



Date: 20090427

Docket: T-884-08

Citation: 2009 FC 418

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 27, 2009

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

**ASSOCIATION DES CRABIERES ACADIENS INC., A
COMPANY DULY INCORPORATED UNDER THE LAWS OF
NEW BRUNSWICK, JOËL GIONET, IN HIS PERSONAL
CAPACITY AND IN HIS CAPACITY AS PRESIDENT OF
THE ASSOCIATION DES CRABIERES ACADIENS INC.,
ASSOCIATION DES CRABIERES GASPÉSIENS INC., AN
INCORPORATED ASSOCIATION REGISTERED UNDER
THE LAWS OF QUEBEC, MARC COUTURE, IN HIS
PERSONAL CAPACITY AND IN HIS CAPACITY AS
ADMINISTRATOR OF THE ASSOCIATION DES CRABIERES
GASPÉSIENS INC., ASSOCIATION DES CRABIERES DE LA
BAIE, AN UNINCORPORATED ASSOCIATION
REGISTERED UNDER THE LAWS OF QUEBEC, DANIEL
DESBOIS, IN HIS PERSONAL CAPACITY AND IN HIS
CAPACITY AS ADMINISTRATOR OF THE ASSOCIATION
DES CRABIERES DE LA BAIE, AND ROBERT F. HACHÉ**

Appellants

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an appeal of the decision of Prothonotary Morneau on October 3, 2008, in docket T-884-08, in which he dismissed the appellants' motion under Rule 317 of the *Federal Courts Rules* to request material that was not in their possession but rather in the decision-maker's possession when he made his decision. The appeal was examined at the same time as the appeal of Prothonotary Tabib's decision on August 18, 2008, in *Association des crevettiers acadiens du golfe Inc. et al v. Attorney General of Canada*, 2009 FC 417, with docket number T-725-08.

[2] The general legal principles cited by the Court in dismissing the appeal in 2009 FC 417 also apply in this case. However, the facts differ in that this case involves a different fisheries plan personally approved by the Minister of Fisheries and Oceans.

[3] The appellants in this case filed an application for judicial review involving the Minister's implementation of the Fisheries Management Plan - Snow crab in the Southern Gulf of Saint Lawrence for the 2008 season, which was publicly announced by a Notice to Fish Harvesters published by Fisheries and Oceans Canada on May 7, 2008. The Plan established the quotas for the provinces, First Nations, the traditional fleet and new access fleets, maintained the 2017 management measures and introduced new measures.

[4] Overall, the purpose of the application is to have the Court declare the Minister's decision [TRANSLATION] "illegal and void": a) to modify the closure period for fishing areas 12, 18, 25 and 26; b) to distribute the "total allowable catch" on reasons extraneous to the purpose of the Act; c) to

deliver fishing licenses contrary to the principles provided in the Act; and d) to make the delivery of fishing licenses subject to conditions extraneous to the proper management and control of fisheries.

[5] As was the case in T-725-08, the present appellants have also requested that they be provided with various documents. What they received under Rule 318 from David Bevan, Assistant Deputy Minister, Fisheries and Agriculture Management, Department of Fisheries and Oceans, was 17 pages with a memorandum to the Minister dated April 25, 2008, for the Fisheries Management Plan - Snow crab in the Southern Gulf of Saint Lawrence - crab fishing areas 12, 18, 25 and 26, which he had signed, and a second memorandum with the same date regarding the motion by the Prince Edward Island Fishermen's Association, crab fishing area 12, which he refused to grant.

[6] Prothonotary Morneau refused to allow the application for the disclosure of additional documents. He noted that the Minister seemed to have made the decision personally and that the appellants' motion was intended to request materials relating to decisions outside the scope of the impugned decision, the transmission of these documents having already been expressly denied by Prothonotary Morneau himself and Prothonotary Tabib previously. He noted, citing the trial division's decision in *Gagliano v. Canada (Commission of Inquiry into the Sponsorship Program and Advertising Activities – Gomery Commission)*, [2006] F.C.J. No. 917, at para. 69, that there is a strong presumption of truthfulness of a decision-maker's declaration under Rule 318.

[7] He did not refer to the Court of Appeal's decision in 2007 FCA 131, which confirmed Justice Teitelbaum's decision and also cited his remarks on that case in paragraph 69 of his reasons:

[69]... We are not sure that Teitelbaum J. was correct when he opined that that declaration by the Commissioner “creates a strong presumption that he only considered material which can be found in the public record.”

Nevertheless, regardless of the level of presumption, I am convinced that Prothonotary Morneau did not err in deciding that the Minister did not have other documents in his possession that he would have considered in arriving at his decision.

[8] To support their application, the appellants filed the affidavit of a Robert Haché. Robert Haché noted that, in the case of the application for judicial review under the 2007 Plan, in which he played a role, other documents had been sent. Even if that is the case, that does not mean that other documents were concealed that the Minister should have consulted in this case. This hypothesis can be verified in cross-examination, and if it appears that the file is incomplete, the Court can order that additional documents be produced under Rule 313.

[9] In fact, it appears that Mr. Haché’s affidavit instead raises a legal argument. If the Minister did not have any documents in his possession when he made his decision and therefore made his decision in a vacuum, it would be possible to say that the Minister had “based [his] decision or order on an erroneous finding of fact” within the meaning of section 18.1 of the *Federal Courts Act*.

ORDER

FOR THE AFOREMENTIONED REASONS;

THE COURT ORDERS that:

1. The appeal be dismissed with costs.

“Sean J. Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-884-08

STYLE OF CAUSE: Association des crabiers acadiens Inc. et al. v. AGC

PLACE OF HEARING: Montréal, Québec

DATE OF HEARING: March 27, 2009

REASONS FOR ORDER: HARRINGTON J.

DATED: April 27, 2009

APPEARANCES:

Patrick Ferland FOR THE APPELLANTS
David Quesnel

Jean-Robert Noiseux FOR THE RESPONDENT
Paul Marquis

SOLICITORS OF RECORD:

Heenan Blaikie L.L.P. FOR THE APPELLANTS
Montréal, Quebec

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Montréal, Quebec