Federal Court of Appeal  Cour d'appel fédérale

Date: January 23, 2020

Docket: A-125-19

Citation: 2020 FCA 20

CORAM: **NADON J.A.**
DAWSON J.A.
MACTAVISH J.A.

BETWEEN:

CANADIAN NATIONAL RAILWAY COMPANY

Appellant

and

RICHARDSON INTERNATIONAL LIMITED
and
CANADIAN TRANSPORTATION AGENCY

Respondents

Heard at Vancouver, British Columbia, on September 16, 2019.

Judgment delivered at Ottawa, Ontario, on January 23, 2020.

REASONS FOR JUDGMENT BY: NADON J.A.

CONCURRED IN BY: DAWSON J.A.
MACTAVISH J.A.

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REASONS FOR JUDGMENT

NADON J.A.

I. Introduction

[1] Before us is an appeal by the Canadian National Railway Company (CN) from a confidential decision of the Canadian Transportation Agency (the Agency) in case no. 17-04844, dated November 16, 2018, wherein the Agency held there is an "interchange" at Scotford,

Alberta within the meaning of section 111 of the *Canada Transportation Act*, S.C. 1996 c.10 (the Act). As a result of this determination, the Agency ordered CN to interswitch at the Scotford interchange traffic belonging to the respondent Richardson International Limited (Richardson) originating from its Lamont elevator.

[2] For the reasons that follow, I would allow the appeal.

II. Facts

[3] Richardson, a privately owned agri-food business, owns and operates 54 primary grain elevators in Western Canada of which 25 are served only by CN and 28 are served only by the Canadian Pacific Railway Company (CP). The remaining elevator is served by CN but has direct access to CP service.

[4] The grain that goes through Richardson's elevators is mostly transported by rail to end-use producers or to port terminals for carriage by ship. Richardson's Lamont and Westmor elevators, both situated in Alberta, are Richardson's main elevators in respect of rail shipping.

[5] CN's railway network connects with that of CP at Scotford. CN and CP use this connection to interswitch traffic from shippers other than Richardson. The connection between the two networks lies between CN's Scotford railyard to the south and CP's Scotford railyard to the north. More particularly, CN's main line does not connect with CP's main line at or near Scotford. Rather, both CN and CP have their own spur tracks off their respective mainlines and a

spur track from CN's Scotford yard connects to a CP spur track at the yard of Shell Chemicals adjacent to CP's Scotford yard.

[6] Scotford is situated approximately 35 kilometers northeast of downtown Edmonton, Alberta, while Richardson's Lamont elevator is situated approximately 50 kilometers northeast of downtown Edmonton. Richardson's Lamont elevator, which is located on CN's main line, thus lies within a 30-kilometer radius of the connection at Scotford.

[7] CN and CP use their infrastructure at Scotford to interswitch as many as 150 railcars per day between their respective networks. To attain this number of cars, CP runs into CN's Scotford yard to lift cars and CN runs into CP's Scotford yard to lift cars. Without this coordination, CN says, interchange capacity would be limited to a single track in and out daily, *i.e.* approximately 60 cars per day.

[8] On September 26, 2017, Richardson filed an application before the Agency, pursuant to section 127 of the Act, seeking an order for regulated and extended interswitching with respect to its Lamont and Westmor elevators.

[9] This appeal pertains solely to the Agency's decision regarding the Lamont elevator. In regard thereto, Richardson sought an order which the Agency sets out, at paragraph 2 of its reasons, in the following terms:

> 1. determining that there is an interchange between the railway lines of Canadian National Railway Company (CN) and Canadian Pacific Railway Company (CP) at Scotford, Alberta, or, in the alternative, determining that RIL's

[Richardson's] Lamont elevator is reasonably close to the interchange between the railway lines of CN and CP at Clover Bar, Alberta;

2. requiring CN to transfer traffic offered by RIL for interswitching in accordance with the *Railway Interswitching Regulations*, SOR/88-4l, as amended (Interswitching Regulations) between the Lamont elevator and Scotford, to the extent that the Agency determines that there is an interchange there for the purposes of the CTA, or, in the alternative, between the Lamont elevator and the Clover Bar interchange; and

3. requiring CN to provide reasonable facilities for the convenient interswitching of RIL's traffic in both directions at Scotford or, in the alternative, at the Clover Bar interchange.

III. The Agency's decision

[10] After posing the question that had to be answered, *i.e.* whether there existed an interchange at Scotford, the Agency summarized the parties' respective positions. It then began its analysis by setting out the requirements for an interchange, as per section 111 of the Act, namely:

1) A place where the line of one railway connects with the line of another railway company; and

2) A place where loaded or empty cars may be stored until delivered or received by the other railway company.

[11] In response to CN's argument that although it did interchange traffic with CP at Scotford, its main railway line did not connect with CP's main railway line, the Agency indicated that section 111 did not make any distinction between the type of railway line required to connect with that of another railway. The Agency made the point that while subsection 140(1) of the Act

defined “railway line” as excluding a yard track, siding or spur, or other track auxiliary to a railway line, that definition applied only for the purpose of Division V of the Act. Consequently, in the Agency’s view, the subsection 140(1) exclusions did not apply to a determination under section 111 because “had it been Parliament’s intent to similarly limit the concept of railway line for the purposes of determining whether a location is an interchange, it would have included a comparable exclusion in section 111 of the [Act].” (Reasons at paragraph 50).

[12] Thus, by reason of the concession made by CN that it and CP interchanged traffic at Scotford and because of its determination that there was a connection between their respective railway lines thereat, the Agency concluded the first requirement of section 111 was met.

[13] The Agency then turned to the second requirement. After reviewing the evidence before it, the Agency concluded Scotford was a location where loaded or empty cars could be stored, notwithstanding that it might be necessary to break up trains for storage.

[14] In making its determination with respect to the second requirement, the Agency made a number of factual findings. First, it found that although the storage location at Scotford was not located at the connection point, it was sufficiently close so as not to constitute a barrier to a determination that Scotford was an interchange. Second, it found, on the basis of what it referred to as evidence adduced by Richardson, that each of CN’s yard tracks was approximately 3000 feet in length and thus could store up to 50 cars. The Agency indicated CN had not provided any evidence to refute Richardson’s evidence. Hence, the Agency accepted that up to 50 cars could be stored on each of CN’s tracks at Scotford.

[15] Third, in response to CN's argument that it did not have the capacity to store a unit train without dismantling it into smaller strings of cars on at least three or four separate yard tracks and that, in any event, there was insufficient space to store 100 cars even if dismantled, the Agency held CN had not provided evidence with regard to operational constraints at its yard that might impede the storage of cars once a unit train was broken up.

[16] The Agency then turned to the question of whether it should order CN to interswitch Richardson's traffic from the Lamont elevator at the Scotford interchange and whether CN should be ordered to provide reasonable facilities for the interswitch.

[17] The Agency answered the first question in the affirmative and ordered CN, pursuant to subsection 127(2) of the Act, to interswitch Richardson's traffic from its Lamont elevator at the Scotford interchange (the Interswitching Order or Order). However, the Agency declined to order CN to provide reasonable facilities for the convenient interswitching of traffic at Scotford because there was no evidence before it to show CN's facilities would not be made available.

IV. Legislation

[18] The relevant provisions of the Act, for the purpose of the determination which we are called upon to make in this appeal, are the following:

31 The finding or determination of the Agency on a question of fact within its jurisdiction is binding and conclusive.	**31** La décision de l'Office sur une question de fait relevant de sa compétence est définitive.
…	[…]

41(1) An appeal lies from the Agency to the Federal Court of Appeal on a question of law or a question of jurisdiction on leave to appeal being obtained from that Court on application made within one month after the date of the decision, order, rule or regulation being appealed from, or within any further time that a judge of that Court under special circumstances allows, and on notice to the parties and the Agency, and on hearing those of them that appear and desire to be heard.	**41(1)** Tout acte — décision, arrêté, règle ou règlement — de l'Office est susceptible d'appel devant la Cour d'appel fédérale sur une question de droit ou de compétence, avec l'autorisation de la cour sur demande présentée dans le mois suivant la date de l'acte ou dans le délai supérieur accordé par un juge de la cour en des circonstances spéciales, après notification aux parties et à l'Office et audition de ceux d'entre eux qui comparaissent et désirent être entendus.
…	[…]
111 In this Division [Division IV],	**111** Les définitions qui suivent s'appliquent à la présente section. [Section IV]
…	[…]
interchange means a place where the line of one railway company connects with the line of another railway company and where loaded or empty cars may be stored until delivered or received by the other railway company;	**lieu de correspondance** Lieu où la ligne d'une compagnie de chemin de fer est raccordée avec celle d'une autre compagnie de chemin de fer et où des wagons chargés ou vides peuvent être garés jusqu'à livraison ou réception par cette autre compagnie.
interswitch means to transfer traffic from the lines of one railway company to the lines of another railway company;	**interconnexion** Le transfert du trafic des lignes d'une compagnie de chemin de fer à celles d'une autre compagnie de chemin de fer.
…	[…]
113(1) A railway company shall, according to its powers, in respect of a railway owned or operated by it,	**113(1)** Chaque compagnie de chemin de fer, dans le cadre de ses attributions, relativement au chemin de fer qui lui appartient ou qu'elle exploite :
(*a*) furnish, at the point of origin, at the point of junction of the railway with another railway, and at all	***a*)** fournit, au point d'origine de son chemin de fer et au point de raccordement avec d'autres, et à tous

points of stopping established for that purpose, adequate and suitable accommodation for the receiving and loading of all traffic offered for carriage on the railway;

les points d'arrêt établis à cette fin, des installations convenables pour la réception et le chargement des marchandises à transporter par chemin de fer;

(*b*) furnish adequate and suitable accommodation for the carriage, unloading and delivering of the traffic;

***b*)** fournit les installations convenables pour le transport, le déchargement et la livraison des marchandises;

(*c*) without delay, and with due care and diligence, receive, carry and deliver the traffic;

***c*)** reçoit, transporte et livre ces marchandises sans délai et avec le soin et la diligence voulus;

(*d*) furnish and use all proper appliances, accommodation and means necessary for receiving, loading, carrying, unloading and delivering the traffic; and

***d*)** fournit et utilise tous les appareils, toutes les installations et tous les moyens nécessaires à la réception, au chargement, au transport, au déchargement et à la livraison de ces marchandises;

(*e*) furnish any other service incidental to transportation that is customary or usual in connection with the business of a railway company.

***e*)** fournit les autres services normalement liés à l'exploitation d'un service de transport par une compagnie de chemin de fer.

…

[…]

127(1) If a railway line of one railway company connects with a railway line of another railway company, an application for an interswitching order may be made to the Agency by either company, by a municipal government or by any other interested person.

127(1) Si une ligne d'une compagnie de chemin de fer est raccordée à la ligne d'une autre compagnie de chemin de fer, l'une ou l'autre de ces compagnies, une administration municipale ou tout intéressé peut demander à l'Office d'ordonner l'interconnexion.

127(2) If the point of origin or destination of a continuous movement of traffic is within a radius of 30 km of an interchange, the Agency may order

127(2) Si le point d'origine ou le point de destination d'un transport continu est situé dans un rayon de trente kilomètres d'un lieu de correspondance, l'Office peut ordonner :

(*a*) one of the companies to

***a*)** à l'une des compagnies

interswitch the traffic; and	d’effectuer l’interconnexion;
(*b*) the railway companies to provide reasonable facilities for the convenient interswitching of traffic in both directions at an interchange between the lines of either railway and those of other railway companies connecting with them.	***b*)** aux compagnies de fournir les installations convenables pour permettre l’interconnexion, d’une manière commode et dans les deux directions, à un lieu de correspondance, du trafic, entre les lignes de l’un ou l’autre chemin de fer et celles des autres compagnies de chemins de fer qui y sont raccordées.
…	[…]
140(1) In this Division [Division V], ***railway line*** includes a portion of a railway line, but does not include	**140(1)** Dans la présente section [Division V], ***ligne*** vise la ligne de chemin de fer entière ou un tronçon seulement, mais non une voie de cour de triage, une voie d’évitement ou un épi, ni une autre voie auxiliaire d’une ligne de chemin de fer.
(*a*) a yard track, siding or spur; or	
(*b*) other track auxiliary to a railway line.	

V. Issues

[19] The appeal raises three issues, namely: 1) did the Agency err in making an order of interswitching without naming CP as a party to the proceedings?; 2) did the Agency err in its interpretation of sections 111 and 127 of the Act?; and 3) did the Agency breach its duty of procedural fairness to CN in its assessment of the parties’ respective evidence and submissions?

VI. Analysis

A. *Did the Agency err in making an order of interswitching without naming CP as a party to the proceedings?*

[20] CN says that because the Agency failed to name CP as a party to the proceedings, it made an error of law and of jurisdiction in granting the Interswitching Order for Richardson's Lamont traffic at the Scotford interchange.

[21] In CN's view, because this issue raises a true question of jurisdiction, it is subject to the standard of correctness. Richardson disagrees. It says the issue "relates to the delineation of the Agency's own jurisdiction in applying its home statute." (Richardson's memorandum of fact and law at paragraph 58). Hence, Richardson says the standard of reasonableness is the applicable standard.

[22] For the reasons that follow, I need not determine whether the standard applicable is that of correctness or reasonableness. Although I am not convinced that the issue raises a true question of jurisdiction, I am of the view that, on either standard, CN's arguments must fail.

[23] In support of its submission that the Agency was without jurisdiction to make the Interswitching Order without ensuring CP was a party to the proceedings, CN makes the following arguments.

[24] CN says Richardson's application for an interswitching order identified CP's Scotford yard as part of the "Scotford interchange" and a place where its 100 train cars could be stored.

[25] CN also says the participation of both CP and CN is necessary to give effect to the Interswitching Order. More particularly, it says that, without CP's participation, interswitching capacity at Scotford will be limited to a single track with a maximum capacity of 60 cars per day.

[26] CN further states the Interswitching Order will have an impact on CP and its operations. In other words, CN says that because the Agency's Order requires CP to deliver empty cars and retrieve loaded cars, the Order triggers CP's interchange obligations.

[27] CN also argues that because CP was not made a party to the proceedings, the Agency was deprived of CP's evidence and submissions regarding its capacity to interswitch and store cars at its Scotford yard.

[28] CN then adds that CP's participation in the proceedings was a necessary precondition to the Agency's jurisdiction regarding Richardson's interswitching application. Thus, in CN's view, by failing to ensure CP's participation, the Agency was deprived of the complete picture with respect to the Scotford interchange.

[29] Finally, CN says it should not and cannot be required to defend an interswitching application on its own. In the end, CN argues it was not possible for the Agency to make the

order sought by Richardson without obtaining a substantive response from CP with respect to the application before it.

[30] In my view, CN's arguments cannot succeed for two reasons.

[31] First, there do not appear to be any provisions in either the Act or the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)* SOR/2014-104 that require a shipper seeking an order of interswitching, such as Richardson in the present matter, to name both railway companies at an interchange as respondents. To the contrary, as Richardson submits, paragraph 127(2)*(a)* of the Act provides that the Agency may order one of the railway companies at an interchange to interswitch the traffic of a shipper.

[32] Second, it is important to note that CN did not raise "the issue of jurisdiction" before the Agency. As Richardson points out at paragraph 33 of its memorandum of fact and law, CN raised the participation of CP as a matter of fairness to CP, arguing that CP should be given "the opportunity of making submissions."

[33] This led the Agency to write to CP on May 15, 2018, inviting its comments as to whether the Scotford yard constituted an interchange within the meaning of section 111 of the Act.

[34] In the course of its correspondence with CP, and at CP's request, the Agency provided CP with copies of the pleadings filed by the parties. After having considered the documents

provided to it, CP took no position regarding the issues raised in the pleadings and did not seek to intervene in the proceedings before the Agency. At paragraph 12 of its decision, the Agency wrote as follows:

> With respect to RIL's [Richardson's] request that the Agency issue an order determining that the connection between CN's and CP's railway lines at Scotford constitutes an "interchange", the Agency provided CP with an opportunity to make submissions. CP chose not to comment directly on the matter raised by the Agency's correspondence to it; namely, whether the Scotford yard should be determined to be an "interchange" within the meaning of sections 111 and 127 of the CTA. Its reply does, however, state that an interswitching order would likely impact its operations and business, while indicating that given it was provided with limited information, it is unable to assess the magnitude of this impact. CP also states that there seems to be no market failure that would necessitate such a regulatory intervention.

[35] In the end, CN neither objected to the manner in which the Agency sought submissions from CP nor did it ask the Agency for an order that CP be made a party to the proceedings or for any other order it believed was required in the circumstances.

[36] Thus, in my respectful view, CN cannot now take up CP's case concerning the Interswitching Order made by the Agency. Should Richardson seek an enforcement of the Agency's Order against CP, it shall, it goes without saying, be up to CP to argue its case on whatever basis it deems appropriate.

[37] Consequently, this ground of appeal is without merit.

[38] I now turn to the second issue.

B. *Did the Agency err in its interpretation of sections 111 and 127 of the Act?*

[39] CN says the Agency made a reviewable error in interpreting the words of the definition of "interchange" found at section 111 of the Act. More particularly, CN says the words "the line of one railway company connects with the line of another railway company" were given too broad of an interpretation by the Agency and the Agency failed to consider the purpose of the interswitching provisions of the Act and the legislative scheme as a whole.

[40] In making this argument, CN says the standard of review applicable to this question of interpretation is that of reasonableness since the Agency was interpreting its home statute. Richardson is also of the view that reasonableness is the standard that applies to this issue.

[41] Prior to the Supreme Court of Canada's recent decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*], I would have agreed with the parties that the standard of reasonableness was the applicable standard regarding the issue of interpretation (see *Canadian National Railway Company v. Canadian Transportation Agency*, 2010 FCA 65, [2011] 3 F.C.R. 264, at paragraphs 27-29; *Canadian National Railway Company v. Richardson International Limited*, 2015 FCA 180, 476 N.R. 83, at paragraphs 17, 18 and 30; *Canadian National Railway Company v. BNSF Railway Company*, 2018 FCA 135, [2018] F.C.J. No. 750, at paragraph 8; *Canadian National Railway Company v. Emerson Milling Inc.*, 2017 FCA 86, [2017] F.C.J. No. 415, at paragraph 33). However, there can now be no doubt that the applicable standard in the present matter is that of correctness.

[42] The appeal before us is one taken pursuant to subsection 41(1) of the Act on a question of law upon leave being granted by this Court. It is a statutory appeal of an administrative decision in respect of which the Supreme Court in *Vavilov* held appellate review now applies (*Vavilov* at paragraphs 36-52). More particularly, at paragraph 36 of its reasons in *Vavilov*, the Supreme Court made the following statement:

> …Where a legislature has provided that parties may appeal from an administrative decision to a court, either as a right or with leave, it has subjected the administrative regime to appellate oversight and indicated that it expects the court to scrutinize such administrative decisions on an appellate basis.
>
> [My emphasis].

[43] At paragraph 37 of its reasons in *Vavilov*, the Supreme Court explained that what it meant by "appellate basis" was the standards of review enunciated in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 [*Housen*]. Thus, the standard of correctness will apply to questions of law and to questions of mixed fact and law where there is an extricable principle of law.

[44] Since the issue pertaining to the interpretation of sections 111 and 127 of the Act is, without doubt, a question of law, it is subject to the standard of correctness.

[45] As I indicated earlier, the Agency dealt with the question of interpretation in a summary manner, at paragraphs 47 to 50 of its reasons, where it concluded that because section 111, contrary to subsection 140(1), did not exclude spur lines and other auxiliary lines from the words "railway line", such lines were therefore included in the words "railway line" found in the section 111 definition of "interchange".

[46] Under the previous standard of reasonableness, I would have had no hesitation concluding the Agency's interpretation was unreasonable because it failed to consider both context and the legislative scheme as a whole. As the Supreme Court has made abundantly clear in a number of decisions, the words of a statute must "be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament." (*Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at paragraph 26, quoting from Elmer Driedger, *Construction of Statutes*, 2nd ed. 1983 at p. 87).

[47] In *Vavilov*, the Supreme Court affirmed that the principles of statutory interpretation are one of the elements relevant to evaluating the reasonableness of an administrative decision (*Vavilov* at paragraph 106). After restating the "modern principle" of statutory interpretation, according to which the "language chosen by the legislature [can only be understood] in light of the purpose of the provision and the entire relevant context", the Supreme Court stated the following:

> "[a]n approach to reasonableness review that respects legislative intent must therefore assume that those who interpret the law – whether courts or administrative decision makers – will do so in a manner consistent with this principle of interpretation." (*Vavilov* at paragraph 118).

[48] The Agency failed to observe the fundamental principles of statutory interpretation referred to by the Supreme Court. Notably, the same "implied exclusion rule" adopted here by the Agency was rejected by the Supreme Court in *Green v. Law Society of Manitoba*, 2017 SCC 20, [2017] 1 S.C.R. 360 [*Green*]. The Supreme Court indicated such an interpretation is

"inconsistent with this Court's purposive approach to statutory interpretation", and reaffirmed that "[t]he words of the statute must be considered in conjunction with its purpose and its scheme." (*Green* at paragraphs 35-37).

[49] Thus, even under the more deferential reasonableness standard, the Agency's failure to properly inquire into the legislative intent behind the provision in question would have been fatal to its decision. However, reasonableness is no longer the applicable standard and thus it is now open to us, on the basis of the standard of correctness, to determine what in our view is the correct interpretation of sections 111 and 127 of the Act (*Vavilov* at paragraph 54).

[50] Having given the matter serious consideration, I am of the opinion that we should allow the appeal and return the matter to the Agency for reconsideration in the light of these reasons. In other words, we should not determine what the correct interpretation is. I so conclude for the following reasons.

[51] First, I am satisfied that we have not had the benefit of legal arguments from the parties consistent with the standard of correctness, as the appeal was argued on the basis that the Agency's interpretation was reasonable (on the part of Richardson) or unreasonable (on the part of CN). Neither party argued the point on the basis that the Court could substitute its own view of the meaning of the relevant words found in sections 111 and 127 of the Act.

[52] For example, Richardson argued, at paragraphs 99-103 of its memorandum of fact and law, that since the Agency's decision was consistent with its prior decision in Order No. 1992-

R207 wherein the Agency adopted a generous interpretation of the words “railway line”, the prior decision provided a reasonable basis for the Agency’s decision in the present matter which, in effect, rejected a more restrictive interpretation of the words at issue. Another example is paragraph 82 of CN’s memorandum of fact and law where CN simply asserts that it was an error on the part of the Agency to fail “to undertake or articulate an analysis of whether an interchange should be limited to connections of railway main lines.”

[53] A second reason, in my view, for returning the matter to the Agency is that the Court would benefit greatly from a fuller analysis by the Agency as to why it believes one interpretation is better than the other. In other words, we will benefit from the Agency’s rationale considering that it has considerable expertise not only with regard to its home statute but also in relation to all matters pertaining to railways, including the interswitching of traffic.

[54] In making these comments, I do not rule out the possibility that the Agency might come to an interpretation that differs from the one it arrived at in the present matter. However, whatever interpretation the Agency arrives at will necessarily be the result of a more fulsome analysis, which can only benefit the parties and this Court should the matter return to us.

[55] I now turn to the remaining issue.

C. *Did the Agency breach its duty of procedural fairness to CN in its assessment of the parties’ respective evidence and submissions?*

[56] CN says the Agency breached the duty of procedural fairness owed to it in that the Agency drew an adverse inference against it for failing to file sur-reply evidence when it had no right to do so. CN also says the Agency arbitrarily treated Richardson's submissions as "evidence" while treating its own submissions as mere "argument", without any supporting analysis. CN argues it had a legitimate expectation its submissions would be treated the same as Richardson's.

[57] In my view, in relying on procedural fairness, CN mischaracterizes the issues it raises. It would be an error of law, on the part of the Agency, to make an adverse finding against CN because it failed to file sur-reply evidence when it had no such right. Similarly, if CN is correct in its assertion that the Agency treated Richardson's submissions as evidence, it again follows that the Agency made an error of law. The Agency cannot make findings of fact where there is no evidence to support those findings.

[58] Because of the conclusion I have reached regarding the interpretation issue, we need not dispose of this issue. However, it would be wise, in my view, for the Agency, in redetermining the matter, to be mindful of CN's arguments with respect to the line to be drawn between submissions and evidence.

VII. Conclusion

[59] For these reasons, I would allow the appeal with costs, I would set aside the Agency's decision and I would return the matter to the Agency for redetermination of Richardson's application in accordance with these reasons.

"M. Nadon"

J.A.

"I agree.
Eleanor R. Dawson J.A."

"I agree.
Anne L. Mactavish J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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