Federal Court of Canada Cour fédérale du Canada

RECEIPT FOR COURT COSTS
REÇU POUR FRAIS JUDICIAIRES

TO/À:

BIRCHALL NORTHEY

Issuing Office:
Bureau émetteur: TOR

Prepared by:
Préparé par: LAU

Date: 3-JAN-07

Court File No.:
N° du dossier de la Cour: A-4-08

STYLE OF CAUSE & DESCRIPTION OF SERVICES PROVIDED INTITULÉ DE LA CAUSE ET DESCRIPTION DES SERVICES RENDUS	COST(S) - FRAIS
LES AMIS DE LA RIVIERE KIPAWA v AGC et al (Notice of Appeal)	$50

PAID IN CASH ☐ PAYÉ COMPTANT CHARGE TO ACCOUNT ☐ PORTER AU COMPTE

PAID BY CHEQUE NO. 001395 ☑ PAYÉ PAR CHÈQUE N° _____

PAID BY VISA NO. _____ ☐ PAYÉ PAR VISA N° _____

PAID BY MASTERCARD NO. _____ ☐ PAYÉ PAR MASTERCARD N° _____

WHITE – ORIGINAL FILE
BLANCHE - DOSSIER ORIGINAL – OTTAWA

BLUE – ACCOUNTING
BLEUE – COMPTABILITÉ – OTTAWA

GOLDENROD – OR –

ACCOUNTING 2ND COPY. LOCAL OFFICE WHERE COSTS RETAINED BY PROVINCE (OTTAWA STATISTICS). COMPTABILITÉ 2e COPIE. BUREAU LOCAL LORSQUE LES FRAIS SONT RETENUS PAR LA PROVINCE (STATISTIQUES OTTAWA)

PINK – PARTY
ROSE – PARTIE

CANARY – DUPLICATE - LOCAL OFFICE
JAUNE – DUPLICATA - BUREAU LOCAL

FCT-26 (REV. 8/99)

A441305

Court File No. A-4-08

FEDERAL COURT OF APPEAL

LES AMIS DE LA RIVIÈRE KIPAWA incorporated as
1162209036 QUEBEC INC.

Appellant

and

THE ATTORNEY GENERAL OF CANADA and
THE MINISTER OF PUBLIC WORKS AND GOVERNMENT SERVICES CANADA,
THE MINISTER OF FISHERIES AND OCEANS,
THE MINISTER OF TRANSPORT, and
DAVID S. LAFLAMME CONSTRUCTION INC.

Respondents

NOTICE OF APPEAL

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at Wellington Street in the City of Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the Federal Courts Rules and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the Federal Courts Rules instead of serving and filing a notice of appearance.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

January 3, 2008

Paul Robinson
Assessment Officer

Issued by: _____
(Registry Officer)

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Solicitors for the Respondent
David S. Laflamme Construction Inc.

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the order of the Honourable Mr. Justice Simon Nöel dated December 4, 2007 by which the Trial Division dismissed, without costs, the application for judicial review commenced by the present appellant against the present respondents.

is Court file No. T-452-06 for

THE APPELLANT ASKS that the Court of Appeal:

(1) grant the appeal;

(2) quash the decisions of the Respondent Ministers and Departments, including the Minister of Public Works and Government Services Canada (PWGSC), Minister of Transport, and Minister of Fisheries and Oceans, respecting the approval of the Laniel Dam Rehabilitation on or about February 8 or 9, 2006 under the *Navigable Waters Protection Act* (NWPA), the *Fisheries Act*, and the *Canadian Environmental Assessment Act* (CEAA);

(3) declare that the Kipawa River from Laniel to Temiscamingue, including the existing Laniel Dam, is navigable;

(4) grant the appellant its costs on the appeal and the original application; and

(5) grant such further and other relief as counsel may request and the Court consider just.

THE GROUNDS OF APPEAL are as follows:

(1) the Court erred in law in failing to use the correct legal test to determine whether waters are navigable;

(2) the Court erred in law in interpreting the term, "navigable", in a way that is inconsistent with the purpose, scope, and meaning of the NWPA;

(3) the Court erred in law in failing to review compliance with the duty of

procedural fairness at common law and/or under the NWPA, not just the CEAA;

(4) the Court erred in law in limiting its review of compliance with the CEAA to the terms of subs. 20(1);

(5) the Court erred in law or on a matter of mixed law and fact in finding that the Laniel Dam is not navigable;

(6) the Court erred in providing findings of fact that are not supported by or inconsistent with the record and reasons, including:

a. the Laniel Dam is navigable less than 20 days per year [para. 78], when the reasons provide otherwise [para. 73], and the record provides evidence of annual navigation from May to October [e.g., affidavit of D.Skeggs, para. 61];

b. safety concerns support PWGSC prohibiting navigation of the Laniel Dam but facilitating access to other rapids on the same stretch of the Kipawa River [paras. 74 and 88-89], when the record provides that other stretches of the River are classified as more difficult to navigate than the Dam [e.g., affidavit of J. F. Coffey, paras. 15-25 and Ex. B; affidavit of D. Skeggs, para. 48 and Ex. J];

c. PWGSC has a responsibility to forbid persons navigating the Laniel Dam and put in place booms and signs [para.75], when the record demonstrates that it is illegal to impair navigation, through a dam or boom or signage, without authorization under the NWPA [e.g., affidavit of D.Skeggs, para. 99]; and

d. by November 2005, PWGSC had provided the appellants with access to all mandatory public registry materials [para. 34], when the record demonstrates that many relevant documents were not disclosed prior

to this litigation [e.g., affidavit of D. Skeggs, paras. 14-17, 21, 125-132, and 136-140]; and

(7) Such further and other grounds as counsel may submit and the Court consider just.

January 3, 2008

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1162209036 Quebec Inc.

Les Amis de la Rivière Kipawa incorporated as 1162209036 Quebec Inc.

v.

The Attorney General of Canada and the Minister of Public Works and Government Services Canada, the Minister of Fisheries and Oceans, the Minister of Transport, and David S. Laflamme Construction Inc.

*Court File No.:*_____

FEDERAL COURT OF APPEAL

PROCEEDING COMMENCED AT:
the City of Toronto

NOTICE OF APPEAL

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