

COURT OF APPEAL FOR ONTARIO

THE HONOURABLE JUSTICE GOUDGE) WEDNESDAY, THE 20th
THE HONOURABLE JUSTICE GILLESE)
THE HONOURABLE JUSTICE JURIANSZ) DAY OF JULY, 2011

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Appellant

- and -

IMPERIAL TOBACCO CANADA LIMITED and
THE ONTARIO FLUE-CURED TOBACCO GROWERS' MARKETING BOARD

Respondents

ORDER

THIS APPEAL, from the order of Justice Gates of the Superior Court of Justice dated July 26, 2010 staying the application bearing Court File No. CV-10-14709 commenced by the Appellant on April 30, 2010 (the "Application") in favour of arbitration, was heard on February 17, 2011 at the Court of Appeal for Ontario at 130 Queen Street West, Toronto, Ontario.

ON READING the Appeal Book, Compendium, Factum and Motion Record of the Appellant, the Factum and Motion Record of the Respondent Imperial Tobacco Canada Limited, the Factum of the Respondent The Ontario Flue-Cured Tobacco Growers' Marketing Board and the Factum and Compendium of the intervener Her Majesty the Queen in Right of Canada, and upon hearing the submissions of counsel for the parties and the intervener, and upon reviewing written submissions of counsel for the parties and the intervener as a result of a request for clarification of the court's decision delivered this day, Juriansz J.A. dissenting in part:

1. **THIS COURT ORDERS** that the appeal be dismissed in part and that the stay of the Application be continued so far as the Application seeks a declaration of rights for the purposes of section 7 of the Comprehensive Agreement dated July 31, 2008.
2. **THIS COURT ORDERS** that the appeal be allowed in part and the stay of this Application be lifted to allow the Application to proceed, to seek a declaration that the claim of the Tobacco Board in Court file no. 64757CP is not a Released Claim for the purposes of s.15 of the Comprehensive Agreement dated July 31, 2008.
3. **THIS COURT ORDERS** that the Respondent Imperial Tobacco Canada Limited pay the Appellant and the Respondent The Ontario Flue-Cured Tobacco Growers' Marketing Board \$7,000 each for costs, inclusive of disbursements and applicable taxes.
4. **THIS ORDER BEARS INTEREST** at the rate of 3 percent per year commencing on July 20, 2011.

ENTERED AT / INSCRIPT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

OCT 07 2011

PER / PAR: ST



SANDRA THEROUX
Deputy Registrar

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