

Federal Court of Appeal Upholds Canadian Transportation Agency Decision to Allow CN to Construct Railway Line in the Town of Milton – Halton (Regional Municipality) v. Canada (Transportation Agency), 2024 FCA 122 (CanLII)

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The Canadian National Railway Company applied to the Canadian Transportation Agency under subsection 98(2) of the *Canada Transportation Act*, S.C. 1996, c. 10, for the approval of the location of certain railway lines it intends to construct in the Town of Milton, Ontario. These railway lines were part of a larger project, the construction of a terminal that would be used to transfer goods.

Subsection 98(2) provides that “The Agency may, on application by the railway company, grant the approval if it considers that the location of the railway line is reasonable, taking into consideration requirements for railway operations and services and the interests of the localities that will be affected by the line.” The Agency was satisfied that the location of the lines was reasonable, and granted the application. The Regional Municipality of Halton and other public authorities appealed to Federal Court of Appeal in 2024 FCA 122 (CanLII).

The Appellants submitted that the Agency erred in determining what constitutes an interest of the locality in response to a particular application under subsection 98(2) of the Act. The Federal Court of Appeal disagreed. The words of subsection 98(2) specifically contemplated that the Agency is to “[take] into consideration requirements for railway operations and services and the interests of the localities that will be affected by the line”. There is nothing in the context of the section in the wider Act or the purposes of the Act to suggest otherwise. The Federal Court of Appeal found that the Appellant’s real concern was a mere disagreement with the Agency’s weighing of various factors and its conclusion that the location of the railway line was reasonable.

The Court held that the Agency properly looked at the text of subsection 98(2). The Agency noted that it had to determine whether the location of the railway line is “reasonable”, in part by considering the interests of the localities that would be affected by the line. The Agency had also noted that “what constitutes an interest of the locality is not determined in advance, either by the statute or by any guidelines”. So, it decided to determine the interests of the localities on the facts. The Court found that this was entirely consistent with *Canadian National Railway Co. v. Canadian Transportation Agency*, 1999 CanLII 20684 (F.C.A.) (CNR 1999) and *Sharp v. Canada (Transportation Agency)*, 1999 CanLII 9356 (FCA), [1999] 4 F.C. 363. The Federal Court of Appeal saw no error of law in the Agency’s approach. The Court also found that Halton has not identified any topic that the Agency failed to consider under the rubric of “the interests of the localities”.

At paragraph 20, the Federal Court of Appeal stated:

A fair, holistic reading of the Agency's reasons shows that it did weigh and balance these subsection 98(2) considerations, just as the subsection seems to require it to do. At one point in its reasons (para. 242), the Agency was quite explicit on the point, stating that it "has a broad discretion to decide what weight to give the evidence of a given interest of a locality" when it is "balancing that interest against the requirements for railway operations and services".

The Appellants submitted that the Agency's reasons were insufficient. The Court disagreed. It noted at paragraph 23:

All decision-makers, particularly administrative decision-makers to whom the legislature has assigned a decision-making task for reasons of efficiency and expedition, aim to synthesize their reasons down to the essential factors that led them to decide the way they did. They are not to create an encyclopedic account of all of the evidence and all of the parties' positions, as if their task is to report in detail everything that happened during the numerous days of the hearing. Instead, they are to distill and synthesize, ensuring that the parties, reviewing courts and the public observing the matter can discern where the administrative decision-maker was coming from and why it decided the way it did.

The Federal Court held that the Agency's reasons were adequate.

The Appellant also submitted that the Agency was procedurally unfair in two respects: (1) it did not entertain submissions concerning the possible impact of a planned merger between CN and an American railway company; and (2) it denied the appellants the opportunity to adduce more evidence.

The Federal Court noted the law in this respect, at paragraph 45 and determined the Agency met the test of fairness:

The overall test for procedural fairness in a case such as this is whether, considering the context, the parties knew the case to meet and had a full and fair chance to respond: *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69, [2019] 1 F.C.R. 121 at para. 56. Further, procedural rights must be balanced against the public interest in effective, expeditious and efficient decision-making. Those are judge-made tests. But, absent constitutional concern, and there is none here, it is open to legislators to pass legislation expanding or restricting judge-made tests. Here the legislator has spoken and has supplied a legislative standard that we must keep front of mind when evaluating procedural fairness. The Agency must "conduct all proceedings in a manner that is proportionate to the importance and complexity of the issues at stake and the relief claimed": *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, S.O.R./2014-104, s. 4. I conclude that the process followed by the Agency, which built upon the joint panel process, including the reasons it wrote, passes this test.

The Appellants also challenged how the Agency dealt with issues such as municipal revenues, air quality, land use planning, the requirements for railway operations and services, and the mitigation of effects—in other words, how the Agency applied legal standards to the evidence before it. The Federal Court of Appeal noted that these issues dealt with questions of mixed fact and law, which the Court did not have jurisdiction to consider on an appeal. It dismissed the issues.

The Federal Court of Appeal also noted (at paragraph 50):

At other times during oral argument, perhaps out of understandable enthusiasm, the appellants seemed to exhort us to interfere on behalf of the residents of Halton to prevent them from suffering ill-effects from CN's planned facility. However, under this legislative regime passed by our democratically elected government, the assessment of those ill-effects is for the Agency, not us. We would be acting contrary to law if we were to wade in and make our own assessment. Our task is limited to reversing the Agency's decision for legal error or procedural unfairness. Here, we see no legal error and no procedural unfairness.

The Federal Court of Appeal dismissed the appeal with costs. A PDF version is available for download [here](#).

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