



Court File No. T-570-16

FEDERAL COURT

WORLD WILDLIFE FUND CANADA

Applicant

- and -

ATTORNEY GENERAL OF CANADA and
SHELL CANADA LIMITED

Respondents

APPLICATION UNDER sections 18 and 18.1 of the *Federal Courts Act*, RSC 1985, c F-7.

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at **Ottawa, Ontario**.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

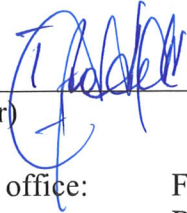
Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the

Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: April 11, 2016

Issued by: _____
(Registry Officer)



THÉRÈSE FADEL
AGENT DU GREFFE
REGISTRY OFFICER

Address of local office:

Federal Court of Canada
Registry Office
Thomas D'Arcy McGee Building
90 Sparks Street, Main Floor
Ottawa, ON K1A 0H9

TO: THE ATTORNEY GENERAL OF CANADA
c/o Deputy Attorney General of Canada
Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, ON K1A 0H8

AND TO: SHELL CANADA LIMITED
400 4th Avenue SW
Calgary, AB T2P 0J4

APPLICATION

This is an application for judicial review challenging the validity of thirty exploration permits (**Former Permits**) issued to Shell Canada Limited (**Shell**) by the Minister of Indigenous and Northern Affairs (**Minister**). The basis for the challenge is that those parties continue to treat the Former Permits as valid even though they have all long ago expired.

This application also challenges the ongoing failure or refusal of the Registrar designated by the Minister to perform mandatory statutory duties under s 87(2) of the *Canada Petroleum Resources Act*, RSC 1985, c 36 (2nd Supp) (**CPRA**) and under s 5(6) of the *Frontier Lands Registration Regulations*, SOR/88-230 (**FLR Regulations**).

On February 29, 2016, the applicant submitted a request to the Registrar to record the expiration of 30 expired Former Permits on the original copies of the permits and in the public register maintained under s 87 of the *CPRA* (**Register**), as required by s 87(2) of the *CPRA* and s 5(6) of the *FLR Regulations*. The applicant requested that the Registrar record the expiration of the Former Permits by March 30, 2016.

As of the date of this application, the Registrar has unlawfully failed or refused to exercise her jurisdiction to record the expiration of the Former Permits in the Register. In so failing to exercise her jurisdiction, the Registrar has acted and continues to act unreasonably and in a manner contrary to the law.

The applicant applies for the following orders:

1. An order declaring that the Former Permits issued by the Minister to Shell have expired and are invalid.
2. An order declaring that the Registrar has failed or refused to perform her mandatory duties to record the expiration of the Former Permits on the original copies and in the abstracts in the Register under s 87(2) of the *CPRA* and s 5(6) of the *FLR Regulations*.
3. An order in the nature of *mandamus* requiring the Registrar to immediately endorse and note the expiration of the Former Permits under s 87(2) of the *CPRA* and s 5(6) of the *FLR Regulations*.
4. An order allowing this matter to be the subject of a single application for judicial review pursuant to Rule 302 of the *Federal Courts Rules*, or, in the alternative, an order declaring that the matter for which relief is sought at paragraphs (1), (2), and (3) is limited to a single order.

5. An order requiring the respondents to pay the applicant's costs of this application.
6. Such further and other relief as this Honourable Court may deem just.

The grounds for the application are:

The parties

1. The applicant, World Wildlife Fund Canada (**WWF-Canada**), is an environmental non-governmental organization with a 50-year history of working to conserve Canada's biodiversity and natural environment as part of the global WWF network. With the support of millions of people in 80 countries around the world and tens of thousands more in Canada, it is one of the largest conservation organizations in the world.
2. The applicant has a genuine interest in conserving and protecting Lancaster Sound's biological diversity and natural environment through the establishment of a National Marine Conservation Area (**NMCA**) under the *Canada National Marine Conservation Areas Act*, SC 2002, c 18, within which oil and gas activities will be prohibited. The applicant has a genuine interest in ensuring that the Registrar complies with the mandatory duties that Parliament has imposed upon her under the *CPRA* and the *FLR Regulations*.
3. The applicant is a public interest litigant and has no personal, proprietary or pecuniary interest in the outcome of this application.
4. The Attorney General of Canada is named as a respondent pursuant to rule 303(2) of the *Federal Courts Rules*, as the Registrar designated by the Minister under the *CPRA* is the tribunal in respect of which the application is brought. Specifically, the Registrar is responsible for performing duties under s 87(2) of the *CPRA* and s 5(6) of the *FLR Regulations*.
5. Shell Canada Limited is the owner of the Former Permits.

Subsection 5(6) of the *FLR Regulations* imposes a duty to record the expiration of oil and gas interests

6. The Minister is responsible for issuing oil and gas interests relating to frontier lands under the *CPRA*.
7. An "interest" is defined, in section 2 of the *CPRA*, to mean:

Any former exploration agreement, former lease, former permit, former special renewal permit, exploration licence, production licence or significant discovery licence.

8. A “former permit” is defined, in section 2, to mean an exploratory permit under the *Canada Oil and Gas Land Regulations* [CRC, c 1518]. Each of Shell’s Former Permits is an exploratory permit under the *Canada Oil and Gas Land Regulations*. Therefore, each Former Permit is a former permit (i.e., an interest) under the *CPRA*.
9. The Minister is required to establish and maintain a public register of all interests and instruments registered under Part VIII of the *CPRA* [s 87(1)].
10. The Registrar designated by the Minister is responsible for performing prescribed duties to maintain and operate the Register [s 87(2)]. The Registrar’s duties to maintain and operate the Register are prescribed in the *FLR Regulations*.
11. Among other duties, the Registrar must keep an original copy of every registered interest at her office [s 7(2)(a)]. She must also prepare and maintain an abstract of every registered interest [s 5(1)]. The abstract must include prescribed information about the interest, including information about the type of the interest, its term and any extension to its term [ss 5(1), (5)].
12. At issue in this application are the duties of the Registrar under subsection 5(6) of the *FLR Regulations*. Subsection 5(6) obliges the Registrar to perform the following duties where an interest has expired:
 - (a) endorse a memorandum to that effect on the original copy of the interest that she is required to maintain under s 7(2)(a) of the *FLR Regulations*, and
 - (b) make a notation of the expiration in the abstract of that interest in the Register.
13. If an interest has expired, the Registrar lacks any discretion or jurisdiction to refuse to perform the aforementioned duties to record the expiration of the interest.

The Former Permits have expired

14. On May 19, 1971, the Minister issued the 30 Former Permits to Shell under the *Canada Oil and Gas Land Regulations*. The Former Permits are numbered A6326, A6327, A6328, A6339, A6340, A6341, A6342, A6353, A6354, A6355,

A6356, A6357, A6368, A6369, A6370, A6371, A6372, A6373, A6383, A6384, A6385, A6386, A6387, A6396, A6397, A6398, A6399, A6406, A6407 and A6408. The Former Permits apply to 30 blocks of offshore frontier lands that adjoin to form a single, continuous block of frontier land in Lancaster Sound, Nunavut.

15. Each of the Former Permits was issued for a term of six years, consistent with s 36(6) of the *Canada Oil and Gas Land Regulations*. Accordingly, each Former Permit was to expire on May 19, 1977.
16. The Minister renewed each of the Former Permits for a period of 1 year on May 19, 1977 under s 38 of the *Canada Oil and Gas Land Regulations*. Following these renewals, each Former Permit was to expire on May 19, 1978.
17. The Minister further renewed each of the Former Permits for a period of 1 year on May 19, 1978 under s 38 of the *Canada Oil and Gas Land Regulations*. Following these renewals, each Former Permit was to expire on May 19, 1979.
18. The Minister did not renew any of the Former Permits prior to May 19, 1979. Accordingly, each Former Permit expired, on its face, on May 19, 1979.
19. Nevertheless, the Registrar endorsed and registered each Former Permit on November 21, 1990 under Part VIII of the *CPRA* and the *FLR Regulations*. For clarity, the applicant is not, in this application, challenging the Registrar's 1990 decision to register the Former Permits.
20. Each Former Permit is registered as a former permit under the *CPRA*. The Register abstract of each Former Permit lists three identical notations:
 - (a) The first, dated January 1, 1986, notes the amalgamation of Shell Canada Limited and Shell Canada Resources Limited to Shell Canada Resources Limited.
 - (b) The second, dated November 21, 1990, notes the registration of each Former Permit.
 - (c) The third, dated October 14, 2014, notes a correction to the January 1, 1986 notation to clarify that Shell Canada Resources Limited and Shell Canada Limited amalgamated to become Shell Canada Limited.
21. Nowhere on the original copy or in the abstract of any Former Permit is the negotiation of a *COGA* exploration agreement noted.

22. Nowhere on the original copy or in the abstract of any Former Permit is the negotiation of an exploration licence noted.
23. Nowhere on the original copy or in the abstract of any Former Permit is an extension of the permit noted.
24. Nowhere on the original copy or in the abstract of any Former Permit is the expiration of the permit noted.
25. Between May 19, 1979 and November 21, 1990, the legislation governing oil and gas interests in Lancaster Sound changed several times.
 - (a) In March 1982, the *Canada Oil and Gas Act*, SC 1980-81-82-83, c 81 (*COGA*) replaced exploration permits under the *Canada Oil and Gas Land Regulations* with a type of interest called an exploration agreement.
 - (b) In February 1987, the *CPRA* replaced both exploration permits under the *Canada Oil and Gas Land Regulations* and *COGA* exploration agreements with a type of interest called an exploration licence.
26. Under the *CPRA*, a finalized *COGA* exploration agreement is automatically deemed to be an exploration licence. However, no finalized *COGA* exploration agreement was reached for any of the Former Permits.
27. Under the *CPRA*, a former permit under the *Canada Oil and Gas Land Regulations* is not automatically deemed to be an exploration licence. Rather, the interest owner of the former permit is required to negotiate an exploration licence with the Minister. This negotiation was to be completed on or before the earlier of:
 - (a) the first anniversary date of the permit following March 5, 1982, or
 - (b) the day that is six months after that date [s 113(1)].
28. The negotiation deadline to convert the Former Permits into exploration licences, assuming that they did not expire on May 19, 1979, was November 19, 1982. Shell did not negotiate an exploration licence for any of the Former Permits by the negotiation deadline.
29. If the former permit owner does not successfully negotiate an exploration licence by the negotiation deadline, the former permit is deemed to be surrendered and the lands subject to the permit revert to the Crown [s 113(2)].

30. There is, however, an exception to the negotiation deadline. Where an exploration licence cannot be negotiated by the negotiation deadline for any reason not attributable to the interest owner, the Minister must extend the deadline to allow for negotiation of an exploration licence “within a reasonable time” [s 115].
31. There is no evidence that the Minister extended the deadline for negotiation for the Former Permits under s 115 of the *CPRA*. No such extension is noted on the original copy or in the Register abstract of any Former Permit.
32. In the circumstances of the present case, the Registrar has a mandatory duty to endorse a memorandum upon the original copy of each Former Permit noting its expiry. The Registrar also has a mandatory duty to make a notation of the expiry in the abstract of each Former Permit.
33. As of the date of this application, the Registrar has failed or refused to endorse a memorandum of expiry upon the original copy of any Former Permit. The Registrar has likewise failed or refused to note in the relevant abstract in the Register the expiry of any Former Permit.

A policy not to allow oil and gas activities in Lancaster Sound did not prevent the negotiation of exploration licences

34. Between about August 1977 and 1991, the Minister adopted a policy not to allow oil and gas activities in Lancaster Sound. This policy was lifted in 1991 but was subsequently put back in place by no later than 1995. The policy was permanently abandoned in June 2000. Since that time, oil and gas activities that comply with relevant laws have been allowed in Lancaster Sound.
35. The policy not to permit oil and gas activities in Lancaster Sound did not prevent the negotiation of exploration licences to replace the Former Permits.
36. If, in the alternative, s 115 of the *CPRA* applies, the significant amount of time that has elapsed since June 2000 without a negotiated exploration licence is not reasonable.

The applicant made numerous efforts to ascertain validity of permits once it learned of their existence

37. The applicant was made aware of the existence of the Former Permits on January 2, 2011. The applicant was made aware of the concerns with the validity of the Former Permits on October 10, 2015.

38. Thereafter, the applicant made efforts to ascertain the validity of the Former Permits, including by seeking a legal opinion from its solicitors on November 23, 2015, which was provided on December 04, 2015.
39. By letter of January 25, 2016 to the Minister, the applicant sought clarification on the status of the Former Permits. The applicant clearly informed the Minister that:
- (a) the information in the Register indicates that the Former Permits have expired;
 - (b) there is no indication that Shell and the Government of Canada negotiated regarding the Former Permits;
 - (c) the fact that the Former Permits are listed as active is a major impediment to the creation of the Lancaster Sound NMCA; and
 - (d) the applicant was seeking clarification to ensure that work on the creation of the Lancaster Sound NMCA could proceed.
40. The applicant gave the Minister until February 8, 2016 to confirm that the Former Permits had expired. No formal response was received by that date. Although staff from the Ministry contacted the applicant to discuss the matter informally, they did not clarify the status of the Former Permits.
41. The applicant and Ministry staff continued to discuss the matter throughout February 2016 but the Ministry still did not explain its position on the validity of the Former Permits.

The applicant requested that the Registrar record the expiration of the Former Permits

42. Accordingly, by letter of February 29, 2016, the applicant clearly informed the Registrar that:
- (a) on their faces, the Former Permits have expired and are therefore invalid;
 - (b) the Registrar has a legal duty to endorse a memorandum of the expiration on the original copy of each Former Permit;
 - (c) the Registrar has a legal duty to note the expiration in the abstract of each Former Permit in the Register; and
 - (d) the Registrar has not discharged these legal duties.

43. By way of the letter of February 29, 2016, the applicant requested that the Registrar perform her mandatory statutory duties under s 87(2) of the *CPRA* and s 5(6) of the *FLR Regulations* by:
 - (a) endorsing the expiration of each Former Permit upon its original copy, and
 - (b) noting the expiration of each Former Permit in the abstract of each Exploration Permit in the *CPRA* public register.
44. The applicant gave the Registrar until March 30, 2016 to perform these mandatory duties.
45. As of the date of this application, the Registrar has failed or refused to comply with the applicant's request that the Registrar perform these mandatory statutory duties.

As the Former Permits have expired, the Registrar's failure or refusal to perform her mandatory statutory duties is unlawful

46. The Registrar's continuing failure or refusal to endorse a memorandum of expiration upon the original copies of the Former Permits and to note the expiration of each Former Permit in its Register abstract is an error of jurisdiction, unreasonable and otherwise contrary to law.

The Registrar's unlawful failure or refusal to perform her mandatory duties necessitates the relief sought by the applicant

47. The Registrar is under a public legal duty to record the expiration of the Former Permits upon both its original copies of Former Permits and in the Register abstracts for the Former Permits. The Registrar owes this duty both to the public and to the applicant.
48. The applicant has a clear right to performance of that duty, including as a result of its request made on February 29, 2016.
49. No equitable bar exists, in the circumstances, to relief in the nature of *mandamus*.
50. This Court has jurisdiction to hear this application and to grant the relief sought under sections 18 and 18.1 of the *Federal Courts Act*, RSC 1985, c F-7.
51. In particular, this Court has the express jurisdiction, under paragraph 18.1(3)(a)

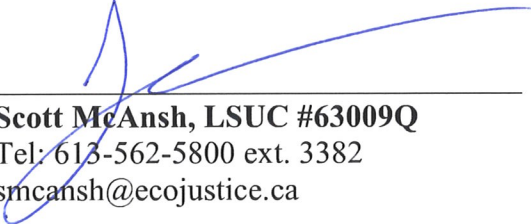
of the *Federal Courts Act*, to order the Registrar to record the expiration of the Former Permits under subsection 87(2) of the *CPRA* and subsection 5(6) of the *FLR Regulations*.

52. The applicant further relies on the *Federal Courts Rules*, the *CPRA*, the *FLR Regulations*, the *Canada Oil and Gas Land Regulations* and such additional grounds as counsel may identify.


This application will be supported by the following material:

1. Affidavit of Paul Crowley, Vice President - Arctic, WWF-Canada, to be sworn.
2. Affidavit of Emma Billard, Legal Administrative Assistant, Ecojustice, to be sworn.
3. Such further and other affidavits and material as counsel may advise and this Honourable Court may allow.

April 11, 2016



Scott McAnsh, LSUC #63009Q
Tel: 613-562-5800 ext. 3382
smcansh@ecojustice.ca



Ian Miron, LSUC #634450
Tel: 416-368-7533 ext. 540
imiron@ecojustice.ca

Ecojustice Environmental Law Clinic at
the University of Ottawa
1 Stewart Street, Suite 216
Ottawa, ON K1N 7M9

Fax: (613) 562-5319

**Solicitors for the Applicant,
World Wildlife Fund Canada**