

FEDERAL COURT
SIMPLIFIED ACTION

BETWEEN:

EDGAR SCHMIDT

PLAINTIFF

- and -

THE ATTORNEY GENERAL OF CANADA

DEFENDANT

NOTICE OF MOTION

TAKE NOTICE THAT the Plaintiff, Edgar Schmidt, will make a motion to the Court on a day and time to be set by the Court, at 701 West Georgia Street, Vancouver, British Columbia.

THE MOTION IS FOR:

1. an order that the Defendant produce a further and better list of documents;
2. an order that the Defendant may not claim privilege over and must disclose documents relating to the test, process and practice involved in examining bills and/or regulations under the Statutory Examination Provisions;
3. an order that the Defendant may not claim privilege over and must disclose a document entitled “*Charter* Certification Process”;
4. an order that the Plaintiff may conduct an oral examination for discovery of Peter Beaman on his affidavit;

5. in the alternative, an order that the Defendant provide further and better answers to the discovery questions posed by the Plaintiff;
6. an order that the Plaintiff may conduct a cross-examination of Peter Beaman;
7. in the further alternative, an order that this matter be removed from the operation of Rules 294 to 299;
8. costs; and
9. such further and other relief as to this Honourable Court seems just.

THE GROUNDS FOR THE MOTION ARE:

Document Disclosure

1. The Plaintiff relies on Rules 222-224, 227 and 295.
2. The Defendant has claimed solicitor-client privilege over documents which are not privileged because they do not meet the basic requirements of privilege, or they are subject to an exception or the Defendant has waived privilege.
3. The Department's process and practice of examination is an issue which is relevant in these proceedings given the declarations sought.

Examination for Discovery

4. The Plaintiff relies on Rules 97, 99, 100, 235, 240, 242 and 296.
5. Although Rule 296 provides that an examination for discovery in a simplified action shall be in writing only, and shall not exceed 50 questions, in this case there are special circumstances upon which the Court should grant the Plaintiff's request to dispense with this

limitation and to permit the Plaintiff to conduct an oral examination of Mr. Beaman.

6. The Defendant refused to meaningfully answer Questions 2-6, asserting that the questions assumed examination standards different from the one used by the Department. The Plaintiff refutes this assertion.
7. The Defendant's answer to Questions 9, 10, 20, 22 and 23 are incomplete. The Defendant's answer to Question 13 appears to be in error. The word "No" which begins the answer is contradicted by the second paragraph.
8. The Defendant refused to meaningfully answer Questions 16 and 21.

Cross-Examination

9. The Plaintiff relies on Rules 3, 55, 87, 88 and 227.
10. It is appropriate to exercise this discretion in favour of the Plaintiff in this case because, as detailed above:
 - a. the list of documents was incomplete (in an ordinary action, Rule 227 would permit the Plaintiff to cross-examine the Defendant in such circumstances);
 - b. many of the relevant questions posed in examination for discovery were not answered at all or were answered in an obfuscating and/or incomplete manner;
 - c. some of the answers given in the examination for discovery are contradictory; and
 - d. some of the answers given in the examination for discovery appear to be in error.

11. If this Court will not exercise its discretion under Rule 55 to dispense with compliance with Rule 296 and permit the Plaintiff to conduct an oral examination for discovery of Mr. Beaman, then the Plaintiff asks, in the alternative, that this matter be removed from the operation of Rules 294 to 299 to ensure that it may be fully adjudicated on the merits.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Affidavit of Sally Yee, affirmed October 16, 2013;
2. Affidavit of Edgar Schmidt, affirmed July 18, 2013; and
3. Affidavit of Peter Beaman, sworn July 4, 2013.

November 13, 2013



Solicitor for the Plaintiff
Joseph J. Arvey, Q.C. and Alison M. Latimer
Arvey Finlay
1320 – 355 Burrard Street
Vancouver BC V6C 2G8
Telephone: 604.689.4421
Fax: 1.888.575.3281

TO: Alain Préfontaine
Department of Justice Canada
50 O'Connor Street, Suite 500
Ottawa ON K1A 0H8
Telephone: 613.670.6257
Fax: 613.954.1920