

Date: 20080428

Docket: T-461-08

Citation: 2008 FC 540

Ottawa, Ontario, April 28, 2008

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**ZOOCHECK CANADA INC. and
ANIMAL ALLIANCE OF CANADA**

Applicants

and

**PARKS CANADA AGENCY, MARIAN STRANAK, IN HER CAPACITY
AS SUPERINTENDENT OF POINT PELEE NATIONAL PARK,
THE ATTORNEY GENERAL OF CANADA and
THE MINISTER OF THE ENVIRONMENT**

Respondents

REASONS FOR ORDER AND ORDER

[1] The Applicants seek to stop what they see as the inhumane, unnecessary and illegal killing of a number of double-crested cormorants (*Phalacrocorax auritus*) that nest on Middle Island in Lake Erie. The Respondents see these birds, in their current numbers, as the cause of significant damage to the ecosystem of Middle Island and they fear that if there is no cull then the damage to the ecosystem of Middle Island will be irreversible.

BACKGROUND

The parties

[2] Zoocheck Canada Inc. and Animal Alliance of Canada are self-described public interest groups. Their interest is in animal protection. Each has an interest in the double-crested cormorant (“cormorant”). Each provided evidence of a commitment to the issue of the cormorant in the Great Lakes basin since mid-decade.

[3] Both Applicants are founding members of Cormorant Defenders International (CDI). CDI educates the public about cormorants, corrects what it sees as misinformation about these birds, and advocates on their behalf.

[4] Parks Canada Agency is responsible for the operation and management of Canada’s national parks. Its charter, as established pursuant to section 16 of the *Parks Canada Agency Act*, S.C. 1998, c. 31, provides that its first priority is to protect “the natural and cultural heritage of our special places and ensure that they remain healthy and whole”.

[5] National parks are subject to a public trust in the sense that section 4(1) of the *Canada National Parks Act*, S.C. 2000, c. 32, provides that they “shall be maintained and made use of so as to leave them unimpaired for the enjoyment of future generations”.

[6] The Minister is responsible for the administration, management and control of Canada's national parks: *Canada National Parks Act*, s. 8(1). The ecological integrity of these parks has a special place in park management. Section 8(2) of the *Canada National Parks Act* provides:

Maintenance or restoration of ecological integrity, through the protection of natural resources and natural processes, shall be the first priority of the Minister when considering all aspects of the management of parks.

La préservation ou le rétablissement de l'intégrité écologique par la protection des ressources naturelles et des processus écologiques sont la première priorité du ministre pour tous les aspects de la gestion des parcs.

[7] Marian Stranak is an employee of Parks Canada and is the Superintendent of Point Pelee National Park.

POINT PELEE NATIONAL PARK AND MIDDLE ISLAND

[8] Point Pelee National Park is located on the shores of Lake Erie near Leamington, Ontario. It is ecologically unique as it is the only national park in Canada located in the Carolinian ecozone of the St. Lawrence lowlands, the southern most ecological region of Canada. While the Carolinian ecozone covers less than one percent of Canada's landmass, it hosts more rare species of plants and animals than in any other region.

[9] Middle Island is several kilometres southwest of the tip of the peninsula of Point Pelee National Park in the western basin of Lake Erie. It is a small island of some 18.5 hectares (48 acres). Middle Island contains significant native Carolinian vegetation, distinct from that found in

mainland Canada. A number of plant and animal species found on the island are listed as “wildlife species at risk” in Schedule 1 of the *Species at Risk Act*, S.C. 2002, c. 29.

[10] Middle Island is also home to a number of nesting cormorants.

[11] Middle Island was acquired in 2000 by Parks Canada from the Nature Conservancy of Canada and has been a part of Point Pelee National Park since that time. One of the terms of that transfer was that Middle Island would be managed as a Zone 1 – Special Preservation Area, which is defined by Parks Canada as:

specific areas or features which deserve special preservation because they contain or support unique, threatened or endangered natural or cultural features, or are among the best examples of the features that represent a natural region.

THE CORMORANT

[12] While there is some dispute in the evidence regarding the cormorant, the following seems to be unchallenged. The cormorant population on Lake Erie, and on Middle Island, has increased over the last two decades. Cormorants are colonial birds and return to their place of birth to nest. Many nest on Middle Island.

[13] Cormorants cause physical damage to the forests in which they nest. They break branches and strip foliage for nest material. The guano produced by breeding cormorants and their offspring is highly acidic and it alters soil chemistry and impairs photosynthesis.

[14] Cormorants nest as high in the tree as they can but will move down the tree as it is destroyed and, if required, will nest on the ground.

PARKS CANADA'S VIEW OF MIDDLE ISLAND'S ECOSYSTEM

[15] Parks Canada and the Canadian Wildlife Service have been monitoring and studying the ecosystem of Middle Island for several years. There has been a decline in forest cover and ground vegetation. Infra-red analysis of the island shows a decline in dense forest cover from 93% in 1995 to 52% in 2006. Data from sampling stations on the island show a decline in dense forest cover from 81% in 1995 to 31% in 2007. Ground vegetation has also decreased in this period.

[16] During the same period Parks Canada has noted an increase in the number of cormorant nests on Middle Island. In 1995 the nest density on Middle Island was 57 nests per hectare. Recently the nest density has been in the range of 260 to 367 nests per hectare.

[17] There has been some recent decline in the cormorant population on Middle Island. There is a dispute as to whether this is evidence of what will be a long term trend or is merely an adjustment in number as a part of the natural cormorant colony cycle.

[18] There being no evidence that other factors such as weather, insects, disease, pollution, etc. are responsible, Parks Canada's experts have concluded that the deforestation of Middle Island is caused by the increased number of nesting cormorants.

[19] Parks Canada is concerned that the damage to the Middle Island ecosystem may result in an ecosystem shift. An ecosystem shift is a change from one ecosystem to another. A shift is not an immediate event but occurs over a period of time as the previous ecosystem is damaged or changed.

[20] Professor Hebert, an expert witness for the Respondents, explained an ecosystem shift by analogy to the rivets in an airplane. One may remove rivets from an airplane one by one with little change being noticed, because there are so many rivets, until suddenly too many have been removed and there is a catastrophic failure of the aircraft. In a similar fashion, he explained, one may remove species of plants and animals from an environment with little notice until suddenly there is a shift in the ecosystem from what it once was to what it has become.

[21] At some point in the rivet removal process or in the plant and animal loss process one reaches a “tipping point”: the point at which the process is irreversible.

[22] One cannot say whether or not the tipping point has been reached with respect to changes at Middle Island because it is only with the benefit of hindsight after there has been an ecosystem shift that one can conclude that the tipping point was reached. Parks Canada argues that immediate steps are required to reduce the number of breeding cormorants on Middle Island before its unique ecosystem is so damaged that the tipping point has been reached and there is an ecosystem shift. If that were to happen, it argues, Middle Island’s unique Carolinian ecosystem would be lost and the Minister would not have satisfied the first priority in section 8(2) of the *Canada National Parks Act* of maintaining ecological integrity.

ACTIONS TAKEN BY PARKS CANADA

[23] Following public consultation, which will be discussed in more detail below, Parks Canada prepared a document entitled 'Proposed Middle Island Conservation Plan' dated March 31, 2008.

The Plan proposes a partial cull of nesting adult cormorants on Middle Island over a five year period, commencing in April 2008, with a view to reducing the number of cormorant nests from the 4,688 nests observed in 2007 to between 438 and 876 nests.

[24] While the proposed cull is to take place over a five year period, most of the cormorants to be culled are likely to be killed in the first year of the cull.

[25] The proposed cull would be for park management purposes and would be authorized by the Superintendent of Point Pelee National Park under section 15(1)(a) of the *National Parks Wildlife Regulations*, SOR/81-401:

15. (1) A superintendent may authorize

(a) the removal, relocation or destruction of wildlife for scientific purposes or park management purposes;

15. (1) Un directeur peut donner l'autorisation

a) d'enlever, de relocaliser ou de détruire des animaux sauvages à des fins scientifiques ou aux fins de la gestion du parc;

[26] Culling a population of wildlife species under s. 15(1)(a) of the *National Parks Wildlife Regulations* requires an environmental assessment screening under the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37.

[27] Notice of Commencement of the environmental assessment was published by the Canadian Environmental Assessment Agency on March 6, 2008. While no public consultation is required at the environmental assessment screening level, Parks Canada exercised its discretion and provided a period of 21 days for public consultation. That process has now been completed.

THE UNDERLYING JUDICIAL REVIEW APPLICATION

[28] On March 25, 2008, the Applicants filed a Motion for an interim and interlocutory injunction and an Application under Section 18.1 of the *Federal Courts Act* seeking, among other remedies, judicial review of the decision of the Superintendent of Point Pelee National Park pursuant to section 15(1)(a) of the *National Parks Wildlife Regulations* authorizing a cull of the cormorant population on Middle Island commencing in or about April 2008.

[29] On April 2, 2008, Justice Phelan issued an Order that provided, in part: “No cull of the cormorants will occur until further Order of a Judge of this Court”. A timetable was established for the exchange of affidavits and cross-examinations prior to the hearing of this motion for an interlocutory injunction on April 25, 2008.

[30] The parties have filed a significant volume of material in support of their respective positions. Affidavits were filed from four witnesses who are experts in the scientific matters involved together with hundreds of pages of exhibits to those affidavits. Each affiant was cross-examined extensively by counsel. In addition to comprehensive Memoranda of Fact and Law, the Court has had the opportunity to hear full argument over the course of one day. All counsel are to be complimented on their thoroughness and in the professional manner in which they addressed this issue.

IS THE MOTION PREMATURE?

[31] As at the date of hearing this motion, the Superintendent of Point Pelee National Park had not authorized the proposed cormorant cull pursuant to section 15(1)(a) of the *National Parks Wildlife Regulations*. The Court was advised that all preconditions to such an authorization had been met and that if the cull were to take place as proposed it would have to commence the week of April 28th.

[32] The Respondents did not object to this motion being heard prior to the expected authorization being made. In fact, they acknowledged that it was appropriate to deal with this matter now in light of the short period of time available prior to the commencement of the cull.

[33] A *quia timet* injunction may be granted where the applicant has presented strong evidence that there is a high probability that the apprehended harm will in fact occur.

[34] In light of the evidence presented and the position of the parties, this motion is not premature.

THE TEST FOR INJUNCTIVE RELIEF

[35] In determining whether the Applicants are entitled to an interlocutory injunction restraining the cull of the cormorants pending a hearing of their application for judicial review, the test to be applied is that established by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 (*RJR-MacDonald*).

[36] The Applicants must establish that:

1. There is a serious issue to be tried;
2. They will suffer irreparable harm if the injunction is not granted; and
3. The balance of convenience favours the granting of the injunction.

[37] The tripartite test is conjunctive; the Applicants have to satisfy all three elements of the test before they will be entitled to relief.

SERIOUS ISSUE TO BE TRIED

[38] The Applicants assert that the Superintendent has no authority, in the circumstances at hand, under section 15(1)(a) of the *National Parks Wildlife Regulations*, to authorize a cull of the cormorants on Middle Island. They assert that a management plan as required under the *Canada National Parks Act*, S.C. 1990, c. 32 is a necessary or implied condition precedent to any decision

under section 15(1)(a) of the *National Parks Wildlife Regulations* authorizing a cull for “park management purposes”.

[39] Sections 11 and 12 of the *Canada National Parks Act* stipulate that the Minister responsible for the Parks Canada Agency is required to prepare and table before each House of Parliament a management plan for each national park and review that plan every five years. It is a part of that process that there is public consultation in the development of the management plan.

11. (1) The Minister shall, within five years after a park is established, prepare a management plan for the park containing a long-term ecological vision for the park, a set of ecological integrity objectives and indicators and provisions for resource protection and restoration, zoning, visitor use, public awareness and performance evaluation, which shall be tabled in each House of Parliament.

(2) The Minister shall review the management plan for each park every five years, and any amendments to a plan shall be tabled with the plan in each House of Parliament.

11. (1) Dans les cinq ans suivant la création d'un parc, le ministre établit un plan directeur de celui-ci qui présente des vues à long terme sur l'écologie du parc et prévoit un ensemble d'objectifs et d'indicateurs relatifs à l'intégrité écologique, et des dispositions visant la protection et le rétablissement des ressources, les modalités d'utilisation du parc par les visiteurs, le zonage, la sensibilisation du public et l'évaluation du rendement; il le fait déposer devant chaque chambre du Parlement.

(2) Le ministre réexamine le plan au moins tous les cinq ans par la suite et, le cas échéant, le fait déposer avec ses modifications devant chacune de ces chambres.

12. (1) The Minister shall, where applicable, provide opportunities for public participation at the national, regional and local levels, including participation by aboriginal organizations, bodies established under land claims agreements and representatives of park communities, in the development of parks policy and regulations, the establishment of parks, the formulation of management plans, land use planning and development in relation to park communities and any other matters that the Minister considers relevant.

(2) At least every two years, the Minister shall cause to be tabled in each House of Parliament a report on the state of the parks and on progress made towards the establishment of new parks.

12. (1) Le ministre favorise, le cas échéant, la participation du public à l'échelle nationale, régionale et locale — notamment la participation des organisations autochtones, des organismes constitués dans le cadre d'accords sur des revendications territoriales et des représentants des collectivités — , tant à la création des parcs qu'à l'élaboration de la politique et des règlements à leur égard, des plans de gestion, de l'aménagement des terres et du développement des collectivités et des autres mesures qu'il juge utiles.

(2) Au moins tous les deux ans, le ministre fait déposer devant chaque chambre du Parlement un rapport sur la situation des parcs existants et les mesures prises en vue de la création de parcs.

[40] The most recent management plan for Point Pelee National Park is dated December 1995. The Applicants argue that this document can have no application to Middle Island because it was prepared prior to Middle Island becoming a part of Point Pelee National Park. The Respondents disagree. They argue that this 1995 Plan, although dated, continues to apply to Point Pelee National Park including Middle Island. This is not an issue I need to determine on this motion.

[41] The Applicants argue that the authority of the Superintendent in section 15(1)(a) of the *National Parks Wildlife Regulations* to authorize a cull for “park management purposes” requires that the decision, at a minimum, be consistent with the management plan established under section 11 of the *Canada National Parks Act*. If there is no such plan applicable to Middle Island, then no such authorization can be valid. They further argue that such an authorization of the Superintendent without a valid management plan may be illegal, being a breach of section 32(1)(c) of the *National Parks General Regulations*, SOR/78-213 which provides as follows:

32. (1) No person shall, in a Park, ...

(c) carry out any action that unreasonably interferes with fauna or the natural beauty of the Park.

32. (1) Il est interdit dans un parc ...

c) d’agir d’une façon qui menace indûment la faune ou la beauté naturelle du parc.

[42] The Respondents argue that the application for judicial review is frivolous as the plain and obvious interpretation of section 15(1) (a) makes no reference to the management plan. They argue that Parliament could have, but did not state in the Regulations that a management plan is a condition precedent to a Superintendent making an authorization under section 15(1). The Respondents pointed out what were described as the absurdities that would result if the Applicants’ interpretation prevailed.

[43] Except in limited circumstances an applicant seeking an injunction need no longer demonstrate a strong *prima facie* case. It is sufficient if he or she can satisfy the Court that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried.

[44] The Respondents argued that the issue between these parties is one of statutory interpretation - a simple question of law alone. The Supreme Court of Canada in *RJR-MacDonald* recognized that where the matter is a simple question of law alone the test for the granting of an injunction remains whether the moving party can establish a strong *prima facie* case. In such a case, the Court held, the issue should be decided squarely on whether there is a strong *prima facie* case; an examination of harm and balance of convenience does not arise.

[45] The Applicants argue that the situation here is not the simple question of law scenario posed by the Supreme Court of Canada in *RJR-MacDonald*. The theoretical example given by the Supreme Court of the constitutionality of a law imposing a state religion coupled with its exhortation that these will be “rare cases” implies that the “simple question of law” must be one where a certain and obvious answer to the legal question is available.

[46] In my view the Applicants have established that the issue to be tried – whether a valid management plan is a necessary precondition to the Superintendent exercising her discretion under section 15(1) (a) of the *National Parks Wildlife Regulations* - is not frivolous or vexatious.

[47] In light of my findings with respect to the other branches of the test, I need not decide whether the Applicants must establish or have established a strong *prima facie* case.

IRREPARABLE HARM

[48] The Applicants argue that if this injunction is not granted they will suffer irreparable harm in two respects:

1. They will have been denied the right to participate in the creation of the management plan required under the *Canada National Parks Act*; and
2. The Applicants as part of the public of Canada are beneficiaries of the trust imposed on Parks Canada in its management of national parks. Since the destruction of so many cormorants will cause harm to the current ecosystem of the park the Applicants as beneficiaries will also suffer irreparable harm.

[49] The killing of the cormorants will no doubt cause irreparable harm to some of the birds. As counsel admitted during the hearing, the harm the Applicants must show is harm to them and not to the birds.

[50] On one hand it can be said that the cull does not deny the Applicants their right to participate in the management plan process when it is finally undertaken by the Minister. On the other hand, counsel asked this Court to recognize the irreparable emotional and psychological harm to the Applicants and their members if, as they fear, these birds are destroyed prior to them being able to attempt their rescue by persuading Parks Canada, through the public consultation process leading to

an official park management plan for Middle Island, that these birds need not be killed. That is the irreparable harm the Applicants argue they may suffer if the cull is not enjoined at this time.

[51] The Respondents argue that the Applicants have had every opportunity to provide their input into the Middle Island situation and that they have provided their input.

[52] During the process leading up to the preparation of the Proposed Middle Island Conservation Plan of March 31, 2008, the Applicants either directly or through their members or through associations of which they are members participated in:

1. the public meeting held in Windsor, Ontario;
2. the public meeting held in Leamington, Ontario;
3. the stakeholder meeting held with the Ontario Federation of Ornithologists; and
4. the stakeholder meeting held with CDI.

[53] The Respondents further point out that in February 2008, CDI submitted a 93 page document to Parks Canada entitled 'A Critical Analysis of Point Pelee National Park's Rationale for Killing the Middle Island Cormorants' and that this was considered by Parks Canada prior to drafting the Proposed Middle Island Conservation Plan.

[54] The Applicants concede that if there were a valid management plan in place applicable to Middle Island and if that plan did not prohibit the killing of the cormorants, then a cull of the sort

proposed might proceed. They argue that absent the consultative process required under the *Canada National Parks Act* in establishing a management plan they have been denied their right to participate actively and fully. Their interest being the lives of the cormorant, participation in that process after the cull will be of little value.

[55] While the Applicants have had many opportunities to express their views regarding Middle Island and the cormorant population, this cannot be said to be a substitute for their rights under Section 12 of the *Canada National Parks Act* to participate in the development of a management plan in the one area of concern to them – the protection of the cormorant population. Participation after a cull will be no substitute for participation prior to the cull.

[56] Accordingly, the Applicants have established irreparable harm to them should this injunction not be granted.

BALANCE OF CONVENIENCE

[57] The Applicants argue that the balance of convenience rests with them and in the granting of the interlocutory injunction. They argue that there is no evidence that the ecosystem shift feared by Parks Canada is imminent or that the tipping point has been reached. They submit that the evidence of an ecosystem shift at Middle Island is, at best, a possibility not a probability.

[58] They argue that the imminent problem is the destruction of thousands of cormorants on Middle Island. They submit that preserving the status quo pending a full hearing on the merits of their application tips the balance of convenience in their favour.

[59] The Applicants rely on the decisions of this Court in *Francis v. Mohawks of Akwesasne Band of Indians*, [1993] F.C.J. 369 and *Duncan v. The Band Council of Behdzi Ahda First Nation*, 2002 F.C.T. 581. In both decisions this Court ordered an injunction to prevent an election taking place. Justice Noël in *Francis* described the rationale for granting the injunction to maintain the status quo as follows:

By granting an interim order prohibiting the holding of the by-election until the matter of its legality is resolved, I would, from the respondents' point of view, temporarily suspend the holding of validly called elections. On the other hand, by granting the interim order, I would preserve the status quo until the issue of the propriety of the by-election is determined. It seems to me that while the present state of affairs is obviously less than desirable, the one which would result if elections were held and were subsequently declared invalid, would be immeasurably worse.

The further disruption which would result in the Akwesasne community if elections, otherwise validly and democratically held, were voided because of an absence of proper authority to hold them could be substantial. Those elected in accordance with the perceived will of the people would be forced to abandon their seats on the Council in favour of members who no longer hold the trust of the community. This would add considerable difficulty to an already difficult situation.

In contrast, preventing the holding of the election until its legality is confirmed would prevent the immediate resolution of the impasse without, however, adding any more fuel to the fire.

In these circumstances, I believe that it is incumbent upon me to preserve the status quo until the matter of the legitimacy of the by-election is determined and to grant the interim order sought by the applicants.

[60] In my view these cases are not persuasive in this circumstance. The present situation at Middle Island is quite dissimilar to that before the Court in those election cases. Here, if the Court prevents the cull of the cormorants until the questioned legality of the Superintendent's authorization is finally determined, there will be further damage to the ecosystem of Middle Island and a risk, of a magnitude this Court cannot determine, that the tipping point of an ecosystem shift is reached.

[61] It may be, to use the analogy given by Professor Hebert, that 2008 will be the last rivet in the airplane and the failure to stop the destruction of vegetation on Middle Island will precipitate the ecosystem shift. If so, the consequence of not taking the steps proposed by Parks Canada would most certainly tip the balance of convenience in the Respondents' favour. While there is no certainty that 2008 will be the tipping point, the possibility that it may be, coupled with the public interest considerations discussed below, tips the balance of convenience in favour of the Respondents.

[62] One might suggest that maintaining the status quo of Middle Island's ecosystem in the circumstances before us actually requires the culling of the cormorants.

[63] The Respondent also argued forcefully that the Supreme Court of Canada in *RJR-MacDonald* recognized that there may be special factors that require the Court's consideration when determining the balance of convenience. In this respect it was argued that the public interest must be acknowledged and weighed.

[64] The Respondents rely upon the decision of the Federal Court of Appeal in *Attorney General of Canada v. Fishing Vessel Owners' Association of B.C.*, [1985] 1 F.C. 791, which overturned an Order enjoining fisheries officers from implementing a fishing plan adopted under the *Fisheries Act*, R.S.C. 1970, c. F-14, for several reasons, including, at p. 795:

[T]he Judge assumed that the grant of the injunction would not cause any damage to the appellants. This was wrong. *When a public authority is prevented from exercising its statutory powers, it can be said, in a case like the present one, that the public interest, of which that authority is the guardian, suffers irreparable harm.* (emphasis added)

[65] This passage was reviewed by the Supreme Court in *RJR-MacDonald*. The Supreme Court concluded as follows:

In the case of a public authority, the onus of demonstrating irreparable harm to the public interest is less than that of a private applicant. This is partly a function of the nature of the public authority and partly a function of the action sought to be enjoined. The test will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility. Once these minimal requirements have been met, the court should in most cases assume that irreparable harm to the public interest would result from the restraint of that action.

[66] There is no doubt in my mind that the Respondents meet those minimal requirements. Further, they have presented evidence of the possibility of real harm to the ecosystem of Middle Island if the cull does not commence the week of April 28, 2008.

[67] Accordingly, the Applicant has failed to satisfy the Court that the balance of convenience rests with it.

[68] The application for an interlocutory injunction is denied. If the Superintendent of Point Pelee National Park issues an authorization pursuant to section 15(1)(a) of the *National Parks Wildlife Regulations* then the cull of the cormorants may proceed, provided all other conditions precedent to the cull have been met.

ANCILLARY MATTERS

[69] The Applicants have been occupied since the filing of the judicial review application with matters related to this motion and accordingly seek an extension of time pursuant to Rule 8 for the filing of further materials on the judicial review application, should they choose, to 30 days from the date of this decision. This is a reasonable request in the circumstances and will be granted for both parties.

ORDER

THIS COURT ORDERS that:

1. The Applicants' motion for an interlocutory injunction is dismissed.
2. The interim injunction preventing the cull of the cormorants on Middle Island as set out in the Order of Mr. Justice Phelan dated April 2, 2008, is hereby ended.
3. The evidence submitted on this motion shall be considered as evidence submitted for the purposes of the application for judicial review.
4. The Applicants shall file any further affidavits in support of the application for judicial review within 30 days of the date of this Order and the respondents shall have an additional 30 days thereafter to file any further supporting affidavits; and
5. The Respondents shall have their costs of this motion.

“Russel W. Zinn”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-461-08

STYLE OF CAUSE: ZOCHECK CANADA INC. ET AL
and Applicants
PARKS CANADA AGENCY ET AL
Respondents

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 25, 2008

**REASONS FOR ORDER
AND ORDER:** ZINN J.

DATED: April 28, 2008

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