

Blakes Bulletin

Environmental Law

Quebec Interprets Requirement for Environmental Permits

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On December 10, 2009, in *More v. Plante*, the Quebec Court of Appeal refused to issue an interlocutory injunction against a company that began general construction work on a building while an affiliated entity was waiting for an environmental permit to build and operate a waste transfer station at that location.

In Quebec, any undertaking that may involve the release of contaminants into the environment must be covered by a certificate of authorization (CA) issued by the Quebec Ministry of Sustainable Development, Environment and Parks (MSDEP) pursuant to section 22 of the *Environment Quality Act* (EQA). In *More*, the Court of Appeal was divided on the application of one of the exclusions listed in section 2 of the *Regulation respecting the application of the Environment Quality Act* (Regulation). Under section 2, no CA is required to build or expand a building, unless the building houses an activity that requires a CA.

CONTEXT

Fiducie Remdev (Remdev) owns a large industrial building in Longueuil, Quebec. In 2008, it rented a third of the building to an affiliate, RCI Environnement Inc (RCI). In June 2009, RCI submitted a CA application with the MSDEP, to build and operate a waste transfer station in the space it rents from Remdev. Later that month, Remdev and RCI wrote to the MSDEP saying that work on the building would proceed in two stages. Remdev was to make general improvements, including upgrading the drainage system, sidewalks, alarm system, sprinkler system, and electrical system. RCI would take care of turning its space into a waste transfer station. The general work was to begin immediately. The MSDEP saw no problem with this approach. In August 2009, Remdev received a construction permit from the City of Longueuil. Subsequently, a group composed of locals and a neighbouring company, also in the waste management business, (the Appellants), applied to the Quebec Superior Court for an interlocutory injunction to stop

Remdev from beginning construction. A safeguard order was issued but then cancelled when the Superior Court held that there was no reason to issue an interlocutory injunction in this case. The Appellants appealed.

MAJORITY OPINION

Chamberland and Rochon JJA refused to grant the injunction. They held that, to succeed, a plaintiff must show a colour of right and the remedy must be necessary to avoid serious or irreparable injury. If the existence of a right is doubtful or debatable, the court must balance the advantages and disadvantages to the parties. Remdev and RCI argued that for large industrial buildings with multiple uses, construction and renovation triggers a CA requirement only for that part of the building that will house an activity requiring a CA. Although it did not rule on this interpretation, the majority gave it sufficient weight to hold that the right invoked by the Appellants was doubtful. The majority noted that while the Appellants believed that Remdev needed a CA, the MSDEP itself took the opposite view.

Further, the balance of inconvenience favoured denying the injunction.

MINORITY OPINION

Morin JA dissented, maintaining that a court cannot consider separately different portions of a building depending on which of these will house an activity requiring a CA. He considered it irrelevant that the work would be done by two different companies.

Morin JA added that even if the Appellants' right to an injunction had not been clear, there would have been no need to proceed with analyzing the balance of advantages and disadvantages, nor to consider whether the foreseen injury was irreparable, because the dispute involved the application of a public interest law, the EQA. He therefore followed a line of decisions holding that an interlocutory injunction should issue almost automatically when it concerns an activity requiring an MSDEP authorization. Finally, Morin J. dismissed the MSDEP's opinion on the need for a CA, because whether a CA is required is a question of law that is ultimately decided by the courts.

CONT'D ON PAGE 2

CONT'D FROM PAGE 1

CONCLUSION

The criteria for obtaining an interlocutory injunction to prevent work from starting before the MSDEP issues a CA are still unclear. This recent decision by the Quebec Court of Appeal suggests, however, that it may sometimes be possible, after consulting with the MSDEP, to begin construction work before the CA is issued.

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