Federal Court Cour fédérale

Date: 20250620

Dockets: T-36-24
T-17-24

Citation: 2025 FC 1119

Ottawa, Ontario, June 20, 2025

PRESENT: Mr. Justice Sébastien Grammond

Docket: T-36-24

BETWEEN:

CITIZENS FOR MY SEA TO SKY

Applicant

and

MINISTER OF ENVIRONMENT AND CLIMATE CHANGE
ATTORNEY GENERAL OF CANADA
WOODFIBRE LNG

Respondents

Docket: T-17-24

AND BETWEEN:

ROBERTA JACQUELINE WILLIAMS
ANNEKA WATT (AD LITEM PAUL WATT)

Applicants

and

IMPACT ASSESSMENT AGENCY OF CANADA
ATTORNEY GENERAL OF CANADA
WOODFIBRE LNG

Respondents

JUDGMENT AND REASONS

[1] The applicants are seeking judicial review of a decision made by the Impact Assessment Agency of Canada [the Agency]. This decision pertained to Woodfibre LNG's project of building a liquefied natural gas [LNG] facility on Howe Sound, near Squamish, British Columbia. More specifically, Woodfibre LNG sought an amendment to its environmental authorizations in order to house its construction workers on a repurposed cruise ship, commonly described as the "Floatel." In the impugned decision, the Agency found that the use of the Floatel would not result in increased impacts on the environment and therefore did not require an amendment to the federal environmental authorization.

[2] The applicants argue that instead of assessing the impacts of the Floatel against the definition of "effects within federal jurisdiction" found in the *Impact Assessment Act*, SC 2019, c 28, s 1 [the 2019 Act], the Agency unreasonably based its decision on the narrower definition of "environmental effect" found in the *Canadian Environmental Assessment Act, 2012*, SC 2012, c 19, s 52 [the 2012 Act]. It is not in dispute that the presence of large numbers of construction workers near small or remote communities gives rise to a heightened risk of gender-based violence. The Agency was aware of this heightened risk but declined to recommend to the Minister of the Environment [Minister] to impose conditions in this regard, because this risk did

not come within the definition of “environmental effect” in section 5 of the 2012 Act. The applicants assert that this was unreasonable. They also argue that the Agency failed to consider the impacts of its decision on human rights protected by the *Canadian Charter of Rights and Freedoms* [the Charter] and international human rights law and breached procedural fairness by failing to hold a public comment period before making the decision.

[3] I am dismissing the applications. It was reasonable for the Agency to assess the Floatel proposal in light of the definition of effects under the 2012 Act rather than the 2019 Act. The decision did not result in an unreasonable balancing of Charter rights and values nor a breach of Canada’s obligations under international human rights law. Moreover, no statutory or common law duty of procedural fairness required the Agency to provide the applicants with an opportunity to make submissions about the Floatel, through a public comment period or otherwise.

I. Background

A. *The Woodfibre LNG Project*

[4] The focus of this application is Woodfibre LNG’s project to build an LNG facility at the site of an abandoned pulp and paper mill on Howe Sound. Briefly stated, natural gas will be supplied to the factory through a pipeline. It will then be liquefied, stored and loaded on ships for export. While the site is located about seven kilometres southwest of Squamish, British Columbia, there is no road access.

[5] The project's environmental impacts were initially assessed ten years ago by Canada, British Columbia and Squamish Nation. Pursuant to section 32 of the 2012 Act, Canada substituted the provincial process for its own. In practical terms, this means that the environmental assessment is performed by a provincial authority, in this case British Columbia's Environmental Assessment Office [EAO]. Nevertheless, the federal Minister retains the power to approve the project and to impose conditions, which are recorded in a "decision statement."

[6] In this case, the EAO prepared an assessment report and approved the project in October 2015. Based on this report, the Minister issued a decision statement approving the project with several conditions in March 2016. One particular feature of this decision statement is that it describes the project by reference to the description contained in the EAO's approval.

[7] I am told that Squamish Nation also approved the project in 2015. The record contains little evidence regarding Squamish Nation's approval. The applicants do not challenge it, and Squamish Nation is not a party to the present proceeding.

B. *The Floatel Proposal*

[8] When the project was first assessed, Woodfibre LNG assumed that construction workers would be housed in existing accommodations in Squamish or Vancouver and ferried to the site daily. During the planning stage, however, Woodfibre LNG realized that this would not be feasible and that other options needed to be considered. It eventually chose to resort to a Floatel.

[9] Given that this would be a material change to the project, Woodfibre LNG notified the three jurisdictions involved in the environmental assessment of the project and sought their approval, through an application submitted in October 2019. In June 2020, the three jurisdictions agreed to cooperate in the analysis of the Floatel proposal. Because of the COVID-19 pandemic and other factors, Woodfibre LNG then reconsidered several aspects of the project. Accordingly, the assessment of the Floatel proposal took longer than expected.

[10] On November 1, 2023, the EAO issued its assessment of the Floatel proposal and amended the project's certificate. Pursuant to the new conditions, Woodfibre LNG was required to develop a gender and cultural safety plan intended to deter gender-based violence in the neighbouring area, including a confidential reporting line and a gender safety advisory committee comprised of community partners. Moreover, Woodfibre LNG workers must reside at the Floatel and are not permitted to access the District of Squamish for recreation, entertainment or other non-work-related activities.

[11] On November 26, 2023, the Agency issued the Analysis Report that is the subject of the present application. It found that the Floatel proposal did not amount to a new project requiring a new impact assessment. Moreover, it found that the proposal would not result in additional impacts that would require new conditions.

[12] The Analysis Report also contains a section on "Additional Information on Socio-economic and Gender-based Analysis Plus." Given that the project was initially assessed under the 2012 Act, the Agency was of the view that these factors were not relevant to its decision.

Nevertheless, it engaged in a four-page discussion of socio-economic effects, largely centered on concerns related to gender safety raised by Squamish Nation, Tsleil-Waututh Nation and community organizations. The Agency concludes its discussion of the issue as follows:

> The Agency recognizes that communities residing in resource-intensive regions experience increased risk of adverse social impacts. Temporary in-migration of workers to these communities may attract some economic benefits, but there is increasing evidence of a wide range of negative social impacts associated with industrial work camps, particularly incidents of violence against Indigenous women, girls and sexual minorities. Concerns raised by community members often relate to sexual abuse of Indigenous women and young girls, sexually transmitted infections due to rape and sex trafficking, safety concerns from increased crime and drug and alcohol abuse. Indigenous Nations have consistently communicated these concerns and living in proximity with temporary workers in camps and rental accommodation.
>
> . . .
>
> The Agency is aware that the proponent has been working with Squamish Nation on a Community and Gender Safety Program and that the EAO has proposed a new condition intended to acknowledge and address gender and culture based violence, harassment and related misconduct.

[13] In early 2024, two groups of applicants brought the present applications for judicial review against the Analysis Report. One application was brought by Citizens for My Sea to Sky [My Sea to Sky], a society formed in 2014, largely in opposition to Woodfibre LNG's project, and which has provided comments at various stages of the environmental assessment of the project. The other application was brought by Roberta Jacqueline Williams and Anneka Watt [the Williams applicants]. Ms. Williams is an elder of the Squamish Nation. Ms. Watt is a high school student, now 17 years old, who also works part-time in a restaurant in Squamish. In their affidavits, both expressed concerns that the presence of workers from the Woodfibre LNG project in Squamish or in the vicinity could result in a higher risk of gender-based violence. In

particular, Ms. Watt is concerned about her safety when she engages in outdoor recreational activities around Howe Sound or when she works at the restaurant.

[14] Site preparation work began in late 2023 and the project has been under construction since then. The parties have informed me that the Floatel has been in operation since June 2024.

II. Analysis

[15] I am dismissing the applications. In these reasons, I will first describe the most relevant features of the statutory framework and address the respondents' preliminary objections to the applications. I will then show that the Agency acted reasonably in restricting its review of the Floatel proposal to the impacts defined in the 2012 Act. I will next explain why the Agency's decision did not disregard Charter rights and values nor breach international human rights law, given the preventive measures already mandated by the British Columbia EAO. Lastly, I will explain why procedural fairness did not require the Agency to conduct a public comment period or to provide the applicants with an opportunity to present their submissions on the Floatel.

A. *Relevant Legislation*

[16] Environmental assessment legislation is often complex. For present purposes, it is not necessary to provide a detailed account of the functioning of either the 2012 Act or the 2019 Act. It is sufficient to say that under both regimes, the outcome of the process is recorded in a document issued by the Minister and called a decision statement. A decision statement contains a

description of the project that is authorized and sets out conditions that the proponent must comply with and that are aimed at mitigating the project's impact.

[17] Over the course of a complex project, it may become necessary to amend a decision statement. The 2012 Act did not contain provisions empowering the Minister to amend a decision statement. Nevertheless, the evidence in this case shows that the Minister could "reissue" a decision statement with changes. In 2019, Parliament chose to regulate this practice through sections 68 and 69 of the 2019 Act:

68 (1) The Minister may amend a decision statement, including to add or remove a condition, to amend any condition or to modify the designated project's description. However, the Minister is not permitted to amend the decision statement to change the decision included in it.	**68 (1)** Le ministre peut modifier la déclaration, notamment pour ajouter ou supprimer des conditions, en modifier ou modifier la description du projet désigné. Toutefois, il ne peut modifier la déclaration afin de changer la décision qui y est indiquée.
(2) The Minister may add, remove or amend a condition only if he or she is of the opinion that doing so will not increase the extent to which the effects that are indicated in the report with respect to the impact assessment of the designated project are adverse.	**(2)** Il ne peut ajouter, supprimer ou modifier une condition que s'il est d'avis que l'ajout, la suppression ou la modification n'aura pas pour effet d'accroître la mesure dans laquelle les effets identifiés dans le rapport d'évaluation d'impact à l'égard du projet sont négatifs.
(3) The Minister may add or amend a condition only if the new or amended condition could be established under subsection 64(1) or (2). Subsection 64(3) applies with respect to	**(3)** Il ne peut ajouter ou modifier une condition que dans le cas où la nouvelle condition ou la condition modifiée serait autorisée par les paragraphes 64(1) ou (2). Le paragraphe

the new or amended condition if it could be established under subsection 64(2).	64(3) s'applique à la nouvelle condition ou à la condition modifiée dans le cas où elle serait autorisée par le paragraphe 64(2).
. . .	. . .
69 (1) If the Minister intends to amend a decision statement under section 68, the Minister must ensure that the following are posted on the Internet site:	**69 (1)** S'il a l'intention de modifier une déclaration en vertu de l'article 68, le ministre veille à ce que soient affichés sur le site Internet :
(a) a draft of the amended decision statement; and	**a)** une ébauche de la déclaration modifiée;
(b) a notice that invites the public to provide comments on the draft within the period specified.	**b)** un avis invitant le public à lui faire des observations sur l'ébauche dans le délai précisé.
. . .	. . .

[18] Moreover, section 184 of the 2019 Act, one of the transitional provisions, which has since been repealed, deemed decision statements issued pursuant to the 2012 Act to be decision statements pursuant to the 2019 Act. Accordingly, the amendment power set out in sections 68 and 69 could be used to amend decision statements made under the previous legislation.

[19] Another difference between the two Acts is relevant to the present matter. Decisions made pursuant to the 2019 Act may consider "effects within federal jurisdiction," which include "any change occurring in Canada to the health, social or economic conditions of the Indigenous peoples of Canada." In contrast, under section 5 of the 2012 Act, only changes to socio-economic conditions resulting from a change to the environment could be considered. The

practical import of this difference in the present case is not in dispute: the heightened risk of gender-based violence arising from the presence of construction workers can be assessed under the 2019 Act, but not under the 2012 Act, as it does not result from a change to the environment.

[20] At this juncture, it may also be useful to note that in October 2023, the Supreme Court of Canada held the 2019 Act to be invalid for overstepping the bounds of Parliament's jurisdiction: *Reference re Impact Assessment Act*, 2023 SCC 23 [*Reference re Impact Assessment Act*]. In June 2024, Parliament amended the 2019 Act to make it compliant with the Court's decision. The wording of sections 68 and 69 remained the same. "Effects within federal jurisdiction" were renamed "adverse effects within federal jurisdiction" and include "a non-negligible adverse change occurring in Canada to the health, social or economic conditions of the Indigenous peoples of Canada."

B. *Preliminary Issues*

[21] Before addressing the substance of the applicants' submissions, I must explain why I reject preliminary objections raised by the respondents regarding mootness, collateral attack and whether the Analysis Report is amenable to judicial review.

[22] Before undertaking this analysis, I wish to note that many of these preliminary arguments amount to a repackaging of the respondents' submissions on the merits. For example, the Attorney General argued that the matter was moot because the conditions imposed by British Columbia were sufficient to prevent gender-based violence. This is obviously a submission pertaining to the merits and has nothing to do with mootness. The apparent lack of merit of an

application cannot form the basis of a preliminary objection, lest we fall in circular reasoning: see, for example, *Gestion Complexe Cousineau (1989) Inc v Canada (Minister of Public Works and Government Services)*, [1995] 2 FC 694 at 706 (CA) [*Gestion Complexe Cousineau*]; *Moresby Explorers Ltd v Canada (Attorney General)*, 2006 FCA 144 at paragraph 17. The Attorney General's scattershot invocation of preliminary objections is not useful and only draws the attention away from the central issues of the case.

(1) Mootness

[23] The applicants first argue that the matter has become moot. I must confess that I have difficulty understanding this submission. A matter is moot where "no present live controversy exists which affects the rights of the parties": *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at 353. Yet, the construction of the project is ongoing and it is scheduled to last until 2027. In substance, the applicants assert that the Agency should have taken a broader view of the Floatel's impacts and that the Minister should have imposed conditions on its use. If the applications were allowed, the Agency and the Minister would be required to reconsider their decision, which could result in the imposition of conditions that would be applicable until the end of the construction phase of the project. This remains a live issue until construction is over. In this context, the Attorney General's assertion that the matter is moot because the Floatel is now in operation sounds hollow.

(2) Collateral Attack and Issue Estoppel

[24] The respondents also argue that the application amounts to a challenge to the initial decision statement issued in 2016 or to the EAO's decision to amend its certificate in 2023. In this regard, the Attorney General relies on *Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 (CanLII), [2001] 2 SCR 460 [*Danyluk*], which is the Supreme Court of Canada's leading decision on the doctrine of issue estoppel.

[25] To show that a prior decision gives rise to issue estoppel, one must show that: (1) the same question was decided; (2) the prior decision was final; and (3) the parties in both proceedings are the same: *Danyluk* at paragraph 25. In the present case, the Attorney General did not explain how the third criterion is met. The environmental assessment processes that gave rise to the project's initial approval and to the EAO's 2023 amendment can hardly be described as proceedings to which the applicants were parties. Even though My Sea to Sky made comments as a member of the public, this does not turn it into a party bound by issue estoppel.

[26] Moreover, the three environmental assessment processes that apply to Woodfibre LNG's project are independent of each other. Each one is based on its own legislation and its own criteria. Hence, challenging the outcome of one process does not automatically amount to a collateral attack against the outcome of another process, as the Attorney General seems to argue.

(3) Is the Analysis a Reviewable Decision or Matter?

[27] The respondents submit that the Analysis Report is not subject to judicial review. They argue that pursuant to section 68 of the 2019 Act, only the Minister has the power to amend a decision statement, and that the Analysis Report was nothing more than a recommendation to the Minister. Section 68 would not be engaged until the Minister forms the intention to amend a decision statement. Therefore, according to the respondents, the Analysis Report is not made pursuant to statute and is not binding.

[28] In my view, the Attorney General's submission mischaracterizes the Analysis Report. In reality, the Analysis Report cannot be dissociated from the exercise of the Minister's power under section 68. The 2019 Act does not assign any formal role to the Agency with respect to the amendment of decision statements. Rather, as a practical matter, the Agency supports the Minister's decision-making power by undertaking an analysis and providing a recommendation. Indeed, the record contains evidence that the Agency's draft report was discussed with the Minister's office.

[29] The fact that the Minister concurred with the Agency's recommendation not to impose conditions does not make the decision any less reviewable. At the hearing, the respondents agreed that a proponent could seek judicial review of a decision that effectively turned down a request to amend a decision statement or refused to assess such a request on its merits. It would be odd if the refusal to exercise the section 68 powers were reviewable only if the decision runs against the proponent's interests.

[30] Therefore, what the applicants were really challenging was the Minister's decision not to exercise his section 68 power, based on the recommendation contained in the Agency's report. I fail to see what purpose would be served by requiring the applicants to amend their applications or to bring new applications explicitly targeting the Minister's inaction, other than turning judicial review into a game of snakes and ladders. Substance should prevail over form, and this Court's jurisdiction should not depend on overly subtle distinctions: *Gestion Complexe Cousineau* at 705. No procedural injustice results from this, as the respondents made extensive submissions on the merits as if the Agency's decision had been made by the Minister.

[31] The respondents rely on cases such as *Gitxaala Nation v Canada*, 2016 FCA 187 at paragraphs 120–127, [2016] 4 FCR 418 [*Gitxaala*], and *Sierra Club Canada Foundation v Canada (Environment and Climate Change)*, 2024 FCA 86 at paragraphs 44–61, for the proposition that the Analysis Report is a mere recommendation and is not justiciable. These cases can be distinguished. The legislation at play there established a two-step process whereby the matter is first considered by an agency that provides a recommendation, and then a Minister or the Governor in Council decides. In this context, only the latter step is a reviewable decision. As a practical matter, deficiencies in the recommendation may be examined upon judicial review of the Minister's or the Governor in Council's decision: *Tsleil-Waututh Nation v Canada (Attorney General)*, 2018 FCA 153 at paragraph 201, [2019] 2 FCR 3. In contrast, in the present case, the Agency's decision was effectively final, unless overturned by the Minister, which did not happen.

[32] The respondents also assert that even if the Court may review "matters" beyond formal "decisions," this does not extend to situations where "the conduct attacked in the application for judicial review fails to affect legal rights, impose legal obligations, or cause prejudicial effects": *Sganos v Canada (Attorney General)*, 2018 FCA 84 at paragraph 6. This, in my view, is better conceptualized as a standing issue flowing from the requirement, in section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, that the applicant be "directly affected." However, even then, public interest standing remains an alternative to direct standing: see, for example, *League for Human Rights of B'nai Brith Canada v Canada*, 2010 FCA 307 at paragraphs 61–62, [2012] 2 FCR 312.

[33] In this case, the respondents have not seriously challenged My Sea to Sky's assertion that it has public interest standing. In any event, the Federal Court of Appeal's reasoning in *Gitxaala*, at paragraphs 82–87, suggests that My Sea to Sky has a sufficient "legal or practical interest" to sustain direct standing. The Williams applicants, on their part, allege that they are personally affected by the presence of construction workers and the lack of sufficiently stringent conditions. In my view, this is sufficient to dispose of the objection pertaining to the lack of prejudicial effect. While the respondents take issue with the reality of the Williams applicants' concerns, this is more appropriately considered on the merits.

[34] Lastly, the respondents rely on *Canada (Attorney General) v Democracy Watch*, 2020 FCA 69, [2020] 3 FCR 623 [*Democracy Watch*]. In that case, the Federal Court of Appeal found that a decision of the Commissioner of Lobbying not to conduct an investigation was not amenable to judicial review. One particular feature of the legislation at issue in that case is that

only Senators and MPs may make a complaint to the Commissioner. The Court noted, at paragraph 40, that

> Neither the purpose of the *Lobbying Act*, nor the language in the introduction to the Lobbyists' Code, is sufficient to justify the reading in of a public complaints process and the concomitant right for members of the public to have the Lobbying Commissioner investigate their complaints.

[35] Environmental assessment legislation, such as the 2019 Act, differs starkly from the *Lobbying Act* at issue in *Democracy Watch*. Indeed, one of the purposes of the 2019 Act is to "foster meaningful public participation," and this is not restricted to discrete categories of people such as Senators and MPs. The reasons that drove the Federal Court of Appeal to find that the decision at issue in *Democracy Watch* was not reviewable are absent from this case. Indeed, decisions concerning environmental assessment processes have often been the subject of judicial review based on either direct or public interest standing; see, for example, *Sierra Club of Canada v Canada (Minister of Finance)*, [1999] 2 FC 211 (TD); *MiningWatch Canada v Canada (Fisheries and Oceans)*, 2010 SCC 2, [2010] 1 SCR 6.

C. *Was it Reasonable for the Agency to Base its Decision on the 2012 Act?*

[36] The applicants' main ground for challenging the Analysis Report is that the Agency only analyzed impacts as defined in the 2012 Act, whereas it should have proceeded under the wider definition of the 2019 Act. This, according to the applicants, would have led the Agency to assess the heightened risk of gender-based violence arising from the presence of construction workers and to impose conditions aimed at mitigating this risk. For the reasons that follow, I disagree.

[37] The applicants acknowledge that the Analysis Report must be reviewed on a standard of reasonableness, pursuant to the framework laid out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*]. According to this framework, "the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome": *Vavilov* at paragraph 83.

[38] It is not in dispute that the Agency applied the criteria of the 2012 Act and not those of the 2019 Act. The Analysis Report itself makes this clear, in particular in section 3.9.3. Moreover, the Attorney General filed the affidavit of Ms. Julie Mailloux, the Agency's Associate Director for Decision Statements, who explained that "[t]he Agency's practice is to review the proposed changes under the legislative framework used to conduct the original assessment, i.e., [the 2012 Act] for decision statements issued under [the 2012 Act]."

[39] Broadly speaking, two types of flaws may render a decision unreasonable: "a failure of rationality internal to the reasoning process" and "when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it": *Vavilov* at paragraph 101. In this case, however, the Agency never provided a legal analysis to support its conclusion that it could not assess the impacts pursuant to the 2019 Act. Its reasoning is unknown, and the submissions of the Attorney General may or may not reflect the basis for the Agency's decision. In such circumstances, it may be difficult to assess internal rationality but I "must still examine the decision in light of the relevant constraints on the decision maker in order to determine whether the decision is reasonable": *Vavilov* at paragraph 138; see also paragraph 123.

[40] The applicants' submissions largely boil down to the argument that the interpretation they put forward would better achieve the 2019 Act's purposes than the Agency's interpretation. In other words, if the Agency assessed proposed changes to a project for the wider range of effects defined in the 2019 Act, this would better prevent or mitigate adverse effects within federal jurisdiction and better foster sustainability. Reasonableness review, however, is not about selecting the interpretation that appears the best or the most reasonable. It does not involve a comparison between the interpretation chosen by the Agency and the one put forward by the applicants. Rather, it must remain focused on the Agency's interpretation and its compatibility with the relevant legal constraints: *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paragraphs 68–71.

[41] Of course, the purpose of legislation is a recognized component of the modern method of interpretation, and it constitutes a constraint bearing on the decision-maker: *Vavilov* at paragraph 122. Nevertheless, as Professor Ruth Sullivan notes, "[t]he legislature never pursues a goal single-mindedly, without qualification, and at all costs": *Statutory Interpretation*, 3rd ed. (Toronto: Irwin Law, 2016) at 186. Indeed, the fact that the legislature goes only so far in the pursuit of a purpose is often due to the presence of competing values or needs that must be balanced with the legislation's purpose. It is also common for a statute to pursue several purposes, as is the case of the 2012 Act and the 2019 Act. Thus, asserting that a competing interpretation would better achieve one of the legislation's purposes is usually insufficient to render an interpretation unreasonable.

[42] Here, insisting on the 2019 Act's purposes of preventing and mitigating impacts and fostering sustainability does not render the Agency's interpretation unreasonable. The 2019 Act has other purposes beyond those highlighted by the applicants, in particular to ensure that the processes it sets up are "fair, predictable and efficient" (paragraph 6(3)(a)). Any purposive analysis must consider the full range of purposes pursued by the 2019 Act. Moreover, the analysis must consider the means chosen by Parliament to achieve these purposes. The 2019 Act's transitional provisions are especially relevant in this regard. Generally speaking, they evince an intention that projects that began to be assessed under the 2012 Act, prior to the coming into force of the 2019 Act, would not be subjected to the heightened requirements of the latter. In all likelihood, such a legislative policy was meant to ensure a certain degree of predictability.

[43] Nor were the applicants successful in showing that the Agency's interpretation disregards constraints flowing from the text of the 2019 Act. Recall that subsection 68(2) forbids the Minister from amending the decision statement in a manner that would "increase the extent to which the effects that are indicated in the report with respect to the impact assessment of the designated project are adverse." Subsection 64(2) contains similar language. The applicants relied heavily on the word "effects," defined in section 2 as including "social or economic conditions," to argue that the Agency was required to assess the full range of impacts contemplated by the 2019 Act, even with respect to a project initially assessed pursuant to the 2012 Act. In my view, the Agency's interpretation to the contrary is reasonably supported by the remainder of the provision, which focuses on effects already "indicated" in the assessment of the

project. Where this assessment was performed under the 2012 Act, it is reasonable to read this language as referring to effects falling within the purview of that Act.

[44] In summary, the applicants have not persuaded me that the Agency's interpretation disregarded the constraints flowing from the text or purpose of the legislation, or any other relevant constraint. They failed to deliver a "knock-out punch," if I may still use that expression. In these circumstances, it is not my role to push the inquiry further and to decide what the correct interpretation is, whether there is only one reasonable interpretation or which interpretation is superior, as this would amount to correctness review.

[45] The parties have not provided detailed submissions as to the effects of the decision of the Supreme Court of Canada in the *Reference re Impact Assessment Act*, which was handed down a few weeks before the Analysis Report was made public, nor those of the amendments made to the 2019 Act in June 2024. In his written submissions, the Attorney General suggested that the Minister no longer had the power to amend decision statements as a result of the invalidation of the 2019 Act. I do not wish to express any definitive opinion on the matter. I simply note that pursuant to the 2012 Act, the Minister had developed a practice of reissuing decision statements with amendments in the absence of any statutory authorization. One could think that the invalidation of the 2019 Act restored the 2012 Act, including this practice. Be that as it may, the evidence shows that the Agency prepared the Analysis Report before the Supreme Court's decision and that the latter played no role in the Agency's final recommendation. Therefore, these events do not render the decision unreasonable.

D. *The Impact of the Decision on Gender-Based Violence*

[46] The Williams applicants also argue that the Agency's failure to consider the impacts of its decision on gender-based violence renders the decision unreasonable. They say that the Agency failed to give proper regard to Charter rights and values and undertake the balancing exercise mandated by *Doré v Barreau du Québec*, 2012 SCC 12, [2012] 1 SCR 395 [*Doré*], and its progeny. They also contend that the Agency's decision is contrary to several norms of international law that make gender-based violence unlawful and that require states to take reasonable measures to prevent it.

(1) Impact on Charter Rights and Values

[47] In *Doré*, the Supreme Court of Canada established a framework for the assessment of administrative decisions impinging on rights or values protected by the Charter. This framework was most recently summarized in *Commission scolaire francophone des Territoires du Nord-Ouest v Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 at paragraphs 61, 67 [*Commission scolaire francophone*]:

> Under the *Doré* approach, a reviewing court must begin by determining whether the administrative decision at issue "engages the *Charter* by limiting *Charter* protections — both rights and values" . . .
>
> Once the reviewing court has determined that the impugned administrative decision infringes *Charter* rights or limits the values underlying them, the court must, under the approach laid down in *Doré*, determine whether the decision is reasonable through an analysis of its proportionality. This involves assessing whether the exercise of discretion reflects a "proportionate balancing" of *Charter* rights and the values underlying them, on the one hand, with the statutory objectives in respect of which the discretion was granted, on the other . . .

[48] For the purposes of this analysis, I am prepared to assume, without deciding, that:

- The presence of a largely male construction workforce gives rise to a heightened risk of gender-based violence in neighbouring communities;
- A heightened risk of gender-based violence engages at least the values underlying sections 7, 15 and 28 of the Charter, if not the rights protected by them;
- In the circumstances of this case, these values translate into a duty of the state to take reasonable measures to prevent gender-based violence;
- There is a sufficient nexus between greenlighting the Floatel proposal and a heightened risk of gender-based violence;
- The Charter values linked with the prevention of gender-based violence were relevant to the exercise of the Agency's decision-making power (*Commission scolaire francophone* at paragraph 66).

[49] All these assumptions may be open to debate. For example, the scope of section 7 with respect to the prevention of infringements upon the right to life and security of the person remains a difficult question, to say the least: *La Rose v Canada*, 2023 FCA 241 at paragraphs 92–118. As the applicants did not make fulsome submissions regarding these issues, I will refrain from addressing them in detail and I will move to their submissions regarding balancing.

[50] As I understand them, the Williams applicants' arguments in this respect are twofold. First, they argue that the Agency failed to engage in any balancing at all, because it does not

mention the Charter in the Analysis Report. In other words, the Agency explicitly refrained from considering the impacts of Woodfibre LNG's proposal on gender-based violence, which cannot be reasonable. Second, they take issue with the Agency's failure to recommend the imposition of conditions aimed at preventing gender-based violence. This would be an unreasonable balancing of Charter rights and values with the Agency's statutory purposes. In this regard, I note that the Williams applicants have not explicitly stated what these purposes are, even though they constitute one side of what must be balanced. I am prepared to assume that in the present case, the Agency's specific purpose was to facilitate the realization of a project that otherwise complies with the law.

[51] In my view, the first submission relies on a mischaracterization of the Analysis Report. It is true that the Agency began its discussion of the issue by noting that its analysis of environmental impacts was not influenced by socio-economic and gender issues. It nevertheless engaged in a lengthy discussion that showed an in-depth understanding of the nature of the issues, the measures proposed by Woodfibre LNG and the conditions imposed by the British Columbia EAO. The Agency did not end the discussion with a conclusion or a recommendation, possibly because it was unsure of the scope of its jurisdiction and in furtherance of the 2019 Act's commitment to a "coordinated action among jurisdictions," but it clearly satisfied itself that any heightened risk of gender-based violence was sufficiently mitigated by the measures taken by the British Columbia EAO. This form of implicit consideration of Charter rights and values is sufficient to satisfy the requirements of the *Doré* framework: *Trinity Western University v Law Society of Upper Canada*, 2018 SCC 33 at paragraphs 28–29, [2018] 2 SCR

453; *Ewert v Canada (Attorney General)*, 2018 FCA 175 at paragraph 20; *Toth v Canada (Mental Health)*, 2025 FCA 119 at paragraph 50.

[52] The Williams applicants' second submission fails too. It was reasonable for the Agency not to impose conditions beyond those that the British Columbia EAO had already imposed. This did not result in a disproportionate balancing between Charter rights and values and statutory purposes.

[53] As I noted above, the Williams applicants' submissions did not focus on the statutory purposes pursued by the Agency, but rather on the sufficiency of the measures taken to prevent gender-based violence. It may be that where the *Doré* framework is applied to a situation where specific breaches of Charter rights have not yet taken place, the analysis will boil down to an assessment of the sufficiency of preventive measures.

[54] In this context, the Williams applicants conceded that the Agency was, in principle, entitled to rely on the conditions set by the British Columbia EAO. Indeed, the environmental assessment of large projects requires a high degree of coordination between the governments involved. Nothing in the constitutional division of powers required the federal government to take a more active role.

[55] The Williams applicants nevertheless challenge the sufficiency of the conditions imposed by the British Columbia EAO. In particular, they assert that it will be difficult to enforce the

prohibition on accessing the community of Squamish, and that more comprehensive provisions could have been made with respect to monitoring and data collection.

[56] Such an argument cannot be assessed against a standard of perfection. The adequacy of preventive measures must be assessed against some realistic benchmark. In tort law, for example, this benchmark is provided by the concept of standard of care. In international human rights law, this is often expressed through the concept of due diligence, to which I will return later. There must be some evidentiary or logical basis for establishing this benchmark.

[57] The only piece of evidence in the record that contributes to establishing a benchmark for preventive measures is the report of the House of Commons Standing Committee on the Status of Women styled *Responding to the Calls for Justice: Addressing Violence Against Indigenous Women and Girls in the Context of Resource Development Projects* (December 2022) [the FEWO Committee Report]. Three of its recommendations pertain to what the federal government should require of companies conducting resource development projects:

- "to develop corporate social responsibility policies that include addressing and preventing violence and harassment" (recommendation 7);

- "to establish tracking mechanisms for the reporting of incidences of harassment and violence" (recommendation 8); and

- "to implement mandatory training for all employees on gender-based and sexual violence, anti-racism, cultural safety, diversity and inclusion, as well as the effects of colonization on Indigenous peoples" (recommendation 10).

[58] On their face, the conditions imposed by the British Columbia EAO align with these recommendations. Woodfibre LNG is required to:

- Establish a gender and cultural safety plan addressing, among other issues, "gender-based violence in the [District of Squamish] and Squamish community area by Workers";

- "Establish clear reporting and response protocols regarding harassment and violence reports at the Project and gender-based violence by Workers in the [District of Squamish] and Squamish community area" as well as "Procedures for receiving and responding to complaints of harassment and violence";

- Implement a workplace harassment and violence prevention program, as well as a Worker code of conduct including "Standards for behaviour when off-duty to deter harassment, violence, including gender-based violence, in the [District of Squamish] and Squamish community area", to be signed by every worker.

[59] In addition, workers are forbidden to access the District of Squamish for "recreation, entertainment or other non-work-related activities." This condition is obviously aimed at reducing the interactions between workers and women and girls who might be vulnerable to gender-based violence.

[60] Given that they appear to respond to the FEWO Committee Report's recommendations, I am not persuaded that the conditions imposed by the British Columbia EAO are insufficient to prevent gender-based violence or that they unreasonably balance Charter rights and values with the furtherance of the Agency's statutory purposes. There is no evidence showing what

additional measures would be needed. While the Williams applicants speculated that the provincial conditions, in particular the prohibition on accessing the District of Squamish, may be difficult to enforce, there is no evidence that they will fail to achieve their purpose.

(2) Compatibility With International Law

[61] To buttress their submissions on gender-based violence, the Williams applicants also rely on international law instruments, namely, articles 1, 2 and 15 of the *Convention on the Elimination of All Forms of Discrimination Against Women*, Can TS 1982 No 31 [CEDAW], the *Convention on the Rights of the Child*, Can TS 1992 No 3 [CRC], and article 22 of the United Nations *Declaration on the Rights of Indigenous Peoples*, UN Doc A/RES/61/295 (2007) [UNDRIP].

[62] Largely for the reasons set forth in the previous section, there is no evidence allowing me to find a breach of any international law obligation. This dispenses me from discussing the various ways in which Canadian courts can consider and apply international law.

[63] I accept that international law requires states to respect, to protect and to fulfil human rights. I also accept that the duty to protect translates into a standard of due diligence to prevent acts of violence against women and girls. See Dinah Shelton and Ariel Gould, "Positive and Negative Obligations," in Dinah Shelton, ed, *The Oxford Handbook of International Human Rights* (Oxford, Oxford University Press, 2013). In this regard, the Williams applicants drew my attention to *Yildirim v Austria*, UN Doc CEDAW/C/39/D/6/2005 (1 October 2007) [*Yildirim*], in which the Committee on the Elimination of Discrimination against Women found a breach of

articles 1, 2 and 3 of CEDAW where the state failed to detain an individual who had repeatedly made serious threats to kill his ex-wife, giving him an opportunity to murder her.

[64] Determining whether Canada, as a sovereign state, has complied with its international obligations necessarily involves a consideration of measures taken by all levels of government, including the conditions imposed by the British Columbia EAO. In the present case, largely for the reasons set forth in the previous section of these reasons, I am not persuaded that Canada failed to comply with its duty to act with due diligence to prevent gender-based violence. The only evidence that contributes to defining the scope of due diligence in the context of resource extraction projects is the FEWO Committee Report, and, as explained above, the provincial conditions appear to align with the Committee's recommendations. The present situation is far removed from that in *Yildirim*, which dealt with state inaction in the face of serious and immediate threats against a specific individual.

[65] The Williams applicants also insisted upon the right to a remedy that flows from the international protection of human rights. As explained above, the provincial conditions require Woodfibre LNG to implement a procedure for handling complaints of gender-based violence and harassment, including complaints made by women and girls residing in Squamish. Moreover, civil and criminal remedies for gender-based violence remain available. There is no evidence that any victim of gender-based violence was or would be denied a remedy. The Williams applicants suggest that the Agency could have imposed conditions on Woodfibre LNG with respect to monitoring and data collection. I understand that further efforts at monitoring and data collection would enable a better understanding of the dynamics of gender-based violence in the context of

resource extraction projects. However, I fail to see how the lack of such conditions results in anyone being deprived of a remedy or in a breach of Canada's international law obligations.

[66] The foregoing analysis is based on the provisions of CEDAW. I do not see how the provisions of CRC and UNDRIP add anything to the analysis. Accordingly, the Agency's decision did not result in a breach of Canada's international law obligations or commitments.

E. *Procedural Fairness*

[67] My Sea to Sky also alleges that the Agency breached its duty of procedural fairness by issuing the Analysis Report without holding a public comment period or giving it an opportunity to make submissions. It submits that the Agency's conduct gave rise to a legitimate expectation that it would have an opportunity to make submissions or that the common law doctrine of procedural fairness, as described in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*], gives rise to a similar requirement. I disagree. No legitimate expectation arose, and the common law doctrine of procedural fairness was displaced by the explicit requirements of section 69 of the 2019 Act. I will address this last issue first.

[68] At common law, an administrative decision maker may be required to provide an applicant with a degree of procedural fairness determined by considering the factors laid out in *Baker*. However, the requirements flowing from the *Baker* framework may be displaced by legislation: *Ocean Port Hotel Ltd v British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52 at paragraph 22, [2001] 2 SCR 781.

[69] Here, paragraph 69(1)(b) of the 2019 Act requires the Minister to hold a public comment period if he intends to amend a decision statement. Pursuant to paragraph 69(1)(a), the draft amended statement must be made public. Therefore, the public comment period relates to the proposed amended statement. There is no requirement of public consultation in respect of the process by which the Agency makes a recommendation to the Minister. In my view, this shows that Parliament did not intend to require any form of public consultation where the Minister does not intend to amend a decision statement nor in respect of the process by which the Agency makes a recommendation to the Minister. In reality, the 2019 Act is silent as to the Agency's role in making such a recommendation even though, as a practical matter, someone must give advice to the Minister as to the exercise of the power to amend a decision statement.

[70] Nevertheless, My Sea to Sky argues that the Agency's conduct gave rise to a legitimate expectation that a public comment period would take place before it issued the Analysis Report. The alleged expectation is based on a contract for participant funding and a string of email exchanges between representatives of My Sea to Sky and the Agency. When it became aware of the Floatel proposal in 2020, My Sea to Sky sought to avail itself of funding that the Agency makes available to those who intend to participate in public hearings or public comment periods, as advertised in a public notice. The Agency agreed to provide an amount of $2,996 and signed a contract with My Sea to Sky to that end. In her affidavit, Ms. Mailloux of the Agency explained that this contract was signed before any decision was made because it was anticipated that under the initial timelines, there would not be enough time to complete the funding process before any public comment period.

[71] In order to give rise to a legitimate expectation, the Agency's representation to My Sea to Sky had to be "clear, unambiguous and unqualified": *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paragraph 95, [2013] 2 SCR 559. Contrary to My Sea to Sky's submissions, the wording of the public notice and contract cannot be interpreted as an unqualified promise that there would be a public comment period even if the Minister did not intend to amend the decision statement. The public notice offering participant funding included the following language:

> Once the Agency's analysis is complete, the Agency will hold a 30-day public comment period. The public and Indigenous peoples will be invited to review the Agency's Analysis Report and provide feedback on any recommended changes to the legally-binding conditions.

[72] The first sentence must be read in light of the second. If there are no recommended changes, the subject-matter of the public comment period disappears.

[73] In the contract signed in May 2020, the "participation opportunity" for which funding is provided is described, in appendix A, as "Review and Submission of Written Comments to the Agency on the proposed changes to the Project and, if applicable, on the changes to the federal conditions." I note, however, that the subject-matter of the contract is described elsewhere as a "post-decision of the environmental assessment" or a "post Environmental assessment by the Agency process," which suggests that those tasked with drafting the contract had but an imprecise idea of the process mandated by the 2019 Act. I also note that the contract refers to the 2012 Act, not the 2019 Act. This is far from an unambiguous representation that a public comment period would be held even if no amendment were contemplated.

[74] Then, in email exchanges in September 2020, February 2021 and June 2022, My Sea to Sky sought clarity as to whether a public comment period would take place. A fair reading of the Agency's answers is that a public comment period would be held in respect of a draft amendment to the decision statement. For example, in an email dated September 3, 2020, Mr. Leung of the Agency stated that "When the Analysis Report and potential amended Decision Statement are drafted, a comment period will follow." In June 2022, Ms. Saxby of My Sea to Sky asked for a clarification and for confirmation that there would be a public comment period on the draft Analysis Report. Mr. Leung responded that "[t]he Agency's comment period will be on the draft amended Decision Statement, rather than the Analysis Report." While the parties did not explicitly contemplate that the Agency's review would not result in recommended amendments, the representations made to My Sea to Sky did not unambiguously extend to this possibility.

[75] Everyone had to adapt to the new legislation and My Sea to Sky may not have realized immediately that a comment period was not required if the Agency did not recommend that a decision statement be amended. Nevertheless, on a fair reading, the Agency never made any representation that it would hold a public comment period beyond what is required by the 2019 Act. Moreover, the fact that My Sea to Sky kept asking for more clarity—even as late as October 2023—tends to show that it did not view the Agency's statements as a firm commitment.

[76] Lastly, My Sea to Sky suggested that its repeated communications with the Agency created a duty to give it an opportunity to make submissions. In other words, the Agency could not close its eyes when it knew that My Sea to Sky had something to say. With respect, this puts

the cart before the horses. If procedural fairness did not require the Agency to provide My Sea to Sky with an opportunity to make submissions, My Sea to Sky cannot create such a duty simply by asking.

III. Disposition

[77] For these reasons, the applications for judicial review will be dismissed.

[78] The respondents are seeking their costs. As in *Democracy Watch* at paragraph 42, the applicants brought the matter before the Court in furtherance of the public interest, even though the Williams applicants may also have been personally affected. For this reason, I exercise my discretion not to award costs.

JUDGMENT in T-17-24 and T-36-24

THIS COURT'S JUDGMENT is that:

1. The applications for judicial review are dismissed.

2. No costs are awarded.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	T-36-24 AND T-17-24
DOCKET:	T-36-24
STYLE OF CAUSE:	CITIZENS FOR MY SEA TO SKY v MINISTER OF ENVIRONMENT AND CLIMATE CHANGE, ATTORNEY GENERAL OF CANADA, WOODFIBRE LNG
AND DOCKET:	T-17-24
STYLE OF CAUSE:	ROBERTA JACQUELINE WILLIAMS, ANNEKA WATT (AD LITEM PAUL WATT) v IMPACT ASSESSMENT AGENCY OF CANADA, ATTORNEY GENERAL OF CANADA, WOODFIBRE LNG
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	MAY 28–29, 2025
JUDGMENT AND REASONS:	GRAMMOND J.
DATED:	JUNE 20, 2025

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