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FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE	
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Apr 14, 2023	
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Court File No.

FEDERAL COURT OF APPEAL

BETWEEN:

BNSF RAILWAY COMPANY

Appellant

- and -

**GREATER VANCOUVER SEWERAGE AND DRAINAGE DISTRICT,
CANADIAN NATIONAL RAILWAY COMPANY and
CANADIAN TRANSPORTATION AGENCY**

Respondents

NOTICE OF APPEAL

TO THE RESPONDENTS:

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

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at CF Pacific Centre, 701 West Georgia Street, Vancouver, British Columbia, V7Y 1K8.

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

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

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

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

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APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from Decision No. 14-R-2023 of the Canadian Transportation Agency dated January 27, 2023.

THE APPELLANT ASKS that:

- (a) the appeal be allowed;
- (b) Decision No. 14-R-2023 of the Canadian Transportation Agency (the "**Agency**") dated January 27, 2023, be quashed or set aside;
- (c) it be awarded its costs of the appeal, including the costs of the motion dated February 25, 2023, from the respondent, Greater Vancouver Sewerage and Drainage District (the "**District**");
- (d) such further and other relief as this Honourable Court may deem just.

THE GROUNDS OF APPEAL are as follows:

- (a) the Agency committed an error of law or an error of jurisdiction, or both, as follows;
- (b) since 1959, the appellant, BNSF Railway Company ("**BNSF**"), and the District have been parties to a perpetual, private agreement (the "**1959 BNSF Agreement**") whereby the District was authorized to construct and attach a sewer pipe (the "**Existing Overhead Sewer**") to a bridge (the "**Bridge**") owned by BNSF that crosses over the BNSF railway track and further authorized the District to operate, maintain and repair the Existing Overhead Sewer;
- (c) the District proposed to replace the Existing Overhead Sewer with a new pipe ("**Proposed Overhead Sewer**");
- (d) on the application (the "**Application**") of the District to the Agency pursuant to ss. 101(3) of the *Canada Transportation Act*, S.C. 1996, c.10, the issue was whether the replacement of the Existing Overhead Sewer with the Proposed

Overhead Sewer was authorized by the terms of the 1959 BNSF Agreement, in particular by the terms "maintain" and "repair";

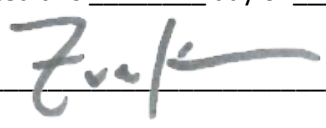
- (e) in interpreting the 1959 BNSF Agreement, in particular the term "maintain", and in error, the Agency applied the principles and definitions derived from its *Guide to Railway Charges for Crossing Maintenance and Construction 2021* (21 October 2021);
- (f) in further error, the Agency neglected or failed to consider whether the replacement of the Existing Overhead Sewer with the Proposed Overhead Sewer was authorized by the terms of the 1959 BNSF Agreement, in particular by the term "repair";
- (g) rather than, correctly, applying the common law principles and standards applicable to the interpretation of private agreements, in particular the common law definitions of "maintain" and "repair";
- (h) with the result that the Agency, in error, determined that the Proposed Overhead Sewer was not authorized by the 1959 BNSF Agreement;
- (i) with the further result that the Agency, in error, concluded it had jurisdiction to hear and determine the Application of the District.

Date: April 14 , 2023



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 Lawyers for the Appellant

<p>I HEREBY CERTIFY that the above document is a true copy of the original issued out of/<u>filed</u> in the Court on the <u>14th</u> day of <u>APR</u> 2023 Dated this <u>17th</u> day of <u>APR</u> 2023.</p> <p> _____</p>
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