



T-85-97

BETWEEN:

SIERRA CLUB OF CANADA

Applicant

- and -

THE MINISTER OF FINANCE OF CANADA,  
THE MINISTER OF FOREIGN AFFAIRS OF CANADA,  
THE MINISTER OF INTERNATIONAL TRADE OF CANADA,  
and  
THE ATTORNEY GENERAL OF CANADA

Respondents

REASONS FOR ORDER

ROULEAU, J.

This is an application for directions and orders requiring the respondents to provide a certified copy of the material requested in the Applicant's Revised Request for Material dated January 30, 1997.

The applicant filed an Originating Notice of Motion on January 20, 1997, challenging the federal government's decision not to conduct an environmental assessment pursuant to the *Canadian Environmental Assessment Act* ("CEAA"). That decision was made with respect to the authorization dated November 8, 1996, made pursuant to section 23 of the *Export Development Act* by the Minister of International Trade and the Minister of Finance. Those Ministers authorized the Export Development

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Corporation to give financial assistance from that Crown corporation's "Canada Account" to support the sale of two CANDU nuclear reactors to China by Atomic Energy of Canada Limited.

At the time of filing its Originating Notice of Motion, the applicant, in accordance with Rule 1612(2) of the *Federal Court Rules*, included a request for material. On January 31, 1997, it filed a Revised Request for Material, six pages in length and seeking material from the four named respondents as well as from the Export Development Corporation and Atomic Energy of Canada Limited and other unspecified federal bodies. Following discussions between counsel for the parties, the respondents have provided certified copies of only three of the many documents the applicant has requested.

The basic objection of the respondents to the Revised Request is that the material being sought therein has no relevance to the decision being challenged, the subject matter of that decision or the grounds of the challenge as set out in the applicant's Originating Notice of Motion. It is the respondent's position that the applicant's request therefore falls outside the proper scope of a Rule 1612 request for material.

The applicant maintains that it is entitled to the material it is seeking since this is a case of far-reaching public importance involving vast sums of public money from the Consolidated Revenue Fund and a major project with important environmental and other implications. It argues that Rules 1612 and 1613 of the *Federal Court Rules* must be given a large and liberal reading.

Having carefully considered the submissions of the parties, I am satisfied that the applicant's Revised Request for Material is outside the scope of Rules 1612 and 1613. Under those rules, a party seeking judicial review of a decision of a federal board, commission or other tribunal, who intends to rely on material in the possession of that tribunal, is entitled to request a certified copy of the material. However, Rule 1612(4) provides that:

1612. (4) The request shall specify the particular material in the possession of the federal board, commission or other tribunal and the material must be relevant to the application for judicial review.

In *Canada v. Pathak*, [1995] 2 F.C. 455, the Court of Appeal made the following comments with respect to Rule 1612(4) at p. 460:

If the material is not relevant, the Tribunal is not obliged to produce it.

A document is relevant to an application for judicial review if it may affect the decision that the Court will make on the application. As the decision of the Court will deal only with the grounds of review invoked by the respondent, the relevance of the documents requested must necessarily be determined in relation to the grounds of review set forth in the originating notice of motion and the affidavit filed by the respondent.

Here, the decision being challenged by the applicant in its Originating Notice of Motion relates to the sale of two CANDU 6 nuclear reactors to China by Atomic Energy of Canada Limited and financed by the Export Development Corporation. The primary relief sought is a variety of declarations to the effect that the *Canadian Environmental Assessment Act* ought to have been applied. The applicant also seeks a variety of declaratory relief and an order in the nature of *mandamus* specifying the type of environmental assessment to be done should the Act be held applicable. It

further seeks to quash or suspend the decision authorizing the financial assistance and the provision of the financial assistance itself.

The applicant's supporting affidavit confirms the scope of the decision being challenged. According to the affidavit of Elizabeth E. May, she wrote to the Minister for International Trade and the Minister of Finance on November 26, 1996, requesting that an environmental assessment be conducted relating to the decision "committing Canada to both provide at least \$1.5 billion in financing and to sell two CANDU 6 nuclear reactors." Ms. May sent follow-up letters again relating to "the financing and sale of Candu reactors to China". The decision not to conduct an environmental assessment relating to "the sale of CANDU 6 nuclear reactors to China" was first communicated to the applicant by a letter dated December 20, 1996, from the Minister of International Trade and the Minister of Finance. Consistent with the May correspondence, it refers only to "the sale of two CANDU reactors to China".

The Revised Request for Material on the other hand, seeks a myriad of information relating to matters and decisions which the applicant is not challenging. Many parts of the Request, particularly paragraphs 5(c)(d) and (j) are broadly worded and include general matters of export sales and financing, or environmental or financial decision-making, and not just the sale and financing of the two CANDU reactors in question. For example, the request relates to the exercise of other unspecified "planned or proposed . . . powers, duties and functions by the Respondent Ministers"; it seeks material not just in relation to the impugned decision but also in respect of "any loans and loan guarantees" and the "planned, proposed or actual sale and export of

CANDU nuclear reactors to China". It also seeks material from parties who are not named as respondents.

In short, the essence of the applicant's complaint is that the CEAA should have been applied and an environmental assessment conducted. That is the crux of its application for judicial review and in accordance with Rule 1612(4) it is permitted to request material relevant to that question only. It is not entitled to any other material as set out in its request which is unnecessary or extraneous to the relief it is seeking and the grounds which it cites and which cannot affect the decision of the Court.

For these reasons, the application is dismissed. I will however, allow the applicant thirty days from the date of my Order to submit a revised Request for Material that complies with these reasons and the Rules of this Court.

**"P. ROULEAU"**

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JUDGE

OTTAWA, Ontario  
May 23, 1997

FEDERAL COURT OF CANADA  
TRIAL DIVISION

NAMES OF SOLICITORS AND SOLICITORS ON THE RECORD

COURT FILE NO.: T-85-97  
STYLE OF CAUSE: SIERRA CLUB OF CANADA  
- and -  
THE MINISTER OF FINANCE OF CANADA *et al.*  
PLACE OF HEARING: MONTREAL, QUEBEC  
DATE OF HEARING: APRIL 15, 1997  
REASONS FOR ORDER OF THE HONOURABLE MR. JUSTICE ROULEAU  
DATED: MAY 23, 1997

APPEARANCES:

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MR. JOSEPH de PENCIER FOR RESPONDENT

SOLICITORS OF RECORD:

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