

Federal Court



Cour fédérale

Date: 20100311

Docket: T-1636-08

Citation: 2010 FC 276

Ottawa, Ontario, March 11, 2010

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**ASTRAZENECA CANADA INC., ASTRAZENECA AB and
SHIONOGI SEIYAKU KABUSHIKI KAISHA**

Applicants

and

**NOVOPHARM LIMITED and
THE MINISTER OF HEALTH**

Respondents

REASONS FOR ORDER AND ORDER

[1] By Motion filed February 12, 2010, Counsel for the Applicants requests an order that video-recordings of cross-examinations of expert witnesses in this proceeding be filed as a supplemental volume to the Application Record. While Counsel for Novopharm did not object to the videotaping of the cross-examinations, objection is made to the filing of the video-recordings as requested.

[2] The issue of the filing of the video-recordings was raised before me during the pre-hearing conference conducted on January 27, 2010. At that time I said that I would not allow the filing of a

video-recording if the purpose for doing so is to address the credibility of the witness concerned. In the representations on the present Motion, Counsel for the Applicants accepts this statement (para.12), but, nevertheless, makes the filing request for the following reasons (paras. 10 and 11):

First, the Court will be able to watch the witnesses' recorded answers. While obviously not a substitute for viva voce evidence, a recording is materially superior to a paper transcript and will assist the Court in understanding the scientific evidence. The tracking of the transcript to the images will further assist the Court in understanding the evidence.

Second, the Court will be better positioned to assign weight to the evidence. By way of example, a party may argue that a witness has made an admission that throws into doubt some portion of their affidavit evidence. On viewing the answer, however, the Court may assign less weight to the answer on the basis that the witness did not understand or fully consider the question. Conversely, the recording may show that the witness gave a deliberate and considered answer and fully understood the question asked.

[3] In my opinion, neither of the reasons provided warrant a deviation from the existing practice in a summary NOC proceeding: the application is determined on a written record. With respect to the reasons provided for deviating from the existing practice I have two responses: understanding the evidence comes from the capable argument of Counsel and not from seeing stated what is available to be read; and the process of weighing the evidence is based on the content of the evidence read in full context, and not on the manner in which the evidence might have been obtained.

ORDER

THIS COURT ORDERS THAT:

1. The Motion is denied; and
2. Costs on the Motion are awarded to the Respondent Novopharm Limited.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1636-08

STYLE OF CAUSE: ASTRAZENECA CANADA INC., ET AL. v
NOVOPHARM LIMITED, ET AL.

MOTION IN WRITING

**REASONS FOR ORDER
AND ORDER:** CAMPBELL J.

DATED: March 11, 2010

SOLICITORS OF RECORD:

Smart & Biggar
Barristers & Solicitors
Toronto, Ontario

FOR THE APPLICANT,
ASTRAZENECA

Heenan, Blaikie, LLP
Lawyers
Toronto, Ontario

FOR THE RESPONDENT,
NOVOPHARM

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE RESPONDENT,
THE MINISTER OF HEALTH