Date: 20081124

Dockets: A-546-07
A-250-08
A-42-08
A-225-08
A-224-08
A-400-08

Citation: 2008 FCA 363

CORAM: **SEXTON J.A.**
BLAIS J.A.
RYER J.A.

Dockets: A-546-07
A-250-08

BETWEEN:

CANADIAN NATIONAL RAILWAY COMPANY

Applicant

and

CANADIAN TRANSPORTATION AGENCY and THE ATTORNEY GENERAL OF CANADA

Respondents

Dockets: A-42-08
A-225-08
A-224-08

BETWEEN:

CANADIAN PACIFIC RAILWAY COMPANY

Applicant

and

CANADIAN TRANSPORTATION AGENCY and THE ATTORNEY GENERAL OF CANADA

Respondents

Docket: A-400-08

BETWEEN:

CANADIAN PACIFIC RAILWAY COMPANY

Appellant

and

CANADIAN TRANSPORTATION AGENCY and THE ATTORNEY GENERAL OF CANADA

Respondents

Heard at Winnipeg, Manitoba, on October 15, 2008.

Judgment delivered at Ottawa, Ontario, on November 24, 2008.

REASONS FOR JUDGMENT BY: RYER J.A.

CONCURRED IN BY: SEXTON J.A.
BLAIS J.A.

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REASONS FOR JUDGMENT

RYER J.A.

[1] The transportation of western grain, which is dealt with in Division VI of Part III of the *Canada Transportation Act*, S.C. 1996 c. 10 (the "CTA"), has been described as "the subject of an evolving system of freight rate regulation since 1897" by Justice Rothstein at paragraph 1 of *Canadian Pacific Railway Co. v. Canada (Transportation Agency) (C.A.)*, 2003 FCA 271, [2003] 4 F.C. 558 (the "Demurrage Decision"). Somewhat more dramatically, Evans J.A., at paragraph 1 of *Ferroequus Railway Co. v. Canadian National Railway Co.*, 2003 FCA 454, [2004] F.C.R. 42, has observed that there is an "historic and ongoing struggle over freight rates for the transportation" of western grain.

[2] The passage of Bill C-11, *An Act to amend the Canada Transportation Act and the Railway Safety Act and to make consequential amendments to other Acts* (39th Parliament, 1st Session, House of Commons Government Bill C-11) ("Bill C-11") in 2007 demonstrates the continuing

evolution of freight rate regulation with respect to western grain. Of concern in the present circumstances is clause 57 of Bill C-11 ("Clause 57"), which reads as follows:

57. Despite subsection 151(5) of the *Canada Transportation Act*, the Canadian Transportation Agency shall, once only, on request of the Minister of Transport and on the date set by the Agency, adjust the volume-related composite price index to reflect costs incurred by the prescribed railway companies, as defined in section 147 of that Act, for the maintenance of hopper cars used for the movement of grain, as defined in section 147 of that Act.	57. Malgré le paragraphe 151(5) de la *Loi sur les transports au Canada*, l'Office des transports du Canada effectue une seule fois, à la demande du ministre des Transports et à la date fixée par l'Office, l'ajustement de l'indice des prix composite afférent au volume pour tenir compte des coûts supportés par les compagnies de chemin de fer régies, au sens de l'article 147 de cette loi, pour l'entretien des wagons-trémies servant au mouvement du grain, au sens de cet article 147.

[3] Clause 57 provides for an adjustment to the volume-related composite price index (the "VRCPI"), an important component of the formula that provides a "revenue cap" on the revenues that Canadian National Railway Company ("CN") and Canadian Pacific Railway Company ("CP") are permitted to earn from the transportation of western grain. The mandated adjustment is narrowly focused on a single component of the VRCPI, costs incurred by CN and CP for the maintenance of hopper cars used in the transportation of western grain.

[4] Indeed, the historic struggle appears to continue. The actions of the Canadian Transportation Agency (the "Agency") in implementing this provision gave rise to six appeals. Five of those appeals (A-546-07, A-250-08, A-42-08, A-225-08 and A-224-08) were consolidated pursuant to the order of Nadon J.A. dated June 6, 2008. Each of those appeals results from a decision of the Agency which relates to the implementation of Clause 57. Pursuant to orders made on October 2, 2007,

November 23, 2007, and May 14, 2008, each decision of the Agency was stayed pending the outcome of the consolidated appeals. The sixth appeal (A-400-08) relates to a subsequent decision of the Agency that essentially incorporates the earlier decisions of the Agency that are now under appeal. That decision has also been stayed pending the outcome of this appeal pursuant to an order made on July 24, 2008.

[5] The consolidated appeals and the subsequent appeal were heard together.

BACKGROUND

Overview

[6] The current freight rate regime with respect to the movement of western grain is succinctly described by Justice Rothstein in paragraphs 1 and 2 of the Demurrage Decision as follows:

> [1] The railway transportation of grain from points in western Canada to Thunder Bay and later to Vancouver and Prince Rupert for export, has been the subject of an evolving system of freight rate regulation since 1897 with *An Act to Authorize a Subsidy for a Railway through the Crows Nest Pass*, 60 & 61 Vict, c. 5., paragraph 1(*e*). Prior to August 1, 2000, the movement of western grain was regulated based on maximum rates. By *An Act to Amend the Canada Transportation Act*, S.C. 2000, c. 16, this maximum rate regulation was replaced with the regulation of maximum annual revenues that the Canadian Pacific Railway Company (CP), Canadian National Railway Company and other prescribed railway companies may earn for the movement of western grain.
>
> [2] Under this new form of regulation, the Canadian Transportation Agency (Agency) determines the maximum revenue entitlement (revenue cap) for each railway company for each year ending July 31 (crop year) according to a formula set out in the *Canada Transportation Act*, S.C. 1996, c. 10, as amended by S.C. 2000, c. 16. If a railway company's revenues for the movement of western grain for the crop year exceed the company's revenue cap for that year, the company is required to pay out the excess together with applicable penalties pursuant to the *Railway Company Pay Out of Excess Revenue for the Movement of Grain Regulations*, SOR/2001-207 of June 7, 2001. [Emphasis in original.]

The Agency and the Revenue Cap

[7] In each crop year the Agency is required to determine the maximum revenue entitlement and the actual revenues for each of CN and CP from the movement of western grain, in accordance with sections 150 and 151 of the CTA. The VRCPI, the adjustment of which is at the heart of the present appeals, is variable F in the revenue cap formula in subsection 151(1) of the CTA.

[8] The relevant portions of those provisions read as follows:

150. (1) A prescribed railway company's revenues, as determined by the Agency, for the movement of grain in a crop year may not exceed the company's maximum revenue entitlement for that year as determined under subsection 151(1).	150. (1) Le revenu d'une compagnie de chemin de fer régie pour le mouvement du grain au cours d'une campagne agricole, calculé par l'Office, ne peut excéder son revenu admissible maximal, calculé conformément au paragraphe 151(1), pour cette campagne.
(2) If a prescribed railway company's revenues, as determined by the Agency, for the movement of grain in a crop year exceed the company's maximum revenue entitlement for that year as determined under subsection 151(1), the company shall pay out the excess amount, and any penalty that may be specified in the regulations, in accordance with the regulations.	(2) Si le revenu d'une compagnie de chemin de fer régie pour le mouvement du grain au cours d'une campagne agricole, calculé par l'Office, excède son revenu admissible maximal, calculé conformément au paragraphe 151(1), pour cette campagne, la compagnie verse l'excédent et toute pénalité réglementaire en conformité avec les règlements.
. . .	[…]
(6) The Agency shall make the determination of a prescribed railway company's revenues for the movement of grain in a crop year on or before December 31 of the following crop year.	(6) L'Office calcule le montant du revenu de chaque compagnie de chemin de fer régie pour le mouvement du grain au cours d'une campagne agricole au plus tard le 31 décembre de la campagne suivante.
151. (1) A prescribed railway company's maximum revenue entitlement for the movement of grain in a crop year is the amount determined by the Agency in accordance with the formula	151.(1) Le revenu admissible maximal d'une compagnie de chemin de fer régie pour le mouvement du grain au cours d'une campagne agricole est calculé par l'Office selon la formule suivante :

[A/B + ((C - D) x $0.022)] x E x F

Where

A is the company's revenues for the movement of grain in the base year;

B is the number of tonnes of grain involved in the company's movement of grain in the base year;

C is the number of miles of the company's average length of haul for the movement of grain in that crop year as determined by the Agency;

D is the number of miles of the company's average length of haul for the movement of grain in the base year;

E is the number of tonnes of grain involved in the company's movement of grain in the crop year as determined by the Agency; and

F is the volume-related composite price index as determined by the Agency.

(2) For the purposes of subsection (1), in the case of the Canadian National Railway Company,

(*a*) A is $348,000,000;

(*b*) B is 12,437,000; and

[A/B + ((C - D) × 0,022 $)] × E × F

où

A représente le revenu de la compagnie pour le mouvement du grain au cours de l'année de référence;

B le nombre de tonnes métriques correspondant aux mouvements de grain effectués par la compagnie au cours de l'année de référence;

C le nombre de milles correspondant à la longueur moyenne des mouvements de grain effectués par la compagnie au cours de la campagne agricole, tel qu'il est déterminé par l'Agence;

D le nombre de milles correspondant à la longueur moyenne des mouvements de grain effectués par la compagnie au cours de l'année de référence;

E le nombre de tonnes métriques correspondant aux mouvements de grain effectués par la compagnie au cours de la campagne agricole, tel qu'il est déterminé par l'Office;

F l'indice des prix composite afférent au volume, tel qu'il est déterminé par l'Office.

(2) Pour l'application du paragraphe (1), dans le cas de la Compagnie des chemins de fer nationaux du Canada :

a) A est égal à 348 000 000 $;

b) B est égal à 12 437 000;

(*c*) D is 1,045.

(3) For the purposes of subsection (1), in the case of the Canadian Pacific Railway Company,

(*a*) A is $362,900,000;

(*b*) B is 13,894,000; and

(*c*) D is 897.

(4) The following rules are applicable to the volume-related composite price index:

(*a*) in the crop year 2000-2001, the index is deemed to be 1.0;

(*b*) the index applies in respect of all of the prescribed railway companies; and

(*c*) the Agency shall make adjustments to the index to reflect the costs incurred by the prescribed railway companies for the purpose of obtaining cars as a result of the sale, lease or other disposal or withdrawal from service of government hopper cars and the costs incurred by the prescribed railway companies for the maintenance of cars that have been so obtained.

(5) The Agency shall make the determination of a prescribed railway company's maximum revenue entitlement for the movement of grain in a crop year under subsection (1) on or before December 31 of the following crop year and shall make the determination of the volume-related composite price index on or before April 30 of the previous crop year.

(6) Despite subsection (5), the Agency

c) D est égal à 1 045.

(3) Pour l'application du paragraphe (1), dans le cas de la Compagnie de chemin de fer Canadien Pacifique :

a) A est égal à 362 900 000 $;

b) B est égal à 13 894 000;

c) D est égal à 897.

(4) Les règles suivantes s'appliquent à l'indice des prix composite afférent au volume :

a) l'indice pour la campagne agricole 2000-2001 est égal à 1,0;

b) l'indice est applicable à toutes les compagnies de chemin de fer régies;

c) l'Office ajuste l'indice afin de tenir compte des coûts supportés par les compagnies de chemin de fer régies, d'une part, pour l'obtention de wagons à la suite de la disposition, notamment par vente ou location, ou de la mise hors de service de wagons-trémies du gouvernement et, d'autre part, pour l'entretien des wagons ainsi obtenus.

(5) L'Office calcule le montant du revenu admissible maximal pour le mouvement du grain de chaque compagnie de chemin de fer régie au cours d'une campagne agricole au plus tard le 31 décembre de la campagne suivante et calcule l'indice des prix composite afférent au volume pour cette campagne au plus tard le 30 avril de la campagne précédente.

(6) Malgré le paragraphe (5), l'Office

shall make the adjustments referred to in paragraph (4)(*c*) at any time that it considers appropriate and determine the date when the adjusted index takes effect.	effectue les ajustements visés à l'alinéa (4)*c*) lorsqu'il l'estime indiqué, et détermine la date de prise d'effet de l'indice ainsi ajusté.

The Revenue Cap and the VRCPI

[9] A revenue cap is determined annually for each of the railways as a consequence of the application of the formula in subsection 151(1) of the CTA. That formula includes data with respect to base year miles, tonnes shipped and revenue, as well as current year miles and tonnes data, which are specific to each railway. The VRCPI component of the formula serves an indexing function and is the same for each railway.

[10] Pursuant to paragraph 151(4)(*a*) of the CTA, the VRCPI for the 2000-2001 crop year, the year that the revenue cap regime commenced, is deemed to be 1.0. In subsequent crop years, the VRCPI, as determined in subsection 151(5) of the CTA, typically increased, essentially reflecting price increases faced by the railways. Generally speaking, an increase in the VRCPI for a crop year would be expected to result in an increase in the revenue caps of the railways for that year. On April 27, 2007, the last time the VRCPI was set before the enactment of Bill C-11, the Agency set the VRCPI for the 2008-2009 crop year at 1.1611, which represented a 3.2 percent increase relative to the preceding crop year.

Hopper Car Maintenance Costs and the VRCPI

[11] The determination of the VRCPI for the 2000-2001 crop year was based on a number of components. One of them was an amount that was representative of the costs incurred by the

railways to maintain the hopper cars used in the shipment of western grain. The hopper car maintenance costs represented by that amount were derived in a quadrennial costing review that occurred in 1992. Accordingly, those costs are referred to as “embedded” or “historic” hopper car maintenance costs.

[12] Issues with respect to the relationship between the amount of “embedded” hopper car maintenance costs and the overall cost of shipping western grain have been around for many years. In this context, it is noted that many of the hopper cars used by the railways were (and still are) owned by the Government of Canada (approximately 12,100 hopper cars in May 2006) and were (and still are) provided by it to the railways at no cost, to the extent that those hopper cars were used in the shipment of western grain. Concerns have been expressed that by virtue of operating efficiencies achieved by the railways since 1992, the amount of “actual” hopper car maintenance costs incurred by the railways is less than the amount of hopper car maintenance costs “embedded” in the VRCPI. Those expressing such concerns generally also held the view that if “embedded” hopper car maintenance costs in the VRCPI were replaced with “actual” hopper car maintenance costs, the result would be to reduce the VRCPI, which would, in turn, lead to a reduction in the per tonne cost of shipping western grain.

[13] Significant attention was focused on issues relating to hopper car maintenance costs in the context of a potential transaction between the Government of Canada and an organization known as the Farmers Rail Car Coalition (“FRCC”), whereunder the government proposed to lease, and ultimately sell, its hopper cars to FRCC. In one scenario, FRCC would have leased the hopper cars

to the railways but retained the obligation to maintain them. In that case, the railways would no longer have had any “actual” hopper car maintenance costs and an adjustment to the VRCPI was contemplated to remove the “embedded” hopper car maintenance costs from the VRCPI. The operating assumption was apparently that FRCC’s cost of maintaining the hopper cars would be less than the hopper car maintenance costs that were “embedded” in the VRCPI and as a result, there would be a reduction in the per tonne shipping costs of western grain.

[14] Much work was done in order to determine the validity of this operating assumption. Transport Canada requested that the Agency make determinations of the relevant costs. The Agency, in turn, requested and received information from the railways. In the course of that process, the Agency released Technical Documents, dated July 5, 2005, which contained a methodology with respect to an adjustment to the VRCPI in the event that the railways no longer incurred hopper car maintenance costs, as well as an estimate of the amount of hopper car maintenance costs that was “embedded” within the revenue caps for the 2006-2007 crop year.

Bill C-11

[15] In the end, the Government of Canada decided to retain its hopper cars and abandoned the transaction with FRCC.

[16] On May 4, 2006, Transport Canada issued a News Release confirming that it would not proceed with the FRCC arrangements and announcing that Bill C-11 had been introduced into the House of Commons. A portion of the News Release reads as follows:

> Amendments to the *Canada Transportation Act* (CTA) were introduced today in the House of Commons to permit the Canadian Transportation Agency to adjust the maintenance costs in the maximum revenues the railways can earn from eligible grain shipments (revenue caps). This adjustment will apply to all hopper cars used in regulated grain service and will more closely align the costs in the revenue caps with the actual costs of maintaining the hopper cars in revenue cap service. Estimates show potential savings for farmers of approximately $2.00 per tonne.
>
> "Farmers will benefit greatly from the government's decision to keep the cars," added Minister Cannon. "The amendments to the CTA will allow an adjustment to maintenance costs in the railways' revenue caps for all hopper cars used in regulated grain service. The savings will allow farmers to see more profits in their business."

[17] It is apparent from this News Release that the Government of Canada, as represented by the Minister in charge of Transport Canada, expected that the adjustment to the VRCPI that was contemplated by Clause 57 would reduce "embedded" hopper car maintenance costs such that farmers would realize potential freight rate reductions of approximately $2.00 per tonne of western grain shipments.

Decision No. 211-R-2007

[18] Subsection 151(5) of the CTA requires the Agency to determine the VRCPI in respect of a crop year on or before April 30 of the previous crop year – in other words, the VRCPI for a crop year is to be determined in advance of that crop year. Because Bill C-11 had not yet been passed, the Agency determined the VRCPI for the 2007-2008 crop year on April 27, 2007, setting it at 1.1611.

[19] In its decision, the Agency responded to concerns that were raised by non-railway respondents who called for a "Costing Review". Those concerns are described in paragraph 10 of that decision, which reads as follows:

> [10] One of the major concerns raised by a number of non-railway respondents during the 2007-2008 crop year consultation was the need for a "Costing Review", in order to adjust the CTA's cost-based revenues (which determine the railway companies' annual revenue caps) to a more appropriate level. Respondents complained that the Agency conducts a thorough and complex analysis into the annual determination of the volume-related composite price index, but gives no consideration to the cost-based revenue to which this index is applied; cost-based revenue which dates back to 1992 Costing Review information. The respondents indicated that it is unfair and inappropriate for the railway companies to benefit by having their revenue increased to capture railway cost inflation while at the same time incurring no revenue adjustment to take into account extensive productivity gains accrued by the railways since the partial adjustment that was made in 2000, in respect of the Revenue Cap Regime.

[20] The Agency did not directly respond to this concern. Instead, it stated an intention to refer the matter to the attention of Transport Canada.

THE IMPUGNED DECISIONS

The Interim Decision

[21] On June 22, 2007, Bill C-11, received Royal Assent.

[22] On June 26, 2007, the Minister of Transport wrote to the Agency Chairperson requesting the Agency to adjust the VRCPI. In his letter, the Minister stated:

> Given the importance of this matter to the grain transportation sector, the Canadian Transportation Agency's expeditious determination of these adjustments would be most appreciated, especially if they could become effective for the new 2007-2008 crop year.

[23] On June 28, 2007, the Agency issued an Advisory to the railway companies. In it, the Agency stated that its preliminary analysis indicated that the one-time adjustment to “embedded” hopper car maintenance costs would be in the range of $60 to $75 million, which would reduce the VRCPI in the 2007-2008 crop year to about 1.07. The Agency further indicated that after industry consultation, a final determination was expected to be made on January 31, 2008, with the resulting adjustment to the VRCPI being effective August 1, 2007.

[24] On July 16, 2007, the Agency wrote to the railways asking if they were willing to accept the approach of the Agency in the Advisory. In correspondence dated July 17, 2007 and July 20, 2007, CP and CN responded in the negative.

[25] On July 26, 2007, the Agency issued a letter decision, LET-R-138-2007, in which it acknowledged the unwillingness of the railways to accept the approach in the Advisory. The Agency stated that in order to deal with some uncertainty that resulted from the issuance of the Advisory, it was contemplating issuing an interim order on August 1, 2007, that would set the VRCPI for the 2007-2008 crop year on an interim basis, to be followed by a final order that would subsequently determine the VRCPI for the entirety of that crop year. The Agency requested submissions with respect to this procedure.

[26] In separate correspondence to the Agency, dated July 30, 2007, the railways expressed their disagreement with the procedure that the Agency proposed in its July 26, 2007 letter decision.

[27] As a consequence of communications between officials of the Agency and the railways, the possibility of having the Clause 57 adjustment to the VRCPI determined and applied as of October 1, 2007, was discussed as an alternative to the interim order that the Agency was contemplating. To that end, the railways made submissions that were received by the Agency around noon on July 31, 2007.

[28] Despite these efforts, no agreement was reached with respect to this proposal. Accordingly, the Agency proceeded to issue Decision No. 388-R-2007 (the "Interim Decision") in the afternoon of July 31, 2007.

[29] In that decision, the Agency varied the VRCPI that had been determined on April 27, 2007, from 1.1611 to 1.0884, effective August 1, 2007, thereby reducing the per tonne cost of shipping western grain by approximately $2.00. The Agency stated that the interim VRCPI would be replaced by a final VRCPI, no later than January 1, 2008, after further audit, assessment and consultation on hopper car maintenance costs had occurred. The final VRCPI, once determined, would apply to the entire 2007-2008 crop year.

[30] In the Interim Decision, the Agency gave reasons for the approach that it had taken. First, it stated that any delay in the determination of the VRCPI for the immediate crop year would militate against commercial certainty. Determining the VRCPI on an interim basis would serve as a guide to increase planning certainty for railway companies, producers and grain shippers alike. The Agency

also cited a need to further audit, assess and consult with the railways on their actual maintenance costs. It stated: “The $2.00 per tonne estimate is just that, an estimate, that needs to be examined further given the importance of the final index to overall railway grain revenues and average producer shipping rates.”

[31] In the Agency’s view, the replacement of the interim VRCPI by the final VRCPI met these policy and practical objectives while complying with the “once only” requirement of Clause 57. Following the issuance of the final order, there would be one VRCPI applied to the entire 2007-2008 crop year. The Agency found its statutory authority to issue the Interim Decision in subsection 28(2) of the CTA and relied on section 32 as authority to vary the VRCPI that was set on April 27, 2007. These two sections of the CTA read as follows:

28. (2) The Agency may, instead of making an order final in the first instance, make an interim order and reserve further directions either for an adjourned hearing of the matter or for further application.	28. (2) L’Office peut prendre un arrêté provisoire et se réserver le droit de compléter sa décision lors d’une audience ultérieure ou d’une nouvelle demande.
32. The Agency may review, rescind or vary any decision or order made by it or may re-hear any application before deciding it if, in the opinion of the Agency, since the decision or order or the hearing of the application, there has been a change in the facts or circumstances pertaining to the decision, order or hearing.	32. L’Office peut réviser, annuler ou modifier ses décisions ou arrêtés, ou entendre de nouveau une demande avant d’en décider, en raison de faits nouveaux ou en cas d’évolution, selon son appréciation, des circonstances de l’affaire visée par ces décisions, arrêtés ou audiences.

[32] The railway companies appealed the Interim Decision to this Court (Appeal #1 and Appeal #2) and obtained stays of that decision, pending the outcome of those appeals.

The Costs Decision

[33] On July 4, 2007, in the context of the Clause 57 adjustment, the Agency issued a letter decision, LET-R-123-2007, requesting the railways to submit hopper car maintenance costs for the years 2004 to 2006. The Agency stated that if possible, the costs should be classified in accordance with the Uniform Classification of Accounts ("UCA").

[34] On August 15, 2007, CP responded to this request and provided costing information. Approximately three months later, CP wrote to the Agency indicating that the costing estimates provided in its August 15, 2007 correspondence had been prepared using a particular methodology that relied on a detailed analysis of individual hopper car maintenance records to build the annual cost of maintenance of its fleet. CP went on to state that in the audit process following the August 15, 2007 submission, it had not been able to reply to certain of the Agency's audit requests, which indicated that the results presented in that submission were unreliable. Accordingly, CP requested that the Agency set aside its August 15, 2007 submission and that an alternate submission be accepted by the Agency.

[35] On November 26, 2007, the Agency advised CP that its alternate submission did not provide an accurate indication of actual costs, as the costs provided were system average costs, rather than costs specific to each hopper car. The Agency permitted CP to withdraw its earlier submission but was unprepared to accept the replacement submission. The Agency advised that unless CP was able to provide verifiable actual cost data by December 10, 2007, the Agency might have no choice except to use CN's costs, which were actual costs provided by individual hopper cars and classified

in accordance with the UCA, as the Agency had requested. In the circumstances, the Agency stated that CN's costs might provide the best available representative measure of the maintenance costs for hopper cars used to ship western grain.

[36] In correspondence to the Agency, dated December 5, 2007 and January 11, 2008, CP asserted that the system average cost data that it was proposing to supply should be acceptable and that the use of CN's costs as a proxy was unacceptable, since CN's costs were much lower than CP's costs.

[37] On January 18, 2008, the Agency issued letter decision, LET-R-12-2008 (the "Costs Decision"). In that decision, it determined that the failure on the part of CP to provide hopper car maintenance data in the form and with the content that had been requested prevented the Agency from determining CP's actual costs as required to fulfil its mandate under Clause 57. Accordingly, the Agency determined that it would use CN's actual costs as a proxy for CP's costs for the purposes of the Clause 57 adjustment.

[38] The Agency noted that CP's regulatory dereliction had necessitated the decision to use CN's costs so that a delay in the fulfillment of its mandate could be avoided. In particular, the Agency stated:

> There are grain industry and public interests involved here that warrant the proper completion of this duty on time.

[39] CP appealed the Costs Decision to this Court (Appeal #3) and obtained a stay of that decision, pending the outcome of the appeal.

The Disclosure Decision

[40] On January 23, 2008, CP wrote to the Agency to express its disagreement with the Costs Decision. In that correspondence, CP stated that the Agency's decision to use CN's costs as a proxy for CP costs was erroneous, in part because CP had not been given an opportunity to review the Agency's assessment of CP's hopper car maintenance costs based on CN's actual costs.

[41] On January 31, 2008, the Agency issued letter decision, LET-R-24-2008 (the "Disclosure Decision"), in response to the January 23, 2008 letter from CP. In this decision, the Agency confirmed the Costs Decision. It also addressed CP's allegation that the Costs Decision was flawed in part because CP had not received disclosure of CN's costs that were to be used as a proxy for CP's costs. Having consulted with CN, the Agency determined that it would not disclose CN's actual costs to CP. However, in lieu of such disclosure, the Agency agreed to provide information to CP with respect to the costing assessment that the Agency had undertaken in relation to the cost data that CN had provided for the purposes of the Clause 57 adjustment, and to allow CP to comment on that costing assessment. The Agency also reiterated that its decision to use CN's costs as a proxy for CP's costs was a default measure that had been necessitated by CP's failure to provide the requested information within the stated time frame.

[42] CP appealed the Disclosure Decision to this Court (Appeal #4) and obtained a stay of that decision, pending the outcome of the appeal.

Final Decision

[43] On October 15, 2007, the Agency released a forty-two page document that was the basis for a consultation process with respect to the Clause 57 adjustment. This process sought input with respect to three determinations: a methodology to adjust the VRCPI, the amount of hopper car maintenance costs that were "embedded" in the revenue cap for the 2007-2008 crop year and the amount of the "actual" hopper car maintenance costs for that crop year. Seven issues were canvassed in the consideration of these three determinations. Those issues are as follows:

Issue No. 1:	The determination of a price index adjustment methodology
Issue No. 2:	The inclusion of Uniform Classification of Account 517 as car maintenance
Issue No. 3:	The level of contribution to constant costs applicable to 1992
Issue No. 4:	The use of a system-wide or specific measure of inflation
Issue No. 5:	The use of a system-wide or specific measure of productivity to determine crop year 2007-2008 "embedded" hopper car maintenance costs
Issue No. 6:	Issues related to the determination of "actual" hopper car maintenance costs for crop year 2007-2008
Issue No. 7:	The level of contribution to constant costs applicable to "actual" crop year 2007-2008 hopper car maintenance costs

Approximately thirty organizations interested in western grain matters participated in this process.

[44] The Agency considered the submissions that were made to it and on February 19, 2008, it issued Decision No. 67-R-2008 (the "Final Decision"). The Agency determined that the VRCPI as adjusted under Clause 57 was 1.0639, and that such amount constituted the VRCPI for the entire 2007-2008 crop year and replaced the VRCPI that was determined under the Interim Decision. The Agency determined that the "embedded" hopper car maintenance costs of the railways for the 2007-2008 crop year were $105.1 million and their "actual" hopper car maintenance costs for that year were $32.9 million. The reduction in the VRCPI for the 2007-2008 crop year (from 1.1611 to 1.0639) resulted from the removal from the VRCPI for that year of $72.2 million, the difference between the amount of "embedded" and "actual" hopper car maintenance costs for that crop year.

[45] The Agency found that the retrospective aspect of the Final Decision was consistent with *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, [1989] 1 S.C.R. 1722, which interpreted subsection 60(2) of the *National Transportation Act*, R.S.C. 1985, c. N-20, which is identical to subsection 28(2) of the CTA. The Agency determined that recourse to the interim/final order procedure was necessary to ensure that the Clause 57 adjustment was made on a timely basis to address the interests of the grain industry, the railways, shippers, producers and other affected persons.

[46] The railway companies appealed the Final Decision to this Court (Appeal # 5) and obtained stays of that decision, pending the outcome of those appeals.

The 2008-2009 VRCPI Decision

[47] On April 24, 2008, while the consolidated appeals were outstanding, the Agency issued Decision No. 207-R-2008 (the "2008-2009 VRCPI Decision") in which the VRCPI was determined to be 1.1493 for the 2008-2009 crop year. In setting the VRCPI for that crop year, the Agency apparently adopted the Final Decision notwithstanding that it had been stayed.

[48] CP appealed the 2008-2009 VRCPI Decision to this Court (Appeal # 6) and obtained a stay of that decision, pending the outcome of the appeal.

ANALYSIS

Standard of Review

[49] In *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9, the Supreme Court of Canada determined that there are now only two standards of review: reasonableness and correctness. With respect to the choice between those two standards, Bastarache J. stated:

> [57] An exhaustive review is not required in every case to determine the proper standard of review. Here again, existing jurisprudence may be helpful in identifying some of the questions that generally fall to be determined according to the correctness standard (*Cartaway Resources Corp. (Re)*, [2004] 1 S.C.R. 672, 2004 SCC 26). This simply means that the analysis required is already deemed to have been performed and need not be repeated.
>
> [62] In summary, the process of judicial review involves two steps. First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review.

[50] Thus, the benefit of prior judicial consideration of the applicable standard of review is available. In that regard, the decision of the Supreme Court in *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, [2007] 1 S.C.R. 650, 2007 SCC 15, provides clear guidance with respect to the standard of review to be applied in circumstances in which the Agency is interpreting the CTA, its own statute. In particular, in paragraphs 98 to 100, Abella J. states:

> [98] The human rights issues the Agency is called upon to address arise in a particular – and particularly complex – context: the federal transportation system. The *Canada Transportation Act* is highly specialized regulatory legislation with a strong policy focus. The scheme and object of the Act are the oxygen the Agency breathes. When interpreting the Act, including its human rights components, the Agency is expected to bring its transportation policy knowledge and experience to bear on its interpretations of its assigned statutory mandate: *Pushpanathan*, at para. 26.
>
> [99] The allegedly jurisdictional determination the Agency was being asked to make, like the "undueness" inquiry, falls squarely within its statutory mandate. It did not involve answering a legal question beyond its expertise, but rather requires the Agency to apply its expertise to the legal issue assigned to it by statute. The Agency, and not a reviewing court, is best placed to determine whether the Agency may exercise its discretion to make a regulation for the purpose of eliminating an undue obstacle to the mobility of persons with disabilities – a determination on which the Agency's jurisdiction to entertain applications depends.
>
> [100] The Agency is responsible for interpreting its own legislation, including what that statutory responsibility includes. The Agency made a decision with many component parts, each of which fell squarely and inextricably within its expertise and mandate. It was therefore entitled to a single, deferential standard of review.
>
> [Emphasis added.]

[51] *VIA Rail* provides considerable guidance with respect to the determination of the applicable standard of review in the instant appeals. First, it instructs that with respect to questions relating to the interpretation of the CTA, the more deferential standard of reasonableness must be accorded to the Agency. Secondly, it is reasonable to conclude that if deference is to be accorded to the Agency

in relation to questions of interpretation of the CTA, a question of law, that same deferential standard should be accorded to the Agency when it deals with questions of fact, discretion and policy, as well as questions of mixed fact and law. Finally, the reference in paragraph 99 to the "allegedly jurisdictional determination" cautions against a broad view of what constitutes a question of jurisdiction, in respect of which the standard of review is correctness. In this regard, Bastarache J., in paragraph 59 of *Dunsmuir* also instructs that a question of jurisdiction is to be understood in "the narrow sense of whether the tribunal had the authority to make the inquiry".

Appeals #1 and #2: The Interim Decision

Issues

[52] The issues in the appeals against the Interim Decision are as follows:

(a) whether the Agency erred in determining that the Clause 57 adjustment could be undertaken by way of an interim order pursuant to subsection 28(2) of the CTA followed by a subsequent final order, having regard to the "once only" requirement in Clause 57;

(b) whether in making the Interim Decision, the Agency failed to act in accordance with the principles of procedural fairness or natural justice;

(c) whether the Agency prejudged the issue of the Clause 57 adjustment prior to making the Interim Decision; and

(d) whether the Agency abused its discretion by taking direction from, or delegating its power to, the Minister of Transport in making the Interim Decision and setting the date for the Claus 57 adjustment.

Whether the Agency erred in determining that the Clause 57 adjustment could be undertaken by way of an interim order pursuant to subsection 28(2) of the CTA followed by a subsequent final order having regard to the "once only" requirement in Clause 57

There was No Application before the Agency

[53] The railways argue that it was not open to the Agency to make an interim order under subsection 28(2) of the CTA on the basis that such order was not made in response to or as a result of an application, as defined in the *Canadian Transportation Agency General Rules*, S.O.R./2005-35 (the "CTA Rules").

[54] In my view, that contention calls for an overly strict interpretation of subsection 28(2) of the CTA. More importantly, that contention is contrary to the decision in *Bell Canada*, where the Supreme Court of Canada interpreted subsection 60(2) of the *National Transportation Act*, which is identical to subsection 28(2) of the CTA. In dealing with the scope of that provision, Gonthier J. stated at page 1754:

> The appellant may make a wide variety of interim orders dealing with hearings, notices and, in general, all matters concerning the administration of proceedings before the appellant.

Whether or not the matter of the Clause 57 adjustment came before the Agency by way of an application, as defined in the CTA Rules, that matter was definitely a proceeding that was before the Agency. It follows, in my view, that subsection 28(2) of the CTA is not, on its face, inapplicable in relation to the mandate of the Agency under Clause 57.

“Once Only” precludes Two Orders

[55] The railways also argued that the use of the interim order procedure is beyond the Agency’s jurisdiction in that Clause 57 permits the adjustment to be made “once only”. In effect, the railways contend that the interim and final orders constitute two adjustments to the VRCPI.

[56] The Agency contends that this is not an issue of jurisdiction. Instead, the Agency argues that the question is one of statutory interpretation. According to the Agency, the “once only” requirement relates to the process of making the Clause 57 adjustment and that the decision to undertake the process in two stages is necessary to balance the interests of all stakeholders.

[57] In my view, the characterization of this issue as one of statutory interpretation is to be preferred. In that regard, I am mindful of the admonitions in *VIA Rail* and *Dunsmuir* that point to a narrow interpretation of what constitutes a jurisdictional issue. Thus, I conclude that this question is to be determined on a standard of reasonableness, consistent with the teachings in *VIA Rail*.

[58] The interpretation of the “once only” requirement in Clause 57 as permitting a two-stage process is consistent with the broad mandate of the Agency, as set out in section 5 of the CTA, to consider a wide range of constituencies, including producers and shippers. Those groups, in accordance with the stated Government of Canada expectations in the May 4, 2006 News Release, anticipated receiving a measure of freight rate relief as a result of the Clause 57 adjustment. The selection of the interim order approach balanced the needs of those with an expectation of such relief on a timely basis against the rights of the railways, the providers of that relief, to have an

opportunity to make full and complete representations with respect to the issues that were required to finalize the quantum of the relieving Clause 57 adjustment. To that extent, the decision of the Agency to adopt the two-stage process can be seen to be reasonable, and therefore not subject to intervention.

Was the Interim Decision a subsection 28(2) order?

[59] The appellants also contend that the Interim Decision was not an interim order at all. Instead, they contend that it should be characterized as a final order.

[60] In *Bell Canada*, Gonthier J. addressed the characteristics that distinguish interim orders from final orders at page 1754:

> Traditionally, such interim rate orders dealing in an interlocutory manner with issues which remain to be decided in a final decision are granted for the purpose of relieving the applicant from the deleterious effects caused by the length of the proceedings. Such decisions are made in an expeditious manner on the basis of evidence which would often be insufficient for the purposes of the final decision. The fact that an order does not make any decision on the merits of an issue to be settled in a final decision and the fact that its purpose is to provide temporary relief against the deleterious effects of the duration of the proceedings are essential characteristics of an interim rate order. [Emphasis added.]

[61] In my view, the Interim Decision cannot be regarded as a final decision. It provided interim relief to the producers and shippers in the context of the longer process necessary to undertake the final VRCPI adjustment. As well, the Interim Decision did not purport to decide the detailed issues on which submissions were required to be received from interested parties before a final decision could be made.

Whether in making the Interim Decision, the Agency failed to act in accordance with the principles of procedural fairness or natural justice

Procedural Fairness

[62] The railways argued that the Interim Decision must be struck down because it was made without input from them and, as such, there was an absence of procedural fairness. In my view, this argument cannot be accepted. The Agency, in fact, received and considered submissions from the railways with respect to the critical issue of whether the interim/final order procedure contemplated by subsection 28(2) of the CTA could be used. To that extent, the railways were accorded procedural fairness. The Agency specifically stated that the adjustment that was made to the VRCPI in the Interim Decision was only an estimate that would be subject to further examination in the second stage of the process. Procedural fairness in relation to that part of the process was addressed by the consultation initiative that commenced in mid-October of 2007.

Whether the Agency prejudged the issue of the Clause 57 adjustment prior to making the Interim Decision

[63] The railways contend that the Agency had fettered or abused its discretion by prejudging the issue of the adjustment to the VRCPI and that the Agency had "made up its mind" with respect to that adjustment in advance of the Interim Decision. As such, the railways urge the Court to set aside the Interim Decision.

[64] In my view, this argument cannot succeed. The conclusion that I have reached that the Interim Order constitutes an interim order as contemplated by subsection 28(2) demonstrates that the amount of the Clause 57 adjustment that was made, was not a final determination of that

adjustment. It was, according to the Agency, an “estimate” and nothing more. The Agency “made up its mind” in the Final Order, after the consultation process had taken place. I would also observe that no serious argument was made that the Agency had prejudged the direction of the adjustment. For example, in correspondence from CN to the Agency, dated July 30, 2007, CN disputed the Agency’s suggestion that the $2.00 per tonne interim adjustment was conservative and stated that “the adjustment should be in the order of $1.40 per tonne”, clearly indicating that CN expected that the Clause 57 adjustment would reduce freight rates. (Appeal Book page 452)

Whether the Agency abused its discretion by taking direction from, or delegating its power to, the Minister of Transport in making the Interim Decision and setting the date for the Claus 57 adjustment.

[65] The railways contend that the Agency’s decision to implement the Clause 57 adjustment, effective as of August 1, 2007, amounted to a delegation to the Minister of Transport of the obligation of the Agency, in Clause 57, to select a date for the adjustment.

[66] In response, the Agency argues that the Minister merely requested that the adjustment be made effective at the start of the 2007-2008 crop year.

[67] In my view, the contention of the railways has not been made out. Nothing indicates that the Agency, in selecting the effective date of the Clause 57 adjustment, did anything other than consider the interests of the various constituencies that it is mandated by section 5 of the CTA to consider.

[68] For the foregoing reasons, I would dismiss the appeals from the Interim Decision.

Appeal #3: The Costs Decision

[69] The issue in this appeal is whether the Agency erred in refusing to consider the cost information that CP submitted and in deciding to use the costs submitted by CN as a proxy for CP's costs.

[70] CP characterizes this issue as an abuse of discretion and a failure to permit CP to make informed submissions, thus constituting a breach of the duty of fairness. According to CP, the standard of review with respect to this issue is correctness.

[71] The Agency contends that this issue is essentially one of CP's own making in that CP failed to provide cost data in a form that the Agency had requested. In that regard, the Agency noted that CN was able to comply with the Agency's requirements.

[72] In my view, the determination of the Agency of the type of cost information that it required in order to make the Clause 57 adjustment is a matter that falls squarely within the expertise of the Agency, whether that determination is one of fact, discretion policy or mixed fact and law. Accordingly, I am of the view that this determination must be shown to have been unreasonable before any judicial intervention can occur.

[73] The Agency interpreted its mandate in relation to the Clause 57 adjustment as requiring a determination of the actual hopper car maintenance costs incurred by the railways in the movement

of western grain. To that end, cost information that was particularized on the basis of individual hopper cars and in conformity with the UCA was requested by the Agency, as late as July 4, 2007. CP's response to that request was withdrawn after it had become apparent to CP and the Agency that the information supplied by CP in response to that request was unreliable. The Agency found CP's attempt to remedy these deficiencies was inadequate and advised CP to that effect in correspondence dated November 26, 2007.

[74] CP now argues that the Agency's information requests required it "to do the impossible" by providing information that it was not required to keep and did not, in fact, keep. This argument is difficult to comprehend and I do not accept it. CP purported to comply with the Agency's request for particularized hopper car information in conformity with the UCA. However, that information having been established to be unreliable, CP now protests against its obligation to provide it. The contention of impossibility is addressed by the observation that CN was able to comply with the Agency's information request.

[75] The inability of CP to comply with the Agency's request left the Agency in the position of accepting CP's system average cost submissions or choosing another alternative. The Agency opted to use CN's costs as a proxy for the actual costs that CP failed to provide. In that regard, I am unable to conclude that the choice made by the Agency was unreasonable.

[76] CP also argues that the Agency failed to consider the submissions contained in CP's correspondence to the Agency, dated December 5, 2007, and thereby failed to accord procedural

fairness to CP. In my view, that correspondence does little more than reiterate the submissions that CP previously made and requests that the Agency "reconsider its reasons" for its prior response on the matter of whether CP's costs, as submitted, should be accepted. Moreover, the first paragraph of the Costs Decision specifically refers to the December 5, 2007 correspondence. The fact that the Agency did not accept the submissions made by CP in that correspondence does not establish that those submissions were not considered by the Agency.

[77] Accordingly, for these reasons, I would dismiss the appeal from the Costs Decision.

Appeal #4: The Disclosure Decision

[78] The issues in this appeal are whether the Agency erred in not changing the Costs Decision in light of CP's disagreement with that decision, in its correspondence to the Agency, dated January 23, 2008, and whether the Agency should have disclosed to CP the information that was submitted by CN.

[79] For the reasons stated above, in relation to the Costs Decision, I find no error on the part of the Agency in its decision not to change the Costs Decision.

[80] With respect to the matter of the refusal to disclose CN's confidential information to CP, I am unable to locate in the record any request by CP for disclosure of such information. Nonetheless, CP alleges that the Agency erred in failing to give CP the opportunity to evaluate the CN information.

[81] The Agency was cognizant of the fact that the retention of CN's costs as confidential would limit CP's ability to comment on whether CN's costs were an appropriate proxy for its costs. To address that issue, the Agency provided information with respect to the Agency's costing assessment in relation to certain of CN's costs that were to be used in the Clause 57 determination and gave CP an opportunity to comment on that information. In the circumstances, this evidences a reasonable attempt on the part of the Agency to enable CP to have additional input in relation to this aspect of the Clause 57 determination, recognizing that the difficulty in which CP found itself was largely brought about by its own inability to provide the costing information that had been requested by the Agency.

[82] Accordingly, for these reasons, I would dismiss the appeal from the Disclosure Decision.

Appeal #5: The Final Decision

[83] The issues in the appeals against the Final Decision are as follows:

(a) whether the "once only" requirement in Clause 57 prohibited the adjustment to the VRCPI that was made in the Final Decision;

(b) whether the Agency erred in determining that the Clause 57 adjustment to the VRCPI in the Final Decision could be retroactively effective as of August 1, 2007;

(c) whether the Agency erred in using CN's costs as a proxy for CP's costs for the purposes of the Clause 57 adjustment; and

(d) whether the Agency erred in its determination of the amounts of "embedded" and "actual" hopper car maintenance costs for the purposes of the Clause 57 adjustment.

Whether the "once only" requirement in Clause 57 prohibited the adjustment to the VRCPI that was made in the Final Decision

[84] The issue of whether the use of the interim/final order procedure has been considered in the portion of these reasons that deal with the appeals from the Interim Decision. For the reasons that were given there, I am of the view that there was no reviewable error on the part of the Agency in adopting this procedure and that the Interim Decision constitutes an interim order within the meaning of subsection 28(2) of the CTA.

Whether the Agency erred in determining that the Clause 57 adjustment to the VRCPI in the Final Decision could be effective as of August 1, 2007

[85] The railways contend that the Final Decision cannot have retrospective effect. With respect, I do not agree. In my view, this issue has been settled in *Bell Canada*, wherein Gonthier J. stated at page 1752:

> I agree with Hugessen J. and with the reasons of Laycraft J.A. in *Re Coseka* where he made a careful review of previous cases. The statutory scheme established by the *Railway Act* and the *National Transportation Act* is such that one of the differences between interim and final orders must be that interim decisions may be reviewed and modified in a retrospective manner by a final decision. It is inherent in the nature of interim orders that their effect as well as any discrepancy between the interim order and the final order may be reviewed and remedied by the final order. I hasten to add that the words "further directions" do not have any magical, retrospective content. Under the *Railway Act* and the *National Transportation Act*, final orders are subject to "further [prospective] directions" as well. It is the interim nature of the order which makes it subject to further retrospective directions.

[86] Having determined that the Interim Decision is an interim order within the meaning of subsection 28(2) of the CTA, in my view, it follows that the Final Decision must be considered as the completion of the interim/final order process. Accordingly, the Final Decision has the effect of modifying the Interim Decision in a retrospective manner such that the VRCPI as determined in the Final Decision is effective as of August 1, 2007.

Whether the Agency erred in using CN's costs as a proxy for CP's costs for the purposes of the Clause 57 adjustment

[87] This issue, which was raised by CN in its appeal to the Final Decision, has been dealt with in the portion of these reasons that deal with the Costs Decision. For these reasons set out therein, I am not persuaded that the Agency made any error that warrants intervention in deciding to use CN's costs as a proxy for CP's costs.

Whether the Agency erred in its determination of the amounts of "embedded" and "actual" hopper car maintenance costs for the purposes of the Clause 57 adjustment

[88] The railways raise three areas in respect of which they allege that the Agency erred in its determination of "embedded" and "actual" hopper car maintenance costs of the railways for the purposes of the Clause 57 adjustment. In particular, these issues relate to the appropriateness of the Agency's determinations with respect to:

(a) the component of "embedded" and "actual" hopper car maintenance costs that relates to contributions in respect of constant costs;

(b) the term or duration of a tonnage to cost with respect to the 2007-2008 crop year that was a component of the VRCPI adjustment methodology that was determined by the Agency; and

(c) the period of years in respect of which expenses of the railways were considered (2004, 2005 and 2006 only) for the purposes of determining the “actual” hopper car maintenance costs of the railways for the 2007-2008 crop year.

[89] In my view, these determinations are integral to the determination of the types of costs that are inherent in the determination of the Clause 57 adjustment. As such, they are squarely within the expertise of the Agency as determinations of fact or mixed fact and law, attracting the deferential standard of review. In my view, the railways have not demonstrated that any of the determinations made by the Agency in respect of these three matters is unreasonable. Accordingly, I am not prepared to intervene in relation to any of those matters.

[90] Accordingly, for these reasons, I would dismiss the appeal from the Final Decision.

Appeal #6: The 2008-2009 VRCPI Decision

[91] CP challenged the 2008-2009 VRCPI Decision on the ground that the determination of the VRCPI for the 2008-2009 crop year was based on the VRCPI that was determined in the Final Decision, a decision that had been stayed. Since I am of the view that the Final Decision should be upheld, it follows that the 2008-2009 VRCPI must similarly stand. Accordingly, I would dismiss the appeal against the 2008-2009 VRCPI Decision.

DISPOSITION

[92] For the foregoing reasons, I would dismiss all of the appeals, with one set of costs. A copy of these reasons should be placed in each of Court files A-546-07, A-250-08, A-42-08, A-225-08, A-224-08, A-400-08.

"C. Michael Ryer"
J.A.

"I agree
J. Edgar Sexton J.A."

"I agree.
Pierre Blais J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-546-07
STYLE OF CAUSE:	Canadian National Railway Company Appellant and Canadian Transportation Agency Respondent
PLACE OF HEARING:	Winnipeg, Manitoba
DATE OF HEARING:	October 15, 2008
REASONS FOR JUDGMENT BY:	RYER J.A.
CONCURRED IN BY:	SEXTON J.A. BLAIS J.A.
DATED:	November 24, 2008

APPEARANCES:

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Glenn Hector	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-42-08
STYLE OF CAUSE:	Canadian Pacific Railway Company Appellant and Canadian Transportation Agency and The Attorney General of Canada Respondents
PLACE OF HEARING:	Winnipeg, Manitoba
DATE OF HEARING:	October 15, 2008
REASONS FOR JUDGMENT BY:	RYER J.A.
CONCURRED IN BY:	SEXTON J.A. BLAIS J.A.
DATED:	November 24, 2008

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FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-224-08
STYLE OF CAUSE:	Canadian Pacific Railway Company Appellant and Canadian Transportation Agency and The Attorney General of Canada Respondents
PLACE OF HEARING:	Winnipeg, Manitoba
DATE OF HEARING:	October 15, 2008
REASONS FOR JUDGMENT BY:	RYER J.A.
CONCURRED IN BY:	SEXTON J.A. BLAIS J.A.
DATED:	November 24, 2008

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FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-225-08
STYLE OF CAUSE:	Canadian Pacific Railway Company Appellant and Canadian Transportation Agency and The Attorney General of Canada Respondents
PLACE OF HEARING:	Winnipeg, Manitoba
DATE OF HEARING:	October 15, 2008
REASONS FOR JUDGMENT BY:	RYER J.A.
CONCURRED IN BY:	SEXTON J.A. BLAIS J.A.
DATED:	November 24, 2008

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FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-250-08
STYLE OF CAUSE:	Canadian National Railway Company Appellant and Canadian Transportation Agency and Attorney General of Canada Respondents
PLACE OF HEARING:	Winnipeg, Manitoba
DATE OF HEARING:	October 15, 2008
REASONS FOR JUDGMENT BY:	RYER J.A.
CONCURRED IN BY:	SEXTON J.A. BLAIS J.A.
DATED:	November 24, 2008

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FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-400-08
STYLE OF CAUSE:	Canadian Pacific Railway Company Appellant and Canadian Transportation Agency and The Attorney General of Canada Respondents
PLACE OF HEARING:	Winnipeg, Manitoba
DATE OF HEARING:	October 15, 2008
REASONS FOR JUDGMENT BY:	RYER J.A.
CONCURRED IN BY:	SEXTON J.A. BLAIS J.A.
DATED:	November 24, 2008

APPEARANCES:

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