



Issue Date: November 8, 2022

Citation: *Canacha inc. et al. v. Canada (Environment and Climate Change)*, 2022 EPTC 10

EPTC File No.: 0025-2022

Case name: *Canacha Inc. et al. v. Canada (Environment and Climate Change)*

Applicants: Canacha inc., Sylvain Boisvert, Groupe Ricova Inc. and Dominic Colubriale

Respondent: Minister of Environment and Climate Change Canada

Subject of proceeding: Review commenced under s. 256 of the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33 of an Environmental Protection Compliance Order issued under subsection 235(1) of that Act.

Heard: In writing

Appearances:

Parties

Canacha inc.
Sylvain Boisvert
Groupe Ricova Inc.
Dominic Colubriale

Minister of Environment and Climate
Change Canada

Counsel or representative

Aubert Gallant

Benjamin Chartrand
Éloïse Eysseric

DECISION DELIVERED BY:

HEATHER GIBBS

Background

[1] On September 23, 2022, Canacha Inc. (“Canacha”) applied to the Environmental Protection Tribunal of Canada (the “Tribunal”) for a review of an Environmental Protection Compliance Order (“EPCO”) issued on August 18, 2022, by Environment and Climate Change Canada (“ECCC”). The request for review was filed three days late and Canacha is asking the Tribunal to extend the time limit for filing their request for review. The Minister of Environment and Climate Change Canada (“the Minister”) submits that such an extension is not in the public interest and asks that the Tribunal dismiss it.

Legislative framework

[2] Subsection [256\(1\)](#) of the [Canadian Environmental Protection Act \(1999\), SC 1999, c 33](#) (the “CEPA”) provides that a person who is subject to an EPCO may file a request for review within 30 days. Subsection [256\(2\)](#) reads as follows: “The Chief Review Officer may extend the period within which a request for a review may be made where, in the Chief Review Officer’s opinion, it is in the public interest to do so.”

Observations

[3] Canacha Inc. acknowledges that the request for review was filed three days late, on September 23 instead of September 20, 2022. In requesting an extension of time, Canacha submits that the delay was due to a situation beyond its control and cannot be attributed exclusively to it. Canacha explains that there were difficulties in the FEDEX system, and despite the fact that the document was sent to Ottawa on September 20, 2022, for unknown reasons, it was not delivered to the Tribunal until September 23, 2022.

[4] Canacha also submits that the decision in this matter is seriously prejudicial to the company, preventing it from exporting its recycled materials to India. The request for review goes into a bit more detail on this point: [translation] “Stopping our exports to India without notice in 2022 under a regulation that has been in place since 2010 is a disaster for our recycling industry. Stocks are piling up in all sorting plants with no foreign outlet. A grace period of ten to twelve months would be necessary to bring our industry in line with Canada Customs and Basel Convention requirements.”

[5] ECCC objects to the extension of time to request a review. ECCC submits that the Tribunal may exercise its discretion to allow a late request for review of an EPCO under section [256\(2\)](#), only when the public interest requires it. ECCC submits that in this case, the dismissal of the extension of time is in the public interest.

[6] ECCC submits, first, that the applicants' explanation for their delay is not reasonable in the circumstances because they were simply not diligent in filing their request for review. Second, ECCC submits that the request for review is, on its face, doomed to fail because the Tribunal cannot allow the applicants to contravene the effects of applicable statutory and regulatory provisions.

[7] Third, ECCC submits that the applicants are currently in violation of the substance of the measures contained in the EPCO. In the Minister's view, it is not in the public interest for the Tribunal to exercise its discretion in favour of a party that disregards the mandatory nature of [CEPA](#) and the enforcement measures to prevent environmental degradation. The Minister filed the affidavit of Mr. Robert Lambert, an enforcement officer at ECCC, to establish that the applicants were not in compliance with the EPCO and continued to export waste or recyclable materials.

Tribunal's findings

[8] Canacha Inc. received the enforcement order on August 18, 2022. The 30-day [CEPA](#) deadline expired on Saturday, September 17, 2022, so Canacha had until the next business day, Tuesday, September 20, 2022, to send its request for review to the Tribunal — Monday, September 19, 2022, being a federal holiday. The request was not filed until September 23, 2022.

[9] The Tribunal begins by noting that the time limit for filing a request for review under [CEPA](#) serves the public interest in the efficiency and finality of administrative decisions. The Tribunal relies in this regard on the decision of the Federal Court of Appeal on judicial review, cited by the Minister, [Canada v. Berhad, 2005 FCA 267](#), para. 60:

The importance of that public interest is reflected in the relatively short time limits for the commencement of challenges to administrative decisions — within 30 days from the date on which the decision is communicated, or such further time as the Court may allow on a motion for an extension of time. That time limit is not whimsical. It exists in the public interest, in order to bring finality to administrative decisions so as to ensure their effective implementation without delay and to provide security to those who comply with the decision or enforce compliance with it, often at considerable expense.

[10] Furthermore, section [258](#) of the [CEPA](#) provides that a request for review does not suspend the operation of an order. Subsection [258\(2\)](#) sets out that a review officer may, on application made before the beginning of the hearing, suspend the operation of the order and impose conditions “that are reasonable in the circumstances and consistent with the protection of the environment and public safety”. In this case, Canacha never requested the suspension of the compliance order, which remains in effect. According to

Mr. Lambert's affidavit, the contents of which have not been contradicted, Canacha was not in compliance.

[11] The public interest obviously includes the protection of the environment. The Tribunal finds that it is not in the public interest to exercise its discretion to extend the deadline in favour of a party that disregards the mandatory nature of [CEPA](#).

[12] The framework set out in [CEPA](#) is intended to be efficient and fair to all parties. In this case, the Tribunal finds that the applicants have not demonstrated that an extension of time would be in the public interest.

Decision

[13] The Tribunal dismisses the request for review and closes the file.

Review dismissed.

"Heather Gibbs"

HEATHER GIBBS
CHIEF REVIEW OFFICER