

Federal Court



Cour fédérale

Date: 20260216

Docket: T-2097-24

Ottawa, Ontario, February 16, 2026

PRESENT: Madam Justice McDonald

BETWEEN:

TRIGON PACIFIC TERMINALS LIMITED

Applicant

and

**PRINCE RUPERT PORT AUTHORITY
AND THE MINISTER OF TRANSPORT**

Respondents

ORDER AND REASONS

[1] On this Motion, the Respondent, Prince Rupert Port Authority (PRPA or Port Authority) seeks to strike the Notice of Application filed by the Applicant, Trigon Pacific Terminals Limited (Trigon). In their Application, Trigon seeks judicial review of the July 19, 2024 PRPA decision, where PRPA refused to conduct regulatory review of Trigon's proposed liquified petroleum gas (LPG) project under section 82 of the *Impact Assessment Act*, SC 2019, c 28, s 1

(IAA). The Respondent, the Minister of Transport (Minister), made submissions on the Motion in support of PRPA's Motion to strike.

I. Background

[2] For context, I will begin with a brief background.

[3] Trigon is a commodities exporter operating at the Port of Prince Rupert marine terminal on Ridley Island, British Columbia. PRPA is the federal port authority under the *Canada Marine Act*, SC 1998, c 10.

[4] In 2019, Trigon and PRPA entered a lease which authorized Trigon to export specific commodities but did not include LPG.

[5] In 2023, Trigon requested PRPA's consent to export LPG. This request was refused by PRPA on the grounds that the exclusive right to export LPG had been granted to Ridley Island Energy Export Facility (REEF) in 2015. REEF is one of Trigon's competitors. PRPA's refusal of Trigon's request is the subject of separate litigation in the British Columbia courts.

[6] On May 23, 2024, Trigon requested that PRPA conduct regulatory review of Trigon's proposed LPG export plan under section 82 of the *IAA*.

[7] In a letter dated July 19, 2024, PRPA's Vice President, Shelby O'Brien, advised Trigon that the request was denied on various grounds, including:

The Lease, as amended, does not permit Trigon to use the Lands to carry out the Project Activities.

...

Trigon has not established that it holds all necessary surface and/or subsurface rights to carry out the TriPac LPG Project Activities. PRPA finds that Trigon has failed to perfect its request that PRPA subject the Project to an impact assessment pursuant to section 82 of the *Act*. PRPA denies the request to perform the impact assessment at this time, without prejudice to Trigon submitting a subsequent and perfected assessment request.

[8] The July 19, 2024 letter from PRPA is the decision under review in the underlying Application.

[9] The Minister was added as a Respondent because of the relief sought by Trigon.

II. Motion relief sought

[10] In their Notice of Motion, the Port Authority seeks an Order to strike and dismiss Trigon's Notice of Application on the grounds that the matter is not subject to judicial review on the following grounds:

- (1) the Application is premature;
- (2) the PRPA decision is not subject to judicial review; and
- (3) Trigon seeks remedies the Court cannot grant.

A. *Preliminary issue – Stevenson Affidavit*

[11] Trigon objects to paragraphs 4-6 and 12-13 of the Affidavit of Shaun Stevenson.

Mr. Stevenson is the President and Chief Executive Officer of PRPA. His Affidavit attaches 10 exhibits, which are also documents referenced in Trigon's Notice of Application. Trigon does not challenge the admissibility of these documents; however, Trigon argues that paragraphs 4-6 and 12-13 of the Stevenson Affidavit contain subjective opinions and ought to be disregarded. It is helpful to reproduce these paragraphs:

4. PRPA's authority to administer authorizations for the use, occupancy, and operation of the Port of Prince Rupert (the "Port") stems from article 7.1 of its letters patent. Attached and marked as Exhibit "A" to this my affidavit is a true copy of PRPA's Letters Patent.
 5. PRPA's Letters Patent empowered it to create a process for reviewing project proposals for compliance with federal environmental legislation and regulations within the Port.
 6. PRPA's September 2020 Land Use Plan (the "LUP") guides the responsible management of land development at the Port of Prince Rupert. Attached and marked as Exhibit "B" to this my affidavit is a true copy of the LUP.
- ...
12. On July 19, 2024, PRPA issued a preliminary determination under s. 4.6, Stage 1, of the LUP in response to a project proposal from Trigon (the "Preliminary Determination"). Attached and marked as Exhibit "H" to this my affidavit is a true copy of the Preliminary Determination.
 13. On July 24, 2024, Trigon responded to the Preliminary Determination via letter (the "Trigon July 24 Letter"). Attached and marked as Exhibit "I" to this my affidavit is a true copy of the Trigon July 24 Letter.

[12] Trigon is correct that, on a motion to strike a judicial review application, affidavits are generally not admissible because: (1) affidavits can delay judicial review applications, which is inconsistent with their summary nature; (2) a motion to strike requires showing that the originating notice has an error on its face, and therefore evidence is usually not required; and (3) facts pled are assumed true in a motion to strike, and therefore factual evidence is not required (*JP Morgan Asset Management (Canada) Inc v Canada (National Revenue)*, 2013 FCA 250 at paras 51,52 [*JP Morgan*]).

[13] However, there are exceptions to this general rule that include where the affidavit does not undercut the rule's justifications and admitting the affidavit is in the interests of justice (*JP Morgan* at para 53). Relevant here is the exception where an affidavit attaches a document referenced in the notice of application, with nothing more (*JP Morgan* at para 54).

[14] In this case, the above paragraphs of the Stevenson Affidavit arguably contain some unnecessary editorialization; however the primary focus of the paragraphs is to provide context explaining the attached document. I will thus disregard the commentary, but accept that the paragraphs attach exhibits that fall within an exception to the general rule against affidavits on motions to strike (*JP Morgan* at para 54).

III. Analysis

A. *Motion to strike - general principles*

[15] The Court has discretion to strike applications for judicial review “where it is ‘so clearly improper as to be bereft of any possibility of success’” (*JP Morgan* at para 47, citing *David Bull Laboratories (Canada) Inc v Pharmacia Inc*, 1994 CanLII 3529 (FCA) at p 600).

[16] The threshold for striking a judicial review application is high and the Court will only do so where there is “an obvious, fatal flaw striking at the root of this Court’s power to entertain the application” (*JP Morgan* at para 47). In considering a motion to strike, the Court must read the notice of application with a view to understanding the real essence of the Application by reading it holistically and practically without fastening onto matters of form: *JP Morgan* at paras 49-50.

[17] If the basis for striking the Application is a debatable issue, then the motion to strike should be dismissed and the issue determined by the application hearing judge (*Robert Aquilini Successor Trust v Canada (Attorney General)*, 2021 CanLII 46435 ((FC) at para 19).

B. *Application relief sought*

[18] In their Notice of Application, Trigon seeks the following relief against PRPA:

- a. an order quashing the Decision;
- b. a declaration that that Decision is invalid;
- c. a declaration that the Decision is unlawful;

- d. in addition, or in the alternative, an order in the nature of *mandamus* requiring PRPA to perform a regulatory review and impact assessment of the Project under section 82 of the *IAA*;
- e. an order prohibiting PRPA from refusing to perform a regulatory review and impact assessment of the Project under section 82 of the *IAA*;
- f. in addition, or in the alternative, an order directing that the Minister of Transport (Canada) or an appropriate delegate of His Majesty the King other than PRPA, as determined by this Honourable Court, conduct or oversee the regulatory review and impact assessment of the Project under section 82 of the *IAA*;

[19] Against this background, I will consider PRPA’s Motion to strike Trigon’s Application.

(1) *Is Trigon’s Application premature?*

[20] PRPA argues that the July 19, 2024 letter is not a final decision, but only a screening step and therefore more properly characterized as a preliminary decision. PRPA explains that its LUP entails a four-stage process for reviewing and approving applications regarding land use and the July letter was the first stage of the LUP process. As such, they argue that the decision is not subject to judicial review.

[21] For context, it is helpful to reproduce the full text of the July 19, 2024 letter:

We write with regard to the above-noted matter and Trigon’s email request dated May 23, 2024 that PRPA proceed with a regulatory review of the Trigon Pacific LPG Project (the “**Project**” or “**TriPac LPG Project**”) in accordance with section 82 of the *Impact Assessment Act (Canada)* (the “**Act**”).

PRPA has reviewed the Project Description attached to Trigon's email of May 23, 2024, and Trigon's letter dated May 24, 2024. For the reasons that follow, PRPA concludes that Trigon has failed to establish facts to warrant subjecting the Project to an impact assessment pursuant to section 82 of the *Act*.

Among other things, the Project Description reveals that the Project – when constructed and operating – would use the Lands to include liquefied petroleum gas (“**LPG**”), including natural gas condensates, propane (C₃H₈), and butane (C₄H₁₀).

The Project Description provides a Project Scope at section 3.4 that includes LPG export facilities having an annual throughput capacity greater than 80,000 barrels/day, or more than 2.4 million metric tonnes per year. The Project Description provides that these facilities would be located on the Lands and within the existing terminal footprint. New Project infrastructure would include LPG cooling equipment and LPG pre-treatment equipment, and LPG offloading equipment to export LPG.

The Project Description sets out the “**Project Activities**” at section 3.5, including but not limited to: constructing LPG storage tank and bullets; receiving LPG and unloading from CN trains, operating LPG pre-treatment and refrigeration; storing LPG; operating terminal and vessel handling operations required for loading LPG carriers for export.

The Lease, as amended, does not permit Trigon to use the Lands to carry out the Project Activities.

In recognition that Trigon holds no right to use the Lands to include LPG, on September 29, 2023, Trigon requested that PRPA consent to change the permitted uses of the Lands to include LPG pursuant to section 5(1) of the Lease (the “**Request**”). PRPA denied the Request by letter dated November 6, 2023.

On January 10, 2024, Trigon requested that PRPA reconsider its denial of Trigon's Request (the “**Reconsideration Request**”). PRPA denied the Reconsideration Request by letter dated January 18, 2024.

On May 24, 2024, Trigon consented to PRPA sharing the TriPac LPG Project Description with Ridley Island Energy Export Facility Limited Partnership. PRPA did so and further denied the Reconsideration Request by letter dated July 18, 2024.

Trigon has not established that it holds all necessary surface and/or subsurface rights to carry out the TriPac LPG Project Activities. PRPA finds that Trigon has failed to perfect its request that PRPA subject the Project to an impact assessment pursuant to section 82 of the *Act*. PRPA denies the request to perform the impact assessment at this time, without prejudice to Trigon submitting a subsequent and perfected assessment request. [Emphasis in original.]

[22] Assessing the prematurity of a judicial review requires consideration of the following: (1) is there recourse elsewhere, now or later; (2) is the recourse adequate or effective; and (3) are the circumstances of the sort of unusual or exceptional circumstances recognized by the caselaw (*JP Morgan* at para 91).

[23] A similar issue of prematurity was addressed in *GCT Canada Limited Partnership v Vancouver Fraser Port Authority*, 2020 FC 348 [*GCT Canada 2020*], where the Court declined to strike an application that challenged a decision made under the Vancouver Fraser Port Authority Preliminary Project Enquiry process for reviewing applications under the Port Authority's letters patent. On the issue of the prematurity of the judicial review application, Justice Furlanetto found as follows (at para 36):

...I do not agree that it can be concluded at this stage that no decision has been made. The issue of prematurity cannot arise from the decision-maker's own making. As discussed in *Whalen v. Fort McMurray No. 468 First Nation*, 2019 FC 732 at para 23 ("Whalen") a decision-making body cannot manipulate the prematurity doctrine to shield itself from judicial review simply by announcing that its decision is not definitive...

[24] In my view, the finding in *GCT Canada 2020* is applicable to the facts here. PRPA's decision in the July letter is clear, namely that PRPA would only proceed with the request if Trigon secured the rights to export LPG. There is no stated right to seek reconsideration or appeal of this decision. Accordingly, the July letter effectively ended the administrative process. The fact that PRPA characterizes the letter as a "preliminary decision" simply because there is the option to reapply or amend their application, does not change the fundamental nature of the decision.

[25] Additionally, the fact that Trigon can reapply at a later date does not constitute "recourse elsewhere". If Trigon reapplied through the same process, presumably the application would be rejected on the same grounds and Trigon would be unable to challenge the legality of these grounds for rejection. That is contrary to the role of judicial review, which is to ensure legality in exercises of state power and respect for the rule of law (*Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, 2018 SCC 26 at para 13).

[26] On these facts, I am satisfied that there is at least a "debatable issue" raised in this Application, therefore the Motion fails to meet the high threshold necessary to strike out the judicial review application.

(2) *Is the PRPA decision reviewable?*

[27] PRPA argues that the July letter does not affect legal rights, impose legal obligations, or cause prejudicial effects, and therefore is not judicially reviewable (*Air Canada v Toronto Port Authority*, 2011 FCA 347 at paras 28-29).

[28] The argument is that Trigon suffers no prejudice, because the July letter is merely a preliminary decision that, at most, caused inconvenience. PRPA says that any prejudice to Trigon arose from the rejection of the LPG proposal in November 2023, which is the subject of litigation in the British Columbia courts, and this judicial review cannot be used to litigate that dispute in another forum.

[29] Upon review of the July letter, it does not read as a “preliminary” decision, as the letter clearly prevents Trigon from proceeding with their impact assessment application. These prejudicial effects are distinct from the prejudicial effects of the November 2023 LPG proposal rejection. The litigation before the British Columbia courts relates to the denial of Trigon’s rights to export LPG, whereas the July letter denied Trigon’s application for an IAA assessment. As such, while clearly related, they are distinct decisions. Accordingly, I do not accept PRPA’s claim that Trigon has suffered no new prejudice from the July letter decision, because they were already prejudiced by the refusal of the LPG proposal.

[30] Finally, I do not regard the July letter as only causing inconvenience or indirect financial consequences to Trigon. As proponents of the LPG Project, Trigon is directly affected by the

letter, as their ability to move forward with their proposed project depended, in part, on the outcome of their denied request.

[31] On this Motion, I am satisfied that it is at least a debatable issue whether Trigon suffers prejudice from the July letter decision. Trigon's Application therefore cannot be struck on this basis.

(3) *Is a remedy available?*

[32] The Minister argues that part of Trigon's desired relief, an order that the Minister "conduct or oversee the regulatory review and impact assessment of the proposed Project under section 82 of the *IAA*", cannot be ordered, and therefore Trigon's Application should be struck. According to the Minister, Trigon's sought order is "an order of *mandamus* that does not lie against a Minister unless the law requires the Minister to perform a specific function and circumstances are such that they do not have the discretion to refuse" Additionally, ordering the Minister to conduct or oversee a task entrusted to the port authorities would be contrary to Parliament's intention.

[33] A similar argument on a motion to strike an application for judicial review was rejected in *GCT Canada 2020* at paras 46-58. Justice Furlanetto found that "[i]t is not plain and obvious that the Federal Court does not have jurisdiction to award the oversight relief requested in the notice of application to some other delegate or that the relief requested is so bereft of any possibility of success to be struck at this preliminary stage" (*GCT Canada 2020* at para 54). The

GCT Canada 2020 decision on the merits did not decide the issue of whether the Federal Court can grant the Applicant's relief sought (*GCT Canada Limited Partnership v Vancouver Fraser Port Authority*, 2022 FC 1109 at para 281).

[34] The question of whether the Court has the power to award Trigon's desired relief, in whole or in part, cannot be definitively determined in the context of this Motion and is best addressed by the application hearing judge, who will have the benefit of the full evidentiary record.

IV. Conclusion

[35] Overall, I am satisfied that, at a minimum, there are debatable issues regarding whether the July letter decision is premature, prejudiced to Trigon, and whether Trigon's desired relief can be ordered. I therefore decline to strike Trigon's Application.

[36] This Motion is dismissed. Costs shall be costs in the cause.

ORDER IN T-2097-24

THIS COURT ORDERS that:

1. The Respondents Motion is dismissed; and
2. Costs of this Motion shall be costs in the cause.

"Ann Marie McDonald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-2097-24

STYLE OF CAUSE: TRIGON PACIFIC TERMINALS LIMITED V PRINCE RUPERT PORT AUTHORITY AND MINISTER OF TRANSPORT

MOTION IN WRITING PURSUANT TO RULE 369 OF THE FEDERAL COURTS RULES CONSIDERED AT: OTTAWA, ONTARIO

ORDER AND REASONS: MCDONALD J.

DATED: FEBRUARY 16, 2026

WRITTEN REPRESENTATIONS BY:

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