SUPREME COURT OF NOVA SCOTIA
Citation: *Brown v. Nova Scotia (Environment)*, 2016 NSSC 319

Date: 20161122
Docket: Hfx No. 449565
Registry: Halifax

Between:

Roy Brown and Michael Lawrence

Appellants

v.

Minister of the Environment, representing Her Majesty the Queen in right of the Province of Nova Scotia

Respondent

v.

Marlene Brown, Melissa King and Angela Zwicker

Intervenors

DECISION

Judge: The Honourable Justice Denise M. Boudreau

Heard: October 13, 2016, in Halifax, Nova Scotia

Counsel: Andrew Christofi, for the Appellants
Sheldon Choo, for the Respondent
Kaitlyn Mitchell and Julia Croome, for the Intervenors

By the Court:

[1] The appellants appeal a Ministerial Order (the "2016 Order") issued by the respondent against them pursuant to ss. 125 of the *Environment Act*, S.N.S. 1994-95, c. 1 (the "*Act*"). The Order was made on February 24, 2016, against the appellants and 3012334 Nova Scotia Limited ("301 NSL").

[2] The Intervenors are landowners of parcels adjacent to, or near, the physical location which is the subject of the 2016 Order.

Background

[3] This case has a fairly extensive history. I have reviewed all of the evidence provided to me. I do not intend to refer to it all here, but I do wish to mention the evidence most relevant to the decision I must make.

[4] The matter relates to a property located at 1275 Old Sambro Road, Harrietsfield, HRM. The property is owned by 301 NSL, and the sole directors/officers of that company are the appellants.

[5] From 1997 until 2005, 301 NSL operated a construction and debris recycling facility on the property, operating under the business name "RDM Recycling

Limited”. Both appellants were very much involved in the day to day operations of this business.

[6] From very early on, concerns arose in respect of non-recyclable materials that were being stored on the property, in particular, the effect of these materials on water quality on the property, as well as adjoining properties. Those materials included gyproc, asphalt, and carpet. Rainwater flowing through those materials and into the ground (called “leachate”) was found to be contributing to elevated levels of chemicals in the groundwater, both on-site and off-site. Following many discussions between the respondent and 301 NSL, in 2003 a Remedial Action Plan (the “Plan”) was developed to address some of these concerns.

[7] One aspect of the Plan was the construction of a containment cell on the property, for storage of the materials I have mentioned. That containment cell was constructed in 2003 – 2004, and was filled with approximately 120,000 tons of material. In its design, and as built, the cell included a holding tank for the large volumes of leachate which would, it was anticipated, accumulate. It was further anticipated that this holding tank would periodically be drained, and the contents discarded, as required by the respondent.

[8] It would appear that various questions have been raised since that time, and continue to be raised, as to whether that containment cell was/is doing the job it was meant to do. From the limited information before me, it does not appear that the cell holding tank is capturing much leachate. In December 2004, for example, the appellant Mr. Brown checked the holding tank and noted that there was not enough leachate to pump. It is difficult to know, however, what this means; it may not necessarily mean that the cell is not working properly.

[9] In any event, in 2005, 301 NSL sold its business assets to a new company, 3076525 NSL Limited ("307 NSL"). 301 NSL retained ownership of the land, and leased portions of it to 307 NSL, which then commenced operating the facility under the business name "RDM Recycling". 307 NSL took over the periodic water monitoring that was required by the Plan with the respondent. The containment cell would appear to have remained the responsibility of 301 NSL.

[10] In 2006, 301 NSL's status with the Registry of Joint Stock Companies was revoked for nonpayment of registration fees. That has remained the case until the time of the hearing before me.

[11] In 2009, 307 NSL contacted the respondent, seeking a reduction in the frequency of water monitoring (required by the 2003 plan). Discussions were held between the parties, without the involvement of 301 NSL or the appellants.

[12] In November 2010, the respondent issued an Order pursuant to ss. 125 of the *Act* (the "2010 Order") requiring that certain remedial actions be undertaken by a number of named parties. This 2010 Order named 307 NSL, 301 NSL, a third company named Ernest A. Nicholson Limited, as well as both appellants.

[13] 307 NSL was the only party that appealed the 2010 Order, to this Court. The main thrust of their objection related to the containment cell; they argued that much of the contamination on the property resulted from the cell, which was not their responsibility. By decision dated May 6, 2015 (*3076525 Nova Scotia Ltd. v. Nova Scotia (Minister of Environment*) [2015] NSSC 137), the Court held that the 2010 Order was reasonable with the exception of the clause referring to the containment cell. The Court found that the respondent had not been aware of the full circumstances between 307 NSL and the containment cell, which rendered the Order unreasonable in relation to that one issue.

[14] Following this decision, and further discussions, the respondent decided to revoke the 2010 Order and replace it with two separate orders: the first, naming

301 NSL and the two appellants, is the 2016 Order before me. The issue of the containment cell, and any leachate emitting therefrom, is contained in this 2016 Order. The second Order, naming only 307 NSL, is not before me.

[15] The 2016 Order provides a number of requirements upon the named parties, including the engaging of professionals; groundwater monitoring; surface water management; and reporting.

[16] In relation to the two appellants, the record before me included a document entitled "Checklist on the Issuance of Ministerial Orders under Part XIII of the Environment Act" (Court Exhibit 1, Tab 30), dated February 2016. At page 4, the Checklist provides:

> Are the directors/officers to be personally named in the Ministerial Order?
>
> Yes
>
> Names: Roy Brown and Michael Lawrence are Directors for 3012334 Nova Scotia Limited (formerly RDM Recycling Limited). 3012334 Nova Scotia Limited (formerly RDM Recycling Limited) have been revoked for non-payment, so their Directors will be named.

[17] It should be noted that a Checklist was also created for the 2010 Order. Its wording was, for our purposes, the same, as regards the above-noted paragraph:

> Are the directors/officers to be personally named in the Ministerial Order?
>
> Yes

> Names: Roy Brown and Michael Lawrence are Directors for 3012334 Nova Scotia limited (formerly RDM Recycling Limited) and Ernest A. Nicholson Limited. These companies currently own and/or lease the property to 3076525 Nova Scotia Limited. 3012334 Nova Scotia Limited (formerly RDM Recycling Limited) and Ernest A. Nicholson Limited have been revoked for non-payment, so their Directors will be named.
>
> (*3076525 Nova Scotia Ltd. v. Nova Scotia (Minister of Environment*), supra, para. 84)

[18] The appellants object to the 2016 Order made against them, for the following reasons:

1. They submit that they were not afforded procedural fairness in the respondent's process in issuing this Order. More specifically, that they were not informed that the status of 301 NSL (as being revoked for non-payment) was the reason the respondent was naming them individually;

2. Furthermore, the appellants argue that they should not have been named personally in the Order, since 301 NSL is the entity who owned the property, and who entered into agreements, throughout the process. The appellants argue that naming them personally has "lifted the corporate veil" inappropriately;

3. Lastly, they submit that the respondent did not consider all of the factors noted in s. 129 of the *Act* in relation to them; they submit that the factors considered related to 301 NSL only.

Statutory provisions

[19] The *Act*'s stated purpose is as follows:

> 2 The purpose of this Act is to support and promote the protection, enhancement and prudent use of the environment while recognizing the following goals:
>
> (a) maintaining environmental protection as essential to the integrity of ecosystems, human health and the socio-economic well-being of society;
>
> (b) maintaining the principles of sustainable development, including
>
> (i) the principle of ecological value, ensuring the maintenance and restoration of essential ecological processes and the preservation and prevention of loss of biological diversity,
>
> (ii) the precautionary principle will be used in decision-making so that where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation,
>
> (iii) the principle of pollution prevention and waste reduction as the foundation for long-term environmental protection, including
>
> (A) the conservation and efficient use of resources,
>
> (B) the promotion of the development and use of sustainable, scientific and technological innovations and management systems, and
>
> (C) the importance of reducing, reusing, recycling and recovering the products of our society,
>
> (iv) the principle of shared responsibility of all Nova Scotians to sustain the environment and the economy, both locally and globally, through individual and government actions,
>
> (v) the stewardship principle, which recognizes the responsibility of a producer for a product from the point of manufacturing to the point of final disposal,
>
> (vi) the linkage between economic and environmental issues, recognizing that long-term economic prosperity depends upon sound environmental management and that effective environmental protection depends on strong economy, and

(vii) the comprehensive integration of sustainable development principles in public policy making in the Province;

(c) the polluter-pay principle confirming the responsibility of anyone who creates an adverse effect on the environment that is not *de minimis* to take remedial action and pay for the costs of that action;

(d) taking remedial action and providing for rehabilitation to restore an adversely affected area to a beneficial use;

(e) Government having a catalyst role in the areas of environmental education, environmental management, environmental emergencies, environmental research and the development of policies, standards, objectives and guidelines and other measures to protect the environment;

(f) encouraging the development and use of environmental technologies, innovations and industries;

(g) the Province being responsible for working co-operatively and building partnerships with other provinces, the Government of Canada, other governments and other persons respecting transboundary matters and the co-ordination of legislative and regulatory initiatives;

(h) providing access to information and facilitating effective public participation in the formulation of decisions affecting the environment, including opportunities to participate in the review of legislation, regulations and policies and the provision of access to information affecting the environment;

(i) providing a responsive, effective, fair, timely and efficient administrative and regulatory system;

(j) promoting this Act primarily through non-regulatory means such as co-operation, communication, education, incentives and partnerships.

[20] Subsection 125 of the *Act* relates to Ministerial Orders. It reads:

125 (1) Where the Minister believes on reasonable and probable grounds that a person has contravened or will contravene this Act, the Minister may, whether or not the person has been charged or convicted in respect of the contravention, issue an order requiring a person, at that person's own expense, to

(a) cease the specified activity;

(b) stop, limit, alter or control the release of any substance into the environment or part thereof in accordance with the directions in the order, either permanently or for a specified period;

(c) alter the procedures to be followed in the control, reduction or elimination of the release of any substance into the environment or part thereof;

(d) install, replace or alter any equipment or thing designed to control, reduce or eliminate the release of any substance into the environment or part thereof;

(e) take interim measures to control, eliminate or manage the adverse effect, including the provision of potable water to affected parties;

(f) undertake remedial action to control, reduce, eliminate or mitigate an adverse effect;

(g) install, replace or alter a facility in order to control, reduce, eliminate or mitigate the release of any substance into or on the environment or part thereof;

(h) carry out clean-up, site rehabilitation or management, site security and protection or other remedial actions in accordance with directions set out in the order;

(i) comply with directions set out in the order respecting the withdrawal of water from a watercourse, including directions to stop the withdrawal;

(j) refrain from altering a watercourse or comply with directions set out in the order respecting altering a watercourse;

(k) where a person has altered a watercourse, or has unlawfully released a contaminant into a watercourse, or where a contaminant may reach a watercourse, take immediate action to remedy the damage the person has caused;

(l) where a person is handling, storing or transporting dangerous goods, waste dangerous goods or pest-control products, take such action as is deemed necessary to avoid contamination by the good or product;

(m) cause a crop, feed, food, animal, plant, water, produce, product or other matter contaminated by a pest-control product to be destroyed or rendered harmless;

(n) restrict the sale, handling, use or distribution of a crop, feed, food, animal, plant, water, produce, product or other matter permanently or for such period of time as deemed necessary;

(o) take specified precautions with respect to the treatment or decontamination of an area affected by dangerous goods, waste dangerous goods or a pest-control product;

(p) take specified precautions with respect to the future use of an area affected by dangerous goods, waste dangerous goods or a pest-control product;

(q) restrict or prohibit the use of a contaminated site, or the use of any product that comes from a contaminated site;

(r) provide security in an amount and form specified by the Department during a clean-up and afterwards for monitoring or other purposes;

(s) do all things and take all steps necessary to comply with this Act, or to repair any injury or damage, or to control, eliminate or manage an adverse effect.

…

(3) In addition to any other requirements that may be included in an order issued pursuant to this Part, the order may contain provisions

(a) requiring a person, at that person's own expense, to

(i) maintain records on any relevant matter, and report periodically to the Minister or person appointed by the Minister,

(ii) hire an expert to prepare a report for submission to the Minister or person appointed by the Minister,

(iii) submit to the Minister or person appointed by the Minister any information, proposal or plan specified by the Minister setting out any action to be taken by the person with respect to the subject-matter of the order,

(iv) prepare and submit a contingency plan,

(v) undertake tests, investigations, surveys and other action and report results to the Minister,

(vi) take any other measure that the Minister considers necessary to facilitate compliance with the order or to protect or restore the environment;

(b) fixing the manner or method of, or the procedures to be used in, carrying out the measures required by the order;

(c) fixing the time within which any measure required by the order is to be commenced and the time within which the order or any portion of the order is to be complied with.

[21] The *Act* also provides a definition for the word "person":

3 In this Act,

…

(aj) "person" includes an individual and a partnership and, for greater certainty, a corporation, municipality and any other entity, and, without restricting the

> generality of the foregoing, the Government, a Government agency, and her Majesty in right of Canada and a person acting on behalf of her Majesty.

[22] The 2016 Order made reference to the Minister's belief that the appellants had contravened ss. 67(2) of the *Act*, which reads:

> 67(2) No person shall release or permit the release into the environment of a substance in an amount, concentration or level or at a rate of release that causes or may cause a significant adverse effect, unless authorized by an approval or the regulations.

[23] I also note ss. 129 of the *Act*, which provides the factors that the respondent is to consider before making an order:

> 129 (1) In deciding whether to issue an order pursuant to this Part, the Minister, an administrator or an inspector shall be guided by the following considerations, if such information is available or accessible to the Minister, an administrator or an inspector:
>
> (a) when the substance became present over, in, on or under the site;
>
> (b) in the case of an owner, occupier or operator, or previous owner, occupier or operator of the site
>
> (i) whether the substance was present over, in, on or under the site at the time that person became an owner, occupier or operator,
>
> (ii) whether the person knew or ought reasonably to have known that the substance was present over, in, on or under the site at the time that person became an owner, occupier or operator,
>
> (iii) whether the presence of the substance over, in, on or under the site ought to have been discovered by the owner, occupier or operator had the owner, occupier or operator exercised due diligence in ascertaining the presence of the substance before the owner, occupier or operator became an owner, occupier or operator, and whether the owner, occupier or operator exercised such due diligence,
>
> (iv) whether the presence of the substance over, in, on or under the site was caused solely by the act or omission of an independent third-party,

(v) the economic benefits the person may have received and the relationship between that price and the fair market value of the site had the substance not been present over, in, on or under it;

(c) in the case of a previous owner, occupier or operator whether that person disposed of the interest in the site without disclosing the presence of the substance over, in, on or under the site to the person who acquired the interest;

(d) whether the person took all reasonable care to prevent the presence of the substance over, in, on or under the site;

(e) whether a person dealing with the substance ignored industry standards and practices in effect at the time or complied with the requirements of applicable enactments in effect at the time;

(f) whether the person contributed to further accumulation of the continued release of the substance on becoming aware of the presence of the substance over, in, on or under the site;

(g) what steps the person took to deal with the site on becoming aware of the presence of the substance over, in, on or under the site;

(h) any other criteria the Minister considers to be relevant.

Issue 1(a): Procedural fairness - Standard of Review

[24] The first question raised by the appellants relates to procedural fairness. In the context of judicial review, a question of procedural fairness is not typically assessed by using either of the traditional *Dunsmuir* approaches:

> [30] The judge gave no deference to the arbitrator in the judge's assessment of procedural fairness. With that, I agree. I note parenthetically that deference is not withheld because of any standard of review analysis. The judge is not reviewing the tribunal's ultimate decision, to which a "standard of review" is accorded. Rather, the judge assesses the tribunal's process, a topic outside the typical standard of review analysis. In *Nova Scotia (Provincial Dental Board) v. Creager* 2005 NSCA 9, this court said:
>
> > [24] Issues of procedural fairness do not involve any deferential standard of review: *Moreau-Bérubé v. New Brunswick (Judicial Council)* [2002] 1 S.C.R. 249, per Arbour J.; *C.U.P.E. v. Ontario (Minister of Labor),* [2003]

> 1 S.C.R. 539, at paras. 100-103, per Binnie, J. for the majority, and at para. 5, per Bastarache J. dissenting. As stated by Justice Binnie in *C.U.P.E.* at para. 102:
>
> > The content of procedural fairness goes to the manner in which the Minister went about making his decision, whereas the standard of review is applied to the end of product of his deliberations.
> >
> > This point is also clear from *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817. Justice L'Heureux-Dubé (paras. 55-62) considered "substantive" aspects of the tribunal's decision based on the standard of review determined from the functional and practical approach but (para. 43) considered procedural fairness without analyzing the standard of review.
>
> [25] Procedural fairness analysis may involve a review of the statutory intent and the tribunal's functions assigned by that statute: e.g. *Bell Canada v. Canadian Telephone Employees Association* [2003] 1 S.C.R. 884, at paras. 21-31; *Imperial Oil Ltd. v. Québec (Minister of the Environment)*, [2003] 2 S.C.R. 624, at paras. 31-32. But, once the court has determined that a requirement of procedural fairness applies, the court decides whether there was a violation without deference.
>
> (Bowater Mersey Paper Co. v. C.E.P. Local 141, 2010 NSCA 19)

[25] Having said that, the intervenors have directed me to a recent article written by Justice David Stratas of the Federal Court of Appeal, who notes that this area of law is unsettled, and advocates flexibility in a reviewing court's approach to procedural fairness:

> The time has come to recognize that procedural decisions come in all shapes and sizes.
>
> Courts are particularly vigilant in reviewing procedural fairness where the interests at stake are high. Thus, administrative decision-makers who make procedural decisions affecting those facing the expropriation of their home or the loss of their license to practice the profession are often subject to exacting review. In many cases, the review is described as correctness review.
>
> However, some cases are different. Suppose a labor arbitrator has been managing a case for years, observing the inter-party dynamics and understanding the

> litigation complexities in it. At the last minute, a party seeks an adjournment of a long-scheduled hearing. The arbitrator decides not to adjourn the case. On judicial review, the reviewing court will recognize the fact-based nature of the decision, the arbitrator's knowledge of the management – labor dynamic and the arbitrator's privileged position to appreciate what has been going on in this particular matter. In such a case, reviewing courts are deferential, sometimes highly so.
>
> In short, just as the intensity of review of substantive decisions should vary according to the circumstances, procedural decisions should also be subject to the same flexible approach. The approach discussed above – arriving at a sense of what the margin of appreciation should be in a particular case – is apposite to procedural decisions as well. Decisions are decisions and they should be reviewed using the same methodology.
>
> …
>
> As the conflicting Supreme Court decisions recognize, some "procedural" decisions deserve deference, some less so, others not at all. It all depends on the animating concept behind judicial review and the factors in circumstances that affect its application in an individual case.

[26] I conclude from my review of this issue that when considering the issue of procedural fairness, I do not approach it strictly from a "reasonableness" or "correctness" lens, but from a perspective individual to this case.

Issue 1(b): Procedural Fairness - Analysis

[27] The appellants argue that during the decision-making process of the respondent, the respondent should have specifically made the appellants aware that it was considering the inclusion of both appellants in the Order, because of 301 NSL's corporate status (i.e. being revoked for nonpayment). The appellants' brief notes:

> 39 During the currency of the Minister's deliberations with respect to the issuance of the 2010 and 2016 Orders against the Appellants, the Minister owed the Appellants, at a minimum, notice of the reason the Minister sought to add the Appellants to the order. Prior to the filing of this notice of appeal, the Appellants had no knowledge that 301 NSL's registration status was the reason the Appellants were added to the 2016 Order.
>
> …
>
> 41 Had the Appellants known that 301 NSL's registration status was the reason the Minister sought to add them to the 2016 Order, they could have rectified the situation by making payment to the RJSC of all late fees required by law in order that NSE, in its particular understanding of the law, would omit to place the appellants on the 2016 Order.

[28] The appellants cite no caselaw in support of this submission.

[29] As I noted in my introduction, this case has a long history. The environmental issues relating to this property have been the subject of discussion since the late 1990s. The appellants have been aware of these issues for many years.

[30] That being said, a question arose as to what opportunities the appellants would have had to actually meet with representatives of the respondent, and discuss the matter. The appellant Brown, in an affidavit filed in this matter, states that he met with representatives of the respondent on July 13, 2010, at the property, on their invitation. Also present was a representative of 307 NSL. The parties discussed, among other things, the issue of 307 NSL seeking a reduction in water quality monitoring. Mr. Brown advised in his affidavit that he would have been

interested in attending further meetings, but that he was not invited to, nor did he attend any others.

[31] That statement was incorrect. During cross-examination, Mr. Brown was reminded of, and did recall, another meeting where he was present on May 17, 2012, at the property, again with representatives of the respondent.

[32] Furthermore, it would appear that yet another meeting happened in 2015, following the court decision. Scott Robertson, an Inspector Specialist with the Department of the Environment, provided an affidavit to this Court. Mr. Robertson recalled attending the May 2012 meeting with Mr. Brown. He also recalled another meeting, held on August 13, 2015, at the departmental office in Bedford, Nova Scotia, and recalled that both appellants were present at that meeting. Mr. Robertson also provided an email, which he attested was sent by him on September 17, 2015, wherein he confirmed the attendance of both appellants at the August meeting, and outlining topics that had been discussed at the meeting.

[33] Mr. Brown, for his part, cannot recall the 2015 meeting. He agrees that he would have, and should have, attended such a meeting, if it took place, and if he was aware of it. He noted that in the summer of 2015, he was experiencing

significant health difficulties, which were very distracting to him. Mr. Brown agreed that he may have forgotten about this 2015 meeting.

[34] I have no recent evidence from the second appellant, Mr. Lawrence. I am advised that Mr. Lawrence now suffers from ALS and that it is difficult for him to communicate.

[35] It seems clear to me based on the evidence, and I do find, that a meeting took place in August 2015, and that both Mr. Brown and Mr. Lawrence were present. This would have given the appellants an additional opportunity to become aware of the situation and make suggestions/submissions, if they so wished. They have had numerous such opportunities.

[36] I have been provided with the case of *Pracz v. Nova Scotia (Minister of Environment and Labor)* 2004 NSSC 61. In that case, the plaintiff Praczs had been served with a ss. 125 Ministerial Order as a result of an oil tank spill on the property. They did not comply with its terms. The Minister then undertook the clean-up work itself, and served the plaintiffs with a new Order, requiring them to reimburse the money paid out by the respondent. The plaintiffs objected to this Order on the basis that the Minister had not afforded them an opportunity to make

representations, prior to the Order being issued, and had therefore not met an appropriate standard of procedural fairness.

[37] In relation to the suggestion by the plaintiffs that they were entitled to an opportunity to make representations, the court said the following:

> 52 There is nothing in the legislation which requires a Minister to receive submissions prior to issuing a Ministerial Order. Staff of the Department did discuss with the Praczes the particulars surrounding the spill on several occasions. In his Affidavit, Paul Currie, an Inspector Specialist II with Environment listed occasions when he spoke with the Praczes:
>
> (1) On April 11, 2003 he met with the Praczes in the Bedford offices of Environment where he received, "further particulars regarding their contractor and the insurance adjusters representing the sub-contractor who installed the tank";
>
> (2) On April 11, 2003 he met spoke with Mr. and Mrs. Pracz at the spill site;
>
> (3) On April 11, 2003 he spoke with the Praczes' adjuster and contractor;
>
> (4) On April 16, 2003 along with another inspector Mr. Currie met and spoke with the Praczes.
>
> 53 In my view there is no procedural right for the Praczes to make submissions prior to the issuance of the Ministerial Orders.
>
> …
>
> 57 I find that the Praczes had ample opportunity to communicate their position to Environment through their employee John Currie. I find no procedural unfairness.

[38] I agree that there is nothing in the *Act* which requires a Minister to receive submissions, on any issue, prior to issuing a ss. 125 Order. I have been provided with no caselaw suggesting such a duty.

[39] Having said that, as to the issue of procedural fairness generally, I have gone on to consider the five factors suggested by the Supreme Court of Canada in *Baker v. Canada* [1999] 2 S.C.R. 817: a) the nature of the decision and the decision-making process; b) the nature of the statutory scheme; c) the importance of the decision; d) the expectation of the parties; e) the deference accorded the decision-maker.

[40] In considering the nature of the decision, the statutory scheme, as well as the deference to be accorded to the respondent: the respondent had been dealing with this matter for many years prior to issuing this Order. It is a decision rendered within her home statute. It is in the nature of a request to remediate an environmental problem, again, within her mandated subject-matter. In my view significant deference should be granted to her process.

[41] In terms of the expectations of the appellants, let us recall that the first Ministerial Order, issued in 2010, also included the appellants in their individual capacity. The process resulting in that 2010 Order was similar (if not exactly the same) as the one that occurred here. The expectations of the appellants as to process in 2016, could not be different than what they had experienced in 2010. As well, their company was already revoked for non-payment in 2010.

[42] The appellants have been aware of, and have had meetings about, the concerns related to this property for many years. I find it very hard to accept that this Order came as any surprise to them.

[43] The nature of this Order, while important, does not rise to the importance of an order or decision resulting in the loss of a residence, or the loss of a license to practice, or a livelihood.

[44] In relation to the appellants' argument that the Minister should have specifically advised the respondents, in advance, that the fact of their company's revocation was either "one" reason, or "the" reason, for naming them individually: I see no merit to that argument and I reject it.

[45] The appellants were/are well aware, or should be, that their own company is revoked for nonpayment. This is not a recent event; the revocation occurred some 10 years ago. They are not caught by surprise.

[46] Frankly, there is no evidence upon which to base a conclusion that the appellants would have reinstated their company's status if they had been given this information by the respondent. That is pure speculation. The appellants did not reinstate their company's status in the face of the 2010 Order, in which they were also named individually.

[47] The appellants did not appeal their inclusion in the 2010 order, nor did they raise with anyone any concerns about being named individually at that time.

[48] In conclusion, I find that, as in *Pracz*, the respondent had no duty to actively seek submissions from the appellants prior to issuing an Order. The appellants were, in fact, advised of the progress of the matter. They had ample opportunity to present their thoughts and concerns to the respondent, if they so chose. The procedure undertaken by the respondent here was not unfair, having regard to all the circumstances.

Issue 2(a): Naming of Appellants personally in Order – Standard of Review

[49] In the decision relating to the 2010 Orders (*3076525 Nova Scotia Ltd*, supra), having reviewed the authorities, the Court concluded:

> 85 The standard of review of reasonableness applies to both the terms of the Order and to the naming of parties in the Order.

[50] That would appear, on its face, to address the issue of the standard of review to be applied, on this review of the Minister's decision to name the appellants personally.

[51] The appellants disagree. They submit that the standard of review in this case should be one of correctness.

[52] The appellants argue that the respondent's decision to add them as individuals was made as a result of her (erroneous) legal assessment relating to a company's corporate status. In other words, they say, the respondent included them because of assumptions she made about 301 NSL, given that it was revoked for nonpayment, and what that might mean from a legal standpoint. For example, she may have believed that such a revocation affected the enforceability of an Order against that company. As a result, she named the company's directors.

[53] The appellants note that the assessment of the status of a corporation, as a legal entity, is not within the usual purview of the respondent's work. It is not a decision that is made in the usual course, or as part of her home statute. It is therefore the position of the appellant that such a decision would require a review on a correctness standard, giving no deference to the decision-maker.

[54] I have considered these arguments. I disagree that the respondent is interpreting, or is attempting any interpretation, of corporate law.

[55] The 2016 Order names three "persons": 301 NSL, Mr. Brown, and Mr. Lawrence. I see nothing therein which implies that the Minister has made any legal determination about the corporation. The fact that 301 NSL was included,

acknowledges that that company exists, and that it remains a “person” pursuant to the *Act*. The Minister is well within her home statute to make that decision.

[56] The respondent further included the appellants Mr. Brown and Mr. Lawrence; based on the information before me, the decision to include them did relate to concerns about the company’s status. I repeat from the Checklist:

> Are the directors/officers to be personally named in the Ministerial Order?
>
> Yes
>
> Names: Roy Brown and Michael Lawrence are Directors for 3012334 Nova Scotia limited (formerly RDM Recycling Limited). 3012334 Nova Scotia Limited (formerly RDM Recycling Limited) have been revoked for non-payment, so their Directors will be named.
>
> (Checklist on the Issuance of Ministerial Orders under Part XIII of the Environment Act; Court Exhibit 1, Tab 30, page 4)

[57] However, this is not a formal determination relating to corporate status. This strikes me, at most, as a statement made out of an abundance of caution. I note further in the Checklist (at p. 12):

> When did the substance become present on site?
>
> Suspected of initially becoming present when 3012334 Nova Scotia Limited (formerly RDM Recycling Limited) Roy Brown and Michael Lawrence – Directors 301 NSL started processing operations prior to 2003; and continuing to increase through 2010 or later…

[58] In my view, the respondent's decision here was not an interpretation of corporate law. She named 301 NSL, which would imply that she considered an Order enforceable against it. She decided to go further, and also name the appellants. I find that such a decision was squarely within her job description, as it is her job to decide who is named in a Ministerial Order.

[59] I therefore find that the appropriate standard of review as to the naming of these parties on this Order is reasonableness. Reasonableness was defined in the *Dunsmuir* decision as follows:

> 47 Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquiries into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

Issue 2(b): Naming of Appellants on Order - Analysis

[60] As I have already explained, the appellants have advanced one argument in their claim that the 2016 Order was unreasonable; that is, that the respondent should not have named them personally, but should have limited herself to naming

301 NSL. They submit that by naming them in their personal capacity, the respondent has “pierced the corporate veil”, where she should not have.

[61] I have already outlined the sections of the *Act* that apply in this case.

[62] There is no doubt that all three named parties, 301 NSL, Mr. Brown, and Mr. Lawrence, are “persons” as defined in ss. 3 (aj) of the *Act*.

[63] Section 125 allows the Minister to issue such an Order to a “person” where she believes, on reasonable and probable grounds, that that “person” has contravened or will contravene the *Act*. The contravention being alleged here is pursuant to ss. 67(1), which prohibits the releasing of substances in amounts that cause (or may cause) adverse effects.

[64] There are no other preconditions, with the exception of ss. 129, which provides factors that the Minister “shall be guided by” in making such an Order. In particular, I point out that the powers given to the Minister pursuant to ss. 125 are not limited to the owner of property, or to the operator of a business. One merely has to be a “person”, who the Minister believes, on reasonable and probable grounds, to have breached the *Act.*

[65] It should also be noted that Ministerial Orders themselves do not address civil liability for the costs of fulfilling such Orders. The *Act* provides a separate section dealing with liability for the costs of carrying out Ministerial Orders:

> 134 (1) Where an order under this Part is directed to more than one person, all persons named in the order are jointly responsible for carrying out the terms of the order and are jointly and severally liable for payment of the costs of doing so, including any costs incurred by the Minister under Section 132.
>
> …
>
> (5)Where a person named in an order did not cause or contribute to the loss, damage, cost or expense by fault or negligence, each of the persons liable to pay compensation, whether or not they are named in the order, are liable to make contribution to and indemnify that person to such degree as is determined to be just and equitable in the circumstances.
>
> 141 No civil remedy for an act or omission is suspended or affected by reason only that the act or omission is an offence under this Act or gives rise to a civil remedy under this Act, and nothing in this Act shall be construed so as to repeal, remove or reduce any remedy available to any person under any enactment, at common law or under any Act of Parliament or of a provincial legislature.

[66] At page 12 of the Checklist, it is noted:

> When did the substance become present on site?
>
> Unknown – NSE determined in 2010 review of data from ground water monitoring program that an offsite impact to domestic wells is occurring from the property at 1275 Old Sambro Road, Harrietsfield.
>
> Suspected of initially becoming present when 3012334 Nova Scotia Limited (formerly RDM Recycling Limited) Roy Brown and Michael Lawrence – Directors 301 NSL started processing operations prior to 2003; and continuing to increase through 2010 or later. In 2002 301 NSL was found by NSE to be stockpiling material in anticipation of an approval to dispose of construction and demolition debris. This was not approved and a further appeal was denied by Nova Scotia Environment. A Remedial Action Plan allowed for an engineered cell to be constructed and debris to be disposed. In December 2005 Halifax

> Regional Municipality allowed for a C and D recycling operation to be licensed on the site for processing and transfer only.

[67] While it is true that 301 NSL owned the property (and operated the recycling facility thereon for a number of years), it is clear from the record that both individual appellants were actively and intimately involved in the day-to-day operations of the facility. They were the only two Directors of this small facility, and both worked on site. They collected (or allowed the collection of) non-recyclable materials, in large amounts. They both dealt with the respondent on a repeated and continuous basis, and they negotiated the Plan. Their involvement is well-documented throughout the years.

[68] In my view, this is not a case which “pierces the corporate veil”.

[69] All three parties (301 NSL, Mr. Brown, and Mr. Lawrence) were named as “persons” whom the respondent believed, on reasonable and probable grounds, had met the test pursuant to ss. 125. The documentation and information before the respondent, when that decision was made, showed that there was ample evidence before her to reach that conclusion. The Checklist indicates that the appellants were personally named because of the revocation of their company for non-payment; that explains why the respondent exercised her discretion to include

them, along with their company. There was presumably a concern that the "revoked" company would not respond to the Order.

[70] However, and quite apart from that, it remains that there was evidence that the appellants, on their own merits, met the requisite test under ss. 125. Including them was a discretionary decision, made due to concerns about the company. In my view, that decision was within the range of possible, acceptable outcomes that the respondent was entitled to make.

[71] The appellants point out that, where one seeks to pierce the corporate veil, a statute should be explicitly clear that such is permitted. The appellants point to Part XVIII of the *Act*, dealing with "Penalties and Prosecutions", and in particular ss. 164:

> 164 Where a corporation commits an offence under this Act or the regulations, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the violation of this Act or the regulations is guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted.

[72] Subsection 164 is an example of a true lifting of the corporate veil, done in explicit terms. By virtue of this provision, had 301 NSL been charged with an offence pursuant to the *Act*, its corporate directors could possibly have found themselves liable for those actions.

[73] However, that is not the situation here. As I have already stated, in my view, the record before the respondent showed three parties that met the requirements of ss. 125 of the *Act*. The respondent chose to include all three, which was within her discretion. I see no unreasonableness in that conclusion.

[74] This decision should not be understood to say that in issuing Ministerial Orders, the respondent could always, as of right, name corporate directors of a corporation. For example, where corporate directors would have had no direct involvement in a matter, other than being listed as directors at the Registry, I make no comment. That decision is for another day.

Issue 3: ss. 125 *Act*

[75] I further disagree that the respondent's considerations dealt only with 301 NSL, without specific consideration for the appellants. Having reviewed the record, including the "Checklist" that I have already mentioned, Mr. Brown and Mr. Lawrence's particular circumstances and actions were considered.

[76] Having regard to the record before me, and the information that was before the respondent, I see the naming the appellants as a reasonable conclusion by the respondent under the circumstances. The inclusion of the appellants in this Order is

a possible, acceptable outcome, given the definitions provided in the *Act*. As such, I uphold the 2016 Ministerial Order.

[77] If the parties cannot resolve costs, I invite written submissions within 30 days of this decision.

Boudreau, J.