

**2009 01H 0010**

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
COURT OF APPEAL**

**BETWEEN:**

**VICTOR TODD SPARKES**

**INTENDED APPELLANT**

**AND:**

**IMPERIAL TOBACCO CANADA LIMITED**

**INTENDED FIRST RESPONDENT**

**AND:**

**IMPERIAL TOBACCO COMPANY LIMITED**

**INTENDED SECOND RESPONDENT**

**AND:**

**ATTORNEY GENERAL OF CANADA**

**INTENDED THIRD RESPONDENT**

**INTERLOCUTORY APPLICATION**  
**(Inter Partes)**

The application of the Intended Appellant states as follows:

1. The application for leave to appeal was called for hearing on May 5, 2009.
2. Justice Welsh ordered that leave and merits be heard together and set the following dates:

June 26, 2009	Intended Appellant's Factum
July 22, 2009	Intended First and Second Respondents' Factum
August 12, 2009	Intended Third Respondent's Factum
September 14 and 15, 2009	Hearing of Appeal

3. The dates for hearing both leave and merits having been set, it was unnecessary for the Intended Appellant to file an affidavit of readiness in relation to hearing of the merits, pursuant to Rule 57.18.
4. The Intended First and Second Respondents (Imperial Tobacco) filed Supplemental Materials on or about August 17, 2009. Leave was not sought to file these materials.
5. The Intended Appellant delivered a Reply on August 21, 2009. Leave was not sought to file the Reply, but is sought on invitation of the Court by means of this application.
6. The Applicant, the Intended Appellant (Plaintiff) Victor Sparkes, therefore applies, pursuant to Rules 57.30 and 57.31, for an order that leave be granted to file a Brief in Reply dated August 21, 2009.

**DATED** at St. John's, in the Province of Newfoundland and Labrador, this \_\_\_\_\_ day of September, 2009.

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**CHES CROSBIE BARRISTERS**  
Solicitors for the Intended Appellant  
169 Water Street, 4<sup>th</sup> Floor  
St. John's, NL A1C 1B1  
*Attention: Chesley F. Crosbie, Q.C.*

**TO: MCINNES COOPER**  
Solicitors for the First and Second Intended Respondents  
10 Fort William Place, PO Box 5939  
St. John's, NL A1C 5X4  
*Attention: James L. Thistle, Q.C.*

**LAWSON LUNDELL**  
Solicitors for the Intended Third Respondent  
925 West Georgia Street  
Suite 1600 Cathedral Place  
Vancouver, BC V6C 3L2  
*William Everett, Q.C.*

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**INTENDED THIRD RESPONDENT**

**AFFIDAVIT  
(In Support of Interlocutory Application)**

I, Sheri Geehan, of Conception Bay South, in the Province of Newfoundland and Labrador, hereby make oath and say as follows:

1. THAT I am a legal assistant with the law firm of Ches Crosbie Barristers, the solicitors for the Intended Appellant.
2. THAT I have read and understand the foregoing application.
3. THAT the facts stated in the application are true to the best of my knowledge, information and belief.

4. THAT I am personally familiar with the files, and that Mr. Crosbie has filed Reply memoranda in certification applications in the Trial Division in this and two other matters.
  
5. THAT I make this Affidavit in support of the Intended Appellant's application of even date.

**SWORN TO** at St. John's, in the Province of Newfoundland and Labrador, this        day of September, 2009, before me:

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**SHERI GEEHAN**

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**ATTORNEY GENERAL OF CANADA**

**INTENDED THIRD RESPONDENT**

**NOTICE TO RESPONDENTS**

You are hereby notified that the foregoing application will be heard on Monday, the 14<sup>th</sup> day of September, 2009, at the hour of ten o'clock in the forenoon or so soon thereafter as the application can be heard.

**TO: MCINNES COOPER**

Solicitors for the First and Second Intended Respondents  
10 Fort William Place, PO Box 5939  
St. John's, NL A1C 5X4  
*Attention: James L. Thistle, Q.C.*

**LAWSON LUNDELL**

Solicitors for the Intended Third Respondent  
925 West Georgia Street  
Suite 1600 Cathedral Place  
Vancouver, BC V6C 3L2  
*William Everett, Q.C.*