

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF
THE NORTH AMERICAN FREE TRADE AGREEMENT
AND THE UNCITRAL ARBITRATION RULES**

BETWEEN:

**WILLIAM RALPH CLAYTON, WILLIAM RICHARD CLAYTON, DOUGLAS
CLAYTON AND DANIEL CLAYTON AND BILCON OF DELAWARE INC.**

Claimants

AND:

GOVERNMENT OF CANADA

Respondent

SECOND AFFIDAVIT OF BOB PETRIE

I, BOB PETRIE residing at 4126 Highway 359, Hall's Harbour, Nova Scotia, Canada,
MAKE OATH AND SAY AS FOLLOWS:

1. The Government of Canada has forwarded to me, and I have reviewed the Reply Memorial submitted by the Claimants in this case, as well as the Supplemental Affidavit of Mr. Paul Buxton, the Second Expert Report of Mr. David Estrin and the Expert Report of Mr. T. Murray Rankin. I feel compelled to file this second Affidavit in order to clarify facts relating to Nova Scotia's review of the application of Nova Stone Exporters Inc. (Nova Stone) for an industrial approval to operate a 3.9ha quarry at Whites Point.
2. I have explained at length in my first Affidavit how Nova Scotia reviewed the application of Nova Stone for an industrial approval to operate a 3.9ha quarry at Whites Point, and about our request for DFO assistance and expertise relating to the potential

adverse effects of that operation on marine life.¹ I reaffirm that testimony, and will not repeat it here, except as to give necessary context to my testimony in this Affidavit.

3. As I explained in my first Affidavit, I was the District Manager of the Yarmouth Office of the Nova Scotia Department of Environment and Labour in 2002, and hence was responsible for the assessment of Nova Stone's application.² In their Reply Memorial the Claimants focus on an engineering report prepared by Mr. Robert Balcom which recommended the approval of the application without some of the conditions that I would eventually impose on the proposed blasting.³

4. As I explained in my first Affidavit, Mr. Balcom was a member of my team who worked on the review of Nova Stone's application.⁴ Mr. Balcom was an engineer and his role was to provide me with input and data related to the potential environmental effects of the proposed activities from that perspective. In his report, he noted several concerns about the lack of data in the application regarding the impact on marine mammals in the Bay of Fundy, particularly in light of how close the proposed blasting was to the shore.⁵ In the end, he recommended the approval of Nova Stone's application, on the condition that "[t]he effect of blasting in the quarry on the marine mammals shall be monitored and a report on the effect must be submitted to the department" and that "[b]lasting operations may be modified by the administrator if there is a negative effect on the endangered Right Whale in the Bay of Fundy."⁶

5. As District Manager I was responsible for taking a broader perspective and while I respected Mr Balcom's recommendations, given our relative lack of expertise within NSDEL on the impacts of blasting on marine mammals, and the fact that this

¹ First Affidavit of Bob Petrie, ¶¶ 7-17.

² First Affidavit of Bob Petrie, ¶ 2, 7.

³ Claimants' Reply ¶ 43. *See also* Engineer's Report on the Nova Stone Exporters, Inc. Quarry, by Robert Balcom, March 21, 2002, **Exhibit R-79**.

⁴ First Affidavit of Bob Petrie, ¶ 7.

⁵ *See* Engineer's Report on the Nova Stone Exporters, Inc. Quarry, by Robert Balcom, March 21, 2002, pp. 2-4, **Exhibit R-79**.

⁶ *See* p. 10 of the Draft Terms and Conditions of Approval, attached to Engineer's Report on the Nova Stone Exporters, Inc. Quarry, by Robert Balcom, March 21, 2002, **Exhibit R-79**.

project was the first step in a large scale and long term quarry and marine terminal operation that was attracting public concern about marine impacts, we requested DFO's assistance in the review of Nova Stone's application with respect to the potential effects of the proposed blasting on marine life in the Bay of Fundy.⁷ The request for DFO assistance and input was part of my due diligence to make sure that I adequately understood and considered all of the potential impacts of the proposed activities before making a decision on the requested industrial approval.


6. Given DFO's expertise in the area, and my own understanding of the relevant facts and context, I decided that including the conditions DFO proposed for blasting, with slight modifications, was the only responsible course I could take. There was no reason to believe that these conditions could not be fulfilled. In fact, I believed that their fulfilment would provide the necessary clarity with respect to both the level of risk involved in the blasting, and the potential mitigation measures that could be employed to minimize that risk. I stand by my decision as the right one today.

Affirmed

SWORN BEFORE ME at)
in the Province of Nova Scotia)
this 19th day of March, 2013)



BOB PETRIE



A Commissioner for taking Affidavits
in and for the Supreme Court of Nova Scotia

VERNA SAMPSON
A Commissioner of the Supreme
Court of Nova Scotia

⁷ First Affidavit of Bob Petrie, ¶ 13. See also NSDEL Briefing Note, Nova Stone Exporters Inc., Quarry Application, Little River, Digby County, April 11, 2002, **Exhibit R-84**.