Imperial Oil Ltd. *Appellant*

v.

Attorney General of Quebec for and on behalf of the Minister of the Environment, André Boisclair (formerly Paul Bégin) *Respondent*

and

Administrative Tribunal of Québec, City of Lévis, Ginette Tanguay, Marc Turgeon, Lucie Munger, Nicolas Pelletier, Christine Duhaime, Succession of Claude Maheux, Christine Bédard, Nancy Kidd, André Martin, Jacques Desmeules, Claude Nadeau, Brigitte Michaud, Lucien Bélanger, Carole Roseberry, Reynald Landry, Bernard Côté, Groupe B. Côté, Caisse populaire Desjardins of Saint-David, Les Entreprises Michel Verret inc., André Blais, Sylvie Bourget, Céline Couture, Jacques Marquis, Normand Rodrigue, Chantale Jean, Jean-Marc Bergeron, Jocelyne Giasson, Lini Fortin, Martine Ringuet, Marielle Vallières, Gilbert Caron, Rita Nolin, Renée-Claude Gagné, Danny Gracez and Corporation Adélaïde Capitale inc. *Mis en cause*

and

Attorney General of Ontario and Friends of the Earth *Interveners*

Indexed as: Imperial Oil Ltd. *v.* Quebec (Minister of the Environment)

Neutral citation: 2003 SCC 58.

File No.: 28835.

2003: February 14; 2003 : October 30.

Present: McLachlin C.J. and Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour, LeBel and Deschamps JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Administrative law -- Discretion -- Procedural fairness -- Duty of impartiality -- Conflict of interest -- Minister of the Environment issuing characterization order against former owner of land polluted by hydrocarbons when he was himself sued for damages by present owners of land -- Whether Minister fulfilled his duty of impartiality in issuing characterization order -- Environment Quality Act, R.S.Q., c. Q-2, s. 31.42.

Environmental law -- Decontamination and restoration -- Characterization of land -- Order of Minister -- Nature of functions and powers assigned to Minister in connection with administration of Environment Quality Act -- Content of rules of procedural fairness relevant to performance of Minister's functions -- Environment Quality Act, R.S.Q., c. Q-2, s. 31.42.

When contamination caused problems at a site that had been operated by Imperial Oil, Quebec's Minister of the Environment ordered Imperial, pursuant to s. 31.42 of the *Environment Quality Act* (*EQA*), to prepare at its own expense a site characterization study which would also include appropriate decontamination measures and submit it to the Ministère. Imperial declined to do the study and asked the Administrative Tribunal of Québec to quash the Minister's order. It argued, *inter alia*, that there had been a violation of the rules of procedural fairness that applied to the Minister's decision since the Minister was in a conflict of interest because he had been involved in the earlier decontamination work and was now being sued concerning the contamination of the site by the present owners of the land. The Tribunal dismissed the appeal, but the Superior Court allowed the application for judicial review. It concluded that the Minister's order should be set aside because the Tribunal had adopted an unreasonable interpretation of s. 31.42 *EQA*, but also because the Minister was in a conflict of interest. The Minister therefore did not have the appearance of impartiality required by the rules of procedural fairness. The Quebec Court of Appeal set aside this decision and affirmed the Minister's order.

Held: The appeal should be dismissed.

The Minister had the authority to issue the kind of order at stake in the present case under the *EQA*. Section 31.42, which sets out what is called the polluter-pay principle, allows for the use of a broad discretion by the Minister. Under that provision, the Minister may impose an obligation on the parties responsible for the contamination of the environment to conduct the studies required in order to ascertain the nature of the problem identified, to submit a plan for the corrective work and, where applicable, to have that work performed at their own expense. In the application of s. 31.42, the Minister is performing a mainly political role which involves his authority, and his duty, to choose the best course of action, from the standpoint of the public interest, in order to achieve the objectives of the environmental protection legislation. He is not performing an adjudicative function. On the contrary, he is performing his functions of management and application of environmental protection legislation.

Imperial's challenge rests on an erroneous understanding of the Minister's functions and of the nature of the relevant rules of procedural fairness. Having regard to the context, which includes the Minister's functions viewed in their entirety, as well as to the framework within which his power to issue orders is exercised, the concept of impartiality governing the work of the courts does not apply to his decision. The contextual nature of the content of the duty of impartiality, like that of all of the rules of procedural fairness, may vary in order to reflect the context of a decision-maker's activities and the nature of its functions. Here, the Minister certainly had to comply with

the procedural fairness obligations set out in the law, such as the requirements that notice be given to interested persons and that reasons for the decision be given. Once those requirements had been met, the principles of procedural fairness that applied to the situation, and that were in fact codified by the *Act respecting Administrative Justice*, required only that he comply with the procedural obligations set out in the law and that he carefully and attentively consider the representations made by the person subject to the law he administered. Moreover, the interests in issue certainly did not amount to a personal interest within the meaning applied to that expression in the case law. The only interests the Minister was representing were the public interest in protecting the environment and the interest of the State, which is responsible for preserving the environment. In the circumstances of this case, it was difficult to separate those interests. In exercising his discretion, the Minister could properly consider a solution that would save some public money. Accordingly, he applied one of the organizing principles of the *EQA*, the polluter-pay principle. There was no conflict of interest such as would warrant judicial intervention, let alone any abuse or misuse of power. The Minister acted within the framework provided by the applicable law and in accordance with that law. There was no need to rely on the theory of overlapping duties or the theory of necessity since there was no ground on which proceedings to review the decision of the Administrative Tribunal of Québec dismissing the appeal from the Minister's decision were available.

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Applied: *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869; **referred to:** *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001] 2 S.C.R. 241, 2001 SCC 40; *Valente v. The Queen*, [1985] 2 S.C.R. 673; *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369; *Bell Canada v. Canadian Telephone Employees Association*, 2003 SCC 36; *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653; *IWA v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282; *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623; *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, [2001] 2 S.C.R. 781, 2001 SCC 52.

Statutes and Regulations Cited

Act respecting Administrative Justice, R.S.Q., c. J-3, ss. 2 [am. 1996, c. 54, s. 2], 5, 15 [*idem*, s. 15], 137 [*idem*, s. 137].

Arctic Waters Pollution Prevention Act, R.S.C. 1985, c. A-12 , ss. 6, 7.

Canadian Charter of Rights and Freedoms, s. 11(*d*).

Canadian Environmental Protection Act, 1999, S.C. 1999, c. 33.

Charter of Human Rights and Freedoms, R.S.Q., c. C-12, s. 23.

Contaminated Sites Remediation Act, S.M. 1996, c. C205, ss. 1(1)(c)(i), 9(1), 15(1), 17(1), 21(a).

Crown Forest Sustainability Act, 1994, S.O. 1994, c. 25, s. 56(1).
Environment Act, S.N.S. 1994-95, c. 1, ss. 2(c), 69, 71, 78(2), 88, 89, 90.

Environment Management Act, R.S.B.C. 1996, c. 118, s. 6(3).

Environmental Management and Protection Act, 2002, S.S. 2002, c. E-10.21, ss. 7, 9, 12, 14, 15, 46.

Environmental Protection Act, R.S.N.W.T. 1988, c. E-7, ss. 4(2), 5.1, 6, 7, 16.

Environmental Protection Act, R.S.O. 1990, c. E.19, ss. 7, 8, 43, 93, 97, 99, 150, 190(1).

Environmental Protection Act, R.S.P.E.I. 1988, c. E-9, ss. 7, 7.1, 21.

Environmental Protection Act, S.N.L. 2002, c. E-14.2, ss. 8(1), 9, 28, 29, Part XIII.

Environmental Protection and Enhancement Act, R.S.A. 2000, c. E-12, ss. 2(i), 112, 113(1), 114(1), 116.

Environment Quality Act, R.S.Q., c. Q-2, ss. 2(*c*), 19.1 [am. 1978, c. 64, s. 4; am. 1996, c. 26, s. 72], 19.2 [am. 1978, c. 64, s. 4], 19.3 [ad. 1978, c. 64, s. 4; am. 1996, c. 2, s. 841], 22 [am. 1978, c. 64, s. 5; am. 1979, c. 49, s. 33; am. 1988, c. 49, s. 4], 25 [am. 1978, c. 64, s. 6; am. 1979, c. 49, s. 33; am. 1986, c. 95, s. 272; am. 1988, c. 49, s. 38; am. 1996, c. 2, s. 841; am. 1997, c. 43, s. 508], 27 [am. 1979, c. 49, s. 33; am. 1988, c. 49, s. 38], 31.11 [am. 1988, c. 49, s. 8; am. 1991, c. 30, s. 2], 31.42 [ad. 1990, c. 26, s. 4; am. 1997, c. 43, s. 518], 31.43, 31.44 [*idem*; *idem*, s. 520], 96 [am. 1978, c. 64, s. 31; am. 1979, c. 49, ss. 28, 33; am. 1980, c. 11, s. 72; am. 1982, c. 25, s. 9; am. 1984, c. 29, s. 16; am. 1987, c. 25, s. 9; am. 1988, c. 29, s. 16; am. 1990, c. 26, s. 6; am. 1997, c. 43, ss. 875, 537; am. 1999, c. 75, s. 32], 106 to 115, 113 [am. 1984, c. 29, s. 20; am. 1990, c. 26, s. 12; 1992, c. 57, s. 680; am. 1999, c. 40, s. 239],114.1, 115.1 [am. 1978, c. 64, s. 41; am. 1982, c. 25, s. 14; am. 1984, c. 29, s. 21].

Fisheries Act, R.S.C. 1985, c. F-14 , s. 42.

Ontario Water Resources Act, R.S.O. 1990, c. O.40, ss. 16.1 [rep. & sub. 1998, c. 35, s. 49], 32, 84, 91.

Pesticides Act, R.S.O. 1990, c. P.11, ss. 29, 30.

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APPEAL from a judgment of the Quebec Court of Appeal, [2001] R.J.Q. 1732, [2001] Q.J. No. 3541 (QL), reversing a decision of the Superior Court, J.E. 2000-442, that had set aside a decision of the Administrative Tribunal of Québec, [1999] T.A.Q. 1256. Appeal dismissed.

Pierre Legault and *Olivier Therrien*, for the appellant.

Claude Bouchard, *Dominique Rousseau* and *Anne-Marie Brunet*, for the respondent.

Jacques Lemieux, for the mis en cause the Administrative Tribunal of Québec.

Michel Laliberté, for the mis en cause City of Lévis.

Jack D. Coop, for the intervener the Attorney General of Ontario.

Written submissions only by *Jerry V. DeMarco*, *Robert V. Wright* and *Lynda M. Collins*, for the interveners Friends of the Earth.

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LEBEL J. --

I. Introduction

1 This environmental law case arises out of the application of the polluter-pay statutory principle that has now been incorporated into the environmental legislation of Quebec. When contamination caused problems at a site that had been operated by the appellant, Imperial Oil Limited ("Imperial"), Quebec's Minister of the Environment (the "Minister") ordered Imperial to prepare at its own expense a site characterization study which would also include appropriate decontamination measures and submit it to the Ministère. Imperial challenged that order before the Administrative Tribunal of Québec ("ATQ"), without success. The Superior Court allowed Imperial's application for judicial review because the Tribunal had committed what were, in the Court's opinion, unreasonable errors in interpreting the relevant legislation. In addition, the Court held that a situation of conflict of interest in which the Minister found himself at the time the order was issued would have invalidated the order in any event. Because the Minister had been involved in supervising earlier decontamination work at the site and a number of purchasers of parts of the site had brought action against the Minister in civil liability, he did not have the appearance of impartiality required by the rules of procedural fairness applicable to his decision. The Quebec Court of Appeal set that judgment aside. In the opinion of that Court, the nature of the duties imposed on the Minister created a state of necessity which justified a situation that would otherwise have breached the principle of impartial administrative decision-making. The appeal decision also held that the ATQ had not unreasonably interpreted the *Environment Quality Act*, R.S.Q., c. Q-2 ("*EQA*").

2 This appeal again raised a number of the legal issues that had previously been considered by the Quebec Court of Appeal and the Superior Court in this case. For reasons differing in part from those of the Court of Appeal, I would dismiss this appeal. The Minister had the authority to issue the kind of order at stake in the present case under the *EQA*, Accordingly, by reason of the nature of the duties assigned to the Minister by the *EQA*, he did not violate any of the rules of procedural fairness that applied to the execution of his power to issue orders. The concept of impartiality was raised, interpreted and applied incorrectly in this case.

II. Origin of the Case

3 As in many environmental law cases, the roots of the problem in issue go back a very long time, in this case to, or almost to, the beginning of the 20th century. In about 1920, Imperial built a petroleum products depot on land it had acquired on the south shore of

the St. Lawrence River in Lévis, opposite Québec. Imperial continued to operate the depot until 1973. In 1979, it sold the buildings. The purchaser demolished the petroleum processing facilities, and in 1987 sold the site on to a real estate developer, Les Habitations de la Marina ("Marina"), which planned to build a residential complex on it.

4 The environmental problems became apparent at that time. Test borings of the soil showed the presence of hydrocarbons. The discovery of these contaminants might have become a bar to the issuing of building permits. Marina then commissioned soil characterization studies. The experts it consulted confirmed the presence of contaminants and suggested two decontamination methods to solve the problem. They also recommended that the Ministère de l'Environnement et de la Faune of Quebec be consulted in order to obtain its advice about the measures being considered. The Ministère required further studies, which Marina obtained and submitted. The Ministère then approved the decontamination methods to be used so that housing could be built on the former oil depot site. No contact was made with Imperial during that period. The Ministère's requirements included that the decontamination work be supervised by an independent consultant. The developer did not hire the consultant, but had the decontamination work executed in accordance with the recommendations of the Ministère. When it was over, the Ministère issued a certificate of authorization. Streets were laid out, and a number of houses were built.

5 In 1994, the pollution problem on the site resurfaced. The owners of some of the properties again noticed signs that hydrocarbons were present in the soil, and became concerned. New characterization studies were done and confirmed their fears. Because of the oil and the concentrations of mineral grease detected, the land could not be used for residential purposes. Owners of contaminated lots filed three actions in court against the vendor who had sold them the property and against the City of Lévis, which had issued the building permits. The Ministère was also joined as a party. It was alleged, *inter alia*, that it had been negligent in supervising and approving the decontamination work. Notices of intended proceedings were served in other cases. The matter became increasingly politicized. The City of Lévis began to look for a solution that would satisfy the owners involved and the public.

6 To that end, the City of Lévis initiated discussions with the Ministère., which considered a variety of solutions. On March 12, 1998, after further studies and lengthy consultations, the Minister decided to issue an order under s. 31.42 *EQA*. This order required Imperial, as the former owner and operator of the site, to have a soil characterization study done by an independent expert, at its own expense, and to submit the report no later than June 30, 1998. The study had to include a detailed examination of the condition of the soil, an assessment of the level of soil contamination and recommendations as to what action should be taken upon receipt of the report. The order, called a characterization order, did not direct that the work be done at that stage in the proceedings initiated by the Ministère.

7 Imperial declined to do the characterization study. It exercised the right of appeal provided for by s. 96 *EQA*. It asked the Tribunal to quash the Minister's order. After the

dismissal of its appeal by the Tribunal, it initiated the judicial review proceedings which are now the subject of the appeal to this Court. In order to precisely identify the legal issue on which the outcome of this appeal turns, we must carefully examine the judicial history of this case and the reasons stated first by the Administrative Tribunal and then by the Superior Court and the Court of Appeal.

III. Judicial History

A.Administrative Tribunal of Québec, [1999] T.A.Q. 1256

8 Imperial's argument before the Administrative Tribunal was, first, that there had been a violation of the rules of procedural fairness that applied to the Minister's decision. The Minister was in a conflict of interest, because he had been involved in the decontamination work done in 1988 and 1989. Accordingly, it was impossible for him to act impartially, in accordance with the principles of natural justice. Its second argument was that the facts of the case did not support a characterization order, and that in any event the order could not have been made against Imperial, which argued that it had used its site in accordance with then acceptable standards for industrial land, during the time it operated its depot.

9 The decision of the Administrative Tribunal rejected all of the appellant's arguments. The Tribunal found, first, that the complaints regarding the violation of the rules of procedural equity were without merit. In its opinion, the notices required had been given before the order was issued. Imperial had had an opportunity to present observations to the Minister. Moreover, in the Tribunal's opinion, the legislation created overlapping functions that were an exception to the rule of impartiality. The overlap reflects the exigencies of the enforcement of environmental legislation. The order, which was limited to the characterization study, was also not an unreasonable exercise of the Minister's powers. The argument concerning the requirements that had to be met before issuing the order was also rejected after a review of the evidence. On that point, the Tribunal decided that such orders may be made against a party who is no longer the owner of a site, if it may have been responsible for pollution discovered on the site, after the transfer or abandonment, in accordance with ss. 31.42 and 31.43 *EQA*. In the Tribunal's opinion, the evidence established that the hydrocarbons found in the soil, which had in fact moved beyond the boundaries of the site, came from the operations carried on by Imperial. The Tribunal affirmed the Minister's order for those reasons.

B.Quebec Superior Court, J.E. 2000-442

10 Imperial then moved the dispute to the Superior Court. It filed an application for judicial review and declaratory judgment. Its application asked that the decision of the Administrative Tribunal affirming the Minister's order be reviewed and set aside. In its application, the appellant restated its arguments concerning the failure to meet the requirements governing the issuing of that kind of order, in the context of this case. It also alleged that the Tribunal's decision was unreasonable. Its main argument, however, seems to have related to the legal status of the Minister at the time the order was issued.

On that point, it argued that the tribunal should not have affirmed a decision that the Minister had had no jurisdiction to make, because he was in a conflict of interest and thus did not have the impartiality required to make the decision. The conflict of interest allegedly arose from the proceedings that had previously been brought against the Minister concerning the contamination of the land, and the proceedings he had been threatened with, as well as from his involvement in the decontamination work carried on between 1987 and 1989. Imperial also noted -- correctly -- that during that period it had received neither a warning that the pollution problem had been discovered or work been undertaken to remedy it nor a request that it be involved in that work. It pointed out that the work had complicated the situation and had undoubtedly considerably increased the costs of the characterization studies and of the decontamination and site restoration work that might have to be executed.

11 Pelletier J. allowed the application for judicial review and set aside the Tribunal's decision and the Minister's order. His judgment held, first, that the Tribunal had adopted an unreasonable interpretation of s. 31.42 *EQA* when it concluded that the characterization order imposed only reasonable costs on Imperial. The Superior Court seems to have thought, in this case, that the characterization order necessarily involved an order to perform decontamination or restoration, and that the two steps could not be separated. Pelletier J. therefore found that the Tribunal had greatly underestimated the extent of the obligations imposed by the order, and that the seriousness of that error vitiated the Tribunal's entire analysis of the evidence and the findings it made on the basis of that analysis. The judge also accepted the conflict of interest argument. His judgment explains that the Minister was in a flagrant conflict of interest, because of his involvement in the decontamination of the site and the proceedings brought against him. His interest in the ultimate outcome of the case, which the judge characterized as "personal", prevented him from acting with the necessary impartiality. The order was therefore also vitiated by this fundamental defect. This meant that a problem of bias on the part of the decision-maker had arisen. This problem could not be solved through the doctrine of built-in bias, which restricts the scope of the duty of impartiality because of the nature of the management and decision-making structures that govern the discharge of the duties by the Minister.

C.Quebec Court of Appeal, [2001] 1 R.J.Q. 1732

12 On appeal by the Minister, the Court of Appeal set aside the judgment of the Superior Court and dismissed the application for judicial review for the reasons stated in the opinion of Thibault J.A.. She found, first, that the Superior Court had erred in concluding that the *EQA* did not permit the Minister to issue orders concerning the characterization studies and the restoration and decontamination work in two separate steps. She then held that the financial consequences of the order were not a relevant criterion at the time it was issued. On that point, therefore, the judgment rejected the argument that the interpretation of the Act had been unreasonable.

13 The opinion of Thibault J.A. dealt primarily with the procedural fairness problem, particularly as it related to the Minister's bias and conflict of interest. In her opinion,

although the Minister was exercising a discretionary administrative power, he was nonetheless bound to act impartially. She conceded that there was an appearance of bias, because of the Minister's financial interest. However, to avoid quashing the impugned decision, she then relied upon the concept of necessity : the Minister alone may perform the functions and exercise the powers provided for by the Act to ensure that the obligations that the legislation imposes on the polluter are met, in order to protect the environment in Quebec. The acknowledgement of a state of necessity justified an exception to the principle of impartiality applied to administrative decision-makers. The Minister's alleged inability to act resulted from the duties imposed on him by law, and not from his voluntary act. Thibault J.A. also did not think that it was necessary to examine the arguments made by Imperial concerning the constitutionality of the Administrative Tribunal of Québec, as she believed it to be of no practical consequence in this case. Imperial's application for judicial review was therefore dismissed in its entirety by the Quebec Court of Appeal. That judgment is the subject of the appeal for which leave was granted to this Court.

IV. Relevant Statutory Provisions

14Environment Quality Act, R.S.Q., c. Q-2

31.42 Where the Minister believes on reasonable grounds that a contaminant is present in the environment in a greater quantity or concentration than that established by regulation under paragraph *a* of section 31.52, he may order whoever had emitted, deposited, released or discharged, even before 22 June 1990, all or some of the contaminant to furnish him with a characterization study, a programme of decontamination or restoration of the environment describing the work proposed for the decontamination or restoration of the environment and a timetable for the execution of the work.**31.42.** Le ministre peut, lorsqu'il a des motifs raisonnables de croire qu'un contaminant est présent dans l'environnement dans une quantité ou une concentration supérieure à celle établie par règlement adopté en vertu du paragraphe *a* de l'article 31.52, ordonner à quiconque y a émis, déposé, dégagé ou rejeté le contaminant, en tout ou en partie, et ce, même avant le 22 juin 1990, de lui fournir une étude de caractérisation de l'environnement, un programme de décontamination ou de restauration de l'environnement décrivant les travaux visant à décontaminer ou à restaurer l'environnement et un échéancier de la réalisation de ces travaux.Moreover, where the Minister believes on reasonable grounds that a contaminant prohibited by regulation of the Government is present in the environment or that a contaminant present in the environment is likely to affect the life, health, safety, welfare or comfort of human beings, or to cause damage to or to otherwise impair the quality of the soil, vegetation, wildlife or property, he may issue an order to the same effect to whoever has emitted, deposited, released or discharged, even before 22 June 1990, all or some of the contaminant.

The order shall include a statement of the reasons invoked by the Minister and specify the time within which the documents must be furnished to him. The order takes effect 16 days after its notification or on any later date stated therein.

Within 60 days of receipt of the documents, the Minister may approve the proposed decontamination or restoration work and the timetable for its execution, with or without amendment. Whoever is named in the order as being responsible for the source of contamination shall at the request of the Minister provide him, within the time he fixes, with any information, research findings or study he may need to grant his approval.

Whoever is named in the order as being responsible for the source of contamination shall execute the work in accordance with the timetable, as approved by the Minister.Le ministre peut également, lorsqu'il a des motifs raisonnables de croire qu'est présent dans l'environnement un contaminant dont la présence y est prohibée par règlement du gouvernement ou est susceptible de porter atteinte à la vie, à la santé, à la sécurité, au bien-être ou au confort de l'être humain, de causer du dommage ou de porter autrement préjudice à la qualité du sol, à la végétation, à la faune ou aux biens, rendre une ordonnance au même effet à l'égard de quiconque y a émis, déposé, dégagé ou rejeté le contaminant, en tout ou en partie, et ce, même avant le 22 juin 1990.

L'ordonnance contient l'énoncé des motifs du ministre et le délai dans lequel doivent lui être fournis les documents. Elle prend effet le seizième jour qui suit celui de sa notification ou à toute date ultérieure que le ministre y indique.

Dans les soixante jours de la réception des documents, le ministre approuve, avec ou sans modification, les travaux de décontamination ou de restauration projetés et l'échéancier de leur réalisation. Le responsable visé dans l'ordonnance doit, à la demande du ministre, lui fournir dans le délai qu'il fixe tout renseignement, toute recherche ou toute étude dont il estime avoir besoin pour accorder son approbation

Le responsable visé dans l'ordonnance doit alors exécuter ces travaux conformément à l'échéancier, tels qu'ils ont été approuvés.
. . . . . .**31.44.** At least 15 days before issuing either order, the Minister shall, as prescribed by section 5 of the Act respecting administrative justice (chapter J-3), notify whoever has emitted, deposited, released or discharged the contaminant and, where applicable, the owner of the soil concerned, stating the reasons on which the order is based, the time within which the documents required under section 31.42 must be furnished to him or the work he may order under section 31.43 and the timetable for its execution, the date on which the order, if issued, is to take effect and the fact that observations may be presented by whoever has been notified and, where applicable, by the owner of the soil concerned within the period of time specified in the prior notice as well as the fact that whoever has been notifed may, for the purposes of section 31.43, propose work and a timetable for its execution.

The prior notice shall be accompanied with a copy of every analysis, study or other technical report taken into consideration by the Minister.

For the purposes of section 31.43, the Minister may approve, with or without amendment, the work and the timetable for its execution proposed, where that is the case, by whoever is responsible for the source of contamination, upon presenting observations.

Upon notifying the prior notice, the Minister shall transmit a copy to the secretary-treasurer or clerk of the municipality where the contaminant has been found.**31.44.** Avant de rendre l'une ou l'autre de ces ordonnances, le ministre, en application de l'article 5 de la Loi sur la justice administrative (chapitre J-3), notifie à quiconque a émis, déposé, dégagé ou rejeté le contaminant et, le cas échéant, au propriétaire du sol concerné un avis d'au moins 15 jours mentionnant les motifs qui la justifie [*sic*], le délai dans lequel les documents exigés en vertu de l'article 31.42 devront lui être fournis ou les travaux qu'il pourra ordonner en vertu de l'article 31.43 et l'échéancier de la réalisation de ceux-ci, la date projetée pour la prise d'effet de l'ordonnance, le cas échéant, ainsi que la possibilité pour celui à qui l'avis est notifié et, le cas échéant, pour le propriétaire du sol concerné de présenter leurs observations dans le délai qu'il y indique et la possibilité pour celui à qui est notifié l'avis, de proposer, aux fins de l'article 31.43, les travaux et l'échéancier de leur réalisation.

Ce préavis est accompagné d'une copie de tout rapport d'analyse ou d'étude ou de tout autre rapport technique dont le ministre a tenu compte.

Aux fins de l'article 31.43, le ministre approuve, avec ou sans modification, les travaux et l'échéancier de leur réalisation, proposés par le responsable, le cas échéant, au moment où il a présenté ses observations.

Lorsque le ministre notifie le préavis, il en transmet copie au secrétaire-trésorier ou au greffier de la municipalité sur le territoire de laquelle se trouve le contaminant.**96.** Any order issued by the Minister, except those contemplated in sections 29 and 32.5, in the second paragraph of section 34 and in sections 35, 49.1, 58, 61, 114, 114.1 and 120 may be contested by the municipality or person concerned before the Administrative Tribunal of Québec.

The same applies in all cases where the Minister refuses to grant or revokes an authorization certificate, a certificate, an authorization, an approval other than the approval referred to in the third paragraph of section 31.44, a permission or a permit, refuses to renew a permit, notifies a notice under section 31.46, requires a change in an application made to him, fixes or apportions costs and expenses other than those contemplated in section 32.5 or 35, determines compensation under section 61, notifies a denial of conformity to the proponent of a project, refuses to issue or amends, suspends or revokes a depollution attestation or refuses to amend or to revoke a depollution attestation upon application from the holder thereof.

An operator of an industrial establishment may, where the Minister approves rates with amendments pursuant to section 32.9, contest such decision before the Tribunal.

115.1. The Minister may take all such measures as he may indicate to clean, collect or contain contaminants that are or that are likely to be emitted, deposited, discharged or ejected into the environment or to prevent their being emitted, deposited, discharged or ejected into the environment, where he considers such measures necessary to avert or

diminish the risk of damage to public or private property, human beings, wildlife, vegetation or the general environment.

The Minister may claim the direct and indirect costs related to such measures, in the same manner as any debt owing to the Government, from any person or municipality who had custody of or control over the contaminants and from any person or municipality responsible for the emission, deposit, discharge or issuance of the contaminants, as the case may be, whether or not the latter has been prosecuted for infrigement of this Act. Liability is joint and several where there are several debtors involved.**96.** Toute ordonnance émise par le ministre, à l'exception de celles visées aux articles 29 et 32.5, au deuxième alinéa de l'article 34, aux articles 35, 49.1, 58, 61, 114, 114.1 et 120, peut être contestée par la municipalité ou la personne concernée devant le Tribunal administratif du Québec.

Il en est de même dans tous les cas où le ministre refuse d'accorder ou révoque un certificat d'autorisation, un certificat, une autorisation, une approbation, autre que celle visée au troisième alinéa de l'article 31.44, une permission ou un permis, refuse de renouveler un permis, notifie un avis en vertu de l'article 31.46, exige une modification à une demande qui lui est faite, fixe ou répartit des coûts ou des frais autres que ceux visés aux articles 32.5 ou 35, détermine une indemnité en vertu de l'article 61, notifie une dénégation de conformité à l'initiateur du projet, refuse de délivrer ou modifie, suspend ou révoque une attestation d'assainissement ou refuse de modifier ou de révoquer l'attestation d'assainissement à la demande de son titulaire.

Dans le cas où le ministre approuve des taux avec modification en vertu de l'article 32.9, l'exploitant peut contester cette décision devant le Tribunal.

115.1 Le ministre est autorisé à prendre toutes les mesures qu'il indique pour nettoyer, recueillir ou contenir des contaminants émis, déposés, dégagés ou rejetés dans l'environnement ou susceptibles de l'être ou pour prévenir qu'ils ne soient émis, déposés, dégagés ou rejetés dans l'environnement lorsque, à son avis, ces mesures sont requises pour éviter ou diminuer un risque de dommage à des biens publics ou privés, à l'homme, à la faune, à la végétation ou à l'environnement en général.

Le ministre peut, en la manière de toute dette due au gouvernement, réclamer les frais directs et indirects afférents à ces mesures de toute personne ou municipalité qui avait la garde ou le contrôle de ces contaminants et de toute personne ou municipalité responsable de l'émission, du dépôt, du dégagement ou du rejet des contaminants, selon le cas, que celle-ci ait été ou non poursuivie pour infraction à la présente loi. La responsabilité est solidaire lorsqu'il y a une pluralité de débiteurs.*Act respecting Administrative Justice,* R.S.Q., c. J-3

2. The procedures leading to an individual decision to be made by the Administration, pursuant to norms or standards prescribed by law, in respect of a citizen shall be conducted in keeping with the duty to act fairly.
2. Les procédures menant à une décision individuelle prise à l'égard d'un administré par

l'Administration gouvernementale, en application des normes prescrites par la loi, sont conduites dans le respect du devoir d'agir équitablement.. . . . . .
15. The Tribunal has the power to decide any question of law or fact necessary for the exercise of its jurisdiction.

In the case of the contestation of a decision, the Tribunal may confirm, vary or quash the contested decision and, if appropriate, make the decision which, in its opinion, should have been made initially.**15.** Le Tribunal a le pouvoir de décider toute question de droit ou de fait nécessaire à l'exercice de sa compétence.

Lorsqu'il s'agit de la contestation d'une décision, il peut confirmer, modifier ou infirmer la décision contestée et, s'il y a lieu, rendre la décision qui, à son avis, aurait dû être prise en premier lieu.. . . . . .**137.** Each party may plead any ground of law or fact relevant to the determination of his rights and obligations.**137.** Toute partie peut présenter tout moyen pertinent de droit ou de fait pour la détermination de ses droits et obligations.

V. Analysis

A. *The issues*

15 A clear understanding of the nature of the issues between the parties in this Court is essential in order to avoid getting sidetracked by related problems. We need to go straight to the precise question the answer to which will determine the outcome of this appeal. Prior to that, however, I will summarize the arguments and problems no longer raised by the parties in this Court. The analysis will then focus on the question that really remains at issue in this appeal.

16 The Administrative Tribunal, the Superior Court and the Court of Appeal all had to determine whether the Minister had the authority to issue two orders in succession, the first concerning the characterization of the site and the second the performance of the work. They considered the requirements to be met before the characterization order could be issued, and discussed the evidence introduced on that point. None of that remains in issue in this Court.

17 The sole issue now at stake in this appeal is the question of procedural fairness or natural justice in relation to the Minister's decision. It remains, though, an important issue. The appellant submits that there was bias, or at the least an appearance of bias, that completely vitiated the decision to issue a characterization order. That argument is based on the premise that the Minister was bound by a duty of impartiality that he could not fulfil because of the existence of a conflict of interest. The conflict, it is submitted, arose both from the involvement of the Ministère in the decontamination operations performed earlier and from the economic consequences of the legal action that had been taken or was being threatened against it. The Quebec Court of Appeal based its reasoning on the same premise, but then sought to restrict its scope of application through the identification of exceptions to the duty of impartiality, such as necessity. We will therefore have to consider the nature and effects of that duty, and the conditions and

scope of its application to an administrative decision-maker such as the Minister. If the argument that the Minister must be impartial, as framed by the appellant, is found to be without merit, the legal basis for the entire challenge to the decisions of the Tribunal and the Minister will fall apart. The application for judicial review will then have to be dismissed.

B. *The statutory framework created by the Environment Quality Act*

18 Although the appeal heard by the Court raises an administrative law issue in the context of an application for judicial review, the question relates to an environmental protection problem in Quebec. It cannot be resolved without first examining the statutory framework that governs this field in Quebec. The examination of this framework will then make possible the proper identification and definition of the nature of the functions and powers assigned to the Minister, in connection with the administration of environmental legislation. With an accurate understanding of the objectives and operation of that scheme, we will then be better able to ascertain the content of the rules of procedural fairness which are relevant to the performance of the Minister's functions, and to determines whether they were breached when the characterization order was issued (*Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869, at p. 886, *per* Iacobucci J.).

19 The Quebec legislation reflects the growing concern on the part of legislatures and of society about the safeguarding of the environment. That concern does not reflect only the collective desire to protect it in the interests of the people who live and work in it, and exploit its resources, today. It may also be evidence of an emerging sense of inter-generational solidarity and acknowledgement of an environmental debt to humanity and to the world of tomorrow (*114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Ville)*, [2001] 2 S.C.R. 241, 2001 SCC 40, at para. 1, *per* L'Heureux-Dubé J.).

20 The centrepiece of Quebec's environmental legislation is the *Environment Quality Act*, which was originally enacted in 1972. That Act recognizes that every person is entitled to a healthy environment and to its protection, and to the safeguarding of the living species inhabiting it (s. 19.1 *EQA*). To ensure that this right may be effectively exercised, and that the duties created to give effect to it are executed, the Act provides for a variety of mechanisms for taking action. Various schemes are established for authorizing and monitoring activities that could threaten the environment. Others prohibit or restrict the emission of contaminants and impose obligations to decontaminate. There are also sometimes severe penal sanctions for breaches of the Act. The Superior Court is given broad powers of injunction, to prevent or stop any act that might interfere with the fundamental right to the preservation of the quality of the environment (s. 19.2 *EQA*).

21 The Minister of the Environment plays a key role in the administration of the Act and the regulations under it, and in the implementation of the general policy on which they are based. The legislature has delegated substantial and diverse functions and powers to the Minister for such purposes. Broadly speaking, the Minister prepares plans for the conservation and protection of the environment and sees that they are carried out

(s. 2(c) *EQA*). The legislature has also assigned the Minister the task of issuing authorizations, depollution certificates and permits required for any activity that might result in the discharge of contaminants into the environment or reduce the quality of the environment (ss. 22 and 31.11 *EQA*). In addition, the Act gives the Minister broad powers to act in order to prevent harm to the quality of the environment by making various categories of orders prescribing various corrective measures (see, for example, ss. 25 and 27 *EQA*). Morever, the Minister may institute the civil or penal proceedings that are necessary for the proper enforcement of the Act (s. 19.3 *EQA*, ss. 106 to 115 *EQA*). The Minister may also have the necessary corrective work executed and its cost recovered from the offenders (ss. 113 to 115.1 *EQA*).

22 The power to make orders that is in issue in this appeal belong to a class of powers delegated to the Minister which allow him to take action whenever contaminants are found in the environment. Other provisions in the Act, such as ss. 113 and 115.1, authorize the Minister to have the work needed to eliminate the contaminants executed, and to try to recover its cost from the parties responsible later. Section 31.42 provides for a different approach. Under that provision, the Minister may impose an obligation on the parties responsible for the contamination of the environment to conduct the studies required in order to ascertain the nature of the problem identified, to submit a plan for the corrective work and, where applicable, to have that work performed at their own expense. As we have seen, the order issued under s. 31.42 is subject to appeal to the ATQ. As well, neglect or refusal to carry out such an order entitles the Minister to initiate the civil or penal proceedings provided for in, *inter alia*, Division XIII of the Act. We need not examine the legal rules applicable to there proceedings in this appeal. Nor, in the context of this appeal, do we need to examine the nature and scope of the defences that could be raised in the course of proceedings. Those questions will undoubtedly provide the subject matter of future developments in the case law.

23 Section 31.42 *EQA*, which was enacted in 1990 (S.Q. 1990, c. 26, s. 4), applies what is called the polluter-pay principle, which has now been incorporated into Quebec's environmental legislation. In fact, that principle has become firmly entrenched in environmental law in Canada. It is found in almost all federal and provincial environmental legislation, as may be seen : *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33; *Arctic Waters Pollution Prevention Act*, R.S.C. 1985, c. A-12 , ss. 6, 7; *Fisheries Act*, R.S.C. 1985, c. F-14 , s. 42; *Waste Management Act*, R.S.B.C. 1996, c. 482, ss. 26.5(1), 27(1), 27.1, 28.2, 28.5; *Environment Management Act*, R.S.B.C. 1996, c. 118, s. 6(3); *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, ss. 2(i), 112, 113(1), 114(1), 116; *Environmental Management and Protection Act, 2002*, S.S. 2002, c. E-10.21, ss. 7, 9, 12, 14, 15, 46; *Contaminated Sites Remediation Act*, S.M. 1996, c. C205, ss. 1(1)(c)(i), 9(1), 15(1), 17(1), 21(a)); *Environmental Protection Act*, R.S.O. 1990, c. E.19, ss. 7, 8, 43, 93, 97, 99, 150, 190(1); *Pesticides Act*, R.S.O. 1990, c. P.11, ss. 29, 30; *Ontario Water Resources Act*, R.S.O. 1990, c. O.40, ss. 16.1, 32, 84, 91; *Crown Forest Sustainability Act, 1994*, S.O. 1994, c. 25, s. 56(1); *Environment Act*, S.N.S. 1994-95, c. 1, ss. 2(c), 69, 71, 78(2), 88, 89, 90; *Environmental Protection Act*, S.N.L. 2002, c. E-14.2, ss. 8(1), 9, 28,29, Part XIII; *Environmental Protection Act*, R.S.P.E.I. 1988, c. E-9, ss. 7, 7.1, 21; *Environmental Protection Act*, R.S.N.W.T. 1988, c.

E-7, ss. 4(2), 5.1, 6, 7, 16 (see R. Daigneault, "La portée de la loi dite du `pollueur-payeur'" (1991), 36 *McGill L.J.* 1027). That principle is also recognized at the international level. One of the best examples of that recognition is found in the sixteenth principle of *Rio Declaration on Environment and Development (1992)*.

24 To encourage sustainable development, that principle assigns polluters the responsibility for remedying contamination for which they are responsible and imposes on them the direct and immediate costs of pollution. At the same time, polluters are asked to pay more attention to the need to protect ecosystems in the course of their economic activities.

25 The procedure which authorizes the Minister to issue an order against whoever is responsible for the pollution under s. 31.42 *EQA* and its related provisions represents one of the most important enforcement tools available in Quebec's environmental legislation. The adaptation of such a procedure appeared of singular importance in the search for a solution to soil contamination problems. On that point, it should be noted that the decision of the ATQ quoted passages from the debates of the National Assembly of Quebec in 1990 confirming that legislative objective. Section 31.42 allows for the use of a broad discretion in pursuit of that objective. The Minister may issue a characterization order or prescribe that a work program be carried out. The Act authorizes the Minister to issue an order when he believes on reasonable grounds that a contaminant harmful to the environment is present in a place and may cause harm to human beings or the ecosystem. The order may be made against whoever is responsible for the contamination, including anyone whose activity occurred before the coming into force of the Act in 1990. As discretionary and broad as the power to make orders appears to be, nonetheless important procedural requirements circumscribe it. We must now examine them.

26 Those procedural rules provide more guidance about certain aspects of the general duty of procedural fairness that s. 2 of the *Act respecting Administrative Justice* imposes on administrative decision-makers, by codifying a consistent line of decisions in Canadian administrative law (P. Issalys and D. Lemieux, *L'action gouvernementale : Precis de droit des institutions administratives* (2nd ed. 2002), at p. 847). First, s. 31.44 *EQA* requires that the Minister give 15 days' prior notice of his intention to issue an order. Such a notice shall state, *inter alia*, that the person to whom it is directed may present observations within the time specified, and shall describe the reasons for the proposed decision. Section 31.44 then refers to s. 5 of the *Act respecting Administrative Justice*, which describes the obligations with which an administrative authority such as the Minister must comply before making an individual and unfavourable decision in respect of a citizen. That provision restates the requirement that the interested parties be given prior notice, also sets out the right to present observations and produce documents concerning the proposed decision and reiterates that reasons must be given in support of the decision.

27 The record confirms that the necessary notices were given. The appellant had an opportunity to present its observations, which the Minister reviewed before issuing a decision, for which reasons were given. The procedural framework established by the Act

was therefore followed. As we have seen, the debate then focused on another issue which is also a component of the principles of natural justice : the nature and scope of the duty of impartiality that applies to the decision-maker, the Minister. That issue was incorrectly addressed, however, on the basis of an erroneous understanding both of the duty of impartiality of the Minister and of the consequences of the conflict of interest to which a breach of that principle allegedly gave rise. At the outset of the analysis, a preferred approach would have been to attempt to determine the applicability of the concept of impartiality relied upon by the appellant, in its full potential reach. In this perspective, the scope of the duty of impartiality upon an administrative decision-maker such as the Minister in the exercise of an essentially discretionary and political power, and the manner in which that duty is discharged, would then have had to be examined.

C. *The duty of impartiality in administrative law and variations of that duty*

28 The duty of impartiality ranks among the fundamental obligations of the courts. The *Canadian Charter of Rights and Freedoms* recognizes the right of any person charged with an offence to be tried by an independent and impartial tribunal (s. 11(*d*)). In the matters which fall within the legislative jurisdiction of Quebec, s. 23 of the *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12, recognizes the right to a fair hearing by an independent and impartial tribunal as a fundamental human right. The concept of impartiality refers to the decision-maker's state of mind (*Valente v. The Queen*, [1985] 2 S.C.R. 673, at p. 685, *per* Le Dain J.). The decision-maker must approach the issue submitted to him or her with an open mind, not influenced by personal interests or outside pressure. It is not sufficient that the decision-maker be impartial in his or her own mind, internally, to the satisfaction of his or her own conscience. It is also necessary that the decision-maker appear impartial in the objective view of a reasonable and well-informed observer (*Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369, at p. 394, *per* de Grandpré J.; also : *Bell Canada v. Canadian Telephone Employees Association*, 2003 SCC 36, at para. 17, *per* McLachlin C.J. and Bastarache J.). The duty of impartiality, which originated with the judiciary, has now become part of the principles of administrative justice.

29 The principles of natural justice do undeniably govern the actions of administrative decision-makers, as is in fact evidenced by s. 2 of the *Act respecting Administrative Justice* (P. Garant, *Droit administratif* (4th ed. 1996), vol. 2, "Le contentieux", at pp. 319-320 and 338; *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R.1170, at p. 1190, *per* Sopinka J.; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at pp. 836-837, *per* L'Heureux-Dubé J.). Imperial therefore argues that the duty of impartiality applies in its full rigour and that the Minister did not meet its requirements.

30 The appellant argued that the Minister had placed himself in an insoluble conflict of interest because of his unfortunate involvement in the failed decontamination of the Marina de Lévis site and the legal and financial consequences of that involvement for the Minister. The appellant underlines that the decisions made by the Minister, and the actions taken by him, in the course of those decontamination operations even resulted in

the loss of any appearance of impartiality. Accordingly, the appellant submits, his capacity to make an impartial decision was irremediably compromised in the eyes of any properly informed, objective and reasonable observer. However, that is not the full extent of the problem. The appellant then points out that legal action has already been initiated against the Minister by a number of owners of contaminated land, claiming substantial damages from him. In addition, notices have been sent to the Ministère in a number of cases in which further actions in damages remain possible. The potential risks of damage judgments in those cases put the Minister in a situation in which he is incapable of acting with the necessary independence in applying s. 31.42. In the appellant's submission, the decision to proceed by issuing a characterization order is necessarily tainted by the suspicion that the Minister's intention in so doing was to insulate himself from the possible legal consequences of his unfortunate involvement in the decontamination operations at the Marina site. Allowing the Minister to act with impunity in these circumstances would amount to ratifying a genuine abuse or misuse of power.

31 The appellant's reasoning thus treats the Minister, for all intents and purposes, like a member of the judiciary, whose personal interest in a case would make him apparently biased in the eyes of an objective and properly informed third party. This line of argument overlooks the contextual nature of the content of the duty of impartiality which, like that of all of the rules of procedural fairness, may vary in order to reflect the context of a decision-maker's activities and the nature of its functions (*Baker*, *supra*, at p. 837; *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, at p. 682, *per* L'Heureux-Dubé J.; *IWA v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282, at pp. 323-324, *per* Gonthier J.; *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623, at p. 636, *per* Cory J.). These variations in the actual content of the principles of natural justice acknowledge the great diversity in the situations of administrative decision-makers and in the roles they play, as intended by legislatures (*Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, [2001] 2 S.C.R. 781, 2001 SCC 52, at para. 24, *per* McLachlin C.J.). The categories of administrative bodies involved range from administrative tribunals whose adjudicative functions are very similar to those of the courts, such as grievance arbitrators in labour law, to bodies that perform multiple tasks and whose adjudicative functions are merely one aspect of broad duties and powers that sometimes include regulation-making power. The notion of administrative decision-maker also includes administrative managers such as ministers or officials who perform policy-making discretionary functions within the apparatus of government. The extent of the duties imposed on the administrative decision-maker will then depend on the nature of the functions to be performed and on the legislature's intention. In each case, the entire body of legislation that defines the functions of an administrative decision-maker, and the framework within which his or her activities are carried on, will have to be carefully examined. The determination of the actual content of the duties of procedural fairness that apply requires such an analysis.

32 In his management of the Marina file, the Minister made a decision that especially targeted Imperial. That decision may impose substantial expenses on the parties which the Minister considers to be the authors of the pollution of the site in question. There is

no doubt that the characterization order calls for major studies in order to determine the condition of the site and for the preparation of recommendations about the measures which should be taken to remedy the contamination of the site. Given these circumstances, we need a concrete definition of the nature and extent of the rules of procedural fairness that apply to the Minister's decision. Is the Minister bound by a duty of impartiality, in its full scope and rigour, as are judges or administrative tribunals that essentially perform adjudicative functions, such as the ATQ or grievance arbitrators in the case of labour law? On this point, the decisions of this Court stress the crucial importance of a careful examination of the applicable legislation in order to determine the nature and scope of the rules of procedural fairness that apply to action taken by an administrative decision-maker (*Ocean Port Hotel*, *supra*, at paras. 20, 22; *Bell Canada*, *supra*, at para. 22).

33 The *Environment Quality Act* defines the nature and extent of the procedural fairness obligations by which the Minister is bound when he issues a characterization order. Those procedural obligations result from the express terms of the Act, such as requirements respecting the structure for managing environmental problems and the type of functions assigned to the Minister for that purpose. The method of managing environmental problems selected by the legislature creates a situation that the legislature clearly intended to create and to which it clearly agreed. The role assigned to the Minister by the legislation sometimes inevitably places the Minister in a conflict with those subject to the law he administers, in the course of the implementation of environmental legislation.

34 When the Minister has to make a specific decision concerning someone subject to the law, he must comply with precise procedural obligations, which were described earlier. Generally speaking, those obligations require that he give notice to the person concerned, receive and review the representations and information submitted by that person and give reasons to that person for his decision. The effect of this procedural framework is that the Minister must carefully and attentively examine the observations submitted to him. However, that obligation is not equivalent to the impartiality that is required of a judge or an administrative decision-maker whose primary function is adjudication. In performing his functions, the Minister is involved in the management of an environmental protection system. He must make decisions in a context in which the need for the long-term management of environmental problems plays a prominent role, and in which he must ensure that the fundamental legislative policy on which the interpretation and application of environment quality legislation are based is implemented. The Minister has the responsibility of protecting the public interest in the environment, and must make his decisions in consideration of that interest.

35 What remains to be considered is the problem of the Minister's personal interest, as that interest was expressed by the trial judge. The decision in *Pearlman*, *supra*, provided necessary guidance on the nature of the personal interest that would put an administrative decision-maker in a conflict of interest within the meaning of the principles of procedural fairness. That case dealt with disciplinary proceedings taken by the Manitoba Law Society against one of its members, who argued that the members of the Law Society's

Discipline Committee were in an unavoidable conflict of interest. The enabling statute of the professional body in question allowed it to award the costs of a disciplinary proceeding against a lawyer subject to those proceedings. In the submission of the appellant Pearlman, the members of the committee therefore had a pecuniary interest in ordering that costs be paid. They would benefit from payment of those costs as members of the Law Society, and that situation created an unacceptable appearance of conflict of interest (*Pearlman*, at p. 883, *per* Iacobucci J.).

36 The Court rejected that argument. It again stressed that the manner in which the rules of natural justice are applied depends on the context (pp. 884-85). The duty to remain untainted by personal interest applied in a context in which the members of the Discipline Committee were performing their duties in the common interests of the profession and for the protection of the public, not for their personal benefit. Any interest they may have had in recovering the costs of the proceedings was too remote and attenuated to give rise to a reasonable apprehension of bias in the eyes of an objective and properly informed observer (at pp. 891-92, *per* Iacobucci J.).

37 In light of the foregoing, I am of the view that the Minister was merely defending, in the context of this case, the inseparable interests of the public and the state in the protection of the environment.

VI. Application of the Rules of Procedural Fairness

38 In this case, as was discussed above, the Minister used a discretionary political power for the purposes of the application of s. 31.42 *EQA*. A contamination problem had to be dealt with, and he had to choose the solution that he considered to be the most appropriate. That choice fell within the discretion assigned to him by the Act (Issalys and Lemieux, *supra*, at p. 127). He had to choose among doing nothing, carrying out the necessary investigations and work and then trying to recover the cost from the persons responsible for the contamination of the site, and going directly to those persons and trying to compel them to take the necessary action at their own expense. The Minister was not performing an adjudicative function in which he was acting as a sort of judge. On the contrary, he was performing his functions of management and application of environmental protection legislation. The Minister was performing a mainly political role which involved his authority, and his duty, to choose the best course of action, from the standpoint of the public interest, in order to achieve the objectives of the environmental protection legislation.

39 Having regard to the context, which includes the Minister's functions viewed in their entirety, as well as to the framework within which his power to issue orders is exercised, the concept of impartiality governing the work of the courts did not apply to his decision. Certainly, the Minister must comply with the procedural fairness obligations set out in the law such as the requirements that notice be given to interested persons and that reasons for the decision be given. Once those requirements have been met, the principles of procedural fairness that apply to the situation, and that are in fact, as we have seen, codified by the *Act respecting Administrative Justice*, required only that he

comply with the procedural obligations set out in the law and that he carefully and attentively consider the representations made by the person subject to the law he administers. Moreover, applying the principles stated in *Pearlman*, the interests in issue certainly did not amount to a personal interest within the meaning applied to that expression in the case law. The only interests the Minister was representing were the public interest in protecting the environment and the interest of the State, which is responsible for preserving the environment. In the circumstances of this case, it would be difficult to separate those interests. In exercising his discretion, the Minister could properly consider a solution that might save some public money. Accordingly, he applied one of the organizing principles of the *Environment Quality Act*, the polluter-pay principle. There was no conflict of interest such as would warrant judicial intervention, let alone any abuse or misuse of power. The Minister acted within the framework provided by the applicable law and in accordance with that law. There was no need to rely on the theory of overlapping duties or the theory of necessity since there was no ground on which proceedings to review the decision of the Administrative Tribunal of Québec dismissing the appeal from the Minister's decision were available. The appellant's entire challenge rested on an erroneous understanding of the Minister's functions and of the nature of the relevant rules of procedural fairness.

VII. Conclusion

40 For these reasons, the appeal must be dismissed. I would award costs to the Attorney General of Quebec.

Appeal dismissed with costs to the Attorney General of Quebec.

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Solicitor for the respondent: Department of Justice, Québec.

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