

Indexed as:

**Canadian Wildlife Federation Inc. v. Saskatchewan Water Corp.
(F.C.A.)**

Between

**Saskatchewan Water Corporation, Appellant (Respondent), and
Canadian Wildlife Federation Inc., Gordon Geske and Joseph
Dolecki, Respondents (Applicants), and
Minister of the Environment, (Respondent)**

[1989] F.C.J. No. 530

99 N.R. 72

[1990] 2 W.W.R. 69

38 Admin. L.R. 138

4 C.E.L.R. (N.S.) 1

16 A.C.W.S. (3d) 179

Action no. A-228-89

Federal Court of Appeal
Ottawa, Ontario

Iacobucci C.J., Hugessen and Stone JJ.

June 22, 1989

Ministerial powers -- Licensing -- Dam construction -- Minister required to follow environmental guidelines -- Department of Environment Act, R.S.C. 1985, c. E-10, s. 6 -- International River Improvements Act, R.S.C. 1985, c. I-20 -- Environmental Assessment and Review Process Guidelines Order, SOR/84-467.

This was an appeal against a decision holding that the Minister of the Environment was bound by the Environmental Assessment and Review Process Guidelines Order when deciding whether to issue a licence under the International River Improvements Act for the construction of a dam.

HELD: The appeal was dismissed. The guidelines order was mandatory. The issuance of mandatory guidelines was not incompatible with the provisions in s. 6 of the Department of the Environment Act.

D. Gauley and Cliff Wheatley, for the Appellant.
Brian A. Crane and Martin W. Mason, for the Respondents.

The judgment of the Court was delivered by

HUGESSEN J.-- We are all of the view that this appeal must fail.

Reduced to its essentials, the appellant's argument is that the Minister of the Environment, in issuing a licence under the International River Improvements Act (I.R.I.A.), R.S.C. 1985, c. I-20, is not bound to follow the Environmental Assessment and Review Process (E.A.R.P.) Guidelines Order, SOR/84-467, 22 June 1984. We cannot agree.

In the first place, the appellant's contention that the I.R.I.A. and the Regulations pursuant thereto, C.R.C., c. 982, are a "complete code" for the issuance of licences thereunder simply begs the question as to whether the E.A.R.P. Guidelines Order is mandatory; if it is, the Minister is obliged to follow it just as he is obliged to follow any other law of general application. Secondly, appellant's suggestion that section 6 of the Department of the Environment Act, R.S.C., 1985, c. E-10, is somehow incompatible with the issuance of mandatory guidelines does not resist examination. When compared with section 5, and when both English and French texts are read together, the language of section 6:

English version

GUIDELINES BY ORDER

6. For the purposes of carrying out his duties and functions related to environmental quality, the Minister may, by order, with the approval of the Governor in Council, establish guidelines for use by departments, boards and agencies of the Government of Canada and, where appropriate, by corporations named in Schedule III to the Financial Administration Act and regulatory bodies in the exercise of their powers and the carrying out of their duties and functions.

French version

DIRECTIVES ÉTABLIES PAR ARRÊTÉ

6. Au titre de celles de ses fonctions qui portent sur la quantité de l'environnement, le ministre peut par arrêté, avec l'approbation du gouverneur en conseil, établir des directives à l'usage des ministères et organismes fédéraux et, s'il y a lieu, à celui des sociétés

d'État énumérés à l'annexe III de la Loi sur la gestion des finances publiques et des organismes de réglementation dans l'exercice de leurs pouvoirs et fonctions.

is unquestionably capable of supporting a power to make binding subordinate legislation. The word "guidelines" in itself is neutral in this regard. Finally, there is nothing in the text of the Guidelines themselves which indicates that they are not mandatory; on the contrary, the repeated use of the word "shall", [Footnote: In the French text, l'indicatif présent; see Interpretation Act, R.S.C., 1985, c. I-21, s. 11] throughout, and particularly in sections 6, 13 and 20, indicates a clear intention that the Guidelines shall bind all those to whom they are addressed, including the Minister of the Environment himself.

The appeal will be dismissed with costs.

HUGESSEN J.