

Court File No.: T-1747-22

FEDERAL COURT
TRIAL DIVISION

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F I L E D	FEDERAL COURT COUR FÉDÉRALE 26-Aug-2022	D É P O S É
Tanya Smith		
St. John's, NL		1

BETWEEN:

AMERICAN IRON & METAL COMPANY INC.,
APPLICANT

- and -

SAINT JOHN PORT AUTHORITY,
RESPONDENT.

NOTICE OF APPLICATION
FORM 301

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at 82 Westmorland Street, Suite 100, in Fredericton, New Brunswick.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a Notice of Appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor, or where the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this Notice of Application.

Copies of the *Federal Courts Rules* 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 APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

DATED at Fredericton, New Brunswick, this 26 day of August 2022.

ORIGINAL SIGNED BY
TANYA SMITH
A SIGNÉ L'ORIGINAL

Issued by:

(Registry Officer)

Address of local office 82 ~~77~~ Westmorland Street, ~~Suite 300~~
Fredericton, NB E3B 6Z3

TO: SAINT JOHN PORT AUTHORITY
C/O SARAH DEVER LETSON
STEWART MCKELVEY
SUITE 1000, BRUNSWICK HOUSE
44 CHIPMAN HILL
SAINT JOHN, NB E2L 2A9

INFORMATION COMMISSIONER OF CANADA
30 VICTORIA STREET
GATINEAU, QC K1A 1H3

APPLICATION

1. THE APPLICANT makes an Application for:

- (a) a review of the Saint John Port Authority's decision, pursuant to section 44 of the *Access to Information Act*, R.S.C., 1985, c. A-1, to disclose a record, or part thereof, which contains third party information for which disclosure is prohibited pursuant to subsections 20(1)(b)(c) and (d) of the *Access to Information Act*, R.S.C., 1985, c. A-1.
- (b) an order directing the Saint John Port Authority not to disclose a record, or part of a record, pursuant to section 51 of the *Access to Information Act*.
- (c) costs of this application; and
- (d) such other relief or remedy as this Honourable Court deems just and reasonable.

2. THE GROUNDS FOR THE APPLICATION are:

- (a) The Applicant, American Iron & Metal Company Inc., is a body corporate, incorporated under the laws of the Province of Quebec. The Applicant is in the business of recovering and recycling scrap metal by-products.

- (b) The Applicant has operations in over ninety (90) locations throughout Atlantic Canada, Ontario, Quebec, and in various countries across the globe.
- (c) The Applicant operates a facility in the City of Saint John, New Brunswick that is located at the civic address of 145 Gateway Street, Saint John, NB, E2M 5S8 (the “Saint John Location”). The Applicant leases this property from the Saint John Port Authority, a corporation duly incorporated under the laws of Canada.
- (d) The Saint John Port Authority was incorporated by Letters Patent dated May 1, 1999, issued pursuant to the the *Canada Marine Act*, 1980, c. 10.
- (e) The Applicant and the Saint John Port Authority are parties to a lease (the “Lease Agreement”) and a renewal of the lease (the “Lease Renewal Agreement”) in relation to the Saint John Location.
- (f) This Application arises out of a request for access to information that was submitted to the Saint John Port Authority by a third party in and around July 14, 2022 requesting a copy of the Lease Agreement and the Lease Renewal Agreement between the Applicant and the Saint John Port Authority.
- (g) On July 14, 2022, pursuant to section 28(1) of the *Access to Information Act*, the Saint John Port Authority notified the Applicant that it had received an access to information request for the Lease Agreement and the Lease Renewal Agreement between the

Applicant and the Saint John Port Authority. The Saint John Port Authority advised the Applicant that it intended to disclose the Lease Agreement and the Lease Renewal Agreement, subject to certain redactions that it had made pursuant to its interpretation and application of s. 18 and 20(1) of the *Access to Information Act*.

- (h) On July 28, 2022, the Applicant advised the Saint John Port Authority that the Lease Agreement and the Lease Renewal Agreement which the Saint John Port Authority intended to disclose included information that was prohibited from disclosure pursuant to section 20(1)(b)(c) and (d) of the *Access to Information Act* and that it did not consent to the release of these documents without additional redactions. The Applicant provided the Saint John Port Authority with representations as to why additional parts of the Lease Agreement and the Lease Renewal Agreement ought not to be disclosed. The Applicant stated the statutory provision it relied on for each part of the Lease Agreement and Lease Renewal Agreement it asserted ought not to be disclosed.

- (i) On August 6, 2022, the Saint John Port Authority provided the Applicant with its decision in relation to the release of the Lease Agreement and the Lease Renewal Agreement. The Saint John Port Authority advised that it would redact the signatures of the Applicant's representatives who had signed the Lease Agreement and the Lease Renewal Agreement but that it would not be making any further redactions to the Lease Agreement and Lease Renewal Agreement, aside from those set out in its correspondence of July 14, 2022. The Saint John Port Authority advised the Applicant that it intended to disclose the Lease Agreement and the Lease Renewal Agreement

(with the redactions noted above) and that the Applicant could request a review, within 20 days of the notice, under section 44 of the *Access to Information Act* if it was dissatisfied with this decision.

(j) The Lease Agreement and Lease Renewal Agreement that the Saint John Port Authority intends to disclose contains:

- financial, commercial, and technical information that is confidential information that was supplied to the Saint John Port Authority by the Applicant and has been treated consistently by the Applicant as confidential information;
- information, the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, the Applicant; and
- information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of the Applicant.

(k) The above information is prohibited from disclosure pursuant to subsections 20(1)(b), (c) and (d) of the *Access to Information Act*.

(l) The Applicant relies on Rules 400(1)(3) and (6) of the *Federal Courts Rules*, SOR/98-106 and subsections 20(1)(b), 20(1)(c), 20(1)(d), 20(5), 44, 44.1, 47(1) and 51 of the *Access to Information Act*.

This application will be supported by the following material:

- the Affidavit of Michael Cormier; and
- such further and other evidence as counsel may advise and this Honourable Court may permit.

DATED at Fredericton, New Brunswick, this 26th day of August 2022.



Jessica Bungay
COX & PALMER
TD Tower
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Fredericton, NB E3B 6Z3
Telephone: 506-453-9612
Facsimile: 506-453-9600

Solicitor for the Applicant

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the _____

day of AUG 26 2022 A.D. 20____

Dated this _____ day of AUG 26 2022 20____

T. Smith

T. SMITH
REGISTRY OFFICER
AGENT DU GREFFE