

Federal Court



Cour fédérale

Date: 20100120

Docket: T-1788-08

Citation: 2010 FC 61

Ottawa, Ontario, January 20, 2010

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

UNICROP LTD.

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review by Unicrop Ltd. of Helsinki, Finland (Unicrop) of a decision of the Commissioner of Patents (the Commissioner), who found Canadian Patent Application No. 2,531,185 (the Application) completely abandoned as of July 5, 2008, which decision was communicated to the Applicant by letter dated October 17, 2008.

Factual Background

[2] On January 3, 2006, Unicrop filed the Application as a National Entry under the Patent Cooperation Treaty (PCT FI2004/000426) at the Canadian Intellectual Property Office (CIPO). The

Application was filed by Bereskin & Parr LLP, Unicrop's representatives at the time the Application was filed. As a post-1989 filing, pursuant to subsection 27.1(1) of the *Patent Act*, R.S.C. 1985, P-4 (the Act), the Application is a "new act" application and maintenance fees are required to be paid.

[3] The Applicant, through Bereskin & Parr, submitted the annual maintenance fees to CIPO, up to and including the second anniversary maintenance fee, which were due on July 5th of each applicable year as per the time prescribed by the *Patent Rules*, SOR/96-423 (the Rules). The last payment from Bereskin & Parr was submitted to the Commissioner around June 12, 2006.

[4] The third anniversary maintenance fee was due on July 5, 2007 and this payment was not paid in time. The Commissioner of Patents therefore deemed the Application abandoned pursuant to subsection 73(1) of the Act.

[5] As per subsection 73(3) of the Act and subsection 98(1) of the Rules, the Applicant had twelve months to reinstate the Application, provided a request for reinstatement was made, the reinstatement fee was paid and the annual maintenance fees were paid.

[6] On June 23, 2008, the Applicant, through their agent Furman & Kallio, purported to reinstate the Application. Furman & Kallio submitted two letters to CIPO on June 23, 2008. The first letter requested the reinstatement of the Application, tendered the administrative reinstatement

fee (\$200.00) and contained the third anniversary maintenance fee (\$100.00). The second letter dated June 23, 2008 contained the payment for the fourth anniversary maintenance fee (\$100.00).

[7] In a letter sent to the law firm of Furman & Kallio on July 23, 2008, CIPO acknowledged receipt of the fourth year maintenance fee payment dated June 23, 2008. The letter advised that only the authorized correspondent could pay the reinstatement and maintenance fees. According to CIPO, Bereskin & Parr LLP was the authorized correspondent. The Commissioner explained the fees were improperly paid, since no Appointment of Agent had been received prior to, or concurrent with the fees.

[8] The Applicant argues a Unicrop representative signed the Appointment of Patent Agent/Representative appointing Furman & Kallio as agents in law of Unicrop for the Application on June 16, 2008. The Applicant submits it is not disputed that the Appointment of Agent had not been submitted to CIPO prior to July 5, 2008. The failure to provide that document to CIPO was an inadvertent clerical error which occurred within the office of Furman & Kallio.

[9] On August 12, 2008, Furman & Kallio responded to CIPO's letter dated July 23, 2008. Furman & Kallio stated they had already been appointed as agent to act on behalf of the Applicant when the two letters were sent on June 23, 2008. A copy of the Appointment of Agent dated June 16, 2008 was enclosed and a reconsideration of the retroactive rejection of the fees was also requested.

[10] On October 17, 2008, CIPO sent a letter to the law firm of Furman & Kallio indicating that the fees would not be accepted and advising that the Application could not be reinstated as the reinstatement period had expired. The Application was deemed abandoned and dead (beyond reinstatement), effectively forfeiting the Applicant's patent rights.

[11] On October 23, 2008, CIPO sent a letter to Furman & Kallio acknowledging receipt of the maintenance fee for the third year and the reinstatement fee payments dated June 23, 2008, and reiterated that the payments could not be accepted as the Application was now abandoned.

Issues

[12] This application raises the following issues:

- a. What is the appropriate standard of review?
- b. Did the Commissioner of Patents err in refusing to reinstate the Application?
- c. Can subsection 3.1(1) of the *Patent Rules* provide relief in this case?
- d. Do the equitable doctrines of relief against forfeiture or promissory estoppel provide the Applicant with a remedy in this case?

Relevant Legislative Provisions

[13] *Patent Act*, R.S.C. 1985, P-4:

Maintenance fees

27.1 (1) An applicant for a patent shall, to maintain the application in effect, pay to the Commissioner such fees, in respect of such periods, as may

Taxes périodiques

27.1 (1) Le demandeur est tenu de payer au commissaire, afin de maintenir sa demande en état, les taxes réglementaires pour chaque période

be prescribed.

réglementaire.

(2) and (3) [Repealed, 1993, c. 15, s. 32]

(2) et (3) [Abrogés, 1993, ch. 15, art. 32]

Deemed abandonment of applications

Abandon

73. (1) An application for a patent in Canada shall be deemed to be abandoned if the applicant does not

73. (1) La demande de brevet est considérée comme abandonnée si le demandeur omet, selon le cas :

(a) reply in good faith to any requisition made by an examiner in connection with an examination, within six months after the requisition is made or within any shorter period established by the Commissioner;

a) de répondre de bonne foi, dans le cadre d'un examen, à toute demande de l'examineur, dans les six mois suivant cette demande ou dans le délai plus court déterminé par le commissaire;

(b) comply with a notice given pursuant to subsection 27(6);

b) de se conformer à l'avis mentionné au paragraphe 27(6);

(c) pay the fees payable under section 27.1, within the time provided by the regulations;

c) de payer, dans le délai réglementaire, les taxes visées à l'article 27.1;

(d) make a request for examination or pay the prescribed fee under subsection 35(1) within the time provided by the regulations;

d) de présenter la requête visée au paragraphe 35(1) ou de payer la taxe réglementaire dans le délai réglementaire;

(e) comply with a notice given under subsection 35(2); or

e) de se conformer à l'avis mentionné au paragraphe 35(2);

(f) pay the prescribed fees stated to be payable in a notice of allowance of patent within six months after the date of the notice.

f) de payer les taxes réglementaires mentionnées dans l'avis d'acceptation de la demande de brevet dans les six mois suivant celui-ci.

Deemed abandonment in prescribed circumstances

(2) An application shall also be deemed to be abandoned in any other circumstances that are prescribed.

Reinstatement

(3) An application deemed to be abandoned under this section shall be reinstated if the applicant

(a) makes a request for reinstatement to the Commissioner within the prescribed period;

(b) takes the action that should have been taken in order to avoid the abandonment; and

(c) pays the prescribed fee before the expiration of the prescribed period.

Amendment and re-examination

(4) An application that has been abandoned pursuant to paragraph (1)(f) and reinstated is subject to amendment and further examination.

Original filing date

(5) An application that is reinstated retains its original filing date.

Idem

(2) Elle est aussi considérée comme abandonnée dans les circonstances réglementaires.

Rétablissement

(3) Elle peut être rétablie si le demandeur :

a) présente au commissaire, dans le délai réglementaire, une requête à cet effet;

b) prend les mesures qui s'imposaient pour éviter l'abandon;

c) paie les taxes réglementaires avant l'expiration de la période réglementaire.

Modification et réexamen

(4) La demande abandonnée au titre de l'alinéa (1)f) et rétablie par la suite est sujette à modification et à nouvel examen.

Date de dépôt originelle

(5) La demande rétablie conserve sa date de dépôt.

2. In these Rules,

2. Les définitions qui suivent s'appliquent aux présentes règles.

“authorized correspondent” means, in respect of an application,

« correspondant autorisé » Pour une demande :

(a) where the application was filed by the inventor, where no transfer of the inventor's right to the patent or of the whole interest in the invention has been registered in the Patent Office and where no patent agent has been appointed

a) lorsque la demande a été déposée par l'inventeur, qu'aucune cession de son droit au brevet, de son droit sur l'invention ou de son intérêt entier dans l'invention n'a été enregistrée au Bureau des brevets et qu'aucun agent de brevets n'a été nommé :

(i) the sole inventor,

(i) l'unique inventeur,

(ii) one of two or more joint inventors authorized by all such inventors to act on their joint behalf, or

(ii) s'il y a deux coinventeurs ou plus, celui autorisé par ceux-ci à agir en leur nom,

(iii) where there are two or more joint inventors and no inventor has been authorized in accordance with subparagraph (ii), the first inventor named in the petition or, in the case of PCT national phase applications, the first inventor named in the international application,

(iii) s'il y a deux coinventeurs ou plus et qu'aucun de ceux-ci n'a été ainsi autorisé, le premier inventeur nommé dans la pétition ou, dans le cas des demandes PCT à la phase nationale, le premier inventeur nommé dans la demande internationale;

(b) where an associate patent agent has been appointed or is required to be appointed pursuant to section 21, the associate patent agent, or

b) lorsqu'un coagent a été nommé ou doit l'être en application de l'article 21, le coagent ainsi nommé;

(c) where paragraphs (a) and (b) do not apply, a patent agent

c) lorsque les alinéas a) et b) ne s'appliquent pas, l'agent de

appointed pursuant to section 20; (correspondant autorisé)

brevets nommé en application de l'article 20. (authorized correspondent)

3.1 (1) Subject to subsection 6(1), if, before the expiry of a time limit for paying a fee set out in Schedule II, the Commissioner receives a communication in accordance with which a clear but unsuccessful attempt is made to pay the fee, the fee shall be considered to have been paid before the expiry of the time limit if

3.1 (1) Sous réserve du paragraphe 6(1), si, avant l'expiration du délai fixé pour le versement d'une taxe prévue à l'annexe II, le commissaire reçoit une communication dans laquelle une personne fait une tentative manifeste mais infructueuse pour verser la taxe, celle-ci est réputée avoir été reçue avant l'expiration du délai dans les cas suivants :

(a) the amount of the fee that was missing is paid before the expiry of the time limit;

a) la taxe impayée est versée avant l'expiration du délai;

(b) if a notice is sent in accordance with subsection (2), the amount of the fee that was missing, together with the late payment fee set out in item 22.1 of Schedule II, are paid before the expiry of the two-month period after the date of the notice; or

b) dans le cas où un avis est envoyé conformément au paragraphe (2), la taxe impayée, accompagnée de la surtaxe pour paiement en souffrance prévue à l'article 22.1 de l'annexe II, est versée dans les deux mois suivant la date de l'avis;

(c) if a notice is not sent, the amount of the fee that was missing, together with the late payment fee set out in item 22.1 of Schedule II, are paid before the expiry of the two-month period after the day on which the communication was received by the Commissioner.

c) dans le cas où aucun avis n'est envoyé, la taxe impayée, accompagnée de la surtaxe pour paiement en souffrance prévue à l'article 22.1 de l'annexe II, est versée dans les deux mois suivant la date à laquelle le commissaire a reçu la communication.

(2) Subject to subsection 6(1) and unless the person making

(2) Sous réserve du paragraphe 6(1) et à moins que l'auteur de

the communication did not provide information that would allow them to be contacted, if the Commissioner has received a communication in the circumstances referred to in subsection (1), the Commissioner shall, by notice to the person who made the communication, request payment of the amount of the fee that was missing together, if applicable, with the late payment fee referred to in subsection (1).

(3) Subsections (1) and (2) do not apply in respect of the fees set out in items 9 to 9.4 and 22.1 of Schedule II.

6. (1) Except as provided by the Act or these Rules, for the purpose of prosecuting or maintaining an application the Commissioner shall only communicate with, and shall only have regard to communications from, the authorized correspondent.

Appointment of Patent Agents

20. (1) An applicant who is not an inventor shall appoint a patent agent to prosecute the application for the applicant.

(2) The appointment of a patent agent shall be made in the

la communication au commissaire ne soumette pas les renseignements permettant de communiquer avec lui, si le commissaire reçoit la communication dans les circonstances visées au paragraphe (1), il demande, par avis, à la personne qui lui a envoyé la communication de verser la taxe impayée, accompagnée, s'il y a lieu, de la surtaxe pour paiement en souffrance visée au paragraphe (1).

(3) Les paragraphes (1) et (2) ne s'appliquent pas aux taxes prévues aux articles 9 à 9.4 et 22.1 de l'annexe II.

6. (1) Sauf disposition contraire de la Loi ou des présentes règles, dans le cadre de la poursuite ou du maintien d'une demande, le commissaire ne communique qu'avec le correspondant autorisé en ce qui concerne cette demande et ne tient compte que des communications reçues de celui-ci à cet égard.

Nomination des agents de brevets

20. (1) Le demandeur qui n'est pas l'inventeur nomme un agent de brevets chargé de poursuivre la demande en son nom.

(2) L'agent de brevets est nommé dans la pétition ou dans

petition or by submitting to the Commissioner a notice signed by the applicant.

un avis remis au commissaire et signé par le demandeur.

(3) The appointment of a patent agent may be revoked by submitting to the Commissioner a notice of revocation signed by the applicant or that patent agent.

(3) La nomination d'un agent de brevets peut être révoquée par un avis de révocation remis au commissaire et signé par l'agent ou le demandeur.

98. (1) For an application deemed to be abandoned under section 73 of the Act to be reinstated, the applicant shall, in respect of each failure to take an action referred to in subsection 73(1) of the Act or section 97, make a request for reinstatement to the Commissioner, take the action that should have been taken in order to avoid the abandonment and pay the fee set out in item 7 of Schedule II, before the expiry of the 12-month period after the date on which the application is deemed to be abandoned as a result of that failure.

98. (1) Pour que la demande considérée comme abandonnée en application de l'article 73 de la Loi soit rétablie, le demandeur, à l'égard de chaque omission visée au paragraphe 73(1) de la Loi ou à l'article 97, présente au commissaire une requête à cet effet, prend les mesures qui s'imposaient pour éviter l'abandon et paie la taxe prévue à l'article 7 de l'annexe II, dans les douze mois suivant la date de prise d'effet de l'abandon.

(2) For the purposes of subsection (1), if an application is deemed to be abandoned for failure to pay a fee referred to in subsection 3(3), (4) or (7), for the applicant to take the action that should have been taken in order to avoid the abandonment, the applicant shall, before the expiry of the time prescribed by subsection

(2) Pour prendre les mesures qui s'imposaient pour éviter l'abandon pour non-paiement de la taxe visée aux paragraphes 3(3), (4) ou (7), le demandeur, avant l'expiration du délai prévu au paragraphe (1) :

(1), either

(a) pay the applicable standard fee, or

a) soit paie la taxe générale applicable;

(b) file a small entity declaration in respect of the application in accordance with section 3.01 and pay the applicable small entity fee.

b) soit dépose, à l'égard de sa demande, la déclaration du statut de petite entité conformément à l'article 3.01 et paie la taxe applicable aux petites entités.

Analysis

1. *What is the appropriate standard of review?*

[15] There is no dispute between the parties, and the Court agrees that the appropriate standard of review in the present case is the correctness standard, as the issue to be decided is essentially a question of law. The jurisprudence of the Federal Court of Appeal has consistently held that interpretations of the Act and Rules and in particular in respect of issues involving the renewal of maintenance fees is to be determined on a standard of correctness (*Dutch Industries Limited v. Canada (Commissioner of Patents)*, 2003 FCA 121, [2003] 4 F.C. 67). As such, the Commissioner's expertise does not extend to the legal interpretation of statutes regarding administrative matters (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 60; *Rendina v. Canada (Attorney General)*, 2007 FC 914, [2008] 3 F.C.R. 3 at par. 10-11).

2. *Did the Commissioner of Patents err in refusing to reinstate the Application?*

[16] Section 2 of the Rules describes an "authorized correspondent" as the inventor (if they have not appointed an agent), a patent agent appointed by the inventor or an associate patent agent.

Section 22 of the Rules provides that any act by or in relation to a patent agent or an associate patent

agent shall have the effect of an act by or in relation to the applicant. Subsection 6(1) of the Rules prescribes who may communicate with CIPO for the purpose of prosecuting and maintaining a patent application.

[17] Maintenance fees must be paid in order to maintain a “new act” patent application, and when these maintenance fees are not paid by the annual anniversary date of the application (in this case July 5th), the application is deemed abandoned (subsections 27.1(1) and 73(1) of the Act).

[18] The Act and the Rules provide a one-year grace period for reinstatement in respect of a patent application which has been deemed abandoned for failure to pay maintenance fees (subsection 73(3) of the Act and section 98 of the Rules). The Applicant notes that subsection 73(3)(a) of the Act states that for an application deemed to be abandoned to be reinstated within the reinstatement period, among other criteria, an applicant must “make a request for reinstatement to the Commissioner within the prescribed period”. The Applicant submits that neither the Act nor the Rules specify what constitutes a “request for reinstatement” to comply with paragraph 73(3)(a) of the Act. Both the Act and the Rules are silent as to what form the request should take, beyond the general requirement that the request be explicit.

[19] The Applicant submits the situation in this case is governed by the principles of *Sarnoff Corporation v. Canada (Attorney General)*, 2008 FC 712, [2009] 2 F.C.R. 3 aff’d 2009 FCA 142, [2009] F.C.J. no. 567 (QL) where my colleague Justice Hughes found the necessary obligations to reinstate the patent application had been made by the appropriate agent of record.

[20] The Respondent alleges there is a significant factual distinction between the circumstances in *Sarnoff* and those in the present case. In *Sarnoff*, the evidence was unclear whether or not CIPO received proper notice of Appointment of Agent or associate agent according to the Act.

Considering all of the evidence, Justice Hughes concluded at paragraph 28 that CIPO “had to have had an appointment of associate agent” and this finding was affirmed by the Federal Court of Appeal.

[21] The Respondent asserts that the Applicant’s interpretation of the Act and the Rules would create uncertainty in the administration of the patent system and is contrary to the object and purpose of the Act as there is no obligation on the part of CIPO to notify applicants of their obligations required by statute.

[22] Thus, where the required fees have not been paid in time by the appropriate representative, the Respondent further submits the application is abandoned and the Commissioner has no discretion or authority to modify or influence that result.

[23] As noted, subsection 6(1) of the Rules provides that CIPO will only communicate with the authorized correspondent (as defined in section 2 of the Rules) for the purpose of prosecuting or maintaining an application. As this Court observed in *Sarnoff*, the Act and the Rules are silent as to when the notice of appointment must be submitted and the effect on the actions taken, such as CIPO acknowledging and receiving payments. Moreover, subsection 6(1) of the Rules should not be read

so restrictively so as to prohibit an agent from engaging in routine matters such as the payment of maintenance fees (*Sarnoff*). Accordingly, each case must be determined on its own merit.

[24] In *Sarnoff*, the required fees were paid in a timely manner and acknowledged by CIPO but there was an issue in *Sarnoff* as to whether a Notice of Appointment of Agent had or had not been filed within the required time.

[25] In the case at bar and contrary to *Sarnoff*, the Court finds that the evidence demonstrates clearly that the law firm of Furman & Kallio did not file a Notice of Appointment of Agent with CIPO as required under the Act, nor were there any clear efforts to establish legal representation prior to the Application reaching the deadline for reinstatement. Further, CIPO does not have a communication history with Furman & Kallio in respect of Patent Application No. 2,531,185 and Bereskin and Parr was recognized as the appropriate authorized correspondent at the time.

[26] Courts have recognized that the maintenance fee regime is complicated and, accordingly, courts should give patent holders the benefit of any omissions or ambiguities in the legislation (*Dutch Industries*). However, in light of the above, I see no omissions or ambiguities that might be resolved in the Applicant's favour.

[27] Since subsection 6(1) of the Rules requires that all communication with the Commissioner be conducted by the authorized correspondent, the Commissioner did not err in refusing payment of the fees by Furman & Kallio, as they were not the authorized correspondent for the Application at

the time the payments were made. The Applicant does not contest that the Notice of Appointment of Agent was not received by CIPO by July 5, 2008 and, as such, it was reasonable for the Commissioner to refuse the payment of the fees and the reinstatement of the Application.

[28] If the applicant's confirmed intention to appoint Furman & Kallio as its representative is undisputable, the fact of the matter is that CIPO cannot be deemed to have knowledge of the said change and left to decide in each instance whether an applicant's direct communication with CIPO should be considered or not. Simply because one purports to be an agent of another does not, in law, make that person an agent. Not only does the Applicant's interpretation run contrary to the Rules as it renders the definition of "authorized correspondent" pointless, it also creates uncertainty coupled with an administrative burden for CIPO who is involved in a high number of communications in fulfilling its mandate.

[29] The Court finds that the appointment of Furman & Kallio as agent of the Applicant was not received by CIPO by July 5, 2008 and, as such, it was reasonable for the Commissioner to refuse the payment of the fees and the reinstatement of the Application.

3. *Can subsection 3.1(1) of the Patent Rules provide relief in this case?*

[30] The Applicant submits that subsection 3.1(1) of the Rules provides an additional two month saving provision if a clear attempt to pay the fees was made unsuccessfully. Subsection 3.1(2) of the Rules states that the Commissioner shall provide a notice if the criteria of that subsection are met. The Applicant notes the use of "shall" is to be construed as imperative (section 11 of the

Interpretation Act, R.S., 1985, c. I-21). Accordingly, the use of “shall” in subsection 3.1(2) of the Rules creates an obligation on the Commissioner to provide such notice, where circumstances of subsection 3.1(1) of the Rules occur.

[31] The Applicant also argued at hearing that the intent of section 3.1 of the Rules is to afford patent applicants with an opportunity to take corrective action where fee authorizations are miscommunicated, ambiguous, or otherwise insufficiently clear for the Commissioner to process payment of the requisite fees. There was no notice provided as per section 3.1 of the Rules in this case and the Applicant submits it is inconsistent with the intent of this provision to deny the effect saving provision where a purely clerical matter (the Appointment of Agent) has not been complied with.

[32] I disagree with the Applicant. The Applicant’s argument was rejected in *Rendina*. My colleague Justice de Montigny stated at para. 22 that the provision “subject to subsection 6(1)” contained in subsection 3.1 (1) of the Rules, means that the request for reinstatement had to come from the patent agent.

[33] The same interpretation can be made in the present case. As previously discussed, the law firm of Furman & Kallio was not the authorized correspondent pursuant to subsection 6(1) of the Rules and therefore could not, as a matter of interpretation, attempt to pay the maintenance fees and the reinstatement fee under subsection 3.1(1) of the Rules. This argument can therefore be of no assistance to the applicant.

4. *Do the equitable doctrines of relief against forfeiture or promissory estoppel provide the Applicant with a remedy in this case?*

[34] The Applicant submits the doctrine of relief against forfeiture is a doctrine of equity which is not displaced by statutory regimes. As a court of equity, the Federal Court may grant relief against forfeiture with respect to subject matter otherwise within its jurisdiction (*Shiloh Spinners Ltd. v. Harding*, [1973] A.C. 691, [1973] 1 All E.R. 90 (H.L.) at pp. 102-3; *Federal Courts Act*, section 4 and subsection 20(2)).

[35] In support of his submission, the Applicant cites *Sarnoff* as the authority for the Court to apply equitable remedies to this instance.

[36] However, in *Sarnoff*, my colleague Justice Hughes acknowledged the Court's decision in *F. Hoffman-LaRoche AG v. Canada (Commissioner of Patents)*, 2003 FC 1381, [2004] 2 F.C.R. 405, aff'd. 2005 FCA 399, 344 N.R. 202, and distinguished his decision on the facts, stating that the applicant had effectively complied with the statute, which afforded him the option to grant equitable relief.

[37] The facts of the present case are different from those in *Sarnoff*, as the Applicant has failed to comply with the statute and there is no error or mistake on the part of CIPO. To grant equitable relief to the Applicant in this case would nullify the time limit provided by the statute and would be contrary to the Federal Court of Appeal's decision in *F. Hoffman-LaRoche AG* as it would

contradict the plain terms of the statute. Indeed, the Act and the Rules provide a mandatory requirement for an authorized correspondent to make payment to CIPO on or before a particular date and the consequence for failure to meet these obligations is statutory abandonment.

[38] In the case at bar, although the required fees were paid, they were not paid by the authorized correspondent as required by the legislation and thus, Furman & Kallio was not recognized as the appropriate agent by CIPO. The Court cannot find that the decision by the Commissioner not to reinstate the Application is contrary to equity. As noted in *F. Hoffmann-La Roche AG* at para. 44, the Court is unable to give relief on the ground of equity when a forfeiture results from a statutory rule since a judge must give effect to the statute. The contrary would amount for this Court to substitute its own deadline for the one enacted by Parliament.

[39] For these reasons, the application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

"Richard Boivin"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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