

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20161219**

**Docket: A-8-16**

**Citation: 2016 FCA 317**

**CORAM: NADON J.A.  
RENNIE J.A.  
DE MONTIGNY J.A.**

**BETWEEN:**

**HERB C. PINDER JR., JOHN WEDGE AND TOM MOLLOY,  
TRUSTEES FOR THE PINDER FAMILY TRUST**

**Appellants**

**and**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,  
REPRESENTED BY THE MINISTER OF ENVIRONMENT,  
AND PARKS CANADA AGENCY**

**Respondents**

Heard at Saskatoon, Saskatchewan, on November 14, 2016.

Judgment delivered at Ottawa, Ontario, on December 19, 2016.

**REASONS FOR JUDGMENT BY:**

**DE MONTIGNY J.A.**

**CONCURRED IN BY:**

**NADON J.A.  
RENNIE J.A.**

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**REASONS FOR JUDGMENT**

**DE MONTIGNY J.A.**

[1] This appeal raises an issue that would appear quite straightforward, at first sight, but which has nevertheless given rise to protracted disputes between the parties. Simply put, the question is whether a deck abutting a cottage and extending to the side lot line is compliant with the requirements of the *National Parks of Canada Cottages Regulations*, S.O.R./79-398 (the

Regulations) according to which the side yard width not abutting a street must be a minimum of 2 metres.

[2] In a decision dated December 9, 2015 (Reasons for Judgment found at 2015 FC 1376), Justice Heneghan of the Federal Court (the Judge) dismissed the appellants' motion for summary judgment and granted the respondents' corresponding motion for summary judgment on the basis that there was no genuine issue for trial in respect of the appellants' claim. She found that the deck was non-compliant with the Regulations, either as being a part of the cottage, or a projection of it.

[3] Having carefully read the record and considered the submissions of the parties, I am of the view that the appeal should be dismissed. The Judge correctly found that the deck is part of the cottage. It was not unfair to arrive at this conclusion, despite the fact that this was not the main argument advanced by the parties.

#### I. Background

[4] The appellants are trustees of the Pinder Family Trust. They lease from Parks Canada, a federal agency which acts as agent for and on behalf of the Government of Canada, a cottage lot in the Waskesiu Lake town site in Prince Albert National Park. The lease was originally entered into for a term of 42 years in 1948, and was subsequently renewed for an additional 42 years in 1988; it subjects the use of the land to all regulations under the control and management of Parks Canada, under the authority of the *Canada National Parks Act*, S.C. 2000, c. 32 (the Act). The appellants acquired the lease on January 1, 1995, through an assignment from the original lessee.

[5] There was much dispute before the Judge as to how exactly the cottage and the deck came to be built in 1995, and in particular, whether the deck structure extending to the fence at the south property line was ever formally approved by Parks Canada. The appellants submitted that the entire development (including the deck) was inspected and expressly approved, first by way of a letter dated August 14, 1995, and then as a result of Parks Canada not raising any concerns with the deck location after surveying the Pinder property, along with all the town side lots in Waskesiu, in 1997. The respondents argued that the plans were only “conceptually approved”. They conceded, however, that a 1.2 metre setback on the construction blueprint formed part of this conceptual approval, despite the fact that the Regulations require a 2 metre setback for those properties not abutting a street.

[6] The genesis of these proceedings does not lie in that dispute, however. Rather, it originates from the approval requested in 2005 by a trustee of the Pinder Family Trust, the appellant Mr. Pinder, for repairs to be conducted under the deck due to a number of its pilings having shifted. He requested approval from Coralee Vaillancourt, the Waskesiu Lake Realty Officer, to replace and enlarge his deck, and submitted the requisite fee. The Officer responded by expressing the view that the deck was not built in compliance with the approved site plan of 1994, and that the deck and shed extended well into the setbacks. She advised that Parks Canada would not review the appellants’ application until the deck was brought into compliance with all required setbacks.

[7] Notwithstanding Ms. Vaillancourt’s response, Mr. Pinder proceeded with the repairs and extension of the cottage’s deck, without a building permit. He extended the deck to the east and

west sides of the property line, replaced the surface boards and repaired the damaged pilings. He did not remove the 1.2 metre widths from the south side of the deck, since it was Mr. Pinder's understanding that the site plans of 1994 entitled him to build a deck up to the property line. Ms. Vaillancourt learned of these repairs from Mr. Leir, Mr. Pinder's neighbour, which prompted a review of his file and eventually led to a site inspection of the lot with Mr. Terrence Schneider, the Waskesiu Lake town site manager for the Prince Albert National Park. In inspecting the property, it was concluded that the reconstruction went well beyond normal repair and maintenance, constituting a complete redevelopment of the deck which resulted in an increased footprint of the previous deck structure.

[8] A series of meetings occurred between the parties, and on November 6, 2012, Parks Canada ultimately advised Mr. Pinder that the lease would be terminated if the deck was not brought into compliance with the Regulations by June 1, 2013. Proceedings were commenced by the appellants in July 2013, seeking (1) a declaration that their lease is in good standing; (2) a declaration that their cottage does not contravene the Regulations; (3) injunctive relief which would prevent the respondents from terminating the lease and taking any other action in relation to the deck or the cottage; and (4) general and punitive damages for defamation, breach of privacy and intentional misconduct. The defamation claimed stemmed from Parks Canada officials having allegedly illegally and wrongfully advised the appellants' neighbour that Mr. Pinder had constructed an illegal and unapproved deck and had left the impression with this same neighbour that Mr. Pinder had deliberately submitted false plans of the deck location. In the fall of 2014, the respondents brought a motion for summary judgment, to which the appellants responded with their own motion for summary judgment (seeking, in the alternative, a

determination of the issues raised in their Amended Statement of Claim by way of summary trial).

II. Decision under appeal

[9] After identifying the test on a motion for summary judgment (i.e., as requiring that there be no genuine issue for trial), the Judge first addressed the respondents' motion and found that the interpretation and scope of the Regulations raised a genuine issue for trial. Since the appellants advanced the same issue and dealt with it in their response to the respondents' arguments, she decided that the issue could nevertheless be determined by way of summary trial pursuant to Rule 215(3) of the *Federal Courts Rules*, S.O.R./98-106.

[10] The Judge first noted that the Act and the Regulations do not define the word "deck". Relying on the definitions of "accessory building" and "cottage" in the Regulations, she then found that the deck is part of the cottage, for all practical purposes. The Judge came to that conclusion essentially on the basis that the deck is abutting the cottage and is ancillary to its uses.

[11] The Judge then went on to note that "[a]lthough physically the deck is a projection of the Cottage, insofar as it juts out", it is not a projection for the purposes of the Regulations. As a result, it would not be subject to the exemption afforded to projections pursuant to the definition of "side yard width", which she interpreted as excluding projections from the setback requirements for cottages and accessory buildings.

[12] In the event that a deck is considered to be a projection, the Judge determined that the result would be the same and that the appellants' deck would still be non-compliant. Her reasoning on that score, however, is not entirely free from contradiction. Applying the principle that one must look for the common meaning between the English and French versions of an Act when there is an ambiguity in one of them, she found that the phrase "clear of projections" must be read as excluding projections. Yet, at paragraph 97 of her Reasons for Judgment, she wrote: "As such, the calculation of the side yard width is from the nearest point of the cottage, main accessory building or projection to the nearest point of the side lot line". Including the projection to calculate the nearest point of the side lot line would appear to be inconsistent with her previous finding that projections ought to be excluded from the calculation of the side yard width. However, nothing turns on this conflict, for reasons that will become apparent shortly.

[13] The Judge additionally noted that the repair work conducted by Mr. Pinder between 2005 and 2006 required a permit in accordance with subsection 7(1) and section 9 of the Regulations, as the structural integrity of the cottage and deck were affected by his work. This finding has not been appealed.

[14] The Judge also found that the doctrine of estoppel did not apply to prevent the respondents from terminating the lease. She held that the Supreme Court of Canada decision of *Immeubles Jacques Robitaille Inc. v. Québec (City)*, 2014 SCC 34, [2014] 1 S.C.R. 784 was dispositive of the issue, in that it stands for the principle that estoppel cannot be raised as a defence to non-conforming use. The Judge further held that estoppel cannot lie against a public

official whose promise was unlawful or contrary to clear statutory provisions. Again, the appellants are not challenging this ruling.

[15] Finally, the Judge held that the appellants' claim for defamation, breach of privacy and intentional misconduct raised no genuine issue for trial. On the defamation issue, she found the statements made by Parks Canada officials to be substantially true, serving as a valid defence to that portion of the appellants' claim. As for the breach of privacy claim, the Judge held that no such common law tort exists, and thus found that this part of the claim was non-justiciable. As regards the intentional misconduct allegations, she held that the evidence submitted did not establish this cause of action, especially in light of the fact that, in the absence of evidence to the contrary, actions of a public officer are presumed to be performed in good faith. None of these findings are the subject of this appeal.

[16] The Judge therefore dismissed the appellants' motion, and granted the respondents' motion.

### III. Issues

[17] There is no dispute that the deck is adjacent to the cottage, and that it extends to the southern side lot line; there is physically no space unoccupied between the cottage and the southern side lot line, as can readily be seen from the photographs taken during the 2009 site inspection appended as Exhibit "M" to the affidavit of Terrence Schneider (Appeal Book, Vol. 1 at pp. 116-127). Accordingly, the only issues raised in this appeal are the following:



- A. What is the proper interpretation of the Regulations, and in particular, of the “side yard width” requirements?
- B. Did the Judge breach the appellants’ right to procedural fairness by granting the respondents summary judgment on a basis not asserted by the respondents in their Statement of Defence or their Notice of Motion seeking summary judgment?

IV. Analysis

[18] It is well established that the appellate standards of review set out in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, apply with equal force to the review of determinations made on a motion for summary trial (see *Sadhu Singh Hamdard Trust v. Navsun Holdings Ltd. et al.*, 2016 FCA 69 at para. 8; *Collins v. Canada*, 2015 FCA 281 at para. 38, 480 N.R. 274). Since the first issue does not turn on any findings of fact, but rather, on the proper interpretation to be given to the Regulations, it attracts a standard of correctness. The same is true of the second issue, whether the matter was decided on a point not before the Judge, to the extent that it deals with a general question of natural justice. Accordingly, this Court is free to replace the opinion of the Judge with its own, if it is of the view that she erred and did not come to the correct interpretation of the Regulations.

- A. *What is the proper interpretation of the Regulations, and in particular of the “side yard width” requirements?*

[19] As noted by the Judge, the word “deck” is not defined in the Regulations. Since it is clearly not a cottage *per se*, nor an accessory building, such a structure has to be considered either a part of the cottage or a projection. The Judge opted for the first alternative, and her

reasons for doing so are sound. Not only is the deck abutting the cottage, but there is no apparent gap between the cottage and the deck. As such, its only practical purpose can be to further the enjoyment of the cottage. A cottage is defined as “a building with facilities for sleeping, cooking, eating and sanitation”; to the extent that a deck is a structure that extends the cottage and is primarily used for cooking and eating, I agree with the Judge it is “ancillary to the uses of the Cottage” and is “useful only in relation to a primary structure, that is the Cottage” (Reasons for Judgment at para. 82).

[20] The Judge considered the possibility of assimilating a deck to a “projection”, but she rejected it. Counsel for the appellants submitted that her reasoning in that respect is “logically incoherent” because she found that, though physically a projection of the cottage, the deck is not subject to the exemption afforded to projections in calculating the side yard width. Since there is no definition of “projection” in the Regulations, there can be no other applicable definition of this term than that found in the dictionary definition referred to by the Judge, according to which a projection is a projecting part of something.

[21] Consideration must be given to both the English and French versions, however, when interpreting legislation. The word “saillie” (the French equivalent to “projection” in the Regulations) has a much narrower and technical meaning in the realm of architecture. In the online *Dictionnaire de français Larousse*, for example, “saillie” is defined as “chacune des parties en avancée sur le nu d’une façade (balcon, corniche, etc.)”. Similarly, *Le Petit Robert* defines it as follows:

Partie qui avance, dépasse le plan, l'alignement; angle saillant. → aspérité, avancée, bosse, éminence, éperon, protubérance, relief, ressaut. (...) Auvent, balcon, escalier formant saillie.

[22] The common denominator of those definitions is that the protruding parts referred to as a “saillie” are above the ground, such as cornices, entablements, bow windows, balconies and so on. This narrower definition is more consistent with the wording of the Regulations as a whole and with the object of the Act and of the Regulations.

[23] Pursuant to subsection 8(2) of the Act, the primary role of the Minister of Environment is to maintain and restore the ecological integrity of the National Parks of Canada (see *Sunshine Village Corporation v. Parks Canada et al.*, 2003 F.C.T. 546 at paras. 29, 41 and 42, 3 Admin L.R. (4th) 138). In that spirit, paragraph 16(1)(m) provides the Governor in Council's authority to make regulations respecting “the control of the location, standards, design, materials, construction, maintenance, removal and demolition of buildings, structures, facilities, signs and other improvements and the establishment of zones governing uses of land and buildings”. The Regulations have been enacted in conformity with that goal, and set out various restrictions on construction with a view to maintaining the integrity of National Parks and to limiting the footprint of construction.

[24] For instance, paragraphs 5(1)(g) and (h) of the Regulations provide that the appearance of the cottage “shall be compatible with the natural characteristics of the park in which it is located” and that the development (which includes the alteration, reconstruction, structural repair and enlarging of a cottage) “shall not adversely affect the characteristics of the surrounding area”. Similarly, other provisions of the Regulations limit the floor area of a cottage and in the

aggregate of all accessory buildings (paragraphs 5(1)(a) and 6(a)); indicate where the accessory buildings may be located on a lot (paragraphs 6(b) and (c)); subject all developments to the requirement of a permit (subsection 7(1)); set out maintenance standards (section 12); determine what may be stored in the rear or side yard of the cottage lot (section 18); require that fences and hedges be compatible with the natural characteristics of the park (section 20); and prohibits the use of cabin trailers, motor homes, camper-trucks or tents on a cottage lot (section 21). All of these provisions are clearly meant to limit the footprint of construction in National Parks and to assist in furthering the objectives of the Act. The relevant legislative provisions are included in the Schedule to these reasons.

[25] I find further support for the Judge's finding that the deck is part of the cottage in the definition of the word "yard" in the Regulations. According to that definition, "yard" refers to the "land contained within the property lines of a cottage lot that is not covered by a building or other structure" (my emphasis). That definition informs the interpretation to be given to "side yard" and "side yard width", which must therefore relate to that portion of a lot that is not covered by a structure. Such an understanding also has the added benefit of being consistent with my reading of the word "projection".

[26] If leaseholders were permitted to construct decks and any other structure not defined in the Regulations, it would make a mockery of the Governor in Council's clear intention to impose certain limitations on the footprint of construction and would defeat the purpose of the Regulations to allow for a minimum space between developments on contiguous lots. Pushed to the limit, the appellants' interpretation would lead to the absurd result that all leaseholders would

be allowed to build structures up to each and every property line, thus creating a gapless footprint of wooden construction that would extend across all properties. Such an extreme result cannot have been contemplated by the Governor in Council. When properly interpreted, therefore, the deck must be considered as forming part of the cottage when measuring the minimum side yard width prescribed by paragraph 5(1)(c) of the Regulations. In light of that conclusion, there is no need to address the Judge's alternative finding that the deck, even if considered to be a projection of the cottage, would nevertheless be non-compliant.

B. *Did the Judge breach the appellants' right to procedural fairness by granting the respondents summary judgment on a basis not asserted by the respondents in their Statement of Defence or their Notice of Motion seeking summary judgment?*

[27] The appellants argue that the Judge's main finding was not the basis upon which Parks Canada sought to terminate the lease, and was not the position that Parks Canada asserted in its pleadings or in its submissions on its motion for summary judgment. This argument is unconvincing for at least two reasons.

[28] It is true that Parks Canada took the position throughout these proceedings that the deck is in contravention of the Regulations because it is a projection that must be included in the calculation of the minimum side yard width. In a response letter to the appellants' request for clarification dated January 30, 2013, Parks Canada took the position that "a deck is indeed a 'projection' as identified in the mandatory 2.0 metre 'side yard width' requirements and definitions in the *National Park Cottage Regulations* [sic]" (Appeal Book, Vol. 1 at p. 312). The respondents reiterated that position at paragraph 29 of their Statement of Defence (Appeal Book, Vol. 1 at p. 72). In their own Notice of Motion for summary judgment, they once again asserted

that the Regulations require that “decks and other synonymous projections or structures” must respect the prescribed setback from the lot lines adjoining cottage lots (Appeal Book, Vol. 1 at p. 44).

[29] While the respondents have been consistent in their view that a deck is a projection for the purposes of the Regulations, the same cannot be said of the appellants. It is clear from their Amended Statement of Claim dated August 5, 2014, that they were seeking, *inter alia*, a declaration that their cottage does not contravene the Regulations (Appeal Book, Vol. 1 at p. 54, para. 1b). They further asserted, at paragraph 32, that “[t]he Plaintiffs’ deck is not ‘part of the cottage’ nor ‘part of the main accessory building’ as defined in the *Regulations* nor is it a ‘projection’ thereof as that term is used in the *Regulations*”. They added, at paragraph 33, that Parks Canada had confirmed by letter dated October 1, 2010 that their deck was not considered to be part of the cottage, an affirmation that was denied by Parks Canada in their Statement of Defence. Finally, they submitted at paragraph 29 of their Memorandum of Fact and Law that the deck “is not part of the cottage, a main accessory building, or a projection therefrom, and accordingly is not included in the calculation of side yard width” (Appeal Book, Vol. 1 at p. 375). This memorandum was filed to deal with the motions for summary judgment of both parties.

[30] It cannot credibly be said, as a result, that the Judge breached the appellants’ right to procedural fairness and departed from the pleadings or the submissions of the parties when she found for the respondents on the basis that the deck is part of the cottage. While this interpretation of the Regulations may not have been the primary basis upon which the case was

argued, it was nevertheless at play and was explicitly rejected by the appellants as a possible rationale to ground a contravention of the minimum side yard width requirements.

[31] Be that as it may, and this is the second reason why the appellants' procedural fairness submissions ought to be dismissed, a court is not limited to the scope of the pleadings and the parties' arguments when called upon to interpret legislation. Relying on a decision of the Ontario Court of Appeal (*Rodaro v. Royal Bank of Canada* (2002), 59 O.R. (3d) 74, 113 A.C.W.S. (3d) 68 [*Rodaro*]) and several decisions of this Court and of the Federal Court which relied on that decision (see, for instance, *Tervita Corporation v. Commissioner of Competition*, 2013 FCA 28, 360 D.L.R. (4th) 717, rev'd on other grounds in 2015 SCC 3, [2015] 1 S.C.R. 161; *Canada v. Nunn*, 2006 FCA 403, 367 N.R. 108; *Mercury XII (Ship) v. MLT-3 (Belle Copper No. 3)*, 2013 FCA 96, 359 D.L.R. (4th) 561; *876947 Ontario Limited (RPR Environmental) v. Canada (Attorney General)*, 2013 FCA 156; *Lahnalampi v. Canada (Attorney General)*, 2014 FC 1136), counsel for the appellants argued that stepping outside the pleadings and the arguments of the parties denies the parties the right to know the case they have to meet and the right to a fair opportunity to meet that case.

[32] These cases, however, are all distinguishable from the one at bar. None of these decisions involves an issue of statutory interpretation; they turn, rather, on legal findings that are heavily dependent on the evidence put forward by the parties. In *Rodaro*, for example, the trial judge had to determine whether the disclosure of confidential information had resulted in detriment or damage to the confider or wrongful gain to the confidant. The trial judge found that the confider (Mr. Rodaro) had suffered detriment in the form of lost opportunity. While this analysis was

theoretically sound, the Court of Appeal came to the conclusion that it could not be applied in that case, first because it was never pleaded or argued, and second because there was no evidence that the disclosure of the confidential information caused Mr. Rodaro to lose the opportunity described by the trial judge. The Court of Appeal allowed the appeal, on the basis that the trial judge had denied the defendants the right to know the case they had to meet and the right to a fair opportunity to meet the case. Moreover, the introduction of a new theory of liability also raised concerns about the reliability of that theory, since it was not tested through the adversarial process.

[33] This line of authority has no application to the present case. Statutory construction is a pure question of law, and courts not only have the authority, but also the duty to interpret the legislation underlying a dispute. In doing so, judges are not bound by the arguments offered by the parties, and indeed appellate courts may replace the lower court's opinion with that of their own. It is well established that courts are the final interpreters of the law.

[34] Furthermore, the appellants have not shown how they were prejudiced by the Judge's finding. The affidavits, upon which there was exhaustive cross-examination, included pictures and plans of construction about the location and construction of the structure, and the appellants have not indicated what supplementary evidence they could have filed that could have had an impact on the interpretation of the Regulations or on the Judge's determination that the deck was part of the cottage. In those circumstances, I am unable to find that the process was procedurally unfair.



V. Conclusion

[35] For all of the above reasons, I would dismiss the appeal with costs in favour of the respondents.

“Yves de Montigny”

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J.A.

“I agree  
M. Nadon J.A.”

“I agree  
Donald J. Rennie J.A.”

## SCHEDULE A

### Relevant legislative provisions

*National Parks of Canada Cottage Regulations, S.O.R./79-398*

*Règlement sur les chalets situés dans les parcs nationaux du Canada, D.O.R.S./79-398*

#### Interpretation

2 In these Regulations,

**accessory building** means a building or structure on a cottage lot that does not form part of the cottage;

**cottage** means a building with facilities for sleeping, cooking, eating and sanitation;

**side yard** means that area of a lot between the side lot line and the nearest part of a cottage or main accessory building, clear of projections;

**side yard width** means the distance measured horizontally from the nearest point of the side lot line toward the nearest part of a cottage or main accessory building, clear of projections;

**yard** means the land contained within the property lines of a cottage lot that is not covered by a building or other structure;

#### Cottage Requirements

5 (1) Every cottage erected, altered, reconstructed, added to or enlarged after the coming into force of these Regulations shall comply with the

#### Définitions

2 Dans le présent règlement,

**dépendance** désigne une construction ou un bâtiment situé sur un lot mais ne faisant pas partie du chalet;

**chalet désigne** un bâtiment aménagé de façon à pouvoir y dormir, y faire la cuisine, y manger et possédant des installations sanitaires;

**cour latérale** désigne la partie du terrain qui s'étend de la limite latérale du terrain à la partie la plus rapprochée d'un chalet ou d'une dépendance principale, abstraction faite des saillies

**largeur de la cour latérale** désigne la distance, mesurée horizontalement, entre le point le plus rapproché de la limite latérale du terrain et la partie la plus rapprochée d'un chalet ou d'une dépendance principale, abstraction faite des saillies;

**cour** désigne la surface qui, à l'intérieur des limites de propriété d'un lot, n'est pas couverte par un bâtiment ou une autre construction;

#### Conditions relatives aux chalets

5 (1) Les chalets construits, modifiés, reconstruits ou agrandis après l'entrée en vigueur du présent règlement doivent être conformes aux

following requirements:

(a) the floor area shall not exceed one hundred and eleven square metres, except in

(i) the visitor centre of Waterton Lakes Park and Lake Edith Resort Subdivision, where the maximum floor area shall be one hundred and fifty square metres, and

(ii) the visitor centre of Wasagaming and Clear Lake Resort Subdivision, where the maximum floor area shall, if no accessory building is used to accommodate guests overnight, be one hundred and thirty square metres;

...

(c) the side yard width not abutting a street shall be at least two metres;

...

(g) the appearance of the cottage shall be compatible with the natural characteristics of the park in which it is located; and

(h) the development shall not adversely affect the characteristics of the surrounding area.

### Accessory Building Requirements

6 Every accessory building erected, altered, reconstructed, added to or enlarged after the coming into force of these Regulations shall comply with

spécifications suivantes :

a) l'aire de plancher ne peut dépasser cent onze mètres carrés, sauf :

(i) dans le centre d'accueil du parc des Lacs-Waterton et le centre de villégiature du lac Edith où l'aire de plancher ne peut dépasser cent cinquante mètres carrés,

(ii) dans le centre d'accueil de Wasagaming et le centre de villégiature du lac Clear où l'aire de plancher ne peut dépasser cent trente mètres carrés à la condition qu'il n'y ait aucune dépendance qui soit utilisée pour héberger des invités pour la nuit;

[...]

c) la largeur de la cour latérale non contiguë à une rue doit être d'au moins deux mètres;

[...]

g) l'apparence du chalet doit être compatible avec les caractéristiques naturelles du parc dans lequel il est situé;

h) l'aménagement ne nuit pas aux caractéristiques du voisinage.

### Conditions relatives aux dépendances

6 Les dépendances construites, modifiées, reconstruites ou agrandies après l'entrée en vigueur du présent règlement doivent être conformes aux

the following requirements:

(a) the total floor area in the aggregate of all accessory buildings on a cottage lot shall not exceed 37 square metres;

(b) the accessory building shall be located

(i) at least five metres from the cottage, clear of all projections,

(ii) clear of all projections, at least

(A) one metre from the lot lines, if it is located in that portion of a side or rear yard that does not abut on a street, or

(B) five metres from the lot lines if it is located in that portion of a side or rear yard that abuts on a street;

(c) the accessory building shall not be located in a front yard;

### **Development Permit**

7 (1) Subject to section 9, no person shall erect, alter, reconstruct, repair the structure of, add to, enlarge, demolish, remove from a cottage lot or relocate on the same cottage lot a cottage or an accessory building unless a development permit for that purpose has first been issued by the superintendent.

### **Maintenance Standards**

12 (1) No person shall erect, alter, repair, add to or enlarge a cottage or an accessory building except in

spécifications suivantes :

a) l'aire de plancher totale de toutes les dépendances situées sur le lot ne peut dépasser 37 mètres carrés;

b) la dépendance doit

(i) se trouver à au moins cinq mètres du chalet, abstraction faite des saillies, et

(ii) être, abstraction faite des saillies, à au moins

(A) un mètre des limites du terrain, si elles sont situées dans une cour latérale ou arrière qui ne donne pas sur une rue, ou

(B) cinq mètres des limites du terrain, si elles se trouvent dans une cour latérale ou arrière qui donne sur une rue;

c) la dépendance ne peut être construite dans la cour avant;

### **Permis d'aménagement**

7 (1) Sous réserve de l'article 9, il est interdit de construire, de modifier, de reconstruire, d'agrandir, de démolir, de déménager, ou de déplacer sur le même lot, un chalet ou une dépendance, ou d'en réparer la charpente, avant que le directeur ne délivre un permis d'aménagement à cette fin.

### **Normes d'entretien**

12 (1) Il est interdit de construire, de modifier, de réparer ou d'agrandir un chalet ou une dépendance sauf selon

accordance with the following minimum maintenance standards:

- (a) every part of a cottage or an accessory building shall be maintained in a structurally sound condition, capable of safely sustaining its own weight and any load to which it may be subject;
- (b) materials that have been damaged or that show evidence of rot or other deterioration shall be repaired or replaced;
- (c) exterior walls shall be maintained to prevent deterioration that is due to weather, rot or insects by painting, restoring or repairing the walls, coping or flashing and by weatherproofing joints where required;
- (d) a roof including its fascia board, soffit, cornice and flashing shall be maintained in a watertight condition to prevent leakage of water into a dwelling;
- (e) rotted or damaged doors, door frames, window frames, sashes and casings, broken glass and missing or defective door and window hardware shall be repaired or replaced;
- (f) outside stairs or porches shall be maintained free from defects that constitute a hazard and all treads, riser and supporting structural members that are rotted or deteriorated shall be repaired or replaced;

les normes d'entretien minimales suivantes :

- a) la charpente doit être maintenue en bon état et être capable de soutenir sans danger son propre poids et toute charge pertinente;
- b) les matériaux endommagés, pourris ou comportant quelque autre signe de détérioration doivent être réparés ou remplacés;
- c) les murs extérieurs doivent être protégés des dommages causés par le temps, la pourriture et les insectes en les peignant, en les restaurant ou en les réparant, en posant un chaperon ou un solin et en imperméabilisant les joints au besoin;
- d) le toit, sa planche de bordure, son soffite, sa corniche et son solin doivent être maintenus étanches pour prévenir les fuites d'eau dans l'habitation;
- e) les portes, les cadres de portes et de fenêtres, les châssis et les chambranles pourris ou endommagés, les vitres brisées et la quincaillerie manquante ou défectueuse des portes et des fenêtres doivent être réparés ou remplacés;
- f) les escaliers extérieurs ou les porches doivent être maintenus en bon état afin de prévenir tout accident et les giron, les contremarches et les éléments de charpente pourris ou détériorés doivent être réparés ou remplacés;

(g) all plumbing, drain pipes, water pipes and plumbing fixtures in every cottage shall be maintained in good working order and free from leaks and defects;

g) la plomberie, les tuyaux de drainage, les conduites d'eau et les accessoires de plomberie doivent être maintenus en bon état de fonctionnement et exempts de fuites et de défauts; et

(h) where the safety of a cottage requires minimum electrical standards, all electrical standards, and all electrical equipment installations and wiring in the cottage shall be in accordance with the requirements of

h) lorsque la sécurité d'un chalet exige le respect de normes minimales en électricité, ses installations électriques et son câblage doivent être conformes aux exigences

(i) C.S.A. C22.1 "Canadian Electrical Code, Part 1", and

(i) de la partie 1 du C22.1 du « Code canadien de l'électricité » de l'Association canadienne de normalisation, et

(ii) the laws of the province in which the Park is situated; and

(ii) des lois de la province dans laquelle se trouve le parc; et

(i) the electrical wiring and all electrical fixtures located or used in a cottage or an accessory building shall be maintained in good working order.

i) le câblage et les appareils électriques s'y trouvant ou y étant utilisés doivent être maintenus en bon état de fonctionnement.

(2) No lessee shall permit his cottage or accessory building to deteriorate below the standards specified in subsection (1).

(2) Aucun locataire ne doit laisser son chalet ou une dépendance se détériorer au-delà des normes établies au paragraphe (1).

### **Storage in Yards**

### **Entreposage dans les cours**

18 (1) A lessee may store in the rear or side yard of his cottage lot any garden equipment, garden furniture, firewood, boats, boat trailers and other items normally associated with the enjoyment of a cottage on condition that those items are stored in a manner that does not detract from the appearance of the cottage lot and does not interfere with the use and enjoyment of neighbouring cottage

18 (1) Un locataire peut entreposer dans la cour arrière ou latérale de son lot l'équipement de jardinage, les meubles de jardin, de bois de chauffage, les embarcations, les remorques pour embarcations et les autres objets normalement associés à la jouissance d'un chalet, à condition que ces objets soient entreposés de façon à ne pas détruire l'apparence du terrain et à ne pas nuire à l'utilisation

lots.

(2) No person shall store a cabin trailer, motor home or camper-truck on a cottage lot.

### **Fences and Hedges**

20 (1) No person shall, on a cottage lot, construct a fence or cultivate a hedge that is incompatible with the natural characteristics of the park in which the cottage lot is located.

(2) Fences erected on a cottage lot shall not be in excess of one and one-half metres above grade in height and shall not be spiked or barbed so as to be a potential danger to persons or animals.

### **Mobile Accommodation**

21 No person shall use a cabin trailer, motor home, camper-truck or tent on a cottage lot for the purpose of a temporary or permanent residence.

*Canada National Parks Act, S.C. 2000, c. 32*

### **Ecological integrity**

8 (2) Maintenance or restoration of ecological integrity, through the protection of natural resources and natural processes, shall be the first priority of the Minister when considering all aspects of the management of parks.

### **Regulations**

16 (1) The Governor in Council may make regulations respecting

et à la jouissance des lots avoisinants.

(2) Il est interdit de garer à demeure une caravane, une maison mobile ou une camionnette de camping sur un lot.

### **Clôtures et haies**

20 (1) Il est interdit, sur un lot, d'ériger une clôture ou de cultiver une haie qui est incompatible avec les caractéristiques naturelles du parc dans lequel le lot est situé.

(2) Les clôtures construites sur un lot ne peuvent mesurer plus d'un mètre et demi de hauteur ni présenter des pointes ou être barbelées et ainsi constituer un danger pour les personnes et les animaux.

### **Logement mobile**

21 Il est interdit d'utiliser une caravane, une maison mobile, une camionnette de camping ou une tente comme logement temporaire ou permanent sur un lot.

*Loi sur les parcs nationaux du Canada, L.C. 2000, c. 32*

### **Intégrité écologique**

(2) La préservation ou le rétablissement de l'intégrité écologique par la protection des ressources naturelles et des processus écologiques sont la première priorité du ministre pour tous les aspects de la gestion des parcs.

### **Règlements**

16 (1) Le gouverneur en conseil peut prendre des règlements concernant:

...

(m) the control of the location, standards, design, materials, construction, maintenance, removal and demolition of buildings, structures, facilities, signs and other improvements and the establishment of zones governing uses of land and buildings;

[...]

m) la réglementation de l'emplacement, de la conception, de la construction, de l'entretien, de l'amélioration, de l'enlèvement et de la démolition de bâtiments, installations, pancartes et autres structures, des normes à appliquer et des matériaux à utiliser ainsi que le zonage en vue de l'utilisation des terres ou des bâtiments;



**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-8-16

**STYLE OF CAUSE:** HERB C. PINDER JR., JOHN WEDGE AND TOM MOLLOY, TRUSTEES FOR THE PINDER FAMILY TRUST v. HER MAJESTY THE QUEEN IN RIGHT OF CANADA, REPRESENTED BY THE MINISTER OF ENVIRONMENT, AND PARKS CANADA AGENCY

**PLACE OF HEARING:** SASKATOON, SASKATCHEWAN

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**CONCURRED IN BY:** NADON J.A.  
RENNIE J.A.

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