

2009 FCA 120  
Federal Court of Appeal

Van Duyvenbode v. Canada (Treasury Board - Department of Indian Affairs & Northern Development)

2009 CarswellNat 1130, 2009 FCA 120, [2009] F.C.J. No. 504

**Nico Van Duyvenbode, Applicant and Attorney General of Canada, Respondent**

M. Noël J.A.

Judgment: April 17, 2009  
Docket: A-595-08

Counsel: Nico van Duyvenbode (written), for himself  
Neil McGraw (written), for Respondent

Subject: Civil Practice and Procedure

**M. Noël J.A.:**

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
<b>FILED / PRODUIT</b> Date: March 12, 2019 CT-2017-008	
Bianca Zamor for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT.	#161

- 1 The Respondent moves to strike from the record the affidavit filed by the Applicant.
- 2 An affidavit must be premised upon personal knowledge. Its purpose is to adduce facts relevant to the dispute without gloss or explanation (*Bell Canada v. Canada (Human Rights Commission)* (1990), 39 F.T.R. 97 (Fed. T.D.), at 99; *Vancouver Island Peace Society v. Canada* (1993), 64 F.T.R. 127 (Fed. T.D.), at 149).
- 3 It is apparent that the applicant confuses the purpose of the affidavit which he has filed with the submissions which he is entitled to make in support of his application. The affidavit is replete with arguments and conclusions of law. The usual remedy would be to strike out the parts of the affidavit that do not consist of statements of fact. However, the applicant's affidavit is unseverable.
- 4 The affidavit will accordingly be struck in its entirety with leave to file a further affidavit which conforms with the Rules.
- 5 As no costs were sought, none are awarded.