Federal Court Cour fédérale

Date: 20240301

Docket: T-89-24

Citation: 2024 FC 346

Vancouver, British Columbia, March 1, 2024

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

(CANADIAN INSPECTION LTD)

Applicant

and

(CANADIAN NUCLEAR SAFETY COMMISSION AND DEPUTY ATTORNEY GENERAL OF CANADA)

Respondents

ORDER AND REASONS

I. Overview

[1] This Order and Reasons address motions by the Applicant, Canadian Inspection Ltd [CIL], filed on February 21, 2024, seeking three categories of relief. First, CIL seeks leave under Rule 120 of the *Federal Courts Rules*, SOR/98-106 [*Rules*], permitting Mr. Donald Lucic, CIL's

sole owner and Chief Executive Officer, to represent the Applicant, CIL, in the within application for judicial review and possibly in any other litigation before this Court.

[2] Second, CIL seeks an order pursuant to Rule 317 or 225 of the *Rules*, requiring documentary production by the Respondents, the Canadian Nuclear Safety Commission [CNSC] and the Attorney General of Canada.

[3] Finally, CIL seeks an order from this Court granting some form of injunctive relief, serving to maintain the validity of its Industrial Radiography licence [Licence], which is set to expire on March 31, 2024, pending the outcome of this judicial review.

[4] For the reasons explained in greater detail below, my disposition of these motions is as follows:

A. CIL's Rule 120 motion will be granted, in that leave will be granted for Mr. Lucic to represent CIL in the present application for judicial review, with the addition of a condition explained later in these Reasons;
B. CIL's motion under Rule 317 or 225 will be dismissed; and
C. CIL's motion for injunctive relief will be dismissed.

[5] Also, the Respondents' motion record includes correspondence from the Respondents' counsel to the Court's Registry dated February 2, 2024, and responding correspondence from CIL dated February 7, 2024, related to various issues including the fact that CIL's Notice of Application [NOA] commencing this application for judicial review challenges two related

decisions of the CNSC. The Respondents raised the need for CIL to seek relief under Rule 302, which, unless the Court orders otherwise, requires an application for judicial review to be limited to a single order in respect of which relief is sought. CIL responded that it would be filing a motion under Rule 302 to seek such an order.

[6] CIL did not file such a motion. However, at the hearing of the motions referenced above, the Respondents' counsel advised that the Respondents were prepared to consent to an order under Rule 302, as the two decisions challenged in the NOA were related. I advised that, in those circumstances, I was prepared to grant the required order without the benefit of a formal motion. My Order below will accordingly include this relief.

II. Background

[7] CIL is a non-destructive testing company, situated in Edmonton, Alberta, that provides radiographic testing services. CIL is the holder of a Licence, issued by CNSC pursuant to the *Nuclear Safety and Control Act*, SC 1997, c 9 [*NSCA*] and regulations made thereunder. The Licence authorizes CIL, subject to conditions set out therein, to possess, transfer, use and store the nuclear substances and the prescribed equipment listed in an appendix to the Licence and to conduct licensed activities in the locations specified in the appendix.

[8] CIL filed its NOA for judicial review in the within matter on January 15, 2024, concerning disputes between CIL and CNSC. The NOA identifies several issues in dispute between it and CNSC related to CIL's Licence and, in particular, the calculation of licence fees charged by CNSC. The NOA references two administrative dispute resolution mechanisms

internal to CNSC, one described as related to Fee Administration and the other described as related to Regulatory Activity and Assignments. The NOA pleads that CIL pursued resolution of its disputes with CNSC under those mechanisms and seeks judicial review of decisions made by CNSC thereunder and conveyed by correspondence in December 2023 and January 2024.

[9] On February 21, 2024, CIL served and filed a Notice of Motion in support of the motions now under consideration by the Court.

III. Issues

[10] The Notice of Motion raises three issues for the Court's determination:

A. Should the Court grant CIL leave under Rule 120 for Mr Lucic to represent it in this application or in any other litigation before this Court?

B. Should the Court grant an order pursuant to Rule 317 for the production of relevant material in the CNSC's possession (as the tribunal whose decisions are under review) or an order pursuant to Rule 225 for disclosure of relevant documents that are in the possession, power, or control of the CNSC?

C. Should the Court grant an order, serving to maintain the validity of the Licence, which is set to expire on March 31, 2024, pending the outcome of this judicial review?

IV. Rules Relevant to the Motions

[11] CIL relies on the following Rules for its motions.

[12] Rule 120 requires leave of the Court for a corporation to be represented by an officer:

Corporations or unincorporated associations	**Personne morale, société de personnes ou association**
120 A corporation, partnership or unincorporated association shall be represented by a solicitor in all proceedings, unless the Court in special circumstances grants leave to it to be represented by an officer, partner or member, as the case may be.	**120** Une personne morale, une société de personnes ou une association sans personnalité morale se fait représenter par un avocat dans toute instance, à moins que la Cour, à cause de circonstances particulières, ne l'autorise à se faire représenter par un de ses dirigeants, associés ou membres, selon le cas.

[13] Rule 225 governs the Court's power to order disclosure of documents:

Order for disclosure	**Ordonnance de divulgation**
225 On motion, the Court may order a party to disclose in an affidavit of documents all relevant documents that are in the possession, power or control of	**225** La Cour peut, sur requête, ordonner à une partie de divulguer dans l'affidavit de documents l'existence de tout document pertinent qui est en la possession, sous l'autorité ou sous la garde de l'une ou l'autre des personnes suivantes :
(a) where the party is an individual, any corporation	**a)** si la partie est un particulier, toute

that is controlled directly or indirectly by the party; or	personne morale qui est contrôlée directement ou indirectement par la partie;
(b) where the party is a corporation,	**b)** si la partie est une personne morale :
(i) any corporation that is controlled directly or indirectly by the party,	**(i)** toute personne morale qui est contrôlée directement ou indirectement par la partie,
(ii) any corporation or individual that directly or indirectly controls the party, or	**(ii)** toute personne morale ou tout particulier qui contrôle directement ou indirectement la partie,
(iii) any corporation that is controlled directly or indirectly by a person who also directly or indirectly controls the party.	**(iii)** toute personne morale qui est contrôlée directement ou indirectement par une personne qui contrôle aussi la partie, directement ou indirectement.

[14] Rules 317 and 318 enable a party to request relevant material from a tribunal:

Material in the Possession of a Tribunal	**Obtention de documents en la possession d'un office fédéral**
Material from tribunal	**Matériel en la possession de l'office fédéral**
317 (1) A party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party by	**317 (1)** Toute partie peut demander la transmission des documents ou des éléments matériels pertinents quant à la demande, qu'elle n'a pas mais qui sont en la

serving on the tribunal and filing a written request, identifying the material requested.

possession de l'office fédéral dont l'ordonnance fait l'objet de la demande, en signifiant à l'office une requête à cet effet puis en la déposant. La requête précise les documents ou les éléments matériels demandés.

Request in notice of application

(2) An applicant may include a request under subsection (1) in its notice of application.

Demande inclue dans l'avis de demande

(2) Un demandeur peut inclure sa demande de transmission de documents dans son avis de demande.

Service of request

(3) If an applicant does not include a request under subsection (1) in its notice of application, the applicant shall serve the request on the other parties.

Signification de la demande de transmission

(3) Si le demandeur n'inclut pas sa demande de transmission de documents dans son avis de demande, il est tenu de signifier cette demande aux autres parties.

Material to be transmitted

318 (1) Within 20 days after service of a request under rule 317, the tribunal shall transmit

Documents à transmettre

318 (1) Dans les 20 jours suivant la signification de la demande de transmission visée à la règle 317, l'office fédéral transmet :

(a) a certified copy of the requested material to the Registry and to the party making the request; or

a) au greffe et à la partie qui en a fait la demande une copie certifiée conforme des documents en cause;

(b) where the material cannot be reproduced, the original material to the Registry.

b) au greffe les documents qui ne se prêtent pas à la reproduction et les éléments matériels en cause.

Objection by tribunal	**Opposition de l'office fédéral**
(2) Where a tribunal or party objects to a request under rule 317, the tribunal or the party shall inform all parties and the Administrator, in writing, of the reasons for the objection.	**(2)** Si l'office fédéral ou une partie s'opposent à la demande de transmission, ils informent par écrit toutes les parties et l'administrateur des motifs de leur opposition.
Directions as to procedure	**Directives de la Cour**
(3) The Court may give directions to the parties and to a tribunal as to the procedure for making submissions with respect to an objection under subsection (2).	**(3)** La Cour peut donner aux parties et à l'office fédéral des directives sur la façon de procéder pour présenter des observations au sujet d'une opposition à la demande de transmission.
Order	**Ordonnance**
(4) The Court may, after hearing submissions with respect to an objection under subsection (2), order that a certified copy, or the original, of all or part of the material requested be forwarded to the Registry.	**(4)** La Cour peut, après avoir entendu les observations sur l'opposition, ordonner qu'une copie certifiée conforme ou l'original des documents ou que les éléments matériels soient transmis, en totalité ou en partie, au greffe.

[15] Also, CIL's request for injunctive relief relies on section 18(1) of the *Federal Courts Act*, RSC 1985, c F-7 [the *Act*], which affords this Court jurisdiction to issue injunctive relief against any federal board, commission or other tribunal. Section 18.2 of the *Act*, which provides that, on an application for judicial review, the Court may make any interim orders that it considers appropriate pending the final disposition of the application, is also relevant to the requested relief.

V. Analysis

A. *Should the Court grant CIL leave under Rule 120 for Mr. Lucic to represent it in this application or in any other litigation before this Court?*

[16] CIL's request for relief under Rule 120 requires that it demonstrate special circumstances warranting relief from the requirement to be represented by a lawyer. Typically this requires a party to demonstrate that: (a) it cannot afford a lawyer; (b) the proposed representative will not be required to be both advocate and witness; (c) the issues are not so complex as to be beyond the proposed representative's capabilities; and (d) the action can proceed in an expeditious manner (*Canada v. BCS Group Business Services Inc.*, 2020 FCA 205 at para 16; *El Mocambo Rocks Inc v Society of Composers, Authors and Music Publishers of Canada (SOCAN)*, 2012 FCA 98 at paras 3–5; *S.A.R. Group Relocation Inc. v. Canada (Attorney General)*, 2002 FCA 99 at para 2).

[17] Significantly, the Respondents do not object to CIL being granted leave for Mr. Lucic to represent it in this application for judicial review, subject to a condition that I will explain below. In declining to object to CIL's Rule 120 request, the Respondents are guided by the fact that Justice Rochester of this Court (as she then was) granted such leave in Court file no. T-1683-22 in an Order dated November 16, 2022 [Rochester Order]. However, Justice Rochester explained in that Order that she was granting it with some trepidation, including based on concerns surrounding Mr. Lucic's familiarity with the *Rules* and his ability to handle the complexities of that application for judicial review.

[18] Based on the concerns she identified, Justice Rochester explained that, while she was granting leave for Mr. Lucic to represent CIL, she was also ordering that, upon a motion by the Respondent or on the Court's own motion, leave may be reviewed, withdrawn, or additional conditions may be imposed, as the circumstances may require. Justice Rochester further explained, for Mr. Lucic's information, that should the Court wish to review the leave granted to him to represent the CIL, this may take the form of a requirement by the Court for Mr. Lucic to reapply for leave to represent CIL by serving and filing a motion record to that effect no later than by a date set by the Court.

[19] The Respondents take the position that the Court should impose the same condition in granting leave to CIL in the present application. Of course, neither the Respondents' decision not to object to the motion, nor their request that this condition be imposed, binds the Court. However, based on the evidence and submissions adduced by CIL in this motion, the fact the Respondents do not object, the Respondents' own submissions, and the overall record before the Court, I am satisfied that CIL meets the applicable test but also that imposition of the condition found in the Rochester Order remains appropriate

[20] CIL objects to that condition, arguing that Mr. Lucic now has the additional experience of representing CIL in Court file no. T-1683-22, which culminated with a decision by Justice Strickland in *Canadian Inspection Ltd v Canadian Nuclear Safety Commission*, 2023 FC 358 [Strickland Decision], and emphasizes that neither the Respondents nor the Court found it necessary to invoke that condition in that proceeding.

[21] However, in my view, both the Strickland Decision and elements of the motions now before the Court lend support to concern surrounding Mr. Lucic's familiarity with the *Rules* and his ability to handle the complexities of an application for judicial review. For instance, in Court file no. T-1683-22, CIL made tortious allegations, which cannot be pursued by way of judicial review, and sought damages, a remedy that is not available on judicial review (Strickland Decision at paras 63 to 64). In the present matter, CIL filed its NOA without first seeking relief under Rule 120 or 302 and, as will be evident from the disposition of these motions explained in these Reasons, Mr. Lucic misunderstands the application of Rules 225 and 317.

[22] Finally, I note that CIL's motion requests Rule 120 relief not only in relation to this application but also "for all or any Federal Court matters going forward". Even if Rule 120 contemplated relief as broad as this, for which CIL has not identified any precedent, I would not be prepared to grant such relief. If CIL is involved in other litigation in the future, it should seek Rule 120 relief in relation to that litigation, so that the Court can assess whether it has demonstrated the required special circumstances in that particular context.

[23] In conclusion on the Rule 120 motion, I am prepared to grant the motion, as it relates to the present application for judicial review, and my Order will impose the same condition as applied in Court file no. T-1683-22.

B. *Should the Court grant an order pursuant to Rule 317 for the production of relevant material in CNSC's possession (as the tribunal whose decisions are under review) or an order pursuant to Rule 225 for disclosure of relevant documents that are in the possession, power, or control of the CNSC?*

[24] When filed, CIL's Notice of Motion sought to compel the Respondents' compliance with Rule 317, which (in combination with Rule 318) requires that a tribunal disclose requested material in its possession that is relevant to an application for judicial review, because the Respondents had not yet made any disclosure under that Rule. CIL is correct in asserting that the Respondents did not make disclosure within the time period contemplated by Rule 318, following the Applicant's request for disclosure in its NOA.

[25] However, as noted earlier in these Reasons, the Respondents' motion record includes the February 2 and February 7, 2024 correspondence from the parties to the Registry related to various procedural issues in this matter. This included the Respondents raising concerns that CIL's disclosure request in its NOA sought documents that were not before the decision-makers at the time of the decisions under review. The Respondents submitted that this issue should be resolved before the deadline for production of the Certified Tribunal Record [CTR] under Rules 317 and 318. CIL's letter took issue with the Respondents' concerns.

[26] Rule 318 contemplates a tribunal raising objections to a request under Rule 317 and the Court providing directions for a procedure to resolve such objections. However, the parties' correspondence had not been actioned by the Court by the time CIL served and filed its Notice of Motion on February 21, 2024. As such, after they were served with the motion, the Respondents served CTRs (one related to each of the two decisions being challenged in this application) on CIL on February 26, 2024.

[27] All of which is to say that, by the time of the hearing of this motion on February 27, 2024, the Respondents had produced CTRs under Rule 318. However, consistent with the parties' positions in their February correspondence with the Registry, there remained a dispute as to the sufficiency of this production, and the parties spoke to that dispute at the hearing of the motion.

[28] In summary, CIL's NOA requested production of particular categories of documentation, which it considers to be relevant to the dispute between the parties surrounding CNSC's calculation of the fee for the Licence. This request included material relevant to the tabulation of "base hours" that form part of that calculation, a spreadsheet (described as Form 1A) that CIL requested CNSC complete related to hours worked by CNSC personnel and possibly others, and related bookkeeping, records and timesheets. The Respondents object to the production of this material, on the basis that it was not before the decision-makers when the decisions under review were made.

[29] I agree with the Respondents' position that the disputed requests appear to be in the nature of a request for production or discovery that might be pursued in an action in this Court. Indeed, CIL's motion invokes Rule 225 as an alternative to Rule 317. Rule 225 permits the Court, on motion, to order a party to disclose in an affidavit of documents all relevant documents that are in the possession, power or control of a related corporation. However, Rule 225 (and other Rules applicable to the production of affidavits of documents) are within Part 4 of the Rules, which Part applies to proceedings that are not applications or appeals (see Rule 169). Rule 225 does not apply to this application for judicial review.

[30] In contrast, a tribunal's production in an application for judicial review is governed by Rules 317 and 318, which require production of documentation that was before the decision-maker when it made its decision (*Canadian Copyright Licensing Agency (Access Copyright) v. Alberta*, 2015 FCA 268 at para 11; *Canadian National Railway Company v Canada (Transportation Agency)*, 2019 FCA 257 at para 12). These rules are not intended to be a means of obtaining discovery of all documents that may be in the tribunal's possession (*Friends of the Earth Canada v. Canada (Attorney General)*, 2023 FC 1438 at para 13; *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at para 115; *Ron W Cameron Charitable Foundation v Canada (National Revenue)*, 2023 FCA 175 at para 47; *1185740 Ont Ltd v MNR*, [1998] 3 CTC 215, 150 FTR 60 (Fed CA)).

[31] The breadth of material subject to disclosure under Rules 317 and 318 is broader where bias or breach of procedural fairness is alleged, as documents relevant to those allegations are then available (*Air Passenger Rights v Canada (Attorney General)*, 2021 FCA 201 at para 21). However, this principle is not engaged by the substance of the allegations in the NOA, which relate to the CNSC's methodology for calculation of licence fees. In so concluding, I am conscious that the first substantive paragraph of the NOA refers to the CNSC having breached procedural fairness. However, I do not read the substance of the NOA as advancing any allegations that are properly characterized as matters of procedural fairness that led to the decisions under review and to which the disputed documents sought by CIL would be relevant.

[32] I appreciate CIL's submission at the hearing of this motion that the records of which it seeks production are relevant to arguments it wishes to advance in this application for judicial

review. In broad strokes, I understand those arguments to be that CNSC's methodology for calculating licence fees is unreasonable, as it relies on an average of hours devoted to licence holders in a particular category, rather than on hours devoted just to CIL. It of course remains available to CIL to argue that, if certain categories of information were not taken into account by the decision-makers, that deficiency undermines the reasonableness of the decisions. However, the tribunal is not required to produce documents that did not inform its decisions, let alone to create documents of the sort that appear contemplated by the NOA's request for completion of Form 1A spreadsheets (*Québec Ports Terminals Inc v Canada (Labour Relations Board)*, [1993] FCJ No. 421, 164 NR 60 (Fed CA) at para 8).

[33] In conclusion, I find no basis to order further documentary production by the Respondents.

[34] Before leaving this motion, I note that, because the Respondents did not produce the CTRs until after CIL had served its affidavits in compliance with the deadline in Rule 306, CIL now requests an opportunity to file supplementary affidavits that take into account the production in the CTRs. This request is reasonable, and the Respondents do not object. Consistent with the timing discussed at the hearing, my Order will provide CIL leave to serve supplementary affidavits within 15 days of the date of the Order.

C. *Should the Court grant an order, serving to maintain the validity of the Licence, which is set to expire on March 31, 2024, pending the outcome of this judicial review?*

[35] The relevant paragraph of CIL's Notice of Motion frames this request for relief as follows:

> The third request is to have an Order for Stay of Execution or have the courts discretion making an Order to an extension of CIL's Industrial Radiography (IR 812) license as it expires on March 31 2024. We ask for this extension or exemption to have the fees waved [sic] so the Notice of Application can be decided by the Federal Courts Judicial Review process being completed.

[36] As noted in the Respondents' written submissions, it is not clear, from the above articulation of this request for relief, as to the nature of the relief CIL is seeking. I understand the overall result that CIL wishes to achieve, *i.e.*, that it have a valid licence following March 31, 2024, and until the decision is made in this application for judicial review, without having to pay the licence fees that are in dispute. However, it was not clear from the articulation in the Notice of Motion whether CIL is seeking a stay, *i.e.*, injunctive relief prohibiting CNSC from engaging in certain steps in relation to the Licence, or rather is seeking a form of mandatory order, requiring CNSC to take certain steps in relation to the Licence.

[37] Based on CIL's responses to the Court's questions at the hearing, I understand that CIL is seeking an order exempting CIL from the obligation to pay licence fees or otherwise achieving (without the payment of fees) renewal of its Licence, which is set to expire on March 31, 2024. To characterize the nature of that requested relief, it is necessary to refer briefly to certain provisions of the statutory authority for the CNSC's licensing regime.

[38] Section 24(2) of the *NSCA* provides that the CNSC may issue, renew, suspend in whole or in part, amend, revoke or replace a licence, or authorize its transfer, on receipt of the required application, accompanied by the prescribed fee. Section 25 provides that the CNSC may also, on

its own motion, renew, suspend in whole or in part, amend, revoke or replace a licence under prescribed conditions.

[39] The fee, that is required by section 24(2)(c) to accompany an application for issuance or renewal of a licence, is calculated pursuant to the *Canadian Nuclear Safety Commission Cost Recovery Fees Regulations*, SOR/2003-212. It is the CNSC's calculation of the fees billed to CIL under these regulations that forms the basis of the dispute in this application for judicial review.

[40] Section 7 of the *NSCA* provides that the CNSC may, in accordance with applicable regulations, exempt any activity, person, class of person or quantity of a nuclear substance, temporarily or permanently, from the application of the *NSCA* or regulations. Section 11 of the *General Nuclear Safety and Control Regulations*, SOR/2000-202 [*Regulations*], further provides that, for the purpose of section 7 of the *NSCA*, the CNSC may grant an exemption if doing so will not pose an unreasonable risk to the environment or the health and safety of persons, pose an unreasonable risk to national security, or result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed.

[41] The record before the Court includes a copy of CIL's Licence, which was issued on March 29, 2019 and states that it is valid from April 1, 2019 to March 31, 2024, unless otherwise suspended, amended, revoked or replaced. CIL has submitted the relevant application for renewal of the Licence in accordance with section 24(2) of the *NSCA*, but not accompanied by the prescribed fee as required by section 24(2)(c), because CIL disputes the amount of the fee. In an effort to achieve renewal without paying the fee, CIL has requested that the CNSC grant an

exemption from that requirement, as permitted by section 7 of the *NSCA* and section 11 of the *Regulations*. I understand that the process for adjudication of that exemption request is underway, but the record before the Court on this motion does not include evidence as to the current status of that request.

[42] Against that legislative and factual backdrop, it is apparent that the relief CIL is seeking on this motion is of a mandatory nature. There is no conduct by the CNSC that CIL is seeking to enjoin. This is not a situation where CNSC intends to cancel the Licence as of March 31, 2024, with CIL moving for a stay of that cancellation. Rather, the Licence will expire, and CIL requires a renewal if it is to remain licensed after March 31. My understanding of CIL's explanation at the hearing, that CIL is seeking an order exempting CIL from the obligation to pay licence fees or otherwise achieving (without the payment of fees) renewal of its Licence, is consistent with that analysis.

[43] A motion for an interlocutory injunction requires the moving party to satisfy the tripartite test in *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311. The moving party must establish: (a) a serious issue to be adjudicated in the underlying proceeding; (b) that irreparable harm would result were the injunction refused; and (c) that the balance of convenience favours granting the injunction. As explained in *R v Canadian Broadcasting Corp*, 2018 SCC 5 [*CBC*] at paragraph 18, the test is modified somewhat in seeking a mandatory interlocutory injunction, in that it is necessary under the first element of the test to demonstrate a strong *prima facie* case, *i.e.*, a strong likelihood that the moving party will succeed in the underlying proceeding.

[44] In their written submissions on this motion, neither party engaged with the tripartite test. I accordingly explained the test at the hearing and requested submissions. CIL made limited submissions. The Respondents did not make such submissions, relying instead on principles advanced in their written representations that limit the availability of mandatory injunctive relief, although also requesting an additional opportunity to make submissions on the tripartite test if the Court considered the test material to the outcome of the motion. Having considered the mandatory nature of the relief requested, I find that it is not necessary to apply the tripartite test, as the principles advanced by the Respondents are determinative of the motion.

[45] The Respondents characterize the requested relief as being in the nature of *mandamus*, seeking to have the Court order that CIL be exempt from having to pay the relevant licence fee. In reliance on Justice Little's decision in *Wasylynuk v Canada (Royal Mounted Police)*, 2020 FC 962 [*Wasylynuk*] at paragraph 69, the Respondents submit that, because *mandamus* involves a determination of rights, such relief cannot be granted on an interlocutory motion.

[46] However, Justice Little also explained that, while he was inclined to conclude that *mandamus* is not available on an interlocutory basis, this does not mean that a party seeking an order requiring a respondent to take some positive action is without a remedy. Such a party can seek an interim or interlocutory mandatory order (at para 69, citing *CBC*). As such, I am not convinced by the Respondents' position that the mandatory nature of the relief sought precludes CIL's success in seeking such relief on an interlocutory basis. Rather, such success is precluded by other principles advanced by the Respondents that limit the availability of relief of a mandatory nature, as explained below.

[47] Following his observations at paragraph 69 of *Wasylynuk*, Justice Little proceeded to apply principles governing the availability of *mandamus*, in analysing the merits of the request for interlocutory mandatory relief. The Court explained that *mandamus* represents an order compelling the performance of a public legal duty, typically set out in a statute or regulations, in response to a public decision-maker that fails to carry out that duty when its performance is owed (at para 76).

[48] It has also been held that *mandamus* is not available if the decision-maker's discretion is characterized as being unqualified, absolute, permissive or unfettered (*Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742 (FCA) at para 54). Moreover, even when *mandamus* is available, such that a court may issue an order compelling a decision-maker to act in making a discretionary decision, the court cannot compel the exercise of discretion in a particular way so as to dictate a particular result (*Canada (Chief Electoral Officer) v. Callaghan)*, 2011 FCA 74 at para 126).

[49] Other than in *Wasylynuk*, where the Court invoked these principles on a motion seeking mandatory interlocutory relief, these authorities involved applications where *mandamus* was the relief sought in the main proceeding. However, in my view these principles must also be taken into account when a party seeks interlocutory mandatory relief against a public decision-maker.

[50] In the case at hand, CIL effectively seeks to compel the CNSC to make a favourable decision on its exemption request, albeit on an interim basis. However, I agree with the Respondents' position that CNSC's authority to grant an exemption under section 7 of the *NSCA*

and section 11 of the *Regulations*, both of which sections use the permissive verb "may", represents a discretionary authority to which the principles explained above apply. At most, the Court could require the CNSC to make a decision on an exemption request, but it cannot dictate a particular result and therefore cannot order the CNSC to grant the exemption. Nor does the Court have an evidentiary basis to conclude that a decision is overdue or would not be received by March 31, 2024, such as might support an order mandating that a decision be made.

[51] Nor can I identify any other basis on which the Court could order the CNSC to renew the Licence without payment of the fee, as (in the absence of an exemption) section 24(2)(c) of the *NSCA* makes payment of the fee a condition of the CNSC's authority to renew a licence. The Court cannot order a public decision-maker to act in a manner for which it does not have the statutory authority.

[52] Based on this analysis, CIL's motion for interlocutory relief must fail.

VI. Conclusion and Costs

[53] My Order below will give effect to the decisions identified in these Reasons. Neither party made any submissions on costs related to these motions. My Order will provide that costs of these motions shall be in the cause.

ORDER IN T-89-24

THIS COURT ORDERS that:

1. Leave is granted under Rule 120 for Donald Lucic, Chief Executive Officer of the Applicant, to represent the Applicant in the context of the present Notice of Application;
2. Upon a motion by the Respondents or on the Court's own motion, the Rule 120 leave granted by this Order may be reviewed or withdrawn or additional conditions may be imposed as circumstances require;
3. The Applicant's motions under Rules 225 and 317 are dismissed;
4. The Applicant is granted leave to serve and file supplementary affidavits in this application, within 15 days of the date of this Order;
5. The Applicant's motion for interlocutory injunctive relief is dismissed;
6. The Applicant is granted leave under Rule 302 for this application to challenge the two decisions identified in the Notice of Application; and
7. Costs of these motions shall be in the cause.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-89-24
STYLE OF CAUSE:	(CANADIAN INSPECTION LTD) v (CANADIAN NUCLEAR SAFETY COMMISSION AND DEPUTY ATTORNEY GENERAL OF CANADA)

HELD BY VIDEOCONFERENCE

DATE OF HEARING:	FEBRUARY 27, 2024
ORDER AND REASONS:	SOUTHCOTT J.
DATED:	MARCH 1, 2024

APPEARANCES:

Donald Lucic	FOR THE APPLICANT
Alexander Brooker	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENTS