

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200224

Docket: A-355-18

Citation: 2020 FCA 53

**CORAM: DAWSON J.A.
STRATAS J.A.
LASKIN J.A.**

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO AS REPRESENTED BY THE
MINISTER OF ENERGY**

Appellant

and

QUALITY PROGRAM SERVICES INC.

Respondent

Heard at Toronto, Ontario, on February 24, 2020.
Judgment delivered from the Bench at Toronto, Ontario, on February 24, 2020.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200224

Docket: A-355-18

Citation: 2020 FCA 53

**CORAM: DAWSON J.A.
STRATAS J.A.
LASKIN J.A.**

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO AS REPRESENTED BY THE
MINISTER OF ENERGY**

Appellant

and

QUALITY PROGRAM SERVICES INC.

Respondent

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on February 24, 2020).

STRATAS J.A.

[1] The appellant appeals from the judgment dated October 4, 2018 of the Federal Court (*per* Southcott J.): 2018 FC 971. The Federal Court declared that the appellant infringed the respondent's trademark and awarded the respondent \$10,000 damages.

[2] In this Court, the appellant submits that the Federal Court erred. It says that the mark it used is an official mark under subpara. 9(1)(n)(iii) of the *Trade-marks Act*, R.S.C. 1985, c. T-13. It says that the use of such a mark cannot be held to be infringing: its status as an official mark is a complete defence to the respondent's claim of infringement.

[3] We reject this submission substantially for the reasons of the Federal Court.

[4] Subpara. 9(1)(n)(iii) of the Act prohibits the use of a mark that has been “adopted and used by any public authority in Canada as an official mark for goods and services” where “the Registrar has, at the request...of the...public authority...given public notice of its adoption and use”. Textually, this allows public authorities to seek recourse against those who use an official mark. In no way does the text confer on the public authority any particular protection against claims for trademark infringement or other claims under the Act. A public authority that chooses to use a mark that is confusing to a registered trademark does so at its peril. Clear legislative wording would be required to effect a different result. We add that the appellant has not persuaded us that the context and purpose of the provision support a different interpretation.

[5] On the issue of liability, particularly confusion, the appellant has not demonstrated any legal error or palpable and overriding error on the part of the Federal Court. Overall, the appellant encourages us to reweigh the evidence. The standard of palpable and overriding error does not permit us to do this.

[6] Therefore, we will dismiss the appeal with costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-355-18

**APPEAL FROM A JUDGMENT R OF THE HONOURABLE JUSTICE SOUTHCOTT
DATED OCTOBER 4, 2018, DOCKET NO. T-1787-16**

STYLE OF CAUSE: HER MAJESTY THE QUEEN IN
RIGHT OF ONTARIO, AS
REPRESENTED BY THE
MINISTER OF ENERGY v.
QUALITY PROGRAM SERVICES
INC.

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: FEBRUARY 24, 2020

REASONS FOR JUDGMENT OF THE COURT BY: DAWSON J.A.
STRATAS J.A.
LASKIN J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

APPEARANCES:

Baaba Forson FOR THE APPELLANT
Dale Schlosser
Matthew Chung

Jonathan M.S. Woolley FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General for Ontario FOR THE APPELLANT
Toronto, Ontario

Richards Buell Sutton LLP FOR THE RESPONDENT
Vancouver, British Columbia

