

Date: 20071207

Docket: A-108-07

Citation: 2007 FCA 389

**CORAM: RICHARD C.J.
DÉCARY J.A.
NADON J.A.**

BETWEEN:

TIMBERWEST FOREST CORP.

Appellant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

Heard at Ottawa, Ontario, on December 5, 2007.

Judgment delivered at Ottawa, Ontario, on December 7, 2007.

REASONS FOR JUDGMENT BY:

DÉCARY J.A.

CONCURRED IN BY:

**RICHARD C.J.
NADON J.A.**

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REASONS FOR JUDGMENT

DÉCARY J.A.

[1] This is an appeal from a decision of O’Keefe J. of the Federal Court (2007 FC 148) whereby he dismissed a challenge by the appellant of the validity of a Notice to Exporters controlling the exports of logs harvested from some private lands in British Columbia. The plaintiff was contending that the Notice to Exporters Serial No. 102 (Notice 102) is not authorized by the *Export and Import Permits Act*, R.S.C. 1985, c. E-19 (the Act) and moreover, is unconstitutional as being an attempt by the federal government to regulate in an area of provincial jurisdiction.

[2] With respect to the legality of Notice 102, I agree with O’Keefe J. that Notice 102 is a policy guideline which does not fetter the exercise of the Minister’s discretion and as such is beyond the reach of the courts. I also agree with him that in any event, the words “other needs” in subsection 3(e) of the Act do not exclude the consideration by the Minister of provincial needs.

[3] With respect to the constitutionality of Notice 102, I also agree with O’Keefe J. that it is not the role of the courts to determine the constitutionality of policies. Furthermore, the appellant did not challenge the validity of any provision of the Act nor of the list of goods established pursuant to that Act.

[4] Neither did the appellant challenge the validity of the Memorandum of Understanding between the governments of Canada and British Columbia, dated March 30, 1998. In that Memorandum, the two governments agreed to establish the Federal Timber Export Advisory Committee for the purpose of providing recommendations to the Federal Minister for International Trade “on exports of logs from lands outside the scope of British Columbia’s forestry legislation”. (see Memorandum, Terms of Reference, A.1, A.B. p. 162)

[5] Absent a challenge to the Memorandum, and considering in addition that the Government of British Columbia was not made a party to the proceedings, the Court is in no position to determine whether it was constitutionally permissible for the Government of British Columbia to allow the Government of Canada to fill the gap in the export restrictions set out in Part 10 of the *Forest Act*, R.S.B.C. 1996, c. 157.

[6] The appeal should be dismissed with costs.

“Robert Décary”

J.A.

“I agree
J. Richard C.J.”

“I agree
M. Nadon J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-108-07

STYLE OF CAUSE: TIMBERWEST FOREST CORP. v.
HER MAJESTY THE QUEEN IN
RIGHT OF CANADA

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: December 5, 2007

REASONS FOR JUDGMENT BY: DÉCARY J.A.

CONCURRED IN BY: RICHARD C.J.
NADON J.A.

DATED: December 7, 2007

APPEARANCES:

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Mr. Orlando Silva

FOR THE APPELLANT

Mr. Robert MacKinnon

FOR THE RESPONDENT

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