The Mint has appointed one of its vice-presidents (Mr. Tremblay) as the representative to be examined on its behalf. The Attorney General has appointed the same man as her representative. At issue in the counter claim is the possible error in the Patent Office of which an Officer of the Mint has, by his occupation it is alleged, little more knowledge than a passerby in the street. Of course, it may be that because of his knowledge of manufacturing coins the representative is a qualified person to give useful evidence on behalf of the Attorney General with respect to invalidity. That can only be discovered when he is examined as a representative of the Attorney General. For that reason, the motion is premature.

[2] The next thought is whether it is the intention of the **Rules** to allow a corporation or the Crown to select an unconnected person to be examined on its behalf for discovery. Such a determination requires some research into the meaning of "representative" and I therefore reserved my decision. I have found nothing which would restrict the appointment of any person as a representative and conclude that any person who is willing to undertake the obligation under rule 241 could be appointed.

[3] I have considered also the possibility of possibly conflicting loyalties giving rise to a conflict of interest. I have concluded that just as an agent may have many principals so may a representative. When a conflict does arise, the representative will have to retire - perhaps as a representative of both. The substitution motion must be dismissed at this time. If at a later date the plaintiff's fears are realized and a new representative has to be appointed, no doubt relief will be sought under rule 400(3)(i) for the time wasted on discoveries to that time.

It Is Hereby Ordered That:

[4] The motion is dismissed as premature without prejudice to the plaintiff's rights to bring a further motion if circumstances change.

Motion dismissed.

Editor: Elizabeth M.A. Turgeon/saf

Stratégies St-Laurent Société pour vaincre la pollution S.V.P., Great Lakes United, La Société d'aménagement de la Baie Lavallière inc., Comité zone d'intervention prioritaire (ZIP) du Lac St-Pierre (demanderesses)
v. L'Honorable Christine Stewart, ès qualité de Ministre de l'Environnement, Société du Port de Montréal, et Pêches et Océans Canada (défenderesses)
(98-T-37)

Indexed As: Stratégies St-Laurent et al. v. Canada (Ministre de l'Environnement) et al.

Federal Court of Canada
Trial Division
Rouleau, J.
September 23, 1998.

Summary:

The plaintiffs applied for judicial review requesting an order of mandamus or a mandatory injunction to the Minister of the Environment requiring that the project for selective dredging of the shoals of the St. Lawrence maritime channel between Montreal and Cap à la Roche be referred for

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a public hearing to a review panel. The defendants applied to strike out the plaintiffs' application for judicial review.

The Federal Court of Canada, Trial Division, in a decision reported at 152 F.T.R. 271, dismissed the application without prejudice to the plaintiffs to seek an extension of time to apply for judicial review. The plaintiffs applied for an extension of time to apply for judicial review to compel the Minister of the Environment to refer the project to an environmental review panel.

The Federal Court of Canada, Trial Division, declined to grant an extension of time.

Administrative Law - Topic 3553

Judicial review - Mandamus - Conditions precedent - Existence of duty - The plaintiffs repeatedly requested the Environment Minister to refer a dredging project in the St. Lawrence to an environmental review panel - The Minister of Fisheries and Oceans gave authorizations, permits were issued in March and the work commenced in August - A press release in March stated that the project would proceed without any additional environmental assessment - In September, the plaintiffs applied for an extension of time to apply for judicial review requesting an order of mandamus requiring that the project be referred to a review panel - The Federal Court of Canada, Trial Division, declined to grant an extension of time to apply - The court stated that mandamus would only be granted if the person involved was in breach of an obligation - The court was not satisfied that the Minister exercised her discretion without legitimate reasons and also did not believe that she was necessarily obliged to refer the project to a review panel - See paragraph 15.

Administrative Law - Topic 3584

Judicial review - Mandamus - Bars - Delay, inconvenience or expense - The plaintiffs repeatedly requested the Environment Minister to refer a dredging project in the St. Lawrence to an environmental review panel - The Minister of Fisheries and Oceans gave authorizations, permits were issued in March and the work commenced in August - A press release in March stated that the project would proceed without any additional environmental assessment - In September, the plaintiffs applied for an extension of time to apply for judicial review requesting an order of mandamus requiring that the project be referred to a review panel - The Federal Court of Canada, Trial Division, declined to grant an extension of time to apply - The limitation period for applications was 30 days and the delay in applying was not satisfactorily explained - Also the balance of convenience and the irreparable harm test favoured the Environment Minister.

Administrative Law - Topic 3705

Judicial review - Mandamus - Mandamus to government and executive - Ministers of the Crown - [See **Administrative Law - Topic 3584**].

Pollution Control - Topic 1847

Environmental assessments or impact studies - Environmental Assessment and Review Process Guidelines Order (Canadian Environmental Assessment Act) - Public review by a panel - [See **Administrative Law - Topic 3584**].

Cases Noticed:

Canada Parks and Wilderness Society v. Banff National Park (1994), 84 F.T.R. 273 (T.D.), refd to. [para. 16].

(Mettez à jour votre recherche avec NRS Online à www.mlb.nb.ca)

C0278-002

Counsel:

Normand Laurendeau, for the plaintiffs;

Linda Merier and Micheline Van Erum, for the defendants, The Honourable Christine Stewart and Fisheries and Oceans Canada;

Sébastien Grammond, for the defendant Montreal Port Corporation.

Solicitors of Record:

Mondor Fournier, Montreal, Quebec, for the plaintiffs;

Morris Rosenberg, Deputy Attorney General of Canada, Ottawa, Ontario, for the defendants, The Honourable Christine Stewart and Fisheries and Oceans Canada;

Byers Casgrain, Montreal, Quebec, for the defendant, Montreal Port Corporation.

This application was heard on September 14, 1998, at Montreal, Quebec, before Rouleau, J., of the Federal Court of Canada, Trial Division, who delivered the following judgment on September 23, 1998.

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[1] Rouleau, J. [Translation]: This is a motion by the plaintiffs for an extension of time to submit an application for judicial review to compel the defendant, the Honourable Christine Stewart, in her capacity as Minister of the Environment, to refer the project for selective dredging of the shoals of the St. Lawrence River maritime channel between Montreal and Cap à la Roche to an environmental review panel and fix its terms of reference.

[2] In his order dated August 17, 1998, dismissing an application for judicial review, Mr. Justice Teitelbaum of this court determined that the starting point for calculating the time the plaintiffs had for filing and application for judicial review was a letter dated May 6, 1998. In the reasons for his order, he also determined that the plaintiffs were out of time, without prejudice to their right to seek an extension of time for filing an application for judicial review of the decision of the Minister of the Environment [see 152 F.T.R. 271]. On September 9, 1998, in response to that decision, the plaintiffs filed the present

[1] Le juge Rouleau: Il s'agit en l'espèce d'une requête des parties demanderesses afin d'obtenir la prorogation du délai en vertu duquel elles peuvent présenter une demande de contrôle judiciaire visant à forcer la défenderesse l'honorable Christine Stewart, ès qualité de Ministre de l'Environnement, à faire procéder à un examen par une Commission d'évaluation environnementale et de fixer le mandat d'icelle eu égard au projet de dragage sélectif des hauts fonds de la voie maritime du fleuve St-Laurent entre Montréal et Cap à la Roche.

[2] Dans son ordonnance en date du 17 août 1998 le juge Teitelbaum de cette cour, en rejetant une demande de contrôle judiciaire, avait déterminé qu'une lettre en date du 6 mai 1998 était le point de départ du calcul du délai à compter duquel les demanderesses pouvaient produire une demande de contrôle judiciaire. Dans ses motifs d'ordonnance il avait également déterminé que les demanderesses étaient hors délai, sans préjudice à leur droit de tenter d'obtenir une prorogation de délai pour déposer une demande de contrôle judiciaire à l'encontre de la décision de la Ministre de l'Environnement [voir 152 F.T.R. 271].

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motion.

[3] At the hearing in Montréal on September 14, 1998, counsel for the plaintiffs argued that under the **Canadian Environmental Assessment Act**, the **CEAA**, the Minister may at any time refer a project to an environmental review panel and that Stratégies St-Laurent had been asking the Minister since June 7, 1990 for public hearings to be held to examine the project proposed by the defendant Montreal Port Corporation. He submits that negotiations continued until July 16, 1990 and that the question of the right to seek judicial review being extinguished was never raised.

[4] He submits that the project involving the dredging of the St. Lawrence River between Montréal and Cap à la Roche would displace approximately 200,000 cubic metres of contaminated sediments, and that several municipalities and even the Quebec Minister of Environment and Wildlife had asked for public hearings to examine the environmental impact.

[5] Furthermore, he submits that it would be in the interests of justice for the court to allow the extension of time; that several of the plaintiffs were not formally notified of the decision by the federal Minister of the Environment; that it would be desirable to allow the public to participate in hearings; and that the Minister should refer this project to an environmental review panel pursuant to s. 28 of the **Act**.

[6] The affidavits in support of the

Suite à cette décision, le 9 septembre 1998, les demanderesses ont déposé la présente requête.

[3] Lors de l'audition à Montréal le 14 septembre 1998, le procureur des demanderesses a soulevé qu'en vertu de la **Loi canadienne sur l'évaluation environnementale**, la **LCEE**, la Ministre peut, à tout moment, faire procéder à l'examen d'un projet par une Commission d'évaluation environnementale et que depuis le 7 juin 1990 Stratégies St-Laurent demandait à la Ministre que des audiences publiques soient tenues pour procéder à l'étude du projet de la défenderesse La Société du Port de Montréal. Il soulève que des négociations se sont poursuivies jusqu'au 16 juillet 1990 et qu'il n'a jamais été question d'extinction de recours.

[4] Il soumet que le projet de dragage du fleuve St-Laurent entre Montréal et Cap à la Roche déplacerait environ 200,000 mètres cubes de sédiments contaminés; que plusieurs municipalités et même le Ministre québécois de l'Environnement et de la Faune ont demandé des audiences publiques pour procéder à l'étude des impacts environnementaux.

[5] De plus, il soumet qu'il serait dans l'intérêt de la justice que la cour accorde la prorogation du délai; que plusieurs des demanderesses n'auraient pas été avisées formellement de la décision de la Ministre fédérale de l'Environnement; qu'il serait opportun de permettre au public de participer à des audiences et que la Ministre, en vertu de l'article 28 de la **Loi**, devrait soumettre ce projet à une Commission d'évaluation environnementale.

[6] Dans les affidavits à l'appui de la

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defendants' reply state that the Minister of Fisheries and Oceans filed environmental studies in 1996 and that since that time the plaintiffs have repeatedly requested that the project be referred to an environmental review panel; that after authorization was given by the Minister of Fisheries and Oceans, the necessary authorizations were issued in March 1998; that the work commenced on August 28, 1998; and that any delay can only have adverse consequences.

réponse des défenderesses, il est mentionné que le Ministre des Pêches et Océans aurait déposé des études environnementales en 1996 et que depuis cette date les demanderesses ont réclamé à plusieurs reprises que le projet fasse l'objet d'un examen par une Commission d'évaluation environnementale; que les autorisations requises par le projet de dragage après autorisation du Ministre des Pêches et Océans ont été émises en mars 1998; que les travaux ont débuté le 28 août 1998 et que tout délai ne peut qu'avoir des conséquences défavorables.

[7] The defendants submit that under the **Federal Court Act**, the plaintiffs are required to file an application for judicial review within 30 days after the time the impugned decision was first communicated. Counsel submits that even though in his order dated August 17, 1998, Teitelbaum, J., seemed to find that the date of the impugned decision was May 6, 1998, it is not disputed that the authorizations for the dredging project were issued on March 19, 1998. In a press release also issued in March 1998, the Minister indicated that there would be no public review of the project. Counsel for the defendants submits that the plaintiffs could have filed an application for judicial review at that point. In fact, on May 6, 1998, the federal Minister of the Environment wrote to one of the plaintiffs to confirm that there would be no public review of the project by an environmental review panel. The plaintiffs did not file an application for judicial review, however, until July 20, 1998.

[7] Les défenderesses soutiennent qu'en vertu de la **Loi sur la Cour fédérale** les demanderesses sont dans l'obligation de présenter une demande de contrôle judiciaire dans les 30 jours du moment où elles ont pris connaissance de la décision attaquée. Le procureur soumet que même si le juge Teitelbaum dans son ordonnance du 17 août 1998 semblait déterminer que la date de la décision attaquée était du 6 mai 1998, il n'est pas contesté que les autorisations du projet de dragage ont été émises le 19 mars 1998. Dans un communiqué de presse également émis en mars 1998, la Ministre indiquait que le projet ne serait pas soumis à un examen public. Le procureur des défenderesses soumet que dès ce moment les demanderesses auraient pu déposer une demande de contrôle judiciaire. En fait, le 6 mai 1998 la Ministre fédérale de l'Environnement écrivait à une des demanderesses pour réitérer que le projet ne ferait pas l'objet d'un examen public par une Commission d'évaluation environnementale. Or, ce n'est que le 20 juillet 1998 que les demanderesses ont présenté une demande de contrôle judiciaire.

[8] Counsel for the defendants submits that

[8] Le procureur des défenderesses soumet

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if the plaintiffs are to obtain an extension of time, the onus is on them to explain the reasons for the delay in a satisfactory manner, by demonstrating that the application is serious and that the extension would not prejudice the parties.

[9] The defendants further submit that no explanation which could justify granting the extension was given. The plaintiffs should have realized in March 1998 that there would be no public review of the project. At the very least, the plaintiffs should have realized on May 6, 1998 that there would be no public review and they should have challenged the decision immediately rather than simply entering into discussions with the defendants.

[10] Counsel for the defendants submits that the process provided in the **CEAA** was followed and that this process was not challenged in the evidence submitted by the plaintiffs.

[11] He further submits that the allegation by the plaintiffs that the screenings were questionable is without merit.

[12] He submits that the plaintiffs do not allege any breach of the **Act** and that they simply contend that the Minister must direct the referral to a review panel under s. 28 of the **CEAA**. The defendants submit that the section creates a purely discretionary power which the Minister may exercise without restriction and that mandamus cannot be used to compel the exercise of a discretionary power.

[13] It is clearly established in the case law that an application for extension of time

que le fardeau repose sur les demanderesses d'obtenir une prorogation du délai en expliquant d'une façon satisfaisante les raisons du retard, en démontrant que le recours est sérieux et que la prorogation ne causerait aucun préjudice aux parties.

[9] Les défenderesses soulèvent de plus qu'aucune explication favorable pour accorder le délai n'a été avancée. Dès mars 1998 les demanderesses auraient dû réaliser qu'aucun examen public du projet n'aurait lieu. À tout le moins, dès le 6 mai 1998, les demanderesses auraient dû réaliser qu'il n'y aurait pas d'examen public et auraient dû contester la décision immédiatement plutôt que de se contenter d'entreprendre des discussions avec les défenderesses.

[10] Le procureur des défenderesses soumet que le processus prévu par la **LCEE** a été suivi et que ce processus n'a fait l'objet d'aucune attaque dans la preuve soumise par les demanderesses.

[11] Il soulève de plus que l'allégation des demanderesses à l'effet que les examens préalables seraient suspects est non fondée.

[12] Il soumet que les demanderesse ne soulèvent aucune contravention à la **Loi** et qu'elles prétendent tout simplement que la Ministre est dans l'obligation d'ordonner la tenue d'un examen par une Commission en vertu de l'article 28 de la **LCEE**. Les défenderesses soumettent que l'article crée un pouvoir purement discrétionnaire que la Ministre peut exercer sans restrainte et qu'on ne peut avoir recours à un bref de mandamus pour forcer l'exercice d'un pouvoir discrétionnaire.

[13] La jurisprudence soutient clairement qu'une demande de prorogation de délai ne

cannot be allowed except in circumstances where the entire period of the delay can be justified and where the defendant will not be prejudiced.

[14] The only reason given by the plaintiffs to justify the delay is that they were in discussions or negotiations with the authorities of the Montreal Port Corporation.

[15] I am not satisfied in the instant case that the Minister exercised her discretion without legitimate reasons. I also do not believe that she was necessarily required to refer the dredging project to an environmental review panel under the **CEAA**. Mandamus will only be granted if the person involved is in breach of his or her obligations.

[16] In **Canada Parks and Wilderness Society v. Banff National Park** (1994), 84 F.T.R. 273, the Federal Court of Canada, Trial Division, upheld the proposition that when permits are authorized or issued, the court cannot intervene.

[17] In the case at bar, the dredging project has already been underway for more than a month and the permits were authorized in March 1998. It is accordingly clear that both the balance of convenience and the irreparable harm test favour the defendants.

[18] While it is true that only two of the plaintiffs were directly informed by letter, it should be noted that a press release was issued in March 1998 informing all interested or concerned persons that the project would be proceeding without any additional environmental assessment. The Minister is certainly not required to notify all

peut être accordée que dans des circonstances où toute la durée du délai peut être justifiée et que la partie défenderesse ne subirait aucun préjudice.

[14] La seule raison offerte par les demanderesses pour justifier le délai est qu'elles étaient en pourparlers ou négociations avec les autorités de la Société du Port de Montréal.

[15] Je n'ai pas été convaincu en l'espèce que la Ministre a exercé son pouvoir discrétionnaire en l'absence de motifs légitimes. Je ne crois pas non plus qu'il lui incombait manifestement en vertu de la **LCEE** d'assujettir le projet de dragage à un examen par une Commission d'évaluation environnementale. Le mandamus ne sera accordé que si la personne visée a manqué à ses obligations.

[16] La cour fédérale, dans **Canada Parks and Wilderness Society v. Banff National Park** (1994), 84 F.T.R. 273, a maintenu la proposition que lorsque les permis sont autorisés ou émis, la cour ne peut intervenir.

[17] En l'espèce, le projet de dragage se poursuit depuis déjà plus d'un mois et les permis ont été autorisés en mars 1998. Il est donc évident que la balance des inconvénients ainsi que le préjudice irréparable favorisent les défenderesses.

[18] Il est vrai que seulement deux des parties demanderesses ont été directement informées par lettre mais il est à noter qu'un communiqué de presse a été émis en mars 1998 informant toutes les personnes intéressées ou concernées que le projet procéderait sans qu'aucune évaluation environnementale supplémentaire n'ait lieu.

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of the parties and the Act does not require that the Minister be aware in advance of all groups which might have an interest. In the instant case, a press release was issued and I am satisfied that this constitutes sufficient notice.

[19] The motion is dismissed with costs to the defendants.

Application dismissed.

Editor: Janette Blue/saf

La Ministre n'est nullement dans l'obligation de notifier toutes les parties et la législation ne prévoit pas que la Ministre doive connaître à l'avance tous les groupes qui pourraient être intéressés. En l'espèce, un communiqué de presse a été émis et je suis satisfait qu'il s'agit là d'un avis suffisant.

[19] La requête est rejetée avec dépens en faveur des défenderesses.

Requête rejetée.

Arrêtiste: Janette Bluen/saf

Dora Amoah Boateng and Ernest Owusu Boateng (applicants)
v. The Minister of Citizenship and Immigration (respondent)
(IMM-2700-97)

Indexed As: Boateng v. Canada (Minister of Citizenship and Immigration)

Federal Court of Canada
Trial Division
Lutfy, J.
September 28, 1998.

Summary:

Boateng sought permanent residence in Canada under the Deferred Removals Orders Class. Her application was denied under s. 19(1)(a)(ii) of the Immigration Act on the ground that her medical condition would cause or might reasonably be expected to cause excessive demands on health or social services. Boateng applied for judicial review.

The Federal Court of Canada, Trial Division, allowed the application and remitted the matter for reconsideration.

Aliens - Topic 1751

Exclusion and expulsion - Immigration - Exclusion - Unhealthy or disabled persons - Boateng was denied an immigrant visa by a visa officer - She was found to be inadmissible under the Immigration Act, s. 19(1)(a)(ii) since she might put excessive demands on social services because of a medical condition - Boateng applied for judicial review - The Federal Court of Canada, Trial Division, allowed the application - The second medical opinion (the opinion which was forwarded after a "fairness" letter) which declared the applicant inadmissible was not properly supported by a concurring medical opinion.

Aliens - Topic 1751

Exclusion and expulsion - Immigration - Exclusion - Unhealthy or disabled persons - Boateng was denied an immigrant visa by a visa officer - She was found to be inadmissible under the Immigration Act, s. 19(1)(a)(ii) since she might put excessive demands on social services because of a medical condition - Boateng applied for judicial review - The Federal Court of Canada, Trial Division, allowed the appli-

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