

A- 486-04

FEDERAL COURT OF APPEAL

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant (Applicant)

and

STEPHEN JOHN PATTERSON

Respondent (Respondent)



NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at Toronto.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the *Federal Court Rules, 1998* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the *Federal Court Rules, 1998*, instead of serving and filing a notice of appearance.

Copies of the *Federal Court Rules, 1998*, information concerning the local offices of the Court and other necessary information may be obtained on

request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(Date): September 24, Issued by:
2004



(Registry Officer)

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Attention: Clayton C. Ruby & Brian Shiller

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the order of the Honourable Madam Justice Heneghan, dated September 21, 2004, by which the Appellant's motion for an interim injunction was dismissed with costs to the Respondent.

THE APPELLANT ASKS that the said order be set aside and that an order issue in its place granting an interim injunction and directing the Respondent to forthwith surrender possession of a northern flying squirrel in his possession that he imported from the United States of America into Canada on or about June 26, 2004, through the port of entry at Windsor, Ontario to officers of the Canadian Food Inspection Agency, with costs.

THE GROUNDS OF APPEAL are as follows:

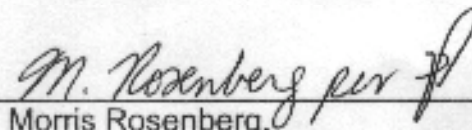
1. Her Honour acted without jurisdiction, acted beyond her jurisdiction or refused to exercise her jurisdiction in dismissing the application for an interim injunction;
2. Her Honour erred in law in dismissing the application for an interim injunction;
3. Her Honour based her decision or order on an erroneous finding of fact that she made in a perverse or capricious manner or without regard to the material before her in dismissing the application for an interim injunction;
4. Her Honour erred in law in finding that the Appellant had failed to establish a serious issue;
5. More specifically, Her Honour erred in law by determining that a failure to surrender an animal illegally imported into Canada,

lawfully ordered removed, and forfeited to the Appellant by law, was not a serious issue;

6. Her Honour erred in law in finding that the Appellant had failed to establish irreparable harm;
7. More specifically, Her Honour erred in law by determining that a failure to surrender an animal that was illegally imported into Canada, lawfully ordered removed, and forfeited to the Appellant by law, did not establish irreparable harm;
8. Her Honour erred in law and in fact by relying upon the matter of the subject animal's health, instead of the impairment of the Agency's responsibility to protect human and animal health in Canada at large;
9. Her Honour erred as a matter of fact in finding that the Appellant had not argued, nor had it shown, that public health was an issue in the application for an interim injunction;
10. Her Honour acted without jurisdiction, acted beyond her jurisdiction or erred in law by considering the fact that the Respondent had not been charged with any breach of the *Health of Animals Act* or the applicable regulations before dismissing the application for an interim injunction;

11. Her Honour erred in law, whether or not the error appears on the face of the record, by requiring the Canadian Food Inspection Agency to conduct an examination of the subject animal, and by extension, of any prohibited animal under similar circumstances to substantiate the risk it presents to human and animal health, as a prerequisite to demonstrating a serious issue or irreparable harm;
12. Her Honour otherwise acted in a way contrary to law; and
13. Such further and other grounds as the Appellant may advise, and this Honourable Court may accept.

DATE: September 24, 2004



Morris Rosenberg,
Deputy Attorney General of Canada,
Solicitor of record to the appellant

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