request could potentially have resulted in legal action filed by the manufacturers against the selling dealerships and consequently the applicants.

[16] Should the Court recognize that the applicants are entitled to the drawback, they submit, pursuant to subsection 107(5) of the *Customs Act*, that the officer may provide,

allow to be provided or provide access to customs information upon receipt of a drawback claim submitted under subsection 113(1) of the *Customs Tariff*.

[17] Given that under the *Customs Act*, the officer is able to provide information, notably for a drawback claim, this information could have been provided to the applicants in their capacity as vehicle exporters. The applicants therefore had the required capacity to obtain the customs information.

[18] According to the applicants, the officer's decision not to provide them with access to the requested information is unreasonable, and he unlawfully refused to exercise his discretion. The officer subordinated his decision to the will of a third party: the original vehicle importer. The officer therefore refused to exercise his jurisdiction based on his misinterpretation of the extent of his jurisdiction. In short, the remedy sought is a *mandamus* application.

[19] To ensure that the CBSA does not grant the drawback more than once, the respondents argue that the applicants were required to produce a notice of waiver pursuant to section 5 of the Regulations:

5. An application for a drawback under this Part may be made where

5. Une demande de drawback aux termes de la présente partie peut être présentée lorsque les conditions suivantes sont réunies :

(a) the goods were exported or deemed to have been exported before the application for drawback is made; and

(b) the applicant provides a waiver from all other persons entitled to claim a drawback, refund or remission of the duties, waiving their right to do so.

a) les marchandises sont exportées ou réputées l'être avant la présentation de la demande;

b) le demandeur fournit une renonciation au bénéfice du drawback, d'un remboursement ou d'une remise des droits par toute personne ayant droit de réclamer ce bénéfice.

[20] Given that the applicants were unable to obtain the notice of waiver from the importers, they cannot be granted the drawback. The respondents therefore argue that without the notice of waiver, the decision-maker could reasonably refuse to issue the drawbacks, seeing as the parties were unable to demonstrate that they were the only ones entitled to the drawback.

[21] The respondents also maintain that even if the Court were to rule that the applicants are entitled to the drawback, the Court cannot order the respondents to provide the customs information sought. The respondents argue that under subsection 107(5) of the *Customs Act*, the official has the discretion to provide, allow to be provided or provide access to customs information. In the respondents' opinion, exercising that discretion is entirely optional. As a result, and based on the criteria set out in *Apotex Inc. v. Canada (Attorney General)*, [1994] 1 FC 742, the respondents argue that the *mandamus*

conclusion sought by the applicants cannot be issued given that the *mandamus* criteria have not been met.

[22] The respondents also argue that even if the Court had to allow the writ of *mandamus* against the officer's decision, it would be useless because the respondents do not have some of the information sought by the applicants. For example, the respondents argue that they do not know the value for duty of each vehicle unless they are imported individually. The respondents also claim that the importer number could not be obtained except through reconciliation with the importer's documents, because these details were submitted under the *Motor Vehicle Safety Act* and not the *Customs Act*. As for the criteria stipulated in *Apotex*, the respondents argue that they have no public legal duty to effect such a reconciliation.

[23] This case raises the following issues:

- 1) What standard of review applies to reviewing the federal agency's decision?
- 2) Did the agency err in law, requiring the Court's intervention, when it denied the applicants' drawback claims on the basis that they were not supported by notices of drawback waiver from the original importers?
- 3) Should the answer to that question be in favour of the applicants, did the officer have the discretion to provide the customs information to the applicants, and if so, did he err in the exercise of his discretion?

ANALYSIS

1) What standard of review applies to reviewing the CBSA's decision?

[24] The applicants have not addressed this issue in their memorandum of fact and law. The respondents, however, assert that the standard of review applicable to the CBSA's decision is the standard of reasonableness *simpliciter*.

[25] In light of the pragmatic and functional tests reiterated in *Dr. Q. v. College of Physicians and Surgeons of British Columbia*, [2003] 1 SCR 226, it is possible to determine that the standard applicable to the CBSA's decision is that of correctness.

[26] First, the *Customs Tariff* does not contain a privative clause that could be a basis for with-drawing the CBSA's decision from the scope of judicial review.

[27] Next, the Court's expertise is like that of the CBSA with regard to the legislative interpretation of the provisions of the *Customs Tariff* and the related *Regulations*, which prove to be relevant to this matter.

[28] With regard to the issue of whether the *Customs Tariff* is a polycentric statute, Shore J. establishes the following in *A & R Dress Co. Inc. v. Canada (Minister of National Revenue)*, 2005 FC 681, [2005] F.C.J. No. 861 (QL) at paragraph 15:

The Customs Tariff provides for duties imposition and duties relief. Section 109 and following of the Customs Tariff provide for duties relief in respect of obsolete and surplus goods. This is not a polycentric issue, where competing rights are at stake. It is a question of whether these sections entitle an entity to a refund. This factor points to a low deferential standard of review.

[29] Although this matter involves a drawback claim under another provision of the *Customs Tariff*, this passage is nonetheless applicable to the facts of this case.

[30] The nature of the issue in this case may be characterized as being of fact and law.

2) Did the agency err in law, requiring the Court's intervention, when it denied the applicants' drawback claims on the basis that they were not supported by notices of drawback waiver from the original importers?

[31] From the outset, the respondents have agreed that the applicants are among those eligible for a drawback. They argue, however, that the applicants are not the only ones who are eligible.

[32] The respondents submit that drawback eligibility is assignable, and as a result the notice of waiver is required so that the CBSA can ensure that a drawback is not granted more than once.

[33] Normally, the way for the applicant to discharge the burden of demonstrating that the applicant is the sole beneficiary entitled to the drawback, as determined by the legislation, is to produce the K32A form, the terms of which stipulate that any other persons eligible for the drawback waive that entitlement.

[34] In this case, the applicants submitted a drawback claim to the CBSA and the burden was consequently on the applicants to demonstrate the drawback entitlement had been transferred to them upon the sale of the vehicles listed in the affidavits.

[35] The respondents claim that the CBSA cannot be forced to grant a drawback for a vehicle because the person claiming the drawback is unable to demonstrate that he or she is the sole beneficiary of this drawback.

[36] The applicants claim that they do not need to demonstrate that other people have waived their entitlement because they are the only ones who are entitled to a drawback as the exporters of their own vehicles.

[37] The applicants also submit that the agency erred in its overly liberal interpretation of the persons eligible for the drawback.

Legislative history

a) The 1973 Regulations

[38] In the *Goods Imported and Exported Drawback Regulations*, SOR/73-97, by using the conditional tense, Parliament appears to have meant to require a waiver from any person eligible to claim the drawback, except the applicant, of course.

3. Subject to these Regulations, the Minister shall authorize the payment **to an exporter or importer** of goods of a drawback of ninety-nine per cent of the Customs duty and excise taxes paid on imported goods that are exported (...)

5. A claim for drawback shall
b) be accompanied by

(i) **waivers from any person**, other than the claimant, **who**, pursuant to these Regulations, **could be entitled to claim a drawback**, and

3. Sous réserve du présent règlement, le Ministre autorise le paiement **à l'exportateur ou à l'importateur** d'un drawback de quatre-vingt-dix-neuf pour cent des droits de douane et des taxes d'accise payés sur des marchandises importées (...)

5. Une demande de drawback doit

b) (être) accompagnée de

(i) **renonciations émanant de toute personne**, sauf le demandeur, **qui**, en vertu du présent règlement, **aurait le droit de demander un**

(ii) (...)

drawback, et
(ii) (...)b) The 1978 Regulations

[39] In 1978, certain amendments to the *Regulations* entered into force via the *Goods Imported and Exported Drawback Regulations*, SOR/78-374. Parliament thereby meant to allow other categories of persons to be eligible for the drawback. Parliament did, however, employ different wording in reference to the waiver required for the applicant to be entitled to the drawback. That said, the meaning behind the language is clear and the use of the conditional tense once again infers that Parliament thereby meant for the waiver to be required of any person eligible to claim the drawback.

3. Subject to these Regulations, the Minister shall authorize the payment to the **exporter, manufacturer or producer of goods** as exported of a drawback of the customs duty, sales and excise taxes paid on or in respect of (...)

3. Sous réserve du présent règlement, le ministre doit autoriser le paiement à **l'exportateur, au fabricant ou au producteur des marchandises exportées**, d'un drawback des droits de douane et des taxes de vente et d'accise payés pour (...)

6. (1) A claim for drawback shall

(b) be accompanied by **waivers from any other person who**, pursuant to these Regulations, **would be entitled to claim a drawback** (...)

6. (1) Une demande de drawback doit être

b) accompagnée des **renonciations de toute autre personne qui**, aux termes de ce règlement, **serait fondée à demander un drawback** (...)

c) The 1986 Regulations

[40] In 1986, the *Goods Imported and Exported Drawback Regulations*, SOR/86-795 amended the categories of persons eligible to claim a drawback once again. The plural form was also used in the section dealing with persons from whom a notice of waiver is required. In short, the applicant had to provide a request for waiver from all other persons eligible to claim the drawback.

3. A drawback may only be claimed by an **importer or exporter** of the imported goods subsequently exported.

3. Un drawback ne peut être demandé que par **l'importateur ou l'exportateur** des marchandises importées et ultérieurement exportées.

5. A drawback may only be granted if:

5. Un drawback ne peut être accordé que si :

(c) the applicant provides a waiver, in the prescribed form, from all other persons entitled to claim a drawback, refund or remission of the duties, waiving their right to do so.

(c) le demandeur fournit, en la forme déterminée, une déclaration de renonciation en vertu de laquelle toutes les personnes ayant le droit de demander un drawback, un remboursement ou une remise des droits renoncent à ce droit.

d) The 1996 Regulations

[41] In 1996, the *Goods Imported and Exported Drawback Regulations*, SOR/96-42 stipulated that the applicant had to provide a waiver from all other persons entitled to claim the drawback. Parliament dispensed with the plural form in the portion of the provision related to persons from whom a drawback waiver is required. Subsection 9(1) of the Regulations stipulates the categories of persons eligible to claim a drawback.

5. An application for a drawback under this Part may be made where:

5. Une demande de drawback aux termes de la présente partie peut être présentée lorsque les conditions suivantes sont réunies :

(a) the goods were exported or deemed to have been

a) les marchandises sont exportées ou réputées l'être

exported before the application for drawback is made; and

avant la présentation de la demande;

(b) the applicant provides a waiver from all other persons entitled to claim a drawback, refund or remission of the duties, waiving their right to do so.

b) le demandeur fournit une renonciation au bénéfice du drawback, d'un remboursement ou d'une remise des droits par toute personne ayant droit de réclamer ce bénéfice.

9. (1) Subject to subsection (2), a drawback may be claimed by any person who is the importer or exporter of the imported or exported goods, or is the processor, owner or producer of those goods between the time of their direct shipment to Canada and their export or deemed export.

9. (1) Sous réserve du paragraphe (2), un drawback peut être demandé par toute personne qui est l'importateur ou l'exportateur des marchandises importées ou exportées ou qui en est le propriétaire, le transformateur ou le producteur entre le moment de leur expédition directe vers le Canada et celui de leur exportation ou exportation réputée.

[42] The applicants claim that they do not need to provide a notice of waiver from the importers because they are the only ones entitled to the drawback.

[43] Given that the meaning of the scope of the aforementioned concept is not clearly established in the Tariff or Regulations, the intention of Parliament can be defined through statutory interpretation, which in this case falls under the legislative context.

Memorandum D7-4-2, "Duty Drawback Program" (dated January 31, 1996) appears to support the conclusion that the notice of waiver is required from any person eligible for the drawback, regardless of the ownership of the exported good.

Who May Apply

5. If you are the importer, exporter, processor, owner, or producer of goods that were exported from Canada and for which duty was paid on importation, you may file a drawback claim. Where more than one person is eligible to file a claim, you must secure a waiver from all other eligible claimants waiving their rights to claim. If you are not sure you require a waiver, please contact your local Revenue Canada Trade Administration Services (TAS) office listed in Appendix C.

Qui peut faire une demande

5. Vous pouvez présenter une demande de drawback, si vous êtes l'importateur, l'exportateur, le transformateur, le propriétaire ou le fabricant des marchandises qui ont été exportées hors du Canada et dont les droits ont été acquittés au moment de l'importation. Si vous êtes plus d'une personne à avoir le droit de présenter une demande, vous devez obtenir une lettre de renonciation de toutes les parties admissibles, renonçant leur droit à l'exonération. Si vous n'êtes pas certain d'avoir besoin d'une telle lettre, veuillez communiquer avec votre bureau des Services de l'administration des politiques commerciales

(SAPC) de Revenu Canada, dont la liste est dressée à l'annexe C.

Supporting Documentation

7. The following documents must accompany the claim:

(a) a copy of any export sales invoice;

(b) a bill of lading or other shipping document;

(c) a waiver on commercial documentation or the original and one copy of any Form K 32A, *Certificate of Importation, Sale or Transfer*, when the claimant is not the importer.
(...)

Documents à l'appui

7. Les documents suivants doivent être assortis à la demande :

a) une copie de toute facture de vente à l'exportation;

b) le document de connaissement ou tout autre document d'expédition;

c) une note de renonciation sur les documents commerciaux, ou l'original et une copie de tout formulaire K 32A, *Certificat à l'égard d'importation, de vente ou de transfert*, lorsque le demandeur n'est pas l'importateur des marchandises.
(...)

[44] In light of this administrative interpretation, the applicants appear to be wrong in believing that they are the only ones entitled to claim a drawback, alleging that by purchasing the vehicles from the hands of importers, they waived the rights of other persons eligible for the drawback. The Regulations do not contain any provision allowing a drawback to be granted to the buyer who is unable to obtain a notice of waiver. In short, it

is the standing of the person that seems to give rise to the entitlement to the drawback claim, not the right to ownership.

[45] Therefore, the meaning given to the legislative text suggests that the applicant, whether ex-porter, importer, owner, processor or producer, must provide a waiver from any other person entitled to claim the drawback, regardless of the right of ownership in the exported property.

[46] In this matter, the applicants could not show that the CBSA's decision was incorrect considering the applicable law. Based on that, the CBSA's decision is therefore upheld, the Court having no other grounds for believing that the CBSA's interpretation of the provisions involving the persons eligible for entitlement to the drawback is unreasonable.

[47] Given that the answer to the second question is not in favour of the applicants, there is no need to answer whether the officer had the discretion and obligation to provide the customs information to the applicants.

[48] Nevertheless, I would like to note that the information provided by the importers was provided to accommodate the requirements of the *Motor Vehicle Safety Act*, and not provided under the *Customs Act*.

[49] It is completely unreasonable to require customs officers to be responsible for having the description of every item imported into Canada on file, and more specifically all the information that the applicants require to submit a detailed drawback claim. As I have stated, those details were submitted under the *Motor Vehicle Safety Act* and not the *Customs Act*. Every federal department has its own import rules and requirements, and the officer exercises complete discretion, as stipulated in paragraph 107(5)(l) of the *Customs Act*, which reads as follows:

107(5) An official may provide, allow to be provided or provide access to customs information to the following persons:

...

(l) an person solely for the purpose of determining any entitlement, liability or obligation of the person under this Act or the *Customs Tariff* including the person's entitlement to any refund, relief, drawback or abatement under those Acts;

107(5) Le fonctionnaire peut fournir un renseignement douanier, permettre qu'il soit fourni ou y donner accès :

...

(l) à quiconque, uniquement en vue de déterminer sa réclamation, sa responsabilité ou ses obligations en vertu de la présente loi ou du *Tarif des douanes*, notamment sa réclamation relativement à un remboursement, un drawback ou un abattement en vertu de ces lois.

[50] As for the officer's actions, sections 113 and 119 of the Regulations address drawback refunds. Those sections read as follows:

113.(1) Subject to subsection (2), section 96 and any regulations made under subsection (4), a refund or drawback shall be granted of all or a portion of duties if

(a) relief or a refund of all or a portion of the duties could have been, but was not, granted under section 89 or 101;

(b) all or a portion of the duties was paid; and

(c) an application is made in accordance with subsection (3) and section 199.

119. An application under section 110 and 113 must be accompanied by a waiver, in the prescribed form, from every other person eligible to claim a drawback, refund or remission of the duties in respect of which the application is made, waiving that person's right to apply for the drawback, refund or remission.

113.(1) Sous réserve du paragraphe (2), de l'article 96 et des règlements d'application du paragraphe (4), est accordé une exonération ou un remboursement de tout ou partie des droits si, à la fois :

a) l'exonération ou le remboursement de tout ou partie des droits aurait pu être accordé en application des articles 89 ou 101, mais ne l'a pas été;

b) les droits ont été payés en tout ou en partie;

c) une demande est présentée en conformité avec le paragraphe (3) et l'article 119.

119. Les demandes présentées en vertu des articles 110 ou 113 comportent, en la forme prescrite par le ministre du Revenu national, la renonciation par laquelle toute autre personne admissible au drawback, au remboursement ou à la remise des droits y renonce.

[51] *Mandamus* is only available when there is a public legal duty to act owed to the applicant. Pursuant to the above-quoted sections, the customs officer cannot act outside of the requirements of the Act or Regulations. The officer cannot perform any other function and has no obligation to act outside of the limits established in the Act and Regulations. Furthermore, as the Federal Court of Appeal stated in *Apotex Inc. v. Canada (Attorney General)*, [1994] 1 FC 742:

Where the duty sought to be enforced is discretionary, the following rules apply:

(a) in exercising a discretion, the decision-maker must not act in a manner which can be characterized as “unfair”, “oppressive” or demonstrate “flagrant impropriety” or “bad faith”;

(b) *mandamus* is unavailable if the decision-maker’s discretion is characterized as being “unqualified”, “absolute”, “permissive” or “unfettered”;

(c) in the exercise of a “fettered” discretion, the decision-maker must act upon “relevant”, as opposed to “irrelevant”, considerations;

(d) *mandamus* is unavailable to compel the exercise of a “fettered discretion” in a particular way; and

(e) *mandamus* is only available when the decision-maker’s discretion is “spent”; i.e., the applicant has a vested right to the performance of the duty.

[52] Given that the officer exercises complete discretion, the respondents maintain that, in relation to the above-cited *ratio*, the *mandamus* conclusion sought by the applicants cannot be issued *de facto*.

[53] As stipulated in section 119 of the Regulations, the form prescribed by the department and a waiver from any other persons eligible for the drawback should have been submitted to the officer. The officer cannot exceed his jurisdiction.

JUDGMENT

The application for judicial review is dismissed with costs.

"Paul U.C. Rouleau"
DEPUTY JUDGE

FEDERAL COURT
SOLICITORS OF RECORD

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