

PRACTICE

Discovery

Production of Documents

Motion seeking enforcement of *Federal Courts Rules*, SOR/98-106 (Rules), r. 317 request for production of material in possession of Canadian Transportation Agency (Agency) — Underlying action leave to appeal from decisions of Agency pursuant to Rules, r. 352 — Moving party (Lukács) alleging Agency failing to act in good faith in decision making — R. 317 providing that “party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party” — Whether motion for leave to appeal under r. 352 “application” within meaning of r. 317 — R. 317 only for use in applications for judicial review — Motion for leave to appeal herein required or permitted to be brought by application by *Canada Transportation Act*, S.C. 1996, c. 10 (Act), s. 41 — Act, s. 41 referring to “application” for leave to appeal, r. 352 referring to motion for leave to appeal — R. 352 meaning that person must apply (in colloquial sense) for leave to appeal by way of motion — R. 317 limited purpose tool — Not serving same purpose as documentary discovery in action, cannot be used on fishing expedition — R. 317 part of procedures aimed at ensuring that those exercising public power properly, fairly reviewed — Making bald, conclusory allegations in motion for leave to appeal without evidentiary foundation abuse of process — R. 317 found in part of Rules dealing with applications for judicial review — R. 317 therefore not available in moving party’s motion for leave to appeal — Motion dismissed.

LUKÁCS V. SWOOP INC. (19-A-14, 2019 FCA 145, Stratas J.A., reasons for order dated May 15, 2019, 8 pp.)