

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260603

Docket: A-238-23

Citation: 2026 FCA 110

**CORAM: STRATAS J.A.
MACTAVISH J.A.
ROUSSEL J.A.**

BETWEEN:

**SIERRA CLUB CANADA FOUNDATION
and MI'GMAWE'L TPLU'TAQNN INC.**

Appellants

and

**MINISTER OF ENVIRONMENT AND CLIMATE CHANGE,
THE ATTORNEY GENERAL OF CANADA, and EQUINOR CANADA LTD.**

Respondents

Heard at Ottawa, Ontario, on November 18, 2024.

Judgment delivered at Ottawa, Ontario, on June 3, 2026.

REASONS FOR JUDGMENT BY:

STRATAS J.A.

CONCURRED IN BY:

**MACTAVISH J.A.
ROUSSEL J.A.**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260603

Docket: A-238-23

Citation: 2026 FCA 110

**CORAM: STRATAS J.A.
MACTAVISH J.A.
ROUSSEL J.A.**

BETWEEN:

**SIERRA CLUB CANADA FOUNDATION
and MI'GMAWE'L TPLU'TAQNN INC.**

Appellants

and

**MINISTER OF ENVIRONMENT AND CLIMATE CHANGE,
THE ATTORNEY GENERAL OF CANADA, and EQUINOR CANADA LTD.**

Respondents

REASONS FOR JUDGMENT

STRATAS J.A.

[1] Way out in the Atlantic, roughly 500 kilometers east of St. John's, Newfoundland, a major project is planned. The respondent, Equinor Canada Ltd., has a 65% interest in the project, known as the Bay du Nord Development Project. The Project aims to tap oil and gas reserves far under the ocean floor and transport them to market.

[2] This is no small thing. After much is set up and built—subsea infrastructure, a floating storage and offloading structure, and drilling installations, all supported by vessels, helicopters and tankers—the Project is expected to supply 300 million barrels of crude oil over 30 years.

[3] But first, legal requirements have to be met. On that, the Impact Assessment Agency of Canada played a key role. The Agency ran a twofold process: an environmental assessment under the *Canadian Environmental Assessment Act, 2012*, S.C. 2012, c. 19, and an integrated Crown consultation process on the Project's potential effects on Indigenous peoples. The latter was to fulfil the Crown's obligation to consult Indigenous peoples in accordance with the honour of the Crown.

[4] After studying many extensive and technical reports concerning the Project, holding a number of meetings and consultations, and receiving and considering several submissions, the Agency prepared an environmental assessment report. In that report it reviewed and assessed the environmental impact of the Project, set out the results of its consultation process, and, in practical terms, approved the Project subject to conditions.

[5] The responsible federal Minister, the Minister of Environment and Climate Change, considered the report. The Minister decided under subsection 5(2) that the Project is not likely to cause significant adverse environmental effects and, guided by the report, imposed extensive mitigation and avoidance conditions that the Project must satisfy. The Minister also found that the consultation process was consistent with the honour of the Crown and appropriately accommodated the concerns and interests of Indigenous groups.

[6] An Indigenous group, Mi'gmawe'l Tplu'taqnn Inc., or MTI, and an environmental group, the Sierra Club Canada Foundation, challenged the Minister's decision. They brought a judicial review in the Federal Court. Together, they raised two grounds.

[7] First was lack of reasonableness. The decision was based on the Agency's report, one that, they say, was fundamentally deficient. Among other things, the report did not consider marine shipping from the Project. Nor did it consider the environmental effects of downstream greenhouse gas emissions from the extracted oil.

[8] Second was inadequate consultation and accommodation with MTI. In certain circumstances, to fulfil their obligations under the honour of the Crown and section 35 of the *Constitution Act*, 1982 (Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11), governments must consult with Indigenous peoples and accommodate their concerns. In this case, the Project lies well beyond MTI's traditional and treaty territories, 640-2000 kilometers away.

[9] The Federal Court rejected both grounds and dismissed the judicial review: 2023 FC 849 (*per* Zinn J.). The appellants, Sierra Club and MTI, appeal to this Court on both issues.

[10] For the following reasons I would dismiss the appeal.

A. Opening observations

[11] A couple of opening observations are in order.

[12] At times, on the environmental issues in the Agency's report, the appellants' submissions seemed like they were in support of a judicial review of the Agency's treatment of those issues rather than a judicial review of the Minister's decision that was based on the Agency's report. At times, the appellants' submissions verged on whether the Minister could have or should have come to a different conclusion. Those submissions miss the mark.

[13] Instead, on the issue of the report's treatment of environmental issues, the Minister's decision under this regime is liable to be set aside only if it was unreasonable for the Minister to regard the Agency's report as a "report" under the Act because the report's deficiencies are so material that the report cannot qualify as a "report" under the Act: *Gitxaala Nation v. Canada*, 2016 FCA 187, [2016] 4 F.C.R. 418 at paras. 124-125; *Raincoast Conservation Foundation v. Canada (Attorney General)*, 2019 FCA 224, [2020] 1 F.C.R. 362 at para. 41. True, this takes us into a detailed examination of what the Agency did and careful scrutiny of the Agency's report. But the focus must remain on the Minister's decision and whether he could reasonably hold the view that the report was a "report" under the Act, one that is not materially deficient.

[14] As will be seen, I agree with the Federal Court that it was reasonable for the Minister to regard the report as sufficient to qualify as a "report" under the Act for the purposes of the Minister's decision. It was reasonable for the Minister to find that it was not materially deficient.

It was reasonable for the Minister to rely on the report as a basis for concluding under the Act that the Project—with certain important conditions imposed—is unlikely to cause significant environmental effects.

[15] It is perhaps worth adding that even if we were reviewing the Agency's decision-making as if it, and not the Minister, were the decision-maker, the Agency's conclusions are highly factually suffused, often with scientific and technical appreciation. On these things, the Minister's decision is quite unconstrained, as that term is understood in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653. Nothing raised by the appellants leads us to find unreasonableness.

[16] On the issue of Indigenous consultation, at times during argument in this Court the appellants seemed to focus on alleged deficiencies in the Agency's process and whether it could have been longer or better. That is not the correct question: *Coldwater First Nation v. Canada (Attorney General)*, 2020 FCA 34, [2020] 3 F.C.R. 3 at para. 29 (*Coldwater First Nation (2020)*); *Gitxaala Nation* at paras. 182-184; *Tsleil-Waututh Nation v. Canada (A.G.)*, 2018 FCA 153, [2019] 2 F.C.R. 3 at paras. 226, 508-509 and 762.

[17] Rather, as the Federal Court appreciated, the question in this Court focuses on the Minister's decision, as assisted and informed by the Agency's report, that the Crown had met its consultation obligations. This takes us into whether the Agency correctly identified the existence and scope of the Crown's duty to consult, whether the Agency was reasonable when assessing

the consultation, and whether, overall, the process was sufficient to meet the Crown's duty to consult.

[18] In this examination, the process of consultation does not impose a duty on the Crown to reach agreement, need not be perfect, and can be addressed through ongoing and future processes: *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 S.C.R. 511 at para. 62; *Coldwater First Nation (2020)* at para. 189; *Gitxaala Nation* at paras. 179-182; *Bigstone Cree Nation v. Nova Gas Transmission Ltd.*, 2018 FCA 89 at para. 49; *Squamish First Nation v. Canada (Fisheries and Oceans)*, 2019 FCA 216 at para. 37. Dissatisfaction, disappointment or disagreement with the outcome reached after consultation is not enough to trigger a breach: *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54, [2017] 2 S.C.R. 386 at para. 83; *Bigstone* at para. 70. The Indigenous right to be consulted and to have its interests meaningfully accommodated in certain circumstances is enormously important, with constitutional underpinnings, but Indigenous groups do not have a right to veto a project.

B. The environmental assessment

[19] As noted above, one of the arguments of the appellants in the Federal Court was that the Agency's report was unreasonable because it relied on an environmental assessment report that failed to consider the impacts of downstream greenhouse gas emissions.

[20] But, as the Federal Court found, certain previously decided jurisprudence, in particular jurisprudence from this Court, binds the Federal Court, binds this Court, and stands in the way of the appellants' position.

[21] As is well known, under a doctrine called vertical *stare decisis*, the Federal Court is bound by our earlier decisions. And under a doctrine called horizontal *stare decisis*, this Court is bound by its own earlier decisions. Only a submission—not made here—that one of our decisions is “manifestly wrong” can relax the doctrine and allow a departure from earlier decisions. See generally *R. v. Sullivan*, 2022 SCC 19, [2022] 1 S.C.R. 460 and *Miller v. Canada (Attorney General)*, 2002 FCA 370.

[22] This Court has held, under analogous legislation, that “[n]othing...expressly requires [the consideration of] larger, general issues such as climate change”: *Forest Ethics Advocacy Association v. Canada (National Energy Board)*, 2014 FCA 245, [2015] 4 F.C.R. 75 at para. 69. That is the case, at least under this particular legislation, worded as it is, for issues downstream from the Project.

[23] And, as a practical and factual matter, the Federal Court rightly noted that the downstream locations and uses of the crude oil from the Project are unknown and many of those uses may be outside of Canada. The origin and destination of tankers is not yet known. Wading into that issue would be an exercise in speculation. Absent the Act requiring the consideration of climate change (and here the *Impact Assessment Act*, S.C. 2019, c. 28, s. 1, with its preamble stands as a contrast), the Report cannot be faulted for not considering it.

[24] But the Agency did scope into the environmental assessment the marine shipping it could practically and jurisdictionally assess, namely the movement of supply and support vessels between Newfoundland and the Project and tanker movements, hook-ups, disconnects, and crude offloading within an area known as the Project Safety Zone.

[25] MTI submits that the Minister's decision is unreasonable because the Agency's report did not consider the issue of marine transshipment in its Report, nor did it give reasons why the issue should not be considered. To some extent, the Agency can hardly be faulted for that: no party raised this as an issue during the public review and consultation processes on the Project description and draft environmental impact statement guidelines. Later, MTI raised it during Crown consultations but the record shows that the Agency fully engaged with the parties on this issue, discussed it, and provided responses. More on this below.

[26] In support of its submission, MTI makes much of this Court's decision in *Tsleil-Waututh Nation*. There, this Court held that marine transshipment was part and parcel of that project and should have been within the scope of the report or, if not, some explanation why it was not in the scope of the project should have been given.

[27] The Federal Court properly rejected this submission for a couple of key reasons.

[28] First, the Federal Court observed that the environmental impact statement for the Project did refer to marine shipping within the project safety zone (at para. 77) and marine shipment was considered to some extent (at para. 78).

[29] Second, the Federal Court noted that there are issues of territorial jurisdiction: Parliament has no authority over the waters in issue here, which, to reiterate, are 500 kilometers from the Canadian shore. In particular, the Federal Court held that (at para. 80) “[t]he Project is located 500 kilometers from the coast of Canada, well beyond the legislative authority of Parliament, and there is uncertainty about the destination of the oil from the Project site” and so “it [is] impossible to assess marine shipping”. These findings are correct and unassailable.

[30] On this, more can be said. Undoubtedly, as the appellants say, the environmental assessment report at issue in *Tsleil-Waututh Nation* was deficient because it ignored the issue of marine transshipment. But the marine transshipment and the onward transportation of the crude oil was to take place right on the Canadian coast, well within Canadian territory and the traditional lands and waters of the Haida Gwaii—not, as here, several hundred miles offshore or more.

[31] And in *Tsleil-Waututh Nation*, the marine transshipment and the onward transportation of the crude oil was to take place in an area heavily frequented by the Southern resident killer whale, a species subject to traditional Indigenous use and uses in accordance with traditional Indigenous culture. This differs from this case: here, the traditional territory of MTI was hundreds of kilometers away and its species of significance, Atlantic salmon, migrate over tens of thousands of square kilometers and are not concentrated around the small Project site.

C. Indigenous consultation

[32] The Federal Court correctly identified the standard of review on this issue: correctness on the existence and scope of the Crown's duty to consult with MTI, reasonableness on the factual determinations upon which the Agency based its depth of consultation assessment (which the Minister adopted), and reasonableness regarding whether the consultation process was sufficient to meet the Crown's duty to consult: see, e.g., *Coldwater First Nation* (2020) at paras. 24-27.

[33] The Agency gave MTI a full right to make submissions on this issue.

[34] The Agency found there was only a low likelihood of interaction between the Project and the salmon. While the communities represented by MTI have a right to fish for a moderate livelihood flowing from treaties and an Aboriginal right to fish for food, social and ceremonial purposes, and while some salmon might migrate from spawning rivers in New Brunswick to the area of the Project, the routine activities of the Project were far from the traditional territory and communities of MTI (640-2000 kilometers away), MTI had no treaty rights in the Project area, and the predicted impact to Atlantic salmon, and, thus, to MTI's fishing rights, was minimal. This distinguishes this case from *Clyde River v. Petroleum Geo-Services Inc.*, 2017 SCC 40, [2017] 1 S.C.R. 1069 and *Tsleil-Waututh Nation*.

[35] The Federal Court agreed with the Minister's view, which was the same as the Agency's view. The Crown's duty to consult existed but was low. In making these findings, the Federal Court made no reversible error. Based on the low level of potential impacts and the low

likelihood of these impacts affecting MTI's communities, the depth of consultation was low. In this regard, the Agency, the Minister, and the Federal Court were right to ignore "mere speculative impacts": *Rio Tinto Alcan Inc. v. Carrier Dekani Tribunal Council*, 2010 SCC 43, [2010] 2 S.C.R. 650 at para. 46; *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.* 2017 SCC 41, [2017] 1 S.C.R. 1099 at paras. 2 and 41.

[36] As mentioned, on the question of whether the duty is fulfilled, the standard of review is reasonableness. In a situation where, as here, the question is a factually suffused question involving issues such as the migration patterns of Atlantic salmon over tens of thousands of square kilometers, the Agency's decision is relatively unconstrained. See generally *Manitoba Metis Federation Inc. v. Brian Pallister et al.*, 2021 MBCA 47; *Coldwater First Nation (2020)*; *Gitxaala Nation*; *Tsleil-Waututh Nation*.

[37] Before the Federal Court, MTI submitted that the Agency did not take its concerns seriously and, for that reason, the report should be viewed as fundamentally deficient. In other words, in this case the Indigenous consultation fell impermissibly below standard.

[38] The Federal Court rejected that submission. The Federal Court did not commit reversible error in doing so. Although the duty to consult was at the low end of the spectrum, the Agency's process resembled a deeper process, in part as seen by the Agency's recommendation of extensive accommodation measures, which the Minister incorporated into Project conditions. In all, the Agency gave MTI four comment periods to raise its concerns and funding to make

submissions. It also held information and engagement sessions with MTI and Equinor to discuss the Project and its impacts.

[39] The Agency also considered a 2018 Indigenous Knowledge Study and a technical review provided by MTI and put the information from those sources to Equinor, required that Equinor give it information on this, received information, and considered all of it. In the end, MTI was not, and is still not, satisfied by Equinor's reaction to the Indigenous knowledge, but it cannot be said that the Agency failed to take it into account in its assessment. Indeed, as mentioned, the Agency recommended extensive accommodation measures that became Project conditions.

[40] At the end of its process, the Agency found as a factual matter that the consultations had been procedurally and substantively adequate.

[41] The Agency also addressed MTI's concerns in responses it provided to the appellants during the process and also in its report. The Agency released its report in draft for comment and received comments. In part in response to these comments, it recommended conditions—best characterized as conditions, accommodations and mitigation measures—to mitigate potential impacts to interests and treaty rights. Some of these were in response to concerns, albeit remote, that a major subsea release of oil could take place. In its best scientific view on the facts, the Agency found that the measures would serve to minimize or avoid impacts on Aboriginal or treaty rights.

[42] The conditions the Agency proposed included the continued incorporation of Indigenous knowledge in follow-up plans and monitoring plans, ongoing research on Atlantic salmon, follow-up programs, continued engagement with Indigenous groups and annual public reporting, and monitoring and spill response programs requiring Indigenous engagement.

[43] Much of the basis for the Agency's conclusions appears in the factual record before it. The Agency found that the only way the Project could impact MTI's interests was through the effects on species important to MTI, such as the Atlantic salmon, that might travel through the Project area and later be harvested. On the evidence before it, the Agency found that for routine Project operations, effects on the salmon would be low. On the evidence, the Agency also found that the risk of a major spill, which the Agency did note would have profound effects, was very low. These are factual and evidentiary-based findings that sustain the Agency's conclusions, the Minister's assessment of the Agency's report, and the Minister's conclusion on the consultation issue.

[44] On this constellation of facts gleaned from the evidentiary record before it, the Federal Court held—and was legally right to hold—that the Crown's duty to consult MTI lay at the low end of the spectrum given that MTI has no Aboriginal or treaty rights in the areas of the Project, the Project's predicted impacts on migrating species of importance to MTI were minimal and so any Project impacts on MTI's fishing rights were minimal. The appellants have not persuaded me that there is any reviewable error or error of law in these findings.

[45] Overall, based on the Agency's report and its consideration of the matter, the Minister formed the view that the Agency considered MTI's concerns and appropriately evaluated them. The Minister accepted all of the Agency's recommended conditions and made them binding requirements. The Minister's view is sustainable, indeed well-established, on this evidentiary record. The Agency's work was far from an exercise in "window-dressing, box-ticking and nice-sounding words"; rather it was "the hard work of taking on board [Indigenous] concerns [and] exploring possible solutions". See *Raincoast Conservation Foundation* at para. 58. While not dispositive by itself, the suggested imposition of many demanding conditions on the Project does confirm that.

D. The timeliness/responsiveness issue

[46] Though the Federal Court committed no reversible error on the environmental assessment and Indigenous consultation issues, I wish to offer observations on a preliminary issue raised by Equinor. These observations will be of practical assistance to parties in future environmental assessments and Indigenous consultation processes.

[47] Equinor says that the Federal Court should never have heard the submissions of MTI and the Sierra Club on the issue of marine transshipment and the impacts of downstream greenhouse gas emissions. It says that they raised these issues far too late in the environmental assessment process and so the Federal Court should have dismissed the application for judicial review on that basis alone.

[48] Equinor notes that the appellants could have raised and dealt with these issues meaningfully at an earlier time, when the Agency was considering the Project description and draft guidelines for the preparation of an environmental impact statement. But the appellants did not really do that until later.

[49] For example, draft environmental impact statement guidelines were posted in August 2018 showing that the issue of marine transshipment and the impacts of downstream greenhouse gas emissions were not covered in the assessment. A month later, MTI's submissions on the draft guidelines did not raise the issue of transshipment. While MTI did raise the potential need for a regional assessment, transshipment was not the primary motivation for this concern. As Equinor says, MTI raised the issue early but only in a single, general, fleeting moment in a facilitated discussion in August 2020, without any accompanying objections or submissions at that time. Similarly, Sierra Club did not react right away. It provided comments on greenhouse emissions just before the final environmental impact statement guidelines in the summer of 2020: Federal Court at para. 40.

[50] At the end of the August 2020 session and in a follow-up email, the Agency offered to have further discussions with MTI to discuss the environmental impact statement. But MTI did not request any additional meetings with the Agency to discuss the marine transshipment issue.

[51] Based on this, Equinor says this Court should exercise its discretion to dismiss the appeal. It says that remedies on judicial review are always discretionary and the Court has the discretion to dismiss any application for judicial review for this sort of delay or lack of responsiveness.

[52] The Federal Court did not agree with Equinor. The Federal Court found that the appellants raised the issue before the Agency finalized the scope of the Project, and that was good enough. Whether the issue was raised in a meaningful, truly responsive way is open to question.

[53] In this Court, Equinor says that the Federal Court erred on this. At best, it says, the issues were raised late and, to some extent, in a general, fleeting way without supporting submissions. Equinor stresses that the purpose of the environmental assessment process under the Act is to allow for a meaningful assessment of environmental concerns and Indigenous concerns, but also to ensure that assessments are efficient and timely. In its memorandum and in oral argument, Equinor suggests that delay or lack of responsiveness in raising and pressing an issue can be a ground for the Court to dismiss an application for judicial review, in whole or in part, depending on the issue.

[54] What legal basis does Equinor assert for this? Equinor says that relief on judicial review is discretionary. In particular, it relies on this Court's comments in *Makivik Corporation v. Canada (Attorney General)*, 2021 FCA 184, [2022] 1 F.C.R. 311. At paragraph 60, this Court said that "remedies on judicial review...are discretionary" and "[t]he categories of cases in which courts may exercise the discretion not to undertake judicial review are not closed".

[55] Supporting this are the wide words of the Supreme Court in *Strickland v. Canada (Attorney General)*, 2015 SCC 37, [2015] 2 S.C.R. 713. There, the Supreme Court (at para. 37)

states briefly and in passing that “even if [an] applicant makes out a case for review on the merits, the reviewing court has an overriding discretion to refuse relief”.

[56] There is no doubt that relief on judicial review is discretionary. But that alone leaves out much of the story.

[57] *Makivik Corporation* and *Strickland*—and many other cases for that matter—do not stand for the proposition that the Court can deny a party relief just because the Court is unhappy, offended or annoyed with a party’s conduct. The Court’s discretion is not that open-ended.

[58] Nor could it be. If it were, then the results of cases would depend on the sensibilities of a judge, or, as the English jurist and scholar John Seiden once memorably put it back in the seventeenth century, relief would depend on “the length of the Chancellor’s foot,” a very “uncertain measure” indeed: John Seiden, *Table-Talk: Being the Discourses of John Selden, Esq.* (ed. Richard Milward, 1689); see also Lord Denning, *Landmarks in the Law* (London: Butterworths, 1984). That would be the rule of whim, not the rule of law.

[59] Under the rule of law—a concept enshrined in the preamble to the *Canadian Charter of Rights and Freedoms* (Part I of the *Constitution Act, 1982*, above)—judges must exercise discretions on stable legal standards, not idiosyncratic personal whims, feelings or vibes.

[60] In accordance with the rule of law, stable categories and rules have developed over time and regulate the reviewing court’s discretion to withhold relief in a judicial review. While the

categories of judicial discretion are not ossified and can develop in response to modern considerations (for recent examples, see, *e.g.*, *Benison v. Canada (Royal Canadian Mounted Police External Review Committee)*, 2026 FCA 53 and *Canada (Public Safety and Emergency Preparedness) v. LeBon*, 2013 FCA 55), equitable doctrines themselves do have operative rules and limits, and the Court obeys them.

[61] Equinor's submission appears to invoke the equitable "clean hands" doctrine: a party that has engaged in misconduct is not entitled to relief. But that doctrine does have a threshold: only truly reprehensible conduct of a certain sort qualifies: see, *e.g.*, *Canada (Minister of Citizenship and Immigration) v. Thanabalasingham*, 2006 FCA 14. For example, a party seeking to set aside an administrative decision for unreasonableness may be caught by the doctrine if, in the prosecution or defence of the administrative proceedings, it has conducted itself immorally, fraudulently or beyond the pale in something connected with the judicial review. As *Thanabalasingham* instructs us, this is a high threshold, one far from met in this case.

[62] However, there is some merit to Equinor's submission that the appellants' delay in raising certain issues disqualifies them from advancing issues that should have been raised earlier, not for reasons founded in equity, but for other reasons.

[63] Judicial review of an administrative decision is shaped by the standards set out in the legislation, here the Act, that governs and shapes the administrative decision. Absent a constitutional concern, the Act, properly interpreted, is the law of the land. The Act binds and

applies to everyone, including all participants in the administrative process—and reviewing courts too.

[64] Here, the purpose of the Act matters. As judges, we do not determine the purpose of legislation by adopting what we would like to see in it. We cannot use our own view of the Act’s purposes by “[creating] an unexpressed exception to clear language”: *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, 2006 SCC 20, [2006] 1 S.C.R. 715 at para. 23; *Hunt v. Canada*, 2026 FCA 88 at para. 13; and see also M. Mancini, “The Purpose Error in the Modern Approach to Statutory Interpretation” (2022), 59 Alta. L. Rev. 919 at p. 927, which the Supreme Court relied upon in the seminal case of *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43, 498 D.L.R. (4th) 316.

[65] In this case, in determining the purpose of the Act, we are assisted by an explicit section setting out the purposes of the Act: s. 4. From this, we see that the environmental assessment process is to meaningfully protect and advance environmental, Indigenous and other concerns and responsible authorities are to exercise their powers under the Act in accordance with the precautionary principle. But that is not all: paragraph 4(1)(f) of the Act provides that “an environmental assessment is [to be] completed in a timely manner”. The Act aims at getting projects that satisfactorily accommodate those concerns, either by themselves or with the assistance of conditions recommended in that process, past the regulatory process and into the tangible implementation phase, for the benefit of Canadians.

[66] The Act is not to be interpreted and applied as if it were a long, multi-year stoplight designed to delay projects just for the sake of delay. Instead, under the Act, projects that satisfactorily accommodate concerns, with suitable modifications, should become reality, for the benefit of Canadians: see *Conseil des innus de Ekuanitshit v. Canada (A.G.)*, 2013 FC 418, aff'd 2014 FCA 189.

[67] This means that those with concerns must advance them meaningfully in a responsive, timely way. Raising them in a fleeting, idle way, in a sentence or two, and late in the process is not enough.

[68] The Federal Court acknowledged that the appellants could have raised their concerns earlier. In its words (at para. 41), “[d]oubtless, these concerns could have been raised at an earlier date” but “they were raised prior to the Agency finalizing the scope of the Project”. This seems to suggest that a party can delay its assertion of concerns until very late, before the scope is finalized, and force the Agency to go back and rerun part of its process.

[69] This seems contrary to the purpose of the Act, namely that assessments be timely and orderly. The failure to raise issues in a timely way should not be allowed. Otherwise, projects would be endlessly delayed by concerns asserted later in the process than they should be.

[70] The idea that concerns must be asserted in a timely way during a hearing is not unknown to our law. For example, those who have a procedural concern about what an administrative decision-maker has done must raise the concern with the administrative decision-maker in a

meaningful and timely way: see *e.g.*, *Halton (Regional Municipality) v. Canada (Transportation Agency)*, 2024 FCA 122 and the cases cited at para. 38 therein, and many others. Parties cannot keep their concerns to themselves, lay in the weeds, and then pounce on judicial review. Instead, they must raise their concerns with the administrative decision-maker in a timely way, and do so meaningfully, not fleetingly: *Rogers Communications Canada Inc. v. Timeless Inc.*, 2026 FCA 92 at para. 12, citing *TVA Group Inc. v. Bell Canada*, 2021 FCA 153, [2022] 1 F.C.R. 283 at paras. 64-66.

[71] This rule is also deeply rooted in practicality. If a concern really matters to a party, one would expect it to raise the concern promptly, even urgently, and in a meaningful way. When the party delays, one can reasonably conclude that the concern does not really matter to that party, or the party is acting in a tactical way. The Court takes this view in other areas of litigation: see, *e.g.*, *Apotex Inc. v. Bristol-Meyers Squibb Company*, 2011 FCA 34.

[72] In this regard, I agree with Equinor's oral submission that a party's delay in raising an issue or lack of responsiveness before an administrative decision-maker might affect the Court's assessment of reasonableness. Delay or lack of diligence in raising an issue can signal to the reviewing court that the issue was really not all that important—or at least not important enough to render the decision unreasonable.

[73] The rule on the need for timeliness, discussed above, does not change just because Indigenous consultation and accommodation issues, vitally important as they are, are involved. There, delays in raising issues can disqualify a party from raising them later: *Coldwater First*

Nation (2020) at paras. 144 and 146; *Roseau River First Nation v. Canada (Attorney General)*, 2023 FCA 163 at para. 32. Indigenous parties cannot hold an issue of concern in reserve and raise it only later when they do not like the outcome. As this Court said in *Coldwater First Nation* (2020) (at para. 55), “Indigenous peoples [cannot] tactically use the consultation process as a means to try to veto it”: see also *Haida Nation* at para. 42; *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53, [2010] 3 S.C.R. 103 at para. 12; *Halfway River First Nation v. British Columbia (Ministry of Forests)*, 1999 BCCA 470 at paras. 160-161; *Ahousaht First Nation v. Canada (Fisheries and Oceans)*, 2008 FCA 21 at paras. 52-53; *Canada v. Long Plain First Nation*, 2015 FCA 177 at paras. 158-163.

E. Adequacy of reasons

[74] The appellants also submit that the Agency’s reasons were inadequate and the Federal Court erred by supplementing them or fleshing them out.

[75] The Federal Court correctly dismissed this submission. I agree with the Federal Court substantially for the reasons it gave.

[76] The Federal Court did not flesh out the Agency’s reasons. Instead, it examined them with a mind willing to understand where the Agency was coming from. Reasons should be understood and assessed in light of the evidentiary record filed with the Court: *Vavilov* at para. 103. *Rogers Communications Canada Inc. v. Timeless Inc.*, 2026 FCA 92 at para. 6; *Universal Ostrich Farms Inc. v. Canada (Food Inspection Agency)*, 2025 FCA 147 at para. 53. Key to this was its

understanding and appreciation of this rather involved and complicated environmental assessment process, set out in detail in the very big, complicated record before it.

F. Proposed disposition

[77] For the reasons given above, I would dismiss the appeal with costs.

“David Stratas”

J.A.

“I agree.

Anne L. Mactavish J.A.”

“I agree.

Sylvie E. Roussel J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-238-23

STYLE OF CAUSE: SIERRA CLUB CANADA
FOUNDATION AND
MI'GMAWE'L TPLU'TAQNN
INC. v. MINISTER OF
ENVIRONMENT AND CLIMATE
CHANGE, THE ATTORNEY
GENERAL OF CANADA, AND
EQUINOR CANADA LTD.

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: NOVEMBER 18, 2024

REASONS FOR JUDGMENT BY: STRATAS J.A.

CONCURRED IN BY: MACTAVISH J.A.
ROUSSEL J.A.

DATED: JUNE 3, 2026

APPEARANCES:

Joshua Ginsberg
Ian Miron
Anna McIntosh

FOR THE APPELLANTS

Sharlene Telles-Langdon
Mark Freeman
Shauna Hall-Coates

FOR THE RESPONDENTS, THE
MINISTER OF ENVIRONMENT
AND CLIMATE CHANGE AND
THE ATTORNEY GENERAL OF
CANADA

Sean Sutherland
John McCammon

FOR THE RESPONDENT,
EQUINOR CANADA LTD.

SOLICITORS OF RECORD:

Ecojustice
Halifax, Nova Scotia

Marie-Josée Hogue
Deputy Attorney General of Canada

Osler, Hoskin & Harcourt LLP
Calgary, Alberta

FOR THE APPELLANTS

FOR THE RESPONDENTS, THE
MINISTER OF ENVIRONMENT
AND CLIMATE CHANGE AND
THE ATTORNEY GENERAL OF
CANADA

FOR THE RESPONDENT,
EQUINOR CANADA LTD.