Re: Ministerial Order Against Imperial Oil Ltd.
2002 YKSC 14

Date: 20020307
Docket: S.C. No. 01-A0035 & S.C. No. 01-A0036
Registry: Whitehorse

IN THE SUPREME COURT OF THE YUKON TERRITORY

RE: A MINISTERIAL ORDER AGAINST RESPONSIBLE PARTY,
DATED OCTOBER 5, 2000,
ISSUED BY BILL OPPEN, DEPUTY MINISTER,
DEPARTMENT OF RENEWABLE RESOURCES,
AGAINST IMPERIAL OIL LTD.
REGARDING SITE LOCATION MARWELL TAR PIT, WHITEHORSE, YUKON

AND:

RE: A MINISTERIAL ORDER AGAINST RESPONSIBLE PARTY,
DATED OCTOBER 5, 2000,
ISSUED BY BILL OPPEN, DEPUTY MINISTER,
DEPARTMENT OF RENEWABLE RESOURCES,
AGAINST IMPERIAL OIL LTD.
REGARDING SITE LOCATION 146 INDUSTRIAL ROAD, WHITEHORSE, YUKON

REASONS FOR JUDGMENT OF
MR. JUSTICE R.S. VEALE

INTRODUCTION

[1] Imperial Oil Ltd. (Imperial Oil) brings this application on a point of law pursuant to Rule 34. Imperial Oil applies for an order quashing the Ministerial Orders issued against Imperial Oil by the Government of Yukon (YTG) under the *Environment Act*, S.Y. 1991, c. 5, as amended. YTG opposes the hearing of the point of law under Rule 34 and on the merits.

ISSUES

[2] There are two broad issues to be determined:

1. Is the application to quash the Ministerial Orders an appropriate matter to be heard under Rule 34?

2. Does the Minister have a duty of fairness that arises prior to issuing the Ministerial Orders?

FACTS

[3] The Canol Oil Refinery was located in the Whitehorse Industrial Area and was operated under the auspices of the U.S. Army during World War II. After the refinery was closed in 1946, it was sold to Imperial Oil by the U.S. Army in 1947. The Canol Oil Refinery was dismantled and shipped to Edmonton, Alberta. The factual circumstances surrounding the dismantling of the refinery are crucial to the issuance of the Ministerial Orders.

[4] The Whitehorse industrial area sites, now described as 146 Industrial Road and as the Marwell Tar Pit, were the subject of Notices of Designation of Contaminated Site dated September 4, 1998, and amended September 5, 2000.

[5] By Ministerial Orders dated October 5, 2000, Imperial Oil was named as a Responsible Party under the *Environment Act,* supra*,* with respect to both 146 Industrial Road and the Marwell Tar Pit site, and was directed to:

> 1. undertake investigations, tests and surveys as may be necessary to complete a site investigation, as

described in s. 7 of the *Contaminated Sites Regulations*, and a site assessment, as described in s. 8 of the *Contaminated Sites Regulations*, to determine the extent and the effects of contamination at the contaminated site and to report the results of the site assessment to the Minister;

2. to establish a plan of restoration for the contaminated site and a timetable for the execution of the restoration work; and

3. to carry out restoration or rehabilitation of the contaminated site in accordance with the *Contaminated Sites Regulations*.

[6] The orders, when issued, required that the site investigation and site assessment reports be delivered no later than September 1, 2001. However, since then, the parties have agreed to extend the compliance date to September 30, 2002. The orders further direct that the plan of restoration and the restoration and rehabilitation work required are to be completed within the time to be specified by the Deputy Minister following receipt of the site investigation and site assessment reports.

[7] A Statement of Reasons was attached to the Ministerial Orders. Under the heading “Identification of Responsible Parties” of the Ministerial Order for 146 Industrial Road, paragraphs 3 and 5 set out the following:

3. Documents concerning the construction, sale and subsequent dismantling of the refinery indicate that Imperial Oil Ltd. purchased the refinery in 1947 from the government of the United States of America and subsequently contracted W.W. Barnes Company of Los Angeles, California to dismantle the refinery. The dismantling efforts took place from the fall of 1947 until late in the spring, 1948.

5. Imperial Oil Ltd. is a corporation that has a registered office in Whitehorse pursuant to the *Business Corporations Act.* Standard Oil Company and W.W.

> Barnes Company, although understood to still be in existence, are not registered corporations, companies, partnerships or proprietorships in the Yukon and thus, at this time, the Yukon does not have the requisite information or jurisdiction to issue a s.115(1) order against the Standard Oil Company or the W.W. Barnes Company. The Department of Defence and the Secretary of State of the United States of America are extraterritorial bodies which would not be bound by a s.115(1) order issued under the *Environment Act.*

[8] With respect to the site located at 146 Industrial Road in Whitehorse, WPT Holdings and Russel Metals also received a virtually identical Ministerial Order.

[9] On November 22, 2000, Imperial Oil advised the Environmental Protection and Assessment Branch of YTG of its intention to seek judicial review of the Ministerial Orders.

[10] Imperial Oil was requested to inform YTG as to the nature of its complaint with respect to the Ministerial Orders issued against it, prior to filing petitions for judicial review of such orders. Imperial Oil did not respond to this request and did not avail itself of its right to complain to the Minister pursuant to section 22 of the *Environment Act*.

[11] Imperial Oil filed its petitions herein on May 14, 2001, accompanied by the supporting affidavits of John Stevens.

[12] The petitions filed by Imperial Oil on May 14, 2001, seek the following orders:

a) staying the Ministerial Orders dated October 5, 2000;

b) granting both an interim and a permanent injunction enjoining the Department of Renewable Resources from taking any further action against Imperial Oil regarding the sites in question;

c) *certiorari* or prohibition pursuant to Rule 63(1) to quash the Ministerial Orders dated October 5, 2001;

d) alternatively, a declaration that the Ministerial Orders are null and void and of no force and effect against Imperial Oil; and

e) costs.

[13] Prior to the issuance of the Ministerial Orders, there had been no contact between any department of YTG and Imperial Oil regarding the investigation of the Site Location 146 Industrial Road or the Marwell Tar Pit to identify potentially responsible parties and the possibility that orders requiring the restoration and rehabilitation of the site would be issued.

[14] The facts set out above are not disputed by YTG.

[15] The Notice of Motion filed by Imperial Oil in each petition claims the following relief:

> 1. In accordance with Rule 34, to have a point of law set down for hearing on the issue of whether the failure to hold hearings with respect to the Ministerial Order, the subject-matter of the Petition, is a breach of the rules of natural justice and procedural fairness and as a result renders the Ministerial Order void and quashable by this Honourable Court;

2. Under the court's inherent jurisdiction and pursuant to the common law rules relating to an application for *certiorari,* to then have a concurrent adjudication of said point of law; and

3. Costs.

[16] YTG has not filed a reply.

Issue 1: Is the application to quash the Ministerial Orders an appropriate matter to be heard under Rule 34?

[17] Imperial Oil submits that the following point of law is appropriate for hearing under Rule 34: was it a breach of procedural fairness for the Minister to fail to give notice and to hold a hearing before issuing the Ministerial Orders which could result in the quashing of such orders? It is agreed that no notice was given or hearing held by YTG prior to the issuance of the Ministerial Orders.

[18] Rule 34 states as follows:

> *Point of law may be set down for hearing*
> 34(1) A point of law arising from the pleadings may, by consent of the parties or by order of the court, be set down by praecipe for hearing and disposed of at any time before the trial.
>
> *Court may dispose of whole action*
> (2) Where, in the opinion of the court, the decision on the point of law substantially disposes of the whole action or of any distinct claim, ground of defence, set-off, counterclaim or reply, the court may dismiss the action or make any order it thinks just.

[19] The leading authority on a Rule 34 proceeding is *Alcan Smelters and Chemicals Limited v. Canada Association of Smelter and Allied Workers, Local 1* (1977), 3 B.C.L.R. 163 at 165 (S.C.). This case sets out the following principles at p. 165:

> The following principles must be observed in considering an application under R. 34:
>
> 1. The point of law to be decided must be raised and clearly defined in the pleadings: see *Dutton-Williams Bros. Ltd. v. Inland Natural Gas Co.* (1960), 31 W.W.R. 575 (B.C. C.A.);
>
> 2. The rule is appropriate only to cases where, assuming allegations in a pleading of an opposite party are true, a question arises as to whether such allegations raise and support a claim or a defence in law: see *Reichl v. Rutherford-McRae Ltd.* (1964), 47 W.W.R. 227 at 231 (B.C. C.A.);
>
> 3. The facts relating to the point of law must not be in dispute and the point of law must be capable of being resolved without hearing evidence: see *Dutton-Williams Bros. Ltd. v. Inland Natural Gas Co.,* supra; *Banks Industrial Supply Ltd. v. Ritchie Bros. Auctioneers Ltd.,* [1972] 1 W.W.R. 231 (B.C.C.A.); and *Armstrong v. Levine* (1964), 47 W.W.R. 635 at 636-37 (B.C.);
>
> 4. Whether a point of law ought to be decided before the trial of the action is discretionary, and it must appear that the determination of the question will be decisive of the litigation or a substantial issue raised in it: see *Banks Industrial Supply Ltd. v. Ritchie Bros. Auctioneers Ltd.,* supra;
>
> 5. In deciding whether the question is one which ought to be determined before trial the court will consider whether the effect of such a decision will immeasurably shorten the trial, or result in a substantial saving of costs: see *Dutton-Williams Bros. Ltd. v. Inland Natural Gas Co.* (1959), 30 W.W.R. 421 at 425-26, reversed 31 W.W.R. 575 (B.C.C.A.).

[20] I will address each principle separately:

1. The point of law is raised clearly in the petition of Imperial Oil at paragraph 16 of the facts:

> 16. Prior to the issuance of the Ministerial Orders, there had been no contact between any department of the Government of the Yukon and the Petitioner regarding the investigation of the site location to identify potentially responsible parties and the possibility that orders requiring the restoration and rehabilitation of the site location would be issued.

2. This principle assumes that Rule 34 only applies to a demurrer situation, i.e. where the defendant or respondent assumes the allegations of fact of the petitioner are true but contends that the allegations do not raise a claim in law.

The present case is somewhat different in that Imperial Oil is the petitioner and raises a point of law from its own pleading. I have no difficulty applying Rule 34 to a petition as it is a form of pleading required by Rule 63(1) for an application for *certiorari.*

However, the question of whether Rule 34 is a demurrer rule only is more troubling. There are many cases where the defendant raised the Rule 34 issue out of the pleadings of the plaintiff. In order to make Rule 34 work, the practice is to assume the truth of the allegation, since the defendant's position is that even if the allegations are true, the plaintiff has no claim. However, I also note there are previous Rule 34 proceedings brought by plaintiffs and petitioners. (See *Grennan Estate* v. *Alton,* [2000] Y.J. No. 19 (S.C.) (QL); *Fletcher-Gordon* v. *Southam Inc.*, [1997] B.C.J. No. 269 (S.C.)(QL); *Strata Plan No. VR 2000* v. *Shaw,* [1998] B.C.J. No 1190 (S.C.)(QL); *Allison Estate* v. *Allison,* [1998] B.C.J. No. 2274 (S.C.)(QL); *Allan v. Connellan,* [1998] B.C.J. No. 2321 (S.C.)(QL).)

There is clearly no limiting wording in Rule 34(1), so I conclude that any party can apply to proceed on a point of law. This is confirmed in G.P. Fraser & John W. Horn, *The Conduct of Civil Litigation in British Columbia, (*Toronto: Butterworths, 1978) at 600:

> The parties to an action may by consent set down for hearing any point of law arising from the pleadings or any

> party may apply for an order that the matter be so set down (Rule 34(1)).

Further, Rule 1(5) sets out that the object of the Rules of Court "is to secure the just, speedy and inexpensive determination of every proceeding on its merits."

In my view, it would be contrary to the object of the Rules of Court to place a narrow interpretation on Rule 34 that is not required on a plain reading of the words of the Rule. As a result, the second principle is met by virtue of both parties being in agreement on the fact of no notice or hearing taking place prior to the Ministerial Orders. This proceeding on a point of law has greater factual certainty as no assumption of truth is required.

3. Although the facts are not in dispute, YTG contends that the point of law is not capable of being resolved without further evidence. The facts set out in this decision are not in dispute but there is no doubt that a public policy component exists. YTG contends that there is a "factual vacuum" about whether the Ministerial decisions were "affecting the rights, interests, property, privileges or liberty of any person".

I wish to make it clear that this is not a proceeding on a point of law to determine the content of the duty of fairness, as the Minister is the master of his or her own procedure. (See *Re Nicholson and Haldimand-Norfolk Regional Board of Commissioners of Police* (1978), 88 D.L.R. (3d) 671 at p. 682.) Rather, it is to determine whether a duty of fairness arises in the factual situation of a Ministerial Order for environmental investigation and restoration under a specific statutory regime in the *Environment Act,* supra. Thus, it is not a question of finding further

facts beyond those agreed by the parties. To this extent, I have narrowed the issue presented by Imperial Oil.

4. Although this point of law may not dispose of the entire petition, it certainly would determine a substantial issue in the proceeding.

5. It is always a difficult question to determine whether a proceeding on a point of law will shorten the trial or result in substantial savings of costs. The answer to this question is largely in the hands of the parties. However, in my view, there is a potential for substantial savings for the parties and that is a worthy objective to pursue. As a matter of public interest in a clean and safe environment, the sooner a resolution is reached, the better for all concerned.

[21] In summary, I find that a proceeding under Rule 34 should proceed. The facts necessary to determine this issue are not in dispute and a decision on whether a duty of fairness arises will dispose of a substantial issue.

Issue 2: Does the Minister have a duty of fairness that arises prior to issuing the Ministerial Orders?

[22] The two Ministerial Orders were issued by YTG under Part 9 of the *Environment Act* entitled: *Release of Contaminants*. That *Act* has a broad mandate which is expressed in these words from the Objectives of the *Act*:

> **Objective**
>
> 5.(2) The following principles apply to the realization of the objectives of this Act

…

> (d) the Government of the Yukon is responsible for the wise management of the environment on behalf of present and future generations; …

[23] In section 111 a responsible party "means the person who had possession, charge or control of the contaminant at the time of its release into the natural environment".

[24] Section 114 creates a registry of contaminated sites which includes the site known as 146 Industrial Road and the site known as the Marwell Tar Pit.

[25] Section 115 under which these Ministerial Orders were issued, states:

> **Restoration and Rehabilitation of Contaminated Sites**
>
> **115.**(1) Where the Minister believes on reasonable grounds that an area of land or part thereof is a contaminated site and that
>
> > (a) the contaminated site has caused or is likely to cause unsafe conditions or irreparable damage to the natural environment, or
> >
> > (b) has caused or is likely to cause a threat to public health,
>
> he or she may order a responsible party
>
> > (c) to provide information that the Minister requests relating to the contaminated site;
> >
> > (d) to undertake investigations, tests, surveys and any other assessment of the contaminated site or adjoining lands the Minister considers necessary to determine the extent and effects of the contamination and report the results to the Minister;

> (e) to establish a plan of restoration or rehabilitation for the contaminated site and a timetable for the execution of the work; and
>
> (f) to carry out restoration or rehabilitation in accordance with any standards established by the regulations and any additional requirements specified by the Minister.
>
> (2) An order under subsection (1) shall include a statement of the reasons for the Minister's belief and specify the time within which the order shall be complied with.
>
> (3) The responsible party shall execute the work in a plan established under paragraph (1)(e) in accordance with a timetable ordered by the Minister.
>
> (4) An order made under subsection (1) may authorize any person designated by the Minister to enter land to carry out the restoration or rehabilitation.
>
> (5) The powers conferred by this section are exercisable notwithstanding the terms of a solid waste management plan or special waste management plan approved under Part 7 or a permit.
>
> (6) The Minister shall cause a copy of an order issued under subsection (1)
>
> (a) to be served on the person that owns the land and, where appropriate, the person who occupies the land; and
>
> (b) to be placed in the registry of contaminated sites.

[26] Section 115 clearly creates an onerous obligation upon a responsible party. The statute does not require any notice to be given to a proposed responsible party prior to the issuance of a Ministerial Order. Failure to comply with the terms of such an order is an offence under section 172 of the *Act*, which provides on a first conviction for a fine

not exceeding $300,000 or to imprisonment for a term not exceeding six months or both.

[27] Does the Minister have a common law duty to act fairly? The fundamental rule, as crafted by Lord Denning, was adopted by the Supreme Court of Canada in *Re Nicholson*, supra, at p.682:

> … The fundamental rule is that, if a person may be subjected to pains or penalties, or be exposed to prosecution or proceedings, or deprived of remedies or redress, or in some such way adversely affected by the investigation and report, then he should be told the case made against him and be afforded a fair opportunity of answering it. The investigating body is, however, the master of its own procedure. It need not hold a hearing. It can do everything in writing. It need not allow lawyers. It need not put every detail of the case against a man. Suffice it if the broad grounds are given. It need not name its informants. It can give the substance only. Moreover it need not do everything itself. It can employ secretaries and assistants to do all the preliminary work and leave much to them. But, in the end, the investigating body itself must come to its own decision and make its own report.

[28] *Re Nicholson*, supra, makes it clear that a party “should be told the case made against him and be afforded a fair opportunity of answering it”. It does not mean that a hearing in the classic sense of a trial must be held. There are other ways to provide a fair opportunity and written submissions is one way. However, the Minister must provide the party with the facts and evidence that make up the case against the party.

[29] In *Re Nicholson*, supra, a probationary police constable was dismissed during his probationary period. The case established that the constable was not to be afforded the protection of a constable with more than 18 months of service (the length of the

probationary period), but he should be treated “fairly”. However, *Re Nicholson*, supra, does not, on its facts, apply to the present Ministerial Order.

[30] In the case of *Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 S.C.R. 817, the Supreme Court expanded on the duty of procedural fairness. The case involved a woman with Canadian-born dependant children who was ordered to be deported by an immigration officer. The Supreme Court set out the principles relevant to the determination of the content of the duty of procedural fairness. It was clearly stated that the duty of fairness is triggered when an administrative decision affects the rights, privileges or interest of an individual (para 20).

[31] L’Heureux-Dubé J. stated at para. 22 that:

> … the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.

[32] The factors may be summarized as follows:

(1) the nature of the decision being made and process followed in making it;

(2) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates;

(3) the importance of the decision to the individual or individuals affected;

(4) the legitimate expectations of the person challenging the decision;

(5) the choices of procedure made by the agency itself.

[33] I set these factors out to indicate the areas where further evidence may be required. However, I am not deciding on the content of the duty of fairness but rather whether the duty arises at all.

[34] YTG argues that the Ministerial Orders under section 115 of the *Environment Act*, supra, are the exercise of powers of a legislative nature and therefore procedural fairness does not apply. (See *Aasland v. British Columbia (Ministry of Environment, Lands and Parks,* [1999] B.C.J. No. 1104 (S.C.) (QL) at paras. 25, 26, 27, 36, 37 and 38.) However, these Ministerial Orders are not general in nature but rather specifically affect the rights of an identifiable person and therefore are clearly an administrative function not legislative. Therefore, procedural fairness and *certiorari*, although discretionary, does apply to these Ministerial Orders.

[35] YTG also submits that I should refuse to exercise my discretion in this case because the legislative scheme of the *Environment Act*, supra, provides alternative procedures that the Minister declined to follow. Section 12 of the *Environment Act Contaminated Sites Regulations*, Yukon O.I.C. 1996/192 provides the Minister with the option of appointing a person to obtain information about naming a responsible party prior to issuing a section 115 order. The Minister did not make such an appointment.

[36] Again, section 13 of the Regulations states that the Minister may appoint a mediator to mediate between two or more responsible parties prior to issuing an order under section 115. The Minister did not appoint a mediator.

[37] YTG relies upon the case of *Attorney General of Canada v. Inuit Tapirisat of Canada et al* (1980), 115 D.L.R. (3d) 1 (S.C.C.) for the principle that the statutory scheme as a whole must be construed to determine if the common law duty of fairness applies. The facts in that case are quite distinguishable from these Ministerial Orders. A decision of the CRTC on telephone rates after a full hearing was appealed to the Governor-in-Council. The Governor-in-Council was performing a function formerly performed by the Legislature itself. The Supreme Court of Canada decided that the Governor-in-Council was not an investigating body and hence the duty of fairness did not arise.

[38] Sections 12 and 13 of the *Environment Act Contaminated Sites Regulations*, supra, do not persuade me that the duty of fairness is a discretionary duty to be exercised by the Minister. The Minister, no doubt, could have made use of these sections and thereby have discharged the common law duty of fairness. However, in the circumstance of these orders, the common law duty of fairness has not been discharged and does arise.

[39] YTG further submits, and I agree, that a court has the discretion to refuse the remedy of *certiorari* where another alternative remedy is available. In this case, YTG says that the *certiorari* issue could be dealt with under section 22 of the *Environment Act,* supra. I set out sections 22, 23 and 24:

> **Complaints**
> **22.**(1) Any person or group of persons may complain to the Minister with respect to a decision, recommendation, act or omission of an authority having or exercising power or responsibility under this Act or a schedule A enactment, including the exercise of a discretionary power.

(2) A complaint shall be made in writing.

Duties of the Minister

23.(1) Subject to subsection (2), on receipt of a complaint, the Minister shall

(a) make a record of the complaint and forthwith send a copy of the record to the Council and the complainant;

(b) notify any other authority or person who may be affected; and

(c) attempt to resolve the complaint.

(2) The Minister may cease considering a complaint, if the Minister believes that the complaint is not made in good faith or concerns a trivial matter.

(3) For the purpose of resolving a complaint the Minister may

(a) require an authority to provide any information or produce any document or thing that relates to the subject matter of the complaint, and the authority shall forthwith provide the information or produce the document or thing required; and

(b) refer the complaint to mediation, and for that purpose appoint a mediator and set the terms of reference of the mediation.

(4) The Minister shall report the results of his or her consideration of the complaint to the complainant and the Council and shall supply to the Council any information concerning the complaint and the Minister’s consideration of it that the Council may require.

Yukon Council on the Economy and the Environment to review complaints

24.(1) At any time after the Council receives a copy of the record of the complaint under subsection 23(1), the Council may recommend that the Minister

> (a) report periodically to the Council on the steps taken by the Minister to attempt to resolve the complaint;
>
> (b) take further steps specified by the Council to attempt to resolve the complaint, including referring the complaint to mediation;
>
> (c) reconsider the complaint; or
>
> (d) refer the complaint to the Commissioner in Executive Council for a decision on the merits of the complaint.
>
> (2) Where the Minister receives a recommendation under subsection (1)
>
> (a) the Minister shall report to the Council within a reasonable time on the results of any action taken; or
>
> (b) if the Minister does not act on the recommendation, the Minister shall report the reasons to the Council.
>
> (3) On receipt of a report under subsection (2), the Council may make a further recommendation under subsection (1).

[40] The Council refers to the Yukon Council of the Economy and the Environment (the Council), which is appointed by the Minister from various sectors of Yukon society. With respect to section 22 complaints, it is a recommending body to the Minister. It is clearly not a body with any necessary legal or environmental experience. Also, the Minister would be considering a complaint about his or her own decision which is tantamount to being one's own Court of Appeal.

[41] Section 22 does not make reference to a corporate person but arguably Imperial Oil could be included in "any person or group of persons".

[42] In the case of *Canadian Pacific Ltd. v. Matsqui Indian Band,* [1995] 1 S.C.R. 3 at 31, the relevant factors to be considered are set out as follows:

> I conclude that a variety of factors should be considered by courts in determining whether they should enter into judicial review, or alternatively should require an applicant to proceed through a statutory appeal procedure. These factors include: the convenience of the alternative remedy, the nature of the error, and the nature of the appellate body (i.e., its investigatory, decision-making and remedial capacities). I do not believe that the category of factors should be closed, as it is for courts in particular circumstances to isolate and balance the factors which are relevant.

[43] The following factors are relevant:

1. The complaint procedure is not a legal appeal;

2. The Council does not have any legal or environmental expertise required in its composition;

3. The Council is a recommendation body and the Minister would determine the complaint against his or her own order.

4. The potential sanctions against Imperial Oil are significant.

[44] In view of the fact that the essence of the Imperial Oil petition is that the common law duty of fairness has not been complied with, I find it difficult to imagine that the Council is equipped or even intended to deal with such a complex legal issue. In my view, the alternative remedy proposal is inadequate and inappropriate to determine the issue of whether procedural fairness is required. This is a legal question which needs to be determined by a court of law with legal expertise.

[45] In summary, I find that the common law duty of fairness is applicable to Ministerial Orders under section 115 of the *Environment Act*, supra. Thus, the Ministerial Orders are voidable and it remains to be determined whether the Ministerial Orders should be set aside. That will require a review of the procedures that were followed by the Minister and determination of the specific content of the duty of fairness in these circumstances.

[46] Costs to Imperial Oil in any event of the cause.

_____

Veale J.

Solicitors for the Petitioner	Robert B. White Q.C. Jamie Dee Larkam
Solicitor for the Government of the Yukon	Penelope Gawn