

JSS BARRISTERS

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10765 004

September 9, 2013

Darel Samuelson
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Barristers & Solicitors
Suite 3500, 855 - 2 Street S.W.
Calgary, AB T2P 4J8
Via Fax: 403-260-9700

Leila Gosselin
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Law Department (8053)
12th Floor, 800 Macleod Trail S.E.
Calgary, AB T2G 2M3
Via Fax: 403-268-4634

Karen Munro
Alberta Justice
Legal Services Division
2 Floor, 10011 - 109 Street
Edmonton, AB T5J 3S8
Via Fax: 1-780-425-0310

Andrew Sims, Q.C.
149, 10403 - 122 Street
Edmonton, AB T5N 4C1
Via Fax: 1-780-423-6813

Dear Sirs/Mesdames:

Re: Appeal of OIPC Order F2005-030 - Imperial Oil Limited
Q.B. Action No: 0801-00878

I enclose for service upon you the filed Civil Notice of Appeal of the Office of the Information and Privacy Commissioner.

Yours truly,


JENSEN SHAWA SOLOMON DUGUID HAWKES LLP

GLENN SOLOMON, Q.C.
GS:lj
Att.



In the Court of Appeal of Alberta

(Please type or print. Attach additional pages if necessary.
All applicable areas must be completed.)

Appeal Number

1301-0250 AC

Q.B. Number

0801-00878

In the matter of the Freedom of Information and Protection ^{Form N}
of Privacy Act, RSA 2000, c. F-25

And in the matter of Order F2005-030 issued by the Office
of the Information and Privacy Commissioner on
December 18, 2007

Imperial Oil Limited

Respondent
(Applicant)

AND

City of Calgary, Her Majesty the Queen in Right of the Province of Alberta
as represented by the Minister of Environment, and the Environmental Appeals Board

Respondents
(Respondents)

AND

(Alberta) Information and Privacy Commissioner

Appellant
(Respondent)

Civil Notice of Appeal

1. Appeal from: Judgment Order Decision

Portion being appealed (R.511):

Whole, or

Only specific part(s)

If specific part(s), indicate which part(s):

Provide a brief description of the issues:

Please see attached Schedule "A"

Of the two options below, indicate where the order originated:

Court of Queen's Bench

File number: 0801-00878

Location: Judicial Centre of Calgary

Justice: Justice R. G. Stevens

On appeal from a Queen's Bench Master or Provincial Court Judge? Yes No
(If you are appealing an order of a Queen's Bench Master or Provincial Court Judge, a copy of that order is also required.)

Board, Tribunal or Professional Discipline Body

Specify:

2. **Particulars of Judgment, Order or Decision Appealed from:**

Date pronounced: July 12, 2013

Date entered: August 20, 2013

Date served: August 20, 2013

Attach a copy pursuant to R.506(2). If a copy is not attached, provide reason:
(Upon the Judgment or Order becoming available, the Appellant shall forthwith file a copy with the Registrar.)

Attached as Schedule "B".

3. If the order originated in the Court of Queen's Bench, check one of the following, to indicate the type of order that is under appeal:

Interim order made in chambers. Specify nature of Order:

Final order or refusal to grant final order before trial (eg. summary judgment, striking pleadings, etc.)

Judgment after trial

4(a) Is this appeal about procedure or custody or access only under Part J. of the Consolidated Practice Directions?

Yes No

If yes, check applicable boxes:

Error correcting only

Yes No

Involves new law

Yes No

If yes, was viva voce evidence given in the court appealed from?

Yes No

4(b) Is this a Family Law Appeal?

Yes No

If yes, check applicable boxes:

Divorce

Error correcting only

Yes No

Involves new law

Yes No

Maintenance Only

Child support

Spousal support

Spousal and Child support

Error correcting only

Yes No

Involves new law

Yes No

Maintenance Arrears

Child support

Spousal support

Spousal and Child support

Error correcting only

Yes No

Involves new law

Yes No

Matrimonial property

Error correcting only

Yes No

Involves new law

Yes No

Adoption

Error correcting only

Yes No

Involves new law

Yes No

Guardianship

Error correcting only

Yes No

Involves new law

Yes No

Parentage

Error correcting only

Yes No

Involves new law

Yes No

Protection against family violence

Error correcting only

Yes No

Involves new law

Yes No

Other, please specify: _____

Error correcting only

Yes No

Involves new law

Yes No

5. **Has this file been under Case Management in the Court of Queen's Bench?**

Yes No

If yes, case management justice: _____

Trial date: _____

6. **Is this case related to any case presently before or about to be filed in this Court?** (e.g. arises from same controversy; involves same, similar or related issues, etc.)

Yes No

If yes, name of related case(s): _____

Action or appeal number(s): _____

Nature of relationship: _____

7. **Is the constitutional validity of an Act or Regulation being challenged as a result of this appeal?**

Yes No

8. **Has mediation been attempted in the trial court?**

Yes No

9. **Are you willing to participate in Judicial Dispute Resolution with a view to settlement or crystallizing of issues?**

Yes No

10. **Would case management be beneficial?**

Yes No

11. **Could this matter be decided without oral argument?**

Yes No

12. **Should the appeal be expedited?**

Yes No

If yes, provide reason:

13. **Is there a statutory ban, ban on publication or an order of the Court which affects the privacy status of this file?**

Yes No

If yes, provide details including which party/parties the ban or order affects and the section the ban was granted under:

A sealing order was granted on September 27, 2008 and filed on September 28, 2008 by Alberta Court of Queen's Bench pursuant to s. 59(3)(a) of the Freedom of Information and Protection of Privacy Act RSA 2000, c. F-25. A copy of that order is attached as Schedule "C".

14. Appellant's estimated time of argument (if less than 45 minutes): 45 minutes

15. List respondent(s) or counsel for the respondent(s)

Please see attached Schedule "D".

Name _____

Law Firm (if applicable) _____

Address _____ Postal Code _____

Telephone Number _____ Fax Number _____

Note: The address set out in section 15 will be considered the respondent's address for service until such time as the respondent files documentation specifying otherwise.

All parties listed in section 15 must be served with a filed copy of the Notice of Appeal within the prescribed appeal period. (R.510(1))

09-Sep-2013

 Date

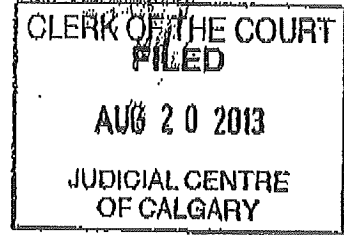
Glenn Solomon, Q.C.

 Signature of Appellant(s) or Counsel (Legibly print or stamp name (R.5.1))

SCHEDULE "A"

1. Brief Description of the Issues:
 - I. Standard of Review
 - A. The Chambers Judge erred in his application of the reasonableness standard of review;
 - B. The Chambers Judge erred in his articulation and application of the correctness standard of review.
 - II. Jurisdiction, Issues Defending the Reasonableness of the Commissioner's Decision, and Considerations of Specialized Jurisdiction and Expertise
 - A. The Chambers Judge erred in failing to defer to the Commissioner (in applying the reasonableness standard), resulting in errors in interpreting statutory provisions:
 - (I) The Chambers Judge erred in making contradictory findings to those made by the Commissioner in respect of s 16 of the *Freedom of Information and Protection of Privacy Act*, RSA 2000, c. F-25 ("FOIP");
 - (II) The Chambers Judge erred in making contradictory findings to those made by the Commissioner in respect of s 24 of FOIP;
 - (III) The Chambers Judge erred in making contradictory findings to those made by the Commissioner in respect of s 25 of FOIP;
 - (IV) The Chambers Judge erred in making contradictory findings to those made by the Commissioner in respect of s 27 of FOIP;
 - (V) The Chambers Judge erred in accepting and relying on different submissions and evidence from the Environmental Appeal Board than that which the Environmental Appeal Board presented to, and which was accepted by, the Commissioner.

SCHEDULE "B"



Clerk's stamp:

IN THE MATTER OF THE
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT,
R.S.A. 2000, c F-25

AND IN THE MATTER OF
Order F2005-030 Issued by the Office of the Information and Privacy Commissioner on
December 18, 2007

COURT FILE NUMBER 0801-00878
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY
 APPLICANT IMPERIAL OIL LIMITED
 RESPONDENTS CITY OF CALGARY, the INFORMATION AND PRIVACY COMMISSIONER OF ALBERTA, HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA as represented by the MINISTER OF ENVIRONMENT, and the ENVIRONMENTAL APPEALS BOARD

DOCUMENT

JUDGMENT ROLL

ADDRESS FOR SERVICE AND CONTACT INFORMATION FOR PARTY FILING THIS DOCUMENT

BLAKE, CASSELS & GRAYDON LLP
 3500, 855 - 2nd Street S.W.
 Calgary, AB T2P 4J8

Attention: Darel Samuelson
 Telephone: 403-260-9630
 Facsimile: 403-260-9700
 Email: darel.samuelson@blakes.com

File No. 14419/1745

DATE ON WHICH JUDGMENT WAS PRONOUNCED: July 12, 2013

LOCATION OF APPLICATION: Special Chambers, Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Mr. Justice R.G. Stevens

UPON THE APPLICATION of Imperial Oil Limited for judicial review of an order of the Information and Privacy Commissioner of Alberta, being Order 2005-030;

AND UPON the said Application having, come on for hearing on November 12, 2009 and on September 26, 27 and 28 2012;

31106287.1

I hereby certify this to be a true copy of
 the original Judgment Roll
 Dated this: 20th day of August 2013

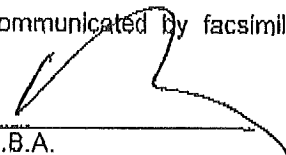
 for Clerk of the Court

AND UPON HEARING READ the Pleadings filed herein, the Record filed by the Information and Privacy Commissioner of Alberta, and the Briefs filed by each of the parties hereto; AND UPON READING the documents sealed by an Order of this Honourable Court dated September 29, 2008; AND UPON HEARING the submissions made by counsel for the Applicant and counsel for each of the Respondents;

AND UPON JUDGMENT HAVING BEEN RESERVED until July 12, 2013;

IT IS HEREBY ORDERED AND ADJUDGED THAT:


1. Order of 2005 – 030 issued by the office of Information and Privacy Commissioner on December 18, 2007 be, and hereby is, quashed.
2. The Applicant, Imperial Oil Limited, shall recover one set of costs in this matter, payable forthwith by the City of Calgary.
3. This Judgment Roll may be approved in counterpart, and communicated by facsimile or by electronic mail.




J.C.Q.B.A.

APPROVED AS BEING THE JUDGMENT GRANTED;

BLAKE, CASSELLS & GRAYDON LLP

Per: 
 Darel Samuelson
 Solicitors for the Applicant,
 Imperial Oil Limited

CITY OF CALGARY LAW DEPARTMENT

Per: 
 Leila G. Gosselin
 Solicitors for the Respondent,
 City of Calgary

ALBERTA JUSTICE

Per: _____
 Karen M. Munroe
 Solicitors for the Respondent,
 Her Majesty the Queen in Right of Alberta
 as represented by the Minister of
 Environment

 Andrew C.L. Sims, Q.C.
 Solicitor for the Respondent,
 Environmental Appeals Board

JENSEN SHAWA SOLOMON DUGUID HAWKES LLP

Per: _____
 Glenn S. Solomon, Q.C.
 Solicitors for the Office of the Information
 and Privacy Commissioner of Alberta

AND UPON HEARING READ the Pleadings filed herein, the Record filed by the Information and Privacy Commissioner of Alberta, and the Briefs filed by each of the parties hereto; AND UPON READING the documents sealed by an Order of this Honourable Court dated September 29, 2008; AND UPON HEARING the submissions made by counsel for the Applicant and counsel for each of the Respondents;

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J.C.Q.B.A.

APPROVED AS BEING THE JUDGMENT GRANTED;

BLAKE, CASSELS & GRAYDON LLP

CITY OF CALGARY LAW DEPARTMENT

Per: _____
Darel Samuelson
Solicitors for the Applicant,
Imperial Oil Limited

Per: _____
Leila G. Gosselin
Solicitors for the Respondent,
City of Calgary

ALBERTA JUSTICE

Per: Karen Munro
Karen M. Munro
Solicitors for the Respondent,
Her Majesty the Queen In Right of Alberta
as represented by the Minister of
Environment

Andrew C.L. Sims, Q.C.
Solicitor for the Respondent,
Environmental Appeals Board

JENSEN SHAWA SOLOMON DUGUID HAWKES LLP

Per: _____
Glenn S. Solomon, Q.C.
Solicitors for the Office of the Information
and Privacy Commissioner of Alberta

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CITY OF CALGARY LAW DEPARTMENT

Per:

Darel Samuelson
Solicitors for the Applicant,
Imperial Oil Limited

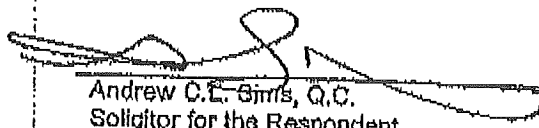
Per:

Leila G. Gosselin
Solicitors for the Respondent,
City of Calgary

ALBERTA JUSTICE

Per:

Karen M. Munroe
Solicitors for the Respondent,
Her Majesty the Queen in Right of Alberta
as represented by the Minister of
Environment



Andrew C.L. Sims, Q.C.
Solicitor for the Respondent,
Environmental Appeals Board

JENSEN SHAWA SOLOMON DUGUID HAWKES LLP

Per:

Glenn S. Solomon, Q.C.
Solicitors for the Office of the Information
and Privacy Commissioner of Alberta

AND UPON HEARING READ the Pleadings filed herein, the Record filed by the Information and Privacy Commissioner of Alberta, and the Briefs filed by each of the parties hereto; AND UPON READING the documents sealed by an Order of this Honourable Court dated September 29, 2008; AND UPON HEARING the submissions made by counsel for the Applicant and counsel for each of the Respondents;
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J.C.Q.B.A.

APPROVED AS BEING THE JUDGMENT GRANTED;

BLAKE, CASSELS & GRAYDON LLP

CITY OF CALGARY LAW DEPARTMENT

Per: _____
Darel Samuelson
Solicitors for the Applicant,
Imperial Oil Limited

Per: _____
Lella G. Gosselin
Solicitors for the Respondent,
City of Calgary

ALBERTA JUSTICE

Per: _____
Karen M. Munroe
Solicitors for the Respondent,
Her Majesty the Queen in Right of Alberta
as represented by the Minister of
Environment

Andrew C.L. Sims, Q.C.
Solicitor for the Respondent,
Environmental Appeals Board

JENSEN SHAWA SOLOMON DUGUID HAWKES LLP

Per: _____
Glenn S. Solomon, Q.C.
Solicitors for the Office of the Information
and Privacy Commissioner of Alberta

Action No.: 0801-00878

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

(I hereby certify this to be a true copy of
the original ORDER

Dated this 25 day of SEPT 2008

IN THE MATTER THE *FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT*
R.S.A. 2000, C. F-25

AND IN THE MATTER OF ORDER F2005-030 ISSUED BY THE OFFICE OF THE
INFORMATION AND PRIVACY COMMISSIONER ON DECEMBER 18, 2007

BETWEEN:

IMPERIAL OIL LIMITED

Applicant

- and -

CITY OF CALGARY, THE INFORMATION AND PRIVACY COMMISSIONER OF ALBERTA,
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA, AS
REPRESENTED BY THE MINISTER OF ENVIRONMENT, AND THE ENVIRONMENTAL
APPEALS BOARD

Respondents

BEFORE THE HONOURABLE
MR./MADAM JUSTICE

R. S. M. C. W. A. C. H.

IN CHAMBERS

) At the Court House, in the City of Calgary,
)
) in the Province of Alberta, on Wednesday,
) *September*
) the *29th* day of *June*, 2008.
)
)

ORDER

UPON THE APPLICATION of the Respondent, the Information and Privacy Commissioner of Alberta; AND UPON HEARING counsel for the Information and Privacy Commissioner of Alberta; AND UPON NOTING the consent of the Applicant and the Co-Respondents; AND UPON REVIEWING the record of the Information and Privacy Commissioner of Alberta; IT IS HEREBY ORDERED THAT:

1. Pursuant to Section 59 (3)(a) of the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, the following documents be, and are hereby, sealed (hereinafter "the sealed documents"):

- (a) The Confidential Addendum to Order F2005-030;
- (b) The Record at Issue in the Inquiry (a Remediation Agreement consisting of 232 pages);

- (c) Alberta Environment's initial written submission for the Commissioner and the Third Party only;
- (d) Alberta Environment's written rebuttal submission for the Commissioner and the Third Party only;
- (e) Imperial Oil Limited's *in camera* initial written submission.

2. This Honourable Court shall receive the sealed documents from the Respondent, the Information and Privacy Commissioner of Alberta, in a sealed envelope and the Clerk of this Honourable Court shall accept the sealed documents for filing when presented in that manner.

3. The sealed documents shall remain sealed, except as otherwise provided herein, unless and until this Order is varied by this Honourable Court.

4. The Justice presiding over this Action may, notwithstanding anything to the contrary herein, review the sealed documents *in camera*, and make such use of the sealed documents as the said presiding Justice determines.

5. To the extent that the presiding Justice takes possession of, and unseals, the sealed documents, the Clerk of this Honourable Court is hereby directed to re-seal the sealed documents, and to thereafter treat the sealed documents as remaining sealed, in accordance with this Order.

6. Any party to this Action may apply to this Honourable Court, on seven days' notice to all other parties, to vary this Order.

7. At the conclusion of this action and any appeals therefrom, or the expiry of all appeal periods, the Clerk of this Honourable Court shall return the sealed documents to the Information and Privacy Commissioner of Alberta, in c/o his counsel, pursuant to Section 56(5) of the *Freedom of Information and Protection of Privacy Act*.

J.C.C.Q.B.A.

CONSENTED TO:

Blake Cassels & Graydon LLP

DAREL SAMUELSON
Solicitors for the Applicant,
Imperial Oil Limited

CONSENTED TO:

Alberta Justice

RENEE CRAIG
Solicitors for the Respondent,
Alberta Environment/ Minister of
Environment

Entered this 25 day

of Sheriff
Clerk of the Court



- (c) Alberta Environment's initial written submission for the Commissioner and the Third Party only;
- (d) Alberta Environment's written rebuttal submission for the Commissioner and the Third Party only;
- (e) Imperial Oil Limited's *in camera* initial written submission.

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J.C.C.Q.B.A.

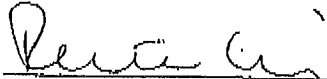
CONSENTED TO:

Blake Cassels & Graydon LLP

DAREL SAMUELSON
Solicitors for the Applicant,
Imperial Oil Limited

CONSENTED TO:

Alberta Justice



RENEE CRAIG
Solicitors for the Respondent,
Alberta Environment/ Minister of
Environment

CONSENTED TO:

City of Calgary Law Department



LEILA J. GOSSELIN
Solicitors for the Respondent,
City of Calgary

CONSENTED TO:

ANDREW SIMS
Solicitors for the Respondent,
Environmental Appeals Board

TO: Clerk of the Court

AND TO: Blake Cassels & Graydon LLP
Attn: Darel Samuelson
Solicitors for the Applicant,
Imperial Oil Limited

AND TO: City of Calgary Law Department
Attn: Leila J. Gosselin
Solicitors for the Respondent,
City of Calgary

AND TO: Alberta Justice
Attn: Renee Craig
Solicitors for the Respondent,
Alberta Environment / Minister of
Environment

AND TO: Andrew Sims
Solicitors for the Respondent,
Environmental Appeals Board

ENTERED this day of June, 2008.

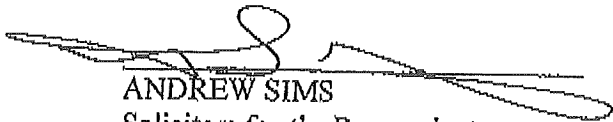
Clerk of the Court

CONSENTED TO:

City of Calgary Law Department

LEILA J. GOSSELIN
Solicitors for the Respondent,
City of Calgary

CONSENTED TO:


ANDREW SIMS
Solicitors for the Respondent,
Environmental Appeals Board

TO: Clerk of the Court

AND TO: Blake Cassels & Graydon LLP
Attn: Darel Samuelson
Solicitors for the Applicant,
Imperial Oil Limited

AND TO: City of Calgary Law Department
Attn: Leila J. Gosselin
Solicitors for the Respondent,
City of Calgary

AND TO: Alberta Justice
Attn: Renee Craig
Solicitors for the Respondent,
Alberta Environment / Minister of
Environment

AND TO: Andrew Sims
Solicitors for the Respondent,
Environmental Appeals Board

ENTERED this day of June, 2008.

Clerk of the Court

Action No. 0801-00878

**IN THE COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

**IN THE MATTER OF THE FREEDOM OF
INFORMATION AND PROTECTION OF PRIVACY
ACT, R.S.A. 2000, c. F-25**

**AND IN THE MATTER OF Order F2005-030 issued
by the Office of the Information and Privacy
Commissioner on December 18, 2007**

Between:

IMPERIAL OIL LIMITED

Applicant

- and -

**CITY OF CALGARY, THE INFORMATION AND
PRIVACY COMMISSIONER OF ALBERTA, HER
MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ALBERTA as represented by the
MINISTER OF ENVIRONMENT, and the
ENVIRONMENTAL APPEALS BOARD**

Respondents

**ORDER OF THE INFORMATION AND PRIVACY
COMMISSIONER OF ALBERTA**

MAY JENSEN SHAWA SOLOMON LLP

Barristers

#800 The Lancaster Building

304 - 8th Avenue S.W.

Calgary, Alberta T2P 1C2

Glenn Solomon

Phone: (403) 571-1507

Fax: (403) 571-1528

File: 10765 004

CLERK OF THE COURT
SEP 25 2008
CALGARY, ALBERTA

SCHEDULE "D"

List of Counsel for the Respondents:

Darel Samuelson
Counsel for Imperial Oil Limited
Blake, Cassels & Graydon LLP
3500, 855 - 2 Street SW
Calgary, Alberta T2P 4J8
Telephone No: 403-260-9630
Fax No: 403-260-9700

Leila G. Gosselin
Counsel for City of Calgary
Law Department (8053)
12th Floor, 800 Macleod Trail S.E.
Calgary, AB T2G 2M3
Telephone No: 403-268-2428
Fax No: 403-268-4634

Karen Munro
Counsel for Her Majesty the Queen
In Right of Alberta as Represented by
The Minister of Environment
Alberta Justice
Legal Services Division
2 Floor, 10011 - 109 Street
Edmonton, AB T5J 3S8
Telephone No: 780-644-2324
Fax No: 780-425-0310

Andrew Sims, Q.C.
Counsel for Environmental Appeals Board
Alberta Justice
149, 10403 - 122 Street
Edmonton, AB T5N 4C1
Telephone No: 780-423-6807
Fax No: 780-423-6813

Notice to the Respondent:

A respondent who fails to comply with the requirements of the Alberta Rules of Court and the Court of Appeal Consolidated Practice Directions, within the prescribed time, will not be allowed to present oral argument, nor be entitled to costs, unless otherwise ordered.

Failure to appear at the hearing may also lead to an order or judgment being made against the respondent in their absence.

Notice To All Parties:

Parties are required to provide an address for service if it is different than the address set out in this document.

Parties are also required to notify the Registrar of any change of address throughout the proceedings, to ensure that they can be contacted at all times.

An address for service within 30 kilometers of the office of the Registrar must be provided (R.5(1)(b)(i)).

Appeal Number: 1301-0250AC
Q.B. Number: 0801-00878

IN THE COURT OF APPEAL OF ALBERTA

BETWEEN:

In the matter of the Freedom of Information and Protection of Privacy Act, RSA 2000, c. F-25

And in the matter of Order F2005-030 issued by the Office of the Information and Privacy Commissioner on December 18, 2007

Imperial Oil Limited

Respondent
(Applicant)

AND

City of Calgary, Her Majesty the Queen in Right of the Province of Alberta
as represented by the Minister of Environment,
and the Environmental Appeals Board

Respondents
(Respondents)

AND

(Alberta) Information and Privacy Commissioner

Appellant
(Respondent)



CIVIL NOTICE OF APPEAL

Appellant(s) or counsel for the appellant(s):
Glenn Solomon, Q.C.

Jensen Shawa Solomon Duguid Hawkes LLP

Law Firm (if applicable)

800, 304 - 8 Avenue SW

Calgary, AB

T2P 1C2

403-571-1507

403-571-1528

Telephone Number

Fax Number