

Federal Court of Appeal



Cour d'appel fédérale

Date: 20241114

Docket: A-253-23

Citation: 2024 FCA 190

**CORAM: BOIVIN J.A.
LOCKE J.A.
LEBLANC J.A.**

BETWEEN:

SHELBURNE ELVER LIMITED

Appellant

and

**HIS MAJESTY THE KING (MINISTER OF FISHERIES, OCEANS AND THE
CANADIAN COAST GUARD)**

Respondent

and

3349659 CANADA INC. O/A NEPTUNE CANADA

Intervener

Heard at Halifax, Nova Scotia, on November 14, 2024.
Judgment delivered from the Bench at Halifax, Nova Scotia, on November 14, 2024.

REASONS FOR JUDGMENT OF THE COURT BY:

LOCKE J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Halifax, Nova Scotia, on November 14, 2024).

LOCKE J.A.

[1] Shelburne Elver Limited (Shelburne) appeals a decision of the Federal Court (2023 FC 1166, *per* Justice Elizabeth Walker, as she then was) that dismissed Shelburne's application for judicial review of a decision of the Minister of Fisheries, Oceans and the Canadian Coast Guard (the Minister) to reduce Shelburne's quota for elver fishing in 2022 by 13.7%, compared to previous years, without financial compensation (the Decision).

[2] A parallel appeal (Court File No. A-251-23) by another elver fishing licensee (South Shore Trading Co. Ltd.) was recently discontinued. Yet another elver fishing licensee (3349659 Canada Inc., doing business as Neptune Canada (Neptune)) was granted leave to intervene in the present appeal.

[3] Shelburne argues that the Federal Court should have set aside the Minister's Decision because it is unreasonable, and because it was arrived at in a manner that was not procedurally fair.

[4] Having carefully considered Shelburne's and Neptune's written and oral submissions, we are all of the view that the present appeal must be dismissed. We agree substantially with the reasons of the Federal Court.

[5] The parties do not disagree on the standard of review that we should apply in this appeal. We must consider whether the Federal Court identified the correct standards of review of the

Minister's Decision and whether it correctly applied those standards: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at paras. 45-47.

Shelburne does not take issue with the standards of review identified by the Federal Court. The Federal Court correctly identified the deferential reasonableness standard on the substance of the Decision, and gave no deference to the Minister in respect of procedural fairness. Shelburne's arguments are that the Federal Court erred in its application of these standards of review.

[6] With regard to the reasonableness of the Decision, we find that the Federal Court was correct in noting the broad discretion of the Minister conferred by statute and in finding her exercise of that broad discretion reasonable in view of a series of memoranda to the Minister in the weeks preceding the Decision.

[7] In its intervention, Neptune argues that the Decision was unreasonable because the Minister failed to take into account the rights of non-indigenous fishers in the constitutional context that contemplates fishing rights for First Nations. According to the Order dated January 5, 2024 granting leave to intervene, Neptune was obliged to limit itself to the issues raised in the notices of appeal, and was not allowed to introduce new issues. The notices of appeal did not raise this issue. Moreover, Shelburne does not take issue with the general aim of reducing quotas for non-indigenous elver fishers in order to make room for increased quotas for First Nations, and even to do so without compensation. Therefore, it was inappropriate for Neptune to raise this issue. We will not address it.

[8] On procedural fairness, Shelburne questions the Minister's change in approach in February 2022 to reducing quotas. A "willing buyer, willing seller" approach had been contemplated since early 2021. The new approach contemplated no financial compensation for elver fishers. Shelburne argues that it had a legitimate expectation that the Minister would pursue the "willing buyer, willing seller" approach in making her decision, and would hold a second round of proposals in that regard.

[9] We agree with the conclusion of the Federal Court that the Minister's statements prior to February 2022 were not so clear, unambiguous and unqualified as to create a binding commitment to which legitimate expectations could apply (*Canada (Attorney General) v. Mavi*, 2011 SCC 30, [2011] 2 S.C.R. 504 at para. 68). We also agree with the Federal Court's conclusion that the Minister's actions after the change of approach (including communicating the change, inviting submissions thereon, and receiving and considering those submissions prior to making the Decision) met the requirements of procedural fairness. It is helpful to recall, as did the Federal Court, that legitimate expectations cannot give rise to substantive rights. We also agree with the Federal Court that the delay in the fall of 2021 in addressing the first round of proposals was not determinative of procedural fairness.

[10] Despite the able submissions of counsel for the appellant, the appeal will be dismissed with costs.

"George R. Locke"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-253-23

STYLE OF CAUSE: SHELBURNE ELVER LIMITED v.
HIS MAJESTY THE KING
(MINISTER OF FISHERIES,
OCEANS AND THE CANADIAN
COAST GUARD) AND 3349659
CANADA INC. O/A NEPTUNE
CANADA

PLACE OF HEARING: HALIFAX, NOVA SCOTIA

DATE OF HEARING: NOVEMBER 14, 2024

REASONS FOR JUDGMENT OF THE COURT BY: BOIVIN J.A.
LOCKE J.A.
LEBLANC J.A.

DELIVERED FROM THE BENCH BY: LOCKE J.A.

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