

FEDERAL COURT

BETWEEN:

COLLIE WILLIAM NICKERSON

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER section 18.1 of the *Federal Courts Act*, RSC, 1985, c F-7 and Rule 301 of the *Federal Courts Rules*, 1998.

NOTICE OF APPLICATION TO FEDERAL COURT FOR JUDICIAL REVIEW

TO THE RESPONDENT:

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

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Halifax, Nova Scotia.

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

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court, and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

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

Issued the: _____

Issued by: _____

Address of local office:

1801 Hollis Street, 17th Floor
Suite 1720
Halifax, Nova Scotia
B3J 3N4.

TO: Attorney General for Canada
Department of Justice
Suite 1400, Duke Tower
5251 Duke St.
Halifax, NS B3J 1P3

APPLICATION

This is an application for judicial review in respect of delay experienced by the Applicant during a randomized administrative review conducted by the Department of Fisheries and Oceans Canada (“DFO”) which resulted in the inability of the Applicant to commence lobster fishing at the opening of the season of LFA 34 (the “Decision”). The Decision was communicated to the Applicant on November 24, 2023,

The Applicant makes application for:

1. An order requiring the DFO to complete their administrative review in a timely manner;
2. An interlocutory injunction and/or stay with respect to the Decision allowing the Applicant to fish under his commercial inshore fishing licenses;
3. Costs of this application;
4. Such further and other relief as this Honourable Court deems to be just and appropriate.

The grounds for the application are:

5. The Applicant, Mr. Collie Nickerson is a commercial fisherman who has worked in the fishery for over 64 years (since he was 15 years old). Mr. Nickerson has held inshore commercial fishing licenses typically issued on an annual basis, namely Herring 103879, Mackerel 106116, Swordfish 108919, and Lobster 111092).
6. On May 10, 2023, the Applicant was advised that he had been selected for administrative review of the eligibility of his commercial inshore fishing licenses. The Applicant was asked for financial information from the 2023 fishing season, vessel lease agreements, any corporate documents, and to disclose whether any new agreements were entered into related to his fishing enterprise.
7. The Applicant hired lawyers and an accountant to assist him in fulfilling the requests. To date, all documentation initially requested in the May 10, 2023, letter has been provided. DFO does not allege that the Applicant is not compliant with any regulation or policy.
8. After providing the initial information requested, the DFO made multiple follow-up requests for further information, often in the form of detailed and specific accounting information.
9. The DFO has taken the position that the “departmental service standard” for completing a review of eligibility is 30-days following the receipt of all the information, meaning that each shred of incremental information requested restarts the 30-day clock from the date on which it is received.

10. The DFO's position is that if the review has not concluded that the Applicant is deemed eligible, the Applicant will not be given the opportunity to renew his inshore commercial fishing licenses, he will not be legally permitted to fish under those licenses, and he will be unable to transfer/sell his licenses.
11. On November 10, 2023, DFO sought further financial information from the Applicant. On November 21, 2023, the DFO received the information. DFO stated that they would take 30-days from receipt of that information to process the information and determine whether further information was required or if the administrative review was completed.
12. The Decision that is subject to this judicial review was communicated on November 24, 2023, through counsel for the Applicant. The DFO communicated that their assessment of the Applicant's eligibility to be issued an inshore commercial fishing license, per subsection 19(3) of the *Atlantic Fishery Regulations* had not yet been concluded. The DFO stated that there may be additional questions and because the information was received so late, DFO was not provided enough time to conduct the assessment in advance of the fishing season.
13. The Applicant is unaware whether any information remains outstanding and when the administrative review will conclude. No further questions or information has been sought from the Applicant since November 10, 2023.
14. The failure of DFO to complete their administrative review by the start of lobster fishing season (LFA 34) is unreasonable because:
 - a) The Applicant was randomly selected for administrative review; there are no allegations of non-compliance or breach of any regulation;
 - b) The Decision was in effect an administrative decision and the DFO owed the Applicant and other license-holders a duty of procedural fairness, which was not fulfilled;
 - c) The Decision is illogical and incoherent and is the culmination of the DFO's breach of its statutory duty to manage the fishery in a prudent manner;
 - d) The Decision serves only to prevent law-abiding authorized license-holders, who have devoted their lives to building up this fishery and developing markets for it, from fishing to achieve other DFO objectives;
 - e) The Decision is unreasonable because its effect is severely disproportionate with respect to the impact on the Applicant.
 - f) the Decision is unreasonable based on other grounds which may appear in the Record.

This application will be supported by the following material:

15. This Notice of Application;
- a) A copy of the Decision;
 - b) Affidavit of Collie Nickerson along with exhibits;
 - c) Such further and other material as counsel may advise and this Honourable Court may allow.
 - d) The Applicant requests that DFO send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of DFO to the Registry:
 - a. the certified record relied on by DFO in determining selection for administrative review,
 - b. any other materials or documents collected by and relied on by DFO in conducting the Administrative Review.

DATED at Halifax, Nova Scotia, this 28th day of November 2023.



Jennifer Power
Counsel for the Applicant

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