Federal Court  Cour fédérale

Date: 20180109

Docket: T-1457-17

Citation: 2018 FC 12

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 9, 2018

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

DANIEL TURP

Applicant

and

THE MINISTER OF FOREIGN AFFAIRS
AND
GENERAL DYNAMICS LAND SYSTEMS CANADA INC.

Respondents

ORDER AND REASONS

I. Introduction

[1] On September 27, 2017, the applicant, Daniel Turp, served and filed this application for judicial review—amended on November 21, 2017—in which he is asking the Federal Court to rule on the legality and the reasonableness of the express or implied refusal by the Minister of

Foreign Affairs [Minister] to suspend or cancel, pursuant to section 10 of the *Export and Import Permits Act*, RSC 1985, c E-19 [EIPA], the permits issued to General Dynamics Land Systems Canada Inc [GDLS] to export the light armoured vehicles [LAVs] they manufacture to the Kingdom of Saudi Arabia [Saudi Arabia].

[2] It should be noted that on January 24, 2017, the Federal Court dismissed a first application for judicial review by the applicant of a previous decision made on April 8, 2016, to authorize the issuance of the export permits in question pursuant to section 7 of the EIPA (T-462-16): *Turp v Canada (Foreign Affairs)*, 2017 FC 84 [*Turp FC*]. That judgment is now under appeal (A-59-17).

[3] Since this application for judicial review was filed, the applicant served the affidavits on which he intends to rely. However, the Minister has not yet served any affidavits even though the time limits for doing so have expired.

[4] On October 17, 2017, counsel for the Minister advised counsel for the applicant that he objected to the request for material made under rule 317 of the *Federal Courts Rules*, SOR/98-106 [Rules].

[5] On October 18, 2017, citing the Federal Court's inherent powers and, by analogy, paragraphs 221(1)(a), (b) and (f) of the Rules, the Minister, represented by the Attorney General of Canada, served and filed a motion to strike this application for judicial review on the grounds that it is plain and obvious that it has no chance of success, that it is redundant and that it is ultimately an abuse of process.

[6] On October 25, 2017, Justice Roy suspended the time limits provided in the Rules—which included the service of the Minister's affidavits and the ruling on the objection to the request for material—so that the Court could decide the Minister's motion to strike.

[7] The Minister filed the following documentary evidence in support of her motion to strike:

a) The notice of amended application for judicial review dated April 21, 2016, in docket T-462-16;

b) The Federal Court judgment dated January 24, 2017, in docket T-462-16; and

c) The notice of appeal dated February 21, 2017, in docket A-59-17.

[8] For his part, the applicant, who objects to this motion to strike, filed the following documentary evidence in his reply record:

a) The letter from counsel Bernard Letarte dated October 17, 2017, regarding this case, objecting to the request for material made in the notice of application for judicial review dated September 27, 2017;

b) An excerpt from the House of Commons debates dated September 28, 2017, in which the Minister answers a question about the export permits issued following the allegations that Saudi Arabia uses Canadian weapons against its civilian population; and

c) The Minister's memorandum of fact and law dated July 11, 2017, in docket A-59-17.

[9] The applicant's supplementary reply record contains an affidavit from the applicant, dated October 23, 2017, and the following documentary evidence:

a) A release from the Department of External Affairs dated September 10, 1986, entitled "Exports Controls Policy" (Exhibit A) – alleged in the notice of amended application T-462-16 (paragraph 17) and the notice of application dated September 27, 2017 (paragraph 26);

b) The Export Controls Handbook, revised in June 2015 (Exhibit B) – alleged in the notice of amended application T-462-16 (paragraphs 18 and 27) and the notice of application dated September 27, 2017 (paragraphs 27 and 30);

c) Amnesty International Report 2016/17 entitled "The State of the World's Human Rights" (Exhibit C) – alleged in the notice of application dated September 27, 2017 (paragraph 15);

d) A release from the Office of the United Nations High Commissioner for Human Rights dated April 5, 2017, entitled "UN experts urge Saudi Arabia to halt forced evictions and demolitions of the Al-Masora neighborhood in Awamia" (Exhibit D) – alleged in the notice of application dated September 27, 2017;

e) A release from the Office of the United Nations High Commissioner for Human Rights dated May 24, 2017, entitled "Saudi Arabia's use of force and demolitions in the Al-Masora neighborhood violates human rights"

(Exhibit E) – alleged in the notice of application dated September 27, 2017 (events of April to August 2017, paragraphs 20 *et seq.*);

f) An article from the Globe and Mail reporting an announcement by the Minister in late July 2017 to the effect that she was very concerned about the use of Canadian LAVs against civilians and relating a statement by the Saudi Embassy indicating that it considered it necessary to use military equipment to fight the terrorists (Exhibit F) – in reference to the facts alleged in the notice of application dated September 27, 2017 (paragraphs 22 and 37);

g) A release from the Office of the United Nations High Commissioner for Human Rights dated May 4, 2017, entitled "UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concludes visit to Saudi Arabia" (Exhibit G) – alleged in the notice of application dated September 27, 2017 (paragraphs 18 *et seq.*);

h) A summary of the situation prepared by the Office for the Coordination of Humanitarian Affairs on the crisis in Yemen, entitled "Crisis Overview" (Exhibit H) – in reference to the facts alleged in the notice of application dated September 27, 2017 (paragraphs 23 and 24);

i) A report by the Human Rights Council dated September 13, 2017, entitled "Situation of human rights in Yemen, including violations and abuses

since September 2014" (Exhibit I) – in reference to the facts alleged in the notice of application dated September 27, 2017 (paragraphs 23 and 24);

j) An article from the Globe and Mail dated July 28, 2017, entitled "Saudi Arabia appears to be deploying Canadian-made armoured vehicles against its own citizens" and an article from CBC News dated July 28, 2017, entitled "Ottawa ready to review Saudi arms deals amid crackdown" (Exhibit J) – in reference to the facts alleged in the notice of application dated September 27, 2017 (paragraphs 20 and 37).

[10] On November 20, 2017, the Court heard the oral submissions of counsel. At the outset of the hearing, the Court noted that, given the nature of the general remedies sought by the applicant in this application for judicial review, GDLS is a directly interested party adverse in interest to the applicant within the meaning of section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 [FCA]. Counsel for the applicant also specified the remedies that he is seeking, which are already covered by the basket clause in the notice of application for judicial review dated September 27, 2017. The Court granted leave to the applicant to file and serve a notice of amended application and allowed both parties to make supplementary written submissions after the hearing.

[11] On November 21, 2017, the applicant filed and served a notice of amended application for judicial review, in which he added GDLS as a co-respondent and specified the remedies he is seeking, in keeping with the amendments announced at the hearing on November 20, 2017. No other amendment was made to the notice of application dated September 27, 2017.

[12] Although it was designated as a co-respondent, GDLS did not appear in this matter.

[13] In exercising my judicial discretion, and for the reasons set out below, I do not consider it appropriate to strike this application for judicial review.

II. General principles for striking out

[14] It is relevant to set out below the general and well known principles that the Court considered in exercising its discretionary jurisdiction.

A. The inherent jurisdiction of the Court and its underlying values

[15] It should be noted that the motions judge's discretion to summarily strike out a notice of judicial review because it discloses no cause of action or is an abuse of process arises from the Court's inherent jurisdiction to control the processes before it. In reality, "[t]he Federal Courts' power to control the integrity of its [*sic*] own processes is part of its core function, essential for the due administration of justice, the preservation of the rule of law and the maintenance of a proper balance of power among the legislative, executive and judicial branches of government" (*Canada (National Revenue) v RBC Life Insurance Company*, 2013 FCA 50 at paragraph 36 and cited case law; see also *Lee v Canada (Correctional Service)*, 2017 FCA 228 at paragraphs 13–15). Different considerations come into play.

[16] "Ensuring access to justice is the greatest challenge to the rule of law in Canada today" (*Hryniak v Mauldin*, 2014 SCC 7 at paragraph 1). Not only can trials be protracted and expensive, but the proliferation of interlocutory applications and cross-appeals generates

additional delays and expenses that are burdensome on litigants and the entire judicial system. On the contrary, "[t]he power to strike out claims that have no reasonable prospect of success is a valuable housekeeping measure essential to effective and fair litigation. It unclutters the proceedings, weeding out the hopeless claims and ensuring that those that have some chance of success go on to trial" (*R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at paragraph 19 [*Imperial Tobacco*]; see also *Canada v Olumide*, 2017 FCA 42 at paragraph 18).

[17] This is also a fact: the Rules governing the conduct of actions (Part 4) are more restrictive than the Rules governing applications (Part 5). The former include a wide range of preliminary motions, including the motion to strike referred to in rule 221, which is not true for the latter. The reason is simple. It is a matter of saving the Court's limited judicial resources by forcing the parties to make all of their arguments at the hearing of the application on the merits. Thus, although the Federal Court could order that an application for judicial review proceed as though it were an action, generally, the application is heard and determined without delay and in a summary way (see subsection 18.4(1) of the FCA).

[18] Nevertheless, the opportunity to file a motion to strike a judicial review is not limited to cases where the application has been converted into an action. Regardless of any statutory or regulatory provision, this Court can summarily strike a notice of application for judicial review if it is so clearly improper as to be bereft of any possibility of success or if it is otherwise an abuse of process (see *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 at paragraphs 47–50 and cited case law [*JP Morgan*]; *Canada v Garber*, 2008 FCA 53 at paragraphs 33–41 and cited case law [*Garber*].

B. Striking out for want of a reasonable cause of action

[19] According to the case law, the Court may strike an application for judicial review for want of a reasonable cause of action. However, the motions judge's discretion must not be trivialized. This discretion is exercised only in the most exceptional circumstances, namely when the application is bereft of any possibility of success. The moving party must therefore satisfy the judge that there is an obvious, fatal flaw that fundamentally vitiates the Court's power to hear the application. This is a very onerous burden (see *JP Morgan* at paragraph 47; *Odynsky v League for Human Rights of B'Nai Brith Canada*, 2009 FCA 82 at paragraph 5 citing *David Bull Laboratories (Canada) Inc v Pharmacia Inc*, [1995] 1 FCR 588, 176 NR 48 (CA)). As discussed below, I am not persuaded that the Minister has discharged that burden.

[20] The underlying principle is that in a motion to strike, the facts alleged in the notice of application for judicial review are assumed to be true, unless they are manifestly incapable of being proven (see, by analogy: subsection 221(2) of the Rules; see also *Operation Dismantle v The Queen*, [1985] 1 SCR 441 at page 455; 18 DLR (4th) 481; *Imperial Tobacco* at paragraph 22; *JP Morgan* at paragraph 52). This eliminates the need to submit the facts through an affidavit. This does not apply where a document is referred to and incorporated by reference in a notice of application, which may merely be appended, nothing more, for the assistance of the Court (see *JP Morgan* at paragraph 54).

[21] The situation can become complicated when the moving party goes beyond seeking that the application for judicial review be struck for want of a reasonable cause of action, but adds supplementary grounds, such as abuse of process. In that case, nothing prevents the moving party

from relying on documents that are not referred to in the notice of application for judicial review to prove that the application in question is redundant, vexatious, or is otherwise an abuse of process (see, by analogy and *a contrario*: paragraphs 221(1)(b), (c) and (f) and subsection 221(2) of the Rules). For his part, the applicant may file any evidence to refute these allegations. That is exactly what happened here.

[22] In a motion to strike, the Court must read the notice of application for judicial review in such a way as to grasp its true nature (see, in general, *JP Morgan*). The Court must perform a comprehensive and practical reading, without getting mired in matters of form. A flaw that must be demonstrated through an affidavit is not obvious, no more than motions to strike that raise substantive issues that must be made at the hearing (see *JP Morgan* at paragraphs 48, 50, 52 and cited case law). In my opinion, this applies to most of the arguments raised by the Minister in her motion to strike.

[23] It has been stated time and again that the jurisdictional defect that prevents the Court from hearing the application for judicial review or from granting the remedy sought must be clear. For example, applications for judicial review have been struck because, as an exception to sections 18 and 18.1 of the FCA, there was a statutory appeal proceeding. Striking out was also possible when the only remedy sought by the applicant could not be granted by the Court, such as vacating a tax assessment (see section 18.5 of the FCA; see also *JP Morgan* at paragraphs 81 *et seq.*; *Canada v Addison & Leyen Ltd*, 2007 SCC 33 at paragraphs 6–8).

[24] In this case, the striking out is not being sought because the Court does not have jurisdiction or because there is another appropriate remedy, but rather because, essentially, the

Minister is challenging the applicant's legal interest and the existence of a legal duty to the applicant, as well as the nature of the remedy that could be obtained if the Minister were to refuse to suspend or cancel an export permit under section 10 of the EIPA. In this case, I find that the issues instead pertain to the merits of the case and cannot be decided summarily without an examination of the evidence. Without making a final decision on the issues in this application for judicial review, it is not plain and obvious that the applicant does not have public interest standing, that the Minister's express or implied refusal to exercise the jurisdiction provided for in section 10 of the EIPA is not reviewable, that no decision was rendered, that the application for judicial review is premature or that none of the remedies set out in sections 18 and 18.1 of the FCA can be granted by the Court in this case.

C. Striking out for abuse of process

[25] According to the case law, striking out for abuse of process is available to the respondent in circumstances where the applicant has filed a new proceeding before the Court that concerns the same subject matter after a discontinuance or after a final judgment is rendered dismissing a previous judicial review, which is not the case here.

[26] Nevertheless, the doctrine of abuse of process has also been cited "to preclude relitigation in circumstances where the strict requirements of issue estoppel (typically the privity/mutuality requirements) are not met, but where allowing the litigation to proceed would nonetheless violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice" (*Toronto (City) v CUPE, Local 79*, 2003 SCC 63 at paragraph 37 [*CUPE*]).

[27] However, although the reasons for the principles underlying the doctrine of abuse of process for relitigation and the doctrine of issue estoppel seem to have a common basis, the doctrine of abuse of process essentially seeks to preserve the integrity of the judicial system in order to avoid inconsistent results (see *CUPE* at paragraph 43; *Garber* at paragraph 36). The underlying public interest is the same: there should be finality in litigation and a party should not be twice vexed in the same matter (see *Johnson (AP) v Gore Wood and Co (A Firm)*, [2001] 2 WLR 72, cited in *Garber* at paragraph 81).

[28] In short, the finality and authority of judicial decisions, first, and the right to be heard, second—interests that are sometimes conflicting—must be weighed by the judge called upon to strike an application for abuse of process: ultimately, it is the integrity of the judicial process which should be the court's fundamental concern (see *Garber* at paragraph 1). In this context, a motions judge's determination as to whether the relitigation of issues and material facts constitutes an abuse of process is a discretionary matter (see *CUPE* at paragraph 35; *Garber* at paragraph 17).

[29] In this case, as it is discussed more fully below, I am not persuaded that this application for judicial review must be struck on the grounds that it is redundant and is ultimately an abuse of process.

III. Legal framework governing the export of military equipment

[30] This case calls for a brief review of the legal framework governing the export of military equipment to contextualize the nature of the issue addressed in docket T-462-16 in relation to that raised today in this case following new facts that arose since April 8, 2016.

[31] Section 3 of the EIPA authorizes the Governor in Council to establish a list of goods and technology, including therein any article the export or transfer of which the Governor in Council deems it necessary to control. According to paragraph 2(a) of the *Export Control List*, SOR/89-202 and amendments thereto [List], military equipment is subject to export control when it is intended for export to any destination other than the United States.

[32] From a technical standpoint, this refers to goods and technology in Group 2 of *A Guide To Canada's Export Control List* [Guide], published by the Department of Foreign Affairs, Trade and Development [Department], of which Canada agreed to control the export in accordance with the Wassenaar Arrangement and the *Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and other Related Materials* (see paragraph (a) of Group 2 of the Annex to the List).

[33] Under subsection 7(1) of the EIPA, the Minister may issue to any resident of Canada applying therefor a permit to export or transfer the abovementioned goods or technology in such quantity and of such quality, by such persons, to such places or persons and subject to such other terms and conditions as are described in the permit or in the regulations.

[34] In order to establish that the export is consistent with the purpose of the export control, the applicant must provide the Minister with various details, including the quantity, unit value and total market value of the goods; a copy of the contract of sale between the applicant and the person to whom the applicant sold the goods for export; a summary report on prior exports of like goods by the applicant; the intended end-use of the goods by the consignee of the goods; the intended end-use location of the goods if different from the location of the consignee, etc. (see section 3 of the *Export Permits Regulations*, SOR/97-204).

[35] In deciding whether to issue the export permit, subsection 7(1.01) of the EIPA sets out the factors that the Minister may consider:

7(1.01) In deciding whether to issue a permit under subsection (1), the Minister may, in addition to any other matter that the Minister may consider, have regard to whether the goods or technology specified in an application for a permit may be used for a purpose prejudicial to	7(1.01) Pour décider s'il délivre la licence, le ministre peut prendre en considération, notamment, le fait que les marchandises ou les technologies mentionnées dans la demande peuvent être utilisées dans le dessein :
(a) the safety or interests of the State by being used to do anything referred to in paragraphs 3(1)(a) to (n) of the *Security of Information Act*; or	a) de nuire à la sécurité ou aux intérêts de l'État par l'utilisation qui peut en être faite pour accomplir ; l'une ou l'autre des actions visées aux alinéas 3(1)a) à n) de la *Loi sur la protection de l'information*;
(b) peace, security or stability in any region of the world or within any country.	b) de nuire à la paix, à la sécurité ou à la stabilité dans n'importe quelle région du monde ou à l'intérieur des frontières de n'importe quel pays.

[36] The *Export Controls Handbook* [Handbook], an administrative tool that complements the EIPA, provides guidance regarding the relevant factors:

> With respect to military goods and technology, Canadian export control policy has, for many years, been restrictive. Under present policy guidelines set out by Cabinet in 1986, Canada closely controls the export of military items to:
>
> - countries which pose a threat to Canada and its allies;
> - countries involved in or under imminent threat of hostilities;
> - countries under United Nations Security Council sanctions;
> - countries whose governments have a persistent record of serious violations of the human rights of their citizens, unless it can be demonstrated that there is no reasonable risk that the goods might be used against the civilian population.
>
> [Emphasis added.]

[37] As discussed below, in docket T-462-16, only the application of section 7 of the EIPA was reviewed by the Court. In this case, however, the Court must consider the application of section 10 of the EIPA, which reads as follows:

10(1) Subject to subsection (3), the Minister may amend, suspend, cancel or reinstate any permit, import allocation, export allocation, certificate or other authorization issued or granted under this Act.	10(1) Sous réserve du paragraphe (3), le ministre peut modifier, suspendre, annuler ou rétablir les licences, certificats, autorisations d'importation ou d'exportation ou autres autorisations délivrés ou concédés en vertu de la présente loi.

(2) If a permit has been issued under this Act to any person for the exportation or importation of goods that have been included on the Export Control List or the Import Control List solely for the purpose described in subsection 5(4.3), (5) or (6), 5.1(1), 5.2(1), (2) or (3) or 5.4(6), (7) or (8), and

(2) Le ministre peut modifier, suspendre ou annuler une licence, au besoin, lorsqu'il y a eu délivrance, en vertu de la présente loi, d'une licence pour l'exportation ou pour l'importation de marchandises figurant sur la liste des marchandises d'exportation contrôlée ou sur celle des marchandises d'importation contrôlée aux seules fins visées aux paragraphes 5(4.3), (5) ou (6), 5.1(1), 5.2(1), (2) ou (3) ou 5.4(6), (7) ou (8), et que l'on se trouve dans l'une des circonstances suivantes :

(a) the person furnished, in or in connection with his application for the permit, information that was false or misleading in a material particular,

a) la personne qui a fait la demande de licence a fourni, à l'occasion de la demande, des renseignements faux ou trompeurs sur un point important;

(b) the Minister has, subsequent to the issuance of the permit and on the application of the person, issued to the person under this Act another permit for the exportation or the importation of the same goods,

b) le ministre a délivré en vertu de la présente loi, après la délivrance de la licence et à la demande de cette personne, une seconde licence pour l'exportation ou l'importation de ces marchandises;

(c) the goods have, subsequent to the issuance of the permit, been included on the Export Control List or the Import Control List for a purpose other than that described in subsection 5(4.3), (5) or (6), 5.1(1), 5.2(1), (2) or (3) or 5.4(6), (7) or (8),

c) les marchandises ont, après la délivrance de la licence, été portées sur la liste des marchandises d'exportation contrôlée ou sur celle des marchandises d'importation contrôlée à d'autres fins que celles visées aux paragraphes 5(4.3), (5) ou (6), 5.1(1), 5.2(1), (2) ou (3) ou 5.4(6), (7) ou (8);

(d) it becomes necessary or desirable to correct an error in the permit, or	d) il est nécessaire ou indiqué de corriger une erreur dans la licence;
(e) the person agrees to the amendment, suspension or cancellation of the permit,	e) le titulaire de la licence consent à la modification, la suspension ou l'annulation.
the Minister may amend, suspend or cancel the permit, as is appropriate in the circumstances.	
(3) Except as provided in subsection (2), the Minister shall not amend, suspend or cancel a permit that has been issued under this Act in the circumstances described in that subsection unless to do so would be compatible with the purpose of subsection 8(2) or section 8.1 or 8.2, namely, that permits to export or to import goods that have been included on the Export Control List or the Import Control List in those circumstances be issued as freely as possible to persons wishing to export or import those goods and with no more inconvenience to those persons than is necessary to achieve the purpose for which the goods were placed on that List.	(3) Sauf les cas prévus au paragraphe (2), le ministre ne peut modifier, suspendre ou annuler une licence délivrée en vertu de la présente loi dans les circonstances visées à ce paragraphe que dans la mesure compatible avec l'objet du paragraphe 8(2) ou des articles 8.1 ou 8.2, c'est-à-dire que les licences d'exportation ou d'importation de marchandises figurant sur la liste des marchandises d'exportation contrôlée ou sur celle des marchandises d'importation contrôlée dans ces circonstances soient délivrées aussi librement que possible aux personnes qui désirent exporter ou importer les marchandises sans plus d'inconvénients qu'il n'est nécessaire pour atteindre le but visé par leur mention sur cette liste.

[38] In this case, it is therefore the legal scope and application of the general discretionary power under subsection 10(1) of the EIPA that must be examined in cases where new material

information regarding the use of military equipment is communicated to the Minister. It is apparent on the face of these proceedings that the cause of action in 2017 is not the same as in 2016.

IV. The first application for judicial review in docket T-462-16

[39] Since the Attorney General of Canada submits on behalf of the Minister that this application for judicial review is redundant and is ultimately an abuse of process, it is also necessary to examine the first application for judicial review, the issues in docket T-462-16, and the Federal Court's judgment dated January 24, 2017.

A. General factual background

[40] The facts related to the first application for judicial review are not at issue today and are not really disputed by the parties.

[41] Saudi Arabia is an Islamic absolute monarchy whose power lies in a strong army. According to the documentary evidence, the Saudi State routinely, gravely and systematically violates the fundamental rights of its citizens. These violations (death penalty, execution of this penalty by decapitation, torture and other cruel, inhuman and degrading treatment, including corporal punishment, such as whipping and amputation) have been repeatedly reported by human rights protection organizations. Moreover, the Saudi State considers any peaceful criticism of the government as terrorism, including when religious minorities seek to protect their rights. In fact, the Kingdom's Shiite minority is particularly at risk. Saudi Arabia is also the leader of a coalition intervening in Yemen. A number of reports reveal serious violations of human rights and of

international humanitarian law by this coalition, which attacks civilian targets, such as hospitals, schools, and places of worship, resulting in thousands of innocent victims.

[42] For its part, GDLS is a Canadian company that specializes in the manufacture of military vehicles, namely LAVs. Since these vehicles are military equipment that is concerned by the Guide and subject to export control, GDLS cannot export LAVs to Saudi Arabia without export permits issued by the Department or on its behalf under section 7 of the EIPA.

[43] In this regard, the export to Saudi Arabia of LAVs manufactured in Canada is nothing new. Between 1993 and July 2015, the Minister issued permits to export more than 2,900 LAVs to Saudi Arabia. During that period, more than a dozen other countries authorized the export of military equipment to Saudi Arabia. Until very recently, the contracts of sale for LAVs were negotiated between Saudi Arabia and United States and were awarded to GDLS by the Canadian Commercial Corporation [CCC], a Crown corporation. In 2014, CCC entered directly into a contract—the terms of which are confidential—with Saudi Arabia for GDLS to supply several hundred LAVs with an estimated value of 14 billion dollars over a 14-year period. The continuation of this lucrative contract became an election issue during the 2015 federal campaign. In fact, the termination of the contract could result in significant job losses and the payment of onerous penalties by the Crown.

[44] On March 21, 2016, the applicant filed an application for judicial review seeking to prohibit the issuance of permits for the export of LAVs to Saudi Arabia. Note that, on the day the notice of application was filed in docket T-462-16, the information the applicant had at his

disposal indicated that no permits had yet been issued for the export of LAVs, except for the transmission of technical data.

[45] However, according to the documentation subsequently transmitted by the tribunal on April 16, 2016, pursuant to rule 317, the Minister at the time, the Honourable Stéphane Dion, had just authorized, on April 8, 2016, the issuance of six permits to export LAVs to Saudi Arabia [the 2016 ministerial authorization]. Furthermore, on April 21, 2016, the applicant amended his notice of application for judicial review in order to have all of the export permits issued by the Minister cancelled and to obtain various declarations of illegality relating to the 2016 ministerial authorization.

B. 2016 ministerial authorization

[46] According to the documentation transmitted by the tribunal, the 2016 ministerial authorization was based on the recommendation of the Deputy Minister of Foreign Affairs in a memorandum dated March 21, 2016, entitled “Memorandum for Action” [memorandum]. The recommendation was the result of the collaboration of several branches of the Department, as well as of the Department of National Defence and the Department of Innovation, Science and Economic Development.

[47] After describing the profile of the exporter, GDLS, the history of LAV exports to Saudi Arabia, and the context in which the permit applications were made, the memorandum sets out the following considerations in particular:

- Saudi Arabia is a key partner for Canada and an important ally in the region, plagued with instability, terrorism, and conflict. More particularly, Saudi Arabia is not a threat, but moreso a key military ally who backs efforts of the international community to fight the Islamic State in Iraq and Syria and the instability in Yemen. The acquisition of these next-generation vehicles will help in those efforts, which are compatible with Canadian defence interests;

- The importance of trade relations between Canada and Saudi Arabia;

- Canada's concerns regarding the human rights situation in Saudi Arabia;

- The long-standing defence relationship between Canada and Saudi Arabia, including the fact that Canada and other Western countries encourage Saudi Arabia to arm itself to be able to defend itself against neighbouring States;

- The importance of the exports in question to the Canadian military industry and the economic benefits that Canada will receive from the exports, including in terms of job creation;

- Saudi Arabia's involvement in the conflict in Yemen and the allegations to the effect that Saudi Arabia and other countries involved in this conflict may have violated international humanitarian law in the context of this conflict; and

- The fact that thousands of Canadian LAVs have been exported to Saudi Arabia since 1993 and that, to the Department's knowledge, there have been no incidents indicating that these vehicles were used to commit human rights violations, in particular, the fact that there is no indication that military equipment of Canadian origin was used in violations of international humanitarian law.

[48] Ultimately, the federal officials were of the opinion that the proposed exports were consistent with Canada's foreign policy priorities and with Canada's defence and security interests in the Middle East and that there were no reasons to believe that LAVs would be used to commit violations of human rights and of international humanitarian law. This latter consideration is critical in this case, because according to the facts alleged in this application for judicial review—which must be assumed to be true at this stage—the Minister currently has concrete evidence to the effect that Canadian LAVs were used against civilians in Saudi Arabia.

C. Arguments raised by the applicant

[49] In challenging the 2016 ministerial authorization, the applicant submitted various grounds for setting it aside revolving around three separate themes.

[50] First, the applicant submitted that the Minister had acted illegally in issuing the export permits to GDLS. Therefore, the applicant submits that the issuance of the permits was contrary to the EIPA, its various guidelines and the *Geneva Conventions Act*, RSC 1985, c G-3 [GCA].

[51] Second, the applicant also argued that the Minister had a closed mind and had fettered her discretion by giving significant weight to irrelevant considerations, which was evident namely from the Minister's public statements.

[52] Third, the applicant submitted that the ministerial authorization was unreasonable: since Saudi Arabia is directly involved in hostilities in Yemen and in repeated and documented violations of fundamental rights, there was a significant risk that the LAVs would be used against civilians.

[53] As we will see below, in her judgment dated January 24, 2017, Justice Tremblay-Lamer dismissed each of these arguments, but not without certain nuances that are important to highlight today. This is particularly true of the reasonableness of the 2016 ministerial authorization, given the absence of concrete evidence of Canadian LAVs being used against civilian populations.

D. Judgment dated January 24, 2017

[54] In Justice Tremblay-Lamer's judgment dated January 24, 2017, she approached the case as follows: by first addressing the standard of review and the applicant's interests, followed by the issues in dispute.

(1) Reviewability of the ministerial authorization

[55] First, the Court addressed the 2016 ministerial authorization as a reviewable decision under section 18 of the FCA.

[56] Since the authority to issue permits under section 7 of the EIPA is discretionary and since exercising that discretion relates to government policies, the standard of reasonableness applies (*Turp FC* at paragraphs 23–24). In such cases, the Court's contextual analysis must take into account the economic and trade objectives of the EIPA, Canada's national and international security interests and the Minister's expertise with regard to international relations, as well as considerations relating to human rights (*Turp FC* at paragraph 25).

(2) The applicant's standing

[57] The Court granted the applicant public interest standing with respect to the issue of the reasonableness of the Minister's decision on April 8, 2016, to authorize the issuance of export permits to GDLS (*Turp FC* at paragraphs 26–30).

[58] However, the Court found that the applicant could not raise procedural fairness issues, which includes the issues raised by the applicant regarding procedural errors and the Minister's closed mind (*Turp FC* at paragraphs 31–32).

[59] Moreover, even though the Court commented on the application of the GCA—it is possible that the first article of the four Geneva Conventions of 1949 [Conventions] has been integrated into Canadian law—it nevertheless noted that the first article confers rights and imposes obligations on the State Parties to the Conventions, but not on individuals (*Turp FC* at paragraphs 58 and 65).

(3) Substantive issues

[60] On judicial review, Justice Tremblay-Lamer reiterates that "[t]he role of this Court is thus to determine whether the Minister acted within his jurisdiction and exercised his discretion on the basis of proper considerations" (*Turp FC* at paragraph 38), and that "[i]t is for him to decide . . . how much weight to give to each, as long as he exercises his power in accordance with the object and in the spirit of the EIPA" (*Turp FC* at paragraph 37). In this regard, one question of law that was hotly debated by the parties was whether or not the factors listed by Parliament in subsection 7(1.01) of the EIPA are exclusive and binding. In fact, the memorandum prepared for the Minister sets out a certain number of policy factors that were considered that are not expressly mentioned in the EIPA or the Handbook.

[61] In particular, the applicant relied specifically on the Handbook, which refers to "present policy guidelines set out by Cabinet in 1986". Yet, according to the press release dated September 10, 1986, entitled "Exports Controls Policy", ". . . Canada will not allow the export of military equipment to countries whose [foreign] governments have a persistent record of serious violations of the human rights of their citizens, unless it can be demonstrated that there is no reasonable risk that the goods might be used against the civilian population . . . the onus of proving 'no reasonable risk' [is] squarely on the exporter."

[62] However, the Court dismissed the applicant's general argument to the effect that under subsection 7(1.01) of the EIPA and the Handbook, and in light of Canada's international obligations, the Minister is not only obliged to consider the factors set out in subsection 7(1.01) of the EIPA, but must also refuse to issue an export permit if there exists a reasonable risk that the exported goods might be used against the civilian population (*Turp FC* at paragraphs 39 *et seq.*). Moreover, the guidelines, while useful for informing the exercise of the Minister's

discretion and the interpretation of the provisions of the EIPA, are not binding (*Turp FC* at paragraph 46).

[63] Generally, the Court instead decided that the Minister is free to issue an export permit if the Minister concludes that it is in Canada's interest to do so, considering the relevant factors (*Turp FC* at paragraph 40). First, the EIPA and the Handbook do not contain any export prohibitions. Second, Canada did not take any measures under the *Special Economic Measures Act*, SC 1992, c 17, to prevent the export of military equipment to Saudi Arabia, either because of the serious and systematic human rights violations committed in the country, or because of the grave humanitarian crisis in Yemen following the armed conflict in which Saudi Arabia was involved (*Turp FC* at paragraph 41).

[64] Moreover, with respect to the risk factors set out in the Handbook, the Court states that they were explicitly considered during the consultations leading up to the decision (*Turp FC* at paragraph 42). Yet, according to the documentation considered by the officials, there was no indication that military equipment of Canadian origin, including LAVs, had been used in acts contrary to international humanitarian law (*Turp FC* at paragraph 42), nor that the LAVs exported since the 1990s had been used to commit human rights violations in Saudi Arabia (*Turp FC* at paragraph 44).

[65] At paragraph 45 of her judgment, Justice Tremblay-Lamer writes:

> It is for the Minister, whose expertise in such matters has been recognized by the courts (*Lake v Canada (Minister of Justice)*, 2008 SCC 23 at para 37 [*Lake*]), to assess whether there is a reasonable risk that the goods might be used against the civilian population. The fact that there have been no incidents in which

> LAVs have been used in human rights violations in Saudi Arabia since trade relations between that country and Canada began in the 1990s is significant evidence in the context of this assessment. For there to be a reasonable risk, there must at least be some connection between Saudi Arabia's alleged human rights violations and the use of the exported goods.
>
> [Emphasis added.]

[66] The Court stated that it was satisfied that the Minister's discretion had been exercised in good faith on the basis of the relevant considerations. The Court determined that the decision to authorize the issuance of the export permits constituted a possible, acceptable outcome that is defensible in respect of the facts and law (*Turp FC* at paragraph 55). That being said, the Court's role is not to pass moral judgment on the decision in question but only to ensure the legality of such a decision (*Turp FC* at paragraph 76). In this regard, the Minister considered the economic impact of the proposed export, Canada's national and international security interests, Saudi Arabia's human rights record and the conflict in Yemen, thereby respecting the values underlying the Geneva Conventions of 1949 (*Turp FC* at paragraph 76). Even though the Minister's broad discretion would have allowed him to deny the export permits, the Court found that it could not intervene to set aside the 2016 ministerial authorization (*Turp FC* at paragraph 76).

[67] That first application for judicial review to have the 2016 ministerial authorization set aside was therefore dismissed.

(4) Non-binding and persuasive nature

[68] The judgment dated January 24, 2017, is not yet final since the appeal proceedings have not yet all been exhausted.

[69] For the purposes of this motion to strike, after reviewing the case law and the submissions of counsel, I found that I should follow, as a matter of judicial comity, Justice Tremblay-Lamer's decision in *Turp FC*, to the extent that the decision already addresses some of the same issues that could be raised on the merits of this application for judicial review. This refers specifically to the reviewability of the 2016 ministerial authorization, to the applicant's standing and to the substantive issues involving the reasonableness of the 2016 ministerial authorization.

[70] However, the issue of the reasonableness of this ministerial refusal to suspend or cancel the export permits under section 10 of the EIPA—in light of the new facts and the new evidence referred to in this application for judicial review—was not decided in the judgment dated January 24, 2017. Furthermore, after a thorough comparative analysis of the proceedings in docket T-462-16 and in this case, I find below that this application is not redundant and is not ultimately an abuse of process.

[71] Finally, note in passing that the applicant's appeal was heard on December 6, 2017 (A-59-17). The Federal Court of Appeal's decision is still pending.

V. No abuse of process in this case

[72] In this case, I am not persuaded that this application for judicial review must be summarily struck on the grounds that it is redundant and ultimately an abuse of process. I specifically considered the fact that there should be finality in litigation and that the Minister should not be twice vexed in the same matter. That is not the case here.

A. Positions of the parties

[73] In this case, the Minister cannot ask that this application for judicial review be struck on the ground of *res judicata*. In fact, the appeal proceedings relating to the judgment dated January 24, 2017, are not yet exhausted, meaning that the judgment is not final. Nevertheless, counsel for the Minister are arguing today that the application for judicial review in this case is redundant and ultimately an abuse of process, since the applicant essentially wishes to reopen the debate that took place before the Court in docket T-462-16, the only difference being that the applicant—relying on new facts that arose after the authorization on April 8, 2016, to issue export permits to GDLS—is now asking that the Minister reconsider her decision and cancel or suspend the permits in question under section 10 of the EIPA. In this regard, according to the teachings in the judgment rendered on January 24, 2017, section 10 of the EIPA does not oblige the Minister to cancel the permits, even if the new facts alleged by the applicant are assumed to be true. In short, to avoid any risk of contradictory judgments, the judgment dated January 24, 2017, must now be followed by the Court, unless it is overturned on appeal. Moreover, the Court should summarily strike this application for judicial review.

[74] The applicant submits that there is no abuse of process, redundancy or risk of contradictory judgments. Counsel for the Minister are misreading the applicant’s proceedings.

To the contrary, the applicant is not trying to reopen the debate on issues that were already decided by the Court on January 24, 2017, and, if he were, the appropriate remedy would be to suspend the proceedings pending the Federal Court of Appeal's—if not the Supreme Court of Canada's—final ruling on the issues. Moreover, the irrefutable evidence of the Saudi State's use of Canadian LAVs against innocent civilian populations in 2017—a new and determinative fact that must be assumed to be true—raises a new cause of action, since in such a case the Minister has the power to amend, suspend or cancel an export permit under section 10 of the EIPA. Although the Court is not bound by the judgment dated January 24, 2017, Justice Tremblay-Lamer nevertheless recognized that the risk of Canadian LAVs being used against civilian populations was a determinative factor in exercising the ministerial power to issue export permits to GDLS under section 7 of the EIPA.

B. Nature of this application for judicial review

[75] I agree with the applicant that this application for judicial review raises a new cause of action in light of the new facts alleged in the notice of application. In general, this application for judicial review capitalizes on the fact that in *Turp FC*, the Court clearly states that, for there to be a reasonable risk, there must at least be a connection between Saudi Arabia's alleged violations and the use of the exported goods. As noted above, the Court showed great deference to the Minister, given the absence of evidence, to the knowledge of Canadian authorities, that Canadian LAVs exported under previous contracts had been used against civilian populations.

[76] While many of the facts concerning human rights violations in Saudi Arabia and in Yemen were already alleged in docket T-462-16, the notice of application contains the following

allegations, which present the following new facts that arose after the 2016 ministerial authorization:

> [TRANSLATION]
> . . .
>
> 11. In fact, the risk that Canadian armoured vehicles sold to Saudi Arabia could be used against civilians, even though initially denied by the Minister, has materialized. The Saudi Embassy itself has recognized that Canadian armoured vehicles had been used in recent months against the civilian population during the siege of Awamiyah, a city with a Shiite majority located in eastern Saudi Arabia.
>
> 12. Even though the Minister was sent a formal notice in a letter dated August 3, 2017, to reconsider her predecessor's decision in light of this evidence and to cancel the permits issued, the Minister refused to act.
>
> . . .
>
> 19. The Kingdom's Shiite minority is most particularly targeted by the so-called "fight against terrorism" led by the Saudi regime.
>
> 20. Therefore, from April to August 2017, the Saudi armed forces occupied the predominantly Shiite city of Awamiyah in the Qatif region and destroyed the historic neighbourhood, killing civilians and causing the residents to flee. It was in this context that Canadian armoured vehicles sold to Saudi Arabia under previous contracts were used.
>
> 21. However, in May, United Nations experts had demanded that the Saudi authorities put an end to the destruction of the cultural heritage and restore the rights of the residents of Awamiyah. Unfortunately, far from being resolved, the situation only got worse after that communiqué was released.
>
> 22. Saudi Arabia defended itself, saying that it considered it necessary to use the military equipment to fight "the terrorists," when even the UN Special Rapporteur finds the definition of terrorist used by Riyadh to be unacceptable.
>
> . . .
>
> 37. The Minister now has evidence that Canadian LAVs were used against religious minorities in Saudi Arabia.

> 38. In light of that evidence, the applicant sent a letter to Minister Freeland on August 3, 2017, urging her to cancel the export permits for LAVs to Saudi Arabia. That letter went unanswered.
>
> . . .

[77] These allegations are not utterly without merit and are not made gratuitously. In support of the applicant's allegations, the notice of application specifies that he intends to rely primarily on the following evidence:

> a) An affidavit from Ali Al-Ahmed, Director of the Gulf Institute;
>
> b) An affidavit from Mark Hiznay, Director at Human Rights Watch;
>
> c) Two affidavits from a Saudi refugee and a Saudi refugee claimant, including videos recorded in Awamiyah, Saudi Arabia;
>
> d) Various public reports about the human rights situation in Saudi Arabia;
>
> e) Various public reports about the military intervention in Yemen;
>
> f) Letter from André Lespérance to Minister Freeland (August 3, 2017);
>
> g) Report on Exports of Military Goods from Canada 2012–2013;
>
> h) The material from the tribunal that will be transmitted under rule 317 of the *Federal Courts Rules* and will be considered relevant;
>
> i) Any other evidence advised by counsel, with leave of the Court.

[78] As specified in the notice of amended application dated November 21, 2017, the objective of this application is to order the Minister to cancel the permits or to order her to decide whether the permits issued to GDLS should be maintained or revoked. In the alternative, the

applicant is asking the Court to order any remedy that it considers appropriate and just in the circumstances, including:

a) Declaring that the Minister's refusal to cancel the export permits is unreasonable and asking the Minister to reconsider the matter to make a decision that is consistent with the reasons for the judgment to be delivered on the merits;

b) Suspending the validity of the permits issued to GDLS for the export of LAVs to Saudi Arabia;

c) Cancelling the permits issued to GDLS for the export of LAVs to Saudi Arabia; or

d) Setting aside the Minister's decision to refuse to cancel the permits issued to GDLS for the export of LAVs to Saudi Arabia and asking the Minister to reconsider the matter to make a decision that is consistent with the reasons for the judgment to be delivered on the merits.

C. Criteria for abuse of process not met

[79] In light of the essence and the objective of this application for judicial review, the Attorney General of Canada's argument that the applicant is essentially trying to reopen the same debate on the merits that was addressed before the Court in docket T-462-16 must be dismissed. The applicant is not challenging the 2016 ministerial authorization, nor is he requesting that the Minister reconsider her decision on the basis of the facts that he raised before. Certainly, some facts alleged by the applicant in his notice of amended application dated November 21, 2017, echo what was alleged in the notice of amended application dated April 21, 2016 (T-462-16).

But there is nothing abusive about that. Given the factual background, which is common to both cases, such redundancy is simply a general background of the human rights situation in Saudi Arabia and in Yemen.

[80] In this case, the applicant submitted in docket T-462-16 that the issuance of permits to export LAVs to Saudi Arabia was contrary to the EIPA, its various guidelines and the GCA. Strictly speaking, Canada is not bound by international treaty norms unless they have been incorporated into Canadian law by enactment. However, the courts may be informed by international law in interpreting the Constitution of Canada. It is also established that the protection of human rights or humanitarian rights is a peremptory norm of international law from which a State cannot easily derogate (see *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at paragraphs 60, 64–65). That being said, an informed reading of the notice of amended application dated November 21, 2017, leads us to find that the applicant does not intend to reopen the debate on that issue.

[81] What is crucial here is that the applicant alleges that since the ministerial authorization on April 8, 2016, Canadian LAVs have, in fact, been used by the Saudi State against innocent civilians. However, that evidence did not exist when the 2016 ministerial authorization was granted. From April to August 2017, the Saudi armed forces occupied the predominantly Shiite city of Awamiyah in the Qatif region. At that time, acts of repression were perpetrated against the population. We can even see images of the Canadian LAVs. These incidents were reported in the media and were the subject of various reports by humanitarian organizations. The Saudi State defended itself, claiming that it had carried out those acts to combat terrorists in the region.

[82] Contrary to what the Attorney General of Canada suggests, I do not consider this application for judicial review to be a disguised attack of Justice Tremblay-Lamer's judgment dated January 24, 2017. In this case, there is no risk of contradictory judgments. Regardless of whether the judgment dated January 24, 2017, is confirmed or set aside, that changes nothing about the fact that new facts have arisen since the 2016 ministerial authorization. Any jurisdiction that could be exercised by the Federal Court of Appeal or the Supreme Court of Canada on appeal, in lieu of the Federal Court, can be exercised only on the basis of the situation and the evidence that existed at the time the Minister authorized the issuance of the export permits. However, the issue that the Court will have to decide on the merits is whether, in themselves, the new facts and the new evidence raised in the notice of amended application dated November 21, 2017, warrant the reconsideration of the 2016 ministerial authorization and, if applicable, whether the Minister's refusal to suspend or cancel the export permits is unreasonable.

[83] In *Turp FC*, Justice Tremblay-Lamer determined that the possibility that the LAVs could be used against the civilian population was a relevant factor for the Minister to consider. The lack of evidence of such use was found to be determinative. It therefore follows that this factor must again be considered if the discretion under section 10 of the EIPA were to be exercised. The parameters have undeniably changed since the 2016 ministerial authorization. As the Minister has refused to suspend or cancel the export permits issued to GDLS, this Court will be required to assess the reasonableness of the Minister's new decision at a hearing on the merits. The fact that the Court found in 2017 that the Minister's assessment of the factors in April 2016 was reasonable does not mean that the same finding must be made of the refusal to suspend or cancel the export permits based on the new facts and evidence on record.

[84] Even if the applicant's appeal from the judgment dated January 24, 2017, were to be dismissed, this application for judicial review is not redundant and continues to be relevant and topical in all respects. In this regard, bear in mind that GDLS, the company that holds the export permits, was not a party to docket T-462-16. The six export permits at issue were never filed in the Court record. This raises the question of whether those permits contain specific conditions regarding Saudi Arabia's end-use of the LAVs. We do not know whether, at the time, they had a validity period or expiry date or whether GDLS would have to apply for the issuance of new export permits.

[85] "This concept of abuse of process was described at common law as proceedings 'unfair to the point that they are contrary to the interest of justice'" (*CUPE* at paragraph 35 and cited case law). That does not apply here, for the reasons already set out above. Any discretion that is exercised by the Court to control the proceedings before it must serve the interests of justice and protect the integrity of the judicial system. The factors referred to above argue largely in favour of these proceedings continuing independently of the appeal proceedings brought against the judgment dated January 24, 2017, in docket T-462-16. In this case, higher considerations of maintaining the integrity of the judicial review system instead require that the issues of national importance raised in this application for judicial review be examined on the merits as soon as possible, as the Court is not persuaded that the application is destined to fail for the reasons raised by the Attorney General of Canada in the motion to strike.

VI. Existence of a cause of action

[86] By assuming the facts alleged in the notice of amended application dated November 21, 2017, to be true, I am not satisfied that this application for judicial review must be summarily struck on the grounds that it is bereft of any possibility of success or that there is an obvious, fatal flaw that fundamentally vitiates the Court's power to hear the application.

A. Positions of the parties

[87] In short, the Attorney General of Canada is challenging, first, the applicant's legal interest to bring this application for judicial review before the Court and, second, the Court's power to grant on the merits any remedy sought by the applicant in his notice of amended application dated November 21, 2017, even with assuming to be true the fact that, since the 2016 ministerial authorization, Saudi Arabia has used Canadian LAVs against civilian populations. In this case, there is no legal duty to act at a citizen's request. The conditions for obtaining a writ of *mandamus* are not satisfied (see *Apotex Inc v Canada (Attorney General)*, [1994] 1 FCR 742, 162 NR 177 (FCA) affd by *Apotex Inc v Canada (Attorney General)*, [1994] 3 SCR 1100, 176 NR 1 [*Apotex*]). *Inter alia*, there must be a public legal duty to act owed to the applicant, which is not the case here. In this sense, the Minister did not make a reviewable decision. Any remedy seeking the exercise of the discretion under section 10 of the EIPA is premature. At most, this case concerns a refusal by failure to act, meaning that applications to set aside (*certiorari*) or for a declaratory judgment are inapplicable, unnecessary or redundant. The Court is not an appropriate forum to sit at first instance in lieu of the Minister.

[88] In reply, the applicant submits that the Minister's express or implied refusal to exercise the discretion provided in section 10 of the EIPA to amend, suspend or cancel an export permit is a decision reviewable by the Court. However, the applicant's legal interest—which is the same as that recognized by the Court in docket T-462-16—is indisputable. In this case, the applicant has serious arguments to make on the merits regarding the unreasonableness of the ministerial refusal that arose after the 2016 ministerial authorization. The entire argument by counsel for the Minister is based on a mischaracterization of this application for judicial review and on a semantic debate about the existence of a reviewable decision and the nature of the remedies sought by the applicant. Although the applicant did in fact request orders that are similar to a *mandamus* or a mandatory injunction, he also asked the Court to order any other remedy that it considers appropriate. Therefore, if the Court decides that the applicant does not satisfy all of the conditions for issuing a writ of *mandamus*, it is open to order any other remedy that it deems appropriate, whether it be to issue a declaratory judgment or simply to set aside the Minister's decision and refer the matter back for reconsideration (see *Centre Québécois du droit de l'environnement v Canada (Environment)*, 2015 FC 773 at paragraph 83 [*CQDE*]).

B. The applicant's standing

[89] The Attorney General of Canada is depicting this application for judicial review as an unwarranted intrusion into the exercise of ministerial discretion. Whether it is to seek a writ of *mandamus* or a declaratory judgment, the applicant does not have standing. Otherwise, any citizen could compel the Minister to undertake a decision-making process on any export permit issued under the EIPA. It follows that the Minister could have simply ignored the notice dated August 3, 2017—without even acknowledging receipt—and that the Court is again authorized to

strike this application for judicial review. In fact, since the applicant cannot argue that there is a duty toward him personally, this application for judicial review is destined to fail. The Attorney General of Canada bases this argument on the fact that, because the EIPA does not provide for any process for the participation or consultation of persons with opposing interests to a Canadian resident who applies for an export permit, agreeing to proceed with this application for judicial review would be equivalent to creating a judicial forum to debate policy issues with regard to which the person has no direct or personal interest and to transferring to the Court the decision-making authority that Parliament conferred on the Minister.

[90] It appears to me that the Attorney General of Canada is attempting to debate the justiciability of the application and the applicant's interest, which Justice Tremblay-Lamer already decided in her judgment dated January 24, 2017 (*Turp FC* at paragraphs 26–32). In fact, it was decided that the applicant did have public interest standing with regard to the issue of the reasonableness of the Minister's decision to issue the export permits to GDLS. Why would that be different today?

[91] Bear in mind that to grant public interest standing to an applicant, the courts must consider three factors:

> Whether there is a serious justiciable issue raised;
>
> Whether the plaintiff has a real stake or a genuine interest in it; and
>
> Whether, in all the circumstances, the proposed suit is a reasonable and effective way to bring the issue before the courts.

(see *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 at paragraph 37).

[92] In terms of the applicant's standing, in all cases, the principles that apply to granting public interest standing must be given a liberal and generous interpretation by the courts (see *Canadian Council of Churches v Canada (Minister of Employment and Immigration)*, [1992] 1 SCR 236 at page 253, 88 DLR (4th) 193 [*Canadian Council of Churches* cited to SCR]). In fact, an overly restrictive approach to granting public interest standing would immunize public acts from certain challenges (see *Canadian Council of Churches*, at page 252; *League for Human Rights of B'Nai Brith Canada v Odynsky*, 2010 FCA 307 at paragraph 61 and cited case law).

[93] Yet, in the judgment dated January 24, 2017, Justice Tremblay-Lamer finds as follows at paragraph 29:

> I am of the view that the question of the issuance of export permits for controlled goods is sufficiently important from the public's perspective to meet the first criterion. As for the second criterion, the applicant is a professor of constitutional and international law for whom the principles of the rule of law, respect for fundamental rights and international humanitarian law are of particular concern. Among other things, through several interventions before the courts, he has shown himself to be an engaged citizen with a genuine interest in issues involving fundamental rights around the world. I also find that this judicial review is a reasonable and effective way to bring the issue before the Court. Aside from the administrative avenues that have already been exhausted, there exists no other way to bring such a challenge before the Court. No other party has a higher interest than the applicant when it comes to challenging the approval of export permits by the Minister, with the possible exception of a Canadian living in Saudi Arabia or Yemen.

[94] *Prima facie*, there is no reason not to follow Justice Tremblay-Lamer's reasoning and not to apply it to the exercise of the Minister's power to reconsider under section 10 of the EIPA. I would add only that democratic life—a profoundly Canadian value—assumes that citizens can act in the public interest by submitting justiciable questions involving the exercise of public powers when the question cannot otherwise be submitted to the courts. It is only in very clear cases that the Court should agree to terminate an application for judicial review on a preliminary motion to strike for lack of standing (see *Sierra Club of Canada v Canada (Minister of Finance)*, [1999] 2 FC 211 at paragraph 25, 157 FTR 123 (FCTD); *Apotex Inc v Canada (Governor in Council)*, 2007 FCA 374 at paragraph 13). In this case, it is not plain and obvious at this stage that the applicant does not have public interest standing.

C. Reviewability of the ministerial refusal alleged by the applicant

[95] Without deciding this issue on the merits, it also seems to me at this stage that the applicant has a reasonable cause of action, as the Minister has not yet filed any affidavit and has refused to submit the documents sought by the request for material made under rule 317. The Minister's refusal to reconsider the 2016 ministerial authorization and to exercise any jurisdiction provided under section 10 of the EIPA in light of the new facts alleged in the notice of amended application dated November 21, 2017, is, *prima facie*, a reviewable decision under sections 18 and 18.1 of the FCA, and a truncated interpretation of this application for judicial review cannot prevent this Court from exercising its constitutional supervisory role.

[96] The rule of law is enshrined in the preamble to the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK),

1982, c 11 [Charter]. It is a major operating principle of any legislative, executive or judicial action. The rule of law incorporates a number of themes and requires government officials to exercise their authority according to law, and not arbitrarily (see *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 at paragraph 134 [*Charkaoui*]; *Roncarelli v Duplessis*, [1959] SCR 121, 16 DLR (2nd) 689). The corollary of this constitutionally protected principle is that superior courts, including the Federal Courts (see *Charkaoui* at paragraph 136), may be called upon to review whether particular exercises of state power fall outside the law (see *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2 at paragraph 10). That is the case here, even though utmost caution is required. However, we have not yet arrived at the merits of the case.

[97] While discretionary decisions by the government will generally be given considerable respect, that discretion must be exercised in accordance with the boundaries imposed in the statute, the principles of the rule of law, the principles of administrative law, the fundamental values of Canadian society, and the principles of the Charter (see *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraph 56, 174 DLR (4th) 193). Even when an executive power involves exercising the Crown's or government's foreign affairs prerogative—which is not the case here—courts are empowered to make orders ensuring that this prerogative is exercised in accordance with the Constitution and any applicable statute (see *Canada (Prime Minister) v Khadr*, 2010 SCC 3 at paragraph 37 and cited case law).

[98] Nevertheless, it is not disputed that the refusal to exercise a statutory jurisdiction is a reviewable decision (see, for example, *CQDE*; *Alberta Wilderness Association v Canada (Attorney General)*, 2013 FCA 190 [*Alberta Wilderness*]; *Centre québécois du droit de*

l'environnement v Oléoduc Énergie Est ltée, 2014 QCCS 4147 citing *Morin v 9247-9104 Québec inc*, 2013 QCCA 1968; *Communications, Energy and Paperworkers Union of Canada v Canada (Attorney General)*, 2013 FC 34 at paragraph 29). As indicated in the case law, this refusal can be express or implied. Neglect to perform the duty or unreasonable delay in performing it may be deemed an implied refusal to perform (see *Dragan v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 211 at paragraph 45; the appeal was dismissed for mootness, see *Canada (Minister of Citizenship and Immigration) v Dragan*, 2003 FCA 233; see also *Mersad v Canada (Citizenship and Immigration)*, 2014 FC 543 at paragraph 15; *0769449 BC Ltd (Kimberly Transport) v Vancouver Fraser Port Authority*, 2015 FC 252 at paragraph 24). In this case, on August 3, 2017, the applicant gave the Minister formal notice to exercise the jurisdiction provided for in section 10 of the EIPA, but by assuming the facts alleged in the notice of amended application dated November 21, 2017, to be true, the Minister still refuses to respond to the notice and to act in accordance with the law.

[99] In the motion to strike, the Minister counters that she has no legal duty to act, meaning that none of the remedies sought in the notice of amended application dated November 21, 2017, can be granted by the Court, which the applicant of course refutes. I agree with the applicant that these issues cannot be decided on a preliminary basis and without evidence before the Court. This is not a summary judgment proceeding, where the Court, based on the evidence submitted by the parties, can decide a certain number of issues. At this stage, I am not persuaded that the applicant has no cause of action. The problem goes far beyond the context of the formal notice. The possible failure to exercise a public power, such as that set out in section 10 of the EIPA, is a justiciable issue.

[100] Needless to say, the power to issue export permits under section 7 of the EIPA is a public act delegated by Parliament to the Minister of which the permanence is ensured in practice by the regulatory nature of the permit that is issued to the exporter. However, what is very important for the orderly administration of the EIPA is that section 10 confers on the Minister a general power to amend, suspend, cancel or reinstate permits and authorizations issued or granted under the EIPA. In passing, it does not seem necessary to refer here to the doctrine of jurisdiction by necessary implication, under which the powers conferred by an enabling statute are construed to include not only those expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of its objects (see *ATCO Gas & Pipelines Ltd v Alberta (Energy & Utilities Board)*, 2006 SCC 4 at paragraph 51; *Bell Canada v Canada (Canadian Radio-Television and Telecommunications Commission)*, [1989] 1 SCR 1722 at pages 1756–1758, 60 DLR (4th) 682).

[101] *Prima facie*, there is nothing to prevent the Minister—after having given the permit holder the opportunity to make submissions—from amending permit conditions, suspending an authorization or permit, or even cancelling any export permit after the discovery of new facts or an end-use that does not comply with the EIPA or its Regulations or with the specific conditions of any permit issued to the exporter. Even though section 10 of the EIPA does not impose an obligation on the Minister, the Court may intervene when the discretion at issue was not exercised in good faith, is based on considerations that are extraneous or irrelevant to the purpose of the EIPA or if the rules of procedural fairness were not respected (see *Maple Lodge Farms v Government of Canada*, [1982] 2 SCR 2 at pages 7–8, 137 DLR (3rd) 558; *YM (Sales) Inc v Canada (Foreign Affairs and International Trade Canada)*, 2008 FC 78 at paragraphs 20–22).

[102] The Attorney General of Canada would prefer that it be only when a person is directly affected that the Court could review the Minister's decision under section 10 of the EIPA. In practice, this would restrict applications for judicial review to the exporter. Yet, for the moment, GDLS has no interest, from an economic or legal point of view, in asking the Minister to suspend or cancel the export permits on the grounds that Saudi Arabia used Canadian LAVs against civilian populations in 2017, as the applicant alleges in his notice of amended application dated November 21, 2017. On the contrary, CCC is a party to the contract to supply military equipment and could find itself in a difficult situation and face an order to pay penalties if the promised deliveries are not carried out. The fact remains that the integrity of the export permit regime still rests on the legislative affirmation of the broad review and oversight powers delegated to the Minister under the EIPA. How then can we ensure that the Minister acts at all times in accordance with the legislative mandate to ensure continuous oversight of the export of military equipment?

[103] In this case, the applicant can seriously argue that the issue is not whether the Minister has any duty toward the applicant or GDLS. This is not a traditional permit issuance matter in which the jurisprudential rules for issuing writs of *mandamus* govern the exercise of judicial jurisdiction. The applicant's remedy is much broader and involves issues that relate to public interest and to the statutory interpretation of the powers to review and cancel export permits conferred on the Minister under section 10 of the EIPA. On the merits, the Court will be called upon to determine whether the duty of the Minister—as the officer mandated by the EIPA to ensure the ongoing review and oversight of the export of military equipment—was performed within the statutory boundaries and in accordance with Parliamentary intent.

[104] As already noted above, in docket T-462-16, the applicant challenged the legality and the reasonableness of the Minister's previous decision to authorize the issuance of permits for the export to Saudi Arabia of LAVs manufactured by GDLS. Although the 2016 ministerial authorization could be described as a "decision," strictly speaking, such an act of public authority is not a judicial or quasi-judicial decision, since no right is formally decided by the Minister in the context of an adversarial debate. It is much more akin to a legislative act. In addition, since this is a blanket authorization, valid for only six export permits, the exporter must still comply with all the regulatory conditions and other specific conditions contained in any subsequent permit issued under section 7 of the EIPA.

[105] The legal characterization that could be made of the express or implied refusal alleged in the notice of amended application dated November 21, 2017, does not fall to the parties, but exclusively to this Court. It goes without saying that this characterization will depend on the evidence in the Court record and cannot be summarily decided at this stage. In fact, there is a clear distinction between the making of a decision—and the refusal to act could itself be a decision—and the documentation of it (see *Mount Sinai Hospital Center v Quebec (Minister of Health and Social Services),* 2001 SCC 41 at paragraphs 2–3 [*Mount Sinai Hospital Center*]).

[106] If the facts alleged in the notice of amended application are assumed to be true, and they are in fact supported by the documentary evidence the applicant submits in the notice of amended application, the Minister has new facts and concrete evidence (including public reports and videos) to the effect that Canadian LAVs were indeed used by the Saudi State against civilian populations in 2017, in this case, in the largely Shiite city of Awamiyah in the Qatif region. The allegation that, despite this new evidence, the Minister has refused to suspend or

cancel the export permits issued to GDLS under the 2016 ministerial authorization must also be assumed to be true at this stage. It is not plain and obvious at this stage that the Minister's express or implied refusal to exercise the discretion under section 10 of the EIPA is not reviewable or that the applicant has no reasonable cause of action.

D. The argument that the application for judicial review is premature

[107] According to the case law, the absence of a "decision" is not an absolute bar to an application for judicial review (see *Amnesty International Canada v Canadian Forces*, 2007 FC 1147 at paragraph 69 and cited case law). That being said, given that the record is incomplete, it is inappropriate for the Court to make a preliminary decision on the argument that the application for judicial review is premature, and given the fact that, according to the Attorney General of Canada, to date the Minister has not made a reviewable decision under section 10 of the EIPA. That is an issue that will have to be decided on the merits after a review of the evidence and the certified record, if applicable. Furthermore, the lack of transparency in the decision-making process is not a safeguard that prevents the Court from examining the legality of any ministerial action that could be disputed. The judicial dialogue arising from the separation of powers doctrine cannot be initiated without a certain candor and transparency from public authorities.

[108] The problem here is that the ministerial authorizations and the export permits issued under section 7 of the EIPA are documents that are not generally accessible to the public. The same applies to any decision to amend, suspend, cancel or reinstate an export permit under section 10 of the EIPA. Similarly, the Minister's deliberations and consultations will not be

accessible unless an application for judicial review challenging the legality or reasonableness of any such decision has been served on the Minister with a request for material under rule 317. In fact, the applicant and the Court found out about the existence of the 2016 ministerial authorization only after the service of the originating notice in docket T-462-16.

[109] The question as to whether or not the Minister decided to disregard the formal notice dated August 3, 2017, to reconsider the 2016 ministerial authorization, and to suspend or cancel the export permits already issued under the 2016 ministerial authorization necessarily requires a review of the material contained in the certified record transmitted under rule 318 to the Court Registry and to the party who requested it. However, to date, despite the request for material included in the notice of application for judicial review served and filed on September 27, 2017, the Minister objected to transmitting to the Registry and to the applicant the documents regarding the reconsideration of the decision dated April 8, 2016, based on the new facts reported by the media in July 2017 or communicated to the Minister in the formal notice dated August 3, 2017.

[110] Nevertheless, in late July 2017, the Minister and the Prime Minister reported to the media that the federal government was taking [TRANSLATION] “the allegations very seriously” that Saudi Arabia had used Canadian LAVs to repress the Shiite minority: [TRANSLATION] “We made a commitment, as a government, to be more open, more transparent, and more accountable towards Canadians about issues like these, and that is exactly what we are going to do” (Prime Minister). [TRANSLATION] “If we discover that Canadian exports were used to commit serious human rights violations, the Minister [Chrystia Freeland] will intervene” (statement by email from Global Affairs Canada) (see Radio-Canada, The Canadian Press and RCI, “Ottawa se penche sur l’utilisation de blindés canadiens en Arabie saoudite”, *Radio-Canada* (July 29, 2017),

online:

https://ici.radio-canada.ca/nouvelle/1047828/ottawa-armee-blindes-canadiens-arabie-saoudite).

[111] On September 28, 2017, questioned by the Member of Parliament for Montcalm regarding what she intended to do following the allegations that Canadian LAVs were used against civilian populations, the Minister advised the House of Commons as follows:

> **Mr. Luc Thériault (Montcalm, BQ):**
>
> Mr. Speaker, Saudi Arabia uses Canadian weapons against civilians. On July 28, the minister said that she was going to take action. Nevertheless, armoured vehicles are still making their way to Riyadh, and Saudi money is still making its way to Canada.
>
> Why does the Minister of Foreign Affairs want to sign the Arms Trade Treaty, when her government does not even intend to abide by it?
>
> **Hon. Chrystia Freeland (Minister of Foreign Affairs, Lib.):**
>
> Mr. Speaker, Canada expects the end user of all exports to abide by the end use terms in issued export permits. I requested a review of the situation and department officials are actively requesting more information on these allegations. I can confirm that no new export permits have been issued for Saudi Arabia.

[112] Note that the Member of Parliament for Montcalm was referring to Bill C-47 entitled "An Act to amend the Export and Import Permits Act and the Criminal Code (amendments permitting the accession to the Arms Trade Treaty and other amendments)". Note that according to Article 7, paragraph 7, of the *Arms Trade Treaty*, April 2, 2013, (entry into force on December 24, 2014) [ATT], an exporting State Party is encouraged to reassess its authorization after consultations, if appropriate, with the importing State if it becomes aware of new relevant information indicating an overriding risk that the arms could be used to commit or facilitate a

serious violation of international humanitarian law or international human rights law. Bill C-47 was tabled for first reading on April 13, 2017. Since then, it has passed second reading and was referred to the Standing Committee on Foreign Affairs and International Development on October 3, 2017. No legislative amendment is currently foreseen for sections 7 and 10 of the EIPA, as the government is of the opinion that the current export permit regime is consistent with the provisions of the ATT and with Canada's other commitments.

[113] The Attorney General of Canada submits that the Minister did not make a reviewable decision. But how to be sure? The transparency of the decision-making power conferred on the Minister under the EIPA is at the heart of this debate before the Court. In this case, how can the applicant and all Canadian citizens know whether or not the Minister decided to refuse to suspend or cancel the export permits based on the new facts and evidence of Canadian LAVs being used against civilian populations? To what extent has the Minister undertaken toward the Canadian population to act for it to be possible to consider that she made a "decision" that raises the public's legitimate expectations? At what point can it be said that a refusal to exercise the statutory jurisdiction provided for in section 10 of the EIPA arises from the Minister's deliberation?

[114] Without deciding on the merits of the objection to the transmission of the material requested under rule 317, the answer to these issues therefore depends on the evidence that will be presented on the merits of the application for judicial review and the content of the certified record. A number of months have passed since the formal notice was sent on August 3, 2017, and the Minister's public engagement to review the situation and act if necessary. Assuming the facts stated in the notice of amended application dated November 21, 2017, to be true, it must be

concluded that the allegation of the refusal to act and the existence of a negative decision by the Minister is not without factual basis at this stage of the proceedings.

[115] In the absence of an affidavit from the Minister or an authorized representative from her Department, the Court cannot, at this stage, be content with the general statement contained in the letter dated October 17, 2017, from counsel for the Minister to counsel for the applicant to the effect that [TRANSLATION] "the only decision that was made in relation to the export permits issued to General Dynamics Land Systems Canada (GDLS) is the decision made on April 8, 2016, by the Honourable Stéphane Dion, Minister of Foreign Affairs, authorizing the issuance of these permits." It is not plain and obvious at this stage that no decision was made and that the application for judicial review is premature.

E. Remedies that can be granted on the merits of the case

[116] I am also of the opinion that the remedies that could be granted by the Court on the merits is an issue that should be decided by the trial judge after considering the evidence on record and the content of the certified record transmitted to the Court by the tribunal. In fact, pursuant to subsection 18.1(3) of the FCA, the Court has the discretion to grant a remedy that is appropriate and based on the facts to correct the errors made or problems raised in a matter.

[117] Ultimately, the remedies may vary according to the Court's legal characterization of the refusal or of the impugned decision. Everything will depend on the nature of the reviewable errors and on the situation at the time when the Court must rule on the merits of the case. By analogy, the following remarks by the Supreme Court of Canada at paragraph 21 of *Imperial*

Tobacco invite motions judges to show caution before rendering a preliminary decision that the Court cannot grant any of the remedies sought by the applicant:

> Valuable as it is, the motion to strike is a tool that must be used with care. The law is not static and unchanging. Actions that yesterday were deemed hopeless may tomorrow succeed . . . The history of our law reveals that often new developments in the law first surface on motions to strike or similar preliminary motions . . . Therefore, on a motion to strike, it is not determinative that the law has not yet recognized the particular claim. The court must rather ask whether, assuming the facts pleaded are true, there is a reasonable prospect that the claim will succeed. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial.
>
> [Emphasis added.]

[118] If there is indeed an area of law that is not immutable, it is that of administrative law. Largely derived from the principles established by the superior courts, this is an ever-evolving area of law. And while there is a broad range of extraordinary remedies—the injunction, writs of *certiorari*, *mandamus*, prohibition or *quo warranto* and the declaratory judgment—it is the case law that has defined their scope and the conditions for granting them. One thing is certain, however: the courts are not concerned with the particular form of the administrative act. What matters most is its legal effect. This is because, as it must be kept in mind, judicial review rests on the constitutional necessity—under the rule of law and the separation of powers doctrine—that superior courts be able to determine the legality or the reasonableness of any legislative or governmental action, regardless of its nature or origin.

[119] However, without deciding the case on the merits, I note that the Federal Court may, in appropriate cases, issue an order of *mandamus* requiring the Minister to exercise any discretion available under the law (see *JP Morgan* at paragraph 94; *Canada (Public Safety and Emergency*

Preparedness) v LeBon, 2013 FCA 55 at paragraphs 14–15). In fact, the *Apotex* judgment that the Attorney General of Canada cites in this case clearly acknowledges that bodies having a discretionary decision-making power may still be faced with a court order for *mandamus* in certain circumstances (see *Apotex*; see also *Trinity Western University v British Columbia College of Teachers*, 2001 SCC 31 at paragraphs 41, 43, and 44; *Mount Sinai Hospital Center* at paragraph 117).

[120] Lastly, the Court has a broad declaratory power with respect to any tribunal or the Attorney General of Canada (see *Bilodeau-Massé v Canada (Attorney General)*, 2017 FC 604 at paragraph 39; see also *CQDE*; *Native Women's Assn. of Canada v Canada*, [1994] 3 SCR 627 at page 646, 119 DLR (4th) 224 [*Native Women's Assn.* cited to SCR]). For example, in a case such as this one, where an applicant has no proprietary or pecuniary interest in the outcome of the proceeding and is acting in the public interest, the appropriate remedy could be a declaratory judgment on the interpretation of the statute—in this case, section 10 of the EIPA—and the scope of any duty of the responsible minister in exercising a discretionary power (see *MiningWatch Canada v Canada (Fisheries and Oceans)*, 2010 SCC 2 at paragraphs 8, 12, 43 and 50–53). If the Court is permitted to grant a declaratory judgment when the notice of application contains a basket clause (see *Native Women's Assn.* at pages 646–648), especially when the notice of application alternatively seeks a declaratory judgment and/or a judgment setting aside the decision made, the respondent cannot argue that he or she is prejudiced.

[121] By assuming the facts alleged by the applicant in the notice of amended application dated November 21, 2017, to be true, it is not plain and obvious at this stage that none of the remedies provided for in sections 18 and 18.1 of the FCA can be granted by the Court in this case.

VII. Conclusion

[122] In conclusion, the Minister's arguments that this application has no chance of success, that it is redundant, and that it is ultimately an abuse of process are unfounded in this case.

[123] This motion to strike is dismissed without costs.

ORDER in T-1457-17

THE COURT ORDERS that the motion to strike be dismissed without costs.

"Luc Martineau"
Judge

Certified true translation
This 28th day of July 2020

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1457-17
STYLE OF CAUSE:	DANIEL TURP v THE MINISTER OF FOREIGN AFFAIRS AND DYNAMICS LAND SYSTEMS CANADA INC.
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	NOVEMBER 20, 2017
ORDER AND REASONS:	MARTINEAU J.
DATED:	JANUARY 9, 2018

APPEARANCES:

André Lespérance Anne-Julie Asselin	FOR THE APPLICANT
Bernard Letarte Vincent Veilleux	FOR THE RESPONDENT THE MINISTER OF FOREIGN AFFAIRS

SOLICITORS OF RECORD:

Trudel Johnston & Lespérance Avocats / Barristers & Solicitors Montreal, Quebec	FOR THE APPLICANT
Attorney General of Canada	FOR THE RESPONDENT THE MINISTER OF FOREIGN AFFAIRS