Date: 20070725

Docket: T-658-07

Citation: 2007 FC 775

Ottawa, Ontario, July 25, 2007

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

ROBERT ARSENAULT, JOSEPH AYLWARD, WAYNE AYLWARD, JAMES BUOTE, BERNARD DIXON, CLIFFORD DOUCETTE, KENNETH FRASER, TERRANCE GALLANT, DEVIN GAUDET, PETER GAUDET, RODNEY GAUDET, TAYLOR GAUDET, CASEY GAVIN, JAMIE GAVIN, SIDNEY GAVIN, DONALD HARPER, CARTER HUTT, TERRY LEWELLYN, IVAN MACDONALD, LANCE MACDONALD, WAYNE MACINTYRE, DAVID MACISAAC, GORDON MACLEOD, DONALD MAYHEW, AUSTIN O'MEARA

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] By motion made in writing without personal appearance pursuant to Federal Courts Rule 369, the Attorney General of Canada, on behalf of the Minister of Fisheries and Oceans, seeks an order to have the Applicants' application for judicial review struck. His position is that the decision in question was issued on 30 March 2006. Since section 18.1 of the *Federal Courts Act* requires that an application for judicial review be made within 30 days after communication thereof, and since

the Applicants have not sought an order extending that time, the application is doomed to fail, as it was only filed 20 April 2007.

[2] The Applicants, as Respondents on this motion, submit that the matter it should not be dealt with in writing. They suggest that the interests of justice would be better served by an oral hearing. In any event, in their notice of application for judicial review they allege that the decision in question was made by the Minister of Fisheries and Oceans on 31 March 2007, and that therefore the application for judicial review was timely when filed 20 April 2007.

[3] As I have decided to dismiss the motion, without prejudice to it being argued during the judicial review hearing, the Applicants' request for an oral hearing is moot.

[4] This case is about snow crabs and fishing licenses. On 30 March 2006, the Minister, the Honourable Loyola Hearn, approved a management plan which included financial assistance to traditional crabbers to offset quota reductions to accommodate First Nations under what is called the Marshall Response Initiative. Thereafter, the Applicants were sent unsigned "A Financial Assistance Agreement to Provide Access to Snow Crab for Aboriginals, Areas 12, 18, 25-26". The Agreement, if signed, provided the Department of Fisheries and Oceans would make voluntary payments in respect of the recipient relinquishing his or her eligibility to receive certain percentages of the snow crab allocation relating to certain licenses. The Agreement also provided that it was the recipient's responsibility to obtain independent, including legal, advice and:

> In consideration for the payments herein, the Recipient here releases Her Majesty the Queen in Right of Canada and Her Ministers, officers, employees and agents, from any and all claims, suits, actions or demands of any nature that the Recipient has or may have and that are related to or arise from this Agreement.

[5] The Applicants took issue with the draft agreement. Through counsel they stated they wished to receive the benefits to which they claim to be entitled but that they did not agree that they had been fully compensated for their loss of quota and that they were not prepared to relinquish all their rights to the quota thus taken away and their right to claim for additional compensation. Counsel asked for a reply prior to 31 March 2007, adding that failure to pay the benefits would be considered by them as a refusal of their demand. Counsel for the Department of Fisheries and Oceans replied on 22 March 2007 that "everyone who was eligible to benefit from the "Marshal Program" must accept the terms of this agreement". They must comply with that requirement prior to 31 March 2007. Afterwards the financial assistance would no longer be available.

[6] The record, as it currently stands, does not indicate that the plan approved by the Minister in March 2006 included a hold-harmless agreement. Certainly, there is no evidence that the Applicants were put on notice at that time. Indeed, from the portions of the record referred to, it is certainly arguable that the Applicants are correct in their submission that the decision under judicial review was one made on or about 31 March 2007, or perhaps 22 March 2007. If so, their application was timely when filed.

[7] A pleading should not be struck and a proceeding dismissed unless it is "plain and obvious" that it is without merit (*Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959).

[8] Furthermore, applications such as this, as opposed to actions, are supposed to be heard in a summary way. While the Court has the jurisdiction to dismiss an application which is bereft of the possibility of success, the normal, and better, course is for a respondent to argue the point at the hearing of the application itself, rather than to bring on a motion to strike (*David Bull Laboratories (Canada Inc.) v. Pharmacia*, [1995] 1 F.C. 588 (FCA)).

ORDER

The motion is dismissed with costs. The respondent shall have 30 days to serve and file his affidavit evidence, with subsequent delays adjusted accordingly.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-658-07
STYLE OF CAUSE:	ROBERT ARSENAULT, and others **v.** ATTORNEY GENERAL OF CANADA

MOTION DEALT WITH IN WRITING IN VIRTUE OF R. 369 OF THE *FEDERAL COURTS RULES*.

REASONS FOR ORDER And ORDER:	HARRINGTON J.
DATED:	25 JULY 2007

APPEARANCES:

Kenneth L. Godfrey Lindsay A. Wadden	FOR THE APPLICANTS
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SOLICITORS OF RECORD:

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