

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.

CHES CROSBIE BARRISTERS
 Solicitors for the Intended Appellant
 169 Water Street, 4th 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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**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:

SHERI GEEHAN

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INTENDED SECOND RESPONDENT

AND:

ATTORNEY GENERAL OF CANADA

INTENDED THIRD RESPONDENT

NOTICE TO RESPONDENTS

You are hereby notified that the foregoing application will be heard on Monday, the 14th 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.

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