

NEW BRUNSWICK BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

Hearing

IN THE MATTER OF A Hearing concerning the requirement for a  
License pursuant to Section 86 of the Electricity Act

Re: Fraser Papers Inc.

August 11th 2005

BOARD: David Nicholson, Esq., Q.C. - Chairman

David Nelson - Vice-Chairman

Randy Bell - Commissioner

Patricia Leblanc-Bird - Commissioner

Kenneth Sollows - Commissioner

Board Counsel: Peter A. MacNutt, Esq., Q.C.

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CHAIRMAN: Good morning, ladies and gentlemen. This is a  
hearing being held pursuant to Section 87 of the Electricity  
Act of the Province of New Brunswick.  
It involves a question as to whether or not pursuant to 87(1)(a)  
of the Act and other portions of that section, the summonsed  
party, Fraser Papers Inc. is required to be licensed under  
the Electricity Act.

Could I have appearances, please?

MR. THIBODEAU: "Gilles Thibodeau, pour les Papiers Fraser,  
Fraser Papers Inc., puis je suis accompagné de Ronald  
Beaulieu qui est le coordonnateur de l'énergie pour les

Papiers Fraser Inc."

CHAIRMAN: Thank you, Mr. Beaulieu.

MR. MACNUTT: Peter MacNutt appearing for the Board Staff, Mr. Chairman.

CHAIRMAN: And thank you, Mr. MacNutt. Any other parties here?

There being none, why, we will carry on. Mr. Beaulieu, I understand that you have a motion that you wish to make to the Board this morning?

MR. THIBODEAU: Thibodeau.

CHAIRMAN: Thibodeau.

MR. THIBODEAU: Oui. Effectivement, monsieur le Président, j'ai deux motions. La première concerne justement la question que vous venez de soulever à savoir que cette audience est pour la détermination des questions soulevées sous l'article 87 de la Loi sur l'électricité.

J'avais avisé mon savant confrère, Maître McNutt, que considérant que vous comme Président avait déjà eu des discussions avec mon client, Ronald Beaulieu, relativement justement à l'application pour l'audience que nous avons ici aujourd'hui, j'ai préparé un affidavit que je veux remettre au Tribunal. J'avais avisé préalablement, comme je vous le dis, M. MacNutt, la question qui se pose c'est une recusation à cause de partialité.

Je comprends que vous avez eu, monsieur le Président,

une conversation téléphonique avec M. Ronald Beaulieu dont les détails sont écrit à l'annexe B de l'affidavit. Et effectivement basé sur cette conversation-là, mon client est convaincu qu'il y a raison de croire à la partialité de -- c'est-à-dire de votre partialité et en conséquence nous demandons votre récusation.

CHAIRMAN: All right. I will mark that affidavit as exhibit F-1. Now, correct me if I am wrong, but the second motion that you wish to make, if granted by this Board, would make the first one superfluous.

MR. THIBODEAU: C'est tout probablement correct, monsieur le Président. Et je suis près à procéder avec la deuxième motion que j'ai déjà avisé M. MacNutt.

Là, la deuxième motion est relative à les procédures ici. Nous demandons que les procédures soient dans la langue française. Et à notre avis en vertu de l'article 19 de la Loi sur les langues officielles, nous croyons que les membres du Tribunal soient capable de fonctionner ou de comprendre les deux langues officielles.

Et je lis de l'article 19, ça dit: Il est incombe au Tribunal -- puis je fais remarquer au Tribunal, aux membres du Tribunal qu'en vertu de la Loi sur les langues officielles, le Tribunal et -- ou c'est-à-dire "Court" est défini, les tribunaux désignent toutes les cours, les

tribunaux administratifs de la province. En anglais c'est

"Court, means any court or administrative tribunals in the province." Et nous soumettons que la Commission présentement est un Tribunal en vertu de cette Loi-là.

Et en vertu de l'article 19 je poursuis: Il incombe au Tribunal saisi d'une affaire de comprendre sans l'aide d'un interprète ou de toutes techniques de traduction simultanée ou d'interprétation consécutive la langue choisit en vertu de l'article 17 par une partie à cette affaire.

Ca fait, nous soumettons en l'espèce. Je comprends que ça peut être difficile. Mais dans l'instance aux faits, nous croyons que tout -- pas nécessairement tous les membres du Tribunal présentement ne comprend -- ne peut fonctionner ou ne peut rencontrer in acceptable le l'article 19. Et c'est la raison pour lequel nous croyons important de demander l'application de cet article-là. Merci.

ce CHAIRMAN: Well, sir, let me reassure you that this panel agrees with all of what you have just said and that your motion will be granted. And that when we leave here today, we will strike a new panel to hear the matter, and it will be a bilingual panel.

I have a few remarks, however, that I would like to

put on the record at this time.

Number one, I will ask you -- I know that Mr. MacNutt, the Board Counsel, has been dealing with you concerning an agreed upon statement of fact. And my understanding was, perhaps not complete, that you were going back to your clients to see if in fact they were prepared to agree to that. Can you enlighten us at all on that matter? You can remain seated.

It's not necessary to stand.

MR. THIBODEAU: Non. Je préfère me lever debout, monsieur le Président.

CHAIRMAN: If you prefer, then do it.

MR. THIBODEAU: Effectivement nous avons débuté ou échangé des documents relativement à une entente sur les faits. Et je crois être en mesure de vous dire effectivement, à l'exception de quelques faits, nous pourrions dire disposer de la majorité de cette audience ou de l'application en vertu d'une entente relativement aux faits. Il y a seulement deux ou trois items-là que nous sommes pas nécessairement d'accord avec et je n'ai pas eu la chance considérant justement les motions que nous avons présentés d'adresser ces points-là. Mais effectivement je crois être en mesure de vous confirmer qu'effectivement nous aurons une entente sur la majorité des faits relativement à cette -- la présente

affaire."

CHAIRMAN: Good. Well, certainly I would encourage you, since you are here physically today, that you sit down after this proceeding is concluded and speak with Mr. MacNutt about that, and hopefully we can present the new panel with an agreed upon statement of facts, which will certainly cut down on costs all the way around. There is no question about that, which is something we would like to see.

Now, there is something that I would, however, like to put on the record. And you did mention that you had spoken to Mr. MacNutt and indicated to him, and therefore, have today filed exhibit F-1. And you did that in what I would term a normal, gentlemanly fashion as I am used to it between barristers and solicitors of the Bar of New Brunswick. You gave him -- as soon as you came upon it and spoke with your client, you said there may be a bias on the part of the Chairman. And therefore, I will probably be asking that the Chairman step down because of bias. That was done I think sometime in June and that's appropriate.

MR. THIBODEAU: Originellement, oui. Effectivement c'était au mois de juin, monsieur le Président.

CHAIRMAN: Yes. And therefore, the Board immediately took

steps to add to the panel that had been designated for this, so that if you did in fact do that and I step down, which was my intention to do, so that we could get on with the matter, then there would be sufficient for a quorum and we could carry on today.

Now, let me say in reference to the second motion, which the Board has granted, that this Board over the years has in fact had any number of hearings, particularly on the Motor Carrier side, that involved bilingual panels. And we have always gone along with that. And with frankness, in most of our procedure, there are stages at which the parties -- as there is in the court system, where the parties make known that they may wish to have a bilingual panel.

Unfortunately, we are all dealing with a first here under the Electricity Act, and this which I would call under a Motor Carrier action, is almost a show cause hearing. It's a very difficult kind of hearing, because we end up being the police force that gathers the information, the crown prosecutor that lays the charge and then the judge and the jury that hears the matter. And you can as a barrister and solicitor appreciate how difficult that really is. So that's why I was not surprised when the matter of perhaps bias on the part of

myself or otherwise came up.

So, that's difficult. However, all of that having been said, you and your client -- the various representatives of your client have been dealing with this Board in the English language since way back in the spring sometime, including after you came on the file and dealt with Board Counsel in the English language. And yet -- and you will be given the opportunity to straighten out the record if I am incorrect -- and yet to my knowledge the first time that you wanted to address the Board in the French language came up at all was last Thursday, a week before this hearing.

MR. THIBODEAU: Avec respect, la dernière comparution que j'ai eu avec le Tribunal ça fait trois semaines, si je me trompe pas, relativement à l'application pour la divulgation ou la confidentialité que nous avons eu. Et vous étiez le Président à ce moment-là.

J'avais soulevé que je préférais m'adresser dans la langue française. Et effectivement j'ai procédé en anglais-là, parce qu'il y avait plusieurs personnes.

Aujourd'hui, les seules parties impliquées c'est mon client, les papiers Fraser ou Fraser Papers, et nous voulons procéder dans les deux langues. Mais je veux procéder moi-même dans la langue française. C'est-à-dire



que nous ne vous demandons pas la traduction des commentaires de mon savant confrère, M. MacNutt, de la documentation, la traduction. Mais nous voulons procéder dans la langue française. C'est-à-dire que je vais adresser le Tribunal en français. M. MacNutt, l'adressera en anglais s'il le veut. Je n'ai pas de difficulté avec ça.

Les documents, la majorité, je suis d'accord avec vous, sont rédigés dans la langue anglaise. Et nous exigeons pas la traduction de ces documents-là. Nous voulons procéder de façon expéditive. Et c'est la raison pour lequel nous prenons cette position-là.

CHAIRMAN: No, I am not going to get into an argument with you.

You can go look at the transcript. The hearing that you refer to three weeks ago, the procedure was there. We went through the procedure. It was the English language. You stood up and you asked -- you said I wanted to address the Tribunal in the French language, and I said well go ahead and do it.

MR. THIBODEAU: Oui. Je suis d'accord.

CHAIRMAN: And you said, no, no, I won't bother now. And so that's not at all the same thing, sir. But I am not going to belabour the point.

I believe when you are of the vintage at the bar that

I am and Mr. MacNutt for that matter too, that the appropriate thing to have done, particularly, in view of our procedures and how we are established, is that you would have informed the Board in advance of your request and that your request was coming. And that would have, therefore, given us the opportunity to get the bilingual panel and to have them sitting here today in our stead, rather than doing it ineffectively. You brought it up on the Thursday, then you told Mr. MacNutt that you had to go back to your clients to get instructions, which is appropriate, on Friday. And you finally on Monday of this week confirmed that you would be doing this. And I am just saying that that to me strikes me as not properly respecting the difficulty that a Tribunal such as ours has to make that shift from -- for instance, you are aware of the fact that one of our bilingual members is employed by your client and can't sit.

So all of that having been said, we will adjourn today sine die.

We will have to make arrangements to have a temporary member appointed to this Tribunal to give us the quorum of three members, and at which time, you, through your offices will be informed as to the rescheduled date when this matter will be done. And you will be given at least seven clear days notice of that fact.

Now, Mr. MacNutt, indicates to me that your mailing address is fine, but e-mailing is difficult. Is that correct, Mr. MacNutt?

MR. MACNUTT: The situation, I believe, is that Mr. Thibodeau's office is on vacation until I believe it's September the 8th. And yes, e-mailing and telephone communication has been a little awkward, but I managed to get through. It would help if Mr. Thibodeau could give me some assurance as to -- that we could perhaps deal with matters by e-mail and where I could reach him during the day between now and September.

CHAIRMAN: Mr. Thibodeau, I just -- would you after we rise here, would you speak with Mr. MacNutt, give him -- we deal a lot by e-mail. We find it's very convenient for the people who appear before the Board, et cetera, that sort of thing, to do so. But to try and give Mr. MacNutt some coordinates that we can count on, so that when we do set this up that we will be able to give you that seven clear days' notice of the adjourned date and go forward from there.

MR. THIBODEAU: Je vais le faire, monsieur le Président, mais je suis un de ceux-là qui contrairement si vous le croyez, je suis du -- du vieux "vintage". J'ai été à l'école de droit en même temps que M. MacNutt. Ca fait

que je ne suis pas en plus amoureux avec les e-mail-là. Parce que quand que j'ai commencé à pratiquer, monsieur le Président, on avait même pas une fax. Ca fait qu'aujourd'hui je trouve ça un petit peu rapide.

Mais dans l'instance de ces remarques-là, je vais m'arranger avec Maître MacNutt."

CHAIRMAN: Thank you. Well, my brother and I both agree that the fun went out of the practice of law when they invented the fax machine.

MR. THIBODEAU: And the telephone.

CHAIRMAN: Well, the telephone is okay. You can always say it hasn't come in the mail yet. But when the fax is out there - - spitting it out, you have a difficult time doing that.

All right. Well, I encourage you again to sit down with Mr. MacNutt, go through what factual things need to be straightened out so we can get the agreed upon facts. And we will adjourn and give you notice of when the hearing will be set. Thank you.

MR. THIBODEAU: Merci.

(Adjourned)

Certified to be a true transcript  
of the proceedings of this hearing  
as recorded by me, to the best of  
my ability.

Reporter