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Environmental Assessment Branch
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The Honourable Margaret Miller
Minister of Environment
Nova Scotia Environment
1894 Barrington St, Suite 1800
PO Box 442
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Sent Via Electronic Mail

Dear Minister Miller:

Re: Reasonable apprehension of bias with respect to the environmental assessment of Northern Pulp's proposed effluent treatment facility

We write to you on behalf of our client, Friends of the Northumberland Strait (“FONS”). As per FONS’ letter to you dated September 27, 2018, FONS is of the view that you, in your position as Minister of Environment, have a significant and direct financial interest in ensuring that the environmental assessment (“EA”) for Northern Pulp’s proposed effluent treatment facility (“ETF”) is concluded as quickly as possible. In addition, your government has ongoing contractual relationships with Northern Pulp that could be interpreted as requiring you to favour Northern Pulp when deciding whether to approve the EA.

Given your position as a Cabinet minister committed to acting in the interest of your government,¹ these factors give rise to a reasonable apprehension of bias with respect to your role in the EA process. As a result, the current EA process, and any decision you make pursuant to s 34 of the *Environment Act*, are void.

On this basis, FONS respectfully requests that you recuse yourself from the EA and delegate your authority to an independent and unbiased body. FONS specifically requests delegation to the Canadian Environmental Assessment Agency (“CEAA”), as this body is familiar with the file and the public has already expressed extensive and unprecedented support for a federal-level assessment.

¹ See *Canadian Union of Public Employees v Ontario (Minister of Labour)*, [2003] 1 SCR 539 at paras 114-116 [Appendix A, Tab 1].

A. Background

(1) The current EA

Northern Pulp currently uses Boat Harbour as its effluent treatment facility, and has done so since the 1960s. However, in 2015 concern about the impacts of the Boat Harbour facility on Pictou Landing First Nation led the Provincial legislature to pass the *Boat Harbour Act* (“*BHA*”). Section 3 of the *BHA* requires Northern Pulp to close the Boat Harbour facility on or before January 31, 2020.²

If the Mill is to continue operating past the closure date, Northern Pulp must have a replacement ETF up and running by that deadline. Unfortunately, Northern Pulp has already publically acknowledged that it will miss the closure date.³ This raises the question of how long the Mill must remain idle after the closure date before it can begin operating its new ETF.

The Province has decided to apply a Class 1 environmental assessment to Northern Pulp’s proposed ETF. This means that your task is to review the information provided by Northern Pulp and to make a determination pursuant to section 34(1) of the *Environment Act*, SNS 1994-95, c 1. Section 34(1) authorizes you to approve or reject the ETF, or to lengthen the EA process by requesting additional information, ordering a focus report or an environmental-assessment report, or referring the project to alternate dispute resolution.

Importantly, any decision that would have the effect of lengthening the EA process could potentially result in further delays in construction and could ultimately add months or even years to the Mill’s closure time.

(2) Reasonable apprehension of bias: the legal framework

The widely accepted and unchallenged test for reasonable apprehension of bias originates with the Supreme Court of Canada’s decision in *Committee for Justice and Liberty*.⁴ That test, which has been adopted by the Nova Scotia Court of Appeal,⁵ is as follows: what would an informed person, viewing the matter realistically and practically, conclude? Would he or she think that it is more likely than not that the decision-maker, whether consciously or unconsciously, would not decide fairly?

A finding of reasonable apprehension of bias is highly fact-specific and must be established via cogent evidence.⁶ However, as a general principle the case law has established that a decision-maker’s pecuniary interest in the outcome of a proceeding, however large or small that interest

² *Boat Harbour Act*, SNS 2015, c 4, s 3 [*BHA*].

³ Paul Withers, “Premier unmoved by Northern Pulp’s ask for more time to close waste water facility,” 31 January 2019, CBC News [Appendix B, Tab 1]; Michael MacDonald, “N.S. mill’s future at risk without extension, Northern Pulp warns,” 1 February 2019, CTV News Atlantic [Appendix B, Tab 1].

⁴ *Committee for Justice and Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369 at 386 [Appendix A, Tab 2].

⁵ *Nova Scotia (Attorney General) v MacLean*, 2017 NSCA 24 at paras 40-41 [*MacLean*] [Appendix A, Tab 3].

⁶ *Ibid*, at para 39.

may be, is grounds for automatic disqualification. This principle was affirmed by the Supreme Court in its 2003 decision in *Wewaykum Indian Band*.⁷

Where a reasonable apprehension of bias exists in a proceeding, it cannot be cured by a subsequent decision. The Supreme Court has been clear that “[t]he damage created by apprehension of bias cannot be remedied. The hearing, and any subsequent order resulting from it, is void.”⁸

As will be illustrated in the following sections, because of your position as a Minister and member of Cabinet, both your government’s pecuniary interest in the outcome of the EA and your government’s contractual relationships with Northern Pulp give rise to a reasonable apprehension of bias in the context of the ongoing EA. As a result, your participation voids the current EA process and any decisions or orders flowing from it, and you are disqualified from participation in any future EA of Northern Pulp’s proposed ETF.

(3) Reasonable apprehension of bias & the public interest

The rule against bias is essential to maintaining public confidence in the administration of justice. This fundamental principle of procedural fairness is all the more important when the decision-maker is tasked with making a decision in the public interest.⁹

You are unquestionably required to have regard for the public interest when making a decision under section 34(1) of the *Environment Act*. The *Act*’s purpose provisions illustrate its clear focus on the public interest, enumerating goals such as the following:

- (a) maintaining environmental protection as essential to the integrity of ecosystems, human health and the socio-economic well-being of society;¹⁰
- (b) maintaining the principles of sustainable development, including the principle of shared responsibility of all Nova Scotians to sustain the environment and the economy, both locally and globally, through individual and government actions;¹¹ and
- (c) providing access to information and facilitating effective public participation in the formulation of decisions affecting the environment [...].¹²

The requirement to have regard for the public interest when making your decision is further emphasized by the *Environmental Assessment Regulations*, NS Reg 26/95 (“*EA Regs*”). Section 12 of the *EA Regs* lists the factors that you must consider when formulating your decision. These include the following:

⁷ *Wewaykum Indian Band v Canada*, 2003 SCC 45 at paras 69-70 [*Wewaykum*] [Appendix A, Tab 4].

⁸ *Newfoundland Telephone Co v Newfoundland*, [1992] 1 SCR 623 at 645 [*Newfoundland Telephone*] [Appendix A, Tab 5].

⁹ *Committee for Justice and Liberty*, *supra* note 4 at 391 [Appendix A, Tab 2].

¹⁰ *Environment Act*, SNS 1994-95, c 1, s 2(a).

¹¹ *Ibid*, s 2(b)(iv).

¹² *Ibid*, s 2(h).

- (a) concerns expressed by the public and aboriginal people about the adverse effects or the environmental effects of the proposed undertaking;¹³
- (b) steps taken by the proponent to address environmental concerns expressed by the public and aboriginal people;¹⁴ and
- (c) potential and known adverse effects or environmental effects of the proposed undertaking [...].¹⁵

As a result, the rule against bias must be observed to the highest possible standard in these circumstances.

(4) The current public controversy

As you are certainly aware, there has been significant public controversy over Northern Pulp's proposed ETF. As a result, our clients anticipate that the EA process, and your initial decision under section 34(1), will be heavily scrutinized. An appearance of bias in this context could result in a widespread loss of public confidence in the administration of justice in the Province.

The public controversy over the proposed ETF has been documented in numerous news stories over the past year. A sample of this extensive media coverage is attached to this submission at **Appendix B, Tab 2**.

The importance of maintaining an unbiased appearance throughout the EA process is all the more important in light of this historic public controversy.

B. The Minister of Environment has a significant and direct financial interest in the outcome of the EA

Your financial interest in the outcome of the current environmental assessment can be divided into two categories:

1. The Province's direct financial investment in the design and development of the new ETF; and
2. Significant unpaid loans from the Province to Northern Pulp.

These two categories will be examined in turn.

(1) The Province has invested directly in the proposed ETF

As documented in the Province's Public Accounts for the fiscal year ended March 31, 2018, Northern Pulp received a \$6 million contribution from the Department of Transportation and Infrastructure Renewal ("TIR").¹⁶ When media contacted TIR about this payment, the Department revealed that it was a "contribution towards detailed design and engineering studies

¹³ *Environmental Assessment Regulations*, NS Reg 26/95, s 12(c) [EA Regs].

¹⁴ *Ibid*, s 12(d).

¹⁵ *Ibid*, s 12(e).

¹⁶ Nova Scotia, *Public Accounts: Volume 3 – Supplement to the Public Accounts for the fiscal year ended March 31, 2018* (Halifax, NS: Communications Nova Scotia, 2018) at p 330 [Appendix B, Tab 3].

for a potential replacement effluent treatment facility.”¹⁷ In addition, TIR noted that it had contributed \$144,980.00 towards design and engineering studies in 2016-2017, for a grand total of \$6.146 million for the fiscal years 2016-2017 and 2017-2018.¹⁸

The results of various requests for information under the provincial *Freedom of Information and Protection of Privacy Act* (“**FOIPOP Act**”) reveal that negotiations between Northern Pulp and TIR over funding for the design and construction of the new ETF continued throughout 2018.¹⁹ This is further confirmed by both the Province and Northern Pulp. For example, in Justice Gabriel’s decision in *Pictou Landing First Nation v Nova Scotia (Aboriginal Affairs)*, he cited a brief from the Province disclosing that “[the Province] is also engaged in confidential discussions directly with Northern Pulp regarding potential crown funding that may be provided to support construction of the new ETF [...]”²⁰

In addition, Terri Fraser, the Mill’s Technical Manager, submitted an affidavit in the context of Northern Pulp’s application for an injunction against a number of fishermen. In that affidavit, she acknowledged the execution of a 2016 agreement between the Province and Northern Pulp to share the cost of “preliminary engineering studies for a replacement ETF,”²¹ and a 2017 funding agreement between the same parties to “allow detailed engineering work to be done, the environmental studies to continue, and allow major equipment to be purchased.”²² Ms. Fraser also stated that the Province and Northern Pulp began negotiating “[...] how the cost of the new ETF should be shared [...]” in September 2017, and that “[t]hose discussions continue today.”²³

Although the Province has not yet revealed the outcome of these funding negotiations, the final cost of the new ETF is estimated to be \$130 million.²⁴ If your decision on the EA were to delay this project further, or even to reject the proposal, the Province could risk losing any anticipated return on its investment. Furthermore, any decision requiring redesign of the ETF, or any measures required to ensure environmental compliance (such as adding tertiary treatment or making changes to enable the mill to utilize a closed-loop effluent treatment system) could result in further significant monetary contributions from the Province. These are, and will be seen as, powerful incentives to approve the current design with no significant changes.

¹⁷ Tim Bousquet, “Northern Pulp, Scotsburn Lumber, and U.S. tariffs,” 8 January 2019, Halifax Examiner [Appendix B, Tab 4].

¹⁸ *Ibid.*

¹⁹ Email from Marla J. MacInnis to Gary S. Porter, 22 August 2018 [Appendix B, Tab 5]; Memorandum from Honourable Lloyd Hines, Minister, Transportation and Infrastructure Renewal to the Executive Council, 15 May 2018 [Appendix B, Tab 5].

²⁰ *Pictou Landing First Nation v Nova Scotia (Aboriginal Affairs)*, 2018 NSSC 306 at para 7 [Appendix B, Tab 6].

²¹ Affidavit of Terri Fraser, Sworn 30 November 2018, para 17 [Appendix B, Tab 7].

²² *Ibid.*, para 26.

²³ *Ibid.*, para 22.

²⁴ Chris Muise, “Northern Pulp Seeks Extension,” 6 February 2019, The Advocate [Appendix B, Tab 8]; Keith Doucette, “Northern Pulp mill formally registers controversial effluent treatment project,” 7 February 2019, Globalnews.ca [Appendix B, Tab 8].

(2) The Province has provided significant loans to Northern Pulp, many of which remain outstanding

In 2017, the Department of Business disclosed that between 2009 and 2017 it had loaned Northern Pulp and its affiliates a total of \$110.8 million (plus an additional \$900,000 in “incentives”).²⁵ \$3.6 million was repaid in August 2016, leaving the remaining \$107.2 million outstanding.²⁶

Although the details of these loans have not been disclosed, it is clear that the Province has provided very substantial financing for the Mill over the past decade. Logic dictates that a lengthy or even permanent closure of the Mill resulting from the EA process could jeopardize the Province’s chances of recouping these investments.

These financial connections between the Province and Northern Pulp create a significant and direct pecuniary interest on your part in the outcome of the EA process. It is clear that the Province is at risk of suffering a significant financial blow if the Mill is forced to close, even temporarily, as of January 31, 2020 – and that financial blow may worsen the longer the Mill is required to stay idle. As a member of Cabinet, you have a collective responsibility with your colleagues to pursue positive financial outcomes for your government, or at the very least to avoid devastating financial losses.²⁷ Although Northern Pulp has now acknowledged that it will miss the closure deadline, the decisions relating to the process and outcome of the EA will be a contributing factor in determining the length of the Mill’s closure. In other words, your decision on the EA could result directly in a significant increase in the Province’s financial liability.

These circumstances create an obvious bias toward approving the project as quickly as possible.

C. Extensive contractual relationships between the Province and Northern Pulp prevent the Minister from making impartial regulatory decisions impacting Northern Pulp’s operations

On December 1, 1995, the Province entered into a Memorandum of Understanding (“MOU”)²⁸ with Scott Maritimes Limited, a prior owner and operator of the Mill. The MOU is extensive, but for our purposes the two relevant clauses are as follows:

4.01(d) Nova Scotia agrees to undertake a clean-up program with respect to the [Boat Harbour] Facility prior to the commencement of the Lease with Scott [...] If a

²⁵ Department of Business, “FOIPOP 2017-03648-BUS – Loans to Northern Pulp and Affiliates,” June 2017 [Appendix B, Tab 9]; Bousquet, “Northern Pulp, Scotsburn Lumber, and U.S. tariffs,” *supra* note 17 [Appendix B, Tab 4].

²⁶ Although we do not have updated information on outstanding loans, with the exception of the \$3.6 million repaid in August 2016 all of the repayable loans disclosed by the Department of Business in 2017 were listed as having terms ending in 2023 or later.

²⁷ See *Canadian Union of Public Employees*, *supra* note 1 at paras 114-116 [Appendix A, Tab 1].

²⁸ Memorandum of Understanding between Her Majesty the Queen in Right of Nova Scotia and Scott Maritimes Limited, 1 December 1995 [Appendix B, Tab 10].

pipeline and diffuser is required by any level of government during the term of the Lease it shall be installed at the sole expense of Nova Scotia.

[...]

4.01(l) Nova Scotia agrees to use its best efforts to assist Scott obtain [sic] all necessary permits, consents and approvals to permit the construction and operation of a replacement effluent treatment facility to replace the [Boat Harbour] Facility at the expiration of the term of the Lease.

The MOU, including the two provisions cited above, continues to operate as between the Province and Northern Pulp. On May 12, 2008, the Province signed an “Acknowledgement Agreement”²⁹ with Northern Pulp that states, in part, as follows:

[T]he Province acknowledges, agrees and confirms that [...] the Memorandum of Understanding between the Province and Scott dated December 1, 1995 and the Indemnity Agreement between the Province and Scott dated December 31, 1995 shall continue to apply with respect to the ongoing operation of the Effluent Treatment system, Purchaser’s [sic] use of the Lands [...] and Purchaser’s use of Boat Harbour [...].

The obligations imposed by these two provisions appear to be completely at odds with your obligation to conduct an independent, neutral and unbiased EA. In fact, these provisions suggest that a decision to reject the proposed ETF, or to lengthen the EA process by requesting further information, could result in contractual liability for the Province.

Northern Pulp is also party to a number of other long-standing agreements with the Province. These agreements include the Indemnity Agreement³⁰ referenced above, a Lease³¹ and a License Agreement³² both dated December 31, 1995, and a 2002 Lease Extension Agreement.³³ These agreements impose various obligations on the Province in relation to Northern Pulp’s proposed ETF.

In fact, Northern Pulp has stated publicly that its various contracts with the Province should be determinative of the results of administrative approval processes. As per its 2015 appeal of the Industrial Approval issued by the Province, “[g]overnment cannot arbitrarily revoke Northern Pulp’s contractual rights under the Agreements with the Province by way of an administrative

²⁹ Acknowledgement Agreement from Her Majesty the Queen in Right of the Province of Nova Scotia to Northern Pulp NS LP, its affiliates and Northern Pulp Nova Scotia Corporation, 12 May 2008 [Appendix B, Tab 11].

³⁰ Indemnity Agreement between Her Majesty the Queen in Right of the Province of Nova Scotia and Scott Maritimes Limited, 31 December 1995 [Appendix B, Tab 12].

³¹ Lease between Her Majesty the Queen in Right of the Province of Nova Scotia and Scott Maritimes Limited, 31 December 1995 [Appendix B, Tab 13].

³² License Agreement between Her Majesty the Queen in Right of the Province of Nova Scotia and Scott Maritimes Limited, 31 December 1995 [Appendix B, Tab 14].

³³ Lease Extension Agreement between Her Majesty the Queen in Right of the Province of Nova Scotia and Kimberly-Clark Inc, 22 October 2002 [Appendix B, Tab 15].

approval process.”³⁴ In response to this appeal, Randy Delorey, then Minister of the Environment, revoked a number of the conditions originally included in the 2015 Industrial Approval, and agreed to re-examine others³⁵ – suggesting that the Province is concerned about the potential contractual liability resulting from its efforts to effectively regulate Northern Pulp’s operations.

Northern Pulp also refers explicitly to the Province’s potential contractual liability in its Registration Document for the current EA. At section 1.0, it states as follows:

At the date of Registration, the Province of Nova Scotia has made contributions to the cost planning and design of the project. The contributions may be off set against any future award Northern Pulp may be granted for damages against the Province in any respect due to early termination of the present [Boat Harbour Effluent Treatment Facility] lease.³⁶

This statement speaks for itself, but Northern Pulp apparently contemplates a claim for damages for “early termination” of the Boat Harbour lease (which currently extends until 2030). Once again, it stands to reason that such a damages claim, and the Province’s alleged liability, for early termination of the Boat Harbour lease will increase the longer the Mill stays idle.

Your position as a member of Cabinet creates a direct interest in upholding the Province’s contractual obligations and/or minimizing the liability associated with any unavoidable contractual disputes and litigation. As a result, these extensive contractual relationships between the Province and Northern Pulp gives rise to a reasonable apprehension of bias in the context of the ongoing EA.

D. The Minister must recuse herself from the EA and delegate her authority to an independent and unbiased body

As a consequence of this apprehension of bias, the current EA process is void.³⁷ In addition, in your capacity as Minister of Environment you are disqualified from presiding over and making decisions under section 34 of the *Environment Act* in relation to the current EA. You are likewise disqualified from making decisions in relation to any future EA of Northern Pulp’s proposed ETF.³⁸

Accordingly, FONS respectfully requests that you recuse yourself from the EA and delegate your authority under section 34(1) of the *Environment Act* to an independent and unbiased body.

³⁴ Letter from Ms. Terri Fraser, Technical Manager Northern Pulp Nova Scotia Corporation, to the Honourable Randy Delorey, Minister of Environment, 9 April 2015 [Appendix B, Tab 16].

³⁵ Letter from the Honourable Randy Delorey, Minister of Environment, to Ms. Terri Fraser, Technical Manager Northern Pulp Nova Scotia Corporation, 9 July 2015 [Appendix B, Tab 17].

³⁶ Northern Pulp Nova Scotia Corporation, *Environmental Assessment Registration Document: Replacement Effluent Treatment Facility*, 31 January 2019 at p 1.

³⁷ *Newfoundland Telephone*, *supra* note 8 at 645 [Appendix A, Tab 5].

³⁸ *Wewaykum*, *supra* note 7 at paras 69-73 [Appendix A, Tab 4].

FONS specifically asks that you delegate the EA to the Canadian Environmental Assessment Agency. This delegation is authorized by section 17 of the *Environment Act*.

We look forward to hearing from you on this important matter.

Sincerely,



James Gunvaldsen Klaassen
Barrister & Solicitor



Sarah McDonald
Barrister & Solicitor

Enclosures

Appendix A – Case Law, Tabs 1-5

Appendix B – Evidence, Tabs 1-17

APPENDIX A

[Canadian Union of Public Employees \(C.U.P.E.\) v. Ontario \(Minister of Labour\), \[2003\] 1 S.C.R. 539](#)

Supreme Court Reports

Supreme Court of Canada

Present: McLachlin C.J. and Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour, LeBel and Deschamps JJ.

Heard: October 8, 2002;

Judgment: May 16, 2003.

File No.: 28396.

[\[2003\] 1 S.C.R. 539](#) | [\[2003\] 1 R.C.S. 539](#) | [\[2003\] S.C.J. No. 28](#) | [\[2003\] A.C.S. no 28](#) | [2003 SCC 29](#)

Minister of Labour for Ontario, appellant; v. Canadian Union of Public Employees and Service Employees International Union, respondents, and Canadian Bar Association and National Academy of Arbitrators (Canadian Region), interveners.

(209 paras.)

Case Summary

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Catchwords:

Labour relations — Hospital labour disputes — Appointment of board of arbitration — Legislation requiring disputes over collective agreements in hospitals and nursing homes to be resolved by compulsory arbitration — Minister of Labour appointing retired judges to chair arbitration boards — Whether Minister required to select arbitrators qualified by expertise and acceptance in labour relations community — Whether retired judges, as a class, biased against labour — Hospital Labour Disputes Arbitration Act, R.S.O. 1990, c. H.14, s. 6(5).

Catchwords:

Administrative law — Judicial review — Appointment of board of arbitration — Legislation requiring disputes over collective agreements in hospitals and nursing homes to be resolved by compulsory arbitration — Minister of Labour appointing retired judges to chair arbitration boards — Whether appointment process for selecting chairs of arbitration boards violates natural justice or infringes institutional independence [page540] and impartiality of arbitration boards — Whether appointment process breached legitimate expectations of unions — Whether appointments caused reasonable apprehension of bias — Whether Minister disqualified or required to delegate task of making appointments because of interest in arbitrations — Whether Minister's appointments patently unreasonable — Hospital Labour Disputes Arbitration Act, R.S.O. 1990, c. H.14, s. 6(5).

Summary:

Since 1965, Ontario's hospitals, nursing homes and their employees have been required to resolve disputes over

collective agreements by compulsory arbitration under the *Hospital Labour Disputes Arbitration Act* ("HLDAA"). If the parties cannot agree on a mutually acceptable arbitrator, a panel of three members is struck, two designated by the parties and the third chosen by the two designates or, if they fail to agree, appointed by the Minister of Labour. Amendments to the *Labour Relations Act* in 1979 facilitated the formation and use of a list of arbitrators with expertise acceptable to both management and the unions. A similar register of arbitrators was dropped from the HLDAA in 1980 but a normal practice was for senior officials of the Ministry of Labour, under delegated authority, to identify appropriate arbitrators. Following the 1995 provincial election, a reorganization of public sector institutions, including schools and hospitals, led to Bill 136. The Bill contained the proposed *Public Sector Dispute Resolution Act, 1997* which included a Dispute Resolution Commission. Organized labour opposed many aspects of the Bill, including the proposed commission. When the Minister announced a return to the sector-based system of appointing arbitrators, the unions believed the selection of HLDAA chairpersons would thereafter be limited to mutually agreed candidates.

In early 1998, the Minister appointed four retired judges to chair several arbitration boards. They were not appointed by mutual agreement nor were they on the "agreed" list compiled under s. 49(10) of the *Labour Relations Act, 1995*. The unions were not consulted. The President of the Ontario Federation of Labour complained to the Minister that the understanding about a return to the *status quo* had been breached without consultation. The unions objected that retired judges lack expertise, [page541] experience, tenure and independence from government. They also complained the Minister had breached procedural fairness by not delegating the task of making appointments to senior officials. The four judges initially appointed declined to act but other retired judges accepted the appointments. The unions sought declarations that the Minister's actions denied natural justice and lacked institutional independence and impartiality. The Divisional Court dismissed the application for judicial review. The Court of Appeal allowed the unions' appeal, concluding that the Minister had created a reasonable apprehension of bias and interfered with the independence and impartiality of the arbitrators, as well as defeating the legitimate expectation of the unions contrary to the requirements of natural justice. The Minister was ordered not to make any further appointments "unless such appointments are made from the long-standing and established roster of experienced labour relations arbitrators" compiled under s. 49(10) of the *Labour Relations Act, 1995*.

Held (McLachlin C.J. and Major and Bastarache JJ. dissenting): The appeal should be dismissed for reasons that differ somewhat from those of the Court of Appeal. The Minister is required, in the exercise of his power of appointment under s. 6(5) of the HLDAA, to be satisfied that prospective chairpersons are not only independent and impartial but possess appropriate labour relations expertise and are recognized in the labour relations community as generally acceptable to both management and labour.

Per Gonthier, Iacobucci, Binnie, Arbour, LeBel and Deschamps JJ.: The Minister, as a matter of law, was required to exercise his power of appointment in a manner consistent with the purpose and objects of the statute that conferred the power. A fundamental purpose and object of the HLDAA was to provide an adequate substitute for strikes and lock-outs. To achieve the statutory purpose, as the Minister himself wrote on February 2, 1998, "the parties must perceive the system as neutral and credible". This view was fully supported by the HLDAA's legislative history.

The Minister was not required to proceed with the selection of chairpersons by way of "mutual agreement" or from the s. 49(10) roster. Nor were retired judges as a "class" reasonably seen as biased against labour. Nevertheless, the Minister was required by the HLDAA, properly interpreted, to select arbitrators from candidates [page542] who were qualified not only by their impartiality, but by their expertise and general acceptance in the labour relations community.

Section 6(5) of the HLDAA contemplates the appointment of "a person who is, in the opinion of the Minister, qualified to act". The Minister's discretion is constrained by the scheme and object of the Act as a whole, which is to create a "neutral and credible" substitute for the right to strike and lock-out. Labour arbitration has traditionally rested on a consensual basis, with the arbitrator chosen by the parties or being acceptable to both parties. Although the s. 6(5) power is expressed in broad terms, the Minister is nevertheless required, in the exercise of that power, to have regard to relevant labour relations expertise, independence, impartiality and general acceptability within the labour relations community. These criteria are neither vague nor uncertain. The livelihood of a significant group of professional labour arbitrators depends on their recognized ability to fulfill them. The

result is a perfectly manageable framework within which the legislature intended to give the Minister broad but not unlimited scope within which to make appointments in furtherance of the *HLDA*'s object and purposes. The Minister, under the *HLDA*, is not given a broad policy function. His narrow role is simply to substitute for the parties in naming a third arbitrator in case of their disagreement and, given the context, background and purpose of the Act, his rejection of labour relations expertise and general acceptability as relevant factors was patently unreasonable.

Although, as a member of Cabinet, the Minister was committed to public sector rationalization and had a perceived interest in the appointment process and the outcome of the arbitrations, the legislature specifically conferred the power of appointment on the Minister and, absent a constitutional challenge, clear and unequivocal statutory language conferring that authority prevailed over the common law rule against bias. The Minister's power to delegate the appointment process under s. 9.2(1) of the *HLDA* was permissive only and to take away his authority to make his own choice would amount to a judicial amendment of the legislation.

The Minister satisfied any duty to consult with the unions about the change in the appointments process. [page543] There were extensive meetings during which the Minister signalled that the process was subject to reform and that retired judges were potential candidates for appointments. The unions made clear their opposition. Section 6(5) of the *HLDA* did not impose on the Minister a procedural requirement to consult with the parties to each arbitration nor does the evidence establish a firm practice of appointing from a list or by mutual agreement. A general, ambiguous promise to continue an existing system subject to reform does not suffice under the doctrine of legitimate expectation to bind the Minister's exercise of his or her discretion.

The Court of Appeal had concluded that the Minister's approach tainted both the independence and impartiality of the *HLDA* arbitration boards to which the retired judges had been appointed. This conclusion was not justified. The *HLDA* commands the use of *ad hoc* arbitration boards. Such boards are not characterized by financial security or security of tenure beyond the life of the arbitration itself. The independence of arbitrators is guaranteed by training, experience and mutual acceptability. Since s. 6(5) requires the appointment of individuals qualified by training, experience and mutual acceptability, the proper exercise of the appointment power would lead to a tribunal which would satisfy reasonable concerns about institutional independence.

Impartiality raises different considerations. The Court of Appeal did not suggest that the retired judges were in fact biased or partial but concluded that they might reasonably be seen to be "inimical to the interests of labour, at least in the eyes of the appellants". The test, however, is not directed to the subjective perspective of one of the parties but to the reasonable, detached and informed observer. Retired judges as a class have no greater interest than other citizens in the outcome of the arbitrations and there are no substantial grounds to think they would do the bidding of the Minister or favour employers so as to improve the prospect of future appointments. A fully informed, reasonable person would not stigmatize retired judges, as a class, with an anti-labour bias. Allegations of individual bias must be dealt with on a case-by-case basis.

[page544]

The appropriate standard of review is patent unreasonableness. The pragmatic and functional approach applies to the judicial review of the exercise of a ministerial discretion and factors such as the existence of a privative clause, the Minister's expertise in labour relations, the nature of the question before the Minister and the wording of s. 6(5) all call for considerable deference. A patently unreasonable appointment is one whose defect is immediate, obvious and so flawed in terms of implementing the legislative intent that no amount of curial deference can justify letting it stand.

The appointments were not patently unreasonable simply because the Minister did not restrict himself to the s. 49(10) list of arbitrators. Some arbitrators on the list were unacceptable to the unions and some acceptable arbitrators were not on the list, confirming the reasonableness of the Minister's view that candidates could qualify without being on the list. However, in assessing whether the appointments were patently unreasonable, the courts are entitled to have regard to the importance of the factors the Minister altogether excluded from his consideration. In this case, the Minister expressly excluded relevant factors that went to the heart of the legislative scheme. The matters before the boards required the familiarity and expertise of a labour arbitrator. Expertise and neutrality foster general acceptability. Appointment of an inexperienced and inexperienced chairperson who is not seen as generally acceptable in the labour relations community is a defect in approach that is both

immediate and obvious. Having regard to the legislative intent manifested in the *HLDA*, the Minister's approach to the s. 6(5) appointments was patently unreasonable. The qualifications of specific appointees will have to be assessed on a case-by-case basis if challenged.

The appeal is thus dismissed on the limited ground that appointments that excluded from consideration labour relations expertise and general acceptability in the labour relations community were patently unreasonable.

Per McLachlin C.J. and Major and Bastarache JJ. (dissenting): The appropriate standard of review for the exercise of the Minister's appointment power under s. 6(5) of the *HLDA* is patent unreasonableness. The pragmatic and functional approach focusses on the particular provision being invoked. The Minister exercised power under [page545] a single statute, his enabling legislation, and, absent a constitutional challenge, the patent unreasonableness standard need not make room for a review of statutory interpretation of enabling legislation on a correctness basis. There is no basis for dividing the Minister's decision into component questions subject to different standards of review, nor should the Minister's power be viewed as due less deference because it is circumscribed by legislation. Not every administrative action involves a distinct and identifiable exercise of statutory interpretation. Where, as here, the factors indicate that the question raised by the provision is one intended by the legislators to be left to the exclusive decision of the administrative decision maker, it simply is not one for the courts to make. The presence of a privative clause is compelling evidence that deference is due. The Minister knows more about labour relations than the courts and will be taken to have expertise. Deference is owed to expert decision makers designated by the legislature. The fact-based nature of the question before the Minister also points to deference and empowering the Minister, rather than an apolitical actor, suggests a legislative intent of political accountability.

The Minister did not make appointments that were patently unreasonable. A contextual approach to statutory interpretation of the enabling legislation is necessary for determining the criteria relevant to exercise of the discretion. In some cases, the criteria are spelled out in the legislation, regulations or guidelines or found in the specific purposes of the relevant Act. In others, the relevant factors may be unwritten and derived from the purpose and context of the statute. In this case, there are no relevant regulations, guidelines, or other instruments, and the statute does not say much. The Act stipulates that appointees must be qualified in the opinion of the Minister, expressly contemplating the importance of the Minister's opinion. Labour relations expertise, independence and impartiality, reflected in broad acceptability, are not necessarily dominant or obvious factors and should not be imposed as specific restrictions on the Minister's discretion. The Minister developed an opinion and determined that judging experience was a relevant qualification. The Act called for the Minister to reach his own opinion, not to consider a specific determining factor. Given how much work it takes to identify labour relations experience and broad acceptability as factors and to imply them into s. 6(5), weighing them less heavily than another unwritten qualification, namely judicial experience, does not vitiate the appointments as patently [page546] unreasonable. It takes significant searching or testing to find the alleged defect or even the factors said to constrain the Minister. It is therefore difficult to characterize the appointments as immediately or obviously defective, not in accordance with reason, clearly irrational, or so flawed that no amount of curial deference could justify letting them stand based on a failure to consider these factors. Recognition of the seriousness of quashing a decision as patently unreasonable is crucial to maintaining the discipline of judicial restraint and deference, and our intervention is not warranted in these circumstances.

Concerns about institutional independence and institutional impartiality do not render the Minister's appointments patently unreasonable. The Act requires that the tribunals be *ad hoc* and retired judges as a class cannot reasonably be seen as so partial that appointing them took the Minister outside the bounds of his statutory discretion. The possibility of a successful challenge to a particular board is not foreclosed but the constraints on the Minister's discretion do not permit a general inquiry into the independence and impartiality of the boards on the basis of the appointment process in the absence of a direct challenge to the boards actually appointed.

By Binnie J.

Applied: Roncarelli v. Duplessis, [\[1959\] S.C.R. 121](#); Padfield v. Minister of Agriculture, Fisheries and Food, [1968] A.C. 997; Baker v. Canada (Minister of Citizenship and Immigration), [\[1999\] 2 S.C.R. 817](#); U.E.S., Local 298 v. Bibeault, [\[1988\] 2 S.C.R. 1048](#); Canadian Broadcasting Corp. v. Canada (Labour Relations Board), [\[1995\] 1 S.C.R. 157](#); distinguished: Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services), [\[2001\] 2 S.C.R. 281](#), [2001 SCC 41](#); Moreau-Bérubé v. New Brunswick (Judicial Council), [\[2002\] 1 S.C.R. 249](#), [2002 SCC 11](#); referred to: Air Canada v. British Columbia (Attorney General), [\[1986\] 2 S.C.R. 539](#); Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch), [\[2001\] 2 S.C.R. 781](#), [2001 SCC 52](#); [page547] Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police, [\[1979\] 1 S.C.R. 311](#); Rizzo & Rizzo Shoes Ltd. (Re), [\[1998\] 1 S.C.R. 27](#); R. v. Sharpe, [\[2001\] 1 S.C.R. 45](#), [2001 SCC 2](#); Reference re Public Service Employee Relations Act (Alta.), [\[1987\] 1 S.C.R. 313](#); MacBain v. Lederman, [\[1985\] 1 F.C. 856](#); Canadian Pacific Ltd. v. Matsqui Indian Band, [\[1995\] 1 S.C.R. 3](#); Pearlman v. Manitoba Law Society Judicial Committee, [\[1991\] 2 S.C.R. 869](#); Brosseau v. Alberta Securities Commission, [\[1989\] 1 S.C.R. 301](#); McMaster University and McMaster University Faculty Assn., Re [\(1990\), 13 L.A.C. \(4th\) 199](#); Cardinal v. Director of Kent Institution, [\[1985\] 2 S.C.R. 643](#); Council of Civil Service Unions v. Minister for the Civil Service, [1985] A.C. 374; Reference re Canada Assistance Plan (B.C.), [\[1991\] 2 S.C.R. 525](#); Old St. Boniface Residents Assn. Inc. v. Winnipeg (City), [\[1990\] 3 S.C.R. 1170](#); In re Preston, [1985] A.C. 835; Pasiachnyk v. Saskatchewan (Workers' Compensation Board), [\[1997\] 2 S.C.R. 890](#); Pezim v. British Columbia (Superintendent of Brokers), [\[1994\] 2 S.C.R. 557](#); Canada (Director of Investigation and Research) v. Southam Inc., [\[1997\] 1 S.C.R. 748](#); Pushpanathan v. Canada (Minister of Citizenship and Immigration), [\[1998\] 1 S.C.R. 982](#); Suresh v. Canada (Minister of Citizenship and Immigration), [\[2002\] 1 S.C.R. 3](#), [2002 SCC 1](#); Dr. Q v. College of Physicians and Surgeons of British Columbia, [\[2003\] 1 S.C.R. 226](#), [2003 SCC 19](#); Law Society of New Brunswick v. Ryan, [\[2003\] 1 S.C.R. 247](#), [2003 SCC 20](#); Oakwood Development Ltd. v. Rural Municipality of St. François Xavier, [\[1985\] 2 S.C.R. 164](#); Reference re Bill 30, an Act to amend the Education Act (Ont.), [\[1987\] 1 S.C.R. 1148](#); Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Association, [\[1975\] 1 S.C.R. 382](#); Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp., [\[1979\] 2 S.C.R. 227](#); National Corn Growers Assn. v. Canada (Import Tribunal), [\[1990\] 2 S.C.R. 1324](#); IWA v. Consolidated-Bathurst Packaging Ltd., [\[1990\] 1 S.C.R. 282](#); R. v. Généreux, [\[1992\] 1 S.C.R. 259](#); Valente v. The Queen, [\[1985\] 2 S.C.R. 673](#); Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, [\[1997\] 3 S.C.R. 3](#); Katz v. Vancouver Stock Exchange, [\[1996\] 3 S.C.R. 405](#); 2747-3174 Québec Inc. v. Quebec (Régie des permis d'alcool), [\[1996\] 3 S.C.R. 919](#); R. v. Lippé, [\[1991\] 2 S.C.R. 114](#); R. v. S. (R.D.), [\[1997\] 3 S.C.R. 484](#); R. v. Williams, [\[1998\] 1 S.C.R. 1128](#); R. v. Parks [\(1993\), 15 O.R. \(3d\) 324](#), leave to appeal refused, [\[1994\] 1 S.C.R. x](#); Committee for Justice and Liberty v. National Energy Board, [\[1978\] 1 S.C.R. 369](#); St-Jean v. Mercier, [\[2002\] 1 S.C.R. 491](#), [2002 SCC 15](#).

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By Bastarache J. (dissenting)

Pushpanathan v. Canada (Minister of Citizenship and Immigration), [\[1998\] 1 S.C.R. 982](#); Canadian Broadcasting Corp. v. Canada (Labour Relations Board), [\[1995\] 1 S.C.R. 157](#); Padfield v. Minister of Agriculture, Fisheries and Food, [1968] A.C. 997; Roncarelli v. Duplessis, [\[1959\] S.C.R. 121](#); Toronto Catholic District School Board v. Ontario English Catholic Teachers' Assn. (Toronto Elementary Unit) [\(2001\), 55 O.R. \(3d\) 737](#), leave to appeal refused, [2002] 2 S.C.R. ix; Domtar Inc. v. Quebec (Commission d'appel en matière de lésions professionnelles), [\[1993\] 2 S.C.R. 756](#); National Corn Growers Assn. v. Canada (Import Tribunal), [\[1990\] 2 S.C.R. 1324](#); Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp., [\[1979\] 2 S.C.R. 227](#); Pasiachnyk v. Saskatchewan (Workers' Compensation Board), [\[1997\] 2 S.C.R. 890](#); Canada (Director of Investigation and Research) v. Southam Inc., [\[1997\] 1 S.C.R. 748](#); Ivanhoe inc. v. UFCW, Local 500, [2001] 2 S.C.R. 566, [2001 SCC 47](#); Ajax (Town) v. CAW, Local 222, [\[2000\] 1 S.C.R. 538](#), [2000 SCC 23](#); Suresh v. Canada (Minister of Citizenship and Immigration), [\[2002\] 1 S.C.R. 3](#), [2002 SCC 1](#); Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services), [\[2001\] 2 S.C.R. 281](#), [2001 SCC 41](#); Pezim v. British Columbia (Superintendent of Brokers), [\[1994\] 2 S.C.R. 557](#); Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission), [\[1989\] 1 S.C.R. 1722](#);

Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour), [2003] 1 S.C.R. 539

Moreau-Bérubé v. New Brunswick (Judicial Council), [\[2002\] 1 S.C.R. 249](#), [2002 SCC 11](#); Law Society of New Brunswick v. Ryan, [\[2003\] 1 S.C.R. 247](#), [2003 SCC 20](#); Baker v. Canada (Minister of Citizenship and Immigration), [\[1999\] 2 S.C.R. 817](#); R. v. Advance Cutting & Coring Ltd., [\[2001\] 3 S.C.R. 209](#), [2001 SCC 70](#); Comeau's Sea Foods Ltd. v. Canada (Minister of Fisheries and Oceans), [\[1997\] 1 S.C.R. 12](#); Canada (Attorney General) v. Public Service Alliance of Canada, [\[1993\] 1 S.C.R. 941](#); Canadian Union of Public Employees, Local 301 v. Montreal (City), [\[1997\] 1 S.C.R. 793](#); Katz v. Vancouver Stock Exchange, [\[1996\] 3 S.C.R. 405](#); Canadian Pacific Ltd. v. Matsqui Indian Band, [\[1995\] 1 S.C.R. 3](#).

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Labour Relations Act, 1995, [S.O. 1995, c. 1](#), Sch. A, s. 49(10).

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History and Disposition:

APPEAL from a judgment of the Ontario Court of Appeal (2000), 51 O.R. (3d) 417, 194 D.L.R. (4th) 265, 138 O.A.C. 256, 26 Admin. L.R. (3d) 55, 5 C.C.E.L. (3d) 8, [2000] O.J. No. 4361 (QL), allowing an appeal from a judgment of the Divisional Court (1999), 117 O.A.C. 340, [1999] O.J. No. 358 [page550] (QL). Appeal dismissed, McLachlin C.J. and Major and Bastarache JJ. dissenting.

Counsel

Leslie McIntosh, for the appellant.

Howard Goldblatt, Steven Barrett and Vanessa Payne, for the respondents.

J. Gregory Richards, Jeff G. Cowan and Susan Philpott, for the intervener the Canadian Bar Association.

Michel G. Picher and Barbara A. Mclsaac, Q.C., for the intervener the National Academy of Arbitrators (Canadian Region).

The reasons of McLachlin C.J. and Major and Bastarache JJ. were delivered by

BASTARACHE J. (dissenting)

1 I adopt Binnie J.'s recital of the facts and judicial history. In my view, however, the Minister of Labour ("Minister") did not make appointments that were patently unreasonable. In reaching that decision, I would adopt a somewhat different approach to that of Binnie J. with regard to judicial review for abuse of discretion. I also object to Binnie J.'s conclusion that the impartiality and independence of boards can be challenged on the sole basis of the appointment process without any direct attack on a board actually constituted.

2 With regard to judicial review for abuse of discretion, as I shall explain, the balance of factors in this case

labour relations community as widely acceptable to both unions and management by reason of his or her independence, neutrality and proven expertise.

112 I do not consider these criteria to be vague or uncertain. The practice of labour relations in this country has developed into a highly sophisticated business. The livelihood of a significant group of professional labour arbitrators depends on their recognized ability to fulfill these criteria. Some of them not only enjoy national reputations for their skills in resolving industrial conflicts but are retired judges. From the Minister's perspective, there exists not only a large pool of recognized candidates, but the *HLDA* allows generous latitude to his selection (i.e., a candidate "who is, in the opinion of the Minister, qualified"). The result is a perfectly manageable framework within which the legislature intended to give the Minister broad but not unlimited scope within which to make appointments in furtherance of the *HLDA*'s object and purposes.

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(2) Procedural Fairness

113 Under this heading, I group the challenges to the Minister's impartiality, the allegation that he violated procedural fairness by allegedly changing the "system" of appointments without prior consultation, and his alleged violation of the doctrine of legitimate expectation.

(a) *Was the Minister Impartial in the Exercise of the Power of Appointment?*

114 The unions say the Minister could not, as a member of a cost-cutting government, make the appointments impartially. He was therefore disqualified and ought to have delegated the appointments to senior officials.

115 The Minister says that he is not responsible for health costs or hospital administration. He is, however, a member of Cabinet and committed to government policy which, in 1997, included public sector "rationalization" and pay restraint. He was elected on a platform called "the Common Sense Revolution" and people would reasonably think he was committed to carrying it out.

116 The Ontario Court of Appeal concluded that the Minister had a "significant and direct interest" in the outcome of the arbitral awards (para. 21). As Austin J.A. pointed out, "[a]pproximately 75 per cent to 80 per cent of hospital budgets relate to labour costs and the government's primary method for controlling expenditures is wage control. Although nursing homes have sources of income that are not available to hospitals, they too are substantially dependent upon the government for funding" (para. 21). The Minister's response is that here, unlike in cases such as *MacBain v. Lederman*, [1985] 1 F.C. 856 (C.A.), at pp. 869-71 and 884, neither he nor his government was a party to hospital sector arbitral proceedings. In the *MacBain* case, the Canadian Human Rights Commission appointed the members of the *ad hoc* tribunal to adjudicate the very dispute between the Commission and the person complained about. The Minister argues that his interest in hospital finance [page598] is not "directly at stake" (*Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3, at para. 100) and "too attenuated and remote to give rise to a reasonable apprehension of bias" (*Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869, at p. 891). The local hospital boards could absorb higher unit labour costs by reducing services, thus keeping public funding requirements more or less constant. This approach, I think, is unrealistic. It underestimates the Minister's collective responsibility with his colleagues at a time of pitched confrontation with the unions over reductions in public sector staffing and financing. At the very least, there was an appearance that he had a significant interest in outcomes as well as process.

117 The legal answer to this branch of the unions' argument, however, is that the legislature specifically conferred the power of appointment on the Minister. Absent a constitutional challenge, a statutory regime expressed in clear and unequivocal language on this specific point prevails over common law principles of natural justice, as recently affirmed by this Court in *Ocean Port Hotel*, *supra*. In that case, the members of the provincial liquor licensing appeal board, who were empowered to impose penalties on liquor licences for non-compliance with the Act, were

**[Committee for Justice and Liberty v. Canada \(National Energy Board\),
\[1978\] 1 S.C.R. 369](#)**

Supreme Court Reports

Supreme Court of Canada

Present: Laskin C.J. and Martland, Judson, Ritchie, Spence, Pigeon, Dickson and de Grandpré JJ.

1976: March 8, 9 and 10 / 1976: March 11.

[1978] 1 S.C.R. 369 | [\[1978\] 1 R.C.S. 369](#)

IN THE MATTER OF the National Energy Board Act; AND IN THE MATTER OF an application by Canadian Arctic Gas Pipeline Limited for a certificate of public convenience and necessity for the construction and operation of a natural gas pipeline, under File No. 1555-C46-1; AND IN THE MATTER OF applications by Foothills Pipe Lines Ltd., Westcoast Transmission Company Limited and The Alberta Gas Trunk Line (Canada) Limited for certificates of public convenience and necessity for the construction and operation of certain natural gas pipelines, under File Nos. 1555-F2-3, 1555-W5-49 and 1555-A34-1; AND IN THE MATTER OF an application by Alberta Natural Gas Company Ltd. for a certificate of public convenience and necessity for the construction and operation of certain extensions to its natural gas pipeline, under File No. 1555-A2-10; AND IN THE MATTER OF a submission by The Alberta Gas Trunk Line Company Limited, under File No. 1555-AS-2; AND IN THE MATTER OF an application by the National Energy Board pursuant to section 28(4) of the Federal Court Act. The Committee for Justice and Liberty, The Consumers' Association of Canada, Canadian Arctic Resources Committee, Appellants; and The National Energy Board, Canadian Arctic Gas Pipeline Limited and The Attorney General of Canada et al., Respondents.

ON APPEAL FROM THE FEDERAL COURT OF APPEAL

Case Summary

Administrative law — Judicial review — Boards and tribunals — Natural justice — Bias or apprehended bias — Application for certificate of public necessity — National Energy Board Act, R.S.C. 1970. c. N-6, s. 44

The issue in this appeal arose in connection with the organization of hearings by the National Energy Board to consider competing applications for a Mackenzie Valley pipeline, i.e. applications for a certificate of public convenience and necessity under s. 44 of the National Energy Board Act, R.S.C. 1970, c. N-6. The Board assigned Mr. Crowe, Chairman of the Board, and two other of its members to be the panel to hear the applications. The appellants were recognised by the Board as "interested persons" under s. 45 of the Act. The appellants objected to the participation of Mr. Crowe as a member of the panel because of reasonable apprehension or reasonable likelihood of bias: Mr. Crowe became Chairman and Chief Executive Officer of the National Energy Board on October, 15, 1973. Immediately prior to that date he was president of the Canada Development Corporation, having assumed the position late in 1971 after first having been a provisional director following the enactment of the Canada Development Corporation Act, 1971 (Can.), c. 49. The objects of that Corporation included assisting in business and economic development and investing in shared securities, ventures, enterprises and property to that end. As Corporation president and as its representative Mr. Crowe was associated with the Gas Arctic-Northwest Project Study Group which considered the physical and economic feasibility of a northern natural gas pipeline to bring natural gas to southern markets. The Agreement setting up the Study Group brought together two groups of companies which merged their efforts and pursuant to the agreement set up two companies of which Canadian Arctic Gas Pipeline Limited was one. Mr. Crowe was an active participant in the Study Group as a member of the Management Committee and a member and subsequently vice-chairman of its Finance, tax and accounting committee and during his period of membership

of the Management Committee he participated in the seven meetings held during that time, and joined in a unanimous decision of the Committee on June 27, 1973, respecting the ownership and routing of a Mackenzie Valley pipeline. The Canada Development Corporation remained a full participant in the Study Group until long after the applications were made for certificates of public convenience and necessity and until after the hearings had commenced, in effect to the time of the reference of the question of reasonable apprehension of bias in Mr. Crowe to the Federal Court of Appeal. Further, during the period of Mr. Crowe's association with the Study Group as the representative of the Canada Development Corporation the latter contributed \$1,200,000 to the Study Group as its share of expenses. The National Energy Board referred to the Federal Court of Appeal the following question, "Would the Board err in rejecting the objection and in holding that Mr. Crowe was not disqualified from being a member of the panel on grounds of reasonable apprehension or reasonable likelihood of bias?" pursuant to the Federal Court Act, 1970-71-72 (Can.), c. 1, s. 28(4). That Court answered in the negative.

Held (Martland, Judson and de Grandpré JJ. dissenting): The appeal should be allowed.

Per Laskin C.J. and Ritchie, Spence, Pigeon and Dickson JJ.: In dealing with applications under s. 44 of the National Energy Board Act, the function of the pro Board is quasi-judicial, or, at least, is a function which the Board must discharge in accordance with the rules of natural justice: and if not necessarily the full range of such rules as would apply to a Court (though the Board is a court of record under s. 10 of the Act) certainly to a degree that would reflect integrity of its proceedings and impartiality in the conduct of those proceedings. A reasonable apprehension of bias arises where there exists a reasonable probability that the judge might not act in an entirely impartial manner. The issue in this situation was not one of actual bias. Thus the facts that Mr. Crowe had nothing to gain or lose either through his participation in the Study Group or in making decisions as chairman of the National Energy Board and that his participation in the Study Group was in a representative capacity became irrelevant. The participation of Mr. Crowe in the discussions and decisions leading to the application by Canadian Arctic Gas Pipeline Limited for a certificate did however give rise to a reasonable apprehension, which reasonably well-informed persons could properly have, of a biased appraisal and judgment of the issues to be determined. The test of probability or reasoned suspicion of bias, unintended though the bias may be, is grounded in the concern that there be no lack of public confidence in the impartiality of adjudicative agencies, and emphasis is added to this concern in this case by the fact that the Board is to have regard for the public interest.

Per Martland, Judson and de Grandpré JJ. dissenting: The proper test to be applied was correctly expressed by the Court of Appeal. The apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information, the test of "what would an informed person, viewing the matter realistically and practically--conclude?" There is no real difference between the expression found in the decided cases "reasonable apprehension of bias", "reasonable suspicion of bias" or "real likelihood of bias" but the grounds for the apprehension must be substantial. The question of bias in a member of a court of justice cannot be examined in the same light as that in a member of an administrative tribunal entrusted with an administrative discretion. While the basic principle that natural justice must be rendered is the same its application must take into account the special circumstances of the tribunal. By its nature the National Energy Board must be staffed with persons of experience and expertise. The considerations which underlie its operations are policy oriented. The basic principle in matters of bias must be applied in the light of the circumstances of the case a bar. The Board is not a court nor is it a quasi-judicial body. In hearing the objection of interested parties and in performing its statutory function the Board has the duty to establish a balance between the administration of policies which they are duty bound to apply and the protection of the various interests spelled out in s. 44 of the Act. In reaching its decision the Board draws upon its experience, upon that of its own experts and upon that of all agencies of the Government of Canada. The Board is not and cannot be limited to deciding the matter on the sole basis of the representations made before it. In the circumstances of the case the Court of Appeal rightly concluded that no reasonable apprehension of bias by reasonable, right minded and informed persons exists.

Cases Cited

[Ghirardosi v. Minister of Highways for British Columbia, [\[1966\] S.C.R. 367](#); Blanchette v. C.I.S. Ltd., [\[1973\] S.C.R. 833](#); Szilard v. Szasz, [1955] S.C.R. referred to].

APPEAL from a judgment of the Federal Court of Appeal [\[1976\] 2 F.C. 20](#) which answered in the negative a question referred to it by the National Energy Board. Appeal allowed, Martland, Judson, and de Grandpré JJ. dissenting.

LASKIN C.J.:— On March 11, 1976, this Court gave judgment in an appeal from a decision of the Federal Court of Appeal which answered in the negative a question referred to it by the National Energy Board pursuant to s. 28(4) of the Federal Court Act, 1970-71-72 (Can.), c. 1. The question so referred was as follows:

Would the Board err in rejecting the objections and in holding that Mr. [Marshall] Crowe was not disqualified from being a member of the panel on grounds of reasonable apprehension or reasonable likelihood of bias?

This Court allowed the appeal, set aside the decision of the Federal Court of Appeal and declared that the question should be answered in the affirmative. It stated in its formal judgment on March 11, 1976 that reasons of the majority and dissenting judges would be delivered later. The reasons of the majority now follow.

The issue referred to the Federal Court of Appeal and which came by leave to this Court arose in connection with the organization of hearings by the National Energy Board to consider competing applications for a Mackenzie Valley pipeline, that is, applications for a certificate of public convenience and necessity under s. 44 of the National Energy Board Act, R.S.C. 1970, c. N-6. One of the applications, filed on March 21, 1974 by Canadian Arctic Gas Pipeline Limited was in respect of a proposed natural gas pipeline and associated works to move natural gas in an area of the Northwest Territories (the Mackenzie River Delta and Beaufort Basin) to markets in southern Canada and also to move natural gas in Alaska markets in other states of the United States. This application was supplemented by other material filed on January 23, 1975, on March 10, 1975 and on May 8, 1975. The competing application, filed in March, 1975 by Foothills Pipe Lines Ltd., was for a natural gas pipeline to move natural gas only from the area in the Northwest Territories, mentioned above, to southern Canada markets and not from Alaska as well.

On April 17, 1975, the National Energy Board assigned Mr. Crowe, Chairman of the Board and two other members (of the eight members in all who then constituted the Board) to be the panel with Mr. Crowe presiding, to hear the applications, beginning on October 27, 1975. Under s. 45 of its governing statute the Board was empowered to give standing at its s. 44 hearings to "interested persons", and it was then obliged to hear the objections to the granting of a certificate of public convenience and necessity. The three appellants in this case, The Committee for Justice and Liberty Foundation, The Consumers' Association of Canada and the Canadian Arctic Resources Committee were recognized by the Board as "interested persons" as were other organizations and individuals. In all, some 88 parties were represented at the commencement of the hearings, and of these 80 indicated that they had no objection to Mr. Crowe continuing as a member and presiding over the hearings. One of the non-objectors was Canadian Arctic Gas Pipeline Limited, one of the applicants for a certificate. It was its counsel who raised on July 9, 1975 the question of reasonable apprehension of bias on Mr. Crowe's part in favour of the client by reason of Mr. Crowe's association with a Study Group out of whose deliberations and decisions the applicant was born.

When the hearings opened on October 27, 1975 as scheduled, Mr. Crowe read a statement detailing his involvement with the Study Group. Objections were then invited. In the result, the question mentioned at the beginning of the reasons was referred to the Federal Court of Appeal on October 29, 1975. I turn now to deal with the facts upon which the issue of reasonable apprehension of bias is raised.

Mr. Marshall Crowe became Chairman of the National Energy Board and its Chief Executive Officer on October 15,

hearings.

What must be kept in mind here is that we are concerned with a s. 44 application in respect of which, in my opinion, the Board's function is quasi-judicial or, at least, is a function which it must discharge in accordance with rules of natural justice, not necessarily the full range of such rules that would apply to a Court (although I note that the Board is a court of record under s. 10 of its Act) but certainly to a degree that would reflect integrity of its proceedings and impartiality in the conduct of those proceedings. This is not, however, a prescription that would govern an inquiry under ss. 14(2) and 22.

I am of the opinion that the only issue here is whether the principle of reasonable apprehension or reasonable likelihood of bias applies to the Board in respect of hearings under s. 44. If it does apply--and this was accepted by all the respondents--then, on the facts herein, I can see no answer to the position of the appellants.

Before setting out the basis of this conclusion I wish to reiterate what was said in the Federal Court of Appeal and freely conceded by the appellants, namely, that no question of personal or financial or proprietary interest, such as to give rise to an allegation of actual bias, is raised against Mr. Crowe. The Federal Court of Appeal founded its conclusion against disqualification on the following statement of principle:

It is true that all of the circumstances of the case, including the decisions in which Mr. Crowe participated as a member of the study group, might give rise in a very sensitive or scrupulous conscience to the suspicion that he might be unconsciously biased, and therefore should not serve. But that is not, we think, the test to apply in this case. It is, rather, what would an informed person, viewing the matter realistically and practically--and having thought the matter through-- conclude. Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly.

This was followed by an encompassing factual conclusion which was as follows:

On the totality of the facts, which have been described only in skeletal form, we are all of the opinion that they should not cause reasonable and right minded persons to have a reasonable apprehension of bias on the part of Mr. Crowe, either on the question of whether present or future public convenience and necessity require a pipe-line or the question of which, if any, of the several applicants should be granted a certificate.

The Federal Court of Appeal supported this factual conclusion by emphasizing that Mr. Crowe participated in the Study Group as merely a representative, that he had nothing to gain or lose by his participation or by any decision he might reach in the course of his duties as chairman of the National Energy Board in connection with the applications that were before it. I do not think that Mr. Crowe's representative capacity is a material consideration on the issue in question here, any more than representative capacity would be a material consideration if the president or chairman of one of the other participants in the Study Group had been appointed chairman of the National Energy Board and had then proceeded to sit on an application which he had a hand in fashioning, albeit he was divorced from the Study Group at the time the application was filed. Mr. Crowe was not a mere cipher, carrying messages from the board of directors of the Canada Development Corporation and having no initiative or flexibility in the manner and degree of his participation in the work of the Study Group. Nowhere in the Study Group Agreement nor in the minutes of proceedings of the Management Committee is there any indication that the representatives came to the meetings with fixed instructions from which they could not depart without a reference back. The nature of the exercise carried on under the Study Group Agreement required the representatives to apply their own judgment and their own talents to the joint project, with of course concern for the interests of the companies that they represented and subject, of course, to such directions as the companies might give. Since the representatives were all high officials of the companies, they had latitude in their participation that would not have been open to a junior employee.

Nor do I think that anything turns in this case on the fact that Mr. Crowe (according to the Federal Court of Appeal) had nothing to gain or lose either through his participation in the Study Group or in making decisions as chairman of the National Energy Board. The Federal Court of Appeal appears here to have moved over into the area of actual bias and that is not an issue.

The additional factor which underlay the Federal Court of Appeal's factual conclusion is, in its own words, as

NOVA SCOTIA COURT OF APPEAL

Citation: *Nova Scotia (Attorney General) v. MacLean*, 2017 NSCA 24

Date: 20170317

Docket: CA 454541

Registry: Halifax

Between:

The Attorney General of Nova Scotia
representing Her Majesty the Queen in Right
of the Province of Nova Scotia (including the Minister
of Community Services and the Minister of Health and Wellness)

Appellant

v.

Beth MacLean, Olga Cain on behalf of Sheila
Livingstone, Susan Lattie on behalf of Joseph
Delaney, Disability Rights Coalition,
J. Walter Thompson, Q.C., in his capacity as
Nova Scotia Human Rights Board of Inquiry
Chair, and The Nova Scotia Human Rights Commission

Respondents

Judge: The Honourable Mr. Justice Jamie W.S. Saunders

Appeal Heard: November 28, 2017, in Halifax, Nova Scotia

Subject: **Human Rights Act, R.S.N.S. 1989, c.214. Board of Inquiry. Reasonable Apprehension of Bias. Standard of Review. Prematurity. Legal Principles to be Applied Whenever Considering a Complaint of Apparent, or Actual, Bias. Costs.**

Summary: During the course of a Board of Inquiry established to consider a complaint under the *Human Rights Act*, R.S.N.S. 1989, c. 214, it came to light that 15 years earlier the Board

Chair had written two letters concerning matters said to be similar to the issues raised in the complaint. The Attorney General of Nova Scotia moved to have the Chair recuse himself on the basis that the impugned correspondence raised a reasonable apprehension of bias.

After a hearing, the Chair ruled that the letters he had written did not give rise to a reasonable apprehension of bias, and he dismissed the motion.

The Attorney General appealed that ruling to this Court, asking that we allow the appeal and order the Chair to recuse himself from any further consideration of the complaint.

Held:

Appeal dismissed. This human rights complaint actually consists of four separate complaints alleging discrimination by the Province against the complainants because of the “combined effect” of their mental disabilities and their reliance upon social assistance. They say they have been forced to live in institutions with large groups of people and been denied the opportunity to integrate and participate in supportive, community-based housing. They allege that this “prolonged detention” has caused lasting harm to their mental and physical health and socialization skills, preventing them from realizing their full potential as contributing members of society. They say that by not providing them with their preferred choice of housing in locations of their choosing, the Province has violated their rights under the *Act*. They claim entitlement to the kinds of help and professional supports available to others, in order to live in the community.

The appellant was right to bring a motion to challenge the Board’s jurisdiction on the basis that a reasonable apprehension of bias existed. On this record, raising the issue was certainly justified and a thorough review of the allegation was warranted.

The Commission argued that this Court ought to decline to consider the issue, on the grounds that it is premature, and that the Board ought to be able to complete its inquiry, following which – should it be necessary – an allegation that a reasonable apprehension of bias exists, could be included as a ground of appeal, were an appeal commenced. Ordinarily, this Court is reluctant to entertain appeals from interim or interlocutory rulings in the course of a proceeding, except

where a departure from that norm would be appropriate. This is such a case. It would be a colossal waste of time to refuse to deal with the allegation of apparent bias now, thus permitting the Board to complete its hearings and deliberations; yet at the end of all of that risking the possibility that if the Board's decision were appealed, a ground of appeal months (or years) later would likely raise the very same allegation.

After considering the record and counsels' able submissions, the appeal is dismissed. The Attorney General has failed to displace the presumption of impartiality by offering cogent evidence that would establish a reasonable apprehension of bias in this case. The Chair's earlier writings do not demonstrate that his duty to remain impartial has been compromised. Rather, the record confirms that the Chair remains open to deciding the issues impartially and upon the evidence that will be adduced at the hearing, not on any pre-determined views favoring one side or the other.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 31 pages.

NOVA SCOTIA COURT OF APPEAL

Citation: *Nova Scotia (Attorney General) v. MacLean*, 2017 NSCA 24

Date: 20170317

Docket: CA 454541

Registry: Halifax

Between:

The Attorney General of Nova Scotia
representing Her Majesty the Queen in Right
of the Province of Nova Scotia (including the Minister
of Community Services and the Minister of Health and Wellness)

Appellant

v.

Beth MacLean, Olga Cain on behalf of Sheila Livingstone, Susan Lattie on behalf of Joseph Delaney, Disability Rights Coalition, J. Walter Thompson, Q.C., in his capacity as Nova Scotia Human Rights Board of Inquiry Chair, and The Nova Scotia Human Rights Commission

Respondents

Judges: Bryson, Saunders and Bourgeois, J.J.A.

Appeal Heard: November 28, 2016, in Halifax, Nova Scotia

Held: Appeal dismissed per reasons for judgment of Saunders, J.A.; Bryson and Bourgeois, J.J.A. concurring.

Counsel: Dorianne Mullin, for the appellant
Vincent Calderhead and Charlene Moore, for the respondents,
Beth MacLean, Olga Cain and Susan Lattie
Dianne Pothier, Claire McNeil and Donna Franey, for the respondent, Disability Rights Coalition
Jason T. Cooke and Jennifer Keliher, for the respondent, Nova Scotia Human Rights Commission

[39] First, as a matter of law, there is a strong presumption of judicial impartiality, which is not easily displaced. Second, there is a heavy burden of proof upon the person making the allegation to present cogent evidence establishing “serious grounds” sufficient to justify a finding that the decision-maker should be disqualified on account of bias. Third, whether a reasonable apprehension of bias exists is “highly fact-specific”. Such an inquiry is one where the context, and the particular circumstances, are of supreme importance. The allegation can only be addressed carefully in light of the entire context. There are no shortcuts. See *Wewaykum Indian Band v. Canada*, 2003 SCC 45.

[40] The “test” regarding what constitutes a reasonable apprehension of bias appears in the oft-quoted dissenting judgment of de Grandpré, J. in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369 at ¶40:

...the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information, that test is “what would an informed person, viewing the matter realistically and practically— ...conclude? Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly.

[41] In relation to what constitutes the “reasonable person”, the qualifications are not limited to just being “reasonable”. The law requires a fully *informed* “reasonable person”. That is:

...a person who approaches the question of whether there exists a reasonable apprehension of bias with a complex and contextualized understanding of the issues in the case. The reasonable person understands the impossibility of judicial neutrality, but demands judicial impartiality.

[*R. v. S.(R.D.)(R.D.S.)*, [1997] 3 S.C.R. 484]

[42] In that case, the Supreme Court of Canada explained in detail the requirement for neutrality in decision-making, and how the duty to be impartial did not oblige judges to have no sympathies or opinions at all, but rather to ensure that they were receptive to other points of view. In his reasons, Justice Cory (joined by Justice Iacobucci, said at ¶119:

119 The requirement for neutrality does not require judges to discount the very life experiences that may so well qualify them to preside over disputes. It has been observed that the duty to be impartial

Roy Anthony Roberts, C. Aubrey Roberts and John Henderson, suing on their own behalf and on behalf of all other members of the Wewaykum Indian Band (also known as the Campbell River Indian Band) *Appellants*

v.

Her Majesty The Queen *Respondent*

and

Ralph Dick, Daniel Billy, Elmer Dick, Stephen Assu and James D. Wilson, suing on their own behalf and on behalf of all other members of the Wewaikai Indian Band (also known as the Cape Mudge Indian Band) *Respondents/Appellants*

and between

Ralph Dick, Daniel Billy, Elmer Dick, Stephen Assu, Godfrey Price, Allen Chickite and Lloyd Chickite, suing on their own behalf and on behalf of all other members of the Wewaikai Indian Band (also known as the Cape Mudge Indian Band) *Appellants*

v.

Her Majesty The Queen *Respondent*

and

Attorney General of Ontario, Attorney General of British Columbia, Gitanmaax Indian Band, Kispiox Indian Band and Glen Vowell Indian Band *Interveners*

INDEXED AS: WEWAYKUM INDIAN BAND v. CANADA

Roy Anthony Roberts, C. Aubrey Roberts et John Henderson, poursuivant en leur nom et au nom de tous les autres membres de la Bande indienne Wewaykum (également connue sous le nom de Bande indienne de Campbell River) *Appellants*

c.

Sa Majesté la Reine *Intimée*

et

Ralph Dick, Daniel Billy, Elmer Dick, Stephen Assu et James D. Wilson, poursuivant en leur nom et au nom de tous les autres membres de la Bande indienne Wewaikai (également connue sous le nom de Bande indienne de Cape Mudge) *Intimés/Appellants*

et entre

Ralph Dick, Daniel Billy, Elmer Dick, Stephen Assu, Godfrey Price, Allen Chickite et Lloyd Chickite, poursuivant en leur nom et au nom de tous les autres membres de la Bande indienne Wewaikai (également connue sous le nom de Bande indienne de Cape Mudge) *Appellants*

c.

Sa Majesté la Reine *Intimée*

et

Procureur général de l'Ontario, procureur général de la Colombie-Britannique, Bande indienne Gitanmaax, Bande indienne Kispiox et Bande indienne de Glen Vowell *Intervenants*

RÉPERTORIÉ : BANDE INDIENNE WEWAYKUM c. CANADA

Neutral citation: 2003 SCC 45.

File No.: 27641.

2003: June 23; 2003: September 26.

Present: McLachlin C.J. and Gonthier, Iacobucci, Major, Bastarache, Arbour, LeBel and Deschamps JJ.

MOTION FOR DIRECTIONS

MOTIONS TO VACATE A JUDGMENT

Courts — Judges — Impartiality — Reasonable apprehension of bias — Supreme Court judgment dismissing Indian bands' appeals — Indian bands presenting motions to set aside judgment alleging reasonable apprehension of bias arising from involvement of judge in bands' claims while serving as federal Associate Deputy Minister of Justice over 15 years prior to hearing of appeals — Whether judgment tainted by reasonable apprehension of bias — Whether judgment should be set aside.

In 1985 and 1989 respectively, the Campbell River Band and the Cape Mudge Band instituted legal proceedings against each other and the Crown, each band claiming exclusive entitlement to two reserves on Vancouver Island. In 1995, the Federal Court, Trial Division dismissed the actions and the Federal Court of Appeal upheld the decision. In December 2002, in reasons written by Binnie J. and concurred in unanimously, this Court dismissed the bands' appeals. In February 2003, the Campbell River Band made an access to information request to the federal Department of Justice seeking copies of all records to, from or which make reference to Mr. Binnie concerning the bands' claims against the Crown. Mr. Binnie, when he was Associate Deputy Minister of Justice in 1982-1986, had been responsible for all litigation, except tax matters and cases in Quebec, involving the Government of Canada and had supervisory authority over thousands of cases. The Department of Justice found a number of internal memoranda which indicate that, in late 1985 and early 1986, Mr. Binnie had received some information concerning the Campbell River Band's claim and that he had attended a meeting where the claim was discussed. The Crown filed a motion in this Court seeking directions as to any steps to be taken. Binnie J. recused himself from any further proceedings in this matter and filed a statement setting out that he had no recollection of personal involvement in the case. The bands sought an order setting aside this Court's judgment. Both bands agree that actual bias is not at issue and accept Binnie J.'s statement that he had no

Référence neutre : 2003 CSC 45.

N° du greffe : 27641.

2003 : 23 juin; 2003 : 26 septembre.

Présents : La juge en chef McLachlin et les juges Gonthier, Iacobucci, Major, Bastarache, Arbour, LeBel et Deschamps.

REQUÊTE SOLLICITANT DES DIRECTIVES

REQUÊTES EN ANNULATION DE JUGEMENT

Tribunaux — Juges — Impartialité — Crainte raisonnable de partialité — Pourvois de bandes indiennes rejetés par la Cour suprême — Présentation par les bandes indiennes de requêtes en annulation du jugement fondée sur la crainte raisonnable de partialité qui découlerait du rôle joué par un juge dans les demandes des bandes en tant que sous-ministre adjoint de la Justice plus de 15 ans avant l'audition des appels — Le jugement est-il entaché d'une crainte raisonnable de partialité? — Y a-t-il lieu d'annuler le jugement?

En 1985 et 1989 respectivement, la bande de Campbell River et la bande de Cape Mudge ont intenté une action en justice, chacune poursuivant l'autre ainsi que la Couronne et revendiquant le droit exclusif à deux réserves situées dans l'île de Vancouver. En 1995, la section de première instance de la Cour fédérale a rejeté les actions et la Cour d'appel fédérale a confirmé cette décision. En décembre 2002, notre Cour a rejeté les pourvois des bandes dans des motifs exposés par le juge Binnie, auxquels ont souscrit tous les autres juges de la Cour. En février 2003, la bande de Campbell River a présenté au ministère de la Justice une demande d'accès à l'information dans laquelle elle sollicitait des copies de tous les documents qui soit avaient été expédiées à M. Binnie, soit émanaient de ce dernier ou encore faisaient mention de lui et qui se rapportaient aux demandes présentées contre le gouvernement fédéral par les bandes. Lorsqu'il a occupé le poste de sous-ministre adjoint de la Justice, de 1982 à 1986, M. Binnie était responsable de tous les litiges auxquels était partie le gouvernement fédéral, sauf les affaires fiscales et celles se déroulant au Québec, et il supervisait des milliers de dossiers. Le ministère de la Justice a trouvé un certain nombre de notes de service internes qui indiquent que, à la fin de 1985 et au début de 1986, M. Binnie a reçu certains renseignements concernant la demande de la bande de Campbell River et a assisté à une réunion au cours de laquelle cette demande a été discutée. La Couronne a présenté à notre Cour une requête sollicitant des directives quant aux mesures qui pourraient devoir être prises. Le juge Binnie s'est

recollection of personal involvement in the case. However, they allege that Binnie J.'s involvement as federal Associate Deputy Minister of Justice in the early stages of the Campbell River Band's claim in 1985 and 1986 gives rise to a reasonable apprehension of bias.

Held: The motion for directions and the motions to vacate a judgment should be dismissed. In the circumstances of this case, no reasonable apprehension of bias is established and hence Binnie J. was not disqualified from hearing the appeals or participating in the judgment.

Public confidence in our legal system is rooted in the fundamental belief that those who adjudicate in law must always do so without bias or prejudice and must be perceived to do so. A judge's impartiality is presumed and a party arguing for disqualification must establish that the circumstances justify a finding that the judge must be disqualified. The criterion of disqualification is the reasonable apprehension of bias. The question is what would an informed, reasonable and right-minded person, viewing the matter realistically and practically, and having thought the matter through, conclude. Would he think that it is more likely than not that the judge, whether consciously or unconsciously, would not decide fairly?

It is necessary to clarify the relationship of this objective standard to two other factors: the subjective consideration of actual bias and the notion of automatic disqualification. Most arguments for disqualification are not based on actual bias. When parties say that there was no actual bias on the part of a judge, it can mean one of three things: (1) that reasonable apprehension is a surrogate for actual bias; (2) that unconscious bias can exist even where the judge acted in good faith; and (3) that looking for real bias is simply not the relevant inquiry since justice should not only be done but must be seen to be done. This third justification for the objective standard of reasonable apprehension of bias envisions the possibility that a judge may be totally impartial in circumstances which nevertheless create a reasonable apprehension of bias, requiring his disqualification. The idea that "justice must be seen to be done" cannot be severed from the

récusé à l'égard de toutes procédures ultérieures dans cette affaire et il a déposé une déclaration précisant qu'il n'avait aucun souvenir d'avoir participé personnellement à ce dossier. Les bandes ont demandé une ordonnance portant annulation du jugement de notre Cour. Les deux bandes reconnaissent qu'il ne s'agit pas d'une affaire de partialité réelle et elles acceptent la déclaration du juge Binnie selon laquelle il n'avait aucun souvenir d'avoir participé personnellement à cette affaire. Cependant, elles font valoir que le rôle joué par le juge Binnie en tant que sous-ministre adjoint de la Justice aux premiers stades de la demande de la bande de Campbell River en 1985 et 1986 fait naître une crainte raisonnable de partialité.

Arrêt : La requête sollicitant des directives et les requêtes en annulation de jugement sont rejetées. À la lumière des circonstances de l'espèce, aucune crainte raisonnable de partialité n'a été établie et le juge Binnie n'était pas inhabile à connaître des présents pourvois et à participer au jugement.

La confiance du public dans notre système juridique prend sa source dans la conviction fondamentale selon laquelle ceux qui rendent jugement doivent non seulement toujours le faire sans partialité ni préjugé, mais doivent également être perçus comme agissant ainsi. L'impartialité du juge doit être présumée et c'est à la partie qui plaide l'inhabilité qu'incombe le fardeau d'établir que les circonstances permettent de conclure que le juge doit être récusé. Le critère de récusation est la crainte raisonnable de partialité. Il consiste à se demander à quelle conclusion arriverait une personne bien renseignée qui étudierait la question en profondeur, de façon réaliste et pratique. Croirait-elle que, selon toute vraisemblance, le juge, consciemment ou non, ne rendra pas une décision juste?

Il est nécessaire de clarifier le rapport entre cette norme objective et deux autres facteurs : le facteur subjectif de la partialité réelle et la notion d'inhabilité automatique. Dans la plupart des cas où l'inhabilité du décideur est invoquée, la partie qui la soulève n'invoque pas la partialité réelle. Lorsque des parties affirment qu'il y avait absence de partialité réelle de la part du juge, cela peut signifier l'une des trois choses suivantes : (1) que la crainte raisonnable de partialité est un critère de remplacement de la partialité réelle; (2) qu'il peut y avoir partialité inconsciente, même lorsque le juge a agi de bonne foi; (3) que la présence ou l'absence de partialité réelle n'est tout simplement pas la bonne question à se poser, puisque justice doit non seulement être rendue mais elle doit également paraître être rendue. Cette troisième justification de la norme objective de la crainte raisonnable de partialité admet la possibilité qu'un juge puisse être totalement

standard of reasonable apprehension of bias. The relevant inquiry is not whether there was in fact either conscious or unconscious bias on the part of the judge, but whether a reasonable person properly informed would apprehend that there was. With respect to the notion of automatic disqualification, recent English case law suggests that automatic disqualification is justified in cases where a judge has an interest in the outcome of a proceeding. This case law is not helpful here because automatic disqualification does not extend to judges somehow involved in the litigation or linked to counsel at an earlier stage. In Canada, proof of actual bias or a reasonable apprehension of bias is required. In any event, on the facts of this case, there is no suggestion that Binnie J. had any financial interest in the appeals, or had such an interest in the subject matter of the case that he was effectively in the position of a party to the cause.

In this case, disqualification can only be based on a reasonable apprehension of bias. In light of the strong presumption of judicial impartiality, the standard refers to an apprehension based on serious grounds. Each case must be examined contextually and the inquiry is fact-specific. Where, as here, the issue of bias arises after judgment has been rendered, it is not helpful to determine whether the judge would have recused himself had the matter come to light earlier. Although the standard remains the same, an abundance of caution guides many, if not most judges, at this early stage, and judges often recuse themselves where it is not legally necessary. Lastly, this Court's dictum that judges should not preside over a case in which they played a part at any stage is but an illustration of the general principle. It does not suggest that any degree of earlier participation in a case is cause for automatic disqualification, but rather suggests that a reasonable and right-minded person would likely view unfavourably the fact that the judge acted as counsel in a case over which he is presiding, and could take this fact as the foundation of a reasonable apprehension of bias.

Here, neither Binnie J.'s past status as Associate Deputy Minister nor his long-standing interest in matters involving First Nations is by itself sufficient to justify his disqualification. The source of concern for the bands is

impartial dans des circonstances faisant néanmoins naître une crainte raisonnable de partialité requérant qu'il soit déclaré inhabile. L'idée selon laquelle « justice doit paraître être rendue » ne peut être dissociée de la norme de la crainte raisonnable de partialité. La question pertinente n'est pas de savoir si, dans les faits, le juge a fait preuve de partialité consciente ou inconsciente, mais si une personne raisonnable et bien renseignée craindrait qu'il y ait eu partialité. Relativement à la notion d'inhabilité automatique, certains arrêts britanniques récents suggèrent que l'application de cette notion est justifiée lorsque le juge a un intérêt dans l'issue de l'instance. Cette jurisprudence n'est pas utile en l'espèce, parce que la règle de l'inhabilité automatique ne s'applique pas dans les cas où le décideur a, d'une certaine façon, participé au litige ou été en contact avec les avocats aux premiers stades de l'affaire. Au Canada, il faut prouver l'existence de partialité réelle ou d'une crainte raisonnable de partialité. Quoi qu'il en soit, au vu des faits de l'espèce, rien n'indique que le juge Binnie avait quelque intérêt pécuniaire dans les pourvois ou qu'il manifestait pour l'objet de l'affaire un intérêt tel qu'il se trouvait effectivement dans la position d'une partie à la cause.

Dans la présente affaire, l'inhabilité ne peut être invoquée que sur le fondement de la crainte raisonnable de partialité. Vu la forte présomption d'impartialité dont jouissent les tribunaux, la norme exige une crainte de partialité fondée sur des motifs sérieux. Chaque affaire doit être examinée au regard du contexte et des faits qui lui sont propres. Lorsque, comme en l'espèce, la question de l'inhabilité se soulève après le prononcé du jugement et non au début de l'instance, il n'est pas utile de se demander si le juge se serait récusé si la situation avait été connue plus tôt. Quoique la norme reste la même, bon nombre de juges, sinon la plupart d'entre eux, font montre d'une prudence extrême tôt dans l'instance, et il arrive souvent qu'ils se récusent alors qu'ils ne seraient pas légalement tenus de le faire. Enfin, la remarque incidente de notre Cour selon laquelle les juges ne doivent pas siéger dans une cause à laquelle ils ont participé à quelque stade de l'affaire n'est qu'une illustration du principe général. Elle ne dit pas que toute participation dans le passé à une affaire est automatiquement cause d'inhabilité, mais elle indique plutôt qu'une personne sensée et raisonnable verrait vraisemblablement d'un mauvais oeil le fait que le juge a agi comme avocat dans une affaire dont il est saisi, et que cette personne pourrait considérer que ce fait naître une crainte raisonnable de partialité.

En l'espèce, ni le fait que le juge Binnie ait dans le passé occupé la charge de sous-ministre adjoint ni son intérêt de longue date pour les questions concernant les Premières nations ne justifient en soi de conclure

Binnie J.'s involvement in this case in the mid-1980s. The documentary record, however, does not support a reasonable apprehension of bias. Binnie J.'s involvement in the dispute was confined to a limited supervisory and administrative role. While his link to this litigation exceeded *pro forma* management of the files, he was never counsel of record and played no active role after the claim was filed, nor did he plan litigation strategy. Any views attributed to Binnie J. earlier on were offered in the context of wider implications of the negotiation process, and not in the context of litigation. Furthermore, in his capacity of Associate Deputy Minister, he was responsible for thousands of files at the relevant time and the matter on which he was involved in this file was not unique to this case but was an issue of general application to existing reserves in British Columbia. More importantly, Binnie J.'s supervisory role dates back over 15 years. This lengthy period is significant in relation to Binnie J.'s statement that he had no recollection of his involvement because it is a factor that a reasonable person would properly consider, and it makes bias or its apprehension improbable. Nor would a reasonable person, viewing the matter realistically, conclude that Binnie J.'s ability to remain impartial was unconsciously affected by a limited administrative and supervisory role dating back over 15 years.

Even if the involvement of a single judge had given rise to a reasonable apprehension of bias in this case, no reasonable person informed of the decision-making process of this Court and viewing it realistically could conclude that the eight other judges who heard the appeals were biased or tainted.

Cases Cited

Applied: *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369; **distinguished:** *R. v. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte (No. 2)*, [1999] 2 W.L.R. 272; **referred to:** *Guerin v. The Queen*, [1984] 2 S.C.R. 335; *Valente v. The Queen*, [1985] 2 S.C.R. 673; *Locabail (U.K.) Ltd. v. Bayfield Properties Ltd.*, [2000] Q.B. 451; *R. v. Bertram*, [1989] O.J. No. 2123 (QL); *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484; *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623; *R. v. Gough*, [1993] A.C. 646; *The Queen v. Barnsley Licensing Justices*, [1960] 2 Q.B. 167; *The King v. Sussex Justices, Ex parte*

à son inhabilité. La préoccupation des bandes est la participation du juge Binnie à la présente affaire au milieu des années 1980. La preuve documentaire n'étaye toutefois pas l'existence d'une crainte raisonnable de partialité. Le juge Binnie n'a joué dans le différend en cause qu'un rôle de supervision et d'administration limité. Bien que le lien entre le juge Binnie et le présent litige ait dépassé la gestion *pro forma* des dossiers, ce dernier n'a jamais été l'avocat inscrit au dossier et il n'a pas joué de rôle actif dans le différend après le dépôt de l'action ni planifié la stratégie d'instance. Les opinions attribuées au juge Binnie ont été formulées dans le contexte des répercussions plus larges du processus de négociation plutôt que dans le contexte du litige. De plus, en sa qualité de sous-ministre adjoint, il était responsable de milliers de dossiers à l'époque pertinente et la question sur laquelle il s'est penché dans la présente affaire ne touchait pas exclusivement celle-ci mais concernait en général les réserves existantes en Colombie-Britannique. Fait plus important encore, le rôle limité de supervision qu'a joué le juge Binnie remonte à plus de 15 ans. Ce très long délai est important en ce qui concerne la déclaration du juge Binnie selon laquelle il n'avait aucun souvenir de sa participation à cette affaire, parce qu'il s'agit d'un facteur dont la personne raisonnable tiendrait à juste titre compte et qui rend improbable l'existence de partialité ou de crainte de partialité. Considérant la question de façon réaliste, cette personne ne conclurait pas non plus que le rôle limité d'administration et de supervision qu'a joué le juge Binnie dans ce dossier, il y a de cela plus de 15 ans, a inconsciemment influencé sa capacité de demeurer impartial.

Même si le rôle joué par un seul juge avait fait naître une crainte raisonnable de partialité en l'espèce, aucune personne raisonnable connaissant le processus décisionnel de notre Cour et le considérant de façon réaliste ne saurait conclure que les huit autres juges étaient partiaux ou ont été influencés.

Jurisprudence

Arrêt appliqué : *Committee for Justice and Liberty c. Office national de l'énergie*, [1978] 1 R.C.S. 369; **distinction d'avec l'arrêt :** *R. c. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte (No. 2)*, [1999] 2 W.L.R. 272; **arrêts mentionnés :** *Guerin c. La Reine*, [1984] 2 R.C.S. 335; *Valente c. La Reine*, [1985] 2 R.C.S. 673; *Locabail (U.K.) Ltd. c. Bayfield Properties Ltd.*, [2000] Q.B. 451; *R. c. Bertram*, [1989] O.J. No. 2123 (QL); *R. c. S. (R.D.)*, [1997] 3 R.C.S. 484; *Newfoundland Telephone Co. c. Terre-Neuve (Board of Commissioners of Public Utilities)*, [1992] 1 R.C.S. 623; *R. c. Gough*, [1993] A.C. 646; *The Queen c. Barnsley Licensing Justices*, [1960] 2 Q.B. 167; *The King c.*

McCarthy, [1924] 1 K.B. 256; *Dimes v. Proprietors of the Grand Junction Canal* (1852), 3 H.L.C. 759, 10 E.R. 301; *Man O'War Station Ltd. v. Auckland City Council* (Judgment No. 1), [2002] 3 N.Z.L.R. 577, [2002] UKPC 28; *Panton v. Minister of Finance*, [2001] 5 L.R.C. 132, [2001] UKPC 33.

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MOTION FOR DIRECTIONS and MOTIONS TO VACATE a judgment of the Supreme Court of Canada, *Wewaykum Indian Band v. Canada*, [2002] 4 S.C.R. 245, 2002 SCC 79. Motions dismissed.

Michael P. Carroll, Q.C., and *Malcolm Maclean*, for the appellants Roy Anthony Roberts et al.

John D. McAlpine, Q.C., and *Allan Donovan*, for the respondents/appellants Ralph Dick et al.

J. Vincent O'Donnell, Q.C., and *Jean Bélanger*, for the respondent Her Majesty the Queen.

Written submissions only by *Patrick G. Foy, Q.C.*, and *Angus M. Gunn, Jr.*, for the intervener the Attorney General of British Columbia.

Written submissions only by *Peter R. Grant* and *David Schulze*, for the interveners the Gitanmaax Indian Band, the Kispiox Indian Band and the Glen Vowell Indian Band.

The following is the judgment delivered by

THE CHIEF JUSTICE AND GONTHIER, IACOBUCCI, MAJOR, BASTARACHE, ARBOUR, LEBEL AND DESCHAMPS JJ. —

I. Introduction

The Wewaykum or Campbell River Indian Band ("Campbell River") and the Wewaikai or Cape

Sussex Justices, Ex parte McCarthy, [1924] 1 K.B. 256; *Dimes c. Proprietors of the Grand Junction Canal* (1852), 3 H.L.C. 759, 10 E.R. 301; *Man O'War Station Ltd. c. Auckland City Council* (Judgment No. 1), [2002] 3 N.Z.L.R. 577, [2002] UKPC 28; *Panton c. Minister of Finance*, [2001] 5 L.R.C. 132, [2001] UKPC 33.

Lois et règlements cités

Loi sur l'accès à l'information, L.R.C. 1985, ch. A-1.
Loi sur les Indiens, L.R.C. 1985, ch. I-5.
Règles de la Cour suprême du Canada, DORS/2002-156, art. 3.

Doctrine citée

Conseil canadien de la magistrature. *Principes de déontologie judiciaire*. Ottawa : Le Conseil, 1998.
 Wilson, Bertha. "Decision-making in the Supreme Court" (1986), 36 *U.T.L.J.* 227.

REQUÊTE SOLLICITANT DES DIRECTIVES et REQUÊTES EN ANNULATION de l'arrêt de la Cour suprême du Canada, *Bande indienne Wewaykum c. Canada*, [2002] 4 R.C.S. 245, 2002 CSC 79. Requêtes rejetées.

Michael P. Carroll, c.r., et *Malcolm Maclean*, pour les appelants Roy Anthony Roberts et autres.

John D. McAlpine, c.r., et *Allan Donovan*, pour les intimés/appelants Ralph Dick et autres.

J. Vincent O'Donnell, c.r., et *Jean Bélanger*, pour l'intimée Sa Majesté la Reine.

Argumentation écrite seulement par *Patrick G. Foy, c.r.*, et *Angus M. Gunn, Jr.*, pour l'intervenant le procureur général de la Colombie-Britannique.

Argumentation écrite seulement par *Peter R. Grant* et *David Schulze*, pour les intervenantes la Bande indienne Gitanmaax, la Bande indienne Kispiox et la Bande indienne de Glen Vowell.

Version française du jugement rendu par

LA JUGE EN CHEF ET LES JUGES GONTHIER, IACOBUCCI, MAJOR, BASTARACHE, ARBOUR, LEBEL ET DESCHAMPS —

I. Introduction

La bande indienne Wewaykum ou bande indienne de Campbell River (ci-après la « bande de

67 Of the three justifications for the objective standard of reasonable apprehension of bias, the last is the most demanding for the judicial system, because it countenances the possibility that justice might not be seen to be done, even where it is undoubtedly done — that is, it envisions the possibility that a decision-maker may be totally impartial in circumstances which nevertheless create a reasonable apprehension of bias, requiring his or her disqualification. But, even where the principle is understood in these terms, the criterion of disqualification still goes to the judge's state of mind, albeit viewed from the objective perspective of the reasonable person. The reasonable person is asked to imagine the decision-maker's state of mind, under the circumstances. In that sense, the oft-stated idea that "justice must be seen to be done", which was invoked by counsel for the bands, cannot be severed from the standard of reasonable apprehension of bias.

68 We emphasize this aspect of the criterion of disqualification in Canadian law because another strand of this area of the law in the Commonwealth suggests that some circumstances of conflict of interest may be enough to justify disqualification, whether or not, from the perspective of the reasonable person, they could have any impact on the judge's mind. As we conclude in the next section, this line of argument is not helpful to counsel for the bands in the present case.

C. *Reasonable Apprehension of Bias and Automatic Disqualification*

69 At the opposite end from claims of actual bias, it has been suggested that it is wrong to be a judge in one's own cause, whether or not one knows this to be the case. The idea has been linked to the early decision of *Dimes v. Proprietors of the Grand Junction Canal* (1852), 3 H.L.C. 759, 10 E.R. 301. More recently, in *Gough, supra*, at p. 661, Lord Goff stated that

there are certain cases in which it has been considered that the circumstances are such that they must inevitably shake public confidence in the integrity of the admin-

De ces trois justifications de la norme objective de la crainte raisonnable de partialité, la dernière est la plus exigeante pour le système judiciaire, en ce qu'elle admet la possibilité que justice puisse paraître ne pas avoir été rendue, même lorsqu'elle l'a indubitablement été — c'est-à-dire qu'elle envisage qu'un décideur puisse être totalement impartial dans des circonstances faisant néanmoins naître une crainte raisonnable de partialité requérant qu'il soit déclaré inhabile. Cependant, même lorsque le principe est interprété ainsi, le critère de détermination de l'inhabilité revient toujours à l'état d'esprit du juge, quoique ce facteur soit considéré du point de vue objectif de la personne raisonnable. On demande à cette personne d'imaginer l'état d'esprit du juge, dans les circonstances pertinentes. En ce sens, l'idée maintes fois énoncée selon laquelle « justice doit paraître être rendue », qu'ont invoqué les avocats des bandes, ne peut être dissociée de la norme de la crainte raisonnable de partialité.

Nous insistons sur cet élément du critère de détermination de l'inhabilité en droit canadien parce qu'il existe, sur cet aspect du droit dans le Commonwealth, un autre courant voulant que certaines situations de conflit d'intérêts suffisent à justifier une déclaration d'inhabilité, indépendamment du fait que, du point de vue de la personne raisonnable, ces situations puissent ou non avoir une influence sur l'esprit du juge. Vu notre conclusion dans la prochaine section, cette argumentation n'est d'aucun secours aux avocats des bandes en l'espèce.

C. *Crainte raisonnable de partialité et inhabilité automatique*

Aux antipodes des demandes invoquant l'existence de partialité réelle, il a été avancé que nul ne peut être à la fois juge et partie dans une cause, et ce que la personne concernée en soit consciente ou non. On rattache cette thèse à une vieille décision, l'affaire *Dimes c. Proprietors of the Grand Junction Canal* (1852), 3 H.L.C. 759, 10 E.R. 301. Plus récemment, dans l'arrêt *Gough*, précité, p. 661, lord Goff a dit ceci :

[TRADUCTION] . . . il existe des cas où l'on a estimé que les circonstances sont telles qu'elles ébranleraient inévitablement la confiance du public dans l'intégrité

istration of justice if the decision is to be allowed to stand. . . . These cases arise where a person sitting in a judicial capacity has a pecuniary interest in the outcome of the proceedings. . . . In such a case, . . . not only is it irrelevant that there was in fact no bias on the part of the tribunal, but there is no question of investigating, from an objective point of view, whether there was any real likelihood of bias, or any reasonable suspicion of bias, on the facts of the particular case. The nature of the interest is such that public confidence in the administration of justice requires that the decision should not stand.

This has been described as “automatic disqualification”, and was recently revisited by the House of Lords in *R. v. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte (No. 2)*, [1999] 2 W.L.R. 272. There, the House of Lords dealt with a situation in which Lord Hoffmann had participated in a decision in which Amnesty International was an intervener, while sitting as a director and chairperson of a charity closely allied with Amnesty International and sharing its objects. In that context, it was found that the rule of “automatic disqualification” extended to a limited class of non-financial interests, where the judge has such a relevant interest in the subject matter of the case that he or she is effectively in the position of a party to the cause. As a result, Lord Hoffmann was disqualified, and the decision of the House of Lords was set aside, in a judgment that drew much attention around the world.

A more recent decision of the English Court of Appeal suggests that this extension of the rule of automatic disqualification, beyond cases of financial interests, is likely to remain exceptional (*Locabail (U.K.)*, *supra*). Even so extended, the rule of automatic disqualification does not apply to the situation in which the decision-maker was somehow involved in the litigation or linked to counsel at an earlier stage, as is argued here.

de l’administration de la justice si la décision était maintenue. [. . .] Il s’agit des cas où une personne exerçant des fonctions judiciaires possède un intérêt pécuniaire dans l’issue de l’instance. [. . .] En pareils cas, [. . .] non seulement l’absence de partialité de la part du tribunal n’est-elle pas pertinente, mais il n’est pas question de se demander si, d’un point de vue objectif, il existait une probabilité réelle de partialité ou une crainte raisonnable de partialité eu égard aux faits de l’affaire en cause. La nature de l’intérêt est telle que la confiance du public dans l’administration de la justice commande que la décision ne soit pas maintenue.

Ce genre de cas, qu’on a qualifié de situations d’« inhabilité automatique », a récemment été réexaminé par la Chambre des lords dans *R. c. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte (No. 2)*, [1999] 2 W.L.R. 272. Dans cet arrêt, la Chambre des lords a examiné une situation où lord Hoffmann avait participé à la décision d’une affaire dans laquelle Amnistie internationale était intervenante, alors qu’il siégeait comme administrateur et président d’un organisme de bienfaisance qui était intimement lié à Amnistie internationale et partageait les objectifs de celle-ci. Dans ce contexte, il a été jugé qu’une catégorie limitée d’intérêts non pécuniaires entraînent également l’application de la règle de l’« inhabilité automatique », par exemple lorsque le juge possède un intérêt à ce point pertinent à l’égard de l’objet de l’affaire qu’il se trouve effectivement dans la position d’une partie à la cause. Par conséquent, lord Hoffmann a été déclaré inhabile et la décision de la Chambre des lords a été annulée dans un jugement qui a suscité beaucoup d’attention à travers le monde.

Un arrêt plus récent de la Cour d’appel d’Angleterre semble indiquer que l’élargissement de l’application de la règle de l’inhabilité automatique à d’autres situations que celles mettant en jeu des intérêts pécuniaires restera vraisemblablement exceptionnel (*Locabail (U.K.)*, précité). Malgré cet élargissement, la règle de l’inhabilité automatique ne s’applique pas dans les cas où le décideur a, d’une certaine façon, participé au litige ou été en contact avec les avocats aux premiers stades de l’affaire, comme il est allégué en l’espèce.

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**Newfoundland Telephone Company
Limited** *Appellant*

v.

**The Board of Commissioners of Public
Utilities** *Respondent*

INDEXED AS: NEWFOUNDLAND TELEPHONE CO. v.
NEWFOUNDLAND (BOARD OF COMMISSIONERS OF
PUBLIC UTILITIES)

File No.: 22060.

1991: November 7; 1992: March 5.

Present: La Forest, L'Heureux-Dubé, Sopinka,
Gonthier, Cory, McLachlin and Iacobucci JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR
NEWFOUNDLAND

*Administrative law — Apprehension of bias — Policy-
making board — Board member expressing strong views
as to issue board considering — Decision made after
Board declined to remove member from panel — Extent
to which an administrative board member may comment
on matters before the board — Whether reasonable
apprehension of bias — If so, whether decision void or
merely voidable.*

Respondent Board, whose members are appointed by
cabinet subject only to the qualification that they not be
employed by or have an interest in a public utility, regu-
lates appellant. One commissioner, a former consumers'
advocate playing the self-appointed role of champion of
consumers' rights on the Board, made several strong
statements which were reported in the press against
appellant's executive pay policies before a public hear-
ing was held by the Board into appellant's costs. When
the hearing commenced, appellant objected to this com-
missioner's participation on the panel because of an
apprehension of bias. The Board found that it had no
jurisdiction to rule on its own members and decided that
the panel would continue as constituted. A number of
public statements relating to the issue before the Board
were made by this commissioner during the hearing and
before the Board released its decision which (by a
majority which included the commissioner at issue) dis-
allowed some of appellant's costs. A minority would

**Newfoundland Telephone Company
Limited** *Appelante*

c.

**The Board of Commissioners of Public
Utilities** *Intimée*

b RÉPERTORIÉ: NEWFOUNDLAND TELEPHONE CO. c.
TERRE-NEUVE (BOARD OF COMMISSIONERS OF PUBLIC
UTILITIES)

N° du greffe: 22060.

c 1991: 7 novembre; 1992: 5 mars.

Présents: Les juges La Forest, L'Heureux-Dubé,
Sopinka, Gonthier, Cory, McLachlin et Iacobucci.

d EN APPEL DE LA COUR D'APPEL DE TERRE-NEUVE

*Droit administratif — Crainte de partialité — Com-
mission chargée de l'élaboration de politiques — Un
membre de la Commission a exprimé des opinions bien
arrêtées sur une question dont la Commission était sai-
sie — Décision rendue après le refus de la Commission
d'écarter ce membre de la formation étudiant la ques-
tion — Dans quelle mesure un membre d'une commis-
sion administrative peut-il commenter des questions
soumises à la commission? — Y a-t-il eu une crainte
raisonnable de partialité? — Dans l'affirmative, la déci-
sion rendue était-elle nulle ou seulement susceptible
d'annulation?*

La Commission intimée, dont les membres sont
nommés par le cabinet à la seule condition qu'ils ne
soient pas employés par une entreprise de services
publics et qu'ils n'aient aucun intérêt dans une telle
entreprise, assure la réglementation de l'appelante. Un
commissaire, ancien défenseur des droits des consom-
mateurs qui a décidé de jouer ce même rôle au sein de la
Commission, a fait, antérieurement à la tenue d'une
audience publique par la Commission relativement aux
frais de l'appelante, plusieurs déclarations, diffusées
dans la presse, attaquant énergiquement les politiques de
l'appelante en matière de rémunération de ses cadres.
Au début de l'audience, l'appelante, invoquant une
crainte de partialité, s'est opposée à ce que ce commis-
saire siège dans l'affaire. La Commission a conclu
qu'elle n'avait pas compétence pour statuer sur les cas
de ses membres et a décidé que la formation des com-
missaires resterait telle quelle. Pendant le déroulement
de l'audience et avant que la Commission (à la majorité,

have allowed these costs. Appellant appealed both the order of the Board and the Board's decision to proceed with the panel as constituted to the Court of Appeal.

The Court of Appeal found that the Board had complete jurisdiction to determine its own procedures and all questions of fact and law and that it declined to exercise its jurisdiction when it refused to remove the commissioner from the panel. Although the court concluded that there was a reasonable apprehension of bias, it held that the Board's decision was merely voidable and that, given that the commissioner's mind was not closed to argument, the Board's order was valid.

The issues under consideration here were: (1) the extent to which an administrative board member may comment on matters before the board and, (2) the result which should obtain if a decision of a board is made in circumstances where a reasonable apprehension of bias is found.

Held: The appeal should be allowed.

The duty of fairness applies to all administrative bodies. The extent of that duty, however, depends on the particular tribunal's nature and function. The duty to act fairly includes the duty to provide procedural fairness to the parties. That simply cannot exist if an adjudicator is biased. Because it is impossible to determine the precise state of mind of an adjudicator who has made an administrative board decision, an unbiased appearance is an essential component of procedural fairness. The test to ensure fairness is whether a reasonably informed bystander would perceive bias on the part of an adjudicator.

There is a great diversity of administrative boards. Those that are primarily adjudicative in their functions will be expected to comply with the standard applicable to courts: there must be no reasonable apprehension of bias with regard to their decision. At the other end of the scale are boards with popularly elected members where the standard will be much more lenient. In such circumstances, a reasonable apprehension of bias occurs if a board member pre-judges the matter to such an extent

ledit commissaire étant du nombre des majoritaires) ne rende sa décision refusant certains frais de l'appelante, le commissaire en question a fait plusieurs déclarations publiques concernant la question dont la Commission était saisie. La minorité était d'avis d'admettre ces frais. L'appelante a contesté devant la Cour d'appel l'ordonnance de la Commission et la décision de celle-ci de permettre que l'audience ait lieu devant la formation telle qu'elle était constituée.

La Cour d'appel a conclu que la Commission a une compétence absolue pour décider de ses propres procédures et pour statuer sur toutes questions de fait et de droit et que son refus d'écartier le commissaire de la formation constituait un refus d'exercer sa compétence. Bien que concluant à l'existence d'une crainte raisonnable de partialité, la cour a dit que la décision de la Commission était seulement susceptible d'annulation et que, comme le commissaire n'avait pas l'esprit fermé aux arguments, l'ordonnance de la Commission était valide.

Les questions en litige en l'espèce sont celles de savoir (1) dans quelle mesure un membre d'une commission administrative peut commenter les affaires dont la commission est saisie, et (2) ce qui devrait se passer si la décision d'une commission est jugée avoir été rendue dans des circonstances où il existait une crainte raisonnable de partialité.

Arrêt: Le pourvoi est accueilli.

Tous les corps administratifs sont soumis à l'obligation d'agir équitablement. L'étendue de cette obligation tient toutefois à la nature et à la fonction du tribunal en question. L'obligation d'agir équitablement comprend celle d'assurer aux parties l'équité procédurale, qui ne peut tout simplement pas exister s'il y a partialité de la part du décideur. Vu l'impossibilité de déterminer exactement l'état d'esprit d'une personne qui a rendu une décision d'une commission administrative, l'apparence d'impartialité constitue un élément essentiel de l'équité procédurale. Le critère à appliquer pour assurer l'équité consiste à se demander si un observateur relativement bien renseigné percevrait de la partialité chez un décideur.

Il existe une grande diversité de commissions administratives. Celles qui remplissent des fonctions essentiellement juridictionnelles devront respecter la norme applicable aux cours de justice: il ne doit y avoir aucune crainte raisonnable de partialité relativement à leur décision. À l'autre extrémité se trouvent les commissions dont les membres sont élus par le public, pour lesquelles la norme est nettement moins sévère. Dans leur cas, il y a crainte raisonnable de partialité si un membre de la

that any representations to the contrary would be futile. Administrative boards that deal with matters of policy will be closely comparable to the boards composed of elected members. For those boards, a strict application of a reasonable apprehension of bias as a test might undermine the very role which has been entrusted to them by the legislature.

A member of a board which performs a policy-formation function should not be susceptible to a charge of bias simply because of the expression of strong opinions prior to the hearing. As long as those statements do not indicate a mind so closed that any submissions would be futile, they should not be subject to attack on the basis of bias. Statements manifesting a mind so closed as to make submissions futile would, however, even at the investigatory stage, constitute a basis for raising an issue of apprehended bias. Once the matter reaches the hearing stage a greater degree of discretion is required of a member.

The statements at issue here, when taken together, indicated not only a reasonable apprehension of bias but also a closed mind on the commissioner's part on the subject. Once the order directing the holding of the hearing was given, the Utility was entitled to procedural fairness. At the investigative stage, the "closed mind" test was applicable but once matters proceeded to a hearing, a higher standard had to be applied. Procedural fairness at that stage required the commission members to conduct themselves so that there could be no reasonable apprehension of bias.

A denial of a right to a fair hearing cannot be cured by the tribunal's subsequent decision. A decision of a tribunal which denied the parties a fair hearing cannot be simply voidable and rendered valid as a result of the subsequent decision of the tribunal. The damage created by apprehension of bias cannot be remedied. The hearing, and any subsequent order resulting from it, must be void. The order of the Board of Commissioners of Public Utilities was accordingly void.

Cases Cited

Considered: *Szilard v. Szasz*, [1955] S.C.R. 3; *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369; *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170; *Save Richmond Farmland Society v. Richmond (Township)*, [1990] 3 S.C.R. 1213; *Cardinal v. Director of Kent*

commission préjuge l'affaire au point de rendre vain tout argument contraire. Les commissions administratives qui s'occupent de questions de principe sont dans une large mesure assimilables à celles composées de membres élus en ce sens que l'application stricte du critère de la crainte raisonnable de partialité risquerait de miner le rôle que leur a précisément confié le législateur.

Le membre d'une commission qui remplit une fonction d'élaboration des politiques ne devrait pas être exposé à une accusation de partialité du seul fait d'avoir exprimé avant l'audience des opinions bien arrêtées. Pourvu que ces déclarations ne témoignent pas d'un esprit à ce point fermé qu'il serait inutile de présenter des arguments contraires, on ne devrait pas pouvoir les attaquer en invoquant la partialité. Des déclarations traduisant un esprit fermé au point de rendre vain tout argument contraire justifieraient toutefois, même au stade de l'enquête, qu'on invoque la crainte de partialité. Au stade de l'audience, un membre d'une commission est tenu à une plus grande discrétion.

Prises ensemble, les déclarations en cause en l'espèce indiquent non seulement qu'il y avait une crainte raisonnable de partialité mais aussi que le commissaire avait l'esprit fermé. Une fois rendue l'ordonnance exigeant la tenue de l'audience, l'entreprise de services publics avait droit à l'équité procédurale. Si, au stade de l'enquête, c'était le critère de l'«esprit fermé» qui s'appliquait, à l'audience la norme devait être plus sévère. Aussi l'équité procédurale commandait-elle à ce stade-là que les commissaires se comportent de façon à ne susciter aucune crainte raisonnable de partialité.

Une décision subséquente du tribunal ne peut remédier à la négation du droit à une audience équitable. La décision d'un tribunal qui a refusé aux parties une audience équitable ne peut être simplement annulable et être validée ensuite par la décision subséquente du tribunal. Le préjudice résultant d'une crainte de partialité est irrémédiable. L'audience, ainsi que toute ordonnance à laquelle elle aboutit, doit être frappée de nullité. L'ordonnance de la Board of Commissioners of Public Utilities est en conséquence nulle.

Jurisprudence

Arrêts examinés: *Szilard c. Szasz*, [1955] R.C.S. 3; *Committee for Justice and Liberty c. Office national de l'énergie*, [1978] 1 R.C.S. 369; *Assoc. des résidents du Vieux St-Boniface Inc. c. Winnipeg (Ville)*, [1990] 3 R.C.S. 1170; *Save Richmond Farmland Society c. Richmond (Canton)*, [1990] 3 R.C.S. 1213; *Cardinal c.*

Institution, [1985] 2 S.C.R. 643; referred to: *Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police*, [1979] 1 S.C.R. 311; *Martineau v. Matsqui Institution Disciplinary Board*, [1980] 1 S.C.R. 602.

Statutes and Regulations Cited

Public Utilities Act, R.S.N. 1970, c. 322, ss. 5(1) [am. by S.N. 1979, c. 30, s. 1], (8), 6, 14, 15, 79, 83, 85, 86.

Authors Cited

Janisch, Hudson N. Case Comment: *Nfld. Light & Power Co. v. P.U.C. (Bd.)* (1987), 25 Admin. L.R. 196.

APPEAL from a judgment of the Newfoundland Court of Appeal (1990), 83 Nfld. & P.E.I.R. 257, 260 A.P.R. 257, 45 Admin. L.R. 291, dismissing an appeal from an order and from a ruling of the Board of Commissioners of Public Utilities. Appeal allowed.

James R. Chalker, Q.C., and *Evan J. Kipnis*, for the appellant.

Chesley F. Crosbie, for the respondent.

The judgment of the Court was delivered by

CORY J.—Two issues are raised on this appeal. The first requires a consideration of the extent to which an administrative board member may be permitted to comment upon matters before the board. The second, raises the question as to what the result should be if a decision of a board is made in circumstances where there is found to be a reasonable apprehension of bias.

The Factual Background

Pursuant to the provisions of *The Public Utilities Act*, R.S.N. 1970, c. 322, the Board of Commissioners of Public Utilities (“the Board”) is responsible for the regulation of the Newfoundland Telephone Company Limited. Commissioners of the Board are appointed by the Lieutenant-

Directeur de l'établissement Kent, [1985] 2 R.C.S. 643; arrêts mentionnés: *Nicholson c. Haldimand-Norfolk Regional Board of Commissioners of Police*, [1979] 1 R.C.S. 311; *Martineau c. Comité de discipline de l'Institution de Matsqui*, [1980] 1 R.C.S. 602.

Lois et règlements cités

Public Utilities Act, R.S.N. 1970, ch. 322, art. 5(1) [mod. par S.N. 1979, ch. 30, art. 1], (8), 6, 14, 15, 79, 83, 85, 86.

Doctrine citée

Janisch, Hudson N. Case Comment: *Nfld. Light & Power Co. v. P.U.C. (Bd.)* (1987), 25 Admin. L.R. 196.

POURVOI contre un arrêt de la Cour d'appel de Terre-Neuve (1990), 83 Nfld. & P.E.I.R. 257, 260 A.P.R. 257, 45 Admin. L.R. 291, qui a rejeté un appel d'une ordonnance et d'une décision de la Board of Commissioners of Public Utilities. Pourvoi accueilli.

James R. Chalker, c.r. et *Evan J. Kipnis*, pour l'appelante.

Chesley F. Crosbie, pour l'intimée.

Version française du jugement de la Cour rendu par

LE JUGE CORY—Deux questions se posent dans le présent pourvoi. La première nécessite que la Cour examine dans quelle mesure un membre d'une commission administrative peut commenter les affaires dont la commission est saisie. Quant à la seconde, elle concerne ce qui devrait se passer si la décision d'une commission est jugée avoir été rendue dans des circonstances où il existait une crainte raisonnable de partialité.

Les faits

The Public Utilities Act, R.S.N. 1970, ch. 322, confie à la Board of Commissioners of Public Utilities («la Commission») la réglementation de la Newfoundland Telephone Company Limited. Les commissaires sont nommés par le lieutenant-gouverneur en conseil. La loi porte simplement que les

witnesses and counsel by board members. Wells' statements, however, were such, that so long as he remained a member of the Board hearing the matter, a reasonable apprehension of bias existed. It follows that the hearing proceeded unfairly and was invalid.

The Consequences of a Finding of Bias

Everyone appearing before administrative boards is entitled to be treated fairly. It is an independent and unqualified right. As I have stated, it is impossible to have a fair hearing or to have procedural fairness if a reasonable apprehension of bias has been established. If there has been a denial of a right to a fair hearing it cannot be cured by the tribunal's subsequent decision. A decision of a tribunal which denied the parties a fair hearing cannot be simply voidable and rendered valid as a result of the subsequent decision of the tribunal. Procedural fairness is an essential aspect of any hearing before a tribunal. The damage created by apprehension of bias cannot be remedied. The hearing, and any subsequent order resulting from it, is void. In *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643, at p. 661, Le Dain J. speaking for the Court put his position in this way:

... I find it necessary to affirm that the denial of a right to a fair hearing must always render a decision invalid, whether or not it may appear to a reviewing court that the hearing would likely have resulted in a different decision. The right to a fair hearing must be regarded as an independent, unqualified right which finds its essential justification in the sense of procedural justice which any person affected by an administrative decision is entitled to have. It is not for a court to deny that right and sense of justice on the basis of speculation as to what the result might have been had there been a hearing.

In my view, this principle is also applicable to this case. In the circumstances, there is no alternative but to declare that the Order of the Board of Commissioners of Public Utilities is void.

ment juridictionnelles. Cette norme de conduite n'empêchera évidemment pas les commissaires de soumettre à l'interrogatoire le plus rigoureux possible témoins et avocats. Compte tenu toutefois de la nature des déclarations de Wells, une crainte raisonnable de partialité subsistait tant qu'il continuait à siéger en tant que commissaire dans l'affaire. Il s'ensuit donc que l'audience s'est déroulée de façon inéquitable et était en conséquence nulle.

Les conséquences d'une conclusion à la partialité

Quiconque comparaît devant une commission administrative a droit à un traitement équitable. Ce droit est à la fois distinct et absolu. Comme je l'ai déjà mentionné, du moment que la crainte raisonnable de partialité est établie, une audience équitable ou l'équité procédurale sont impossibles. S'il y a eu négation du droit à une audience équitable, la décision subséquente du tribunal ne peut y remédier. La décision d'un tribunal qui a refusé aux parties une audience équitable ne peut être simplement annulable et être validée ensuite par la décision subséquente du tribunal. L'équité procédurale est un élément essentiel de toute audience tenue devant un tribunal. Le préjudice résultant d'une crainte de partialité est irrémédiable. L'audience, ainsi que toute ordonnance à laquelle elle aboutit, est nulle. Dans *Cardinal c. Directeur de l'établissement Kent*, [1985] 2 R.C.S. 643, à la p. 661, le juge Le Dain, au nom de la Cour, s'est exprimé ainsi:

... j'estime nécessaire d'affirmer que la négation du droit à une audition équitable doit toujours rendre une décision invalide, que la cour qui exerce le contrôle considère ou non que l'audition aurait vraisemblablement amené une décision différente. Il faut considérer le droit à une audition équitable comme un droit distinct et absolu qui trouve sa justification essentielle dans le sens de la justice en matière de procédure à laquelle toute personne touchée par une décision administrative a droit. Il n'appartient pas aux tribunaux de refuser ce droit et ce sens de la justice en fonction d'hypothèses sur ce qu'aurait pu être le résultat de l'audition.

À mon avis, ce principe s'applique également en l'espèce. Dans les circonstances, nous ne pouvons que déclarer nulle l'ordonnance de la Board of Commissioners of Public Utilities.

APPENDIX B



Premier unmoved by Northern Pulp's ask for more time to close waste water facility



Pictou Landing First Nation chief not interested in extending deadline to close facility

Paul Withers · CBC News · Posted: Jan 31, 2019 10:33 AM AT | Last Updated: January 31



Premier Stephen McNeil has consistently said his government has no intention of extending the deadline contained in the Boat Harbour Act, which was passed in 2015. (CBC)

Owners of the Northern Pulp paper mill in Pictou, N.S., are seeking a one-year extension of a provincial law that aims to close the mill's waste effluent facility in January 2020.

Speaking at a Halifax news conference, Paper Excellence officials said the company is committed to righting a legacy of five decades of pollution. But the company says it needs

more time to build a new \$130-million effluent treatment plant to replace the existing facility at Boat Harbour, N.S.

The Boat Harbour Act was passed in 2015 by Nova Scotia's Liberal government and requires the current facility to close by January 31, 2020 — one year from today. The move came after pressure from Pictou Landing First Nation, which is adjacent to the settling lagoons used to treat waste water.

The lagoons contain nearly 50 years worth of toxic waste, and it has been called [one of the worst cases of environmental racism in Canada](#).

But Nova Scotia Premier Stephen McNeil is unmoved by the company's request.

"The deadline is the deadline," he told reporters Thursday.

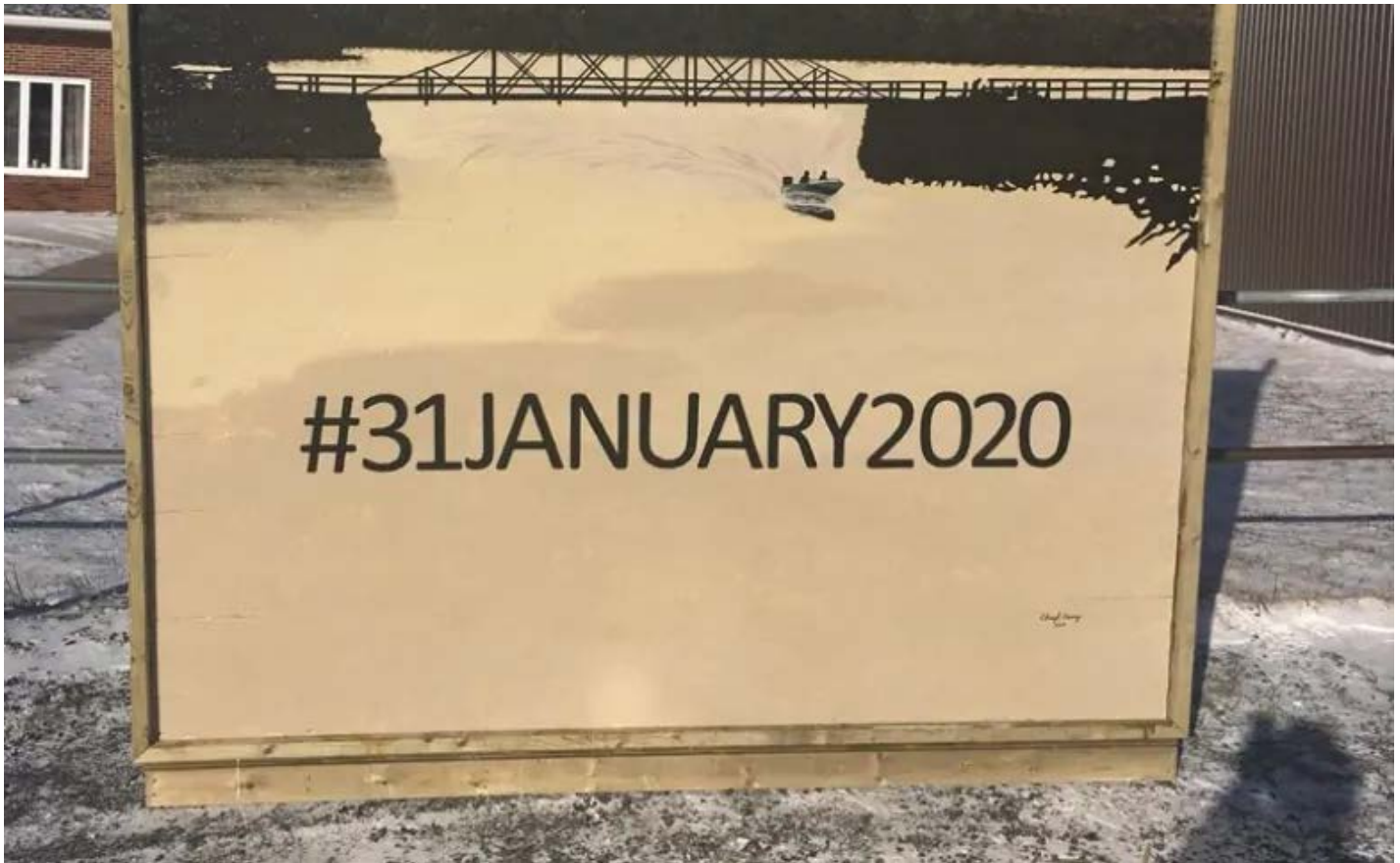
The company says without an extension it will not operate the mill — but would not say it is prepared to close permanently.

"We will not operate illegally, but we do believe we will get there," Paper Excellence spokesperson Kathy Cloutier said.

McNeil seemed prepared for a shutdown of Northern Pulp for some period of time.

"The question would be for what period of time would the company be down."





A sign at Pictou Landing First Nation counts down to the date the current treatment facility is required to close under the province's Boat Harbour Act. (Michael Gorman/CBC)

McNeil says the province is looking at the worst-case scenario, in term of its liabilities, the status of financial assistance to Northern Pulp and other sawmills, worker pension plans and alternative markets for wood chips bought by Northern Pulp.

"We're working our way through that," he said.

Paper Excellence says it will begin construction on the new treatment facility as soon as it secures regulatory approval — even without an extension in place.

The mill's future and the way it treats 75 million litres of waste water each day is the subject of intense debate in northern Nova Scotia, especially in Pictou County where the mill has operated since 1967.

Come Jan. 31, 2019, the legislated deadline to shutter the Boat Harbour effluent treatment facility in Pictou County will be exactly one year away. In this week's Sound Off, Jean Laroche and Michael Gorman stand next to the portraits of premiers past at Province House and examine the history, broken promises and where all the major players stand right now. 2:28

With the closure of Boat Harbour looming, the company is proposing to build, own and operate an activated sludge treatment system next to the Northern Pulp mill with the treated effluent discharged by a diffuser pipe into the Northumberland Strait near Caribou, N.S.

Thursday's news conference coincided with Northern Pulp submitting its environmental assessment to the Nova Scotia government. The assessment will be publicly released in one week.

The proposal will be given a provincial Class 1 review, which takes about 50 days.

The federal government is still considering a much lengthier review of its own, at the request of First Nations and the neighbouring province of Prince Edward Island,

Fishermen claim the proposed discharge pipe will harm the area's lucrative lobster fishery and have staged blockades to stop survey vessels working on a route for the pipe. Earlier this week, Northern Pulp [issued a statement saying the fishermen have agreed to comply with a court injunction](#) that prohibits them from blocking their vessels.



People gathered at Pictou Landing First Nation on Thursday participate in a round dance. The event marked the one-year countdown to the closure of the Boat Harbour treatment facility. (Michael Gorman/CBC)

The company maintains the system will meet federal standards and treated pulp mill effluent is discharged into fresh and salt water elsewhere.

Sawmill owner Robin Wilber of Elmsdale Lumber says the fate of the Northern Pulp will affect the entire forest industry. Sawmills send bark and chips to the mill.

"No pulp mill, no saw mills, the farmer loses income from their woodlots. It's a hugely integrated industry from Yarmouth to Sydney," Wilber said

He says he understands frustration in Pictou County over pollution from the mill, but says the company deserves more time.

"Paper Excellence has only been around for a few years. There were four other previous owners who left a bad taste in everybody's mouth," he says.

"We need to give them a chance."

Durney Nicholas is a fisherman from the Pictou Landing First Nation. He attended the news conference and was not persuaded.

"They always say 'Give me more time,' but enough is enough," he said.

On Thursday, more than 500 people gathered in a gym on Pictou Landing First Nation to kick off the one-year countdown to the closure of Boat Harbour treatment facility, which it has opposed for decades.





In an emotional speech to a crowd of more than 500 people, Pictou Landing First Nation Chief Andrea Paul talked about the legacy of the Boat Harbour treatment facility and said its end would be the start of healing for the community. (Michael Gorman/CBC)

The ceremony included drumming and dancing, students read speeches and people signed declarations of support to uphold the current deadline.

"We're not moving the date. The date is the date," Chief Andrea Paul told reporters.

"We have one year left and Boat Harbour won't be used as an effluent dumping ground. We're very excited."

Paul was emotional as she addressed the crowd and talked about the legacy of Boat Harbour and what it's done to the environment.



People at the event in Pictou Landing react to a speech by Chief Andrea Paul. (Michael Gorman/CBC)

"They took away our right to fish, they took away our right to survival, they took away our health."

Acknowledging a memory wall at the back of the room, a display with the names and pictures of community members no longer alive to see this day, Paul said it would be a sacred day when the community gathers around Boat Harbour in one year to witness the stop of the effluent flow.

"What a powerful day that's going to be," she said. "Next year is going to be a beautiful day."

With files from Michael Gorman

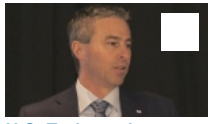
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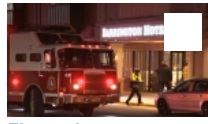
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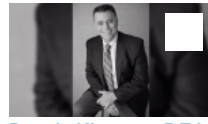
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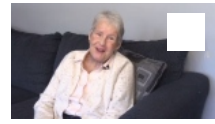
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N.S. mill's future at risk without extension, Northern Pulp warns

Michael MacDonald, THE CANADIAN PRESS

Published Thursday, January 31, 2019 10:26AM AST

Last Updated Friday, February 1, 2019 8:16AM AST

HALIFAX -- The owners of a large Nova Scotia pulp mill are suggesting the operation will be forced to shut down -- threatening 300 jobs -- unless the province extends a legislated deadline for closing the highly polluted waste water facility at Boat Harbour.

The existing deadline is one year away -- Jan. 31, 2020. The company was originally given five years to design and build another treatment facility to replace the fetid lagoons near the Pictou Landing First Nation.

The lagoons contain nearly 50 years worth of toxic waste, which former Nova Scotia environment minister Iain Rankin has called one of the worst cases of environmental racism in Canada.

Speaking at a news conference Thursday, Northern Pulp spokeswoman Kathy Cloutier said the company got bogged down in the industrial approval process and it needs about another year to get the job done.

"Some will say they have heard this before, and look where we are now. We recognize this, and relish the opportunity to be the exception rather than the rule," she said, referring to the fact that the mill's previous owners routinely made cleanup promises they did not keep.

"We want to bring about a positive legacy that addresses environmental concerns. Despite best intentions, we have not always gotten it right in the eyes of the Mik'maq or in the eyes of our stakeholders."

Cloutier said if the province rejects the request, the mill will not break the law by continuing to dump effluent into Boat Harbour past the deadline. That means the mill would almost certainly be forced to shut down, at least temporarily.

However, she said the company is moving ahead with building its new \$130-million treatment facility and pipeline, even if the province fails to grant an extension.

Premier Stephen McNeil has consistently said his government has no intention of extending the deadline in the Boat Harbour Act, legislation that was drafted in 2015 after a serious effluent spill at the Pictou Landing First Nation.

McNeil confirmed Thursday he had spoken with company officials, but he said he had not changed his mind.

"The deadline is the deadline," he said after a cabinet meeting. "We gave them five years."

However, the premier also said he would be open to hearing proposals from residents of the Pictou area, including the local Tory members of the legislature. He said if a consensus was reached on amending the act, that could be debated on the floor of the legislature.

Cloutier said a temporary shutdown is not a realistic option, especially in the winter months.

The premier said the province is already looking into a Plan B, which would involve dealing with the fallout from a permanent closure.

The chief of Pictou Landing First Nation, Andrea Paul, has said the deadline must not be extended. The 600 members of the band marked the beginning of an official one-year countdown during a ceremony Thursday morning.

Paul said the company should not have held its news conference on the same day as the First Nation's event.

"Northern Pulp has just shown us what their new era of improved Indigenous relations will look like," she said in a statement released late Wednesday.

RELATED STORIES

[N.S. prepares for worst on controversial pulp mill: 'No easy solution here'](#)

[Boat Harbour deadline won't move but open to legislature debate: Premier](#)

[Nova Scotia First Nation starts official countdown on Boat Harbour](#)

PHOTOS



The Northern Pulp Nova Scotia Corporation mill is seen in Abercrombie, N.S., on Wednesday, Oct. 11, 2017. (THE CANADIAN PRESS/Andrew Vaughan)

Durney Nicholas, a fisherman from Pictou Landing First Nation, said he wasn't impressed with what he heard at the news conference on Thursday.

"I'm not going to accept what they are saying," he said afterwards. "We're going to still say no. We're going to keep fighting, too ... Enough is enough."

P.E.I. Premier Wade MacLauchlan and other critics have said the project should be subjected to a more rigorous federal environmental assessment.

Cloutier said the company would welcome such scrutiny, but only if the shutdown deadline is extended.

Ronnie Heighton, president of the Northumberland Fishermen's Association, said his group has no reason to trust the company.

"As far as we're concerned, the date is the date," he said in an interview. "They just wasted time away."

The association is opposed to Northern Pulp's plan to build a pipeline that would dump more than 60-million litres of treated waste water daily into the Northumberland Strait.

The company has insisted the water will be largely unaffected within two metres of the pipeline's discharge point.

Heighton doesn't buy that.

"The stuff will still be there," said Heighton, whose group represents about 600 fishermen who fish for lobster, herring, crab, scallops and oysters. "We're talking about ... tonnes of solids per day. After about 30 years, the stuff will be on the surface."

The company confirmed Thursday it had submitted an environmental assessment application to the province for its new treatment and pipeline plan, which will include the use of a so-called Activated Sludge Treatment system.

Cloutier has said that of the 131 kraft pulp mills operating in North America, about 20 per cent use that system. The remaining 80 per cent use the lagoon system now in use at Boat Harbour. No other treatment system is used, she said.

The company has said the treated effluent it plans to pump into the Strait will meet federal regulations for emissions, but opponents say there's a lack of scientific evidence regarding how the waste will affect the long-term health of the waterway.

The 10 kilometre pipeline will travel from Abercrombie point, where the mill is located, across Pictou Harbour and then overland to the west of Pictou before extending into the Strait north of Caribou, N.S.

Built in 1967, the mill manufactures 280,000 tonnes of Northern Bleached Softwood Kraft pulp every year. Most of it is exported to make toilet paper and other paper products.

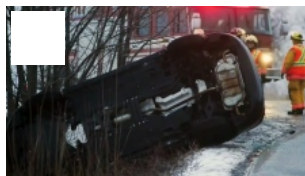
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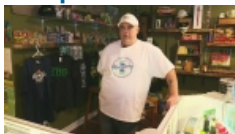
Nova Scotia's Progressive Conservative leader filed court documents today challenging a decision by the Liberal government to keep details of the Yarmouth to Maine ferry contract confidential.



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Uproar in Nova Scotia over plan to dump pulp effluent into Northumberland Strait

By Joan Baxter in [Analysis](#), [Energy](#), [Politics](#) | July 25th 2018

3 stories left



Pictou Landing Chief Andrea Paul addresses participants in the #NOPIPE rally on July 6, 2018 in Pictou, N.S., flanked by Mi'kmaq chiefs, fishers' group leaders and tourism operators from across three provinces. Photo by Gerard J. Halfyard

Kinder Morgan's Trans Mountain expansion may be hot in the media spotlight right now, but on the East Coast, another industrial storm is brewing.

Nova Scotia's Northern Pulp mill has proposed a 10-kilometre pipeline to transport [up to 85 million litres](#) of warm pulp effluent every day directly into the Northumberland Strait — a beautiful part of the Gulf of St. Lawrence and a lucrative fishing ground.

Public protest over this pulp pipe proposal has spawned the #NOPIPE movement, which has sown division among communities in Pictou County. #nspoli #novascotia



The idea of dumping treated waste from the Northern Pulp's mill in Pictou directly into such a rich ecosystem — without giving it an additional month to settle,

3 stories left

as it currently does in a lagoon before it is slowly released into the Strait — has many First Nations, fishers, citizens and local communities up in arms.

Earlier this month, Prime Minister Justin Trudeau turned his back on them as he declined to commit to a federal environmental assessment of the pipeline proposal, [justifying his decision](#) as respect for "provincial jurisdiction." In other words, the prime minister is satisfied that the Nova Scotia government can handle the assessment.

But with the province being responsible, through an indemnity agreement, for part of the project's design and cost — critics are worried that the pipeline won't receive a thorough, unbiased assessment. To boot, they add, the Northern Pulp mill's foreign corporate owners have troubling ties to illegal deforestation abroad.

Sowing division in Pictou County

The pipeline in question is for Northern Pulp's 51-year-old bleached kraft pulp mill in Pictou County on the north shore of Nova Scotia. If approved, it would be almost a metre in diameter and 10 kilometres long, carrying millions of litres of effluent and releasing it through six dispersal pipes into the Northumberland Strait.

The Northumberland Strait separates Prince Edward Island from New Brunswick and Nova Scotia in the Gulf of St. Lawrence; an extremely rich and sensitive fishing ground, on which thousands of people across the Maritimes depend for fisheries and tourism.

Critics of the project [fear](#) it would pollute coastal waters, harm crucial fish habitat and [marine life](#), and put those vital industries [at risk](#). As a result, the plan has sparked widespread opposition and public protest, spawning the hashtag, “#NOPIPE.” It has been condemned by fishermen, tourism operators and First Nations groups, [sowing division](#) in traditionally tight-knit communities in its wake.

The project also comes with a form of ultimatum for government regulators:

“No pipe equals no mill,” is how Kathy Cloutier, director of communications for Paper Excellence, the mill's parent company, put it to me in an email.

Paper Excellence [acquired](#) the Northern Pulp mill in 2011, and owns [four other mills](#) in Canada — three in British Columbia and one in Saskatchewan, as well as two in France. While the company has headquarters in Canada, its larger hold

3 stories left

of Paper Excellence B.V. [operates as a subsidiary](#) of Asia Pulp and Paper Group, and is based in the Netherlands.

Paper Excellence is the fifth largest foreign corporation that has owned the mill in Pictou since it opened in 1967, and has ties to a shocking history of ripping up endangered forests in Southeast Asia.



Northern Pulp's mill in Pictou County, N.S., which produces northern bleached softwood Kraft pulp, is seen in August of 2014. Photo by Gerry Farrell

A dismal overseas record

Paper Excellence is [part of the corporate empire](#) of the billionaire Widjaja family of Indonesia, which also owns Sinar Mas Group. Sinar Mas despite its denial, [has ties](#) to devastating fires and deforestation in Southeast Asia under its international trade name, Asia Pulp and Paper (APP), and the dubious distinction of being responsible for Asia's [worst corporate default](#) — US\$ 13.9 billion in 2001 after a 20-per-cent plunge in global paper prices over three months.

APP pledged to clean up its act, following [boycotts](#) in 2012 of its paper products by several prominent corporate brands, as a result of its role in illegal logging in Indonesia. It adopted a “forest conservation policy,” developed with support from [Greenpeace International](#) to help it accomplish this, but in May 2018, after it emerged that APP was still responsible for destroying forests in Indonesia, [Greenpeace ended all engagement](#) with APP and Sinar Mas Group.

3 stories left

None of this appears to have dampened relations between the Nova Scotia government, however, and the owners of the Northern Pulp mill. As has been the pattern for the past half-century, the province seems intent on doing the mill's bidding.

How Nova Scotia was captured by a pulp mill

In 2017, Nova Scotia's Department of Environment determined that the pipe warranted a "smaller in scale" [Class I environmental assessment](#), which takes just 50 days and leaves the final approval decision to the minister of environment. Critics say the pipe should undergo a more thorough [Class II](#) assessment, which takes 275 days and involves an environmental assessment panel.

Among those calling for the Class II assessment are [Karla MacFarlane](#), interim leader of the Nova Scotia Progressive Conservative Party, and [Tim Houston](#), who represents Pictou East in the legislature and is vying for the leadership of the PC party in the October convention.

Before the decision to proceed with a Class I assessment had been made however, Nova Scotia's Department of Environment had concerns about the pipe plan. According to [internal emails](#) obtained through freedom of information legislation by Linda Pannozzo for *The Halifax Examiner*, officials were worried that the mill's plan to treat effluent on-site in a new activated sludge system, and then pump it through a pipe into the Strait, had the "potential for eutrophication," meaning excess nutrients could lead to oxygen depletion.

Then, the consultants working on the pipe proposal, KSH Solutions Inc, reminded Department of Environment officials that there was a "fixed completion date" for the project, and any delays stemming from public consultations were "of concern." The new system had to be operating by July 2019, so that by January 2020, the mill's effluent would no longer flow into, and settle in Boat Harbour, as it has done since 1967.

Boat Harbour is Nova Scotia's largest environmental contaminated site and an egregious example of environmental racism.

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An effluent aeration pond close to Boat Harbour in Nova Scotia is pictured on July 20, 2016. Photo by Joan Baxter

Threats of expropriation

In the 1960s, when the PC government of then-premier Robert Stanfield was pushing to get the pulp mill built, it engaged two government officials to convince the Pictou Landing First Nation to sign over Boat Harbour, their precious tidal estuary, to the government for mill effluent.

In his book, *We Were Not the Savages*, Mi'kmaq scholar Daniel Paul describes the way these officials obtained control of Boat Harbour as "full of deceit and maliciousness." The officials took the chief and a councillor from Pictou Landing First Nation to a non-functioning domestic sewage facility in New Brunswick in 1965, and told them the water in their estuary would be just as clear and clean as the fresh, spring-fed brook at the site. They were also told, he wrote, th

3 stories left

didn't sign an agreement allowing the government to use Boat Harbour for the mill's effluent, it would be expropriated.

Deceived and under pressure, the chief and councillor agreed, signing away the tidal estuary that had provided their First Nation community with much of their food for countless generations. Boat Harbour immediately became a [toxic wasteland](#).

To entice Scott Paper to build the mill, the provincial government had already bestowed numerous expensive gifts on the American pulp and paper giant. Among them, as detailed in the [the 1965 Scott Maritimes Limited Agreement](#) and a report for the Nova Scotia cabinet in 1965, were: a causeway linking the Town of Pictou with the mill site on Abercrombie Point; a dam across a river to provide the mill with more than 100 million litres of fresh water daily; a 50-year lease on 230,000 acres of Crown land with rock-bottom stumpage rates; and a slew of generous tax breaks.

To top it off, on Sept. 30, 1970, the government of former Progressive Conservative premier G.I. Smith signed an unprecedented agreement with Scott Paper, in which the province agreed "at its cost," to "own, operate and maintain the Effluent Treatment System and continue to accept in such system all effluent from the mill."

Pouring millions into the mill

Over the years, successive provincial governments in Nova Scotia have lavished hundreds of millions of dollars on the mill in loans and grants. The federal government has also chipped in [millions of dollars](#) for environmental improvements.

Even that's not the end of the government largesse.

In 1995, the Liberal government of former premier John Savage signed an indemnity agreement "saving harmless" anyone who worked for the mill from all responsibility for environmental problems with its effluent. It also made the government — that is, the people of Nova Scotia — responsible for effluent and reconfigurations of the mill related to its treatment and disposal, forever.

As it stands, the effluent — an average of [80 million litres daily](#) — flows from the mill through a pipe under inner Pictou Harbour, then comes onshore at Pictou Landing. There it goes into settling ponds, then an aeration basin for a week before it flows into the 350-acre Boat Harbour lagoon. It is released through a dam into a small cove in the Northumberland Strait, following up to a month of further settling.

3 stories left

The new plan would remove that crucial last step: the effluent would be treated on-site in a new facility beside the mill and go directly into the Strait, without the settling of solids that currently happens in Boat Harbour.

In 2014, that effluent pipe ruptured, spilling [47 million litres](#) of toxic effluent near sacred Mi'kmaq burial grounds. The people of Pictou Landing First Nation set up a blockade, joined by others concerned about the mill's air and water pollution over the years.

The mill was [shut down](#) while the pipe was replaced and the First Nation issued an ultimatum to the current Liberal government of Premier Stephen McNeil: legislate the closure of Boat Harbour.

One year later, McNeil's government, with the support of both opposition parties, [passed](#) the Boat Harbour Act, which stipulated that no effluent could flow into the lagoon after Jan. 31, 2020. After that, Boat Harbour would be remediated and restored to its former state.

For a time, there was optimism that the province would finally crack down on the mill for its poor environmental performance over the years.

Those hopes were dashed when, in late 2017, Northern Pulp announced its plan to pipe effluent directly into the Northumberland Strait, and the government decided to go with a Class I environmental assessment.

Appearing before the [Public Accounts Committee](#) of the Nova Scotia legislature in February, Deputy Environment Minister Frances Martin defended the Class I assessment as appropriate, claiming that, "while the effluent treatment plant will be a new plant and a new design, it is a modification to an existing undertaking and that is the pulp mill itself."

Northern Pulp, however, [clearly states](#) that it is designing and building a "new treatment facility."

This decision to go with the Class I assessment for the treatment facility became even more inexplicable when the Department of Environment [announced](#) that it was requiring the more extensive Class II assessment for the clean up of Boat Harbour.

Nova Scotia in a conflict of interest

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Like Kinder Morgan's embattled Trans Mountain expansion, the proposed pulp pipe is pitting provincial governments of similar political stripes against each other – in this case, two provincial Liberal governments in Nova Scotia and P.E.I.

Prince Edward Island Premier Wade MacLaughlan [wrote](#) McNeil and federal Environment and Climate Change Minister Catherine McKenna in January this year, demanding a “more comprehensive assessment” that involves his province.

In response, a spokesperson for the Nova Scotia government [said](#) that P.E.I. would have a chance to submit its comments once the proposal had been registered for a provincial environmental assessment. Given that such commenting is the right of every citizen, this response was a firm snub of one Liberal premier by another.

As a result of the government's indemnity agreement with the mill, Nova Scotia taxpayers appear to be on the hook not just for the new effluent and disposal facility, but also the reconfiguration of the mill to accommodate the change. To date, neither Northern Pulp nor the Nova Scotia government has divulged the cost of the new facility or who will be paying for it. However, [local media](#) cite a 2015 letter from Northern Pulp to the government saying that the cost might be in “excess of \$100 million.”

Nova Scotians will also cover the costs of the Boat Harbour clean up, [estimated at](#) \$133 million and counting.

In 2002, the government of former premier John Hamm passed an Order in Council extending the mill's lease for the use of Boat Harbour until 2030. Hamm now is chair of the board of Northern Pulp, and the mill manager, Bruce Chapman, has been reminding the province of this commitment, [saying](#) that Northern Pulp will expect to be compensated by the province for the loss of the use of Boat Harbour for 10 years.

Nova Scotia citizens may also have to compensate the mill for any [lost profits](#) if it has to be idled because of a delay in getting a new effluent system up and running.

This puts the provincial government in a conflict of interest, and the impossible position of trying to regulate and assess the new effluent system, while it is responsible for its costs and any losses incurred by its delay.

More than 50 years of protest

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Since the pipe plan was made public in late last year, thousands of citizens have mobilized against it. They have also launched a [letter-writing campaign](#) and an [e-petition](#) to convince Ottawa to undertake a federal environmental assessment.

On July 6, a [land-and-sea rally](#) to protest the pipe plan, organized by the Friends of Northumberland Strait, several fishers' associations and unions, the Pictou Landing First Nation, the Pictou Lobster Carnival, tourism operators and environmental groups, drew thousands of people to the waterfront, many on foot and others in an impressive flotilla of fishing boats.

Protesters at the rally, including First Nation chiefs from three provinces, called for a federal environmental assessment.

A few days later, McKenna told reporters she would not rule out a federal assessment, but that the decision would have to wait until the final proposal had been submitted to the province.

The same day, then-minister of fisheries and oceans Dominic LeBlanc [told reporters](#) that the responsibility for the environmental assessment lay with the province of Nova Scotia. On Trudeau's July 17 visit to northern Nova Scotia, McNeil defended the province's environmental assessment process, and the prime minister echoed this sentiment.

It was a profound disappointment to those who, like [Chief Andrea Paul](#) of Pictou Landing First Nation, had been counting on the federal government to do a thorough assessment of the pipe proposal.

3 stories left



A flotilla of civilian vessels takes part in the #NOPIPE land-and-sea rally against the Northern Pulp mill in Nova Scotia on July 6, 2018. Photo by Gerard J. Halfyard

Not giving up hope on Ottawa

In an email, a spokesperson for the Canadian Environmental Assessment Agency (CEAA) stated that even if a proposed project is not included in the list of activities that trigger federal assessments, it can be designated for one if the federal environment minister determines it “may cause adverse environmental effects or public concerns related to those effects.”

So far, neither the mill nor the province has been able to demonstrate that the proposed pipe will not cause “adverse environmental effects” to the precious fishing areas of the Strait, suggesting that grounds for federal intervention do exist. Additionally, the [federal government](#) has “broad responsibilities for the stewardship and management” of all of Canada's oceans — including the Gulf of St. Lawrence — and by extension, the Northumberland Strait.

When Northern Pulp’s general manager and technical manager, together with a consultant engineer in charge of the project, [met with P.E.I.’s Standing Committee on](#)

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Agriculture and Fisheries earlier this year, they were unable to answer basic questions about the potential effect of the effluent on lobsters and the Strait.

Earlier this month, Northern Pulp [admitted](#) that its proposal to lay the pipe along the bottom of Pictou Harbour and out into the Strait, which it had planned to submit to the province in the summer, would not work — something fishers had been saying all along.

Pictou Harbour, the company determined, was too shallow, a collapsed pier and shipwreck were in the way, and an alternate route and outfall for the pipe would have to be found, pushing the registration of the proposal back to the fall of 2018.

None of this reassures people worried about the proposed pipe. For the past 51 years, the provincial government has consistently failed to protect citizens and the environment from the harmful effects the mill has had on air, water, forests and human health.

Nova Scotia's auditor general has strongly [criticized](#) the province's environmental assessment process, saying that environmental "approvals are issued without consulting inspectors who know risks," and describing the monitoring of projects as "poor."

Citizens concerned about the pipe [point out](#) that the provincial government is a party to designing the treatment facility, and can hardly be considered an "unbiased judge" of the proposal.

This is why, despite Trudeau's refusal to commit to federal involvement, many continue to sign petitions, write letters, and pin their hopes on the federal government to step in and undertake an environmental assessment.

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July 25th 2018

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Joan Baxter

Suzanne Edgar | 6 months ago

As a new resident of Nova Scotia, this is very distressing news! Thanks for having the courage to report on the history of this issue. Let's hope we can get the federal government on board for a unbiased assessment.

David Huntley | 5 months ago

The code of ethics of Nova Scotia engineers states

“Hold paramount the safety, health and welfare of the public and the protection of the environment and promote health and safety within the workplace“

Other provinces have very similar statements in their codes.

It follows directly that no Professional Engineer should agree to work on any such project as this.

Gloria Prescott | 5 months ago

Very big conflict of interest with Nova Scotia and this pipeline for the paper mill! Federal environmental assessment is common sense. Here is hoping...

Betsy Cornwell | 5 months ago

This dismal history of the pulp industry has been repeated all over the world with greater or lesser but never benign results. It is unfortunate that Gutenberg's invention has had such a poisonous and unintended consequence - the devastation of our world's essential forests, the destruction of otherwise potable water and the life that depends on it.

It is even more dispiriting to consider that in all probability, most of what is written on it, is certainly not worth the residual costs of the paper on which it appears! Computer was supposed to end the need for paper - instead, of course, computers and ph

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have only added to the hazardous waste of paper production.

An eccentric library worker I knew used to mutter as she went about her tasks that we should put a moratorium on publishing. More and more I subscribe to her viewpoint - too much of what winds up on paper is worthless, but then of, course so is 90% of what appears on media - probably including this dyspeptic opinion.

Nevertheless, I hope for the triumph of electronic communication which can enable most of us to delete, without waste, what we find irrelevant!

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Thousands of Atlantic Canada residents from three provinces protest N.S. pulp mill's effluent plan

JESSICA LEEDER > ATLANTIC BUREAU CHIEF

PICTOU, N.S.

PUBLISHED JULY 6, 2018

UPDATED JULY 9, 2018



Thousands of demonstrators gathered on the waterfront in Pictou, N.S. on Friday, to protest a proposed plan to dump treated effluent from the controversial Northern Pulp mill into the Northumberland Strait.

DARREN CALABRESE



a sprawling tract of land directly across from Pictou's waterfront.

Locals have waged a five-decade battle with the mill's owners to keep its emissions in check. However, the ante was raised recently when the mill began holding public meetings to disclose its plans to build a pipeline in the Northumberland, the body of water separating PEI from New Brunswick and Nova Scotia. It will dispose the "treated effluent" that results from the mill's process of manufacturing bleached kraft pulp into the strait, which attracts thousands of tourists each year and also supports thousands of fishing families, not only from nearby communities, but also in Prince Edward Island and in New Brunswick, which share access to it.

Northern Pulp is in the midst of conducting an environmental assessment on its effluent pipe plan, which is due to be submitted to the provincial government later this summer, said spokesperson Kathy Cloutier. The company has tried over the past several months, through community open houses and talks with fishermen, to reassure those who are concerned that there should not be any detrimental effects from its pipe plan.

"Shouldn't is not good enough – we've got to have total assurance," said Ronnie Heighton, a life-long fisherman.

There is deeply rooted concern about the mill's plan in and around Pictou, where friction is common due to the fact that many townspeople work for Northern Pulp.

Still, hundreds of residents have taken a "no pipe" position and have posted signs declaring that sentiment, including some with skulls and crossbones; other signs are urging people to "stop and think." The signs have been hung in shop windows, on telephone polls and amid flowering gardens.

"The protection of fishing in the Northumberland Strait is paramount," Pictou Mayor Jim Ryan

At least one fishermen's organization has applied to Ottawa to have the pipe project designated for a federal environmental assessment – currently the province has jurisdiction – under the Canadian Environmental Assessment Act. Several other advocacy groups and hundreds of individuals have joined a letter-writing campaign in support of the application.

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Friday's rally was peaceful and featured a flotilla of more than 150 fishing boats loaded with supporters who clogged Pictou's harbour after conducting a sail-by of the Northern Pulp mill with air horns blaring for effect. One of the boats ferried a contingent of Mi'kmaq leaders to shore, including Pictou Landing First Nations Chief Andrea Paul.

Wearing a traditional headdress, Ms. Paul made her way to the stage where, after addressing the audience, she broke down in tears at what she said was a historic show of solidarity.



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“We do not want this pipe in our waters,” Ms. Paul said on stage at the rally. “We need to protect our resources. All of us have an inherent duty to do that.”

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Phillip Crawley, Publisher



Stellarton Council passes motion to send letter showing support for Boat Harbour extension

Brendan Ahern (brendan.ahern@ngnews.ca)

Published: Jan 14 at 11:14 p.m.

Updated: Jan 15 at 11:53 p.m.



The Boat Harbour treatment site, located near Pictou Landing. - File

'I thought we were beyond that stage of having these conversations about us without us': Pictou Landing First Nation Chief Andrea Paul

STELLARTON, N.S. - Stellarton town council voted in favor of sending a letter to Premier Stephen McNeil in support of an extension to the Boat Harbour 2020 deadline with three in favor and two opposed.

A letter written on behalf of former and current Northern Pulp employees had been sent to town council. The letter also contains three pages of signatures in support of an extension.

The matter was added to the agenda on the night of the town council's Jan. 14 meeting.

The letter asks that Stellarton town council draft a letter to McNeil requesting an extension to the Boat Harbour closure date in order to allow the company time to complete an environmental assessment and construct a new effluent treatment plant.

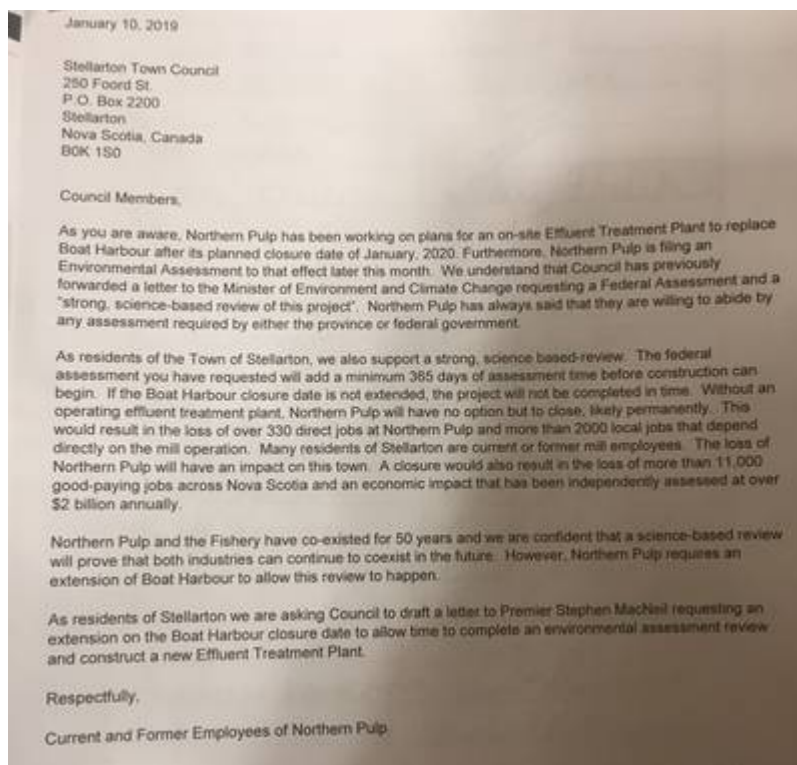
Stellarton town council has already sent a letter to the federal minister of Environment and Climate Change in support of a federal assessment for Northern Pulp's effluent treatment plan.

"I think we should send this letter in, if nothing else to stay neutral," said Deputy Mayor Bryan Knight emphasizing concerns that the Town of Stellarton could be drifting "too deep" into matter.

"My view is that we should send this letter and cut it off there and give both sides a chance to be heard," said Knight.

Common ground between the fishery and the pulp mill was the line that councillors Knight and Simon Lawand were walking when they spoke on the issue at a crowded town hall on Monday night. Former and current mill employees were in attendance at the meeting and used the open forum to speak for those in support of a Boat Harbour extension.

"What we're telling you right now is that if we don't show community support that we do want these jobs, we do want these people living in our towns, we do want to be a part of a contributing county, town, municipal unit," said Northern Pulp employee Tom Dewtie. "What can it hurt to by sending this letter to say, 'give them the time' so that both side can co-exist?"



Letter to Stellarton town council from current and former employees at Northern Pulp dated Jan 10.

Mayor Danny MacGillivray raised concerns over the fact that the letter does not mention any specific dates for how long Boat Harbour would need to remain open should the mill be given an extension.

"I'd also like to hear from Pictou Landing First Nation on what they think of the extension too before we want to have a vote on the letter," he said. "As a main stakeholder I think we should probably hear from them before making a decision."

No one from the Mi'kmaq community was present at the meeting and Pictou Landing First Nation Chief Andrea Paul said that her community had not been consulted.

"I had no knowledge whatsoever that they were doing this," said Paul in a phone interview. "I thought we were beyond that stage of having these conversations about us without us."

"It may not have changed tonight's outcome, but at least the opportunity would have been there to share our perspective."

On Jan. 9 Paul spoke at a the Municipality of Pictou County council meeting where council voted to pass a resolution honoring the Boat Harbour Act.

The letter from Northern Pulp employees to Stellarton town council was dated Jan. 10.

"When you get this close to the end and to see this type of political interference by Northern Pulp, I can honestly say I don't like it," said Paul.

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Province says it's not budging on Boat Harbour deadline



Northern Pulp says it needs more time to prepare the waste treatment facility that will replace Boat Harbour

Paul Withers · CBC News · Posted: Jan 16, 2019 8:49 PM AT | Last Updated: January 16



The Boat Harbour treatment facility is owned by the provincial government, which is on the hook for cleanup costs once the facility closes. (The Canadian Press)

The Nova Scotia government will not relax its January 2020 deadline to close the Boat Harbour wastewater effluent treatment facility, even though regulatory issues have delayed the start date for the massive cleanup project by months and perhaps even a year.

The delay is significant because Northern Pulp has asked the province to keep Boat Harbour open beyond the scheduled closing in order to continue treating 75 million litres of effluent

daily from its Pictou County pulp mill.

- [Boat Harbour cleanup expected to start in 2021](#)
- [Premier hopes 'cooler heads prevail' as pulp mill works on assessment](#)

The mill says it needs more time to prepare the waste treatment facility that will replace Boat Harbour.

Kathy Cloutier, a spokesperson for parent company Paper Excellence, said the remediation delay is more evidence of the pitfalls of setting deadlines before regulatory approval.

"We have asked and have said we need an extension," she told CBC News. "So, does this help? One would have to say yes. If they aren't ready and we need to use it, then we would prefer to do that."

Province still firm on deadline

But the province seems uninterested in accommodating the mill.

The Liberal government maintains it gave Northern Pulp plenty of notice the treatment facility's days were numbered when it passed a law to close Boat Harbour four years ago.

"The province remains committed to the legislated closure date of January 31, 2020, under the Boat Harbour Act," spokesperson Marla MacInnis said late Wednesday in an e-mailed statement.

The remediation project for Boat Harbour, and its timetable, is separate from the new treatment system that is being proposed by Northern Pulp to replace Boat Harbour.

That project is facing its own regulatory and environmental challenges.

"It's a big, complex problem," said Ken Swain, the project manager for the Boat Harbour cleanup. "It's a pretty complicated solution."

Nova Scotia on the hook

Since 1967, lagoons adjacent to the Pictou Landing First Nation have received tens of millions of litres of wastewater effluent per day from the nearby pulp mill.

The Boat Harbour treatment facility is owned by the provincial government, which is on the hook for the cleanup once the facility closes. The cost is forecast at \$217 million.



The Boat Harbour remediation project has been subject to a number of delays. (Nova Scotia Government)

Controversy swirls over where the mill's latest owner, Northern Pulp, plans to discharge treated effluent when Boat Harbour closes.

Swain said the remediation is proceeding on the assumption Boat Harbour will close by Jan. 31, 2020, even if the Boat Harbour cleanup is not ready to proceed.

"We're probably gonna have to push that back," Swain said.

Cleanup expected to start in 2021

Swain points to the environmental assessment process. The cleanup project will undergo a Tier II provincial environmental assessment, which includes an independent review panel and public hearings. It can last up to 275 days.

Last week, the province submitted its plans to the Canadian Environmental Assessment Agency. The agency will decide in February whether the project should undergo a federal assessment.

Procurement will follow regulatory approval and take months longer.

"So what we would probably see in that instance is not being able to have the full-scale implementation started until perhaps early 2021," Swain said.

Boat Harbour cleanup plan

The plan is to dredge up to a million cubic metres of contaminated, watery sediment and pipe it to a pad where water will be removed for treatment.

Up to 500,000 cubic metres of solids will be moved to an existing and expanded containment cell on site.

- [Northern Pulp wins injunction against fishermen's blockade](#)
- [Forestry minister not ready to contemplate closure of Northern Pulp just yet](#)

"The biggest technical challenge is effectively removing that material off the bottom of Boat Harbour," said Swain.

"We want to figure out the most efficient and effective way of getting the lens of contaminated sludge off the bottom and taking as little as possible of the clean underlying harbour bottom."

Why a key pilot project was suspended

They are still looking for the right solution.





A protester wears a sou'wester during a July 2018 protest against Northern Pulp's plan to dump millions of litres of effluent daily into the Northumberland Strait. (The Canadian Press)

Last October, dredging began to test techniques, but the pilot project was suspended in December because cold weather froze pipes.

The pilot project will resume sometime in April or May.

What's in raw mill effluent?

In May 2017, the province awarded a \$6.7-million contract to GHD, an international consulting firm, to come up with the detailed plan for the cleanup.

The plan submitted to the federal government on Jan. 7 is from GHD and Nova Scotia Lands, a provincial agency charged with environmental cleanup.

GHD determined the nature and extent of contamination.

It also compared raw effluent with provincial and federal standards.

"Results indicated both PCBs and dioxins and furans were below the applicable criteria, while metals exceed the marine criteria for barium, boron, cadmium, copper, lead, mercury, and zinc. Metals parameters reported to exceed the Provincial human health criteria were sodium and vanadium," the project description stated.

The good news

The contaminated sludge is 10 per cent solids and 90 per cent water. The goal is remove between 50 to 70 per cent of the water.

The good news so far is water removed from the sludge is relatively clean.

"It will need some treatment, but not to the extent that we initially were envisioning," Swain said.

"We know we have to deal with in excess of five million cubic metres of water during the full-scale implementation of the remediation, which is several thousand Olympic-size swimming pools. So it's a large volume, a big-cost driver."

How the forecast cost has increased

In 2018, the cost of the full cleanup was estimated at \$217 million.

It has risen steadily since the initial estimate of \$52 million in 2015, \$88 million in 2016 and \$133 million in 2017.

A new forecast is expected in mid-2019 after the pilot project is completed.

The goal of the cleanup is to return Boat Harbour tidal estuary to its original condition in 1967 which means removing all the contaminated sediment.

"We'll have to be clean," said Swain.

"At the end of the day what goes out needs to be in compliance with the Fisheries Act. So we cannot release any deleterious substances into the environment so we've got to get it all."

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Province in conflict of interest over Northern Pulp project, activists allege



'How can they be judge of the project, when it's their project?' asks Jill Graham-Scanlan

CBC News · Posted: Oct 04, 2018 1:48 PM AT | Last Updated: October 4, 2018



Friends of the Northumberland Strait want the Canadian Environmental Assessment Agency to take over a review of the project. (Andrew Vaughan/Canadian Press)

A group that opposes Northern Pulp's plan to dump effluent into the Northumberland Strait is calling on the Nova Scotia government to recuse itself from the controversial project's environment assessment process.

In September, Friends of the Northumberland Strait sent an eight-page letter to the provincial Environment Department and Environment and Climate Change Canada, urging the federal

government to conduct the assessment instead.

Jill Graham-Scanlan, the group's president, told CBC Radio's *Information Morning* that the province has several conflicts of interest and "is not in a position to make an unbiased determination" on whether the project should go ahead.



Demonstrators gathered in July to protest plans by Northern Pulp to run an effluent pipe into the Northumberland Strait. (Steve Lawrence/CBC)

The pulp mill in Pictou, N.S., plans to build a pipe that will send effluent far out into the Northumberland Strait. It will replace the current Boat Harbour facility that the province promised to close by 2020.

A design for the new facility hasn't been finalized yet, but once it is, it will have to go through a provincial environmental assessment.

- [Northern Pulp effluent pipe protest draws huge crowds on land and sea in Pictou](https://www.cbc.ca/news/canada/nova-scotia/northern-pulp-effluent-pipe-conflict-of-interest-environmental-assessment-1.4850317)

- [Proposed Northern Pulp pipe route into ocean hits snag](#)

"The province needs to take a proactive approach on this," said Graham-Scanlan. "They need to recognize and acknowledge that they are in a conflict position and step back."

Paid \$6M to Northern Pulp

Friends of the Northumberland Strait argues the province has a financial stake in the design and construction of the new facility, [having already paid \\$6 million to Northern Pulp in 2017](#).

The government has said taxpayers will need to help pay for the new facility because the province is in a lease agreement with Northern Pulp.

"How can they be judge of the project, when it's their project?" asked Graham-Scanlan.

- [\\$6M in taxpayer dollars for N.S. effluent plant stinks, says opponent](#)
- [Fishermen worry Northern Pulp treatment plan will create 'dead zone'](#)

The group's letter to the federal and provincial governments also states the province "may face direct and significant financial consequences and litigation if it does not quickly approve the environmental assessment."

The group points to an indemnity agreement and memorandum of understanding the province signed in 1995 with the former owner of the mill.





In its letter, Friends of the Northumberland Strait write that "the stakes of this project are high. The Northumberland Strait is a valuable and delicate ecosystem." (Nic Meloney/CBC)

"That memorandum of understanding seems to imply that the province will do anything it can to make sure a new treatment facility is built," said Graham-Scanlan.

She said there are also concerns that a registered lobbyist for Northern Pulp now works for the government, and that the province seems to be co-operating with the company rather than providing information to concerned citizens.

Province says decision 'will be based on science'

In a statement to CBC News, the government said the environment is its first concern.

"Any decision will be based on science and the best available evidence," the Environment Department said.

"It is not the province's decision whether or not a federal environmental assessment should take place. We have determined that the Northern Pulp effluent treatment plant project requires a provincial Class 1 environmental assessment. The federal government would decide whether or not it will do its own EA as well."

If the federal government does decide to do its own assessment, that doesn't mean the province is required to bow out, but Graham-Scanlan hopes it will.

"What would compel the province to step back? Doing the right thing," she said.

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Nova Scotia's forest industry faces unknown future without Northern Pulp



Sawmill operators, woodlot owners contemplate effects of a potential Northern Pulp shutdown

Michael Gorman · CBC News · Posted: Jan 22, 2019 6:00 AM AT | Last Updated: January 22



Even with a purposely light touch, 25 per cent of the harvest on this private woodlot was still pulpwood. The low-grade product was sold to Northern Pulp. (Michael Gorman/CBC)

It was a few months ago that Jeff Bishop noticed a growing unease about the future of Nova Scotia's forest industry.

Bishop, the executive director of Forest Nova Scotia, was suddenly taking more and more calls. On the other line were concerned industry members, all taking stock of what the potential loss of the Northern Pulp mill in Pictou County would mean for their livelihoods.

As the legislated closure date of the mill's Boat Harbour treatment facility looms and no replacement approved, the future of the mill — which takes between 35 and 40 per cent of the pulpwood from the provincial market — remains murky.

While there are differing opinions on the mill in terms of its history, operation and environmental footprint, there is mostly consensus on the role it plays within the forestry industry, both direct and indirect.



Officials with the Northern Pulp mill have yet to file their application for an environmental assessment for a new effluent treatment facility. (The Canadian Press)

A 2016 economic impact study found 6,100 direct forestry jobs in the province and Bishop estimates at least 2,550 of those are people connected to wood that eventually finds its way to Northern Pulp in one form or another.

The top 11 sawmills in the province, which account for 96 per cent of the lumber made here, all have ties to Northern Pulp. More than 90 per cent of sawmill chips in the province end up

there.

- [Province says it's not budging on Boat Harbour deadline](#)
- [Forestry minister not ready to contemplate closure of Northern Pulp just yet](#)

Andrew Watters, general manager for Groupe Savoie's hardwood sawmill in Westville, said they get about 30 per cent of their logs from Northern Pulp. All their chips and bark go back to the pulp mill.

"It's a pretty good part of our business plan," he said. "That sawmill waste helps pay your bills. If you don't have a market for that it's pretty hard on the equation."

There are 50 people working at the Westville sawmill, which already struggles to get supply. As a result, the mill is only running one day a week — enough to keep employees' benefits in place and make pension contributions.

If Northern Pulp were to close, Watters estimates mill production would drop to between six to eight months of the year.



Jeff Bishop is executive director of Forest Nova Scotia. (CBC)

The links don't end there, said Bishop.

"There's hundreds — if not thousands — of landowners that sell wood on the market, whether directly to Northern Pulp themselves or through another supplier that Northern Pulp may work with," he said.

Because of how thin the margins can be in the forestry industry and how integrated things are, it is difficult for there not to be significant ripples if such a major player were to exit.

"The forestry industry is greatly dependent on each other and Northern Pulp is the most important link in this relationship," an official with Wagner Forest Management N.S. wrote in a November email to Premier Stephen McNeil and Lands and Forestry Minister Iain Rankin to voice concern about the potential loss of the mill.



Logs harvested in Colchester County are stacked and arranged based on their destination. Pulpwood goes to Northern Pulp, while stud logs will go to one of two lumber mills. (Michael Gorman/CBC)

It was urgency of a different kind in 2014 that led to the creation of the Boat Harbour Act.

That summer, a pipe leading from the mill to Boat Harbour was found to be leaking effluent. An agreement between the government and the Pictou Landing First Nation ended a blockade at the site and led to the passage of legislation in 2015, which called for Boat Harbour to be closed by the end of January 2020.

The bill was born out of the government's desire to do right by a community that for decades had been lied to, saw concerns go unaddressed and was subject to environmental racism.

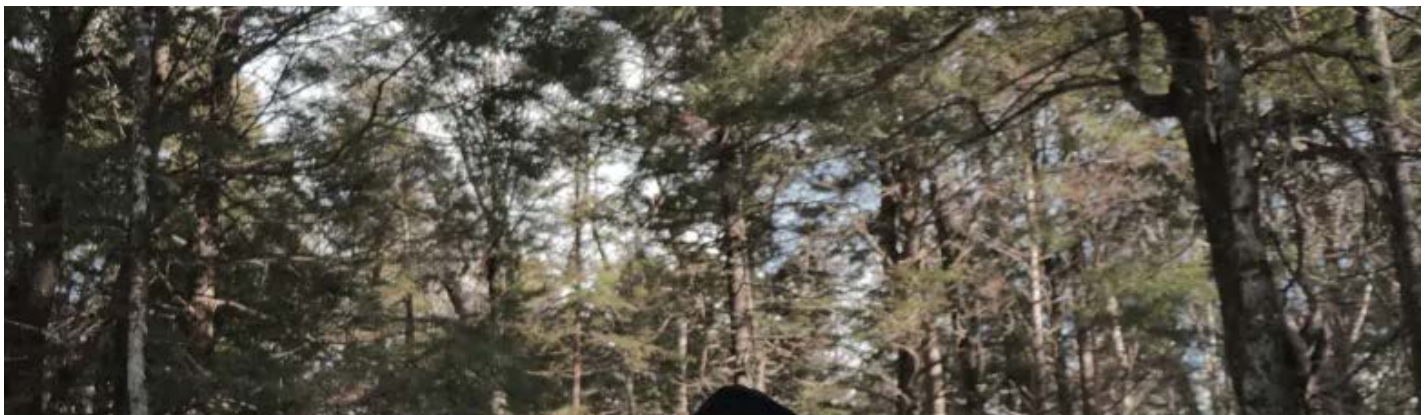
Recently, as the mill attempted to complete work for an assessment application to pump treated effluent into the Northumberland Strait, focus shifted to what the new treatment facility would mean for the fishing industry — [something that's led to protests and created pitched tensions within Pictou County](#).

- [Tensions around Northern Pulp have local MP 'deeply concerned'](#)
- [Northern Pulp admits it is likely to miss 2020 effluent deadline](#)

Amid those tensions, and strong lobbying by the mill, McNeil has rejected calls to extend the closure deadline. The mill has had five years to prepare its plan, he's said, and he intends to keep his promise to the Pictou Landing First Nation.

People in the woods, meanwhile, wonder what it could mean for the future viability of their industry.

Last month, Rankin said the government wasn't at the point of considering a future without the mill, but people in the industry certainly are. The challenge for anyone pulling pulpwood from a block of land is there are few places for it to go.





Andy Kekacs is executive director of the Nova Scotia Woodlot Owners and Operators Association. (Michael Gorman/CBC)

"This is a phenomenal volume of wood for which there isn't much of another use," said Andy Kekacs, executive director of the Nova Scotia Woodlot Owners and Operators Association.

On this day, Kekacs is giving a tour of a recent cut on a private lot in Colchester County.

- [**Northern Pulp to shut Boat Harbour waste treatment plant in 2020**](#)

It's the very definition of soft touch forestry, with trees cut by chainsaw and lots of large trees with high-end value still standing, but with enough space between them so new trees can sprout up.

Even with this approach, 25 per cent of the wood removed was low grade and it all went to Northern Pulp. That money helps make the softer touch more economical.

Losing the mill would have a "significant disruption" on the industry, said Kekacs, one that would extend from sawmills to contractors in the woods, to people who drive trucks and the variety of businesses in rural communities sustained by the paycheques of those workers.





Greg Watson is manager of the North Nova Forest Owners Co-op. (Michael Gorman/CBC)

Greg Watson thinks about where else pulpwood could go as he watches a machine pile it high along a logging road in Denmark, Colchester County.

Watson, manager of North Nova Forest Owners Co-op, used to play in these woods as a kid. Today he's showing off what amounts to a restoration cut, a partial harvest that will help make the land and wood on it more valuable and allow for better regeneration.

Cutting wood like this isn't easy; it often takes more time and costs more money than simply knocking down a stand. But it reflects what landowners in the co-op want, said Watson.

Doing this kind of work, and the nature of Nova Scotia's forests, means crews working for the co-op pull out a lot of pulpwood. That pulpwood needs to go somewhere, and for North Nova right now that somewhere is Northern Pulp, which takes some sort of product from about half the jobs the co-op does.

"I don't think people are aware — and I'm not defending big industry or anything — but I don't know if people actually understand how much it takes," said Watson.





A harvester removes trees during a partial cut in Colchester County. (Michael Gorman/CBC)

The mill also provides North Nova with funding for silviculture work on partial harvests and planting and spacing.

Watson said anyone with ties to the mill is worried. It's the most pressure the sector has faced that he can remember. The co-op has 300 members and Watson and his team manage more than 28,000 hectares of land in Cumberland, Pictou and Colchester counties.

The ability of the team to work the woods has a direct effect on the co-op's woodlot owners, who treat their land as an investment.

Some take regular dividends in the form of firewood sales, for example, while others wait for the right time to use the proceeds of a cut to finance a major expense, such as the construction of a smaller home that keeps them in their community as they age.

"It's not just North Nova as a business," said Watson. "We help a lot of people. We've all got to live here. We've all got to find a solution here."

For many people in the forestry sector, the time to find that solution could be running out.

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Nova Scotia paying millions for Northern Pulp treatment plant design

Aaron Beswick (abeswick@herald.ca)

Published: Aug 21, 2018 at 7:40 a.m.



Northern Pulp is planning to build a replacement for the Boat Harbour treatment facility next to their location in Abercrombie. The current treatment facility will close in January 2020.

The province is paying for at least part of the design of Northern Pulp's new effluent treatment facility.

Tucked into the supplementary information of the Public Accounts document is a grant of \$6,001,238.13 to Northern Pulp Nova Scotia Corporation from the Department of Transportation

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and Infrastructure Renewal.

It's for designing the facility that another arm of the provincial government will conduct an environmental assessment on.

Ronnie Heighton thinks there's a problem with that.

"It's a direct conflict of interest," said the River John fisherman and spokesperson for the Northumberland Fisherman's Association.

"How can a regulator and financier be trusted to do their own environmental assessment?"

Neither the provincial government nor Prime Minister Justin Trudeau think there's a problem with that.

Both McNeil and Trudeau have maintained that the province will do the environmental assessment.

The province never issued a news release about funding the design.

After it was discovered by the Friends of the Northumberland Strait, a group opposed to Northern Pulp's plan to pump treated effluent into the body of water, The Chronicle Herald contacted the Department of Transportation and Infrastructure Renewal.

"The contribution allows negotiations with Northern Pulp to continue and will be credited towards any future agreement," said spokeswoman Marla MacInnis.

"This cost is part of a larger discussion with Northern Pulp which is yet to be concluded."

That larger discussion is who pays to build the replacement for Boat Harbour.

A 1995 indemnity agreement and lease renewed in 2002 by premier John Hamm's government — Hamm is now chair of Northern Pulp's board of directors — puts the taxpayer on the hook for cleaning up Boat Harbor and providing a treatment facility for the mill's effluent until at least 2030.

While the province isn't saying how much a replacement will cost, a 2015 letter by Terri Fraser, technical manager at Northern Pulp, to then Environment minister Randy Delorey warned a new facility would cost over \$100 million.

"We expect taxpayers to be on the hook for half a billion by the time this is all finished," said Jill Graham-Scanlan, a Pictou lawyer and spokeswoman for Friends of the Northumberland Strait.

"We are at a loss to understand why the public and the fishermen are not considered stakeholders in this game of chicken. It's our money being used to pay for this project."

She takes the money for design work as a sign the province will be on the hook for the entire construction cost of the new effluent treatment facility.

MacInnis said it was just to keep the project moving to meet the Jan. 31 deadline for the closure of the existing facility mandated by the Boat Harbour Act passed by the legislature in 2015 to get the Pictou Landing First Nation to lift a blockade of Northern Pulp.

"Detailed engineering was one of the critical items required to build a potential replacement facility in time to meet the closure deadline of January 2020 for the existing facility," said MacInnis.

"This step was required to stay within that timeline and would be reviewed as part of the environmental assessment process."



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Nova Scotia fisherman says blockaders are being used as 'scapegoat' in fight with Northern Pulp

By **HALEY RYAN** StarMetro Halifax

Tues., Dec. 18, 2018

HALIFAX—A Pictou fisherman of 30 years says Northern Pulp Mill's successful injunction against those who've blocked mill survey boats is a blame tactic to hide the company's lack of proper waste plan.

Nearly 100 people from various environmental groups, Pictou Landing First Nation, Pictou area residents and other supporters rallied outside the Nova Scotia Supreme Court in Halifax amid blowing snow on Tuesday afternoon.

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Fishermen's supporters hold up anti-pipeline signs outside Nova Scotia Supreme Court Tuesday. Almost 100 people gathered outside the courthouse before lawyers for Northern Pulp company, Paper Excellence Canada, made arguments seeking an interim injunction to prohibit fishermen's blockades of survey work in the Northumberland Strait. (ZANE WOODFORD)

The rally members said they were there to both support the fishermen named in the temporary injunction sought by Northern Pulp, and protest the mill's [plan](#) to pipe 62 million litres of treated waste, or effluent, each day directly into the Northumberland Strait between Nova Scotia and Prince Edward Island.

"If we allow it, our fisheries die," Pictou fisherman Donald Cheverie said in an interview, his gloved hands resting on a large sign reading 'No pipe in the strait.'

"It's poison."

Fishermen have been [blocking the mill's survey boats](#) from scouting for a potential pipe location since this spring, leading to the mill's move to file for a temporary injunction.

That was granted by Nova Scotia Supreme Court Justice Denise Boudreau on Tuesday, who

said the fishermen have the right to “lawful protest,” but they don’t have the legal right to block the survey vessels from doing their work.

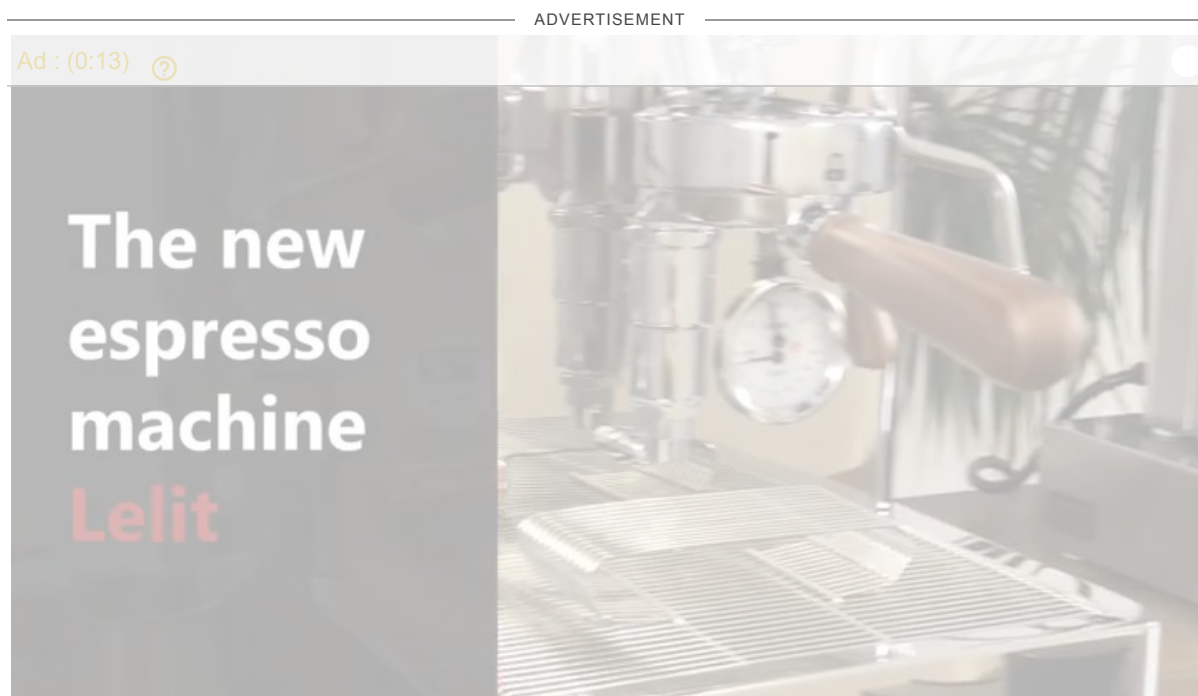
Kathy Cloutier, a spokeswoman for Northern Pulp’s parent company, Paper Excellence

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“Our hope was that the surveying would be allowed to occur without incident or obstruction, however actions indicated that the environmental assessment survey work would not proceed without the company seeking a court injunction,” Cloutier wrote.

The proposed pipeline has been loudly contested by [environmentalists](#), local fishermen, Hollywood [actor Ellen Page](#) of Halifax, the P.E.I. government and Indigenous residents of Pictou Landing First Nation near the Abercrombie, N.S. plant.



Cheverie said local fishermen are so concerned about the pipe because the N.S. fisheries industry has “a lot at stake,” while he said Northern Pulp could “walk away scot-free” since the province is left with any cleanup.

The wider Gulf of St. Lawrence fisheries region is home to lobster and crab fisheries that brought in over \$1.2 billion worth of catch in 2016.

Right now, the effluent is treated in a basin system where effluent flows through a pipe from the mill to Boat Harbour and then to Boat Harbour Basin, [iPolitics reported](#) in an October piece about the mill. There, it mixes with other rivers and streams that flow in there. It is retained for up to 30 days before being discharged into the saltwater at the Pictou Landing shoreline

Now that the mill is losing Boat Harbour as an effluent destination — the [2015 Boat Harbour Act](#) set Jan. 31, 2020 as the cut-off date — it has to go somewhere, hence the debate around the possible new pipeline into the strait.

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In response to environmental concerns around the proposed effluent pipeline, Cloutier said in an email last week that treated effluent is “non-toxic.” Since the bleached kraft pulp mill started in 1967, effluent has been flowing into the Northumberland Strait with “both our fisheries and forest industries coexisting,” Cloutier wrote.

“Effluent of today is not the quality of decades past. Significant improvements have been made over the years. The proposed new form of treatment technology will be an Activated Sludge Treatment (AST) system. The new system will see no untreated effluent (wastewater) leave the mill property,” Cloutier said Tuesday.

But Cheverie said the mill’s position is “another lie,” and any effluent that goes into the strait would be worse than what’s currently coming out of Boat Harbour because there it has about 30 to 40 days to settle, and the new system would pump effluent out every day.



Donald Cheverie, a Pictou, N.S. fisherman of 30 years, rallied outside Nova Scotia Supreme Court on Dec. 18, 2018 in support of the other fishermen named in the injunction sought by Northern Pulp. (ZANE WOODFORD/STARMETRO)

The mill has already said it likely won’t be able to meet the legislated Boat Harbour deadline,

and it hasn't yet submitted an environmental assessment application for a new effluent pipe into the ocean.

For Cheverie, he believes the fishermen have every right to protest the mill's actions by

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"They're trying to use us as a scapegoat. They had five years to do something, and they've done nothing in five years. So trying to blame it on six fishermen? It's absurd," Cheverie said.

"They have no plans on doing anything. They're after an extension to keep Boat Harbour open. If they had any intentions of doing anything with the pipe, you think they would have started four years ago?"

Cheverie said Northern Pulp should take up a closed loop treatment system for their effluent if they changed their pulp process (which would keep effluent out of the ocean), but Cloutier said such a "zero effluent" plan is not an option for the mill in the proposed new effluent treatment facility.

Cloutier said a zero effluent bleached kraft mill "does not exist at this time," and that concept "is not seen as being technically nor economically achievable in the foreseeable future."

Tuesday's rally was largely peaceful, although there were some tense moments between four counter-protestors carrying signs saying 'support Northern Pulp effluent cleanup' and those who were anti-pipeline. They raised signs in each other's faces, and threw up middle fingers as they leaned around the handful of Halifax police officers who separated the groups.

One man yelled "go back to Pictou Landing" in reference to the First Nation, in the direction of a group of men which included some Indigenous protesters.

Ben Chisholm of Antigonish, N.S. is a pipefitter who does business with Northern Pulp and was one of the four counter-protestors. He said they wanted to show support for the mill to remain open, since the company provides a lot of work and income to the construction industry in the area.

Chisholm said he believes Northern Pulp will have a "properly engineered plan" for their proposed pipeline and effluent, and it will be subject to any rules set out by an environmental assessment.

"The government will be checking it all the time, so if it's not up to standard then they can step in and do something," Chisholm said.

He also added that while he's glad to see Boat Harbour will be cleaned up, the effluent that has left the basin over the past 50 years "didn't hurt the fisheries ever" and said "there was

never a fish killed.”

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Nicole MacKenzie of Friends of the Northumberland Strait believes the proposed plan to pump effluent into the ocean will not only physically hurt the fisheries industry, but also create a negative perception that will hurt N.S. exports. (ZANE WOODFORD/STARMETRO)

However, Nicole MacKenzie from the [Friends of the Northumberland Strait](#) group said she believes the proposed plan to pump effluent into the ocean will not only physically hurt the fisheries industry, but likely create a negative perception that will hurt N.S. exports.

MacKenzie said even if mill effluent meets regulations it can still have [harmful effects](#) on aquatic life and habitat, or could also cause the fish and lobster to move away from the area—not to mention create a harmful perception that would damage the reputation of Nova Scotia’s seafood reputation.

“You don’t have to have a dead lobster to kill the industry,” MacKenzie said.

A court hearing at a later date will consider a longer-term injunction.

With files from The Canadian Press

Haley Ryan is a Halifax-based reporter covering women's issues and advocacy. Follow her on Twitter: [@hkryan17](#)

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Canada January 28, 2019 10:19 am

Updated: January 28, 2019 5:27 pm

Nova Scotia First Nation starts official countdown on Boat Harbour

By Staff The Canadian Press



Fishing boats pass the Northern Pulp mill as concerned residents, fishermen and Indigenous groups protest the mill's plan to dump millions of litres of effluent daily into the Northumberland Strait in Pictou, N.S., on Friday, July 6, 2018.

THE CANADIAN PRESS/Andrew Vaughan

A Nova Scotia First Nation is taking a pointedly direct approach to ensuring that a highly polluted waste water treatment facility on its land is shut down.

Under legislation passed in 2015, the provincial government has committed to closing the Boat Harbour facility by Jan. 31, 2020 – one year from this week – and the Pictou Landing First Nation plans to mark the beginning of an official countdown on Thursday.

The First Nation, which is near Pictou, N.S., has organized a “One Year Countdown” event, which is expected to include traditional drumming, dancing, prayers, smudge ceremony and speeches.

The waste water is mainly treated effluent from the Northern Pulp mill, where a proposed plan would see more than 62 million litres per day pumped directly into the Northumberland Strait once Boat Harbour is closed.

That decision has enraged local fishermen, who have staged large protests and prevented the mill’s seismic survey work on the Strait.

READ MORE: ‘Stop it at all costs’: The blockade of Northern Pulp Mill continues

On Monday, Northern Pulp issued a statement saying the fishermen have agreed to comply with a court injunction that prohibits them from blocking seismic survey vessels hired by the mill.

The mill was granted an interim injunction by a Nova Scotia Supreme Court judge in December.

Northern Pulp now says it has reached an agreement with the protesters, saying it will allow the company’s work to proceed in the Strait, Pictou Harbour and Caribou Channel.

“Northern Pulp, and owner Paper Excellence, are pleased that the legal action by Northern Pulp has been resolved to Northern Pulp’s satisfaction through an agreement and the anticipated issuance by the court of a permanent injunction,” the company said in a statement.

The company declined to comment on the latest developments.

WATCH: Thousands gather to protest pulp mill in Pictou

In a brief statement, the fishermen said they accepted the judge’s decision and the pending issuance of a permanent injunction.

Northern Pulp is expected to return to court Tuesday to seek the long-term injunction.

The company is also expected to submit an environmental approval application to the provincial Environment Department later this week.

The company has said the treated effluent it plans to pump into the Strait will meet federal regulations for emissions, but opponents say there’s a lack of scientific evidence regarding how the waste will affect the long-term health of the lucrative lobster and crab fisheries.

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Northern Pulp wins injunction against fishermen's blockade



Judge says fisherman have right to lawful protest, but don't have right to block survey vessels

The Canadian Press · Posted: Dec 18, 2018 3:04 PM AT | Last Updated: December 18, 2018



People protesting the proposed Northern Pulp effluent pipe gathered Tuesday outside Nova Scotia Supreme Court in Halifax. (Preston Mulligan/CBC)

A Nova Scotia judge has granted a temporary injunction to stop fishermen from blocking survey boats hired to examine a route for a pulp mill's effluent pipeline.

Nova Scotia Supreme Court Justice Denise Boudreau decided the fishermen have the right to "lawful protest," but they don't have the legal right to block the survey vessels from doing their work.

Lawyers for the Northern Pulp mill in northern Nova Scotia argued that their project was being unlawfully held back by the fishermen's blockades.

Before the decision was handed down, about 80 people gathered outside the Halifax courthouse to protest the proposed pipeline that would pump treated waste directly into the Northumberland Strait near Abercrombie, N.S.

Kathy Cloutier, a spokesperson for Northern Pulp's parent company, Paper Excellence Canada, confirmed the mill was seeking an interim injunction to prevent blockades of the survey work in the Northumberland Strait.

A group of fishermen has stated they would block any survey boats from entering the strait.

The plan to pump treated effluent from its Abercrombie, N.S., mill into the strait has raised the ire of the fishermen, the P.E.I. government and even Hollywood actor Ellen Page, who is from Halifax.



Hundreds of boats joined a protest in July against Northern Pulp's proposed route for its effluent pipe. (Nic Meloney/CBC)

The wider Gulf of St. Lawrence fisheries region is home to lobster and crab fisheries that brought in over \$1.2 billion worth of catch in 2016.

The Nova Scotia government has committed to stopping the flow of effluent to the heavily polluted Boat Harbour lagoon by Jan. 31, 2020. The lagoon is next to the Pictou Landing First Nation.

Outside the Halifax courtroom, the protesters carried signs that said "No pipe in the Strait," and they chanted "All I want for Christmas is no pipe."

- [Northern Pulp alleges death threats in legal action against fishermen](#)
- [McNeil plea for peace triggers protest in Pictou County](#)

Warren Francis, a 49-year-old fisherman and member of the Pictou Landing First Nation, said before the ruling was made that other protests would follow if an injunction is granted.

"I don't think it will stop us," he said. "My First Nation will have to step it up ... We don't want a pipeline in that strait ... I really hope it doesn't come down to violence."

Ben Chisholm, a 65-year-old business agent for the pipefitters union, said he came to the courthouse to support the mill's position because millions of dollars in economic activity could be lost if the mill closed.

"There's more support for keeping the mill open and cleaning it up than there is for closing it," he said, as the protest chants rang out nearby.

"Any time a big plant closes in an area, it's followed by poverty. There's nothing to replace this."

Northern Pulp to soon file effluent plan

🌐 Premium content

Adam MacInnis (amacinnis@ngnews.ca)

Published: Jan 04 at 8:23 p.m.

Updated: Jan 05 at 9:05 a.m.



The Northern Pulp mill is seen in Abercrombie in 2017. - The Canadian Press

Northern Pulp will register its plans for replacing the Boat Harbour treatment facility with Nova Scotia's Department of Environment by the end of January, triggering the start of the provincial environmental assessment.

Despite the fact the mill hasn't yet been able to have a survey crew complete their work, the project will be registered using existing data, says Kathy Cloutier, director of communications for Paper Excellence, which owns Northern Pulp.

"That is a heavily surveyed area, so there is data we're able to rely on, although our preference would have been our own updated survey."



Fishermen opposed to the plans of pumping treated effluent into the Northumberland Strait repeatedly blocked the survey boat from doing work in the area. A judge issued a temporary injunction last month to prevent fishermen from stopping the survey boat from doing work.

Cloutier didn't rule out the possibility of the survey work being completed before the end of January, but said it would depend on availability of the boat, weather and safety.

The plans Northern Pulp submits will include the primarily land-based route for the pipe carrying treated effluent from Abercrombie Point, which will empty in the area off Caribou Point. Northern Pulp had considered a route that would have emptied in the area of the Northumberland Strait off of Pictou Road. But there were concerns about that, including ice scours as well as a shipwreck that made the mill look elsewhere.

The Caribou route is the mill's preferred option for various reasons, including the volume and depth of water in that location, which would improve the mixing of the treated effluent flowing out with the water in the strait, Cloutier said.

"It's a better disbursement area and a shorter in-water pipe which answers some of the concerns raised by the community and others," she said.

While the initial route would have required building between 10 kilometres and 13 kilometres of pipe underwater, this route will only have about three kilometres underwater.

According to Clouthier, one of the biggest advantages of the new treatment facility over the existing one is that no untreated effluent will leave Northern Pulp's property on Abercrombie Point. With the existing system that's been in operation since the mill opened, untreated effluent is piped from the mill at Abercrombie Point to the Boat Harbour treatment facility near Pictou Landing where it is treated before being released into Boat Harbour and then flows out to the Northumberland Strait.

The provincial government says the new treatment facility would fall into the class 1 environmental assessment category, which would take about 60 days to complete. It hasn't been determined whether a federal environmental assessment, which could take much longer, will be required.

Cloutier said the company believes the project will meet the requirements of the environmental assessment. "We are confident in the project and the science."

Engineers and design teams are currently trying to work on a feasible timeline for completion of the project, she said.

The company has already said it will not be able to meet the deadline of January 2020 to close the existing Boat Harbour facility. It is lobbying the province to extend the deadline. Cloutier said the extension is supported by those who understand the importance of the mill to the forestry industry and overall economy of the province.

"This is an extension that is necessary to provide the time to complete construction," she said.

It would be impossible to keep the mill going even under a hot idle without a treatment facility, she said.

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Northern Pulp is not even considering the option of temporarily closing at this point, Cloutier said. No time of year would be optimal if they did have to shut it down, she said, but winter would particularly

be difficult. "It would be a ripple effect from suppliers to contractors to the port of Halifax almost instantly."

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Northern Pulp taking legal action to stop survey boat blockades



Some Northumberland Strait fishermen have been blocking survey boats over effluent pipe proposal

Anjuli Patil · CBC News · Posted: Dec 05, 2018 5:48 PM AT | Last Updated: December 5, 2018



Paper Excellent Canada says it had no choice but to pursue legal action. (Nic Meloney/CBC)

Northern Pulp is taking legal action to put an end to blockades that have prevented survey boats from doing work for a proposed effluent pipe in the Northumberland Strait.

On Wednesday, Paper Excellent Canada announced it has initiated legal action as a response to fishermen in the Northumberland Strait blocking the survey boats as a protest. The company said it had no choice.

"Clearly our hope was that the surveying would be allowed to occur without incident or obstruction," said Kathy Cloutier, director of corporate communications for Paper Excellence Canada.

"However actions indicated that the environmental assessment survey work would not proceed without the company seeking a court injunction."

- [Stephen McNeil hopes fishermen will end blockade of Northern Pulp survey boats](#)
- ['We'll block them,' fisherman says of Northern Pulp survey boat](#)

Cloutier said the company supports people's rights for free expression, but said the blockades have moved into "an unsafe realm in terms of obstruction and/or threats."

"Then it became necessary — unfortunately — to look at avenues such as court injunctions. These are skilled professionals who have been contracted to perform a function and should be allowed to do so," Cloutier said.

Cloutier said the court documents have been filed and said a court date is scheduled for Dec. 18.

In the meantime, Cloutier said survey boats will remain docked until the process is completed.

Darryl Bowen, a fisherman from Caribou, N.S., doesn't think an injunction will stop blockades.

"There's a lot of fishermen on this shore and unless it's an injunction against every fisherman in the Northumberland Strait, there will be somebody there blocking them if they come back," Bowen said.

With files from Paul Withers and Jean Laroche

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Northern Pulp effluent pipe protest draws huge crowds on land and sea in Pictou



'When we sell Nova Scotia to the world, we're selling it as 'Canada's Ocean Playground,' says Pictou resident

CBC News · Posted: Jul 06, 2018 12:00 PM AT | Last Updated: July 6, 2018



Demonstrators gathered on Friday to protest plans by Northern Pulp to run an effluent pipe into the Northumberland Strait. (Steve Lawrence/CBC)

Hundreds of people from all three Maritime provinces gathered Friday in Pictou, N.S., to protest Northern Pulp's plan to put an effluent pipe into the Northumberland Strait.

Many chanted "No pipe, no way" as they marched from the local arena to the town's waterfront. Organizers estimated at least 1,000 people attended the protest.

Dozens of fishing boats and pleasure craft sailed into Pictou Harbour, some flying the Mi'kmaq Grand Council flag.

"We are the voice of this water, we are the voice of everything that lives in this water," said Andrea Paul, who was on board one of the vessels and is chief of Pictou Landing First Nation.

The pipe is supposed to replace the 140-hectare waste-water lagoon at Boat Harbour, which the government has promised to close by 2020.

The replacement would discharge about 70 million litres of treated effluent a day via a subsea pipe directly into the Northumberland Strait, several kilometres from the mill.

For 50 years, pulp mill waste water — from several mill owners — has been piped under the East River into the Boat Harbour lagoon. From there, it is aerated in settling ponds before being released about a week later into the Northumberland Strait.



Kayla Hounsell
@KaylaHounsell

One of the organizers of today's rally says it's emotional to see it all come together after months of planning. She says, "Pictou County's dirty little secret is coming out."

30 7:36 AM - Jul 6, 2018

[See Kayla Hounsell's other Tweets](#)

Jill Graham-Scanlan, president of Friends of the Northumberland Strait, told CBC's *Information Morning* that even though the effluent is being treated, it's still industrial waste.

"It'll contain all kinds of toxins — metals and other nasty substances that we in no way want flowing out into the clean, pristine waters of our Northumberland Strait and into rich fishing grounds," she said.

The plan for a new pipe [hit a snag this week when recent sonar imaging showed](#) the proposed route of the pipe and its outfall position will have to change due to a shipwreck, evidence of ice scouring, a shoal and a collapsed pier in the area.



Hundreds of people were at the waterfront in Pictou. (Nic Meloney/CBC)

The company is looking for a modification to the proposed route, not a new route, Kathy Cloutier, a Northern Pulp spokesperson, said in an email.

She said whatever Northern Pulp decides, the mill's "commitment to the community and environment will not be compromised."

The mill directly employs 330 people, and supports another 1,500 or so jobs in the forestry sector.

Mike van den Heuvel, a science professor at the University of Prince Edward Island, says it's a mistake to blame changes in the Northumberland Strait, including loss of biodiversity, solely on Northern Pulp.

There are hundreds of creeks and rivers, some carrying sediment and pesticides, flowing into the Strait, he told CBC's *Mainstreet Halifax*.

He says the portion of the mill's nutrient input into the strait is tiny, probably less than one per cent overall.

"Is there nutrients coming out of the mill? Yes. But it's not very much, when you consider it all as a whole."

Van den Heuvel, who studies the effects of agriculture and chemical use on freshwater and coastal environments, said the new treatment proposed for the effluent, based on the design, should be an improvement.

You won't be able to detect the wastewater plume more than 100 or 200 metres away from the pipeline, he said.

- [Proposed Northern Pulp pipe route into ocean hits snag](#)

Proposed plan puts Canada's Ocean Playground 'at risk'

Wes Surrect, general manager at the Pictou Lodge Beach Resort, said the proposed plan for the effluent pipe risks turning off tourists.

"When you're selling tourism, you're selling a brand and when we sell Nova Scotia to the world, we're selling it as 'Canada's Ocean Playground,' and here on the Northumberland Strait we sell our beautiful, sandy beaches, our warm swimmable waters and our fresh, local seafood," he told CBC's *Information Morning*.

"It is our belief that this proposed plan puts all of that at risk and once you tarnish that brand, then we're very concerned what that might do to potential tourism dollars down the road."



Some of the dozens of boats at the protest. (Nic Meloney/CBC)

Premier Stephen McNeil told reporters outside Province House on Thursday that government must find balance between what's good for the economy and what's good for the environment.

"There are those, though, that are always on opposite sides ... those that would prefer that there is no development and there's others who believe there should be development with no rules," said McNeil.

- [Environment Department official defends speedier Northern Pulp assessment](#)
- **REPORTER'S NOTEBOOK** [An 'unnerving' walk on Boat Harbour's contaminated floor](#)

"Our job is always to strike the balance to make sure that we protect the environment for future generations at the same time providing economic opportunity for those who are currently working in the economy of Nova Scotia."

He said how much the province will be contributing to the new treatment facility hasn't been finalized yet.



The Northern Pulp mill is shown in the background. (Nic Meloney/CBC)

More rigorous environmental assessment

Graham-Scanlan said she disagrees with the government's [decision to "fast-track" the province's environmental assessment process](#) by only requiring a Class I assessment on the replacement effluent pipe project, which she said isn't rigorous enough.

"So there's only a 30-day period for the public to view the plan and provide its comments to the environment minister. At that time, the environment minister has only 20 days to review all of the public concerns, review Northern Pulp's proposal and at the end of that 20 days the environment minister makes their decision," she said.





Some people in the area want the federal government to intervene and do a more thorough environmental assessment. (Nic Meloney/CBC)

Graham-Scanlan said she's asking the federal government to take over the environmental assessment process through the Canadian Environmental Assessment Agency.

"We believe that that process will be much more rigorous and give the due attention that this project requires," she said.

- [Taxpayers won't likely shoulder full cost of Boat Harbour replacement, minister says](#)

[Read more articles from CBC Nova Scotia](#)

With files from Information Morning

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Northern Pulp confirms effluent leak at Pictou Landing



Leak reported Sunday morning, a day after annual maintenance shutdown began

Anjuli Patil · CBC News · Posted: Oct 21, 2018 4:30 PM AT | Last Updated: October 21, 2018



There was an effluent leak from Northern Pulp on Sunday. (Andrew Vaughan/Canadian Press)

Northern Pulp says it has taken immediate action to remedy an effluent leak in Pictou Landing, N.S., reported Sunday morning.

The leak was reported a day after the company began its annual maintenance shutdown Saturday, according to Kathy Cloutier, director of communications for Paper Excellence Canada.

"Northern Pulp was not in production at the time of the leak," Cloutier told CBC News in an email.

Cloutier said the company was made aware of a possible effluent leak at 9:20 a.m. The leak was confirmed about 30 minutes later and the flow was stopped.

"Northern Pulp officials instantly notified First Nations and authorities of the incident," Cloutier said.

"Representatives from Northern Pulp will continue to work with agencies throughout the coming days."

Cloutier said Northern Pulp has arranged for a third-party environmental consultant to be at the site Sunday afternoon "for assessment and development of a path forward plan."

[This leak is downstream of the area where a 2014 leak occurred](#), Cloutier said.

- [Province in conflict of interest over Northern Pulp project, activists allege](#)
- [Northern Pulp fined \\$225K for 'toxic' pulp mill effluent leak](#)
- [Northern Pulp ordered to contain, clean up effluent spill](#)

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UPDATED

Northern Pulp and fishermen agree to permanent injunction to allow survey work



N.S. mill granted interim injunction in December to stop fishermen from blocking survey vessels

The Canadian Press · Posted: Jan 28, 2019 12:01 PM AT | Last Updated: 32 minutes ago



Hundreds of boats from the three Maritime provinces joined a rally last July against Northern Pulp's plan to put an effluent pipe into the Northumberland Strait. (Nic Meloney/CBC)

A Nova Scotia First Nation is taking a pointedly direct approach to ensuring that a highly polluted waste water treatment facility on its land is shut down.

Under legislation passed in 2015, the provincial government has committed to closing the Boat Harbour facility by Jan. 31, 2020 — one year from this week — and the Pictou Landing First Nation plans to mark the beginning of an official countdown on Thursday.

The First Nation, which is near Pictou, N.S., has organized a "One Year Countdown" event, which is expected to include traditional drumming, dancing, prayers, smudge ceremony and speeches.

The waste water is mainly treated effluent from the Northern Pulp mill, where a proposed plan would see more than 62 million litres per day pumped directly into the Northumberland Strait once Boat Harbour is closed.

That decision has enraged local fishermen, who have staged large protests and prevented the mill's seismic survey work on the Strait.

On Monday, Northern Pulp issued a statement saying the fishermen have agreed to comply with a court injunction that prohibits them from blocking seismic survey vessels hired by the mill.

The mill was granted an [interim injunction](#) by a Nova Scotia Supreme Court judge in December.





Several boats flying the Grand Council Flag of the Mi'kmaq Nation preparing for a rally in the waters off Pictou in July, 2018. (Nic Meloney/CBC)

Northern Pulp now says it has reached an agreement with the protesters, saying it will allow the company's work to proceed in the Strait, Pictou Harbour and Caribou Channel.

"Northern Pulp, and owner Paper Excellence, are pleased that the legal action by Northern Pulp has been resolved to Northern Pulp's satisfaction through an agreement and the anticipated issuance by the court of a permanent injunction," the company said in a statement.

The company declined to comment on the latest developments.

In a brief statement, the fishermen said they accepted the judge's decision and the pending issuance of a permanent injunction.

Northern Pulp is expected to return to court Tuesday to seek the long-term injunction.

The company is also expected to submit an environmental approval application to the provincial Environment Department later this week.

The company has said the treated effluent it plans to pump into the Strait will meet federal regulations for emissions, but opponents say there's a lack of scientific evidence regarding how the waste will affect the long-term health of the lucrative lobster and crab fisheries.

- [Boat Harbour deadline won't move but McNeil says he's open to legislature debate](#)
- [Nova Scotia's forest industry faces unknown future without Northern Pulp](#)

Northern Pulp admits it is likely to miss 2020 effluent deadline



'We are at risk of missing the timelines by a few months,' Paper Excellence executive says

Paul Withers · CBC News · Posted: Nov 13, 2018 8:33 PM AT | Last Updated: November 14, 2018



Two boats joined a rally in July against a plan by Northern Pulp, shown in the background, to put an effluent pipe into the Northumberland Strait. (Nic Meloney/CBC)

The owners of a pulp and paper mill in Pictou County, N.S., say it's unlikely a new effluent treatment pipeline will be ready in time for the government-imposed deadline of January 2020.

"We are at risk of missing the timelines by a few months," said Jean-Francois Guillot, vice-president of operations at Paper Excellence, which owns Northern Pulp.

"At this point, it's risky," he said. "I don't think so. We can have effluent treatment working by January 2020, it's just the discharge point, we kind of have to do backflips to make that happen."

The deadline matters because the mill's provincial industrial approval expires Jan. 30, 2020, and a functioning effluent treatment system is required.

"If we don't have an industrial permit, we have to stop the mill," Guillot said. "What do we do at that time? What do we do with the employees? What do we do with the asset itself?"

"So, yes, we are asking ourselves those questions. For us, it's not how we walk away — it's how we can make it work."



Jean-Francois Guillot, Paper Excellence's vice-president of operations, says Northern Pulp is likely to miss a January 2020 deadline for a new effluent treatment system, but wants to continue operating in Nova Scotia. (Dave Laughlin/CBC)

Guillot said the company intends to submit an environmental assessment at the end of January 2019 for a new pipeline outfall in the Northumberland Strait four kilometres outside Caribou.

That document will provide more detail on when the company believes a new system will be operational.

"We want to stay in Nova Scotia," Guillot said. "We are convinced it can be workable."

Mill fate rests on effluent treatment

The treatment and release of an estimated 70-million litres of effluent each day is key to the mill's continued operation. It has prompted protests and blockades from fishermen who object to the discharge of treated effluent anywhere in the Northumberland Strait.

The impasse is the result of legislation passed by the Nova Scotia government to close the 140-hectare treatment lagoons at Boat Harbour by January 2020.

- [McNeil plea for peace triggers protest in Pictou County](#)
- [Effluent pipe leak renews opposition to Northern Pulp plan for waste pipeline to Northumberland Strait](#)

The Indigenous community has complained for decades about the effluent flowing through its land.

The closure date was a personal commitment from Premier Stephen McNeil, who has shown no sign of budging.

Boat Harbour compensation deal reached?

Guillot also said Northern Pulp has reached a "tentative agreement on compensation" with the province over the pending closure of the existing treatment facility at Boat Harbour.

The government leases the facility to the company for waste-water treatment.

When it passed legislation to close the facility, it effectively tore up a lease agreement with the company to keep it running until 2030.

"The province and ourselves came to an agreement about, OK, how it is going to work out," Guillot said. "We talk about compensation. Both sides are OK with it. Most of the issues now are making sure to make that happen. It's not a question of money."

The province has disputed the characterization that there is arrangement in place with Northern Pulp and its parent company.

"Government has been meeting with the company to discuss what could be fair compensation given the early termination of the Boat Harbour lease, however, there is no agreement in place at this time," Marla MacInnis, communications spokesperson, said in an email response to CBC News.

First site abandoned

In December 2017, Northern Pulp announced it would build a treatment plant on its property next to the mill at Abercrombie Point and pipe it about 11 kilometres to a dispersal point outside Pictou Harbour.

But the proposed site was abandoned after surveys revealed ice scouring could destroy the six-nozzle diffuser at the discharge point — not to mention require the burying of significant sections of pipeline along the route.

Mill defends new outfall site

Guillot claims the Caribou location in deeper water offers improved mixing and dispersion.

Much is already known about water conditions, according to the company, because of dredging for the Bay Ferries run between Caribou and Wood Islands, P.E.I.

"The treated effluent, when it goes into the ocean — it's really just dissolving or disappearing," he said.

The company said the Caribou location can meet federal water quality guidelines that require temperature and salinity to return to background levels within 100 metres of the outfall.

It has not yet provided modelling data for the proposed location.

Modelling animation of dispersal at Boat Harbour, based on a 30-day tide cycle in July 2016, shows effluent dispersal largely hugs the coast with fingers of effluent extending into the Northumberland Strait.

Guillot said the company is in discussion with the provincial government about obtaining a right-of-way to use the Pictou Causeway as a pipeline route toward Caribou.

"Nobody has closed the door at this point."

50 years of broken pipes and promises

The company is unlikely to win over local fishermen in the Strait who have boiled down their fight down to No Pipe in the Strait.

Groups representing fishermen say they aren't surprised that Northern Pulp will miss the deadline.





Fishing boats gathered to block survey boats hired by Northern Pulp earlier this month. (Submitted)

"To say that they will only miss the deadline by a few months seems wildly optimistic. It doesn't even reflect the advice of their own consultants," Allan McCarthy of the Northumberland Fishermen's Association said in a news release.

"It is the position of our working group, representing over 3,000 fishermen from Nova Scotia, Pictou Landing First Nation, P.E.I., and New Brunswick, that Boat Harbour must close on schedule. All parties in the ... legislature voted in favour of the Boat Harbour Act in 2015. We call on all parties to honour that act now," he said.

"If you think tensions are high now, you don't want to think about what could happen if MLAs do not honour the Boat Harbour Act."

Pictou Landing First Nation won't consider extending the deadline, said Chief Andrea Paul.

"Our community has lived with polluted air and water, broken promises and broken pipes for over 50 years. Boat Harbour is closing on schedule and we expect nothing less. We have also made it clear that we oppose dumping treated pulp effluent anywhere in the Northumberland Strait."

'Collateral damage'

Guillot said the division between the two sides could have long-term effects.

"The scare tactics, I'm OK with that. It's a free country but people have to realize what is the collateral damage that goes with that," he said.

It was the only explicit reference he made to the economic consequences of a mill closure.

"If people are prepared to live with the conditions of having no mill, there is nothing I can do. That's not the outcome we are looking for."

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'No pipe' protest forging new alliances along Northumberland Strait

Aaron Beswick (abeswick@herald.ca)

Published: Jul 05, 2018 at 3:58 p.m.

Updated: Jul 06, 2018 at 9:16 a.m.



Capt. Beverley Denny is one of the Pictou Landing First Nation fishers who will take a boat to protest the proposed Northern Pulp effluent pipe. - Aaron Beswick

First Nations no longer alone in battle over effluent

"There is an irony here," says Mi'kmaq historian Daniel Paul as he talks about rallies to stop Northern Pulp from pumping its treated effluent into the Northumberland Strait.

"If they all care so much now, why didn't they come forward 50 years ago."

A broad spectrum of fishermen's groups, environmental activists and concerned citizens have joined together under the NOPIPE banner to force the federal government to step in and order a larger scientific review of the pulp mill's plan. For many though, the only choice is to stop it.

But decades ago, there were only the voices of the First Nations community that could be heard in opposition.

Back in 1981 Chief Raymond Francis walked into Daniel Paul's office and said he wanted to sue the province.

Francis was chief of the Pictou Landing First Nation that had watched the saltwater lagoon behind the community poisoned by the effluent piped into it from the kraft pulp mill at Abercrombie Point.

Paul was the district superintendent for the then Department of Indian and Northern Affairs.

"I told him you are going after the wrong people because the title of reserve lands is vested in the federal crown," recalled Paul.

In effect, Paul told the chief to sue his own boss – the federal government.

Ultimately, along with a \$35-million settlement the federal government accepted that it had failed in its fiduciary responsibility to protect the Pictou Landing First Nation from a broad based campaign by provincial and municipal officials to get it to accept the effluent from the kraft pulp mill built at Abercrombie Point.

As part of the discovery process the court case heard from the community elders who told of how they feared reprisals from the broader white community if they stood against a project that would bring jobs to Pictou County.

"Just imagine what the public reaction would have been against these already racially oppressed people if they had said no, thus preventing the establishment of an industry which had the potential to employ, either directly or indirectly, thousands of non-Indians," wrote Paul in his history book *We Were Not the Savages*.

It wasn't until the pipe carrying untreated effluent to Boat Harbour ruptured in June 2014 and the band blockaded the site that the provincial government was forced to negotiate a closure of the treatment site.

Now work was underway cleaning up the Boat Harbour treatment site, which is owned by the province and leased to the mill, in anticipation of the 2020 closure date enshrined in legislation as part of the deal that saw the band lift its blockade.

"Right smack in the middle of where we fish lobster," said fisheries director Wayne Denny of where Northern Pulp's new proposed pipe will 'diffuse' its treated effluent into the Northumberland Strait.

"They killed everything behind us and now they're going to kill everything in front of us," said Denny.

- **Northern Pulp must find new route for treated effluent pipe**
- **Northumberland Strait fishermen not willing to gamble on pipe**
- **Northern Pulp employees putting their faith in science and company owners**
- **Pictou County residents and business owners share common concerns about proposed effluent pipe**

The irony for Pictou Landing, which owns 22 lobster licences and 420,000 pounds of crab quota, is the deal that will see Boat Harbour remediated will now see the effluent treated on shore and pumped

into the strait.

And there's not a lot of trust for the promises from the mill that the new pipe won't harm a fishery that directly employs 70 community members seasonally and brings in about \$4 million in gross revenues.

Those numbers don't include the six lobster licenses privately held by community members.

Denny doesn't take reassurance from the requirement that Northern Pulp get an environmental assessment for the proposed replacement effluent treatment plant.

And Paul doesn't expect him or anyone in Pictou Landing to have much trust in the processes established by the federal and provincial governments that are supposed to see science, rather than political pressure, be the primary arbiter of whether projects continue.

"They were told they were going to be able to use Boat Harbour for recreation and swimming and fresh water fishing before they started pumping that effluent in there 50 years ago," said Paul.

"Now you're back there telling these people 'we're going to pump the water out into the strait and there's not going to be negative effects'. It's rather hard to get people to believe you when they have been grossly and viciously lied to over and over."

On Friday, July 6, the lion's share of Pictou Landing's fleet will be joining the flotilla in Pictou Harbour.

Watch online Friday for #No Pipe rally coverage

Many other residents plan on joining the land-based march.

Though his community fought largely alone for so long, Denny now welcomes the support of the broader non-aboriginal community.

"Now it's going to affect them too," said Denny.

"It's everybody's livelihood now."

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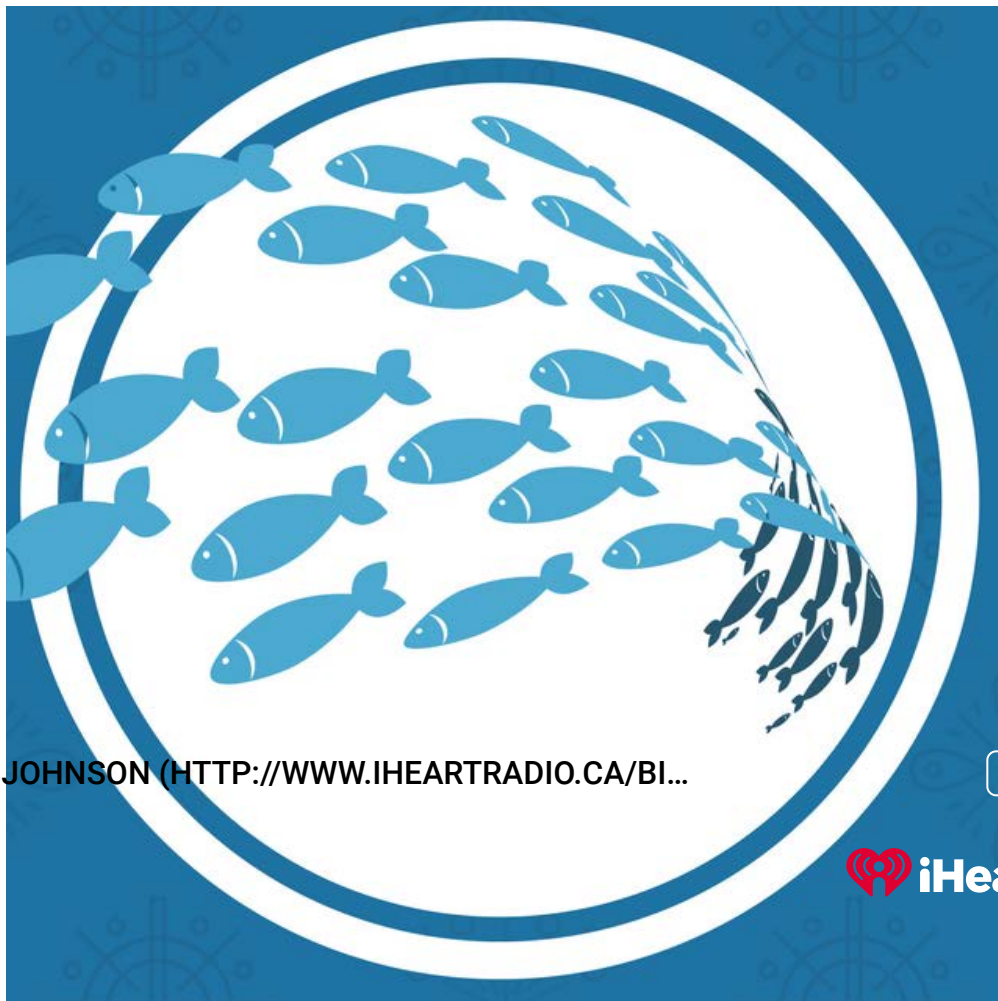
NO PIPE COURTHOUSE RALLY IN HALIFAX TUESDAY



(/Author/Author/Mandy Wood)

MANDY WOOD

Tuesday, December 18th 2018 - 6:32 am



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Photo: Friends of The Northumberland Strait logo (Facebook)



A number of people are planning to rally outside a Halifax courthouse Tuesday afternoon to show their support for fishermen named in legal action against them by Northern Pulp.

The mill is seeking an interim injunction to prevent blockades or obstructions of survey work in the Northumberland Strait as it works on a route for an effluent pipe.

Friends of The Northumberland Strait, the group behind the rally, says Northern Pulp has also filed for a claim of damages against the fishermen.

The plan to dump treated effluent from the Abercrombie mill into the Strait has raised the ire of local fishermen, the Pictou Landing First Nation, the P.E.I. government and even Hollywood actor Ellen Page, who is from Halifax.

The wider Gulf of St. Lawrence fisheries region is home to lobster and crab fisheries that brought in over \$1.2 billion worth of catch in 2016.

Tuesday's rally outside of the Nova Scotia Supreme Court on Upper Water St. is scheduled for 1 p.m.

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CONTESTS

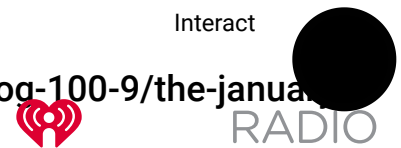


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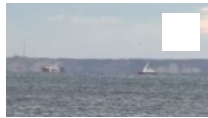


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N.S. pulp mill expected to miss 2020 deadline to close Boat Harbour



The Northern Pulp mill is seen in Abercrombie, N.S. on Wednesday, Oct. 11, 2017. (THE CANADIAN PRESS/Andrew Vaughan)

THE CANADIAN PRESS

Published Wednesday, November 14, 2018 6:23PM AST

ABERCROMBIE POINT, N.S. -- A controversial pulp mill in northern Nova Scotia is facing delays with its new wastewater system, making it likely to miss the provincial deadline of January 2020 to stop using a polluted lagoon.

The Northern Pulp mill has been sending untreated effluent to a First Nation reserve for more than half a century, something the province's former environment minister called one of the worst cases of environmental racism in Canada.

Under provincial legislation, the kraft pulp mill has less than 15 months to overhaul how it processes wastewater.

Kathy Cloutier, a spokeswoman for Paper Excellence Canada, which owns the Abercrombie Point mill, says the setback is due to a delay with a pipeline.

She says the new wastewater treatment facility will meet the deadline, but that a new outfall discharge pipe will take longer.

Despite the delays, Cloutier says once the new treatment plant is operational, untreated effluent will no longer leave the mill.

"Currently (since 1967) untreated effluent travels through a pipe to the Boat Harbour Treatment Facility where it receives treatment and is then discharged as treated effluent into the Northumberland Strait," she said in an email.

"The new system will see effluent treated at the facility on mill property. No untreated effluent will flow through any pipe as is the case today."

The new system is slated to replace Boat Harbour, a toxic wastewater lagoon on the edge of Pictou Landing First Nation.

The delay was met with consternation among local community groups, fishermen and an Indigenous leader, who called on the mill to close Boat Harbour on schedule.

"Our community has lived with polluted air and water, broken promises and broken pipes for over 50 years," Chief Andrea Paul of Pictou Landing First Nation said in a statement.

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"Boat Harbour is closing on schedule and we expect nothing less. We have also made it clear that we oppose dumping treated pulp effluent anywhere in the Northumberland Strait."

Allan McCarthy of the Northumberland Fisherman's Association said it's not a surprise that Northern Pulp will miss the deadline.

He said it seems "wildly optimistic" to say they are only a few months behind schedule.

McCarthy, who represents more than 3,000 fishermen from across the Maritimes, suggested the delay could cause increased strain between fishermen, the government and the mill.

"If you think tensions are high now, you don't want to think about what could happen if MLAs do not honour the Boat Harbour Act," he said.

A group of Northumberland Strait fishermen have said they will block any survey boats from entering the strait. Earlier this month, Premier Stephen McNeil encouraged fishermen to end the blockade of survey boats hired to examine a route for an undersea effluent pipe.

Although the mill initially suggested the effluent would be carried by polyethylene pipe across Pictou Harbour and released through six dispersal pipes into the ocean, it's now examining an alternate route.

Cloutier said Northern Pulp is studying a primarily land-based route with an outfall point at Caribou.

"We are taking the time required to complete studies with regard to the alternate option as initial findings show that Caribou offers improved mixing/dispersion" compared to the original route proposed, she said.

The fishermen's group questioned the new route, saying Northern Pulp does not have answers to essential questions and the required reports and tests have not been completed.

The group said the new route would travel along the Pictou causeway, through a traffic rotary, pass through two watersheds and enter the Northumberland Strait at Caribou.

"We have seen that after mistakes are made, it can take a very long time to correct them," McCarthy said.

"Harming an ecosystem has long term effects."

- By Brett Bundale in Halifax

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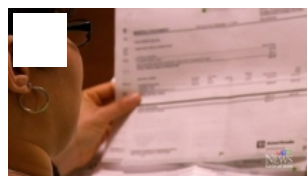
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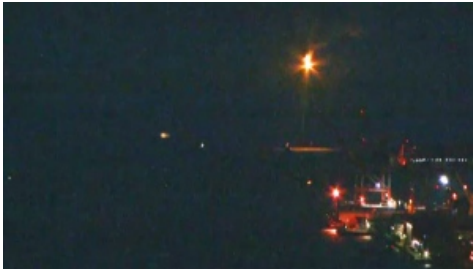


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N.S. paper mill asks for public help as protests mount, Ellen Page criticizes



The Northern Pulp Nova Scotia Corporation mill is seen in Abercrombie, N.S. on Wednesday, Oct. 11, 2017. The CANADIAN PRESS/Andrew Vaughan

Michael Tutton , The Canadian Press

Published Friday, November 16, 2018 1:34PM EST

Last Updated Friday, November 16, 2018 4:20PM EST

PICTOU, N.S. -- A Nova Scotia pulp mill is asking for public support for more time to build an effluent pipeline to the ocean, even as one of the province's best-known Hollywood actors steps up her criticism of the plant.

Kathy Cloutier, a spokeswoman for parent company Paper Excellence, said the Northern Pulp mill is hoping people and groups in the province's forestry industry will issue public declarations in support of an extension for the effluent pipe project.

She said people who work in forestry realize the major impact it would have on the sector if the 330-employee mill can't operate because it can't discharge its treated waste into the Northumberland Strait.

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"It will need to be vocal so that the premier feels that extending the deadline is something the community, the industry and politicians would support," said the spokeswoman.

Her appeal came as the province's lands and forestry minister, Iain Rankin, made it clear his government won't change the Jan. 30, 2020, deadline to shut down the Boat Harbour treatment lagoon at the Pictou Landing First Nation.

"We made a commitment to that community. The act passed with all party support. It gave the mill five years to switch to a different effluent treatment facility so Boat Harbour could cease to operate. And we continue to expect that," said Rankin.

Meanwhile, Ellen Page, a Halifax-born actor who played roles in "Inception," "Juno," "X-Men" and numerous other films, tweeted this week in support of Joan Baxter's book "The Mill: Fifty Years of Pulp and Protest."

Baxter's book traces 50 years of citizen criticism of the mill's environmental impact and efforts to have government do more to protect human and environmental health. It also examines the tactics the province originally used to convince the Pictou Landing First Nation to sign off on the deal allowing pollution to flow to Boat Harbour.

Page refers to Baxter's work as a "must read," and she retweeted comments by a few of her 1.2 million Twitter followers who are critical of the impact of the plant's emissions.

"Did it make me sad and angry? Yes. Did it also inspire me greatly? Yes," Page tweeted of the book.

After reading Cloutier's comments to The Canadian Press, Page again tweeted Friday, writing: "The ... statements in this article are classic tactics used for decades to avoid taking responsibility for the horrific effect on the environment and claiming the effluent is safe when it's not." She again urged her followers to read Baxter's book.

Cloutier said the company has been making environmental improvements over the past decade.

Earlier this year, the firm completed the \$36.9-million replacement project for the stack known as a precipitator. It uses static electricity to remove solid chemical particles from air emissions, and critics acknowledge the work has led to a significant improvement in air quality.

She said the company "acknowledges the history," but believes the new treatment plant project represents an opportunity.

Cloutier also said the bleached kraft mill is the backbone of the province's forestry industry because there is a close relationship between sawmills, pulp mills and paper factories.

"Removing that would have catastrophic effects. It's not a scare tactic. It's an actual fact," she said.

The spokeswoman notes the factory purchases 95 per cent of wood chips produced by the province's saw mills.

"Traditionally those chips and bark are often the difference between breaking even, a loss and having a revenue," she said, adding that Northern Pulp's closure would have a "widespread impact."

Fishermen have said they object to the distribution of treated effluent in their traditional fishing grounds due to uncertainty over the impact.

The company's public presentation says effluent emissions include organic halides, which encompass compounds ranging from chloroform to complex organic molecules such as dioxins and furans, but it says it's "well below World Bank guideline(s) for pulp mills."

It also notes the effluent emissions result in suspended solids -- ranging from clay, sand, silt, organic matter and particulates -- but says the levels will meet Canadian Council of the Ministers of Environment guidelines for aquatic marine life.

In an interview via texts, Baxter criticized the environmental review process the province has set up for the effluent pipeline, arguing the province is in a conflict of interest and there is a lack of independent oversight in the process.

She said the province -- which owns the Boat Harbour facility and leases it to Paper Excellence -- has a legal indemnity agreement that may require it to pay the company for lost profits if it can't operate due to a change in the status of the Boat Harbour facility.

"I think it (the pipeline) should go for a federal assessment," she wrote.

"I agree with the fishermen and the Friends of Northumberland Strait (a citizen group opposed to the pipeline proposal) that the province is in a conflict of interest because of the indemnity agreement."

Rankin said he's aware of the legal agreement, but he again pointed to the Boat Harbour Act, "which does state that the effluent treatment facility can no longer be discharged into the harbour."

Asked if the legislation would trump the contract, he said he didn't want to speculate on "what could happen 14 months from now" -- and added he still expects the company to meet the existing deadline.

Karla MacFarlane, a local Progressive Conservative member of the legislature, said in an interview that her party agrees with the Liberals that no further delays in ending the flow of effluent into Boat Harbour are acceptable.

"The Progressive Conservative Party agrees and honours that the deadline is 2020," she said.

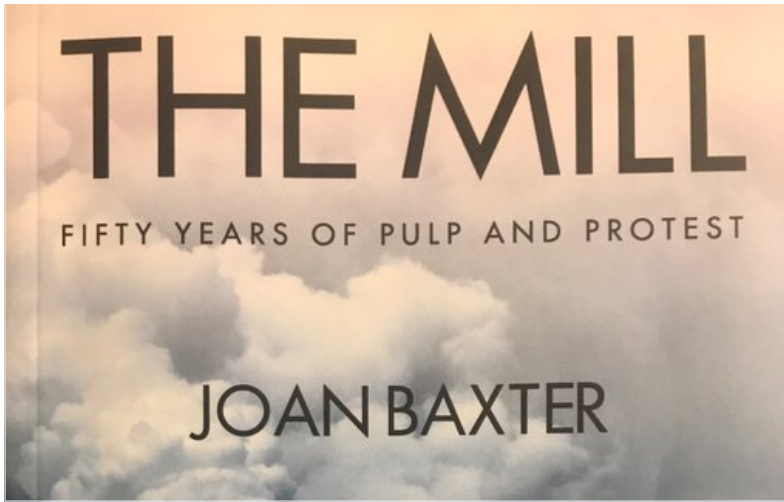


Ellen Page
@EllenPage

This is a MUST READ. Did it make me sad and angry? Yes. Did it also inspire me greatly? Yes. @joan_baxter has written a phenomenal book and I encourage all (particularly Nova Scotian's)... [instagram.com/p/BqF0TjghPw/...](https://www.instagram.com/p/BqF0TjghPw/)

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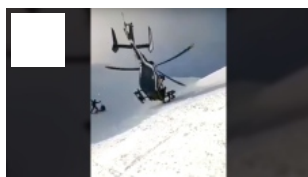


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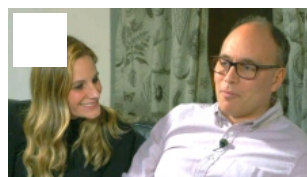
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Canada November 5, 2018 7:53 am

Updated: November 5, 2018 10:59 am

N.S. fishermen to block Northern Pulp's survey vessel from entering Northumberland Strait

By Michael Tutton The Canadian Press



Fishing boats pass the Northern Pulp mill as concerned residents, fishermen and Indigenous groups protest the mill's plan to dump millions of litres of effluent daily into the Northumberland Strait in Pictou, N.S., on Friday, July 6, 2018. A group of fishermen from several ports along the Northumberland Strait say they will block a survey boat hired by Northern Pulp from entering the strait to do work on a proposed new route for an effluent pipe. THE CANADIAN PRESS/Andrew Vaughan

A group of Northumberland Strait fishermen say they will block a survey boat hired by the Northern Pulp mill from entering the strait to do work on a proposed new route for an effluent pipe.

Darryl Bowen, a fisherman from Caribou, N.S., said in a telephone interview on Monday he will make sure his boat or another fishing vessel is placed in front of the survey vessel if it attempts to leave Pictou's harbour in northeastern Nova Scotia.

READ: Northern Pulp mill confirms effluent leak near Pictou Landing

The 48-year-old fisherman says his group has a number of fishing boats available to move quickly to block the survey vessel if it attempts to leave.

"If they try to get out, we're just going to keep getting in front of them so that they can't get by us," he said, adding there were six or seven boats in the one-kilometre long harbour mouth.

"They won't get by ... We'll block them," said Bowen.

However, a spokeswoman for Northern Pulp said the survey vessel isn't currently in the water, and that the company doesn't plan on doing anything that will jeopardize the safety of its contractor's employees.

Kathy Cloutier, director of communications at the mill's parent company, Paper Excellence Canada, said in an email that, "Safety within Paper Excellence Canada and its facilities is paramount."

"When situations occur, we will seek guidance and work with authorities to ensure the safety of all involved."

She said there have been discussions over the past week between Northern Pulp, contract survey crew and leadership of fisheries groups, and she added, "the information survey crew members are seeking to obtain is data that may be of benefit to various interested parties."

WATCH: Thousands gather to protest pulp mill in Pictou

Bowen said the protest by fishermen from several ports started Monday but will continue as long as necessary to prevent the survey from taking place.

He said the view of the fishermen is that it's safer to prevent the surveyors from entering the strait than having the vessel go out on open water and be confronted by hostile fishing boats, as occurred recently.

"The last time they got out there, we went up (to them) and it didn't take long for them to run back to shore," said Bowen, who fishes lobster, crab and scallops.

Though the Northern Pulp mill near Pictou provides key jobs for the town of about 3,000 residents, its pipeline plan has raised concerns about the impact on the lobster fishery, other seafood businesses and protected areas along the coast.

Under provincial legislation, the mill has until 2020 to replace its current wastewater treatment plant in Boat Harbour, and Premier Stephen McNeil has confirmed he is sticking with that deadline.

After years of pumping 70 million litres of treated waste daily into lagoons on the edge of the nearby Pictou Landing First Nation reserve, Northern Pulp wants to pipe it directly into the strait that separates Nova Scotia from P.E.I.

The lagoons contain nearly 50 years worth of toxic waste, which former Nova Scotia environment minister Iain Rankin has called one of the worst cases of environmental racism in Canada.

Paper Excellence, of Richmond, B.C., has said the mill and its 300 employees will be out of work unless it can build a pipeline to the strait.

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McNeil plea for peace triggers protest in Pictou County



'We haven't done anything really unlawful,' says lobster fisherman

Paul Withers · CBC News · Posted: Nov 09, 2018 12:48 PM AT | Last Updated: November 9, 2018



Fishing boats gathered to block survey boats hired by Northern Pulp on Friday. (Submitted)

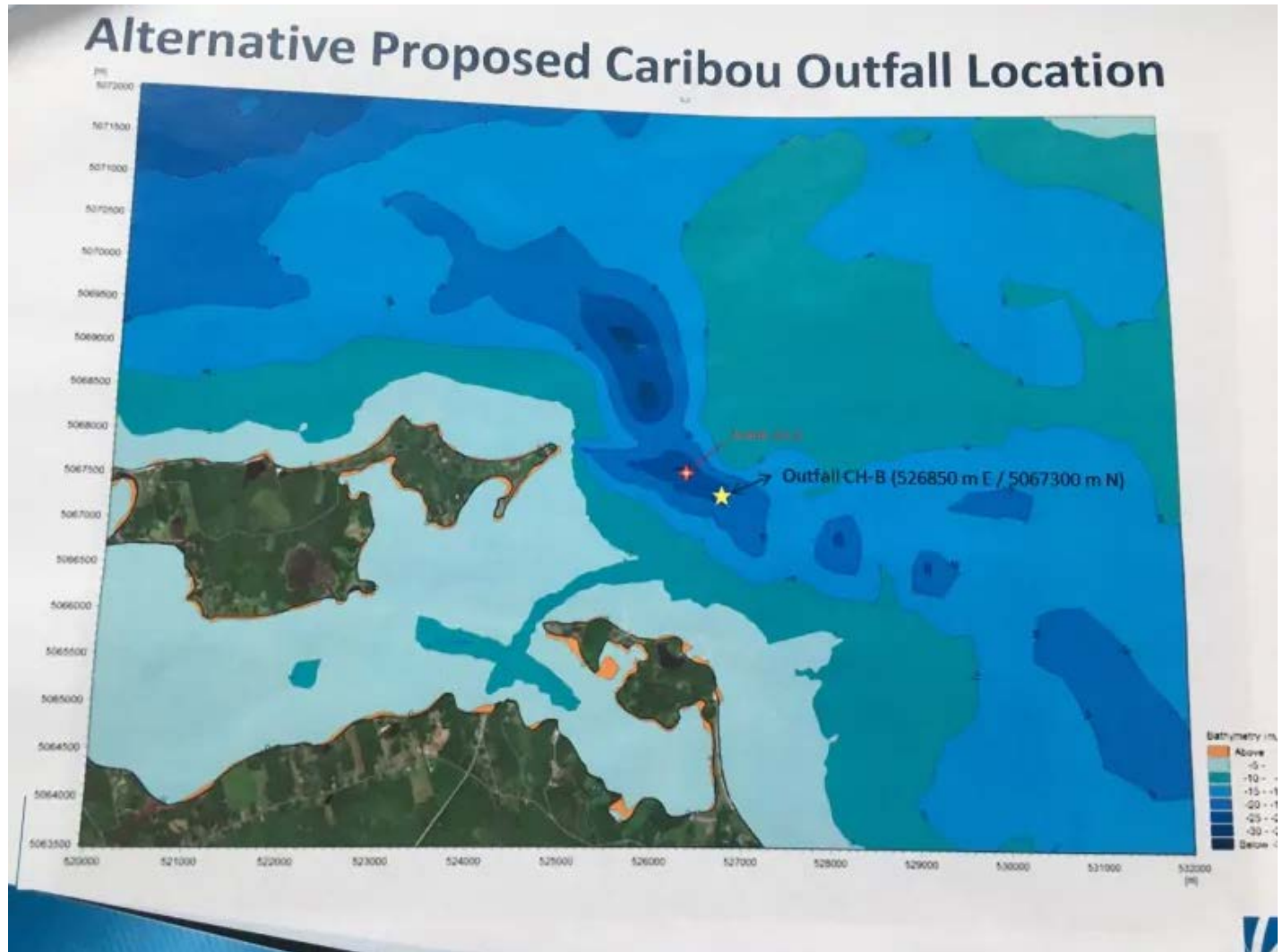
Fishermen in Pictou County sent a message to Nova Scotia Premier Stephen McNeil Friday morning.

Dozens took to the water after McNeil suggested they end a blockade of a survey boat hired to find an undersea route for a pulp mill effluent pipe.

"Premier McNeil's comments kind of struck a nerve with the fleet," said Caribou fisherman Darryl Bowen, who took part in the sunrise demonstration.

"There was probably 40 boats showed up in Pictou Harbour to send a message. We're not backing down and that's that."

Northern Pulp wants to release treated effluent into the Northumberland Strait after its current wastewater treatment system at Boat Harbour closes in 2020.



A map, showing the outfall of the proposed undersea effluent pipeline, which fishermen say they were provided by the owner of Northern Pulp during a meeting at the end of October. (Submitted)

This week, fishermen have headed off the vessel hired to find a route.

"When you have people out there trying to do lawful business that people are preventing them from doing it, its always a concern," McNeil said Thursday.

Lobster fisherman Ben Anderson, who fishes in nearby Pugwash, makes no apologies.

"We haven't done anything really unlawful," said Anderson, who called the action a peaceful demonstration.

- [**Effluent pipe leak renews opposition to Northern Pulp plan for waste pipeline to Northumberland Strait**](#)

Fishermen said they are watching the harbour around the clock for any move by the survey boat.

There is no intention to call off any blockade.

"We told them last year there's going to be no pipe in the Strait and we're not backing down," Bowen said. "We have to protect our industry at all costs. We are prepared to do that."

Fishermen say the survey boat has stayed off the water in recent days.

A spokesperson for Paper Excellence Canada, the owner of Northern Pulp, said in a statement to CBC News that safety is paramount.

"When situations occur, we will seek guidance and work with authorities to ensure the safety of all involved," Kathy Cloutier said.

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Lack of public consultation ahead of Northern Pulp's submission of Environmental assessment sparks backlash

Brendan Ahern (brendan.ahern@ngnews.ca)

Published: Jan 16 at 2:13 p.m.



An aerial view of the Town of Pictou, with the Northern Pulp mill across the harbour. August 21, 2014. - Christian Laforce

Pictou

Northern Pulp's decision not to hold public consultations before filing its environmental assessment has received blowback from groups representing Northumberland fishermen.

In a statement issued from Friends of the Northumberland Strait, the group decries the company's decision, stating that, "Concerned citizens and fishermen say they are appalled that Northern Pulp

does not plan to hold any open houses or public consultation before filing for environmental assessment.”

The statement emphasizes Northern Pulp’s past promise to hold further open house events designed to keep the public up to date on the company’s plan.

“We were told Northern Pulp were wanting to be transparent during this process,” said Friends of the Northumberland Strait president Jill Graham-Scalan in an interview. “They had promised us during that time that as the studies they were conducting on the route and the receiving waters were completed that they would be making those studies available to the public.”

An addendum to Northern Pulp’s water receiving study was posted after the press release, but Graham-Scalan says that this is not the level of transparency that was promised from the company back in December 2017.

With the company’s environmental assessment being submitted at the end of January, Graham-Scalan says that it could be difficult to properly analyze the information and provide feedback.

“Not only do we have to read it, we have to absorb and reply to it,” she said. “That 30-day period is the only period of time that the public has to come up to speed on the proposal and respond to the province in a way that is complete.”

Northern Pulp has cited ‘significant’ delays and a need to move forward under an impending deadline as it’s reason for filing the assessment without holding the open houses.

“We’ve experienced a significant number of delays through the fall in attempting to get some of the information compiled,” said Northern Pulp director of communications, Kathy Cloutier. “We’re at a point now where we want the project to move forward.”

Cloutier added that the blockades Pictou Harbour by strait fishermen of the company’s survey boat was a major factor in the need to push ahead to make up for the lost time.

When asked if the incomplete survey of the sea-floor will impact the quality of environmental data submitted to the province, Cloutier said that the only gaps will have to do with the pipe’s construction.

“There may be some constructability gaps, but the environmental assessment will be a complete document.”

“Another major factor to delays is the number of studies and expanded studies that were done,” said Cloutier. “When the process began there were seven studies that we were aware that we’d need to submit for an environmental assessment. Since then we’ve moved from seven to 17, to 20, we’re now at 28.”

The validity of that data revealed in those studies will then be determined by the provincial assessment.

After Jan 31. Cloutier says that that information will be in the hands of the public and the provincial government.

"I can't speak to a government process, but what I can say is that there will be time for people to submit comment, and that will help the minister."

The statement issued by Friends of the Northumberland Strait remains skeptical that Northern Pulp's assessment will accurately measure the outfall's effect on marine life in the strait.

"Knowing the composition of the treated effluent they plan to release is critical," wrote president of the Northumberland Fishing association Carl Allen. "We've asked for this information for almost a year, and have never received it. If the effluent is as harmless as Northern Pulp tells the public, why haven't they provided the information?"



Independent senators tell Trudeau to act on 'dangerous' Northern Pulp plan



Mike Duffy leads call for federal environmental study on project to pour effluent into Northumberland Strait

Paul Withers · CBC News · Posted: Nov 27, 2018 6:00 AM AT | Last Updated: November 27, 2018



The Northern Pulp mill manufactures 280,000 tonnes of kraft pulp annually and supplies pulp to manufacture common household products such as tissue, towel and toilet paper, writing and photo copy paper. (The Canadian Press)

Mike Duffy is among four independent senators from Nova Scotia and Prince Edward Island demanding a full federal environmental assessment of the plan to release treated pulp mill effluent into the Northumberland Strait.

The senators say Northern Pulp's "dangerous project" could damage the fishery in the Maritime provinces and Quebec's Magdalen Islands.

"Ottawa has no choice but to step in immediately and do a complete environmental impact study," Duffy said in a statement delivered in the senate chamber Monday.

He was speaking on behalf of Nova Scotia independent Senator Dan Christmas and two other independents from P.E.I.: Brian Francis and Diane Griffin.

Paper Excellence must change mill

Paper Excellence, owner of the Northern Pulp mill in Pictou County, N.S., wants to discharge about 70 million litres of treated effluent a day into the strait at a spot several kilometres from shore at Caribou.

The company was forced to come up with a new treatment plan after Nova Scotia ordered the shutdown of its current treatment facility, which has been running for 50 years next to the Pictou Landing First Nation.

Last week in an interview with CBC News, [the company admitted it will not meet the province's 2020 shutdown deadline](#).

Paper Excellence now says it will need an extension to the Boat Harbour Act to get its project through a provincial review, construction and commissioning.

Griffin said with the fishery and tourism industry potentially at risk in several provinces, the environmental review should not to be left to Nova Scotia alone.

About more than jobs

"It would seem really strange that one province should have a say," the senator said.

"There's more than the livelihood of the pulp workers here. It's not that we are against the pulp workers. I really think there needs to be a more serious look at an inland resolution for the effluent. Not to simply say take the cheapest route, which is to shove the pipe out into the strait."



A protester wears a Sou'wester in July as concerned residents, fishermen and Indigenous groups protest Northern Pulp's plan to dump millions of litres of effluent daily into the Northumberland Strait. (The Canadian Press)

The senators stepped in after meeting a group of fishermen in Ottawa last Thursday, including Gordon Beaton from Nova Scotia.

He's happy to see them flex their muscles. "They were all independent senators and they wore that kind of proudly. They really felt they could take this on as just something in the national interest, in a non-partisan way."

For Beaton, it's more evidence that the "No Pipe" campaign led by fishermen and the Pictou Landing First Nation is working.

"It's really found traction. The community is behind it and you see support building from other provinces obviously. Even these senators are interested in not allowing some sort of environmental disaster in the Northumberland Strait," Beaton said.

Northern Pulp defends plan

Griffin said weighing in on this project fits the role of Canadian senators to represent their region, offer sober second thought, and a protect minority interests.

"This is a case where on all three of those roles we have every right, in fact a duty, to speak up," the senator said.

But Northern Pulp said its plan to treat wastewater on site is a "significant improvement" over the existing system at Boat Harbour. It gets untreated wastewater that is carried several kilometres through an underwater pipe before it filters through a series of aeration and settling lagoons and the effluent flows through the reserve into the Northumberland Strait.

"The new system will see no untreated effluent [wastewater] leave the property. Effluent will be fully treated prior to leaving the site. That is a significant improvement," Paper Excellence spokesperson Kathy Cloutier said in an e-mailed response to Duffy's statement.

Paper Excellence says there are 131 similar kraft mills operating in North America. Of those, 20 percent use the system it is proposing and 80 percent use a system similar to the one in use at Boat Harbour.

"No other treatment process is used to treat kraft mill effluent," Cloutier said. "Northern Pulp has thoroughly investigated treatment options available to bleached kraft mills. Technical options available must include an outfall discharge in order for Northern Pulp to operate. It is not a question of cost — it is one of available technology."

The company says what emerges from the pipe is non-toxic and meets federal environmental standards.

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In Nova Scotia, a dispute between fishermen and a pulp mill escalates with a stand-off at sea

By ANTONIA NOORI FARZAN The Washington Post
Thu., Oct. 25, 2018

Across from the fishing pier in Pictou, Nova Scotia, smokestacks pump out billowing clouds of white smoke that drift over the choppy water. The Northern Pulp mill sits on one side of the harbor, churning out pulp that's used to make toilet paper and paper towels. On the other, fishermen who make a living catching lobster, crab, herring, and mackerel tie up their boats.

The fishing piers and the pulp mill represent two of the area's major industries. But recently, they've been embroiled in conflict. Late last year, Northern Pulp announced plans to pipe chemically-treated wastewater into the Northumberland Strait. Fishermen have argued that doing so would effectively destroy their livelihood, while the company has said that its pipe is designed to minimize the impact on fishing areas.

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Fishing boats loaded with lobster traps head from Eastern Passage, N.S. in a 2012 file photo. Many in the lobster fishing community are concerned with Northern Pulp's plan to dump millions of litres of effluent daily into the Northumberland Strait. (ANDREW VAUGHAN / THE CANADIAN PRESS)

On Tuesday, a showdown took place after fishermen spotted a boat that they believed was doing preliminary survey work on behalf of the pulp mill.

A fleet of fishermen met the vessel about two miles offshore and confronted the crew, then escorted them back to its dock, the Canadian Broadcasting Corp. reported.

Allan MacCarthy, a fisherman who has been an outspoken opponent of the planned effluent pipe, was the first to reach the survey boat.

"I said to them, 'You better get out of here because the ones that are following me aren't going to be as nice as I am,'" he told the CBC. "I just told the guys in the boat, 'Your job is not worth this. Get out of here. Get that boat back to Pictou.'"

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[Northern Pulp confirms leak, immediate response at Pictou mill](#)

[Fishermen in Nova Scotia block survey boat from pulp mill](#)

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MacCarthy told the CBC five other fishing boats joined him to escort the boat back to the harbor while another 20 stood by, ready to get involved if necessary.

When he reached the survey boat, “there was a little foolish talk back and forth,” he told the Chronicle Herald. “But when the other boats started coming out of Caribou, they left the area.”

Northern Pulp told the CBC, “At all times, the safety of employees, contractors and their employees is our first priority. When situations occur, we will seek guidance and work with authorities to ensure the safety of all involved.”



Though the Northern Pulp mill near picturesque Pictou, N.S., provides much-needed jobs for the town of about 3,000 residents, its plan to dump millions of litres of effluent daily into the Northumberland Strait has raised concerns about the impact on the lobster fishery, other seafood businesses and protected areas along the strait. (ANDREW VAUGHAN/THE CANADIAN PRESS)

A spokesperson for the Royal Canadian Mounted Police told the CBC that officers had been called to the pier due to a “potential for conflict,” but that no offenses had been committed.

By the afternoon, the boat had been hauled out of the water, locals noted on Facebook.

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“I don’t want to see anybody get hurt,” MacCarthy told the CBC. “I didn’t want to see anybody go to jail for Northern Pulp. But that’s the way fishermen are talking, that this is not going to end well.”

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Smiling Goat baristas hold dance-party rally over thousands in owed wages

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Federation of Nova Scotia Woodland Owners throws support behind Northern Pulp

The News

Published: Dec 08, 2018 at 11:08 a.m.



File Photo

The Federation of Nova Scotia Woodland Owners, a province-wide organization whose purpose is to champion the interests of private woodlot owners, has issued a release to express its support for the continued operation of the Northern Pulp mill at Abercrombie Point.

In a release the federation stated that the mill provides vital jobs for the rural economy of the province, jobs in harvesting and silviculture, in trucking, and in the equipment and other industries.

“The mill buys sawdust, bark, and other byproducts from the province’s sawmills, and this revenue in some cases provides enough income for the sawmill to survive,” it states.

The release also notes that Northern Pulp, in turn, is the largest supplier of logs to the sawmills and warns that if that source vanishes, the sawmills – and the jobs and income they provide – will likely perish as well.

“This would essentially spell the end of the forest industry west of the Canso Causeway.”

The Federation stated that it is fully aware of the need to operate the mill in a responsible fashion in relation to the environment.

“When the mill was put into operation half a century ago, anti-pollution measures were inadequate; this was characteristic of most or all industrial operations of that era.”

But it stated that over the years, a series of increasingly stringent regulations have been placed upon the mill, and that process continues.

“The Federation supports the efforts of the owner and staff of Northern Pulp, and the government agencies involved, to bring the mill into environmental compliance, and we hope that all parties will exercise the necessary patience and tolerance to see it through.”

RELATED:

Ripple effect: Forestry industry anxiously watching Northern Pulp developments, fear potential impacts on sector

'Challenges ahead': Northern Pulp committed to staying in Pictou County despite timeline crunch

Environment minister still waiting on Northern Pulp's plans regarding Boat Harbour

Jan 11, 2019 5:18 AM by: Matthew Moore



The Northern Pulp Nova Scotia Corporation mill is seen in Abercrombie, N.S. on Wednesday, Oct. 11, 2017. THE CANADIAN PRESS/Andrew Vaughan

HALIFAX - The province's environment minister is still awaiting to hear from Northern Pulp regarding their plans for Boat Harbour, as the company has one year until its closure.

Environment minister Margaret Miller said she is expecting to get a submission by month's end.

"I know staff has been working with them and we're expecting something at the end of the month but we haven't received anything yet or any clear indication of what exactly is coming in," she said.

In an emailed statement, Northern Pulp indicated the mill will register the project with the province this month.

NDP leader Gary Burrill said Northern Pulp continues to let down residents of the province.

"If you were to write a text about bad corporate citizenship, Northern Pulp would probably be chapter one."

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KB [Ken Burrows](#) Jan 11, 2019 2:03 PM

The Northern Pulp mill must be shut down no matter what the economic cost is to the province. The harm that mill has caused to people, wildlife and the environment is beyond calculation. The government must not allow that toxic poisonous mill to continue.

MG [Morris Givner](#) Jan 11, 2019 8:21 PM

It is of paramount importance that the Nova Scotia Government mandates that the Northern Pulp Mill and all others must not pollute the Northumberland Strait and all waters around all industrial plants .The reason: all life is harmed by the chemical pollutants from pulp mills. Once sea life is decimated by man-made chemicals,over fishing or turbines,it will never recover. We should learn from the Federal Government's decision making and stupidity which ruined the Newfoundland Cod industry. Currently,B.C. Salmon is threatened because of human- made pollution and inroads into the essential waters required for salmon reproduction and growth.



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Ellen Page steps up attack on Nova Scotia pulp mill's effluent pipeline

Alex Cooke, The Canadian Press

Published Monday, December 10, 2018 7:52AM EST

Last Updated Monday, December 10, 2018 9:57AM EST

HALIFAX -- Hollywood actor Ellen Page is doubling down on her criticism of a Nova Scotia pulp mill, rallying her 1.4 million Twitter followers against its plan to build an effluent pipeline into the ocean.

"Nova Scotia government MUST stop its corporate welfare for company that is literally destroying the province," the Halifax-born movie star tweeted Monday about the Northern Pulp mill.

"Enough is enough."

RELATED STORIES

[N.S. paper mill asks for public help as protests mount, Ellen Page criticizes](#)

[N.S. fishermen to block mill's survey vessel from entering Northumberland Strait](#)

[Fishing boats converge on Nova Scotia harbour as part of effluent pipe protest](#)

The plan to dump treated effluent from the company's Abercrombie, N.S., mill into the Northumberland Strait has raised the ire of fishermen, environmentalists and the P.E.I. government.

Page has been waging a Twitter campaign against Northern Pulp for weeks, often retweeting criticism of the mill.

Last month, Page, who starred in "Inception," "Juno," "X-Men" and numerous other films, tweeted in support of author Joan Baxter's book "The Mill: Fifty Years of Pulp and Protest," which traces decades of criticism of the mill's environmental impact.

It also examines the tactics originally used to convince the Pictou Landing First Nation to sign off on the deal allowing pollution to flow to Boat Harbour.

"Did it make me sad and angry? Yes. Did it also inspire me greatly? Yes," Page tweeted of the book.

A Nova Scotia Supreme Court judge ruled last week the province must consult with the Pictou Landing First Nation on any funding of Northern Pulp's effluent treatment facility.

Justice Timothy Gabriel said if the province becomes a financial backer of the treatment plant, that raises questions on whether the level of funding will mean "upgraded safeguards" in light of what the Mi'kmaq community has endured.

He said if the government consults on environmental aspects of the plant's construction, it should take a "holistic" approach and also consult on the financing it is willing to provide.

Premier Stephen McNeil has hinted that his government will appeal the ruling, saying he would "have more to say" on the matter.

PHOTOS



Fishing boats pass the Northern Pulp mill as concerned residents, fishermen and Indigenous groups protest the mill's plan to dump millions of litres of effluent daily into the Northumberland Strait in Pictou, N.S., on Friday, July 6, 2018. (THE CANADIAN PRESS / Andrew Vaughan)

Also last week, Northern Pulp said it's taking legal action after fishermen blocked survey boats hired to examine a route for the proposed pipeline.

Kathy Cloutier, a spokeswoman for Northern Pulp's parent company Paper Excellence Canada, said the mill has initiated action seeking an interim injunction to prevent blockades or obstructions of the survey work in the Northumberland Strait.

"Our hope was that the surveying would be allowed to occur without incident or obstruction, however actions indicated that the environmental assessment survey work would not proceed without the company seeking a court injunction," Cloutier said in an email.

But Allan MacCarthy of the Northumberland Fishermen's Association called the legal action "frivolous," saying: "The fishermen have stated all along there will be no pipe in the Northumberland Strait. We are not backing down from that."

The wider Gulf of St. Lawrence fisheries region is home to lobster and crab fisheries that brought in over \$1.2 billion worth of catch in 2016.

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Department of Lands and Forestry employees are lobbying the government to delay cleanup of Boat Harbour

Morning File, Friday, January 25, 2019

JANUARY 25, 2019 BY TIM BOUSQUET

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News

1. Scott Brison



Scott Brison. Photo: Jennifer Henderson

Writes Jennifer Henderson:

“Being the President of the Treasury Board is a bit like peeing in a dark suit,” chuckles Scott Brison. “It gives you a warm feeling, but nobody notices.”

Brison, the Liberal Member of Parliament for Kings-Hants, resigned his Cabinet post a couple of weeks ago and, after 22 years in public life, announced he would not be standing for re-election. Wednesday, he gave the keynote address at the Atlantic Conference on Public Administration. “Scott Brison Unplugged” was an irreverent and inspiring pep talk to an audience of mostly masters students and civil servants.

[Click here to read “Scott Brison Unplugged: outgoing MP encourages students to join public service.”](#)

This article is for subscribers. [Click here to subscribe.](#)

2. St. Mary’s River



Photo: Joan Baxter

“For many years, when the St. Mary’s River Association (or SMRA) held meetings in Sherbrooke on Nova Scotia’s Eastern Shore, the group members’ purpose was primarily to report on the headway they were making in their efforts to achieve their vision of ‘Health for our river, the Atlantic salmon and our community,’” reports Joan Baxter:

For many years, when the St. Mary’s River Association (or SMRA) held meetings in Sherbrooke on Nova Scotia’s Eastern Shore, the group members’ purpose was primarily to report on the headway they were making in their efforts to achieve their vision of “Health for our river, the Atlantic salmon and our community.”

Members would gather in the St. Mary’s Education and Interpretive Centre, which volunteers from the community built in 2001 with financial help from supporters of their cause.

The interpretive centre, which doubles as a salmon museum, is a testament to the storied history of the river. It is filled with exhibits of fly-fishing gear through the ages, photos of species at risk such as wood turtles, and of huge Atlantic salmon specimens that could once

be caught in the river. There is also a display devoted to famous anglers who have fished in the river over the decades, including the legendary American baseball player, Babe Ruth.



St. Marys Centre fly-fishing exhibit. Photo: Joan Baxter

Since it was formed in 1979, SMRA volunteers have worked on countless projects to try to improve the health of the river and the local economy that revolves around it. The aim, according to SMRA president Scott Beaver, is to restore the river and the salmon population to a state that will permit a catch-and-release fishing season in the river.

In 2017, 60,000 salmon fry and 21,000 sea trout fry were released into the St. Mary's River, and SMRA also promoted recreational and tourism opportunities in and around the river.

In recent years, with financial support from the Department of Fisheries and Oceans and other sponsors, SMRA has worked on \$1 million worth of restoration on almost 20 kilometres of river habitat. It is the only river in Nova Scotia with a salmon recovery plan.



SMRA members stocking river. Photo: SMRA

Past issues of SMRA's annual newsletters offer a glimpse of the astounding amounts of unpaid time, energy, and enthusiasm that people in rural communities devote to trying to make their small parts of the world better and healthier places. The tone of the newsletter is always upbeat, the reports brimming with optimism and positivity.

The SMRA meeting held this week was not.

Baxter goes on to relate that SMRA fears the proposed Cochrane Hill gold mine will poison the river and destroy the recovering salmon fishery, and so the group and others river friends have organized a "No Open Pit Excavation" (NOPE) campaign in opposition to the mine.

[Click here to read "Friends of St. Mary's River say 'NOPE' to Atlantic Gold."](#)

This article is not behind the paywall, but come on, [subscribe anyway](#); it costs real money to put this stuff together.

3. Naturalists sue to protect endangered species

From the [Healthy Forest Coalition](#) via [Nova Scotia Forest Notes](#):

Wildlife biologist Bob Bancroft and nature organizations launch legal action for Nova Scotia's species at risk

Mr. Bob Bancroft and three of Nova Scotia's naturalists' societies say it is time to ask the courts to intervene on behalf of Nova Scotia's most at-risk wildlife and plants.

"The Department of Lands and Forestry has mandatory legal obligations under the Endangered Species Act that have not been fulfilled," explains retired Acadia University biology professor Dr. Soren Bondrup-Nielsen, president of Blomidon Naturalists Society, one of the parties to the legal proceedings. "We're simply asking the Court to tell our government to do what it is already required to do by law."

In court documents filed today, the applicants allege that the Department of Lands and Forestry (formerly the Department of Natural Resources) has failed to meet its legal obligations with respect to 34 species, including mainland moose, wood turtle, bank swallow, and a host of other species designated at risk in Nova Scotia.

“The Department has not yet identified core habitat for our mainland moose, a requirement that is now over-due by more than a decade,” says wildlife biologist Bob Bancroft, president of the Federation of Nova Scotia Naturalists (also known as Nature Nova Scotia).

The legal documents allege that the Department of Lands and Forestry has not yet identified a single acre of core habitat of threatened and endangered species, despite the legal requirement to do so under the Endangered Species Act.

Other short-comings noted in the documents include failures to appoint recovery teams and create recovery plans within the time-frames required under the Act.

“This is a rule of law case,” notes Jamie Simpson, lawyer for the applicants. “The Act requires the Minister of Lands and Forestry to do certain things towards the recovery of species at risk in Nova Scotia. We are asking the Court to uphold the rule of law and require the Department to abide by the Act.”

The Department’s short-comings with respect to species at risk has been reported several times. In 2015, the East Coast Environmental Law Association published a report calling on the Department to address the alleged violations of the Species at Risk Act. In 2016, the Office of the Auditor General of Nova Scotia published a review of the Department’s track-record on species at risk, noting the alleged failure to fulfill mandatory requirements under the Act.

4. Boat Harbour



The aeration pond at Boat Harbour. Photo: Joan Baxter

The Executive Committee of the Nova Scotia Forest Technicians Association [has sent a letter](#) to all the groups members, urging members to lobby the government for an extension on the deadline for ending Northern Pulp's piping of mill effluent into Boat Harbour. The letter reads:

Dear NSFTA Members,

As your executive, we are graciously asking for your help in order to show a collective voice in support of Northern Pulp and an extension to the January 2020 Boat Harbour Act deadline. The extra time is necessary for Northern Pulp to complete the construction of a new, environmentally responsible onsite treatment system. Those opposed to the project have been very vocal and our government needs to hear the voices of the people who are in support of Northern Pulp and their vitally important role within the forest industry. If you would like to help, you can simply send an e-mail to your local MLA with a message urging an extension amendment to the January 2020 Boat Harbour Act Deadline (please see link below to access MLA contact information). Also, attached is an example of a letter that can be used as a message and sent directly to Premier Stephen McNeil. Without Northern Pulp our \$2.1 billion forest industry is at risk and along with it the livelihood of thousands of workers including many forestry professionals.

Respectively,

Your NSFTA Executive Committee

Membership in the Forest Technician Association is limited to “graduates of a school/college of Forest Technology, recognized by the NSFTA.”

All well and good; this is a free country, people can say what they want...

However.

Is it a problem that one person on the Executive Committee — Rick Andrews — is also an employee of the provincial Department of Lands and Forestry?

And although they didn't sign the letter, along with Andrews, five other department employees — David Steeves, Derek Gilby, Jim Rudderham, Cheryl Rudderham, and Ian Gunn — sit on NSTFA's Board of Directors?

I'll let others debate the ethics of government employees lobbying the political establishment on issues related to their public service careers — school teachers might have some interest in this — but however that debate falls out, this sure looks to me like “regulatory capture.” It's long been said the regulatory regime at the old Department of Natural Resources, now Lands and Forestry, is in the pockets of the forest industry, and the Forest Technicians' letter supports that argument.

Government

No public meetings.

On campus

Dalhousie

Chemistry Under Pressure (Friday, 1:30pm, Room 226, Chemistry Building) — Eva Zurek from the State University of New York, Buffalo, will speak.

Accra as a “Fetish Capital”(Friday, 3:30pm, Room 1170, Marion McCain Building) — Jonathan Roberts from Mount Saint Vincent University will speak.

Mount Saint Vincent

Cultural challenges for Chinese professionals in Canadian workplaces (Friday, 2pm, Keshen-Goodman Library) — Tianyuan Yu will speak.

In the harbour

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- 06:00: **ZIM Monaco**, container ship, arrives at Pier 42 from Valencia, Spain
- 07:00: **Onego Rio**, cargo ship, moves from anchorage to Pier 28
- 07:00: **Oceanex Sanderling**, ro-ro container, moves from Pier 41 to Autoport
- 10:00: **Horizon Star**, offshore supply ship, arrives at Dartmouth Cove from the offshore
- 11:30: **Oceanex Sanderling** moves back to Pier 41
- 16:30: **ZIM Monaco** sails for New York
- 16:30: **Nolhanava**, ro-ro cargo, sails from Pier 36 for Saint-Pierre

Footnotes

I should've had guest writers for this week's Morning File as well. Still working on something.

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DEAD WRONG



A botched police investigation and a probable wrongful conviction shed light on the murders of dozens of women in Nova Scotia.

This is a multi-part series still in publication. [Click here to go to the DEAD WRONG home page.](#)

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The Halifax Examiner was founded by investigative reporter Tim Bousquet, and now includes a growing collection of writers, contributors, and staff. Above, top row, left to right: Russell Gragg, Jennifer Henderson, Admin person extraordinaire Iris, Tim Bousquet, Stephen Kimber, Linda Pannozzo, Evelyn White, Katie

Toth. Bottom row: Erica Butler, Tempa Hull, El Jones [More about the Examiner.](#)

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Court rules that Nova Scotia must consult Mi'kmaq on financing of Northern Pulp effluent plant

By Staff The Canadian Press



The Northern Pulp Nova Scotia Corporation mill is seen in Abercrombie, N.S. on Wednesday, Oct. 11, 2017.

The Canadian Press/ Andrew Vaughan

A Nova Scotia Supreme Court decision says the province must consult with a Mi'kmaq community about how public money is provided to a pulp mill that has sent its effluent into an estuary near the band for five decades.

Justice Timothy Gabriel ruled Friday that if the province becomes a financial backer of Northern Pulp's effluent treatment plant, that raises questions on whether the level of funding will mean "upgraded safeguards" in light of the what the people of Pictou Landing First Nation have endured.

Gabriel said if the government consults on environmental aspects of the plant's construction, it should take a "holistic" approach and also consult on the financing it is willing to provide.

He said the two issues are linked, giving the example of how funding could be tied to a system of penalties based on whether emission and effluent discharge targets are reached by the new system.

READ MORE: Pressure mounts on Ottawa to review N.S mill's contentious effluent pipeline

The judge concluded the Crown has a duty to consult with the first nation, including on the issue of whether funding should be provided at all.

"The consultations between the parties must necessarily include ... whether the province should fund the construction and design of the effluent treatment plan and pipeline, and, if so, what form that financing will take," he wrote.

Provincial legislation requires the closure of effluent flowing to a facility at the heavily polluted Boat Harbour lagoon by Jan. 31, 2020.

The commitment was made by Stephen McNeil's government in 2015 to the Pictou Landing First Nation after five decades of the waste water flowing into the estuary on the edge of the Pictou Landing First Nation.

The province has also indicated it is in discussions with Northern Pulp regarding Crown funding for the treatment facility for effluent from the bleached kraft mill at Abercrombie Point, N.S., though the amount it may contribute remains unclear.

Brian Hebert, the lawyer for the Pictou Landing First Nation, said in an interview that the court decision means the band can demand information about how the money provided by the province would extend the life of the plant – and what impact that might have in terms of potential air pollution.

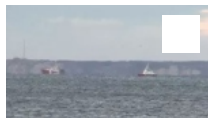
A spokesman for the Office of Aboriginal Affairs says the province is reviewing the judge's decision and "considering the direction from the court as we look at next steps in the ongoing consultation with Pictou Landing First Nation."

"Justice Gabriel's decision did dismiss the First Nation's claims of procedural unfairness and noted the novel nature of the issue raised, and that both parties sought guidance from the court in good faith," wrote spokesman Gary Andrea.

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Featured



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News and weather update: Tuesday Jan 29, 2019



Clean-up effort continues in Sussex



Wild weather damage at N.S. cemetery



Longtime police dog hangs up his collar



Mid-winter ice rescue training

Boat Harbour deadline won't move but open to legislature debate: Premier



The Northern Pulp mill is seen in Abercrombie, N.S. on Wednesday, Oct. 11, 2017. (THE CANADIAN PRESS/Andrew Vaughan)

THE CANADIAN PRESS

Published Thursday, January 24, 2019 5:35PM AST

Last Updated Thursday, January 24, 2019 6:43PM AST

HALIFAX -- Nova Scotia's premier says he has no intention of changing a legislated deadline to close the Northern Pulp mill's wastewater treatment plant in Boat Harbour -- but he is open to debating proposed changes in the legislature.

Stephen McNeil said any changes to the January 2020 deadline would have to evolve out of a community consensus in Pictou County, and would have to be brought to the floor of the legislature by the area's Opposition members.

In the meantime, McNeil said the government will keep its word to stick to the deadline.

"What I've said is if the community could come together and find some resolution and they want an adjustment, they need to put that on the floor. Other than that we're moving forward," he said following a cabinet meeting Thursday.

The heavily polluted treatment lagoon is on the edge of the Pictou Landing First Nation, and Chief Andrea Paul is on the record as being opposed to changing the date, something McNeil acknowledges.

"She's been very clear and we've been clear, said McNeil. "All I'm saying is, if people have changed their mind about what they voted on ... let's have a conversation about it. I haven't changed mine."

Progressive Conservative Leader Tim Houston said he believes the government is looking for political cover after creating a "jam" it doesn't know how to get out of.

"The government realizes that they have created a mess and they are trying to spread it around," said Houston, who added the company has also played a role in what's "become a mess."

McNeil maintains the company has had plenty of time to deal with legislation that was passed in May 2015.

Houston, who is MLA for Pictou East, said while there may be a scenario where he would bring forward an amendment to the deadline, he doesn't know what that could be at this point. He said he is willing to look at any new information that comes forward.

"As we stand here today I don't have any information that suggests the deadline should be moved."

The province is still waiting for an environmental assessment application from the mill on its plan to pump millions of litres of effluent through a system of pipe into the Northumberland Strait.

Mill officials have said in the past that no pipe would mean no mill.

In an interview earlier this week, Kathy Cloutier, a spokeswoman for Northern Pulp's parent company, Paper Excellence Canada, said it plans to submit its application with the provincial Environment Department either on or before Jan. 31.

Cloutier said the application won't include seismic testing of the proposed outfall area because ice in the Strait has likely delayed the survey work until early in the spring.

"The seismic goes more with the constructability aspect," said Cloutier. "So the environmental assessment will be filed as a complete document and then if there is some follow-up it would be around that construction aspect. The science is there for the actual location."

Environment Minister Margaret Miller said Thursday the mill's application documents will be made public within a week of being received.

A 30-day public consultation process would then kick in, to be followed by a 20-day review period by the department.

"We're going to look at the submission as it is," said Miller. "At the end of the process I have the opportunity to either deny the application, to approve it with conditions, or to send it back and ask for more information."

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CTV News at Six Atlantic for Monday, Jan. 28, 2019

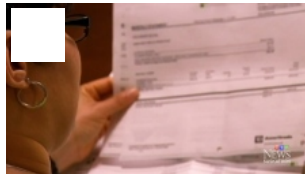
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MPs navigating their way around new House of Commons

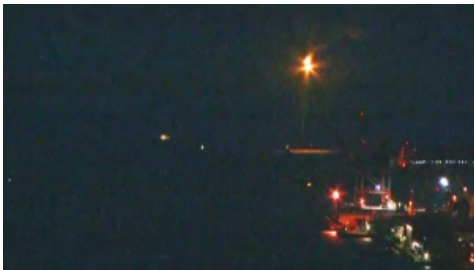


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A search is underway for a missing person after a 12-metre vessel sank off Devils Island at the mouth of Halifax harbour early Tuesday.



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'Stop it at all costs': The blockade of Northern Pulp Mill continues



By Alexander Quon

Online Producer/Reporter Global News

WATCH: For the second day in a row, fishermen have successfully rebuffed a survey ship from leaving Boat Harbour in an attempt to chart a route for the planned effluent pipe. Silas Brown has the details.

The blockade of a pulp mill in Nova Scotia continued on Tuesday with fisherman from the surrounding area of Pictou, N.S., saying they'll do whatever it takes to stop a controversial waste pipe.

For the second day in a row, fishermen have successfully rebuffed a survey ship from leaving Boat Harbour in an attempt to chart a route for the planned effluent pipe, which would carry waste away from the Northern Pulp mill into the Northumberland Strait.

"We were hoping it wasn't going to come to this, but apparently it is and we're ready to do whatever we have to do," said Darryl Bowen, 48, a fisherman from Caribou, N.S., taking part in the blockade.

"We'll stop it at all costs."

READ MORE: N.S. fishermen to block Northern Pulp's survey vessel from entering Northumberland Strait

Last month, a survey vessel was guided back to shore by Bowen and other fishermen who fear that the waste pipe will critically harm the fishery between Nova Scotia and Prince Edward Island.

"Our livelihoods are at stake here. If they destroy the ecosystem of the Northumberland Strait, we're done for generations," Bowen said.

"They can pump Boat Harbour out, they can clean that. You can't drain the Northumberland Strait."

On Tuesday, the blockade was joined by fishermen from Pictou Landing First Nation, which borders on Boat Harbour.

Warren Francis says his band has been dealing with waste from the Northern Pulp Mill from his entire life.

The mill pumps 70 million litres of treated waste daily into lagoons on the edge of the reserve.

“Even our health issues on the reserve are pretty bad, like with breathing disorders and asthma, and I attribute that to Boat Harbour and the air quality that we’re getting right from the lagoon. Now they want to take it from our backyard and move it to our front yard,” Francis said.

Francis says all the fisherman in the area stand together in opposition to the pipe and are calling on the province to look after its people.

The lagoons contain nearly 50 years’ worth of toxic waste, which former Nova Scotia environment minister Iain Rankin has called one of the worst cases of environmental racism in Canada.

“Who is the government looking after?” he asked.

“Are they looking after corporations from across the world, or people from their own backyards?”

Under provincial legislation, the mill, which employs approximately 300 residents in the Pictou area, has until 2020 to replace its current wastewater treatment plant in Boat Harbour, and Premier Stephen McNeil has confirmed he is sticking with that deadline.

Paper Excellence, of Richmond, B.C., has said the mill’s employees will be out of work unless it can build a pipeline to the strait.

Bowen says the blockade will continue until the harbour freezes for the winter, at which point work will be stopped.

—*With files from The Canadian Press and Silas Brown*

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\$6M in taxpayer dollars for N.S. effluent plant stinks, says opponent



'It's a conflict of interest, a direct conflict of interest,' says fishermen's association president

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Nova Scotia taxpayers have contributed \$6 million toward early work on a new effluent treatment facility that would replace the Boat Harbour plant. (George Sadi/CBC)

Nova Scotia taxpayers have contributed \$6 million toward design work and engineering studies for a new wastewater treatment plant that will handle effluent discharged from the Northern Pulp paper mill in Pictou County.

Those against the plan to dump what comes out of the facility into the Northumberland Strait are not happy the province is picking up part of the cost.

"It's a conflict of interest. A direct conflict of interest," said Ronnie Heighton, a lobster fisherman and president of the Northumberland Fishermen's Association.

- [Taxpayers won't likely shoulder full cost of Boat Harbour replacement, minister says](#)

Heighton said it isn't right for the Liberal government to pay for part of the treatment facility when it is also in charge of conducting an environmental assessment of the project.

Environmental impact

He and other opponents are worried over the effluent's impact on the environment.

"It's going to smother the bottom. There will be no fish living. It'll just be a dead zone in the Northumberland Strait," Heighton said.

- [Fishermen worry Northern Pulp treatment plan will create 'dead zone'](#)

The plant will replace the existing, government-owned Boat Harbour effluent treatment facility, which the province has promised to close by Jan. 31, 2020.

The province said it needs to contribute taxpayer money toward the new plant because it's in a lease agreement with Northern Pulp. Under the Boat Harbour Act, the existing plant must be closed 10 years before the lease ends.

Lease agreement

"The contribution allows negotiations with Northern Pulp to continue and will be credited toward any future agreement," said Marla MacInnis, a spokesperson for the provincial Department of Transportation and Infrastructure Renewal.

The \$6-million figure "is part of a larger discussion with Northern Pulp which is yet to be concluded."

MacInnis said the department is working "to find a solution which ensures an environmentally friendly and economically sustainable future" for Pictou Landing First Nation, the Pictou area, Northern Pulp and others.

Ottawa's role

Heighton, however, thinks the federal government should be in charge of the environmental assessment — not the province.

- [Feds could get involved in Northern Pulp assessment](#)

"We can't trust the provincial government," Heighton said. "This has to go to the feds. At least they'll be somewhat independent."

A spokesperson for Northern Pulp told CBC negotiations are ongoing between the company and the province and that the final cost of the effluent treatment plant has yet to be determined.

There is also no deal on who will pay for it or own it once it's built.

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with files from Jean Laroche

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