

Federal Court



Cour fédérale

Date: 20240308

Docket: T-1107-23

Citation: 2024 FC 395

Ottawa, Ontario, March 8, 2024

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

JULIAN CLARK

Applicant

and

**ATTORNEY GENERAL OF CANADA, ISLANDS TRUST SALT SPRING
ISLAND LOCAL TRUST COMMITTEE, ROGERS COMMUNICATIONS INC,
CAPITAL REGION EMERGENCY SERVICE TELECOMMUNICATIONS,
AND CYPRESS LAND SERVICES**

Respondents

JUDGMENT AND REASONS

I. Overview

[1] Julian Clark is a resident of Salt Spring Island, British Columbia. He lives within 120 metres of a telecommunication tower [Tower] constructed by Rogers Communications Inc [Rogers] in 2023.

[2] Construction of the Tower was approved by the Minister of Innovation, Science and Economic Development [Minister or ISED] with the concurrence of the Salt Spring Island Local Trust Committee [Local Committee]. In response to pressure from members of the community, including Mr. Clark, the Local Committee purported to rescind its concurrence on March 22, 2022.

[3] ISED rejected the Local Committee's attempt to rescind its concurrence on the ground that Rogers had successfully completed the necessary public consultation preceding the Minister's approval. The Local Committee asked ISED to engage in dispute resolution to resolve the "impasse", but this was rejected on similar grounds.

[4] Mr. Clark seeks judicial review of ISED's refusal to engage in dispute resolution. The Local Committee filed a Notice of Appearance in this proceeding indicating that it intended to oppose the application. Shortly before this matter was scheduled to be heard, counsel for the Local Committee informed the Court and the parties that it would take no position on the application for judicial review.

[5] For the reasons that follow, Mr. Clark lacks standing to challenge ISED's refusal to engage in dispute resolution. Furthermore, ISED's refusal to engage in dispute resolution was reasonable. The application for judicial review is dismissed.

II. Background

A. *The Parties*

[6] For the past few years, Mr. Clark has been at the forefront of community opposition to construction of the Tower near his home on Salt Spring Island. His opposition has consisted of community organizing, lobbying of the Minister, Local Committee and Rogers, and direct action, including protests to block construction of the Tower.

[7] The Minister is responsible for the administration of the *Radiocommunication Act*, RSC 1985, c R-2 [Act]. Under s 5 of the Act, the Minister may approve sites on which radio apparatus, including antenna systems, may be located, and the erection of all masts, towers and other antenna-supporting structures:

5 (1) Subject to any regulations made under section 6, the Minister may, taking into account all matters that the Minister considers relevant for ensuring the orderly establishment or modification of radio stations and the orderly development and efficient operation of radiocommunication in Canada,

...

(f) approve each site on which radio apparatus, including antenna systems, may be located, and approve the erection of all masts, towers and other antenna-supporting structures; ...

5 (1) Sous réserve de tout règlement pris en application de l'article 6, le ministre peut, compte tenu des questions qu'il juge pertinentes afin d'assurer la constitution ou les modifications ordonnées de stations de radiocommunication ainsi que le développement ordonné et l'exploitation efficace de la radiocommunication au Canada :

...

f) approuver l'emplacement d'appareils radio, y compris de systèmes d'antennes, ainsi que la construction de pylônes, tours et autres structures porteuses d'antennes; ...

[8] The Local Committee was established in 1974 under the *British Columbia Islands Trust Act*, RSBC 1996, c 239. The Islands Trust Area encompasses the islands and waters between the BC mainland and southern Vancouver Island, including Howe Sound and north to Comox.

[9] Rogers is a federally regulated national cellular telephone network provider. It holds a number of spectrum licences for the use of frequencies on Salt Spring Island.

[10] Capital Region Emergency Service Telecommunications Inc [CREST] is an emergency communications network for the Capital Region of British Columbia, which includes Salt Spring Island. CREST's network is used by the Royal Canadian Mounted Police, the British Columbia Ambulance Service, British Columbia Conservation Officer Services, and local fire and emergency coordinators to ensure effective communications in urgent situations.

[11] Cypress Land Services Inc [Cypress] was retained by Rogers to assist with the process preceding the Minister's approval of its application to construct the Tower on Salt Spring Island.

B. *The Antenna Siting Policy*

[12] A proponent who wishes to construct a telecommunication tower must ordinarily comply with ISED's Client Procedures Circular CPC-2-0-03 [Circular]. The Circular requires that the proponent complete a public consultation process, unless one of the exclusions applies.

[13] Public consultation is conducted through the local Land Use Authority [LUA]. If the LUA has a consultation procedure, then that will be followed. Otherwise, the Circular provides a default procedure.

[14] Under s 4.3 of the Circular, public consultation is considered to be complete when the proponent has: (a) concluded its consultation with the LUA; (b) engaged in public consultation in accordance with the LUA's procedure or the Circular's default procedure; and (c) addressed "all reasonable and relevant concerns".

[15] According to s 4.2 of the Circular:

Examples of concerns that proponents are to address may include:

- Why is the use of an existing antenna system or structure not possible?
- Why is an alternate site not possible?
- What is the proponent doing to ensure that the antenna system is not accessible to the general public?
- How is the proponent trying to integrate the antenna into the local surroundings?
- What options are available to satisfy aeronautical obstruction marking requirements at this site?
- What are the steps the proponent took to ensure compliance with the general requirements of this document, including the *Impact Assessment Act*, Safety Code 6, etc.?

Concerns that are not relevant include:

- disputes with members of the public relating to the proponent's service, but unrelated to antenna installations
- potential effects that a proposed antenna system will have on property values or municipal taxes

- questions whether the *Radiocommunication Act*, this document, Safety Code 6, locally established by-laws, other legislation, procedures or processes are valid or should be reformed in some manner

[16] Dispute resolution is addressed in s 5 of the Circular:

The dispute resolution process is a formal process intended to bring about the timely resolution where the parties have reached an impasse.

Upon receipt of a written request from a stakeholder other than the general public asking for ISED intervention concerning a reasonable and relevant concern, ISED may request that all involved parties provide and share all relevant information. ISED may also gather or obtain other relevant information and request that parties provide any further submissions if applicable. ISED will, based on the information provided, either:

- make a final decision on the issue(s) in question, and advise the parties of its decision or
- suggest the parties enter into an alternate dispute resolution process in order to come to a final decision; should the parties be unable to reach a mutually agreeable solution, either party may request that ISED make a final decision

Upon resolution of the issue under dispute, the proponent is to continue with the process contained within this document as required.

C. *The Tower Project*

[17] In or around 2015, Rogers identified an opportunity to improve cellular coverage on Salt Spring Island and the surrounding area. TELUS, another cellular telephone network provider, had previously constructed a telecommunication tower on the island. However, Rogers considered the existing tower to be incapable of supporting the latest hardware to improve network quality.

[18] At the same time, CREST was seeking to remedy a gap in its coverage on the northwest side of Salt Spring Island. This gap hampered the effective response of emergency services in the area. CREST also considered co-location with the TELUS tower, but found this to be inadequate.

[19] In 2020, Rogers and CREST began planning the construction of the new Tower beside the existing TELUS tower. The Tower would be taller and capable of supporting Rogers' new hardware.

D. *The Consultation and Approval Process*

[20] On May 6, 2020, Cypress enquired whether the Local Committee had a consultation process that might replace the default procedure provided by the Circular. The Local Committee responded on May 11, 2020:

[...] the short answer to your question is no, the [Local Committee] has not adopted a telecommunication policy that would replace the consultation methods as outlined in the CPC. However, there are some guideline documents that have been produced that may be of use to you [...]

[21] According to an information package prepared by Cypress on November 19, 2020, titled "ROGERS Telecommunications Facility Proposal":

The Islands Trust does not have an adopted telecommunications policy applicable to privately owned land, although they do have a draft Model Public Consultation Protocol for Local Trust Areas and have recommended that the draft protocol and additional consultation be followed. Please consider this Information Package the Pre-consultation stage with Islands Trust. Once comments from Island Trust are received, an Application Submission will be

required. As we understand it, the Public Consultation process will include all property owners and residents with a notification distance of 10 metres for every one metre in height for the structure (those within 40 metres), 1000 metre notification to neighbouring land-use jurisdictions, emergency service providers, school districts and a Newspaper notice in at least two editions of a local newspaper. A public Information Meeting may be required, which may be augmented with an online forum.

[22] The default procedure is set out in s 4.2 of the Circular, and contemplates that a proponent:

1. provides written notification to the public, the land-use authority and Industry Canada of the proposed antenna system installation or modification (i.e. public notification);
2. engages the public and the land-use authority in order to address relevant questions, comments and concerns regarding the proposal (i.e. responding to the public); and
3. provides an opportunity to the public and the land-use authority to formally respond in writing to the proponent regarding measures taken to address reasonable and relevant concerns (i.e. public reply comment).

[23] Rogers determined that it should notify property owners within a distance of ten times the tower height. This exceeded the requirements of both the Circular's default procedure and the Local Committee's draft procedure. Rogers allocated approximately five weeks for public comment, which exceeded the minimum time period of 30 days.

[24] Information was sent to property owners on March 5, 2021, and a notice of public consultation was placed in a local newspaper. More than 400 pieces of correspondence, including initial comments and questions, as well as responses to the answers provided, were submitted during the consultation process. All input was anonymized when submitted to the

Court, so it is unclear whether Mr. Clark participated. However, it appears he had an opportunity to do so.

[25] Rogers sought the Local Committee's concurrence on May 31, 2021. The request for concurrence stated that Rogers and CREST had completed the public consultation process following the Local Committee's draft procedure, but both parties now maintain this was an error. In fact, Rogers followed the Circular's default procedure with additional elements taken from the Local Committee's draft procedure, as confirmed by the Local Committee at the time.

[26] The request for the Local Committee's concurrence included a description of the steps Rogers had taken to notify and consult members of the public; a summary of the comments received and Rogers' responses; and CREST's statement of support for the project.

[27] A staff report prepared for the Local Committee dated July 27, 2021 stated that: "[...] the proponent has undertaken an enhanced consultation, using the default ISED CPC-2-0-03 protocol as well as guidelines extracted from the Model Strategy for Antenna Systems [...]". The Local Committee granted concurrence at a meeting on July 27, 2021, and confirmed this in writing to Rogers and the Minister by letter dated August 19, 2021.

E. *Concerned Residents of Canvasback*

[28] In the summer of 2021, a group calling themselves "Concerned Residents of Canvasback" [Concerned Residents], named for the road on which the Tower was to be built,

joined together to express opposition to the project. Mr. Clark was an active member of the group.

[29] On December 13, 2021, the law firm Beddoes Litigation sent a letter to ISED asking that its approval of the Tower site be delayed pending further steps and investigations by the Concerned Residents, “which may include seeking a public law remedy via judicial review”. The Concerned Residents claimed that their reasonable and relevant concerns about the Tower were not properly addressed by the Local Committee and Rogers; there were serious deficiencies in the process; and Rogers had made materially false assertions to the Local Committee in order to obtain its concurrence.

[30] In correspondence dated February 8, 2022, ISED informed Beddoes Litigation that it had reviewed the public consultation process and was satisfied that all necessary regulatory requirements had been met. The Concerned Residents did not seek judicial review of this determination.

[31] On April 6, 2022 the Local Committee informed ISED and Rogers that it had voted to rescind its support for the Tower on March 22, 2022. ISED conducted another review of the consultation process and met with the Local Committee a number of times.

[32] By letter dated May 17, 2022, ISED responded to the Local Committee as follows:

Please be informed that our office does not support your decision to rescind the concurrence.

Since the issuance of concurrence, by the Salt Spring Island Local Trust Committee (SS LTC), the only change in circumstances is the SS LTC's November 9, 2021 adoption of a new antenna siting protocol. Given the date of the policy adoption, it is not to be retroactively applied.

Our review of the conduct of the consultation process also found that Rogers was in compliance with Innovation Science and Economic Development's default process. SS LTC's July 27, 2021 concurrence also implied its satisfaction with how the process was conducted and its conclusion.

[33] The Local Committee did not seek judicial review of ISED's determination that Rogers had complied with the default process prescribed by the Circular.

[34] On July 7, 2022, Rogers hosted a virtual town hall and attempted to answer residents' outstanding questions regarding the Tower. Rogers hoped to begin construction of the Tower on July 25 and finish by September 20, 2022. However, in July and August some of the Concerned Residents protested at the intersection leading to the proposed site and blocked construction. Rogers postponed construction to March 2023.

F. *The Request for Dispute Resolution*

[35] On November 8, 2022, the Local Committee informed ISED and Rogers that it had passed a resolution rescinding its concurrence with the construction of the Tower. The Local Committee requested dispute resolution in accordance with the Circular.

[36] Following an election and change in the composition of the Local Committee, the new Chair wrote to ISED and Rogers on February 14, 2023 confirming the resolution to rescind concurrence. The Local Committee continued to object to Rogers' adherence to the default procedure for public consultation, rather than the draft procedure prepared by the Local Committee.

[37] On April 4, 2023, the Local Committee formally requested dispute resolution under s 5 of the Circular regarding its decision to rescind its concurrence with the Tower proposal.

III. Decision Under Review

[38] ISED's decision was communicated to the Local Committee on April 27, 2023, and reads in relevant part:

After reviewing your request, ISED has determined that a dispute resolution process is not warranted for the proposed tower. In making this decision, ISED relied on information provided by both the proponent and LUA to address the concerns identified in your recent letter:

- In May 2020, the LUA confirmed that it had not adopted a relevant telecommunications tower public consultation process and that the default public consultation process in the CPC should be used.
- In early 2021, at the request of the LUA, Rogers agreed to go beyond the minimum requirements of the CPC by increasing the notification area and including additional stakeholders.

In May 2021, after the consultation, Rogers sent a request for concurrence to the LUA which the LUA provided via a written letter dated August 19, 2021. In light of the above, ISED has determined that Rogers successfully completed the consultation

process for this site proposal, by satisfying ISED's Default Public Consultation Process pursuant to Section 4 of the CPC.

The Dispute Resolution Process under Section 5 of CPC-2-0-03 is only applicable when Land-Use Authorities and tower proponents have reached an impasse regarding an ongoing public consultation. Since the relevant consultation process was successfully completed in the summer of 2021, ISED will not take steps to commence a Dispute Resolution Process in accordance with your request.

IV. Issues

[39] This application for judicial review raises the following issues:

- A. Does Mr. Clark have standing to bring this application?
- B. Was ISED's decision reasonable?
- C. Was ISED's decision procedurally fair?

V. Analysis

A. *Does Mr. Clark have Standing to Bring this Application?*

[40] Subsection 18.1(1) of the *Federal Courts Act*, RSC 1985, c F-7 provides as follows:

An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.

Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.

[41] Mr. Clark claims to have standing to bring this application as someone “directly affected” by any decision the Court may make. In the alternative, he says he has public interest standing.

[42] For a party to be “directly affected” by an application for judicial review, the matter must be one that has the potential to adversely affect the party’s legal rights, to impose legal obligations on the party, or to prejudicially affect the party directly (*Soprema Inc v Canada (Attorney General)*, 2021 FC 732 at para 28).

[43] The Circular limits the ability to request dispute resolution to “a stakeholder other than the general public”. Mr. Clark is not a “stakeholder” as defined in the Circular, but a member of the general public.

[44] If the application for judicial review were to succeed, then the result would ordinarily be an order requiring ISED to reconsider the refusal to engage in dispute resolution. If ISED were to initiate dispute resolution, then the affected parties would be Rogers, CREST and the Local Committee. Mr. Clark would have no right to participate in the dispute resolution, except to the limited extent that he and other members of the public could prevail on the Local Committee to advance their interests. The process would not adversely affect his legal rights, impose legal obligations on him, or prejudicially affect him directly.

[45] The Circular provides in s 5 that, as an alternative to dispute resolution process, the Minister or ISED may “make a final decision on the issue(s) in question, and advise the parties of its decision”. Again, this would not affect Mr. Clark’s legal rights, impose legal obligations on

him or prejudicially affect him directly in the legal sense. His interest is limited to his role as a member of the public. Like other members of the public, his interests are represented in this matter by the Local Committee.

[46] Mr. Clark notes that in *Petukhov v Canada (Attorney General)*, 2020 FC 580 [*Petukhov*], no question was raised regarding the standing of members of the public to challenge the Minister's approval of an application by a cable television and telecommunications company to construct an antenna tower. Justice Richard Bell did not directly address the question of standing in that decision, which concerned an allegation of inadequate public consultation.

[47] ISED and Rogers say this application for judicial review is distinct from the one contemplated in the correspondence from Beddoes Litigation. That application, if it had been commenced, would have more closely resembled the one in *Petukhov*, and might not have raised the same concern about standing. I agree.

[48] Mr. Clark also claims to have public interest standing. The test to determine whether a party has public interest standing is the following (*Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 [*Downtown Eastside*] at para 37):

In exercising the discretion to grant public interest standing, the court must consider three factors: (1) whether there is a serious justiciable issue raised; (2) whether the plaintiff has a real stake or a genuine interest in it; and (3) whether, in all the circumstances, the proposed suit is a reasonable and effective way to bring the issue before the courts. [...] The plaintiff seeking public interest standing must persuade the court that these factors, applied purposively and flexibly, favour granting standing. All of the other

relevant considerations being equal, a plaintiff with standing as of right will generally be preferred. [Citations omitted]

[49] In *Downtown Eastside*, the Supreme Court of Canada acknowledged the concern for conserving scarce judicial resources and the need to screen out “the mere busybody”. In *Forest Ethics Advocacy Association v Canada (National Energy Board)*, 2014 FCA 245, the Federal Court of Appeal said the following (at para 33):

Indeed, in this application and on this record, Forest Ethics is a classic “busybody”, as that term is understood in the jurisprudence. Forest Ethics asks this Court to review an administrative decision it had nothing to do with. It did not ask for any relief from the Board. It did not seek any status from the Board. It did not make any representations on any issue before the Board. In particular, it did not make any representations to the Board concerning the three interlocutory decisions.

[50] Without intending any disrespect towards Mr. Clark, he too is a “busybody” as that term is understood in the jurisprudence. He seeks to intervene in a dispute between the Local Committee, Rogers and CREST that none of these parties has any further interest in pursuing.

[51] One of the considerations that informs the Court’s assessment of whether a party has public interest standing is whether, in all the circumstances, “the proposed suit is a reasonable and effective way to bring the issue before the courts”. All other relevant considerations being equal, a party with standing as of right will generally be preferred. Here, the party with a right to challenge the Minister’s refusal to engage in dispute resolution is the Local Committee. The Local Committee initially indicated in its Notice of Appearance that it intended to oppose Mr. Clark’s application for judicial review. Ultimately, it took no position.

[52] In all of the circumstances, I conclude that Mr. Clark has neither personal standing nor public interest standing to bring this application for judicial review. The proper Applicant is the Local Committee, which has declined to participate.

[53] The application for judicial review must be dismissed on this ground alone. However, as the merits of ISED's decision were fully argued, I will comment briefly on whether the decision was reasonable and procedurally fair.

B. *Was ISED's Decision Reasonable?*

[54] Reasonableness is the presumptive standard of review for administrative decisions (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 23, 25). The Court will intervene only where "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[55] The criteria of "justification, intelligibility and transparency" are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[56] ISED declined to engage in dispute resolution primarily on the ground that an “impasse”, as that term is used in the Circular, can occur only in a consultation that is ongoing. There can be no “impasse” in a consultation that has been successfully completed.

[57] While the Circular does not define “impasse”, the ordinary meaning of the word implies a situation where progress can no longer be made. Once a consultation has been completed in accordance with the applicable policy, it is reasonable to conclude that an impasse is no longer possible. This is the position advocated by ISED, Rogers and CREST.

[58] ISED and Rogers both emphasize the importance of timely consultation and construction of telecommunication towers. According to s 1.3 of the Circular: “If the requirements of this document are satisfied and the proposal proceeds, then, under step 5, construction of the antenna system must be completed within **three years** of conclusion of consultation” [emphasis original]. An interpretation of “impasse” that applies to public consultations after they have been completed and to construction projects after they have been approved would clearly frustrate this objective.

[59] Mr. Clark argues that the Local Committee’s concurrence was obtained through deception, and it was therefore unreasonable for ISED to find that public consultation had been completed in a satisfactory manner. Mr. Clark maintains that Rogers agreed to abide by the Local Committee’s draft procedure, but followed the Circular’s default procedure instead.

[60] In fact, Rogers agreed to follow the Circular's default procedure with additional elements taken from the Local Committee's draft procedure. CREST notes that these additional elements were unspecified, but appear to have concerned the geographical area of consultation (ten times the height of the Tower) and the consultation period (five weeks rather than the minimum 30 days).

[61] The Circular is a policy instrument that establishes the procedure for obtaining ministerial approval of telecommunication towers under s 5(1)(f) of the Act. The language of that provision confirms Parliament's grant of discretion to the Minister. Deference is owed to ISED's interpretation of its own policy instrument.

[62] ISED's refusal to engage in dispute resolution concerning a public consultation process that had already been completed in accordance with the Circular, and a project that had previously been approved, was reasonable. In all of the circumstances, it was open to ISED to find there was no "impasse" within the meaning of the Circular that required the Minister's intervention.

C. *Was ISED's Decision Procedurally Fair?*

[63] Procedural fairness is subject to a reviewing exercise best reflected in the correctness standard, although strictly speaking no standard of review is being applied (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). The ultimate

question is whether an applicant had a full and fair chance to be heard (*Siffort v Canada (Citizenship and Immigration)*, 2020 FC 351 at para 18).

[64] Mr. Clark claims that ISED's decision was tainted by bias because a former Director of Coastal Offices for ISED, who held this title as recently as January 2021, now works as the Director of Government Relations, Real Estate and Municipal Affairs at Rogers.

[65] ISED asserts that the threshold for establishing bias is high, given the seriousness of the allegation. The mere fact that a Rogers employee previously worked for ISED is insufficient to meet this threshold. Mr. Clark has "not articulated any specific bias grounded in fact upon which to justify a concern about the decisions made".

[66] Rogers notes that "mere suspicion of bias is not enough"; moreover, public servants are presumed to be impartial and independent (citing *Sagkeeng First Nation v Canada (Attorney General)*, 2015 FC 1113 at paras 104-105).

[67] The classic test for a reasonable apprehension of bias is that stated by the Supreme Court of Canada (*per de Grandpré J*) in *Committee for Justice and Liberty et al v National Energy Board et al*, [1978] 1 SCR 369, at page 394:

[...] the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically -- and having thought the matter through -- conclude. Would he think that it is more likely than not that [the decision maker], whether consciously or unconsciously, would not decide fairly".

[68] The Supreme Court also held that the grounds for the apprehension of bias must be “substantial” (at page 395).

[69] From the limited evidence adduced in this proceeding, it appears that the ISED employee in question was extensively involved in the consultation process. However, Mr. Clark has not explained the role this person may have played in the decision under review. Nor has he demonstrated how a reasonable person might conclude that the ISED official who made the decision did not decide the matter fairly.

[70] Mr. Clark’s allegation of bias falls far short of the necessary threshold.

VI. Conclusion

[71] The application for judicial review is dismissed.

[72] The Minister asks that he be substituted in the style of cause with the Attorney General of Canada (citing Rule 303 of the *Federal Courts Rules*, SOR/98-106). The style of cause will be amended accordingly.

VII. Costs

[73] ISED and Rogers seek costs. CREST does not.

[74] Mr. Clark was unrepresented in this proceeding. He demonstrated an impressive command of the facts and evidence, and his arguments were well considered.

[75] Nevertheless, Mr. Clark caused the Respondents to incur considerable expense in their defence of ISED's decision. This Court has found that he lacked standing to challenge the decision, and the decision itself was reasonable.

[76] ISED and Rogers each seek costs in the all-inclusive lump sum of \$3,000. This is a modest contribution to the costs these Respondents have actually incurred, and is reasonable in the circumstances. Accordingly, ISED and Rogers are each entitled to costs in the amount of \$3,000, for a total costs award of \$6,000.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The Minister of Innovation, Science and Economic Development is substituted in the style of cause with the Attorney General of Canada, with immediate effect.
3. Costs are awarded to the Respondents Attorney General of Canada and Rogers Communications Inc in the amount of \$3,000 each, for a total costs award of \$6,000.

“Simon Fothergill”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1107-23

STYLE OF CAUSE: JULIAN CLARK v ATTORNEY GENERAL OF CANADA, ISLANDS TRUST SALT SPRING ISLAND LOCAL TRUST COMMITTEE, ROGERS COMMUNICATIONS INC, CAPITAL REGION EMERGENCY SERVICE TELECOMMUNICATIONS, AND CYPRESS LAND SERVICES

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA AND BY VIDEOCONFERENCE

DATE OF HEARING: FEBRUARY 1, 2024

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: MARCH 8, 2024

APPEARANCES:

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