

The Importance of Social Licence in Natural Resource Development: Supreme Court Denies Leave to Appeal in *Strateco Resources Inc. v. Québec*

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Stakeholder perception can play a larger role than reality, especially when it comes to government approvals of natural resource development projects. Developers in the extractive resource sector need to be constantly vigilant in their acquisition and maintenance of social licence for the projects that they operate, or that they wish to develop, acquire or invest in. A recent Québec decision shows the importance of dealing effectively with local concerns, even where a proponent might say that the concerns are premature.



On October 15, 2020, the Supreme Court of Canada denied leave to appeal to *Strateco Resources Inc.* (“Strateco”). Strateco had sued the Government of Québec, claiming approximately \$180 million in damages, plus \$10 million in punitive damages, when the Québec Minister of Sustainable Development, the Environment, Wildlife and Parks (the “Minister”) refused to issue a certificate of authorization for Strateco’s advanced uranium exploration project.

In the 2005 and 2006 bull market, Strateco bought 559 uranium mining claims in Northern Québec. In 2008, it applied for government approvals for an advanced exploration project. Necessary approvals included a certificate of authorization from the Minister under Québec’s *Environment Quality Act*.

A government environmental evaluation committee recommended an environmental and social impact assessment of the project. About a year later, a joint federal-provincial directive set the type of review. The federal administrator directed Strateco to consult with the local Cree Nation. The Cree were especially concerned that water pollution from any mine could adversely affect local fisheries upon which the Cree depended.

In 2010 consultations with the community, Strateco dealt with the environmental impacts of the advanced exploration project (which were of limited scope) and left the impacts of mining for discussion at the next phase of approvals (assuming that a mine would ever be

developed). Despite Strateco's presentations at information sessions, the local Cree community continued to be concerned about the potential impacts of any future mine on the local lakes and fisheries.

In July 2011, the Québec review committee and corresponding federal review panel recommended approval of the project. The committee expressed strong reservations. It found that the environmental and social impacts of the project were manageable, but the local communities' concerns regarding the development and operation of a mine had not been adequately addressed by Strateco. The committee's approval of the advanced exploration project included a condition that Strateco enter into an agreement with the Cree community to confirm the social acceptability of a uranium mine.

The federal Minister of Environment referred the project to the Canadian Nuclear Safety Commission for a hearing. By that time, the local Cree community had decided that any support for the project was support for uranium mining, and that this was inconsistent with its role as steward of the land. The Commission issued its licence, but urged Strateco to improve its relationship with the Cree.

Seeing the deterioration of the relationship between Strateco and the local Cree community, the Deputy Minister consulted the Québec review committee. The committee advised that it did not see any prospect for an agreement between Strateco and the Cree. In December 2012, the decision of whether to authorize the advanced exploration project with conditions or reject it, was left to the Minister.

Strateco did not wait for the Minister's decision. Instead, in January of 2013, it started a court action to compel the Minister to issue the certificate of authorization.

Then the wheels really started to fall off the bus. First, the Minister announced a moratorium on certificates of authorization for uranium production. (As it happened, Strateco was the only uranium miner seeking an authorization.) A few months later, the Minister gave advanced notice that he would not be issuing the certificate of authorization. In November 2013, the Minister gave his formal refusal, citing the failure to garner "social acceptability" from the local Cree community.

Strateco amended its court application, claiming that the Minister did not have the authority under the legislation to refuse approval on the grounds of social acceptability. Strateco claimed money damages, saying that this illegal decision amounted to an expropriation of Strateco's uranium claims.

Strateco's action was dismissed. As stated by the Québec Court of Appeal, the Minister's decision ought to be informed by considerations of social, economic or political policy reflected in the legislation. Although the decision must be made in the context of the applicable legislation, the decision involved a sufficient degree of "policy", leaving the

Minister with broad discretion. So long as the Minister's decision was not made in bad faith, the government would be protected from financial liability. Second, because the legislation placed emphasis on public participation as an element of sustainable development, it was open to the Minister to consider the question of social acceptability in his decision. That is not to say that the Cree had a veto, but they did have a voice. Finally, the Court concluded that the imposition of a moratorium on uranium exploration projects did not amount to an expropriation; Strateco was still left with ownership of the mining claims. Further, there was no evidence to support a claim that Strateco was ever promised a certificate of authorization.

What are the lessons learned?

- Do not assume that your definition of project scope is going to carry the day, even when the regulator agrees. We know that only a small number of exploration projects result in mine development; however, if the community's attention is focused on the impacts of a potential mine (even one that might never be built), it is unwise to leave those concerns inadequately addressed. The same goes for other types of staged projects. Sometimes the answer is in early and continuing community engagement and education.
- Do not equate resource ownership with the ability to exploit the resource. It took five years before Strateco received a negative decision from the Minister and a further five years before its court remedies were exhausted, leaving it with the resources, but no ability to further exploration or mining.
- Do not underestimate the importance of acquiring and maintaining social licence in the planning, development and operation of a natural resource project. The greater the potential impacts, the more likely that there will be an element of discretion on the part of the decision-maker (be it a director, a Minister, or Cabinet). The greater the discretion, and the more that the approval looks like a policy decision, the more likely it is that political considerations will be seen as relevant deciding factors. Broad community support, or, at the very least, a lack of broad opposition, can tip the scales.

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