

## FEDERAL COURT JURISDICTION

Judicial review of Yukon Environmental and Socio-economic Assessment Board designated office (DO) referring applicant's multi-well exploration project to Board's Executive Committee for screening pursuant to *Yukon Environmental and Socio-economic Assessment Act*, S.C. 2003, c. 7 (Act), s. 56(1)(d) — Decision taken because after considering mitigative measures included in project proposal, DO could not determine whether project likely having significant adverse socio-economic effects — Applicant, company involved in exploration for, potential development of crude oil, natural gas in Yukon — Board's primary purpose to implement provisions of Act; responsible for conducting comprehensive, neutral assessments for proposed projects in Yukon — Applicant submitting proposal to relevant DO for assessment but DO concluding, in particular, unable to determine whether project likely causing significant adverse effects on access to, use of Porcupine Caribou Herd — Whether Federal Court having jurisdiction to hear present application for judicial review; whether application for judicial review premature — While applicant, respondent each submitting that Act, s. 116 permitting Court to judicially review decision of DO, intervener maintaining that Court's jurisdiction to review DO's decision ousted; that jurisdiction for such review residing with Yukon Supreme Court — Federal Court's jurisdiction under Act never judicially considered — Issue of Federal Court's jurisdiction arising because of specific wording in Act, s. 116, *Federal Courts Act*, R.S.C., 1985, c. F-7, s. 17(6) — Court's jurisdiction in present case determined by first assessing whether Court having jurisdiction under *Federal Courts Act*, if so, whether Act, s. 116 displacing Federal Court's jurisdiction — Board, here, exercising jurisdiction, powers conferred thereupon by, under Act, federal statute — Federal Court having jurisdiction over Board, including DOs thereof, since Board clearly satisfying definition of "federal board, commission or other tribunal" in *Federal Courts Act*, s. 2; Board "body... exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament." — Furthermore, *Federal Courts Act*, ss. 18, 18.1 providing Court with "exclusive original jurisdiction" to issue various remedies as against Board, power to judicially review Board's decisions — Federal Court therefore having jurisdiction under *Federal Courts Act* to judicially review decision made by Board, including one of its DOs — Act, s. 116 enacted to provide Supreme Court of Yukon with concurrent jurisdiction to review actions, decisions of Board, DO, executive committee, panel of Board, joint panel or decision body — In present case, grammatical, ordinary meaning of words in Act, s. 116 revealing that Federal Court no longer having *exclusive* jurisdiction to review decision of Board, DO, Executive Committee, panel of Board, joint panel or decision body, because respondent, territorial minister or anyone directly affected by such decision can also apply for judicial review in Supreme Court of Yukon — Interpretation supported by fact that Act, s. 116 providing Supreme Court of Yukon with same remedial powers as Federal Court having under *Federal Courts Act*, s.18(1) — Act, s. 116 designed to provide Supreme Court of Yukon with jurisdiction concurrent with that of Federal Court to judicially review administrative actions of Board, DO, executive committee, panel of Board, joint panel, or decision body — In short, *Federal Courts Act*, s. 17(6) not removing Federal Court's jurisdiction to hear applications for judicial review of decisions made by Board because, in particular, wording of Act, s. 116 expressly recognizing what would otherwise be within Federal Court's exclusive jurisdiction; because s. 116 not expressly granting exclusive jurisdiction to Yukon Supreme Court to hear such applications or expressly removing such jurisdiction from Federal Court — Regarding prematurity of judicial review application, principle that court should not review administrative decision not yet finalized examined, discussed — Absent exceptional circumstances, therefore, Court should not interfere with ongoing administrative process involving applicant's proposed project until after process completed or until available, effective remedies exhausted —

While Act, s. 116 expressly allowing affected parties to apply to Supreme Court of Yukon for relief against administrative action by DO, administrative action can only be subject to judicial review where decision of DO ending administrative assessment of project — Decision to refer assessment of project to Executive Committee for screening not completing or ending administrative assessment thereof but merely decision to continue project assessment at higher level in review process established under Act — DO's decision to refer assessment to Executive Committee under Act, s. 56(1)(d) not subject to judicial review absent exceptional circumstances or contravention of requirements of procedural fairness — Thus, applicant's application for judicial review premature; Court's intervention not warranted at this time because administrative process concerning applicant's project uncompleted — No exceptional circumstances existing to justify Court's intervention — Application dismissed.

NORTHERN CROSS (YUKON) LIMITED V. CANADA (ATTORNEY GENERAL) (T-418-16, 2017 FC 622, Boswell J., judgment dated June 26, 2017, 34 pp.)