

ACCESS TO INFORMATION

Consolidated appeals from Federal Court (F.C.) order (2016 FC 776) dismissing appellant's motion to set aside Prothonotary's April 4, 2016 order granting Information Commissioner leave to be added as respondent pursuant to *Access to Information Act*, R.S.C., 1985, c. A-1, s. 42(1)(c) — Application relating to decision by respondent Minister of Health (Minister) to disclose records appellant had previously submitted when seeking approval for a pharmaceutical product — Whether F.C. erring in refusing to interfere with Prothonotary's order — F.C. did not err in refusing to interfere with Prothonotary's order — While Commissioner not demonstrating it was a necessary party to appellant's application for judicial review as per *Federal Courts Rules*, SOR/98-106, r. 104, F.C. not bound to strictly apply r. 104 to Commissioner's request — Parliament's intention in Act, s. 42(1)(c) to have agent of Parliament appear in judicial proceedings as party, with leave of Court, must be given effect — When exercising its discretion to grant leave under s. 42(1)(c), Court should be satisfied that Commissioner would be of assistance thereto in judicial review proceeding — Such a test furthering Commissioner's participation, in accordance with Parliamentary intent, while still recognizing that s. 42(1)(c) not giving Commissioner party status as of right — Test to be applied on a case-by-case basis — Sufficient basis herein on which F.C. could have concluded that Prothonotary did not commit a reviewable error in granting Commissioner's motion — Appeal dismissed

APOTEX INC. V. CANADA (MINISTER OF HEALTH) (A-259-16, A-260-16, A-261-16, 2017 FCA 160, Near J.A., judgement dated July 20, 2017)