

SUPREME COURT OF NOVA SCOTIA

Citation: *Sipekne'katik v. Nova Scotia (Environment)*, 2016 NSSC 178

Date: 20160713

Docket: HFX450765

Registry: Halifax

Between:

Sipekne'katik

Appellant

v.

Nova Scotia (Minister of Environment) and
Alton Natural Gas Storage LP

Respondent

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Judge: The Honourable Justice Michael J. Wood

Heard: June 22, 2016, in Halifax, Nova Scotia

Written Decision: July 13, 2016

Subject: Civil Procedure – Stay Pending Appeal – C.P.R. 7.28
Aboriginal Law – Duty to Consult

Summary: Sipekne'katik is a First Nation appealing Minister's decision to issue Industrial Approval under *Environment Act* for natural gas storage facility. Appeal alleges breach of duty to consult and lack of procedural fairness. Appellant seeks stay pending appeal under C.P.R. 7.28.

Primary issue on motion is whether irreparable harm established or exceptional circumstances exist to justify stay. Sipekne'katik argued that because of alleged breach of duty to

consult any work that would potentially impact Shubenacadie River and fish habitat created irreparable harm. Project in question would result in diluted brine solution entering river.

Respondents said harm not established and allegations are based on speculation not evidence.

Issues: Should stay be granted pending appeal?

Result: Stay refused. Appellant did not provide sufficient evidence of irreparable harm. Mitigation measures in place were designed to reduce or avoid adverse impact on river. Appeal hearing scheduled prior to anticipated start of brine operation. Reasonable to expect brining would occur for a relatively short period before appeal decided. Insufficient evidence of irreparable harm to ability to engage in meaningful consultation if stay not granted. No exceptional circumstances to justify stay in the absence of harm.

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