

Cour d'appel
fédérale



CANADA

Federal Court
of Appeal

Date: 20090811

Docket: A-610-08

Citation: 2009 FCA 241

CORAM: NADON J.A.
BLAIS J.A.
PELLETIER J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

ROLAND ANGLEHART SR., ROLAND ANGLEHART JR., BERNARD ARSENEAULT, HÉLIODORE AUCOIN, ALBERT BENOÎT, ROBERT BOUCHER, ELIDE BULGER, GÉRARD CASSIVI, JEAN-GILLES CHIASSON, LUDGER CHIASSON, MARTIN M. CHIASSON, RÉMI CHIASSON, CIE 2973-0819 QUÉBEC INC., CIE 2973-1288 QUÉBEC INC., CIE 3087-5199 QUÉBEC INC., ROBERT COLLIN, ROMÉO G. CORMIER, MARC COUTURE, LES CRUSTACÉES DE GASPÉ LTÉE, LINO DESBOIS, RANDY DEVEAU, CAROL DUGUAY, CHARLES-AIMÉ DUGUAY, DENIS DUGUAY, DONALD DUGUAY, MARIUS DUGUAY, EDGAR FERRON, ARMAND FISET, LIVAIN FOULEM, CLAUDE GIONEST, JOCELYN GIONET, SIMON J. GIONET, AURÈLE GODIN, VALOIS GOUPIL, AURÉLIEN HACHÉ, DONALD R. HACHÉ, GAËTAN HACHÉ, GUY HACHÉ, JACQUES E. HACHÉ, JASON-SYLVAIN HACHÉ, JEAN-PIERRE HACHÉ, JACQUES A. HACHÉ, RENÉ HACHÉ, RHÉAL HACHÉ, ROBERT F. HACHÉ, ALBAN HAUTCOEUR, FERNAND HAUTCOEUR, JEAN-CLAUDE HAUTCOEUR, GREGG HINKLEY, JEAN-PIERRE HUARD, RÉJEAN LEBLANC, CHRISTIAN LELIÈVRE, ELPHÈGE LELIÈVRE, JEAN-ELIE LELIÈVRE, JULES LELIÈVRE, DASSISE MALLET, DELPHIS MALLET, FRANCIS MALLET, JEAN-MARC MARCOUX, ANDRÉ MAZEROLLE, EDDY MAZEROLLE, GILLES A. NOËL, LÉVIS NOËL, MARTIN NOËL, NICOLAS NOËL, ONÉSIME NOËL,

**RAYMOND NOËL, FRANCIS PARISÉ, DOMITIEN PAULIN, SYLVAIN PAULIN,
PÊCHERIES DENISE QUINN SYVRAIS INC., PÊCHERIES FRANÇOIS INC.,
PÊCHERIES JEAN-YAN II INC., PÊCHERIES JIMMY L. LTÉE, PÊCHERIES J.V.L.
LTÉE, PÊCHERIES RAY-L INC., LES PÊCHERIES SERGE-LUC INC., ROGER
PINEL, CLAUDE POIRIER, PRODUITS BELLE BAIE LTÉE, ADRIEN ROUSSEL,
JEAN-CAMILLE ROUSSEL, MATHIAS ROUSSEL, STEVEN ROUSSY, MARIO
SAVOIE, ESTATE OF JEAN-PIERRE ROBICHAUD, ESTATE OF LUCIEN
CHIASSON, ESTATE OF SYLVA HACHÉ, JEAN-MARC SWEENEY, MICHEL
TURBIDE, RÉAL TURBIDE, DONAT VIENNEAU, FERNAND VIENNEAU, LIVAIN
VIENNEAU, RHÉAL VIENNEAU**

Respondents

Hearing held at Charlottetown, Prince Edward Island, on June 10, 2009

Judgment delivered at Ottawa, Ontario, on August 11, 2009.

REASONS FOR JUDGMENT BY:

BLAIS J.A.

CONCURRED IN BY:

NADON J.A.
PELLETIER J.A.

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**SAVOIE, ESTATE OF JEAN-PIERRE ROBICHAUD, ESTATE OF LUCIEN
CHIASSON, ESTATE OF SYLVA HACHÉ, JEAN-MARC SWEENEY, MICHEL
TURBIDE, RÉAL TURBIDE, DONAT VIENNEAU, FERNAND VIENNEAU, LIVAIN
VIENNEAU, RHÉAL VIENNEAU**

Respondents

REASONS FOR JUDGMENT

BLAIS J.A.

[1] This is an appeal of a decision of Justice Frenette (judge) of the Federal Court dated November 28, 2008.

[2] Relying on the decision of Justice Martineau in *Arsenault et al. v. Her Majesty the Queen*, 2008 FC 299, (also on appeal to this Court), the judge dismissed the Attorney General of Canada's application to strike an amended statement of claim and dismiss an action in damages, or, in the alternative, to obtain an order staying proceedings pending a decision on the merits of an application for judicial review that the respondents may file.

[3] The appellant's motion to strike is based on Rule 221(1) of the *Federal Courts Rules*, SOR/98-106 (Rules).

221. (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it

221. À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas:

(a) discloses no reasonable cause of action or defence, as the case may be,	a) qu'il ne révèle aucune cause d'action ou de défense valable;
(b) is immaterial or redundant,	b) qu'il n'est pas pertinent ou qu'il est redondant;
(c) is scandalous, frivolous or vexatious,	c) qu'il est scandaleux, frivole ou vexatoire;
(d) may prejudice or delay the fair trial of the action,	d) qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder;
(e) constitutes a departure from a previous pleading, or	e) qu'il diverge d'un acte de procédure antérieur;
(f) is otherwise an abuse of the process of the Court,	f) qu'il constitue autrement un abus de procédure.
and may order the action be dismissed or judgment entered accordingly.	Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.

[4] For his motion to be allowed, the appellant had to show that it was “plain and obvious” that the plaintiffs’ action had no chance of success, based on the case law established by the Supreme Court of Canada in *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959.

[5] The judge reviewed the pleadings and concluded that it was not “plain, obvious and beyond doubt” that the allegations in the statement of claim supported the conclusion that the action should be dismissed.

[6] Reproduced below are the causes of action listed by the judge in his judgment at paragraph 2:

[TRANSLATION]

- A. breach of various contractual agreements concluded with the Minister of Fisheries and Oceans (the Minister) regarding the crab fishery in Eastern Canada;
- B. breach of a duty of care in the manner in which the portion of the total allowable catch (the TAC) quota allocated to the plaintiffs was reduced as of 2003;
- C. commission of a tort or misfeasance in public office;
- D. exercise of the Minister's management authority in a manner that was abusive, capricious or in bad faith;
- E. expropriation without compensation of certain rights of the plaintiffs through the reduction of their TAC portion;
- F. false representations by the Minister;
- G. unjust enrichment by the Minister in using the plaintiffs' portion of the TAC to allocate to other groups of fishers or to finance his own activities;
- H. breach of a fiduciary duty.

[7] The appellant submits that the Federal Court lacks jurisdiction to hear this matter under section 17 of the *Federal Courts Act*, R.S.C. 1985, c. F-7 (Act) because the respondents should have proceeded first by way of judicial review under section 18 of the Act to have the Minister's decision invalidated (*Canada v. Grenier*, 2005 FCA 348, (*Grenier*) and *Canada v. Tremblay*, 2004 FCA 172).

[8] The appellant also argues that the decisions concerned in the application were not the subject of such a judicial review and that the Court lacks jurisdiction to hear the action.

[9] The respondents take issue with this argument, stating that some of the Minister's decisions have already been the subject of judicial review and found to be unlawful (see *Larocque v. Canada (Minister of Fisheries and Oceans)*, 2006 FCA 237 and *Association des crabiers acadiens v. Canada (Attorney General)*, 2006 FC 1242).

[10] The respondents contend that they are not challenging the lawfulness of the Minister's decisions but, rather, their legitimacy and the commission of concurrent wrongful acts in the exercise of ministerial powers, which fall under the Court's jurisdiction under section 17 of the Act.

[11] The appellant submits that, despite the allegations of breach of contract, expropriation without compensation, negligence in the exercise of discretion, misrepresentation, unjust enrichment, and breach of a fiduciary duty, the actual subject of the respondents' proceeding is the validity of the discretionary administrative decisions of the Minister of Fisheries and Oceans (Minister). In particular, the appellant argues that at the heart of the respondents' claim are the decisions setting the crab quota allocations.

[12] This Court has already recognized that a presumably lawful decision may give rise to liability through an action in damages (see *Canada v. Manuge*, 2009 FCA 29 at paragraph 58):

[58] It is possible that a perfectly lawful administrative decision or activity may be carried out in a negligent or abusive manner, thus giving rise to liability on the part of the federal administration. In other words, even though a decision or an activity is lawful, its execution may be negligent or wrongful. In such a case, bringing an action in liability

based not on the lawfulness of the decision or activity, but on its negligent performance, is appropriate.

[13] The respondents expressly state at paragraphs 61 and following of their memorandum that [TRANSLATION] “their proceeding is not based on the unlawfulness of the Minister’s decisions”. The appellant will surely keep this submission in mind and call it to the trial judge’s attention, if need be. The same can be said for applying the principles established in *Grenier*; the trial judge will be better able to consider this issue.

[14] The appellant has not satisfied us that the respondents’ action is bereft of any chance of success.

[15] The appellant failed to satisfy us that this Court’s intervention is warranted in this case.

[16] The appeal will be dismissed with costs.

“Pierre Blais”

J.A.

“I agree.
M. Nadon J.A.”

“I agree.
J.D. Denis Pelletier J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-610-08

**Appeal of a judgment of the Honourable Mr. Justice Frenette of the Federal Court,
dated November 28, 2008, 2008 FC 1323**

STYLE OF CAUSE: Attorney General of Canada v.
Roland Anglehart Sr. et al.

PLACE OF HEARING: Charlottetown, Prince Edward
Island

DATE OF HEARING: June 10, 2009

REASONS FOR JUDGMENT BY: BLAIS J.A.

CONCURRED IN BY: NADON J.A.
PELLETIER J.A.

DATED: August 11, 2009

APPEARANCES:

Ginette Mazerolle

FOR THE APPELLANT

Bernard Jolin
Patrick Ferland

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

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FOR THE RESPONDENTS