

Date: 20081014

**Docket: T-215-08
T-1358-08**

Citation: 2008 FC 1159

Ottawa, Ontario, October 14, 2008

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY

Applicant

and

**HER MAJESTY THE QUEEN, as represented by
Public Works and Government Services Canada**

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant (Halifax) applied for consolidation of two judicial reviews pursuant to Rule 105 and for directions pursuant to Rule 54. This motion has been opposed by the Respondent (Minister).

[2] In the first proceeding, T-215-08, Halifax challenges the recommendation by the Payment in Lieu of Taxes Dispute Advisory Panel (Panel) to the Minister regarding the land value at the Halifax Citadel. In the second proceeding, T-1358-08, Halifax contests the Minister's decision which accepted the Panel's recommendation to the Minister.

[3] The Respondent's position can be fairly summarized as one of principle – that the first proceeding is moot because it is subsumed in the second and that consolidation under these circumstances is an unhelpful precedent which would favour multiple proceedings.

[4] The Applicant, while accepting that the Panel's recommendation forms a core aspect of the second proceeding, claims that the recommendations stand on their own legal footing as a decision which is open to challenge.

[5] There is no question that the two proceedings are substantially connected and are close to the same stage of readiness for hearing subject to the filing of memoranda of argument in respect of the second proceeding. The parties are ready to proceed on November 19, 2008 in respect of both.

[6] The Respondent's reliance on *Jada Fishing Co. v. Canada (Minister of Fisheries and Oceans)*, 2002 FCA 103, is premature. While that decision held that advice to the Minister of Fisheries and Oceans was not amenable to judicial review, the application of that decision in the context of the present motion would require this Court to determine a critical point in the first proceeding, whether there is a decision to be reviewed, without a full hearing on the issue.

[7] The effect of the Respondent's position would be akin to striking a judicial review on a preliminary motion. While the Applicant may face difficulties with respect to the legal effect of the Panel's recommendation, it is entitled to make those arguments.

[8] The Respondent's reliance on *John E. Canning Ltd. v. Tripap Inc.*, [1999] F.C.J. No. 715 (QL), is likewise misplaced as that case dealt with an action and third parties' claims where there was no commonality of legal and factual issues in those two actions.

[9] The Respondent may be correct that the second proceeding may dispose of the first but that merely shows the commonality of facts and law.

[10] The guiding principles of avoiding multiplicity of proceedings and the promotion of expeditious and inexpensive determination of proceedings govern consolidation motions.

The policy objectives underlying consolidation are the avoidance of a multiplicity of proceedings and the promotion of expeditious and inexpensive determination of those proceedings. *John E. Canning Ltd. v. Tripap Inc.*, [1999] F.C.J. No. 715 at paragraph 27. In deciding whether to consolidate proceedings the Court will consider whether there are common parties, common legal and factual issues, similar causes of action, parallel evidence and the likelihood that the outcome of one case will resolve the other case. *Eli Lilly and Co. v. Apotex Inc.* (1994), 55 C.P.R. (3d) 429 and *Canning, supra*. In addition, proceedings should not be consolidated if one of the parties would be prejudiced. *Eli Lilly, supra*.

Global Restaurant Operations of Ireland Ltd. v. Boston Pizza Royalties Limited Partnership, 2005 FC 317 at para. 11

[11] As indicated earlier, the two proceedings are close to the same stage of preparation.

[12] While there are some differences in the legal issues in the two proceedings potentially as to the standard of review, the commonality of facts and core issues as to the basis of whichever decision is under attack are sufficient for these purposes.

[13] There is little, if any, real prejudice to the parties by some form of consolidation. However, the Court is concerned that the two “decisions” be kept separate for purposes of analysis. There is little or no precedential value in any consolidation order as each case turns to such a degree on its own facts.

[14] The fact that the second proceeding (which the Respondent describes as allowing for review of the Panel’s recommendations indirectly and the Minister’s decision directly) may effectively dispose of the first proceeding, speaks to some form of consolidation.

[15] In order to preserve the distinctiveness of the two “decisions” to be reviewed, I will not order a common record or common argument but will hear the cases one after the other. The second proceeding will be heard first and if there are any issues left to discuss in the first proceeding, they can be dealt with at that time.

[16] To postpone the first proceeding, as suggested by the Respondent, complicates having the matter heard by the same judge or is wasteful of judicial resources if heard by another judge at a later date.

[17] Therefore, it is ordered that:

- (1) T-1358-08 will be heard in Halifax commencing at 0930 on November 19, 2008 to be followed by T-215-08. By setting the date in this Order, there is no need to requisition a hearing date or to pay a separate fee.
- (2) The parties may in respect of T-1358-08 refer to the materials in the Record of T-215-08, both in memoranda and oral argument.
- (3) The Applicant shall file its Record in T-1358-08 by October 31, 2008 and the Respondent by November 14, 2008.
- (4) The parties may seek on an informal basis any further directions as may be necessary.
- (5) Costs of this motion shall be in the cause.

ORDER

THIS COURT ORDERS that:

- (1) T-1358-08 will be heard in Halifax commencing at 0930 on November 19, 2008 to be followed by T-215-08. By setting the date in this Order, there is no need to requisition a hearing date or to pay a separate fee.
- (2) The parties may in respect of T-1358-08 refer to the materials in the Record of T-215-08, both in memoranda and oral argument.
- (3) The Applicant shall file its Record in T-1358-08 by October 31, 2008 and the Respondent by November 14, 2008.
- (4) The parties may seek on an informal basis any further directions as may be necessary.
- (5) Costs of this motion shall be in the cause.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-215-08 and T-1358-08

STYLE OF CAUSE: HALIFAX REGIONAL MUNICIPALITY

and

HER MAJESTY THE QUEEN, as represented by
PUBLIC WORKS AND GOVERNMENT SERVICES
CANADA

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: October 9, 2008

**REASONS FOR ORDER
AND ORDER:** Phelan J.

DATED: October 14, 2008

APPEARANCES:

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Mr. Joseph E. Burke

Mr. Reinhold M. Endres, Q.C. FOR THE RESPONDENT

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