

Federal Court



Cour fédérale

**Date: 20210901**

**Docket: T-814-21**

**Citation: 2021 FC 913**

**Ottawa, Ontario, September 1, 2021**

**PRESENT: The Honourable Mr. Justice Roy**

**BETWEEN:**

**ARCELORMITTAL EXPLOITATION  
MINIÈRE CANADA S.E.N.C.**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**and**

**QUÉBEC MINING ASSOCIATION,  
MINING ASSOCIATION OF BRITISH  
COLUMBIA AND SASKATCHEWAN  
MINING ASSOCIATION**

**Intervenors**

**ORDER AND REASONS**

[1] A number of organisations seek to intervene in the case involving Arcelormittal Exploitation Minière Canada S.E.N.C (“Arcelormittal”) and the Attorney General of Canada. It is a judicial review application filed on May 21, 2021. It seeks a declaratory judgment concerning a proposed Direction of Environment and Climate Change Canada described in a Notice of intent to issue a direction with regards to the *Fisheries Act*, RSD, 1985 c F-14. The said proposed Direction is to Arcelormittal. The Applicant has indicated that it will challenge the constitutionality of the proposed Direction. A notice of Constitutional question, pursuant to rule 69 of the *Federal Courts Rules* (SOR/98-106), was issued on May 17, 2021. It raises division of powers issues. The Notice of constitutional question reads in part:

Le demandeur soumet que le caractère véritable des mesures 2) et 3) ne concerne pas l’exercice de la compétence fédérale en matière de pêcheries, mais plutôt celui de la compétence provinciale en matière de gestion des ressources naturelles non renouvelables.

Le demandeur soumet que la gestion de la fermeture de la mine et les questions purement opérationnelles qui en découlent constituent un exercice illégal de la compétence provinciale en matière de gestion des ressources naturelles non renouvelables par ECCC.

En pratique, les mesures demandées par ECCC constituent une incursion dans un régime complet constitué de deux lois provinciales adoptées par le Parlement du Québec, soit la Loi sur les mines et la Loi sur la qualité de l’environnement, qui confèrent au ministre de l’Environnement et la Lutte contre les changements climatiques (le « **MELCC** ») et au ministre de l’Énergie et des Ressources naturelles (le « **MERN** ») une compétence bien définie sur l’ensemble du cycle de vie d’une mine.

[2] The following entities wish to intervene in the case:

- The Mining Association of Canada
- The Association minière du Québec
- The Mining Association of British Columbia

- The Saskatchewan Mining Association

Collectively, they are referred to as the “Proposed Interveners”

[3] In his affidavit in support of the intervention, the Chief Executive Officer of the Mining Association of Canada stated that the “Proposed Interveners seek to make arguments in relation to the constitutional validity and applicability of the Contested Measures identified the Direction” (affidavit of Pierre Gratton, July 23, 2021, para 6). He also stated that they “can also provide additional insight into the scope and severity of the impairment and other legal and practical effects that the Contested Measures would have on the mining sector in Quebec as well as across Canada.

[4] Arcelormittal welcomes the intervention of the Proposed Interveners. The Attorney General of Canada does not oppose the intervention. The only issue before the Court is therefore under what terms and conditions should the intervention be granted.

[5] The Parties agreed that the written case for the Proposed Interveners is to be limited to 20 pages (rule 65). Oral submissions will not last more than one hour. The written submissions of the Applicant and the Proposed Interveners shall be served and filed before the written submissions on behalf of the Attorney General have to be served and filed with the Court.

[6] As for the parameters of submissions to be allowed on behalf of the Proposed Interveners, they are:

- (a) The pith and substance of the Contested Measures pertains to the management of non-renewable natural resources;

- (b) Mine closure requirements are the core of the provincial exclusive jurisdiction over the development, conservation and management of non-renewable natural resources;
- (c) The Contested Measures impair the basic, minimum and unassailable content of the provincial exclusive jurisdiction over the development, conservation and management of non-renewable natural resources;
- (d) The financing, regulatory and financial difficulties that would result from the Contested Measures in each provincial jurisdictions; the seriousness of the encroachment and how it impairs, if not sterilizes, the legislatures' exclusive constitutional competence;
- (e) The legal and practical implication of the Contested Measures are contrary to the principle of federalism underlying the Canadian Constitution; and
- (f) The Contested Measures would result in direct legal conflict with existing provincial mine closures requirements and generate financing, regulatory and financial difficulties.

[7] The Proposed Interveners seek to offer insights from their perspective. As was discussed during the hearing of the motion for leave to intervene, the intervention is not aimed at duplicating the record to be offered by the Applicant, but it is not meant to be open-ended either. To that end, the evidence to be offered by the Proposed Interveners is limited, with a measure of flexibility as to content, to the following:

- a. Financing, regulatory and financial difficulties that could result from the Contested Measures in each provincial jurisdiction;
- b. Potential conflict between the Contested Measures and existing provincial mine closure requirements;
- c. Potential implications of the Contested Measures for mine operators in Québec other than the Applicant as well as in other provinces; and

- d. Outlining the practices and applicable regulatory framework throughout Canada with regard to the mining reclamation obligations.

**ORDER in file T-814-21**

**THIS COURT ORDERS:**

1. The intervention of the Proposed Interveners is granted;
2. The intervention of the Proposed Interveners is limited to one memorandum of fact and law no longer than 20 pages. The Proposed Interveners shall be limited to oral submissions to last no more than one hour;
3. The intervention is granted in order for the Proposed Interveners to jointly offer submissions in line with, and limited to, the parameters identified at paragraph 6 of this Order;
4. The Proposed Interveners shall use the record adduced by the parties and are allowed to adduce further evidence in support of, and limited to, that which is stated at paragraph 7 of this Order;
5. Any document served on any party in this proceeding must also be served on the Proposed Interveners;
6. The Proposed Interveners may not seek costs or have costs awarded against them.
7. The style of cause of these proceedings is amended to add the Mining Association of Canada, the Québec Mining Association, the Mining Association of British Columbia and the Saskatchewan Mining Association as joint interveners, and hereinafter all documents shall be filed under the amended style of cause.

"Yvan Roy"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-814-21

**STYLE OF CAUSE:** ARCELORMITTAL EXPLOITATION, MINIÈRE  
CANADA S.E.N.C. v ATTORNEY GENERAL OF  
CANADA AND QUÉBEC MINING ASSOCIATION,  
MINING ASSOCIATION OF BRITISH COLUMBIA  
AND SASKATCHEWAN MINING ASSOCIATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** AUGUST 31, 2021

**ORDER AND REASONS:** ROY J.

**DATED:** SEPTEMBER 1, 2021

**APPEARANCES:**

|                              |                     |
|------------------------------|---------------------|
| Guillaume Pelegrin           | FOR THE APPLICANT   |
| Caroline Laverdière          | FOR THE RESPONDENT  |
| Jean Lortie<br>Maude Mercier | FOR THE INTERVENERS |

**SOLICITORS OF RECORD:**

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|--|---------------------|
| Fasken Martineau DuMoulin<br>S.E.N.C.R.L., s.r.l.<br>Barristers and Solicitors<br>Montréal, Quebec | FOR THE APPLICANT   |
| Attorney General of Canada<br>Montréal, Quebec   | FOR THE RESPONDENT  |
| McCarthy Tétrault LLP<br>Barristers and Solicitors   | FOR THE INTERVENERS |

Montréal, Quebec