



Friends of the West Country Assn. v. Canada (Minister of Fisheries and Oceans), [2000] 2 FC 263

Date: 1999-10-12
 Docket: A-550-98
 Parallel citations: 1999 CanLII 9379 (FCA); 169 FTR 298
 URL: <http://canlii.ca/t/4llf>
 Citation: Friends of the West Country Assn. v. Canada (Minister of Fisheries and Oceans), 1999 CanLII 9379 (FCA), [2000] 2 FC 263, <<http://canlii.ca/t/4llf>> retrieved on 2012-07-03
 Share:  [Tweet](#)  [Share](#)
 Noteup: [Search for decisions citing this decision](#)
 Reflex: [Related decisions, legislation cited and decisions cited](#)
 Record

A-550-98

Minister of Fisheries and Oceans, Director, Marine Programs, Canadian Coast Guard (*Appellants*)
 (*Respondents*)

v.

The Friends of the West Country Association (*Respondent*) (*Applicant*)

Indexed as: Friends of the West Country Assn. v. Canada (Minister of Fisheries and Oceans) (C.A.)

Court of Appeal, Linden, Rothstein and McDonald JJ.A. "Toronto, September 8; Ottawa, October 12, 1999.

Environment " Appeal from order allowing application for judicial review of Coast Guard's decisions proposed bridges over navigable waters not likely to cause significant adverse environmental effects " Logging company obtaining provincial approval to build road; applied for approval to construct bridges over navigable waters, triggering federal environmental assessments " (1) CEAA, s. 15(1) conferring on responsible authority (Coast Guard) power to determine scope of project in relation to which environmental assessment to be conducted " Coast Guard determined scope of bridge projects not including road, forestry operations " S. 15(3) requiring environmental assessment in respect of every construction, operation, modification, decommissioning, abandonment, or other undertaking likely to be carried out "in relation to" physical work " S. 15(3) subsidiary to s. 15(1) " Not imposing obligation on responsible authority to conduct environmental assessment outside scope of project determined by s. 15(1) " "In relation to" in s. 15(3) referring to construction, operation, modification, decommissioning, abandonment or other undertakings pertaining to life cycle of physical work itself or that are subsidiary or ancillary to physical work " Independent utility principle, applied by Motions Judge, not applicable to interpretation of s. 15(3) " Once each project scoped under s. 15(1), s. 15(3) not requiring environmental assessment to include construction, operation, modification, decommissioning, abandonment or other undertaking outside scope of projects " (2) S. 16(1)(a) requiring assessment to consider environmental effects and any cumulative environmental effects likely to result from projects in combination with other projects, activities that have been, will be carried out " S. 16(3) providing scope of factors to be considered under s. 16(1)(a) to be determined by responsible authority " Within responsible authority's discretion to decide which other projects, activities to include, exclude for purposes of cumulative environmental effects assessment " In not considering matters outside defined scope of projects, and outside federal jurisdiction, Coast Guard misinterpreted s. 16(1)(a), (3) " Assessment not limited to sources within federal jurisdiction " Finding of insignificant environmental effects sufficient to open possibility of cumulative significant environmental effects when other projects taken into account " Not precluding application of cumulative effects portion of s. 16(1)(a), (3) " Coast Guard erred in declining to exercise jurisdiction in cumulative effects analysis under s. 16(1)(a) " (3) S. 55 requiring establishment of public registry to facilitate public access to records " Registry established at Sarnia, Ontario, 2000 miles from projects " Establishment, operation of public registry subject to discretion of responsible authority, but if not established,

operated in close proximity to relevant geographic area of environmental assessment, other reasonable means (e.g. e-mail, fax) must be provided to comply with s. 55 " Coast Guard's actions with respect to access to public registry patently unreasonable.

Construction of statutes " [Canadian Environmental Assessment Act, s. 15\(3\)](#) requiring conduct of environmental assessment in respect of every construction, operation, modification, decommissioning, abandonment or other undertaking in relation to physical work in opinion of responsible authority likely to be carried out in relation to physical work " Coast Guard (responsible authority) determining proposed bridges over navigable waters not likely to cause significant adverse environmental effects " Determining scope of bridge project not including new logging road, forestry operations " In concluding Coast Guard obliged under [s. 15\(3\)](#) to include road, forestry operations within scope of environmental assessment because "in relation to" bridges, Motions Judge relying on independent utility principle: where individual project not having independent utility, but inextricably intertwined with other projects, must consider all projects " Not helpful in interpretation of [s. 15\(3\)](#) as originating in U.S.A. where constitutional jurisdiction, applicable statutory scheme very different.

This was an appeal from an order allowing an application for judicial review of the Coast Guard's decisions that proposed bridges over navigable waters were not likely to cause significant adverse environmental effects, and to set aside approvals to authorize construction of the bridges. In August 1995, the Province of Alberta Environmental Protection approved a submission for a new road (the Mainline Road) to transport logs to the Sunpine Forest Products Limited mill at Strachan, Alberta, subject to several environmental conditions. In December 1995 Sunpine submitted an application for approval under [Navigable Waters Protection Act, section 5](#) to construct bridges along the Mainline Road corridor. As a result of the requirement to obtain federal approval to construct the bridges over navigable waters, federal environmental assessments were triggered. The Canadian Coast Guard acted on behalf of the Minister of Fisheries and Oceans as the responsible authority to carry out the environmental assessments. It defined the projects subject to environmental assessment as the bridges, and determined that the proposed bridges were not likely to cause significant adverse environmental effects, and approvals were issued.

[Canadian Environmental Assessment Act \(CEAA\)](#), [subsection 15\(1\)](#) provides that the scope of the project in relation to which an environmental assessment is to be conducted shall be determined by the responsible authority. The Coast Guard determined that the scope of the proposed bridge projects did not include the road and proposed forestry operations. The Motions Judge found no reviewable error in the exercise of the Coast Guard's discretion in defining the projects subject to environmental assessment review. No cross-appeal was taken from this finding. [Subsection 15\(3\)](#) requires an environmental assessment to be conducted in respect of every "construction, operation, modification, decommissioning, abandonment or other undertaking" in relation to a physical work that is, in the opinion of the responsible authority, likely to be carried out in relation to that physical work. The Motions Judge concluded that the responsible authority was obliged under [subsection 15\(3\)](#) to include the road and perhaps the forestry operations within the scope of the environmental assessment (as opposed to the projects) because they were "in relation to" the bridges. He held that his interpretation of [subsection 15\(3\)](#) was consistent with the independent utility principle i.e. where an individual project has no independent utility, but is inextricably intertwined with other projects, the responsible authority must consider all projects. He held that the bridges had no independent utility apart from the road and perhaps the forestry operation.

Paragraph 16(1)(a) states that every assessment shall consider the environmental effects of the projects and "any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out". Subsection 16(3) provides that the scope of the factors to be taken into consideration pursuant to paragraph 16(1)(a) is to be determined by the responsible authority. The Motions Judge held that subsection 16(1) reflects an obligation on the part of the responsible authority to apply the independent utility principle in the definition of the scope of the assessment. He found that the Coast Guard erred in law in failing to include consideration of the cumulative environmental effects likely to result from the combination of the road and the bridges.

Subsection 55(1) requires the establishment of a public registry for the purpose of facilitating public access to records. In this case, the registry was established at Sarnia, Ontario, over two thousand miles away from the projects subject to environmental assessment. In view of the remoteness of the registry, applicant requested that it be provided with copies of all materials on the registry. The Coast Guard provided some of this material but, as to the remainder invited the respondent to apply under the [Access to Information Act](#).

The issues were: whether the Motions Judge erred in interpreting and applying the *Canadian Environmental Assessment Act*, sections 15, 16 and 55.

Held, the appeal should be dismissed.

(1) The responsible authority first determines the scope of a project under [subsection 15\(1\)](#). [Subsection 15\(3\)](#) is subsidiary to [subsection 15\(1\)](#). [Subsection 15\(3\)](#) requires the responsible authority to conduct its environmental assessment in respect of various aspects of the project, as is made clear by the definition of "project" in [subsection 2\(1\)](#) as, in relation to a physical work, any proposed construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work. "Project" is thus not equivalent to the physical work. In this case, the physical works were the bridges. However, the projects requiring environmental assessment included any construction, operation, modification, decommissioning, abandonment or other undertaking in relation to the bridges. The focuses of the projects are the physical works, but the construction, operation, modification, decommissioning, abandonment or other undertaking in relation to them are also within the scope of the projects by virtue of the definition of "projects". The same words are found in [subsection 15\(3\)](#) as appear in the definition of "project" dealing with the conduct of the environmental assessment. The environmental assessment that must be carried out will be in respect of the project as scoped. [Subsection 15\(3\)](#) does not impose an obligation on the responsible authority to conduct an environmental assessment outside the scope of the project as determined by [subsection 15\(1\)](#).

"In relation to" in [subsection 15\(3\)](#) cannot contemplate any construction having any connection to the physical work that is the focus of the project, given the context of [sections 15](#) and [16](#). Requiring the responsible authority to scope the project under [subsection 15\(1\)](#), would be unnecessary if every construction remotely connected to the project had to be the subject of the environmental assessment, as would the provision in [paragraph 16\(1\)\(a\)](#) for a cumulative effects analysis, taking account of the project as scoped under [subsection 15\(1\)](#) in combination with other projects or activities that have been or will be carried out. The words "in relation to" are used in the definition of "project" and in [subsection 15\(3\)](#) instead of the word "of". They refer to construction, operation, modification, decommissioning, abandonment or other undertakings that pertain to the life cycle of the physical work itself or that are subsidiary or ancillary to the physical work that is the focus of the project as scoped.

The independent utility principle originated in the United States, where questions of constitutional jurisdiction and the applicable statutory scheme of the relevant environmental protection legislation undoubtedly differ from those in Canada. It was not helpful for the purpose of interpreting [subsection 15\(3\)](#).

Once the responsible authority scoped each project under [subsection 15\(1\)](#), [subsection 15\(3\)](#) did not require that the environmental assessment include construction, operation, modification, decommissioning, abandonment or other undertaking outside the scope of the projects.

(2) The first aspect of the the process under [section 16](#) involves consideration of all the factors in [paragraphs 16\(1\)\(a\)](#) to [\(f\)](#). [Paragraph 16\(1\)\(a\)](#), which refers to the cumulative environmental effects, requires the responsible authority to consider environmental effects that are likely to result from the projects scoped under [subsection 15\(1\)](#), in combination with other projects or activities that have been or will be carried out. The second aspect of the process involves the exercise of the discretion vested in the responsible authority by [subsection 16\(3\)](#) to determine the scope of the cumulative environmental effects that will be considered i.e. which other projects or activities are to be taken into account. It is therefore, within the discretion of the responsible authority to decide which other projects or activities to include and which to exclude for purposes of a cumulative environmental effects assessment under [paragraph 16\(1\)\(a\)](#).

The Coast Guard did not mention the road or forestry operations in its screening reports. Apparently it declined to consider matters that were outside the defined scope of the projects and that were outside federal jurisdiction. The nature of a cumulative effects assessment under [paragraph 16\(1\)\(a\)](#) would appear to expressly broaden the considerations beyond the project as scoped and sources outside that scope are to be considered. Nothing in [paragraph 16\(1\)\(a\)](#) or [subsection 16\(3\)](#) limits the assessment to sources within federal jurisdiction. In order to trigger a federal environmental assessment, some aspect of federal jurisdiction must be engaged. Once engaged, the federal responsible authority is to exercise its cumulative effects discretion unrestrained by its perception of constitutional jurisdiction. It must consider environmental effects touching upon all areas of federal jurisdiction, but focus its environmental assessment on effects within federal jurisdiction. It appears that this was the focus of

the assessments in this case.

Just because a federal project does not create adverse effects itself does not mean that it could not exacerbate adverse effects of other projects. A finding of insignificant effect, as was made here, still implies some effects from the bridge projects themselves. The accumulation of a series of insignificant effects might at some point result in significant effects. For this reason, the insignificant effects finding does not preclude the application of the cumulative effects portion of [paragraph 16\(1\)\(a\)](#) or [subsection 16\(3\)](#). The Coast Guard erred in declining to exercise the discretion conferred on it in its cumulative effects analysis under [paragraph 16\(1\)\(a\)](#) by excluding consideration of effects from other projects or activities because they were outside the scoped projects or were outside federal jurisdiction.

(3) The establishment and manner of operation of the public registry under [subsection 55\(1\)](#) is subject to the exercise of discretion by the responsible authority. While cost is a factor to be considered, and there is no proximity requirement for a public registry, [subsection 55\(1\)](#) does require that convenient public access to the registry must be ensured. If a public registry is not established and operated in close proximity to the relevant geographic area of the environmental assessment, other reasonable means, e.g. e-mail, faxes, placing a set of timely material filed in the registry with an agent in close proximity to the projects for access by the public, must be provided to comply with [subsection 55\(1\)](#). Even under the most deferential standard of review, the actions of the Coast Guard with respect to access to the public registry were patently unreasonable.

statutes and regulations judicially considered

[Access to Information Act](#), R.S.C., 1985, c. A-1.

[Canadian Environmental Assessment Act](#), S.C. 1992, c. 37, preamble, ss. 2(1) "federal authority", "project", 5, 11(2), 12(4), 15(1), (3), 16(1),(2),(3), 55(1).

[Constitution Act, 1867](#), 30 & 31 Vict., c. 3 (U.K.) (as am. by [Canada Act 1982](#), 1982, c. 11 (U.K.), Schedule to the [Constitution Act, 1982](#), Item 1) [R.S.C., 1985, Appendix II, No. 5], s. 91(10),(12),(24).

[Environmental Assessment and Review Process Guidelines Order](#), SOR/84-467.

[Navigable Waters Protection Act](#), R.S.C., 1985, c. N-22, s. 5.

cases judicially considered

applied:

Manitoba's Future Forest Alliance v. Canada (Minister of the Environment) (1999), 30 C.E.L.R. (N.S.) 1 (F.C.T.D.); *Citizens' Mining Council of Newfoundland & Labrador Inc. v. Canada (Minister of the Environment)* (1999), 29 C.E.L.R. (N.S.) 117; 163 F.T.R. 36 (F.C.T.D.); *Friends of the Oldman River Society v. Canada (Minister of Transport)*, 1992 CanLII 110 (SCC), [1992] 1 S.C.R. 3; (1992), 88 D.L.R. (4th) 1; [1992] 2 W.W.R. 193; 84 Alta. L.R. (2d) 129; 3 Admin. L.R. (2d) 1; 7 C.E.L.R. (N.S.) 1; 132 N.R. 321.

considered:

Thomas v. Peterson, 753 F.2d 754 (9th Cir. 1985).

authors cited

Canadian Environmental Assessment Agency. *The Canadian Environmental Assessment Act: Responsible Authority's Guide*. Ottawa: Minister of Supply and Services Canada, 1994.

APPEAL from an order allowing an application for judicial review of the Coast Guard's decisions pursuant to [Canadian Environmental Assessment Act](#), sections 15 and 16 that proposed bridges over navigable waters were not likely to cause significant adverse environmental effects, and to set aside approvals to authorize construction of the bridges (*Friends of the West Country Assn. v. Canada (Minister of Fisheries and Oceans)*, 1998 CanLII 7113 (FC), [1998] 4 F.C. 340; (1998), 150 F.T.R. 161 (T.D.)). Appeal dismissed.

appearances:

Kirk N. Lambrecht for appellants (respondents).

Stewart A. G. Elgie, Jerry V. DeMarco for respondent (applicant).

Brian K. O'Ferrall, E. Bruce Mellett for intervener (Sunpine Forest Products Limited).

Allan H. Lefever, Q.C. for intervener (Alberta).

solicitors of record:

Deputy Attorney General of Canada for appellants (respondents).

Sierra Legal Defence Fund for respondent (applicant).

Bennett Jones for intervener (Sunpine Forest Products Limited).

Reynolds, Mirth, Richards & Farmer, Edmonton, for intervener (Alberta).

Brownlee Fryett, Edmonton, for interveners (AAMD & C and Municipal District of Clearwater).

Birchall Northey, Toronto, for interveners (Canadian Environment Law Association and the Canadian Defence Fund).

The following are the reasons for judgment rendered in English by

[1]Rothstein J.A.: This is an appeal from a decision of Gibson J. [1998 CanLII 7113 (FC), [1998] 4 F.C. 340 (T.D.)] pertaining to the *Canadian Environmental Assessment Act*¹ (CEAA). The issues involve the interpretation and application of sections 15, 16 and 55 of the Act.

FACTS

[2]Sunpine Forest Products Limited harvests timber in an area of over one thousand square miles in west central Alberta. It processes the timber at mills in Alberta, including a mill at Strachan, Alberta. In 1994, Sunpine identified a need for a permanent road to transport logs to its Strachan mill. After consultation involving Sunpine, the Province of Alberta and the Municipal District of Clearwater, a Strachan Area Transportation Network study was prepared. Public input on the study was sought. A Forest Advisory Committee was established with representation from Sunpine, the Province of Alberta Environmental Protection and the Municipality. The respondent was also represented on the Committee. In May 1995, the Committee, with the respondent dissenting, approved a new "Mainline Road" rather than upgrading the existing "North Fork Road". In August 1995, the Province of Alberta Environmental Protection approved a revised Mainline Road submission from Sunpine subject to several environmental conditions.

[3]In December 1995, Sunpine submitted an application for approval under [section 5](#) of the *Navigable Waters Protection Act*² (NWPA) to construct bridges across the Ram River and Prairie Creek along the Mainline Road corridor. As a result of the requirement to obtain federal approval to construct the bridges over navigable waters, federal environmental assessments were triggered pursuant to [paragraph 5\(1\)\(d\)](#) of the CEAA. No approvals for the bridges could be issued under the NWPA until environmental assessments requirements of the CEAA had been met.³ The Canadian Coast Guard acted on behalf of the Minister of Fisheries and Oceans as the responsible authority to carry out the environmental assessments.

[4]The Coast Guard defined the projects subject to environmental assessment as the Ram River Bridge and the Prairie Creek Bridge. On July 18, 1996, the Coast Guard issued Screening Environmental Assessment Reports for each project. The decisions contained in each Report determined that the proposed bridges were "not likely to cause significant adverse environmental effects".

[5]Following issuance of the Screening Reports, public comments were solicited. Following receipt of public comments, the Coast Guard issued an addendum to its Screening Environmental Assessment Reports. The conclusion was that taking into account the implementation of certain mitigative measures, the proposed bridges were "not likely to cause significant adverse environmental effects." Approvals to construct the bridges were issued on August 17, 1996.

[6]Subsequently, Sunpine revised its Ram River Bridge plans to provide for a clear span bridge rather than one with a pier to be constructed within the active channel of the Ram River. On December 3, 1996, the Coast Guard issued a further Screening Environmental Assessment Report for the Ram River Bridge project, concluding that taking into account the implementation of certain mitigative measures, the revised bridge design was "not likely to cause significant adverse environmental effects." On December 12, 1996, the Minister of Fisheries and Oceans issued an approval for the revised Ram River Bridge.

[7]The respondent sought judicial review in the Federal Court Trial Division from the July 18, 1996 decisions of the Coast Guard. At the hearing before Gibson J., the respondent "refine(d) the reliefs sought" to include judicial review of the August 16 [*sic*] and December 3, 1996 decisions of the Coast Guard and to ask that approvals issued under the NWPA to authorize the construction of the Prairie Creek and Ram River Bridges be quashed.

[8]On July 7, 1998, Gibson J. allowed the judicial review. He set aside the approvals granted by the Coast Guard and referred the matter back to the Minister of Fisheries and Oceans or other appropriate minister for consideration and redetermination in a manner consistent with the CEAA, the NWPA and his reasons.

STANDARD OF REVIEW ON THE QUESTIONS OF INTERPRETATION OF THE CEAA

[9]The issues in this appeal are whether the learned Motions Judge erred in interpreting and applying sections 15, 16 and 55 of the CEAA. Gibson J. held that on questions of law, whether as to jurisdiction or as to the interpretation of statutory authority, the standard of review was correctness. As to the exercise of discretion by the Canadian Coast Guard, he held that the standard of review was reasonableness.

[10]As to the interpretation of provisions of the CEAA, there is no applicable privative clause. The CEAA is a statute of general application. It is administered by a broad range of federal authorities with the power to approve or licence projects that could have adverse environmental effects.⁴ The Coast Guard has no particular expertise in interpreting the statutory requirements of the CEAA. The interpretation of the CEAA is a question of law. I agree with Gibson J. that the standard of review on these questions is correctness.

INTERPRETATION OF SUBSECTIONS 15(1), 15(3), 16(1) AND 16(3) OF THE CEAA

[11]The relevant environmental assessment provisions of the CEAA in this case are subsections 15(1), 15(3), 16(1) and 16(3).

15. (1) The scope of the project in relation to which an environmental assessment is to be conducted shall be determined by

(a) the responsible authority; or

(b) where the project is referred to a mediator or a review panel, the Minister, after consulting with the responsible authority.

...

(3) Where a project is in relation to a physical work, an environmental assessment shall be conducted in respect of every construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work that is proposed by the proponent or that is, in the opinion of

(a) the responsible authority, or

(b) where the project is referred to a mediator or a review panel, the Minister, after consulting with the responsible authority, likely to be carried out in relation to that physical work.

16. (1) Every screening or comprehensive study of a project and every mediation or assessment by a review panel shall include a consideration of the following factors:

(a) the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out;

(b) the significance of the effects referred to in paragraph (a);

(c) comments from the public that are received in accordance with this Act and the regulations;

(d) measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project; and

(e) any other matter relevant to the screening, comprehensive study, mediation or assessment by a review panel, such as the need for the project and alternatives to the project, that the responsible authority or, except in the case of a screening, the Minister after consulting with the responsible authority, may require to be considered.

...

(3) The scope of the factors to be taken into consideration pursuant to paragraphs (1)(a), (b) and (d) and (2)(b), (c) and (d) shall be determined

(a) by the responsible authority; or

(b) where a project is referred to a mediator or a review panel, by the Minister, after consulting the responsible authority, when fixing the terms of reference of the mediation or review panel.

(i) [Subsections 15\(1\) and 15\(3\)](#)

[12][Subsection 15\(1\)](#) is straightforward. It confers on the responsible authority (the Canadian Coast Guard in this case) the power to determine the scope of the project in relation to which an environmental assessment is to be conducted. In the case at bar, the Coast Guard determined the scope of the projects as follows:

The scope of the Ram River Bridge Project includes: the construction and maintenance of a two-lane dual span bridge over the Ram River, including associated approaches and related works, storage areas or other undertakings directly associated with the construction of this bridge. The project involves preparation of the construction site, construction of a centre pier, abutments and the bridge structure.

The scope of the Prairie Creek Bridge Project includes: the construction and maintenance of a two-lane single span bridge over Prairie Creek, including associated approaches and related works, storage areas or other undertakings directly associated with the construction of these bridges. The project involves preparation of the construction site, abutments and the bridge structure.

The scope of the projects did not include the Mainline Road and proposed Sunpine forestry operations. Gibson J. found no reviewable error in the manner in which the Coast Guard exercised its discretion in defining the projects subject to environmental assessment review. In particular, he found no error in the Coast Guard not including the Mainline Road and the proposed Sunpine forestry operations within the scope of the bridge projects.

[13]However, he then went on to consider [subsection 15\(3\)](#) of the [CEAA](#). In his view, the words of [subsection 15\(3\)](#) required the responsible authority to conduct an environmental assessment not only of the projects, in this case the bridges, which were physical works, but also "in respect of every construction, operation, modification, decommissioning, abandonment or other undertaking in relation to" the bridges. He found that the bridges were "accessory" to the Mainline Road and might be "accessory" to the Sunpine forestry operation. He therefore concluded that the responsible authority was obliged under [subsection 15\(3\)](#) to include within the scope of the environmental assessment (as opposed to the projects) the road and perhaps the forestry operations because they were "in relation to" the bridges.

[14]I agree with Gibson J. that the words of [subsection 15\(3\)](#) are mandatory as to the environmental assessment that must be conducted in respect of what is proposed by the proponent. However, I must respectfully disagree with the learned Judge that [subsection 15\(3\)](#) imposes a mandatory duty on the responsible authority to conduct an environmental assessment of other physical works outside the scope of the projects under environmental assessment, simply because the other physical works are "in relation to" the projects as scoped by the responsible authority. Put another way, the words in [subsection 15\(3\)](#) do not have the effect of rescoping a project to something wider than what was determined under [subsection 15\(1\)](#).

[15]In *Manitoba's Future Forest Alliance v. Canada (Minister of the Environment)*,⁵ Nadon J. was faced with facts very similar to those in the case at bar. In paragraphs 43 to 57 [pages 18-22], he provides an explanation of the relationship between [subsections 15\(1\) and 15\(3\)](#). The meaning of [subsection 15\(3\)](#) was also recently considered by MacKay J. in *Citizens' Mining Council of Newfoundland & Labrador Inc. v. Canada (Minister of the Environment)*.⁶ Each judgment comes to a similar conclusion with respect to the proper interpretation of

[subsection 15\(3\)](#) and I have found them both to be of assistance.

[16]As I see the scheme of [subsections 15\(1\)](#) and [15\(3\)](#) in relation to this case, the responsible authority first determines the scope of a project under [subsection 15\(1\)](#). [Subsection 15\(3\)](#) is subsidiary to [subsection 15\(1\)](#). [Subsection 15\(3\)](#) requires the responsible authority to conduct its environmental assessment in respect of various aspects of the project.

[17]The definition of "project" in subsection 2(1) of the Act makes this clear:

2. (1) . . .

"project" means

(a) in relation to a physical work, any proposed construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work, or

(b) any proposed physical activity not relating to a physical work that is prescribed or is within a class of physical activities that is prescribed pursuant to regulations made under paragraph 59(b);

"Project" is not equivalent to the physical work. In this case, the physical works were the bridges. However, the projects requiring environmental assessment included any construction, operation, modification, decommissioning, abandonment or other undertaking in relation to the bridges. The focuses of the projects are the physical works but the construction, operation, modification, decommissioning, abandonment or other undertaking in relation to them are also within the scope of the projects by virtue of the definition in subsection 2(1).

[18]Having said this, it is apparent that the same words are found in [subsection 15\(3\)](#) as appear in the subsection 2 (1) definition of "project" dealing with the conduct of the environmental assessment. It follows that the environmental assessment that must be carried out will be in respect of the project as scoped. In other words, [subsection 15\(3\)](#) does not impose an obligation on the responsible authority to conduct an environmental assessment outside the scope of the project as determined under [subsection 15\(1\)](#).

[19]The words "in relation to" in [subsection 15\(3\)](#) might be read in the abstract to contemplate any construction, operation, modification, decommissioning, abandonment or other undertaking that has any connection, no matter how remote, to the physical work which is the focus of the project as scoped. However, such an interpretation would ignore the context of [sections 15](#) and [16](#) and the logical reason for the words "in relation to" in [subsection 15\(3\)](#). The first contextual point is that the responsible authority is required to scope the project under [subsection 15\(1\)](#). This would be an unnecessary exercise if, under [subsection 15\(3\)](#) every other construction, operation, modification, decommissioning, abandonment or other undertaking that had even a remote connection to the project had to be the subject of the environmental assessment. Second, [paragraph 16\(1\)\(a\)](#) provides for a cumulative effects analysis taking account of the project as scoped under [subsection 15\(1\)](#) in combination with other projects or activities that have been or will be carried out. This portion of [paragraph 16\(1\)\(a\)](#) would be redundant if projects or activities outside the project scoped under [subsection 15\(1\)](#) had to be considered under [subsection 15\(3\)](#).

[20]The words "in relation to" are used in the definition of "project" in subsection 2(1) and in [subsection 15\(3\)](#) instead of the word "of". However, if the word "of" was used, the environmental assessment would be limited to the construction, operation, modification, decommissioning or abandonment of the physical work itself. Where a physical work is being constructed, there may be ancillary construction"for example, something as major as a coffer dam required to hold back water where the construction of a bridge required work on a river bed, or of a lesser order, such as the construction of temporary living quarters for construction workers. The words "in relation to" in context here do not contemplate any other construction, operation, modification, decommissioning, abandonment or other undertakings that has any conceivable connection to the project as scoped. Rather the words refer to construction, operation, modification, decommissioning, abandonment or other undertakings that pertain to the life cycle of the physical work itself or that are subsidiary or ancillary to the physical work that is the focus of the project as scoped.

[21]Gibson J. considered that his interpretation of [subsection 15\(3\)](#) was consistent with the independent utility principle taken from *Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985). As I understand the principle, where an

individual project has no independent utility but is inextricably intertwined with other projects, the agency charged with considering the environmental impacts must consider all projects. In his view, the Ram River and Prairie Creek Bridges had no independent utility apart from the Mainline Road and perhaps the forestry operation. It was the independent utility principle, together with his consideration of *The Canadian Environmental Assessment Act: Responsible Authority's Guide*⁷ which he said reflected the independent utility principle, that guided his analysis.

The analysis that follows will be guided by the foregoing general principles and by reference to the independent utility principle, as reflected in the foregoing quotations from the Guide which I find to be consistent with the provisions of the *CEAA*.⁸

[22]At this point, we are dealing with a question of statutory interpretation. The independent utility principle originated in the United States where questions of constitutional jurisdiction and the applicable statutory scheme of the relevant environmental protection legislation undoubtedly differ from those in Canada. I do not find the independent utility principle or the portions of the Guide which may reflect the independent utility principle helpful for the purpose of interpreting [subsection 15\(3\)](#) of the *CEAA*. The intent and meaning of [subsection 15\(3\)](#) may be adequately discerned from a consideration of the context of [sections 15](#) and [16](#) and the logical reason for the words "in relation to" in [subsection 15\(3\)](#).

[23]I conclude, as a matter of statutory interpretation, that once the responsible authority scoped each project under [subsection 15\(1\)](#), [subsection 15\(3\)](#) did not require that the environmental assessment include construction, operation, modification, decom-missioning, abandonment or other undertaking outside the scope of the projects.

(ii) [Subsections 16\(1\)](#) and [16\(3\)](#)

[24]I turn to [subsections 16\(1\)](#) and [16\(3\)](#). Gibson J. was of the view [at page 370] "that [subsection 16\(1\)](#) clearly reflects, on the facts of this case, an obligation on the part of the responsible authority to apply the independent utility principle in the definition of the scope of the assessment." He found that the Coast Guard erred in law in failing to include consideration of the cumulative environmental effects likely to result from the combination of the Mainline Road and the bridges.

[25]Again, it is necessary to focus on the question of statutory interpretation. [Subsection 16\(1\)](#) is indeed mandatory. It requires consideration of the factors enumerated in [paragraphs 16\(1\)\(a\)](#) to [\(f\)](#). In particular, [paragraph 16\(1\)\(a\)](#) states that the environmental assessment shall consider the environmental effects of the project as scoped and "any cumulative environmental effects that are likely to result from the [scoped] project in combination with other projects or activities that have been or will be carried out." However, the scope of the factors to be taken into consideration pursuant to [paragraph 16\(1\)\(a\)](#) is to be determined by the responsible authority under [subsection 16\(3\)](#). This scoping is a discretionary decision on the part of the responsible authority.

[26]The process involves two aspects. The first is for the responsible authority to consider the applicability of all of the factors in [paragraphs 16\(1\)\(a\)](#) to [\(f\)](#) to the project being assessed. The use of the word "shall" in [subsection 16\(1\)](#) indicates that some consideration of each factor is mandatory. Under [paragraph 16\(1\)\(a\)](#), the relevant factor is the environmental effect of the project which includes, *inter alia*, cumulative environmental effects. This requires the responsible authority to consider environmental effects that are likely to result from the projects scoped under [subsection 15\(1\)](#), in combination with other projects or activities that have been or will be carried out.

[27]The second aspect involves the exercise of the discretion vested in the responsible authority by [subsection 16\(3\)](#)⁹ to determine the scope of this part of the [paragraph 16\(1\)\(a\)](#) factor, i.e. the cumulative environmental effects that will be considered. By necessary implication, a decision as to the cumulative environmental effects that are to be considered requires a determination of which other projects or activities are to be taken into account. It is, therefore, within the discretion of the responsible authority to decide which other projects or activities to include and which to exclude for purposes of a cumulative environmental effects assessment under [paragraph 16\(1\)\(a\)](#).

[28]The learned Motions Judge makes no mention of [subsection 16\(3\)](#) in his reasons and it appears that it may not have been brought to his attention. The respondent argues that [subsection 16\(3\)](#) cannot override [paragraph 16\(1\)\(a\)](#) and in any event, that the discretion conferred by [subsection 16\(3\)](#) is only to determine who it is that determines

the scope of the factors. I cannot agree with the respondent on this point. [Subsection 16\(3\)](#) cannot be ignored. When it is taken into account, it is plain that while it is mandatory in the sense that it requires a scoping of certain factors in [subsection 16\(1\)](#) by the responsible authority, that scoping is left to the discretion of the responsible authority. That makes logical sense. [Paragraph 16\(1\)\(a\)](#) cannot be read in isolation. The "other projects or activities" have not been defined in that paragraph. In other words, [paragraph 16\(1\)\(a\)](#) does not specify which other projects or activities are to be considered. Indeed, the learned Motions Judge himself seems to have had some doubt as to whether the forestry operations were to be taken into account. The scoping of other projects or activities to be taken into account is left to the discretion of the responsible authority under [subsection 16\(3\)](#) and [paragraph 16\(1\)\(a\)](#) places no mandatory duty in that regard on the responsible authority.

APPLICATION OF SUBSECTIONS 15(1), 15(3), 16(1) AND 16(3) OF THE CEAA

[29]I turn now to the actions of the Coast Guard in relation to [sections 15](#) and [16](#). Under [subsection 15\(1\)](#), in the exercise of its discretion, the responsible authority scoped each project. The learned Motions Judge found no error in that exercise of discretion. He states:

I can find no reviewable error in the manner in which the responsible authority here exercised his discretion in defining the projects subject to environmental assessment review. More specifically, I find no error on the part of the responsible authority in failing to include within the scope of the bridge projects the road to which the principal projects, that is to say the bridges and the related abutments, could be said to be accessory and the proposed forestry operations to which the bridges might also, on the facts of this matter, be considered to be accessory.¹⁰

No cross-appeal was taken from this finding. Accordingly, no question of error by the Coast Guard arises with respect to [subsection 15\(1\)](#). Once the bridge projects were scoped under [subsection 15\(1\)](#), there was no obligation on the Coast Guard to include the Mainline Road or the Sunpine forestry operations in its environmental assessment by reason of [subsection 15\(3\)](#).

[30]In the case of [section 16](#), Gibson J. found that the responsible authority erred in failing to include consideration of the Mainline Road in its cumulative effects analysis. From his reasons, he seems to treat the error as one of either misinterpreting [paragraph 16\(1\)\(a\)](#) or perhaps misapplying it to the facts of the case.

[31]The Coast Guard's Screening Environmental Assessment Reports of July 18, 1996 address cumulative effects. With respect to the Ram River Bridge, the Report states:

Scope of Environmental Assessment

The scope of the environmental assessment includes the environmental effects at and downstream of the bridge site, identified in [paragraph 16\(1\)\(a\)](#) and [section 2](#) of CEAA of the bridge and any works related to the construction and maintenance of the bridge.

Cumulative Effects

The Ram River Crossing is isolated from other man-made structures by several kilometers. The accumulated hydraulic effects of this bridge with other structures on the waterway are related to the distance upstream or downstream that other in-water structures are located. These hydraulic effects are insignificant and have been addressed by the design of the bridge structure itself.

The potential of cumulative effects from ice and log jamming is also related to the bridge's distance from other structures. To further reduce any jamming-related effects, the design and location of the pier structure on the midstream gravel bar has decreased the potential for ice or log jamming to occur.

Siltation related cumulative effects are considered insignificant as the sediments affected by construction will not be allowed to enter the waterway directly without prescreening through geotextile filters placed prior to construction.

With respect to the Prairie Creek Bridge, the Report states:

Scope of Environmental Assessment

The scope of the environmental assessment includes the environmental effects at and downstream of the bridge site, identified in [paragraph 16\(1\)\(a\)](#) and [section 2](#) of CEAA of the bridge and any works related to the construction and maintenance of the bridge.

Cumulative Effects

The Prairie Creek Crossing is a single-span bridge, with no in-water components, isolated from other man-made structures by several kilometers. The accumulated hydraulic effects of this bridge with other structures on the waterway are related to the distance upstream or downstream that other inwater structures are located. These hydraulic effects are insignificant and have been addressed by the design of the bridge structure itself.

Siltation related cumulative effects are considered insignificant as the sediments affected by construction will not be allowed to enter the waterway directly without prescreening through geotextile filters placed prior to construction.

These reasons make no mention of the Mainline Road or forestry operations.

[32]The only reference in the material that is more explicit as to the reasons why the Mainline Road and forestry operations were not mentioned in the July 18, 1996 Screening Reports is a government memorandum of August 16, 1996, written after public comments were received following the issuance of these Reports. This memorandum appears to have accompanied the August 16, 1996 Screening Environmental Assessment Reports Addenda. The memo states in part:

Comments that identified areas of federal jurisdiction that were within the scope of project that were not already addressed within the Canadian Coastguard Screening Report have been utilized in the preparation of an Addendum to the Report.

...

The remaining submissions were related to

- " areas outside the defined scope of project for these crossings,
- " outside of federal jurisdiction.

[33]The July 18, 1996 Reports address only the bridges and work related to the construction and maintenance of the bridges and the accumulated hydraulic effects of the bridges and other structures on each of the two waterways. From the absence of any reference to the Mainline Road or forestry operations in the Screening Reports and having regard to the August 16, 1996 memo, it is apparent that the Coast Guard declined to consider matters that were outside the defined scope of the projects and that were outside federal jurisdiction. In declining to consider matters outside the scope of the projects and outside federal jurisdiction, I think it misinterpreted [paragraph 16\(1\)\(a\)](#) and [subsection 16\(3\)](#). It construed the boundaries of the exercise of its discretion more narrowly than those provisions permit and, therefore, declined to exercise the discretion conferred on it.¹¹

[34]Under [paragraph 16\(1\)\(a\)](#), the responsible authority is not limited to considering environmental effects solely within the scope of a project as defined in [subsection 15\(1\)](#). Nor is it restricted to considering only environmental effects emanating from sources within federal jurisdiction. Indeed, the nature of a cumulative effects assessment under [paragraph 16\(1\)\(a\)](#) would appear to expressly broaden the considerations beyond the project as scoped. It is implicit in a cumulative effects assessment that both the project as scoped and sources outside that scope are to be considered. Further, nothing in [paragraph 16\(1\)\(a\)](#) or [subsection 16\(3\)](#) limits the assessment to sources within federal jurisdiction. In order to trigger a federal environmental assessment, some aspect of federal jurisdiction must be engaged. However, once engaged, the federal responsible authority is to exercise its cumulative effects discretion unrestrained by its perception of constitutional jurisdiction. As was stated by La Forest J. in *Friends of the Oldman River Society v. Canada (Minister of Transport)*:

What is important is to determine whether either level of government may legislate. One may legislate in regard to provincial aspects, the other federal aspects. Although local projects will generally fall within provincial responsibility, federal participation will be required if the project impinges on an area of federal jurisdiction¹²

[35]During the course of argument, it was pointed out that the Mainline Road passed over a number of non-navigable waters that were in some way connected to the two navigable waterways over which there was federal jurisdiction. It was suggested that the construction or operation of a road or bridges over non-navigable waterways could have a cumulative adverse environmental effect, together with the effect of the construction and operation of the bridges over the navigable waters. It is, of course, not for the Court to speculate as to whether such suggestion is well founded. However, the example demonstrates why it is logical that a cumulative effects assessment under [paragraph 16\(1\)\(a\)](#) not be restricted to the scope of the federal project or to projects only under federal jurisdiction. Having said this, I emphasize that it is within the discretion of the responsible authority to determine the scope of factors to be taken into consideration pursuant to [paragraph 16\(1\)\(a\)](#). Provided the responsible authority does not decline to exercise its discretion by misinterpreting [paragraph 16\(1\)\(a\)](#) and [subsection 16\(3\)](#), it is open to it to include or exclude other projects" in this case, the Mainline Road or forestry operations as it considers appropriate.¹³

[36]Of course, in saying that a responsible authority may consider factors outside federal jurisdiction, I am restricting my comments to [paragraph 16\(1\)\(a\)](#) and [subsection 16\(3\)](#) and to where, once a project under federal jurisdiction has been scoped, the requirement to consider cumulative environmental effects is engaged.

[37]Nor do I ignore subsection 12(4) of the Act which provides:

12. . . .

(4) Where a screening or comprehensive study of a project is to be conducted and a jurisdiction has a responsibility or an authority to conduct an assessment of the environmental effects of the project or any part thereof, the responsible authority may co-operate with that jurisdiction respecting the environmental assessment of the project.

The province of Alberta conducted certain environmental assessments. I see no reason why it would not be open to the Coast Guard to have regard for the work done by the province of Alberta in its cumulative effects assessment under [paragraph 16\(1\)\(a\)](#). I do not read [paragraph 16\(1\)\(a\)](#) or the discretion to be exercised under [subsection 16\(3\)](#) as inviting or requiring duplication of environmental assessments.

[38]I need make no finding as to the type of environmental effects that the responsible authority may take into consideration in its cumulative effects assessment. However, it is clear that although the responsible authority in this case has jurisdiction over navigable waters, it must consider environmental effects touching upon all areas of federal jurisdiction. In *Friends of the Oldman River Society v. Canada (Minister of Transport)*, *supra*, La Forest J. states:

I should make it clear, however, that the scope of assessment is not confined to the particular head of power under which the Government of Canada has a decision-making responsibility within the meaning of the term "proposal". Such a responsibility, as I stated earlier, is a necessary condition to engage the process, but once the initiating department has thus been given authority to embark on an assessment, that review must consider the environmental effect on all areas of federal jurisdiction Here, the Minister of Transport, in his capacity of decision maker under the *Navigable Waters Protection Act*, is directed to consider the environmental impact of the dam on such areas of federal responsibility as navigable waters, fisheries, Indians and Indian lands, to name those most obviously relevant in the circumstances here.¹⁴

Although the Court in *Oldman River* was dealing with the federal environmental assessment regime which the CEAA replaced,¹⁵ the principle is equally applicable here notwithstanding the different terminology of the current legislation. However, given the divided constitutional jurisdiction over environmental assessments between the federal government and the provinces, it follows that the federal responsible authority is to focus its environmental assessment on effects within federal jurisdiction" such as in this case, the effects on "Navigation and Shipping Sea Coast", "Inland Fisheries", and "Indians, and Lands reserved for the Indians".¹⁶

It appears that this was the focus of the assessments in this case and I see nothing inappropriate in that regard.

[39]I note that the decision of the Coast Guard is that the bridge crossings, when mitigative measures are taken into account, are determined to have an insignificant effect on the environment. Implicit in a cumulative effects assessment under [paragraph 16\(1\)\(a\)](#) are effects from both the project as scoped and other projects or activities. Sunpine argued that if there were no adverse environmental effects from the project as scoped, there could be no cumulative effects as envisaged by that paragraph. While on its face this argument is compelling, I am not sure it is possible to rule out that a federal project, while creating no adverse effects itself, could exacerbate adverse effects of other projects. In any event, a finding of insignificant effects as was made here still implies some effects from the bridge projects themselves. It is not illogical to think that the accumulation of a series of insignificant effects might at some point result in significant effects. I do not say that is the case here. I only observe that a finding of insignificant effects of the scoped projects is sufficient to open the possibility of cumulative significant environmental effects when other projects are taken into account. For this reason, I do not think the insignificant effects finding precludes the application of the cumulative effects portion of [paragraph 16\(1\)\(a\)](#) or [subsection 16\(3\)](#) in this case.

[40]For these reasons, I am of the opinion that the Coast Guard erred in declining to exercise the discretion conferred on it in its cumulative effects analysis under [paragraph 16\(1\)\(a\)](#) by excluding consideration of effects from other projects or activities because they were outside the scoped projects or were outside federal jurisdiction.

NON-COMPLIANCE WITH SUBSECTION 55(1) OF THE CEAA

[41]Finally, I turn to the public registry issue. [Subsection 55\(1\)](#) provides:

55. (1) For the purpose of facilitating public access to records relating to environmental assessments, a public registry shall be established and operated in a manner to ensure convenient public access to the registry and in accordance with this Act and the regulations in respect of every project for which an environmental assessment is conducted.

The preamble to the [CEAA](#) provides in part:

AND WHEREAS the Government of Canada is committed to facilitating public participation in the environmental assessment of projects to be carried out by or with the approval or assistance of the Government of Canada and providing access to the information on which those environmental assessments are based;

[42]In this case, the registry was established at Sarnia, Ontario, over two thousand miles away from the projects subject to environmental assessment. At paragraph 61 [pages 372-373] of his reasons, the learned Motions Judge made the following findings of fact:

A representative or representatives of the applicant requested that, in light of the remoteness of the registry from the site of the bridge projects, copies of all materials on the registry be provided to the applicant. Copies of some materials were provided but copies of other materials were not provided for the stated reasons of cost and the amount of work and duplication of the materials. The applicant's representative or representatives were invited to make an application for the materials under the [Access to Information Act](#).

He concluded:

Given that the materials were requested for the purpose of the public consultation provided for in [subsection 18\(3\)](#) of the [CEAA](#) and that the period provided for such consultation was quite short, the recommendation to make use of the [Access to Information Act](#) procedures was completely inappropriate and, more importantly, not in keeping with the obligation under [section 55](#) of the [CEAA](#) and the related commitment recited in the preamble to the [CEAA](#).

[43]The establishment and manner of operation of the public registry under [subsection 55\(1\)](#) is subject to the exercise of discretion by the responsible authority. While cost is certainly a factor to be considered, and there is no proximity requirement for a public registry, [subsection 55\(1\)](#) does require that convenient public access to the registry must be ensured. If a public registry is not established and operated in close proximity to the relevant geographic area of the environmental assessment, other reasonable means, e.g. e-mail, faxes, placing a set of timely material filed in the registry with an agent in close proximity to the projects for access by the public, must be provided to comply with [subsection 55\(1\)](#). Requiring the public to resort to procedures under the *Access to Information Act* [R.S.C., 1985, c. A-1] was the antithesis of what [subsection 55\(1\)](#) requires. Without embarking upon an analysis of the standard of review of discretionary decisions under [subsection 55\(1\)](#), I am satisfied in this case that even under the most deferential standard of review, the actions of the Coast Guard with respect to access to the public registry were patently unreasonable. I am in entire agreement with Gibson J.'s conclusions.

CONCLUSION

[44]The appeal will be dismissed. The matter is to be redetermined in accordance with the reasons of the learned Motions Judge as modified by these reasons. The respondent will be entitled to costs.

Linden J.A.: I agree.

McDonald J.A.: I agree.

¹ S.C. 1992, c. 37.

² R.S.C., 1985, c. N-22.

³ S. 11(2) states:

11. . . .

(2) A responsible authority shall not exercise any power or perform any duty or function referred to in [section 5](#) in relation to a project unless it takes a course of action pursuant to paragraph 20(1)(a) or 37(1)(a).

The duties or functions under [section 5](#) which are proscribed by s. 11(2) until the completion of the environmental assessment include the granting of approvals, permits, licences or any other action enabling the project to be carried out in whole or in part. [S. 5\(1\)](#) deals with "federal authority" generally (which is defined in the Act [in [s. 2\(1\)](#)]) and [s. 5\(2\)](#) concerns projects requiring approval of the Governor in Council.

⁴ It is the activity of granting federal approvals, licences and permits for projects which is the relevant trigger for an environmental assessment under the CEAA in this case. However, the CEAA also triggers a requirement for environmental assessment in other areas of federal activity, such as where the federal authority is the actual proponent of the project ([s. 5\(1\)\(a\)](#)); where the federal government provides direct or indirect financial assistance to a project ([s. 5\(1\)\(b\)](#)); or conveys an interest in federal lands for the purpose of enabling the project to be carried out ([s. 5\(1\)\(d\)](#)).

⁵ (1999), 30 C.E.L.R. (N.S.) 1 (F.C.T.D.).

⁶ (1999), 29 C.E.L.R. (N.S.) 117 (F.C.T.D.).

⁷ Minister of Supply and Services Canada, Cat. No. EN106-25/1-1994 E, ISBN 0-662-22773-5, November 1994.

⁸ At para. 42.

⁹ This discretion to determine the scope of the factors is only provided with respect to those factors enumerated in [ss. 16\(1\)\(a\), \(b\) and \(d\)](#) and [ss. 16\(2\)\(b\), \(c\) and \(d\)](#).

¹⁰ [1998 CanLII 7113 \(FC\)](#), [1998] 4 F.C. 340 (T.D.), at p. 368.

¹¹ The August 16, 1996 memorandum also states:

A decision to dis-allow the permit could have significant socio-economic effects in the form of lost jobs, reduced tax base and traffic accidents related to the usage of the North Fork road by logging traffic.

I do not construe this reference to mean that the Coast Guard considered the environmental effects of the Mainline Road.

¹² [1992 CanLII 110 \(SCC\)](#), [1992] 1 S.C.R. 3, at p. 69.

¹³ Subject, of course, to judicial review of that discretionary decision according to the applicable standard of review"according to Gibson J. in this case, reasonableness *simpliciter* .

¹⁴ *Supra*, note 12, at pp. 72-73.

¹⁵ *Environmental Assessment and Review Process Guidelines Order*, SOR/84-467.

¹⁶ *Constitution Act, 1867* [30 & 31 Vict. c. 3 (U.K.) (as am. by *Canada Act 1982*, 1982, c. 11 (U.K.), Schedule to the *Constitution Act, 1982*, Item 1) [R.S.C., 1985, Appendix II, No. 5]], s. 91(10),(12),(24)