Federal Court  Cour fédérale

Date: 20150209

Docket: T-884-13

Citation: 2015 FC 162

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 9, 2015

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

SYLVIO THIBEAULT

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The applicant contests the legality of a ministerial order by the Minister of Transport, Infrastructure and Communities [the Minister] dated May 16, 2013, ordering him to remove his floating structure located at the mouth of the Chaudière River within 24 hours because it is a work that was not approved by the Minister.

[2] The ministerial order was issued under the supposed authority of sections 5 and 6 of the *Navigable Waters Protection Act*, RSC 1985, c N-22 [Act or NWPA], renamed the *Navigation Protection Act* on April 1, 2014. In these reasons, all references to the Act and to all applicable regulations refer to the provisions in force at the time of issuance of the ministerial order.

[3] This docket, as well as dockets T-1068-13, T-1087-13 and T-1086-13, in which the application seeks to have set aside three ministerial orders granting Marina de la Chaudière inc. [the Marina] the authority to install Dock B, Dock D and buoys on the Chaudière River, were heard consecutively by the Court on January 27 and 28, 2015. The Court's judgment in the three other dockets is rendered concurrently: *Thibeault v. Canada (Transport, Infrastructure and Communities)*, 2015 FC 163.

[4] This is the last step in a long legal saga before the Quebec and federal courts, which has pitted the applicant and other Chaudière River shoreline property owners against the Marina since the late 1980s. In addition to the facts reported by the parties in their respective affidavits, on the day of the hearing, the applicant provided, with the Court's permission, a history of the disputes concerning the Chaudière River basin. This being said, the facts leading up to the current application for judicial review are not really contested, and are briefly summarized below.

[5] On April 20, 2013, a notice was published in the *Canada Gazette* informing the public that the Marina had applied to the Minister for approval of the plans and site of three floating docks on the Chaudière River, and of mooring areas in the St. Lawrence River and in the

Chaudière River. Interested parties had 30 days after the publication of the notice to direct their comments, in writing, on the effect of these works on marine navigation to the manager of the Navigable Waters Protection Program [NWPP].

[6] On May 13, 2013, the applicant forwarded to Richard Jones, the NWPP manager, a formal notice that was taken as opposition to the Marina's application for ministerial approval. In essence, the applicant informed the manager that he is the exclusive owner or occupant of the bed of the Chaudière River where docks B and D and the mooring buoys in Zone 4 were to be installed, and that the Minister does not have the authority to issue approvals concerning the Marina's floating docks because these are vessels rather than works under the Act. In the same line of reasoning, the applicant informed the manager that he had [TRANSLATION] "anchored a ship near the site planned by the Marina for Dock B, that is to say on Lot C, of which he has exclusive ownership, in order to do work on his property".

[7] The same day of he received the formal notice, the NWPP manager received from the Marina a complaint by email to the effect that the applicant [TRANSLATION] "is installing a dock with light[s] and boom[s] across from Lévis where the Marina is applying for Dock B." On May 14, 2013, an officer of the Minister was dispatched to the site to perform a visual inspection and take photos of the [TRANSLATION] "dock" in question. On May 16, 2013, the Minister issued the order requesting the applicant to remove, within 24 hours after receipt of the order, [TRANSLATION] "the work located at the entrance to the Chaudière River at the following approximate geographic position: Lat.: 46° 44' 32" N – Long.: 71° 16' 41" W".

[8] On May 17, 2013, the applicant filed a Notice of Application for judicial review of the ministerial order. The applicant did not ask the Court to stay the ministerial order. If the applicant failed to comply within the established timeframe, the Minister could remove, at the applicant's expense, the work that was not approved, and this is what happened on June 7, 2013, after the Minister asked a sub-contractor to remove the applicant's floating structure, resulting in a cost of $1,850.

[9] One week later, on June 14, 2013, despite the applicant's opposition to the development project published in the *Canada Gazette*, in view of the effect on marine navigation, the Minister granted the Marina the approvals for every one of the works listed in the application, including docks B and D and the Zone 4 mooring area. As indicated above, the legality of the approvals was reviewed by the Court in dockets T-1068-13, T-1087-13 and T-1086-13: 2015 FC 163.

[10] In the present case, the applicant asks that the ministerial order of May 16, 2013, be set aside. This ministerial order is directed at him, personally, and requests that he proceed with the removal of the [TRANSLATION] "unauthorized work". Even though the applicant's floating structure has been removed, the application for judicial review is not moot because the applicant is facing criminal charges for having refused to remove a work that had not been approved by the Minister. His main grounds for today's challenge are that the Minister exceeded his authority in concluding that the applicant's [TRANSLATION] "pontoon boat" is a "work" within the meaning of the NWPA. In the alternative, the applicant submits that the Minister committed a reviewable error by not considering the application of the exceptional provisions in the *Minor Works and Waters (Navigable Waters Protection Act) Order*, 2009 C Gaz 1, 1403 [Order]. In any event, the

applicant submits that in this case, there is reasonable apprehension of bias, which vitiates the entire administrative process.

[11] The standard of reasonableness applies to the first two grounds for review, which raise questions of mixed fact and law, and the correctness standard applies to the last aspect, which raises a question of procedural fairness: *Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 51 (*Dunsmuir*); *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at paragraph 43.

Reasonableness of the ministerial designation

[12] In short, the issue is whether the designation under the NWPA by the Minister's officer of the floating structure measuring approximately 6 metres in length, partly submerged and anchored at the mouth of the Chaudière River is reasonable in this case. The applicant alleges that the floating structure in question constitutes a [TRANSLATION] "pontoon boat", and therefore a "vessel" under the NWPA, and that it was unreasonable for the officer to conclude that it was a "work" under the NWPA. Consequently, the issuance of the contested ministerial order exceeds the Minister's authority. These claims are in every regard contested by the respondent.

[13] When applying the standard of reasonableness, the Court will consider the full decision-making process and the reasons in light of the law and the evidence in the record: "reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above at paragraph 47). Thus, the Court does not have to ask itself

whether the floating structure that was removed is a "vessel", but rather whether the Minister's designation of it as an [TRANSLATION] "unauthorized work" is reasonable in this case.

[14] The following definitions of "vessel" and "work" are found in section 2 of the Act:

2. In this Act,	**2**. Les définitions qui suivent s'appliquent à la présente loi.
. . .	[…]
"vessel" includes every description of ship, boat or craft of any kind, without regard to method or lack of propulsion and to whether it is used as a sea-going vessel or on inland waters only, including everything forming part of its machinery, tackle, equipment, cargo, stores or ballast;	"bateau" Toute construction flottante conçue ou utilisée pour la navigation en mer ou dans les eaux internes, qu'elle soit pourvue ou non d'un moyen propre de propulsion. Est compris dans la présente définition tout ce qui fait partie des machines, de l'outillage de chargement, de l'équipement, de la cargaison, des approvisionnements ou du lest du bateau.
. . .	[…]
"work" includes	"ouvrage" Sont compris parmi les ouvrages:
(*a*) any man-made structure, device or thing, whether temporary or permanent, that may interfere with navigation; and	a) les constructions, dispositifs ou autres objets d'origine humaine, qu'ils soient temporaires ou permanents, susceptibles de nuire à la navigation;
(*b*) any dumping of fill in any navigable water, or any excavation of materials from the bed of any navigable water, that may interfere with navigation	b) les déversements de remblais dans les eaux navigables ou les excavations de matériaux tirés du lit d'eaux navigables, susceptibles de nuire à la navigation.

[15] Subsections 5(1) and 6(1) of the Act create a prohibition against placing a work in navigable waters unless it has been approved by the Minister:

5. (1) No work shall be built or placed in, on, over, under, through or across any navigable water without the Minister's prior approval of the work, its site and the plans for it.	**5**. (1) Il est interdit de construire ou de placer un ouvrage dans des eaux navigables ou sur, sous, au-dessus ou à travers celles-ci à moins que, préalablement au début des travaux, l'ouvrage ainsi que son emplacement et ses plans n'aient été approuvés par le ministre.
. . .	[. . .]
6. (1) If any work to which this Part applies is built or placed without having been approved under this Act, is built or placed on a site not approved under this Act, is not built or placed in accordance with the approved plans and terms and conditions and with the regulations or, having been built or placed as approved, is not maintained, operated, used or removed in accordance with those plans, those terms and conditions and the regulations, the Minister may	**6**. (1) Dans les cas où un ouvrage visé par la présente partie est construit ou placé sans avoir été approuvé au titre de la présente loi ou est construit ou placé sur un emplacement non approuvé au titre de celle-ci ou n'est pas construit ou placé conformément aux plans et conditions approuvés au titre de la présente loi et aux règlements ou, après avoir été construit ou placé conformément à l'approbation, n'est pas entretenu, exploité, utilisé ou enlevé conformément à ces plans et conditions et aux règlements, le ministre peut:
(*a*) order the owner of the work to remove or alter the work;	*a*) ordonner au propriétaire de l'ouvrage de l'enlever ou de le modifier;
(*b*) where the owner of the work fails forthwith to comply with an order made pursuant to paragraph (*a*), remove and	*b*) lorsque le propriétaire de l'ouvrage n'obtempère pas à un ordre donné sous le régime de l'alinéa *a*), enlever et

destroy the work and sell, give away or otherwise dispose of the materials contained in the work; and	détruire l'ouvrage et aliéner — notamment par vente ou don — les matériaux qui le composent;
(*c*) order any person to refrain from proceeding with the construction of the work where, in the opinion of the Minister, the work interferes or would interfere with navigation or is being constructed contrary to this Act.	*c*) enjoindre à quiconque d'arrêter la construction de l'ouvrage lorsqu'il est d'avis qu'il gêne ou gênerait la navigation ou que sa construction est en contravention avec la présente loi.

[16] For the following reasons, I find that the Minister's designation of the work as an [TRANSLATION] "unauthorized work" is a possible, acceptable outcome which is defensible in respect of the facts and law. Thus, the Minister had the authority to issue the contested ministerial order, and according to the evidence in the record, there was every indication that the applicant's floating structure constituted an [TRANSLATION] "interference with navigation" and [TRANSLATION] "could be hazardous at night if its makeshift lights were to fail".

[17] First, the report on the visual inspection conducted by Richard Doyon, the Minister's officer, on May 14, 2013 [when the written notes were prepared, but the report was signed on May 17, 2013], states as follows:

> [TRANSLATION]
>
> This structure resembles a platform, and is level with the water. We do not know what it is made of (wood, metal or other materials???). It has a very small red flashing light at its northern extremity, and a fixed white light at its southern extremity. Two yellow balls are also attached to its southern extremity. This structure could be a hazardous obstruction at night if its lights were to fail, especially since it is level with the water and not very visible.

In fact, photos of the floating structure taken during the site inspection corroborate the observations made by the officer in the departmental report. I disagree with the applicant's argument that the officer should have used a boat on the Chaudière River when making his observations. The choice of the appropriate means of inspection is at the administrative discretion of the departmental officer.

[18] Moreover, in his affidavit, the manager, Mr. Jones, supports the observations of Mr. Doyon, the Minister's officer, and designates the applicant's structure as a "work" rather than a "vessel":

> [TRANSLATION]
>
> 16. The work built or installed by Sylvio Thibeault at the mouth of the Chaudière River basin was a floating structure measuring approximately 6 metres in length and resembling a platform, submerged and anchored at the mouth of the Chaudière River basin, and barely visible to boaters.
>
> 17. Photos were taken of the work during the inspection on May 14, 2013, and are attached as Exhibit RJ-5 in support of my affidavit.
>
> 18. This work had not been designed and was not used for navigation on the sea or inland waters.
>
> 19. It did not have the stabilizing features of a vessel that could navigate and transport.

[19] Regarding the issue of the exact location of the floating structure, which appears to be contested here today by the applicant, he himself admitted in his letter of May 13, 2013, that it had been placed [TRANSLATION] "near the site picked by the Marina for Dock "B", on Lot C, of which he has exclusive ownership, in order to do work on his property" (emphasis added). The Minister therefore did not have any firm evidence that would enable him to conclude, as the

applicant today claims, that this effectively was a [TRANSLATION] "ship, boat or craft designed or used as a sea-going vessel or on inland waters". It should also be noted that on May 16, 2013, no specific information about the construction of the floating structure was available when the ministerial order was issued, so the physical description provided by Mr. Doyon in his inspection report, which is based on his personal observations, seems reasonable to me in this case. Moreover, the applicant's affidavits do not contain any specific description or information about the use of the floating structure, other than to designate it as a [TRANSLATION] "pontoon boat" measuring less than seven metres in length.

[20] But the applicant remains determined: the Act does not allow the ministerial interpretation. Only a "vessel" can be a [TRANSLATION] "ship, boat or craft". By the same logic, the Marina's docks B and D are "vessels". In support of his interpretation of the Act, the applicant refers to the comments by Justice Noël in a related case, where the Court refused to summarily strike out a pleading by the applicant: *3897121 Canada inc v. Marina de la Chaudière inc*, 2012 FC 889. However, that decision does not carry the weight attributed to it by the applicant. Justice Noël did not make a final determination on the issue of whether the Marina's docks are vessels or ships.

[21] To support his interpretation that a "work" cannot be a [TRANSLATION] "ship, boat or craft" even if the structure is anchored, the applicant referred, by analogy, to *Canada v Saint John Shipbuilding and Dry Dock Co*, (1981) 126 DLR (3d) 353, [1981] FCJ no 608 (FCA). The Federal Court of Appeal identified certain criteria for determining that an object that is a ship within the meaning of the *Federal Courts Act*, RSC 1985, c F-7 [FCA]: the object was built for

use on water; the object is capable of being moved from place to place and is so moved from time to time; the object is capable of carrying cargo or people and has in fact done so; and an object that is not capable of navigation itself and is not self-propelled can be recognized as being a ship. In that case, the Federal Court of Appeal concluded that a floating crane without any means of propulsion and without any independent means of navigation was a ship under the FCA. The applicant also referred to the judgment in *Seafarers International Union of Canada—CLC-AFL-CIO v. Crosbie Offshore Services Limited*, [1982] 2 FC 855 (FCA) at paragraph 19, where the Federal Court of Appeal concluded, in a case that involved determining whether the Canada Labour Relations Board had jurisdiction, that a self-propelled drilling rig was a ship.

[22] I do not believe that the case law referred to by the applicant is very helpful to us today. At the risk of repeating myself, the issue is not whether the applicant's floating structure can be called a ship when it is moved, but whether a floating platform that is anchored and moored can be designated as a work. But if we want to proceed by analogies, the overall approach used by the British Columbia Court of Appeal in *Salt Spring Island Local Trust Committee v. B & B Ganges Marina Ltd*, 2008 BCCA 544 at paragraphs 36 and 74 provides an opposite argument. The British Columbia Court of Appeal states that in order to determine whether an object is a "ship" or a "vessel" within the meaning of the *Canada Shipping Act*, RSC 1985, c S-9, the decision-maker must look at the definition in the Act, the object's physical characteristics, its previous use and the owner's intent. In fact, in that case, the British Columbia Court of Appeal determined that a floating barge anchored to a dock was not a ship. The same Court noted that physically, the barge had the characteristics of a ship, and was designed for navigation, but was

not used for navigation, and the owner's intent was to have it remain in place indeterminately. The applicant provides other pertinent examples. In *Thomas c. Todorovic*, 2013 QCCS 2807 at paragraph 36, the Quebec Superior Court concluded that a buoy attached by a rope to a boat was not a ship under the FCA, and in *Beaulne c. Martel*, 2010 QCCS 5550 at paragraph 8, the Quebec Superior Court concluded that an inner tube pulled by a jet ski was not a ship. As I said earlier, the intent is often the determinant, and I do not see how the applicant's floating structure can be designated a "vessel" without evidence of intent.

[23] In this case, I am satisfied that the ministerial designation as an [TRANSLATION] "unauthorized work" is consistent with the evidence and the purpose of the Act, which is to protect the public right to navigation. In *Sauvageau v The King*, [1950] SCR 664 at page 684, the Supreme Court stated that

> [TRANSLATION]
>
> [i]n adopting this Act, the Legislature clearly wished to release the Crown of the imperious obligation that rests primarily upon it to remove from navigable waters all obstructions that encumber it in order to ensure the safety of the public.

[24] In fact, in *Chalets St-Adolphe inc c. St-Aldophe d'Howard* (*Municipalité de)*, 2011 QCCA 1491 at paragraph 35, the Quebec Court of Appeal stated, [TRANSLATION] "It is also admitted that Parliament, in its capacity as protector of this right, has the necessary authority, in respect of any person whose activities interfere with navigation, to obtain the necessary injunctions to put an end to such an interference". This is what the ministerial order that is being contested seeks to do. In *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 SCR 3 at page 59, the Supreme Court of Canada indicated that the NWPA: " . . .

delegated to the Governor General in Council, and now the Minister of Transport, authority to permit construction of what would otherwise be a public nuisance in navigable waters". In this case, the applicant did not submit any application for approval of his floating platform at the mouth of the Chaudière River.

[25] In the end, I dismiss the applicant's interpretation that a work cannot be a ship, boat or craft (in French, "construction flottante"), because this would be contrary to the general purpose and the very wording of the definition of a "work" in section 2 of the Act. On the one hand, this definition is not exhaustive, as is evident from the phrase "'work' includes". On the other hand, there is no clear indication that a ship, boar or craft is excluded from the definition of a work. During the hearing, the applicant noted that the Minister frequently issues authorizations for ships, boats, craft and other floating structures that are deemed works, for instance wharfs for swimmers and jet skis. Thus, it was reasonable for the Minister to deem a floating structure to be a work under the Act.

[26] The Minister therefore had the authority to issue the ministerial order that is being contested. In closing, I would add that regardless of the designation given by the applicant, the outcome would have been the same if the Minister had deemed the floating structure to be a vessel. In fact, according to the evidence in the record, a [TRANSLATION] "pontoon boat" would constitute a [TRANSLATION] "hazardous obstruction" to navigation. Thus, the Minister would still have been able to order him to remove it under the NWPA.

Failure to consider the application of the exceptional provisions

[27] In the alternative, the applicant claims that the Minister committed a reviewable error by failing to consider the application of the exceptional provisions for docks, which do not require ministerial approval. The evidence is that the certified tribunal record does not contain an analysis of the criteria under the Order. Yet, these exceptional provisions are known to the Minister and should have automatically been considered by the decision-maker in assessing whether the applicant required authorization for his work.

[28] Subsection 5.1(1) of the Act states:

5.1 (1) Despite section 5, a work may be built or placed in, on, over, under, through or across any navigable water without meeting the requirements of that section if the work falls within a class of works, or the navigable water falls within a class of navigable waters, established by regulation or under section 13.	**5.1** (1) Par dérogation à l'article 5, il est permis de construire ou de placer un ouvrage dans des eaux navigables ou sur, sous, au-dessus ou à travers celles-ci sans se conformer aux obligations prévues à cet article si l'ouvrage ou les eaux navigables appartiennent à l'une des catégories établies en vertu des règlements ou de l'article 13.

[29] More specifically, section 3 of the Order designates docks as one of the categories in the exceptional provisions:

1. The following definitions apply in this Order.	**1.** Les définitions qui suivent s'appliquent au présent arrêté.
. . .	[…]
"dock" includes a wharf, a pier and a jetty.	"petit quai" S'entend notamment d'un quai, d'un môle ou d'une jetée.

. . .	[…]
3. Docks and boathouses are established as a class of works for the purposes of subsection 5.1(1) of the Act if	**3**. Les petits quais et les remises à embarcations sont établis comme catégorie d'ouvrages pour l'application du paragraphe 5.1(1) de la Loi si les conditions suivantes sont réunies:
(*a*) the works are at least 5 m from the adjacent property boundaries and property line extensions;	*a*) les ouvrages sont situés à une distance d'au moins 5 m des limites d'une propriété adjacente et du prolongement de la ligne formée par ces limites;
(*b*) the works are at least 10 m from any dock, boathouse or other structure that is fully or partially in, on or over the navigable waters;	*b*) ils sont situés à une distance d'au moins 10 m d'un petit quai, d'une remise à embarcations ou d'une autre structure qui sont situés, en totalité ou en partie, dans les eaux navigables, sur celles-ci ou au-dessus de celles-ci;
(*c*) the extremity of the works that is furthest from the land is at least 30 m away from any navigation channel;	*c*) l'extrémité des ouvrages au large est à une distance d'au moins 30 m de tout chenal de navigation;
(*d*) the works do not extend further in, on or over the navigable waters than any adjacent docks;	*d*) les ouvrages ne s'étendent pas, ni dans les eaux navigables, ni sur celles-ci, ni au-dessus de celles-ci, au-delà des petits quais adjacents;
(*e*) the works are not associated with any other proposed works, such as launch ramps, breakwaters, landfill, dredging and marinas; and	*e*) ils ne sont pas associés à d'autres ouvrages projetés, tels que des rampes de mise à l'eau, des brise-lames, des décharges, des travaux de dragage et des marinas;
(*f*) the works are not used for	*f*) ils ne sont pas utilisés pour

float planes or other aircraft equipped with floats.	des hydravions ou d'autres aéronefs munis de flotteurs.

[30] The respondent concedes that the Minister did not analyze the provisions in the Order, but argues that the application of the Order was never raised by the applicant, whereas in any case, the applicant's floating structure was not a "dock" under the Order, which means that the Minister was not required to analyze the exception.

[31] The applicant's arguments are not justified in this case, and I fully agree with the respondent's reasoning. The applicant did not allege in his formal notice of May 13, 2013 that the [TRANSLATION] "floating structure" was a "dock": rather, he characterized it as a [TRANSLATION] "ship". Imposing on the Minister an analysis of the Order would amount to imposing on him an obligation to consider every regulation or order made under the NWPA before making a decision, even if these regulations are clearly not applicable, and to indicate in his decision why each of these regulations was not applied. This would make no practical sense and has no place in the particular context of this case. I would add that, at first glance, the applicant's floating structure is neither a "wharf", a "jetty" nor a "pier" in the usual sense of these terms which appear in the definition of "dock" because the work consisted of wood planks level with the water, and nothing in the record indicated that it was used to moor ships or to load or unload cargo or passengers. Thus, the Order did not have to be considered by the officer.

No reasonable apprehension of bias

[32] Finally, the applicant alleges that the Minister's officer was biased in the inspection process and in issuing the ministerial order. This stems primarily from the fact that the inspection was done and the ministerial order was issued after the Marina filed a complaint. In this regard, the applicant is of the view that the ministerial order was issued because the approval of Dock B was about to be granted, and the applicant's pontoon needed to be removed so that the Marina could install Dock B. The applicant also alleges that the officer had prejudged the matter of the removal of the unapproved work, which is apparent from the fact that he observed the facts from the Marina grounds, which he used as the approximate coordinates, and that he immediately decided that the applicant's work had to be removed. According to the applicant, there is no reason why the Marina should have had more rights than the applicant, who is the exclusive occupant of this parcel of land, and yet the Minister clearly favoured the Marina to the detriment of the applicant. The applicant states that there was no urgent need to remove the floating structure because it did not constitute an obstruction to navigation, and that he had the necessary buoys and lights to make it visible.

[33] The respondent submits that the applicant did not meet the burden of demonstrating that there is a reasonable apprehension of bias. The Marina had already filed an application to install its work, Dock B. This in itself is a neutral fact. No conclusions can be drawn from this evidence. Even if the applicant is the exclusive occupant of the river bed, which is contested by the respondent, this has nothing to do with the issue of bias. On the other hand, the applicant placed himself in violation of the Act. There are no criteria of urgency or obstruction that must be met for the Minister to be able to issue a ministerial order under section 6 of the Act. Finally, the

Minister's decision would have been the same for any unauthorized work, even if there had been no application from the Marina under review.

[34] I dismiss all of the applicant's arguments. First, it is necessary to make a distinction between the legality of the ministerial order and its execution. The ministerial order clearly indicated that the Minister could order the removal of the unapproved work at the applicant's expense if the latter did not comply with the order. The timeframe between the issuance of the ministerial order and the solicitation to have the applicant's work removed was reasonable in this case.

[35] In addition, there is no evidence of bad faith. The applicant was unable to demonstrate in this case that the ministerial order was issued to accommodate the Marina or simply because it was what the latter wanted. The Minister had to review the merits of the Marina's complaint. The Minister started the process as soon as he became aware of the existence of an unapproved work in the Chaudière River. In some of the documents in the certified record, the Minister's officers refer to the fact that an application for Dock B is under review, but make no mention of the fact that this application had already been or would be approved. Moreover, contrary to the applicant's claims, nothing in the Act indicates that the Minister must take into consideration exclusive ownership or occupancy in considering unauthorized works.

[36] In conclusion, the applicant did not demonstrate that an ". . . informed person, viewing the matter realistically and practically" would have reason to fear that the decision would have

been made in a biased way (*Committee for Justice and Liberty et al. v. National Energy Board*, [1978] 1 SCR 369 at page 394).

Conclusions

[37] For these reasons, the application for judicial review will be dismissed. Given the outcome, the respondent is entitled to costs.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed with costs.

"Luc Martineau"

Judge

Certified true translation
Michael Palles

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-884-13
STYLE OF CASE:	SYLVIO THIBEAULT v. THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JANUARY 27, 2015
JUDGMENT AND REASONS:	MARTINEAU J.
DATED:	FEBRUARY 9, 2015

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