**SUPREME COURT OF NOVA SCOTIA**
**Citation:** *Lobster Hub Inc. v. Nova Scotia (Minister of Fisheries and Aquaculture)*, 2024 NSSC 289

**Date:** 20240925
**Docket:** No. 532790
**Registry:** Halifax



**Between:**

Lobster Hub Inc.

Appellant

v.

Minister of Fisheries and Aquaculture and
The Attorney General of Nova Scotia

Respondents

**D E C I S I O N**

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| **Judge:** | The Honourable Justice James L. Chipman |
| **Heard:** | September 3, 2024, in Halifax, Nova Scotia |
| **Written Decision:** | September 25, 2024 |
| **Counsel:** | Richard W. Norman, for the Appellant<br>Alison W. Campbell, for the Respondents |

**By the Court:**

## INTRODUCTION

[1] By Notice of Appeal filed April 24, 2024, Lobster Hub Inc. (LHI) appeals pursuant to s. 119 of the *Fisheries and Coastal Resources Act*, S.N.S., s. 25, as amended (the *Act*) from the March 26, 2024 decision of the Minister of Fisheries and Aquaculture (the Decision).

[2] The Decision denied LHI's application for fish buyers and processers licenses for snow crab, rock crab, quahogs, herring, mackerel, red fish and sea urchin. The Decision is a four para. letter addressed to LHI's counsel. The second para. contains the rationale for the Decision:

> As the Department has stated top you previously, the Department has been undertaking a Licensing Policy Review since 2018 and, during this time, has not been accepting applications for new Fish Buyer or Fish Processing licences with the exception of those for aquaculture products and secondary processing. Given this consistent approach the Department has taken during the Licensing Policy Review, I have made the decision to dismiss your appeal.
>
> [underling in original]

[3] The above referenced "Licencing Policy Review" is more fully referred to as the "Fish Buyers and Fish Processors Policy Review". Informally, the policy is described as a "moratorium". LHI cites four grounds of appeal stating that the Decision is "unreasonable, incorrect and /or procedurally unfair because:"

- the Nova Scotia Department of Fisheries and Aquaculture has not applied the moratorium consistently. New fish buyers and processors licenses have been issued during the moratorium period;
- it is contrary to the intention and purpose of the applicable legislation;
- the moratorium is contrary to the Canada-European Union Comprehensive Economic and Trade Agreement (CETA); and
- it relied on arbitrary or irrelevant considerations.

[4] The Minister of Fisheries and Aquaculture (the Minister) says that when the Decision is read together with a March 26, 2024 "Briefing Note to Minister" (the Briefing Note) that the reasons for the Decision are "clearly intelligible, transparent and justified". The Minister asks for dismissal of the appeal with costs.

**BACKGROUND**

[5] LHI specializes in holding, packaging, and exporting live lobsters. LHI wishes to expand its business to include buying and processing of snow crab and other species. For several years LHI has attempted to amend their licences to add species. This history is documented in the Record of the Respondents (the Record).

[6] On February 16, 2021, LHI applied to the Department of Fisheries and Aquaculture (the Department) for an amendment to their Fish Buyer Licence and Fish Processor Licence adding snow crab as an authorized species under their licences.

[7] On May 7, 2021, the Registrar of Fisheries Licensing did not accept the application on account of the ongoing moratorium. LHI appealed the rejection on June 3, 2021 to the then-Minister.

[8] On July 21, 2021, the then-Minister, Keith Colwell, rejected the appeal. The reasoning in this letter was that the Department website indicates that the Department is not accepting applications due to the moratorium.

[9] On July 19, 2022, LHI's lobbyist wrote to Premier Houston expressing concerns about the Minister's reasoning, specifically the deficiencies in relying on the ongoing moratorium as the sole basis for dismissing the application.

[10] On July 29, 2022, the then-Minister, Steve Craig, responded to the letter on behalf of Premier Houston. This response reiterates that due to the Licencing Policy Review there is "a freeze on applications for changes to existing Fish Buyer or Fish Processor Licences".

[11] On March 9, 2023, LHI legal counsel contacted Minister Craig with a proposal from Lobster Hub regarding the desired amendment to their licence. On March 23, 2023, Minister Craig responded by reiterating that the moratorium is still in place and therefore new Fish Buyers and Fish Processors Licences are not available. The then-Minister added that the Licencing Policy Review was nearing an end, and they were expecting to lift the moratorium once the review was complete. Minister Craig also advised; "Although new Fish Buyers and Processors licences are not available at this time, it is possible to reissue a licence to LHI should your client acquire such a licence".

[12] On January 25, 2024, LHI submitted an application to the Department applying for new Fish Buyer and Fish Processor Licences for snow crab, rock crab, quahogs, herring/mackerel, red fish, and sea urchin.

[13] On February 6, 2024, the Manager of Licencing & Registration for the Department rejected the Application. The reasoning was again that there was a moratorium in place and that they were not accepting applications for new Fish Buyer and Fish Processor Licences. On February 29, 2024, LHI appealed this decision to the Minister.

[14] On March 26, 2024, Minister Kent Smith dismissed the appeal with the Decision. The reasoning provided by Minister Smith was again that there is a Licencing Policy Review, and the Department has not been accepting applications for new Fish Buyer or Fish Processor Licences.

## ISSUES

[15] The parties agree that the main issues in this statutory appeal are as follows:

(a) Did the 2018 Minister have the power to issue a verbal moratorium?

(b) Has the Minister fettered his discretion in rejecting the application?

(c) Was it palpable and overriding error for the Minister to deny LHI's application?

## STANDARDS OF REVIEW

[16] In *Fisher Direct Ltd. v. Nova Scotia (Minister of Fisheries and Aquaculture)*, 2023 NSSC 371, Justice Muise commented on the standards of review applicable to ministerial decisions at paras. 12 and 13:

> [12] As agreed by the parties, since the legislature has not prescribed a particular standard or standards of review, the appellate standards of review apply. They are: correctness for questions of law; and, palpable and overriding error for questions of fact and questions of mixed fact and law "where the legal principle is not readily extricable: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, para 37.
>
> [13] The parties agree the standards of review which apply to each issue are as follows:

- Whether the Minister exceeded his constitutional jurisdiction is to be reviewed on a standard of correctness.

- Whether the Minister provided sufficient reasons is to be reviewed on a standard of palpable and overriding error, including whether the decision is supported by the evidence or information presented.

- Whether the Minister committed a reviewable error in deciding to amend Fisher Direct's licences is reviewable on a standard of palpable and overriding error. The parties also agree that, if a decision is unreasonable, in that it is not within the range of acceptable outcomes, it constitutes a palpable and overriding error.



[17] In this case the parties and the Court agree with the above standards as set forth by Muise J., based upon Supreme Court of Canada authority.

## STATUTORY AUTHORITY

[18] The *Act* grants the Minister broad powers to supervise the fish buying and processing industry. On this appeal the parties referred to the *Act* and in particular, sections 2, 6, 72, 75 and 77 which I now reproduce:

> 2 The purpose of this Act is to
>
> (a) consolidate and revise the law respecting the fishery;
>
> (b) encourage, promote and implement programs that will sustain and improve the fishery, including aquaculture;
>
> (c) service, develop and optimize the harvesting and processing segments of the fishing and aquaculture industries for the betterment of coastal communities and the Province as a whole;
>
> (d) support the sustainable growth of the aquaculture industry;
>
> (e) expand recreational and sport-fishing opportunities and eco- tourism;
>
> (f) foster community involvement in the management of coastal resources;
>
> (g) provide training to enhance the skills and knowledge of participants in the fishery, including aquaculture;
>
> (h) increase the productivity and competitiveness of the processing sector by encouraging value-added processing and diversification.
>
> **Powers of Minister**
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> 6 The Minister, for the purpose of the administration and enforcement of this Act, may
>
> (a) establish and administer policies, programs and guidelines pertaining to the administrative development and protection of the fishery and coastal zone aquatic resources;

(b) consult with and co-ordinate the work and efforts of other departments and agencies of the Province respecting any matter relating to the maintenance and development of fishery resources;
(c) enter into agreements with the Government of Canada or the government of any other province on matters relating to the management or development of fishery resources;
(d) develop scientific databases, especially with respect to determining the impact of various gear types on the fisheries environment and engage in consultations with the Government of Canada to ensure equitable access to fishery resources;
(e) gather, compile, publish and disseminate information, including statistical data, relating to the maintenance and development of fishery resources;
(f) establish and assist demonstration programs that are consistent with the intent of this *Act*;
(g) conduct economic analyses to determine the costs and benefits of proposed alterations to traditional harvesting and processing of fisheries resources and aquaculture;
(h) convene conferences and conduct seminars and educational programs relating to the development, management and protection of fisheries resources;
(i) give financial assistance to any person, group, society or association for purposes related to the promotion and enhancement of the fishery;
(j) establish fees for the provision, registration or filing of any information, documents, returns and reports, any application for, processing and issuance of an approval, certificate, licence or lease, any inspection or investigation and any services or material provided in the course of the administration of this *Act*;
(k) prescribe forms for the purpose of this *Act*.

**General supervision and control**

72 The Minister has the general supervision and control of processing, buying, selling, possession and marketing of fish products within the Province for the purpose of maintaining product quality, protecting the health and safety of seafood consumers and assisting in the orderly development of the fisheries industry.

**Grounds for refusing licence**

75 The Minister may refuse to issue a licence to process or buy fish products if the Minister is not satisfied that it is in the public interest to issue the licence having regard to the supply of fisheries resources available, the presence of existing under-utilized processing capacity or any other factor that, in the opinion of the Minister, is relevant to determining the public interest.

**Certain powers of Governor in Council and Minister**

77 (1) Notwithstanding anything contained in this Act or any other enactment, the Minister may, with the approval of the Governor in Council,

(a) authorize any action or invoke any measure to encourage the development and protection of fishery resources in the Province;
(b) authorize any action or invoke any measure relating to fish products deemed necessary by the Minister to effect the purposes of this *Act*.

(2) Notwithstanding anything contained in this Part, the Governor in Council may make regulations on any matter relating to fishing, the fishing industry, fishery resources and fish products, and so as not to limit the generality of the foregoing, may make regulations
(a) exempting a person or class of persons from this Part;
(b) prescribing fees for the purpose of this Part;
(c) prescribing information to be submitted to the Minister by the holder of a licence issued pursuant to this Part;
(ca) prescribing information to be submitted to the Minister by a person processing, buying, selling, in possession of or marketing fishery products who is exempt pursuant to the regulations;
(d) governing the licensing of intra-provincial trade in fish products;
(e) respecting the licensing of persons involved in the processing or buying of fish products;
(ea) providing for financial contributions by the lobster industry for use in the promotion and development of that industry, including the designation of those members of that industry required to make the contributions, the determination of the amount of the contributions, the designation of an organization to receive and disburse the contributions and the enforcement of the payment of the contributions;
(f) respecting the inspection of premises or facilities used in the processing, buying, selling, possession or marketing of fish products and vehicles used for the transportation of fish products;
(g) limiting the number and the kind or type of licences issued pursuant to this Part;
(h) defining any word or expression used but not defined in this Part;
(i) respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Part.

(2A) A regulation made pursuant to subsection (2) may be of general application or may apply to such classes of persons, matters or things as the Governor in Council determines and there may be different regulations with respect to different classes of persons, matters or things.

(3) The exercise by the Governor in Council of the authority contained in this Section is regulations within the meaning of the *Regulations Act*.

**STATUTORY INTERPRETATION**

[19] In *Sparks v. Holland*, 2019 NSCA 3, Justice Farrar summarized the modern principle of statutory interpretation:

> [27] The Supreme Court of Canada and this Court have affirmed the modern principle of statutory interpretation in many cases that "[t]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the *Act*, the object of the *Act*, and the intention of Parliament (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at P21).
>
> [28] This Court typically asks three questions when applying the modern principle. These questions derive from Professor Ruth Sullivan's text, *Sullivan on the Construction of Statutes*, 6th ed (Markham, On: LexisNexis Canada, 2014) at pp. 9-10.
>
> [29] Ms. Sullivan's questions have been applied in several cases, including *Keizer v. Slauenwhite*, 2012 NSCA 20, and more recently, in Tibbetts. In summary, the Sullivan questions are:
>
> 1. What is the meaning of the legislative text?
> 2. What did the Legislature intend?
> 3. What are the consequences of adopting a proposed interpretation? (*Sullivan*, pp. 9-10)

[20] The Court of Appeal also emphasized the importance of a purposive approach to legislative interpretation:

> [42] The motion judge failed to examine whether the text of s. 113A could be read harmoniously with the scheme of the Act, the object of the Act, and the intention of the Legislature. He did not conduct a purposive analysis in order to determine if there was an interpretation of s. 113A which would operate in harmony with the Legislature's intention. This, in hindsight, may be explained by his misinterpretation of this Court's findings in Tibbetts.
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> [43] As Professor Sullivan explains:
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> A purposive analysis of legislative texts is based on the following propositions:
>
> (1) All legislation is presumed to have a purpose. It is possible for courts to discover or adequately reconstruct this purpose through interpretation.
>
> (2) Legislative purpose must be taken into account in every case and at every stage of interpretation, including initial determination of a text's meaning.
>
> (3) In so far as the language of the text permits, interpretations that are consistent with or promote legislative purpose should be

> adopted, while interpretations that defeat or undermine legislative purpose should be avoided. (Sullivan, p. 259)
>
> [44] According to Professor Sullivan, "an interpretation that would tend to frustrate or defeat the legislature's purpose should be rejected if there is a plausible alternative" (Sullivan, p. 288).
>
> [Emphasis added]

[21] In assessing the Decision I have followed the Court of Appeal's direction with respect to interpreting the *Act*.

[22] The *Act* (with specific reference to the above sections) is the statutory framework against which the Court must assess the Decision. In *R. Baker Fisheries Ltd. v. Nova Scotia (Minister of Fisheries and Aquaculture)*, 2019 NSSC 321, Justice Brothers extensively reviewed the *Act* and had this to say:

> [40] The purpose section of the *Act* suggests an intention to sustain and improve the fishery, including, inter alia, advancing the harvesting and processing segments, while balancing other interests such as ecotourism and the environment. The Minister of Fisheries and Aquaculture is charged with the administration and enforcement of the *Act*, and, to that end, is given wide-ranging powers in relation to the development, management and protection of fishery resources. Those powers include broad authority over fish buying and fish processing licences. The Minister determines the application process, sets the requirements for a licence, and can require an applicant to submit any additional information the Minister considers necessary. The Minister can issue a licence subject to any terms and conditions he considers appropriate. He can refuse to issue a licence having regard to any factor that, in his opinion, is relevant to determining the public interest. Once a licence is issued, the Minister can unilaterally vary or amend the licence at any time, if, in the Minister's view, it is reasonably necessary to carry out the purpose of Part VII of the *Act*. …

[23] I concur with Justice Brothers' comments concerning the *Act*. The *Act* provides the Minister with broad authority over fish buying and processing licences. Indeed, the Minister's wide power under the *Act* is what easily distinguishes this case from decisions cited by LHI in support of their argument that the Minister requires approval from the Governor in Council pursuant to s. 77. For example, in *The Dale Corporation v. The Rent Review Commission, et al.*, [1983] N.S.J. No. 427, our Court of Appeal stated:

> [32] In my opinion substantive matters should not be contained in guidelines because to do so affects the proper exercise by the Commission of its jurisdiction in considering the items set forth in s. 11(2) of the *Rent Review Act* - indeed, the use of such guidelines of necessity will result in decisions being made that are not

> based entirely on the evidence adduced and which are not made within the limited jurisdiction conferred by the *Act*.
>
> [emphasis added]

Here, we are obviously not dealing with limited jurisdiction under the *Act*.

[24] Similarly, in *North Coast Air Services Ltd. v. Canada (Transport Commission)*, [1968] S.C.R. 940, the Supreme Court of Canada dealt with a much narrower statute when it was stated:

> 26 In my opinion, therefore, the wording of the section is not broad enough to grant to the Commission power to regulate, in matters under the *Aeronautics Act*, which are not given to it by that Act, or to exercise regulatory powers given to it in that Act Governor in Council which is still specifically required by the *Act*.

[25] Finally, in *Ainsley Financial Corp. v. Ontario Securities Commission*, [1994] 21 O.R. (3d) 104 (ONCA), the Ontario Court of Appeal was examining a statute unlike what we have here. Ultimately, the Court determined that the Ontario Securities Commission could not impose a regulatory scheme without the appropriate statutory authority as it lacked statutory authority (see paras. 19 – 21).

**Issue 1: Did the 2018 Minister have the power to issue a verbal moratorium?**

[26] LHI argues that the Minister does not have the power to issue a "sweeping and apparently indefinite moratorium". They go on to point out this distinction as support for their argument:

> …With respect to fish processing licenses, the Minister cannot issue a binding verbal direction pursuant to s. 5A of the Regulations without explaining why the direction is in the public interest. The Applicant is not aware of any reasons provided by the Minister as to why the verbal direction was in the public interest

[27] Having reviewed the *Act*, I cannot agree with LHI's position. Contrary to LHI's repeated assertion that the Minister does not have the authority to reject a complete application for a new buyer's licence, s. 75 expressly authorizes the Minister's refusal to grant such an application.

[28] Taken together, ss. 72 and 75 of the *Act* endow the Minister with authority to supervise and control the "orderly development of the fisheries industry" which would necessarily include controlling the number and types of new licences issued.

[29] Indeed, s. 75 suggests factors that the Minister may rely on in determining whether refusing a new licence is in the public interest. These are stated as having regard to:

> supply of fisheries resources available; and
> presence of existing under-utilized processing capacity.

[30] This section also includes broad discretion for the Minister to rely on "any other factor" that in the opinion of the Minister is relevant to determining the public interest.

[31] In my view, the general provision of s. 72 combined with the more express authority to reject new licences on the basis of public interest in s. 75 is ample authority for the Minister to create a policy not to issue new licences while the licensing policy review is still in process, if he is satisfied it is in the public interest to do so.

[32] Further, s. 6 of the *Act* grants the Minister the authority to develop policies pertaining to the administrative development and protection of fisheries.

[33] The Minister is the one granted the authority under the *Act* to determine what is in the public interest. In my view, this discretionary power is entitled to significant deference.

[34] On July 20, 2022, the then Minister advised LHI's lobbyist that he recognized the importance of completing the licensing policy review, noting that he recognized that the "industry needs clarity on the future direction of fish buying and processing in Nova Scotia".

[35] In the same letter, the Minister also noted part of the review required working with other government agencies to ensure that the regulatory improvements reduce undue burden to businesses and government and promote the economic growth of the sector. Further, he noted a number of proposed administrative measures being considered, "such as lengthening the renewal period for licences, reduced reporting frequency, and a simplified designated buyer system all to streamline administrative processes for licences and reducing operational burden".

[36] Assisting in the orderly development of the industry is expressly part of the Minister's mandate under the *Act*. Given his broad authority to reject new applications in the public interest, the creation of a moratorium is clearly within his statutory authority.

[37] While the Minister did not expressly state that the moratorium was in the public interest, his explanation of the regulatory changes being considered and the work being done to ensure the changes would have the desired effect, are rationale which support the concept of "public interest".

[38] The Minister clearly has the statutory authority to create and administer policies. The moratorium is one such policy. Nothing in the *Act* mandates that the policy must be created by regulation or other written legal instrument.

**Issue 2: Has the Minister fettered his discretion in rejecting the application?**

[39] LHI argues that the Minister fettered his discretion in rejecting the application for a new buyers licence by relying "solely" on a policy to reject the application without looking at the merits of the application.

[40] It is not uncommon for Ministerial decisions to be brief. In such circumstances, it is appropriate for the Court to look at the Record to ascertain the reasons for the decision (*Newfoundland and Labrador Nurses' Union v. Newfoundland & Labrador (Treasury Board)*, 2011 SCC 62 at para. 15.

[41] In *Fisher Direct Ltd.*, Justice Muise was presented with an argument like the one here from LHI; in essence that the Minister's decision was too brief. Relying on *Newfoundland Nurses*, the Court rejected the notion that the gap was fatal:

> [131] Nevertheless, I agree with the Minister that such a gap is not necessarily fatal, given the following comments of the Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union v. Newfoundland & Labrador (Treasury Board)*, 2011 SCC 62, at paragraphs 14 to 16:
>
> > [14] Read as a whole, I do not see Dunsmuir as standing for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses -- one for the reasons and a separate one for the result (Donald J.M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at sec.sec.12:5330 and 12:5510). It is a more organic exercise -- the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court was saying in *Dunsmuir* when it told reviewing courts to look at "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (para. 47).

> [15] In assessing whether the decision is reasonable in light of the outcome and the reasons, courts must show "respect for the decision-making process of adjudicative bodies with regard to both the facts and the law" (*Dunsmuir*, at para. 48). This means that courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome.
>
> [16] Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[42] Accordingly, I must look to the Record for a more complete understanding of the analysis. In this case the Briefing Note prepared for the Minister sets out the following:

(a) the history of the Appellant's efforts to amend or acquire a new licence to buy and process snow crab;

(b) arguments and claims raised by the Appellant;

(c) statistics on the Appellant's buying history from 2018 to present;

(d) the rationale for the moratorium; and

(e) the Department's consistent application of the policy.

[43] The Briefing Note does not contain any statements that suggest the Minister must exercise his discretion in accordance with the moratorium policy. Rather the Briefing Note is attentive to LHI's specific arguments. For example, the Briefing Note addresses LHI's claim that the lobster fishermen who supply the company with lobster will no longer sell to LHI, unless the company also commits to buying the snow crab harvest from the same fishermen. The Briefing Note acknowledges that LHI has been making this claim since 2021; however, the Briefing Note goes on to point out that LHI's buying record undermines this claim.

[44] The Briefing Note also states that the "moratorium on new licences and species additions was put in place to prevent licence speculation and oversaturation

of markets and facilities due to limited supply of raw supplies, during the licence review".

[45] Further, the Briefing Note addresses LHI's claim that the moratorium is being applied in an unfair and arbitrary manner. Department staff noted that the moratorium did not apply to the other licences that had been approved as they were for aquaculture products and secondary processing, the raw supply for which is not a concern. Finally, Department staff note that the moratorium policy has been "consistently applied and does not consider the nationality of an applicant".

[46] In my view, the above statement demonstrates that the Department is mindful of the fact that to be fair, a policy should be applied consistently to all applicants. It is apparent that staff are not advising the Minister that the policy must be applied, such that his discretion is fettered. Rather, the Briefing Note points out that there is a public interest in consistent decision making.

[47] Taking everything into consideration, LHI has not demonstrated that the Minister fettered his discretion in choosing to follow the policy. Rather, I am of the view that the Minister decided that the rationale for the moratorium still applied and made the Decision accordingly.

**Issue 3: Was it palpable and overriding error for the Minister to deny LHI's application?**

[48] Given all of what I have reviewed, LHI has not demonstrated that the Minister made a palpable and overriding error in refusing the applications for new fish buyers and processors licences.

[49] Once again, the *Act* grants the Minister the broad discretion to decide what is in the public interest in regulating the fish buying and processing industry in Nova Scotia. The fact that LHI disagrees with the rationale for the moratorium is irrelevant. Indeed, I am of the view that it is not for the Court to question the wisdom of the moratorium. As Sara Blake explains in *Administrative Law in Canada*, 7th ed (Toronto: LexisNexis, 2022):

> Courts review neither the wisdom nor the merits of an exercise of discretion made pursuant to statutory authority. Nor do they review whether government policy accomplishes its intended purpose. A court should not re-weigh the relevant factors nor substitute its own decision for that of the statutory decision maker just because it would have exercised the discretion differently had it been charged with the responsibility. Deference is given to decisions on political, social, economic,

> technical and scientific questions. A discretionary decision made within the scope of the statutory authority will be permitted to stand, especially if made by Cabinet, a Minister, or elected authority, unless it was made in bad faith or violates the applicant's procedural or constitutional rights.
>
> Sara Blake, p. 249

[50] Ms. Blake goes on to explain that the Court's restricted authority to review exercises of discretion flows from the separation of powers between Parliament, the executive and the courts. Policy is set by Parliament and the executive. The Court's role is to apply the law; "It is not the role of a court to question the wisdom or folly of the government's policy choices" (see Blake at p. 250).

[51] When the Decision is read together with the Briefing Note, there exists no palpable and overriding error. The reasons for the Decision are clearly intelligible, transparent and justified. Having reviewed the Record, briefs, oral submissions and authorities, I conclude that the Decision is understandable, and the conclusion falls within the range of acceptable outcomes. Accordingly, the appeal is dismissed. If the parties cannot agree on costs, I would ask for written submissions within 30 days.

Chipman, J.