

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150129

Docket: A-514-14

Citation: 2015 FCA 26

Present: STRATAS J.A.

BETWEEN:

**FORESTETHICS ADVOCACY ASSOCIATION,
LIVING OCEANS SOCIETY and
RAINCOAST CONSERVATION
FOUNDATION**

Appellants

and

**NORTHERN GATEWAY PIPELINES INC. and
NORTHERN GATEWAY PIPELINES
LIMITED PARTNERSHIP**

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on January 29, 2015.

REASONS FOR ORDER BY:

STRATAS J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150129

Docket: A-514-14

Citation: 2015 FCA 26

Present: STRATAS J.A.

BETWEEN:

FORESTETHICS ADVOCACY ASSOCIATION,
LIVING OCEANS SOCIETY and
RAINCOAST CONSERVATION
FOUNDATION

Appellants

and

NORTHERN GATEWAY PIPELINES INC. and
NORTHERN GATEWAY PIPELINES
LIMITED PARTNERSHIP

Respondents

REASONS FOR ORDER

STRATAS J.A.

[1] This motion arises within file A-514-14. This is one of the matters seeking review of the decisions concerning the Northern Gateway Pipeline Project. It has been consolidated with those matters (lead file A-437-14).

[2] In this individual file, the National Energy Board moves to be added as a respondent in file A-514-14. It relies on subsection 22(3) of the *National Energy Board Act*, R.S.C. 1985, c. N-7. That provision allows it to be heard on appeal, but it does not dictate what status the Board must have in the Court.

[3] The appellants oppose, submitting that the National Energy Board should be named only as an intervener under Rule 109. The basis for the appellants' opposition is that the Board's participation when one of its own decisions is being reviewed is limited. Its submissions:

- must be relevant to the issues in the judicial review and useful to the Court; and
- must not offend the fundamental principles of the finality of the tribunal's decision and the impartiality of the tribunal in future proceedings.

(see, e.g., *Canada (Attorney General) v. Quadrini*, 2010 FCA 246.)

[4] The Board is a respondent in the consolidated matters before the Court (lead file A-437-14). It has that status because it has been named as a respondent in a number of the proceedings that make up the consolidated matter.

[5] Further, it is evident from the Board's submissions in reply that it is well aware of the limits on its participation. It knows that it cannot exercise all of the normal rights of a respondent given its status as one of the administrative decision-makers whose decision is being reviewed.

[6] If the appellants take the view that the Board is exceeding its proper limits, they can raise the matter at the hearing of the consolidated matter or, if necessary, bring a motion before the hearing.

[7] In a technical sense, this file (A-514-14) is an appeal from the Board's decision and so the Board should be a respondent. An order shall issue to that effect.

[8] In this same file, the appellants seek to add the Attorney General of Canada as a respondent to these proceedings. The motion is on consent. My order will also grant this relief.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-514-14

STYLE OF CAUSE: *Forestethics Advocacy Association
et al. v. Northern Gateway Pipelines
Inc. et al.*

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: STRATAS J.A.

DATED: JANUARY 29, 2015

WRITTEN REPRESENTATIONS BY:

Barry Robinson

FOR THE APPELLANTS

Andrew Hudson
Isabelle Cadotte

FOR THE PROPOSED
RESPONDENT, NATIONAL
ENERGY BOARD

Richard A. Neufeld, Q.C.
Laura Estep
Bernard Roth

FOR THE RESPONDENTS,
NORTHERN GATEWAY
PIPELINES INC. AND
NORTHERN GATEWAY
PIPELINES LIMITED
PARTNERSHIP

SOLICITORS OF RECORD:

Barry Robinson
Calgary, Alberta

FOR THE APPELLANTS

National Energy Board
Calgary, Alberta

FOR THE PROPOSED
RESPONDENT, NATIONAL
ENERGY BOARD

Bernard Roth
Calgary, Alberta

FOR THE RESPONDENTS,
NORTHERN GATEWAY
PIPELINES INC. AND
NORTHERN GATEWAY
PIPELINES LIMITED
PARTNERSHIP