

**Date: 20091118**

**Docket: T-960-08**

**Citation: 2009 FC 1184**

**Ottawa, Ontario, November 18, 2009**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**MICHAEL J. HARNUM**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

Introduction

[1] Mr. Michael J. Harnum (the “Applicant”) seeks judicial review of the decision of the Minister of Fisheries and Oceans (the “Minister”) dated May 16, 2008. In that decision, the Minister rejected the Applicant’s appeal for the reinstatement of certain fishing licences and vessel registrations.

Background Facts

[2] The Applicant is a fisherman, residing at Green's Harbour, Trinity Bay, Newfoundland and Labrador. He is the son of Mr. James Harnum, also a fisherman who resides at Green's Harbour. Upon the written request of Mr. James Harnum, the Department of Fisheries and Oceans ("DFO") approved the reissuance of certain licences and vessel registrations, known as the "core enterprise", to the Applicant. The details of this transfer are set out in a letter dated September 11, 2006 from Ms. Karen Snook, Area Licensing Administrator with DFO in St. John's Newfoundland and Labrador, to Mr. James Harnum. The licence and vessel registrations are as follows:

- a. Groundfish except Lump (Gillnet/Trap/Longline)
- b. Herring Fixed Gear
- c. Mackerel Fixed Gear
- d. Eel
- e. Capelin Fixed Gear
- f. Squid
- g. Whelk
- h. Lobster
- i. Small Supplementary Crab
- j. Bait
- k. CFV # 138894 – 19' LOA
- l. CFV #092627 – 39' (Subject to IHR's)

[3] At the time that Mr. James Harnum requested DFO to reissue his core enterprise to the Applicant, litigation was ongoing before the Supreme Court of Newfoundland and Labrador relative to the said core enterprise cause number 2003 06T 0061. The litigation was between Charles Green as Plaintiff and James Robert Harnum as Defendant. In that litigation, Mr. Green was seeking a declaration that the fishing enterprise he had participated in from 1987 to 1999 with Mr. James Harnum was a partnership. He also claimed an accounting of profits.

[4] Following a trial before the Supreme Court of Newfoundland and Labrador, Mr. Justice Handrigan issued a judgment on June 9, 2005 in favour of Mr. Green. This judgment is reported at (2005), 248 Nfld. & P.E.I.R. 312. The learned judge summarized his factual findings and issued an Order at paras. 155 through 157 as follows:

The parties fished together from 1987 until 1999 when a disagreement over the management of the enterprise made it untenable for them to work together. The Plaintiff claimed the enterprise was a partnership and sued for a declaration and an accounting from the Defendant. The Plaintiff claimed alternatively that the Defendant had been unjustly enriched and that the Defendant held the fishing enterprise in a constructive trust or that he was entitled to compensation on the basis of quantum meruit.

The parties operated as a partnership, which has been rendered unworkable, but has not been dissolved. The Defendant is accountable to the Plaintiff for the partnership income and assets, including boat, licences and gear. The Plaintiff is entitled to his costs to be taxed on a party-and-party basis. Either party may apply for further orders or directions. Such applications include, but are not limited to: valuation of the assets of the partnership; determining the income of the partnership; dissolution of the partnership; and, distribution of the assets or their values. There is no need to deal with the alternative grounds of relief sought by the Plaintiff.

Order:

In the result, I order that:

- I. The fishing enterprise operated by James Harnum and Charles Green from 1987 to 1999 aboard the “Sandra Tanya” is a partnership in which they were equal partners.
- II. James Harnum is accountable to Charles Green for half the income and assets of the partnership.
- III. Charles Green will have his costs to be taxed on a party-and-party basis.
- IV. Either party may apply for further orders or directions.

[5] An appeal was taken by Mr. James Harnum before the Newfoundland and Labrador Supreme Court, Court of Appeal. Judgment was delivered on August 30, 2006, reported at (2006), 259 Nfld. & P.E.I.R. 141. In its judgment, the Court of Appeal dismissed the appeal and upheld the finding of the trial judge that a partnership existed between Mr. Green and Mr. James Harnum with respect to the fishing enterprise that began operating in 1987. It varied one element of the Order of the trial judge, as appears from para. 42 of the judgment of the Court of Appeal as follows:

In summary, the five grounds of appeal considered by the Court are rejected and the appeal, as to these grounds, is dismissed. Because both parties argued the point, although it was not presented formally as a ground of appeal, the argument presented by Mr. Harnum, respecting the determination by the trial judge, at that stage of the proceedings, of Mr. Green's percentage interest in all the assets, is accepted in part. The four items ordered by the trial judge are affirmed except that item II, as worded, is deleted and there is substituted for it the following:

“James Harnum is accountable to Charles Green for his half interest in the income, the boat and the licenses used to fish the boat, and for Charles Green's proper percentage of the other partnership assets, all up to the point of dissolution in 1999, and thereafter accountable to Charles Green in accordance with the provisions of section 42 of the **Partnership Act.**”

The matter is referred back to the trial judge for completion of trial of the remaining issues.

[6] The matter was remitted to Mr. Justice Handrigan for a trial upon an accounting of the Plaintiff's share of partnership assets and profits. In a judgment delivered on January 30, 2007, reported at (2007), 263 Nfld. & P.E.I.R. 241, the trial judge made the following findings and Order

at paras. 69 and 70:

The Court found that Charles Green was entitled to \$270,202.50 as his share of the profits that Mr. Harnum earned using Mr. Green's share of the enterprise assets from 2000 to 2006, inclusive of both years. It also ordered that the vessel and fishing licenses be sold at fair market value subject to the conditions stated in the judgment. Mr. Green is entitled to his costs to be taxed on a party-and-party basis except for the costs of specified interlocutory proceedings, which will be taxed on a solicitor-client basis.

Order:

In the result, I order that:

1. James Harnum pay Charles Green \$270,202.50 as his share of the profits that Mr. Harnum earned using Mr. Green's share of the enterprise assets from 2000 to 2006, inclusive of both years.
2. The vessel "Sandra Tanya" be sold on the terms and conditions stated in paragraph 65 above.
3. That the fishing licenses owned by the enterprise be sold on the terms and conditions stated in paragraph 66 above.
4. That James Harnum pay Charles Green his costs to be taxed on a party-and-party basis except for those interlocutory proceedings specified in paragraph 67 above.

[7] In the course of his judgment, the trial judge noted that Mr. James Harnum had directed that the fishing licences previously recorded in his name had been reissued to his son, the Applicant in the present proceedings. This was done without notice to Mr. Green and in defiance of an Order directing Mr. James Harnum to retain the partnership assets. Upon learning of the reissuance of the licences, the trial judge granted the application of Mr. Green to add the Applicant as a defendant to

the action in the Supreme Court of Newfoundland and Labrador. At paras. 34 and 35 the trial judge said the following:

When counsel for Mr. Green received Mr. Green's copies of Mr. Harnum's fishing licenses from DFO he discovered that Mr. Harnum had relinquished his licences to DFO on September 11, 2006, and they were reissued at his direction to his designate, Michael Harnum, his son. Mr. Harnum gave Mr. Green no notice of what he intended to do or actually did with the licenses. Nor does he appear to have paid much heed to the order I made on September 9, 2005 when, at Mr. Harnum's request, I stayed execution of my judgment pending Mr. Harnum's appeal. In particular, I directed that "Mr. Harnum shall not dispose of any of the partnership assets, the motor vessel 'Sandra Tanya', gear and the licenses, and shall not do anything to impair the viability or value of these assets".

In consequence of his discovery that the licenses had been transferred to Michael Harnum, who holds the licenses now, Mr. Green applied on October 25, 2006 to add Michael Harnum as a defendant to the proceedings. I allowed his application and made the order he was looking for on November 6, 2006. Mr. Harnum transferred his licenses to his son on September 11, 2006, less that [sic] two weeks after the Court of Appeal finalized its judgment in his appeal; although the process may have been started on April 5, 2006 when Mr. Harnum signed a DFO "2006 Request Form". In fact, Mr. Harnum's actions may have placed the partnership licenses beyond the reach of this court until at least September 11, 2007.

[8] There was a further appeal to the Newfoundland and Labrador Supreme Court, Court of Appeal. In its decision dated September 5, 2007, reported at 285 D.L.R. (4<sup>th</sup>) 340, the Court of Appeal dismissed the appeal undertaken by Mr. James Harnum and the Applicant. An application for leave to appeal to the Supreme Court of Canada was dismissed on January 17, 2008; see (2009), 384 N.R. 394 (note).

[9] In the meantime, by letter dated July 10, 2007, DFO approved the request of Mr. Dwight Saunders of Tri-Nav Consultants Inc., to reissue the core enterprise from the Applicant to Mr. Clyde Boland. That letter signed by Ms. Karen Snook, Area Licensing Administrator, provides in part as follows:

This will acknowledge your recent request regarding the reissuance of the core enterprise from Mr. Michael Harnum to Mr. Clyde Boland.

Your request, as Power of Attorney for Michael Harnum, has been approved and the core enterprise, consisting of a >35' vessel eligibility along with a Groundfish except Lumpfish Licence and a Small Supplementary Crab Licence, has been reissued to Mr. Boland.

Attached is a copy of the Application for Relinquishment of Fishing Privileges for your records.

...

[10] According to the summary of facts that is included in the certified Tribunal Record that was filed by the Attorney General of Canada (the "Respondent") pursuant to the *Federal Courts Rules*, SOR/98-106 (the "Rules") in connection with this application for judicial review, the Applicant was notified by letter dated July 12, 2007 that the core enterprise formerly held by him had been reissued to Mr. Clyde Boland. The summary further records that the Applicant submitted an appeal on July 23, 2007 relative to DFO's decision to reissue his licences and vessel registration to Mr. Boland. On August 5, 2007, the Applicant submitted a request to have his case reviewed by the Regional Licensing Appeal Committee.

[11] Paragraph 31 of the summary sets out the basis of the appeal before the Regional Licensing Appeal Committee as follows:

Robert Harnum submitted that this appeal was based on three factors, the March 27, 2007 decision not to renew his fishing licences and vessel registrations for 2007, the July 10, 2007 decision to allow a third party (Mr. Dwight Saunders) to relinquish his Core designation, vessel registration, supplementary crab licence and groundfish licence without his authorization/consent; and the July 10, 2007 decision to reissue Mr. Harnum's core designation, vessel registration, supplementary crab licence and groundfish licence to Mr. Clyde Boland.

[12] By a Recommendation Form dated November 30, 2007, the Regional Licensing Appeal Committee recommended that the appeal be denied and the matter was referred to the Board.

[13] The hearing before the Board took place in St. John's Newfoundland and Labrador on December 12, 2007. By that time, the Newfoundland and Labrador Supreme Court, Court of Appeal had issued its decision of September 5, 2007 dismissing the appeal advanced by Mr. James Harnum and the Applicant from the January 30, 2007 decision of Mr. Justice Handrigan.

[14] In a memorandum dated March 15, 2008 to the Minister, the Board made the following recommendation:

Recommendation

The Atlantic Fisheries Licensing Appeal Board reviewed all the information presented by the appellant, his representatives and the department of Fisheries and Oceans. The board recommends that the appeal be denied based on the fact that DFO complied with a court order which stated that the vessel and the licences had to be sold and

that Dwight Saunders of Tri-Nav was appointed as power of Attorney to re-issue Michael Harnum's licences and vessel.

[15] By letter dated May 16, 2008, the Applicant's appeal was dismissed. The operative part of that letter provides as follows:

...

The Minister has made a decision based on a thorough review of all available information and I regret to inform you that he has denied your appeal. The Minister concluded that the licensing policy was correctly interpreted and applied by the Department of Fisheries & Oceans in your case.

...

[16] On June 17, 2008, the Applicant filed a Notice of Application pursuant to the Rules, seeking judicial review of the decision of the Minister.

### Submissions

#### i) Applicant's Submissions

[17] The Applicant argues that he did nothing that would justify the refusal of DFO to reissue his core enterprise. He submits that he was involved in the fishing enterprise that was the subject of the litigation before the Supreme Court of Newfoundland and says that the Court was wrong.

[18] Further, he argues that DFO did not follow its policies. It reissued his licences and vessel registrations to Clyde Boland, prior to the expiry of twelve months after the licences had been reissued to him. The Applicant says this was contrary to section 16(4) of the *Commercial Fisheries*

*Licensing Policy for Eastern Canada* (Ottawa: Minister of Supply and Services Canada, 1996), (the “Licensing Policy”).

[19] As well, he submits that DFO erred by recognizing the Order of the Supreme Court of Newfoundland and Labrador authorizing a third party, that is Dwight Saunders, to apply for the reissuance of the licence. The Applicant says this is contrary to section 11(2) of the Licensing Policy.

[20] The Applicant argues that the reissuance of the licence upon the request of Dwight Saunders “complicated” his application for leave to appeal to the Supreme Court of Canada.

[21] He submits that DFO “protected” Dwight Saunders at his expense, thereby discriminating against the Applicant. In other words, the Applicant argues that Mr. Saunders received more favourable treatment than was given to him.

[22] Finally, the Applicant argues that the refusal to reissue licences to him amounts to an unreasonable seizure, contrary to section 8 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the “Charter”).

[23] The Applicant requests that this Court make a recommendation to DFO that it reconsider its decision.

ii) Respondent's Submissions

[24] The Respondent first addresses the applicable standard of review. He submits that since the decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the standard of patent unreasonableness is merged with the standard of reasonableness and that is the applicable standard in this case.

[25] The Respondent argues that the Applicant is making a collateral attack on the decision of the Supreme Court of Newfoundland and Labrador and that this is impermissible.

[26] Next, the Respondent submits that the Charter does not apply to the issuance of fishing licences under the *Fisheries Act*, R.S.C. 1985, c. F-14 (the "Act") since a licence is a privilege that lies wholly within the discretion of the Minister to grant.

[27] The Respondent argues that the allegations relative to a breach of DFO policy are without merit. The policy is not law and the Minister retains discretion to make decisions for the statutory purpose, having regard to administrative efficiency. In this regard, the Respondent relies on the decisions in *Carpenter Fishing Corp. v. Canada*, [1998] 2 F.C. 548 (C.A.) and *Skycharter Limited v. Canada (Minister of Transport)* (1997), 125 F.T.R. 307 (T.D.).

[28] The Respondent submits that the arguments advanced by the Applicant regarding the decision of the Supreme Court of Newfoundland and Labrador are without merit. The decision of Justice Handrigan dated January 30, 2007 shows that the Court was aware of DFO's policies

respecting the issuance of licences. A representative of DFO, Ms. Jackie Perry, testified in that regard before Justice Handrigan on January 22, 2007.

### Discussion and Disposition

[29] This application for judicial review is made pursuant to section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7. Subsections 18.1(3) and 18.1(4) are relevant and provide as follows:

#### Powers of Federal Court

- (3) On an application for judicial review, the Federal Court may
- (a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or
  - (b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

#### Grounds of review

- (4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal
- (a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
  - (b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;
  - (c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;
  - (d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;
  - (e) acted, or failed to act, by reason of fraud or perjured evidence; or
  - (f) acted in any other way that was contrary to law.

[30] The application for judicial review relates to the decision of the Minister in refusing the Applicant's request for the reissuance of certain licences to him. Subsection 7 of the Act governs the Minister's authority to issue licences and provides as follows:

7. (1) Subject to subsection (2), the Minister may, in his absolute discretion, wherever the exclusive right of fishing does not already exist by law, issue or authorize to be issued leases and licences for fisheries or fishing, wherever situated or carried on.

(2) Except as otherwise provided in this Act, leases or licences for any term exceeding nine years shall be issued only under the authority of the Governor in Council.

[31] The Board is created pursuant to the Licensing Policy. Chapter 7, section 35 of the Licensing Policy deals with the appeal process that is available to persons who are not satisfied with decisions of DFO. Paragraph 35(7)(c) of the Licensing Policy describes the role of the Board, that is to hear appeals of licensing decisions and to make recommendations to the Minister, having regard to whether an appellant had been treated fairly and whether "extenuating circumstances" exist that would justify deviation from "established policies, practices or procedures".

[32] In *Jada Fishing Co. et al. v. Canada (Minister of Fisheries and Oceans) et al.* (2002), 288 N.R. 237 (F.C.A.), the Federal Court of Appeal commented on the relationship between the recommendations of the Board and the decision of the Minister at paras. 12 and 13 as follows:

It is clear that the Minister is empowered under section 7 of the *Fisheries Act*, R.S.C. 1985, c. F-14, with absolute discretion to make decisions with regard to fishing licences. The Panel, on the other hand, was without statutory authority and merely made recommendations which the Minister was entitled to accept or reject. Accordingly, the Panel's recommendations are not in themselves

prima facie reviewable. In this case, due to the breadth of the Notice of Application for Judicial Review before Pelletier, J. I am well satisfied that this Court can review a discretionary decision of the Minister based, in part, upon the Panel's recommendation.

The present appeal seeks to set aside the Reviewing Judge's order, and refers only to the "decision" of the Panel and its conduct, without reference to the Minister. However, the Minister's decision of April 3, 1998, still stands, and, in any event, the decision or recommendation of the Panel is inexorably connected to his decision, being without legal effect unless "adopted" by the Minister as one of the basis for his decision. In my analysis, this appeal can only continue as a review of the Minister's decision, albeit under the guise of an attack on the Panel's recommendation, based on paragraph 18.1(4) of the Act as a review of the exercise of Ministerial discretion.

[33] This means that the recommendation of the Board is to be considered as a factor that was taken into account by the Minister when he made the decision that is under review.

[34] As noted above, the granting of fishing licences is governed by Section 7 of the Act. This statutory provision accords broad discretion to the Minister in the matter of issuing licences under the Act. The breadth of that discretion was discussed by the Supreme Court of Canada, in *Comeau's Sea Foods Ltd. v. Canada (Minister of Fisheries and Oceans)*, [1997] 1 S.C.R. 12 at paras. 36-37 as follows:

It is my opinion that the Minister's discretion under s. 7 to authorize the issuance of licences, like the Minister's discretion to issue licences, is restricted only by the requirement of natural justice, no regulations currently being applicable. The Minister is bound to base his or her decision on relevant considerations, avoid arbitrariness and act in good faith. The result is an administrative scheme based primarily on the discretion of the Minister: see *Thomson v. Minister of Fisheries and Oceans*, F.C.T.D., No. T-113-84, February 29, 1984.

This interpretation of the breadth of the Minister's discretion is consonant with the overall policy of the *Fisheries Act*. Canada's fisheries are a "common property resource", belonging to all the people of Canada. Under the *Fisheries Act*, it is the Minister's duty to manage, conserve and develop the fishery on behalf of Canadians in the public interest (s. 43). Licensing is a tool in the arsenal of powers available to the Minister under the *Fisheries Act* to manage fisheries. It restricts the entry into the commercial fishery, it limits the numbers of fishermen, vessels, gear and other aspects of commercial fishery.

[35] The first issue to be addressed is the applicable standard of review. According to the decision of the Supreme Court of Canada in *Dunsmuir*, decisions of decision-makers are reviewable on one of two standards, that of correctness or reasonableness. Where prior jurisprudence has established the applicable standard of review, that standard can be adopted.

[36] Prior to the decision in *Dunsmuir*, decisions of the Board were reviewed on the standard of patent unreasonableness. That standard is now subsumed in the standard of reasonableness. Application of this standard requires the Court to examine the decision, having regard to the evidence that was submitted to the Board. That evidence is the material contained in the Tribunal Record, consisting of the summary of evidence that was presented to the Board, and the Board's recommendation.

[37] The Applicant argues that the Minister erred by failing to follow certain policies set out in the Licensing Policy, in particular sections 11(12) and 16(4). These sections provide as follows:

11(12) For the purpose of renewing a licence or for the issuance of a replacement licence to a new licence holder, the eligible licence holder must personally sign any related documents. In the case of an

estate, the executor or the legally appointed administrator must sign the documents. As provided under the *Fishery (General) Regulations*, in the case of corporation-held licences, only an officer of the corporation may sign on behalf of that corporation.

16(4) A licence may only be issued as a replacement licence once in every twelve (12) month period.

[38] I agree with the arguments of the Respondent concerning the alleged breach of policy. In the first place, policies do not have the force of law but exist as a guide to the implementation of legislation. In this regard, I refer to the decision in *Carpenter Fishing* at para. 28 where the Federal Court of Appeal, in discussing policies relating to fishing licences said that: "...Policy guidelines outlining the general requirements for the granting of licences are not regulations; nor do they have the force of law".

[39] Further, in *Skycharter*, Justice Wetston of this Court said the following about the failure of a minister to follow a departmental policy at para. 11:

The applicants argue that certain policy statements bind the Minister and that, furthermore, the Minister failed to follow these policies. Policy directives are not binding on an authority and are not enforceable by members of the public: *Dee v. Canada (Minister of Employment and Immigration)* (1988), 24 F.T.R. 48, 7 Imm. L.R. (2d) 95 (T.D.); *Mohammad v. Canada (Minister of Employment and Immigration)* (1988), 91 N.R. 121 (F.C.A.); *Martineau and Butters v. Matsqui Institution Inmate Disciplinary Board*, [1978] 1 S.C.R. 118, 14 N.R. 285, per Pigeon, J., at pages 129-130 [S.C.R.]...

[40] Secondly, the third party, Dwight Saunders, was authorized by a Court of competent jurisdiction, that is the Supreme Court of Newfoundland, to request a reissuance of the Applicant's licences. The trial judge had the benefit of hearing the evidence of Ms. Jackie Perry, an employee of

DFO in St. John's, concerning DFO policy regarding the issuance of licences under the Act. The Minister, through his servants and agents, acted reasonably in accepting the application of Mr. Saunders for the reissuance of the licences.

[41] The same applies to the Applicant's arguments concerning alleged disrespect for that provision of the Policy that says a licence shall not be reissued more than once in a twelve-month period. The licences had been reissued in September 2006 to the Applicant, upon the request of his father James Harnum, in disobedience of an Order of Mr. Justice Handrigan. It appears that the purpose of that Order was to preserve the partnership assets, including the licences, until the final disposition of the proceedings before the Supreme Court of Newfoundland. The change in the *status quo* was brought about by the actions of Mr. James Harnum and the Applicant in disregard of the Order of Mr. Justice Handrigan.

[42] In my opinion, in these circumstances it does not lie in the mouth of the Applicant to complain of the actions taken by DFO in responding to the request of Mr. Dwight Saunders for reissuance of the licences, particularly when that request was made pursuant to an Order issued by the Supreme Court of Newfoundland and Labrador.

[43] In any event, the bar against the reissuance of licences more than once in a twelve-month period is a matter of policy, not of law. The implementation of policy regarding fishing and other licences under the Act lies in the discretion of the Minister, having regard to all relevant circumstances, including the outcome of judicial proceedings before the Supreme Court of

Newfoundland and Labrador. The Minister's actions were reasonable having regard to those circumstances and there is no merit in these arguments advanced by the Applicant.

[44] The Applicant argues that he has suffered discrimination and has been deprived of the licences by an unreasonable seizure. He relies upon the Charter in making these submissions.

[45] There can be no unreasonable seizure as the licences are not property but are grants of a privilege that are wholly in the discretion of the Minister. Further, the conduct of the Minister cannot be said to be discriminatory or an unreasonable seizure as he was giving effect to the Order of the Supreme Court of Newfoundland and Labrador. The Charter has no application to the present matter. There is no evidence of unlawful discrimination or unlawful seizure.

[46] In conclusion, the Applicant has failed to show that the Minister's decision is unreasonable. That is the only issue in play in this proceeding. The Applicant's whole approach, both before the Board and in this application for judicial review, is to challenge findings made by the Supreme Court of Newfoundland and Labrador in the proceedings that were commenced by Mr. Green.

[47] A challenge by the Applicant, at this stage, to the findings of liability that were made by the Newfoundland Supreme Court, both in the Trial Division and in the Court of Appeal, is no more than a collateral attack on those findings and that is not permitted. In that regard, I refer to the decision in *R. v. Wilson*, [1983] 2 S.C.R. 595, at p. 599, where the Supreme Court of Canada held that:

...It has long been a fundamental rule that a court order, made by a court having jurisdiction to make it, stands and is binding and conclusive unless it is set aside on appeal or lawfully quashed. It is also well settled in the authorities that such an order may not be attacked collaterally – and a collateral attack may be described as an attack made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgment. Where appeals have been exhausted and other means of direct attack upon a judgment or order, such as proceedings by prerogative writs or proceedings for judicial review, have been unavailing, the only recourse open to one who seeks to set aside a court order is an action for review in the High Court where grounds for such a proceeding exist...  
[Emphasis added]

[48] I have highlighted the description of a “collateral attack” in the quotation above because, in my opinion, the Applicant is here attempting to challenge the findings of the Supreme Court of Newfoundland and Labrador in a proceeding that is factually concerned with another matter, that is the dismissal of an appeal relating to the non-issuance to him of the core enterprise that he formerly held.

[49] It is not a question of whether the Applicant has “done nothing wrong” *vis à vis* that core enterprise. Mr. Justice Handrigan, the trial judge, gave clear reasons in his Judgment of January 30, 2007, for the addition of the Applicant as a defendant in the action that was commenced by Mr. Green. The Court of Appeal, in its judgment of September 5, 2007, did not interfere with the Order of the trial judge in that regard.

[50] The Applicant exercised his rights to appeal the decision of the Trial Division to the Court of Appeal in Newfoundland and Labrador. He exercised his right to seek leave to appeal to the

Supreme Court of Canada. He was unsuccessful. His attempt to further challenge the findings of the Courts of Newfoundland and Labrador in this application for judicial review cannot succeed.

[51] In conclusion, the decision under review meets the relevant standard of review, that is reasonableness. The Board was aware of the decisions of the Supreme Court of Newfoundland and Labrador. The Board, and the Minister, were obliged to acknowledge these decisions in disposing of the Applicant's appeal under the Licensing Policy. Such regard gives effect to the rule of law and respects the foundational role that provincial superior courts have in maintaining the rule of law; see *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 S.C.R. 725 at para. 37.

[52] This application for judicial review is dismissed with costs to the Respondent.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this application for judicial review is dismissed with costs to the Respondent.

“E. Heneghan”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-960-08

**STYLE OF CAUSE:** MICHAEL J. HARNUM v.  
ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** St. John's, NL

**DATE OF HEARING:** June 2, 2009

**REASONS FOR JUDGMENT  
AND JUDGMENT:** HENEGHAN J.

**DATED:** November 18, 2009

**APPEARANCES:**

Robert Harnum FOR THE APPLICANT  
(Brother of Self-represented Applicant)

Dean Smith FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

N/A FOR THE APPLICANT  
(Brother of Self-represented Applicant)

John H. Sims, Q.C. FOR THE RESPONDENT  
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