



From: [REDACTED]@torys.com>
Sent: Tuesday, June 22, 2021 12:17 AM
To: [REDACTED]@justice.gov.il>
Cc: [REDACTED]@torys.com>; [REDACTED]@justice.gov.il>; [REDACTED]@justice.gov.il>
Subject: RE: Kattenburg (privileged and confidential)

Hi all,

Please find attached our draft memorandum of talking points for your consideration.

Thanks,

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: Monday, June 21, 2021 1:26 PM
To: [REDACTED]@justice.gov.il>
Cc: [REDACTED]@torys.com>; [REDACTED]@justice.gov.il>; [REDACTED]@justice.gov.il>
Subject: RE: Kattenburg (privileged and confidential)

Hi [REDACTED]

I hope you had a great weekend. I just wanted to follow up on this. We are finalizing the talking points to send to you later today, and we would like to incorporate any comments we get from your inter-agency team.

Thanks,

[REDACTED]

From: [REDACTED]@justice.gov.il>
Sent: Thursday, June 17, 2021 12:23 PM
To: [REDACTED]@torys.com>
Cc: [REDACTED]@torys.com>; [REDACTED]@justice.gov.il>; [REDACTED]>
Subject: RE: Kattenburg (privileged and confidential)

Hi [REDACTED]

We've forwarded your email to the inter-agency team, and we hope we'll be able to get back to you shortly. Please note that there might be a delay as we have already started our weekend here.

Warm regards,

[REDACTED]

From: [REDACTED]@torys.com>
Sent: Thursday, June 17, 2021 7:00 PM
To: [REDACTED]@justice.gov.il>
Cc: [REDACTED]@torys.com>; [REDACTED]@justice.gov.il>; [REDACTED]@justice.gov.il>
Subject: RE: Kattenburg (privileged and confidential)

Hi [REDACTED]

I just want to confirm – your preference is for the Psâgot and Shiloh wines to be labelled as “Products of Israel”, so you want talking points to help persuade the Canadian government that labelling the wines as such is consistent with the Canadian food and drug regulations? In other words, you do not want us to suggest any alternative labels such as “Product of Israel (West Bank)”. Let us know.

Currently, our talking points cover how the Canadian government should interpret the Federal Court of Appeal’s decision, some of the history/purpose of the food and drug regulations, how the food and drug regulations relate to other trade obligations with respect to alcohol, and how the Canadian Food Inspection Agency should come its new decision on the labelling issues.

Happy to discuss these points.

Thanks,

[REDACTED]

From: [REDACTED]@justice.gov.il>
Sent: Monday, June 14, 2021 8:36 AM
To: [REDACTED]@torys.com>
Cc: [REDACTED]@torys.com>; [REDACTED]@justice.gov.il>; [REDACTED]@justice.gov.il>
Subject: RE: Kattenburg (privileged and confidential)

Hi [REDACTED]

We are interested in raising arguments which were not already raised by the Canadian government and/or an expansion on good points that they raised in order to strengthen their arguments. We need the analysis to be done as advocacy related talking points that we can use to enrich our discussions with the Canadian authorities.

With regard to the various fee structures, we consent to the cap of 10,000 Canadian dollars and would appreciate efforts to staff the matter appropriately so that the advice is practice oriented and value added. Please take into consideration any recent legal developments not addressed in your prior memo. To the extent possible, we would need the talking points by next week Monday.

Perhaps make a list of the ideas that you have, and lets discuss which we think are viable before expending additional drafting or research time.

Warm regards,

[REDACTED]

From: [REDACTED]@torys.com>
Sent: Friday, June 11, 2021 6:39 PM
To: [REDACTED]@justice.gov.il>
Cc: [REDACTED]@torys.com>; [REDACTED]@justice.gov.il>; [REDACTED]
<[REDACTED]@justice.gov.il>
Subject: RE: Kattenburg (privileged and confidential)

Hi [REDACTED]

As I mentioned yesterday, we would be happy to assist with this and would be able to provide you speaking notes by the end of next week.

Our estimated fee depends on the depth of the research you would like us to undertake in preparing the speaking notes:

- We estimate a fee of around CAD\$5,000 to provide practical notes based on our assessment of reasonable arguments, without conducting significant research; or
- We estimate a fee of at least CAD\$10,000 if you'd like us to conduct deeper research into the food and drug regulations as we prepare the speaking notes.

Please let us know how you'd like us to proceed. We would be happy to discuss further.

Thanks,

[REDACTED]

P. [416.865.8198](tel:416.865.8198) | F. 416.865.7380 | 1.800.505.8679

From: [REDACTED]@justice.gov.il>
Sent: Thursday, June 10, 2021 10:16 AM
To: [REDACTED]@torys.com>
Cc: [REDACTED]@torys.com>; [REDACTED]@justice.gov.il>; [REDACTED]
<[REDACTED]@justice.gov.il>
Subject: RE: Kattenburg (privileged and confidential)

Dear [REDACTED],

I hope all is well.

Following several inter-agency meetings, we have decided that, at this point in time, our preferred course of action is for the Israeli Ministry of Foreign Affairs to arrange a call with Global Affairs Canada in order to discuss the recent judgement in Kattenburg.

As such, we would be interested in receiving talking points for the call from your firm. Could you kindly provide us with a fee estimate for this project? To the extent possible, we would want the talking points by the end of next week.

One talking point we were considering is that the primary objective of including the geographical origin in the label might be to provide consumers with information as to the quality and conditions applied to the grapes used (for example, Bordeaux wines enjoy a well-earned reputation for excellence). We tried examining whether this is reflected in the Canadian law, and saw that according to the Canadian Food and Drug Regulations, C. R. C., c.870, Section B.02.108, "*A clear indication of the country of origin shall be shown on the principal display panel of a wine.*" Perhaps it's worthwhile checking whether there are explanatory notes on the law that can confirm whether this was indeed the objective of including the geographical origin on the label? If this idea finds support, one could potentially

<[REDACTED]@justice.gov.il>

Subject: RE: Kattenburg (privileged and confidential)

Hi [REDACTED] and [REDACTED]

An appeal to the Supreme Court of Canada is possible. But given the short and fact-specific decision of the Federal Court of Appeal, it is unlikely that the AGC will seek leave to appeal to the Supreme Court. Even if the AGC does, the Supreme Court is unlikely to grant leave (in Canada, leave to appeal is required for appeals to the Supreme Court). Had the Federal Court of Appeal opined on some of the more jurisprudential issues before it (for example, the constitutional issues), the case might have raised an issue of national importance that could have caught the Supreme Court's attention. But the Federal Court of Appeal is quite limited. We will check with our regulatory colleagues and get back to you on your questions regarding the Agency timeline and process.

Thanks,

[REDACTED]

P.416.865.8198 | F. 416.865.7380 | 1.800.505.8679

From: [REDACTED] [REDACTED] [REDACTED]@justice.gov.il>

Sent: Thursday, May 6, 2021 12:28 PM

To: [REDACTED] [REDACTED]@torys.com>

Cc: [REDACTED] [REDACTED]@torys.com>; [REDACTED] [REDACTED] [REDACTED]@justice.gov.il>; [REDACTED] [REDACTED]

<[REDACTED]@justice.gov.il>

Subject: FW: Kattenburg (privileged and confidential)

Hi [REDACTED]

Thank you for sending us a copy of the decision as well as detailed notes from the hearing – both are very helpful.

What is the expected timeline from here on out (i.e., by when would the submissions need to be filed, and by when would the Agency render a decision)? In addition, does paragraph 18 of the decision mean that other parties, such as the State of Israel or relevant NGOs, are able to file submissions as well? Is an appeal to the Supreme Court of Canada a possibility?

Warm regards,

[REDACTED] and [REDACTED]

From: [REDACTED] [REDACTED] [REDACTED]@torys.com>

Sent: Thursday, May 6, 2021 12:33 AM

To: [REDACTED] [REDACTED] [REDACTED]@justice.gov.il>

Cc: [REDACTED] [REDACTED]@torys.com>; [REDACTED] [REDACTED] [REDACTED]@justice.gov.il>; [REDACTED] [REDACTED]

<[REDACTED]@justice.gov.il>

Subject: RE: Kattenburg (privileged and confidential)

Hi all,

The Court of Appeal hearing concluded – the Court dismissed the appeal from the bench. The Court remitted the matter back to Complaints and Appeals Office of the Canadian Food Inspection Agency for reconsideration. I attach a copy of our notes from the hearing and a copy of the decision, which the Court just published.

Although the appeal was dismissed, the Court held that: (1) “the Federal Court judge should not have embarked on the Agency’s task” of interpreting the relevant legislation and (2) the “the Agency is not bound by the Federal Court judge’s reasons” (paras. 17, 19). The Court did not address the constitutional arguments but said that “[i]t will also be open to the Agency to receive submissions and determine whether *Charter* rights and freedoms are relevant to its decision-making” (para. 18).

Ultimately, this is not a bad result. The holding is quite limited and Court of Appeal expressly did not adopt the decision below. We would be happy to discuss this further with you.

Thanks,

[REDACTED]

From: [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@justice.gov.il>
Sent: Wednesday, May 5, 2021 1:04 AM
To: [REDACTED] [REDACTED] <[REDACTED]@torys.com>
Cc: [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@torys.com>; [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@justice.gov.il>; [REDACTED] [REDACTED] <[REDACTED]@justice.gov.il>
Subject: RE: Kattenburg (privileged and confidential)

Hi [REDACTED],
Great, thank you! We look forward to receiving the notes.
Warm regards,
[REDACTED]

From: [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@torys.com>
Sent: Tuesday, May 4, 2021 8:36 PM
To: [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@justice.gov.il>
Cc: [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@torys.com>; [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@justice.gov.il>; [REDACTED] [REDACTED] <[REDACTED]@justice.gov.il>
Subject: RE: Kattenburg (privileged and confidential)

Hi all,
I am writing to confirm that one of the junior members of our firm will be attending the hearing tomorrow. He will be taking notes that we will share with you following the hearing.
Best,
[REDACTED]

From: [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@justice.gov.il>
Sent: Wednesday, April 28, 2021 4:21 AM
To: [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@torys.com>
Cc: [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@torys.com>; [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@justice.gov.il>; [REDACTED] [REDACTED] <[REDACTED]@justice.gov.il>
Subject: RE: Kattenburg (privileged and confidential)

Hi [REDACTED],
Thank you very much for your email. We are happy to authorize a junior member of your firm to attend the hearing and take notes, for the fee of 2,000 – 2,500 Canadian dollars. We understand that with the Court sending the links to each attendee, it is unlikely that we are able to attend as well on a no-name basis, but should there nevertheless be a way for us to join the hearing, please let us know.
Warm regards,
[REDACTED]

From: [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@torys.com>
Sent: Tuesday, April 27, 2021 10:48 PM
To: [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@justice.gov.il>
Cc: [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@torys.com>; [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@justice.gov.il>; [REDACTED] [REDACTED] <[REDACTED]@justice.gov.il>
Subject: RE: Kattenburg (privileged and confidential)

Hi [REDACTED],
We have spoken with the Court (on a no names basis), and while we can request a link to the hearing on your behalf, we would need to provide the name and e-mail address of the attendee. The Court sends links directly to each attendee. Please let us know how you would like us to proceed.
Regarding the cost, we could send a more junior member of our firm to attend the hearing and take notes, which would reduce the fees for the attendance to about \$2,000-2,500. Let us know if you'd like to discuss or explore that option.
Thanks,
[REDACTED]

[REDACTED]

From: [REDACTED] <[REDACTED]@justice.gov.il>

Sent: Tuesday, April 27, 2021 10:33 AM

To: [REDACTED] <[REDACTED]@torys.com>

Cc: [REDACTED] <[REDACTED]@torys.com>; [REDACTED] <[REDACTED]@justice.gov.il>; [REDACTED]

<[REDACTED]@justice.gov.il>

Subject: RE: Kattenburg (privileged and confidential)

Hi [REDACTED],

Thank you very much for your quick reply.

After discussing it internally, we feel that in light of our budgetary constraints, our preference is that we attend the hearing ourselves, instead of asking you to attend as well. We would therefore be grateful if you could, after confirming the details, send us a link to the hearing.

Thank you!

Warm regards,

From: [REDACTED] <[REDACTED]@torys.com>

Sent: Tuesday, April 27, 2021 4:24 PM

To: [REDACTED] <[REDACTED]@justice.gov.il>

Cc: [REDACTED] <[REDACTED]@torys.com>; [REDACTED] <[REDACTED]@justice.gov.il>; [REDACTED]

<[REDACTED]@justice.gov.il>

Subject: RE: Kattenburg (privileged and confidential)

Hi [REDACTED],

Our quote for attending and reporting on the hearing is \$4,000-\$5,000 – to minimize costs, we could have a briefing call after the hearing rather than me providing a written briefing note.

I am still confirming details about getting access to the link for a member of your office to attend the hearing as well (on a no names basis, of course). I expect that we will not need to provide your name to get access to the link, but that every hearing attendee's name may appear on the Zoom platform.

Happy to discuss,

From: [REDACTED] <[REDACTED]@justice.gov.il>

Sent: Tuesday, April 27, 2021 9:10 AM

To: [REDACTED] <[REDACTED]@torys.com>

Cc: [REDACTED] <[REDACTED]@torys.com>; [REDACTED] <[REDACTED]@justice.gov.il>; [REDACTED]

<[REDACTED]@justice.gov.il>

Subject: RE: Kattenburg (privileged and confidential)

Hi [REDACTED],

Just checking to see whether you already have a quote for us with respect to attending the oral hearing next week. It would be great if you can get back to us on this point so we can plan accordingly.

Thank you!

Warm regards,

From: [REDACTED]

Sent: Monday, April 26, 2021 12:16 PM

To: [REDACTED] <[REDACTED]@torys.com>

Cc: [REDACTED] <[REDACTED]@torys.com>; [REDACTED] <[REDACTED]@justice.gov.il>; [REDACTED]

<[REDACTED]@justice.gov.il>

Subject: RE: Kattenburg (privileged and confidential)

Hi [REDACTED],

I just wanted to update you that we managed to access the appeal books, thanks again.

Warm regards,

[REDACTED]

From: [REDACTED] <[REDACTED]@torys.com>

Sent: Monday, April 26, 2021 3:20 AM

To: [REDACTED] <[REDACTED]@justice.gov.il>

Cc: [REDACTED] <[REDACTED]@justice.gov.il>; [REDACTED] <[REDACTED]@torys.com>; [REDACTED]

[REDACTED] <[REDACTED]@justice.gov.il>

Subject: Re: Kattenburg (privileged and confidential)

Hi [REDACTED] and [REDACTED]

We will work with our IT team to get you the appeal books another way. And we would be happy to attend the hearing. It would not be included in the 10,000 capped fee - I will send you a quote for our attendance shortly. But yes, we would not need to identify as your lawyers.

Thanks,

[REDACTED]

--

[REDACTED]

On Apr 25, 2021, at 11:54 AM, [REDACTED] <[REDACTED]@justice.gov.il> wrote:

Hi [REDACTED]

Following to [REDACTED]'s email below, I just want to confirm - can attend the oral hearing without identifying as our lawyer?

Warm regards,

[REDACTED]

[REDACTED], Adv. (she/her)

Foreign & Counter-Terrorism Litigation Division | Department of International Law



[REDACTED] <[REDACTED]@justice.gov.il>

<image001.jpg>

From: [REDACTED] <[REDACTED]@justice.gov.il>

Sent: Sunday, April 25, 2021 5:44 PM

To: [REDACTED] <[REDACTED]@torys.com>

Cc: [REDACTED] <[REDACTED]@torys.com>; [REDACTED] <[REDACTED]@justice.gov.il>;

[REDACTED] <[REDACTED]@justice.gov.il>

Subject: RE: Kattenburg (privileged and confidential)

Hi [REDACTED]

First, thank you for sending us the appeal books. We're having some issues with our security firewalls not allowing us to download the files - I'm currently in contact with our IT department but perhaps I'll ask you to send the documents again via a different platform. I'll update you as soon as I know more, and I apologize for any inconvenience.

Second, we would be interested in having you attend the oral hearing on May 5th. In terms of fees, would this be included in our capped fee of 10,000 Canadian dollars? If not, would you kindly let us know how much attending the hearing will cost? In addition, it would be great if you could send us the link to the hearing so we can also attend (assuming it's on a no-name basis).

Warm regards,

[REDACTED]

From: [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@justice.gov.il>
Sent: Friday, April 23, 2021 6:34 PM
To: [REDACTED] [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@torys.com>
Cc: [REDACTED] [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@justice.gov.il>; [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@torys.com>; [REDACTED] [REDACTED] <[REDACTED]@justice.gov.il>
Subject: Re: Kattenburg (privileged and confidential)

Hi [REDACTED],

Thanks for the update - I think if we do decide to reach out we would prefer to do it directly. We will keep you posted as to what we decide.

[REDACTED]

On 23 Apr 2021, at 4:20, [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@torys.com> wrote:

[REDACTED] [REDACTED] [REDACTED] | 1.800.505.8679

From: [REDACTED] [REDACTED]
Sent: Thursday, April 22, 2021 9:18 PM
To: [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@justice.gov.il>
Cc: [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@torys.com>; [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@justice.gov.il>; [REDACTED] [REDACTED] <[REDACTED]@justice.gov.il>
Subject: RE: Kattenburg (privileged and confidential)

Hi all,

You can download the appeal books at the following link:

We have not reviewed the records in detail, but we have identified the portion that reveals the interactions between the Canadian Food Inspection Agency and Global Affairs Canada – see the PDF entitled “Kattenburg Supp Appeal Book”, pages 291-313 (page numbers in top right corner). There are some very interesting records disclosed, including the e-mail at p. 312 referring to the Embassy of Israel reaching out Global Affairs on this issue. See also the e-mail at p. 311, which appears to be where the initial reference to the CIFTA came from.

Please note that the appeal books are in a folder that has been zipped and password protected. No specialized software is required to download or unzip the brief. To unzip: please right-click on the downloaded .zip file and select “extract all”. I will send you the password to the zip folder in a separate e-mail.

Thanks,

[REDACTED]

From: [REDACTED] [REDACTED]
Sent: Thursday, April 22, 2021 8:39 PM
To: [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@justice.gov.il>
Cc: [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@torys.com>; [REDACTED] [REDACTED] [REDACTED] <[REDACTED]@justice.gov.il>; [REDACTED] [REDACTED] <[REDACTED]@justice.gov.il>
Subject: RE: Kattenburg (privileged and confidential)

Hi all,

Thanks for including me on the call yesterday (still this morning for me). I spoke with [REDACTED] and he knows Gail Sinclair (the lawyer pleading for the AGC). He suggested that we could reach out to her on your behalf – this may be an easier way to connect with Canada

and pass along the points and cases discussed in our memo. Let us know what you think.

We will send along the appeal books shortly.

Thanks,

From: [REDACTED]@justice.gov.il>

Sent: Thursday, April 22, 2021 6:48 AM

To: [REDACTED]@torys.com>

Cc: [REDACTED]@torys.com>; [REDACTED]@justice.gov.il>; [REDACTED]@justice.gov.il>

Subject: RE: Kattenburg (privileged and confidential)

Hi [REDACTED],

Our inter-agency call is scheduled for 14:00 Israel time, and we'll try to reach a decision as quickly as possible as to whether it would be useful for you to join the call at 14:30 Israel time – I'll update you.

On another note, as we were reviewing the written submissions you sent us, we noticed that in Kattenburg's memorandum, the *Vavilov* case is referred to quite extensively (see p.53 of the Supplementary Appeal Book).

Warm regards,

From: [REDACTED]@torys.com>

Sent: Thursday, April 22, 2021 2:59 AM

To: [REDACTED]@justice.gov.il>; [REDACTED]@justice.gov.il>

Cc: [REDACTED]@torys.com>

Subject: RE: Kattenburg (privileged and confidential)

Hi all,

Nice to speak with you today. If you'd like me to join a call tomorrow at 730am Toronto time, you can reach me at [REDACTED] I hope to have answers to your questions by then.

Please let me know if you will be calling.

Thanks,

[REDACTED]
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com

<image001.png.awsec>

From: [REDACTED]@justice.gov.il>

Sent: Wednesday, April 21, 2021 11:13 AM

To: [REDACTED]@torys.com>; [REDACTED]@justice.gov.il>

Subject: RE: Kattenburg (privileged and confidential)

Hi [REDACTED],

We seem to be having some issues with dialing the number below.

For the sake of time efficiency we suggest using our own dial in:

Number from Canada: 1 866 260 6471

Code: 04221#

Let me know if you run into any issues.

Warm regards,

[REDACTED]

-----Original Appointment-----

From: [REDACTED]@torys.com>

Sent: Wednesday, April 21, 2021 5:56 PM

To: [REDACTED]

Subject: Kattenburg (privileged and confidential)

When: יום רביעי 21 אפריל 2021 11:15-11:45 (UTC-05:00) Eastern Time (US & Canada).

Where: 1-800-600-0998,, 8658198#

Number: 1-800-600-0998

Access Code: 8658198#

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