Federal Court of Appeal | Cour d'appel fédérale

Date: 20241004

Dockets: A-121-24 (lead file)
A-124-24

Citation: 2024 FCA 160

CORAM: **GLEASON J.A.**
MONAGHAN J.A.
BIRINGER J.A.

Docket: A-121-24

BETWEEN:

CANADIAN NATIONAL RAILWAY COMPANY

Appellant

and

REGIONAL MUNICIPALITY OF HALTON,
THE CORPORATION OF THE TOWN OF MILTON,
THE CORPORATION OF THE TOWN OF HALTON HILLS,
THE CORPORATION OF THE CITY OF BURLINGTON,
THE CORPORATION OF THE TOWN OF OAKVILLE and
THE HALTON REGIONAL CONSERVATION AUTHORITY
and

CANADA (MINISTER OF THE ENVIRONMENT) and
ATTORNEY GENERAL OF CANADA

Respondents

Docket: A-124-24

AND BETWEEN:

CANADA (MINISTER OF THE ENVIRONMENT)
ATTORNEY GENERAL OF CANADA, and
CANADIAN NATIONAL RAILWAY COMPANY

Appellants

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THE HALTON REGIONAL CONSERVATION AUTHORITY

Respondents

Heard at Toronto, Ontario, on July 25, 2024.

Judgment delivered at Ottawa, Ontario, on October 4, 2024.

REASONS FOR JUDGMENT BY: BIRINGER J.A.

CONCURRED IN BY: GLEASON J.A.
MONAGHAN J.A.

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REASONS FOR JUDGMENT

BIRINGER J.A.

[1] These consolidated appeals concern an application by the Canadian National Railway Company (CN) for approval to build and operate an intermodal logistics hub in Milton, Ontario (Project). The Project was subject to an environmental assessment under the now repealed *Canadian Environmental Assessment Act, 2012*, S.C. 2012, c. 19, s. 52 (*CEAA 2012*).

[2] The appeals are from a judgment of the Federal Court granting an application for judicial review and setting aside two decisions made under the *CEAA 2012* in respect of the Project, 2024 FC 348 (FC Reasons):

- a decision of the Minister of the Environment and Climate Change (Minister), dated September 1, 2020, that the Project is likely to cause significant adverse environmental effects (SAEEs), which were then referred to the Governor in Council to consider whether they are "justified in the circumstances"; and

- a decision of the Governor in Council, made on January 20, 2021, that the SAEEs that the Project is likely to cause are "justified in the circumstances".

[3] The Federal Court concluded that the decisions were unreasonable because they failed to "meaningfully grapple" with the "direct" SAEE that the Project is likely to have on human health as it relates to air quality and failed to consider the protection of human health, as required by subsection 4(2) of the *CEAA 2012*.

[4] For the reasons that follow, I am of the view that the Federal Court erred. I find the decisions to be reasonable and would accordingly allow the appeals.

I. Background

[5] CN proposed to build the intermodal hub on a 160-hectare parcel of land it owns in Milton, in the Regional Municipality of Halton, adjacent to the existing CN mainline. The purpose of the hub is to facilitate the transfer of intermodal shipping containers between trucks and railcars to meet the growing demand for the movement of goods within the Greater Toronto and Hamilton Area. The Project would include a railway yard with more than 20 kilometres of

new track, and large cranes for the transfer of intermodal shipping containers. CN plans to have 800 trucks enter and exit the site daily.

[6] The intermodal hub would enable more movement of goods by rail and reduce heavy truck traffic on Canadian highways, resulting in certain environmental benefits, including reduced greenhouse gas emissions. There would, however, be adverse environmental effects on the local residents and their environment, including with respect to air quality, human health (related to air quality), wildlife and their habitat, and the availability of agricultural land.

A. *The Environmental Assessment*

[7] In 2015, CN submitted a description of the Project to the Canadian Environmental Assessment Agency (since 2019, the Impact Assessment Agency of Canada) (Agency), as required under the *CEAA 2012*. The Minister determined that a federal environmental assessment was necessary, and CN submitted an environmental impact statement identifying the potential environmental impacts of the Project and proposed mitigation measures.

[8] In 2016, the Minister and the Chair of the Canadian Transportation Agency agreed that, because the Project required approvals under both the *CEAA 2012* and the *Canada Transportation Act*, S.C. 1996, c. 10, there should be a joint review process. An independent panel of experts was appointed to conduct the environmental assessment.

[9] The review panel conducted the environmental assessment pursuant to the requirements of the *CEAA 2012*. Subsection 19(1) of the *CEAA 2012* lists various factors that the assessment must take into account, including the environmental effects of the designated project, any cumulative environmental effects, the significance of the environmental effects, and measures to mitigate any SAEEs of the designated project. Section 5 of the *CEAA 2012* sets out the kinds of environmental effects that must be considered.

[10] The review panel gathered information over the course of four years and held several weeks of public hearings, with testimony from experts and submissions from CN and the Halton Region respondents. The review panel issued its 294-page (excluding appendices) report in January 2020, setting out its conclusions on whether the Project is likely to cause SAEEs.

[11] The review panel concluded that, with mitigation measures in place, some of the Project's environmental effects would not be SAEEs within the meaning of the *CEAA 2012*. However, the review panel also concluded that the Project is likely to cause "significant adverse environmental effects on air quality and on human health as it relates to air quality" [emphasis added] and "significant adverse cumulative environmental effects on air quality, human health, wildlife habitat, and the availability of agricultural land", even with mitigation measures. Only the effects on air quality and human health are relevant in these appeals.

[12] The review panel's report was provided to the Minister. The Minister, after "taking into account the review panel's report with respect to the environmental assessment" as required by subsection 47(1) of the *CEAA 2012*, was obligated to make a decision under subsection 52(1).

Subsection 52(1) requires the Minister to decide, taking into account mitigation measures, if the designated project is likely to cause SAEEs referred to in subsection 5(1) or 5(2).

[13] Subsection 5(1) environmental effects concern matters within federal jurisdiction, such as federal lands, fisheries, and migratory birds. Subsection 5(2) environmental effects arise when a project requires the exercise of a power by a federal authority—here, an approval by the Canadian Transportation Agency under the *Canada Transportation Act* —and includes effects on health and socio-economic conditions (subparagraph 5(2)(*b*)(i)).

B. *The Decisions under the CEAA 2012*

[14] On September 1, 2020, the Minister decided, taking into account mitigation measures, that the Project was not likely to cause SAEEs under subsection 5(1) but was likely to cause SAEEs under subsection 5(2). The Minister rendered the decision by signing, and thereby indicating his concurrence with, a September 1, 2020 memorandum from the Agency (Minister's Decision): FC Reasons at para. 88.

[15] The Summary portion of the Minister's Decision describes the review panel's conclusion that the Project is likely to cause "significant direct adverse environmental effects on local air quality (generally limited to the Municipality of Halton), and significant adverse cumulative effects on air quality and related human health, wildlife habitat and wildlife, and availability of agricultural land (Annex I)".

[16] Subsection 52(2) of the *CEAA 2012* provides that if the Minister determines that the project is likely to cause SAEEs referred to in subsection 5(1) or 5(2), the Minister must refer to the Governor in Council "the matter of whether those effects are justified in the circumstances". Having decided that the Project was likely to cause SAEEs under subsection 5(2), the Minister referred the matter to the Governor in Council.

[17] When a matter is referred, subsection 52(4) requires the Governor in Council to decide whether the SAEEs that the project is likely to cause are "justified in the circumstances". Here, on the recommendation of the Minister, the Governor in Council decided that they were. The Governor in Council decision is reflected in Order in Council 2021-0008, issued January 20, 2021 (GIC Decision).

[18] Subsection 54(1) of the *CEAA 2012* provides that the Minister must issue a decision statement to the proponent of the project, informing them of the decisions made by the Minister and the Governor in Council, and any conditions established under section 53. Section 53 provides that if the Minister has determined that the project is not likely to cause SAEEs under subsection 5(1) or 5(2), or the Governor in Council decides that the SAEEs likely to be caused are justified in the circumstances, the Minister must establish the conditions with which the proponent must comply.

[19] On January 21, 2021, the Minister issued a decision statement, informing CN of the Minister's Decision and the GIC Decision, and including the conditions established by the

Minister with which CN must comply (Decision Statement). (The Decision Statement was later amended and reissued on July 26, 2022, with changes that are not relevant to these appeals.)

[20] A press release issued by the Government of Canada on January 21, 2021 announced the Government's approval of the Project, subject to 325 conditions "to protect the environment and human health", making it "the most stringently regulated intermodal logistics hub in Canada".

C. *The Federal Court Decision*

[21] The Halton Region respondents sought judicial review of the Minister's Decision, the GIC Decision, and the Decision Statement, having been granted leave to apply for judicial review of these three decisions in one hearing: FC Reasons at paras. 1 and 16. The Federal Court concluded that the Minister's Decision and the GIC Decision were unreasonable, set them aside and remanded them for redetermination.

[22] Before turning to the Minister's Decision and the GIC Decision, the Federal Court analyzed the distinction between "direct" and cumulative SAEEs with reference to paragraphs 19(1)(*a*) and (*b*) of the *CEAA 2012*: FC Reasons at paras. 37-44. The Federal Court provided an overview of the review panel's report; the various memoranda from the Agency to the Minister, including the September 1, 2020 memorandum that became the Minister's Decision; and the GIC Decision, focusing on what each said about the issue of human health as it relates to air quality: FC Reasons at paras. 57-107.

[23] The Federal Court then considered the reasonableness of the two decisions. Starting with the Minister's Decision, the Court concluded that the Minister did not consider or refer to the review panel's finding that the Project was likely to cause a "direct" SAEE on human health as it relates to air quality and thus failed to "meaningfully grapple" with what it considered "a central and important issue": FC Reasons at paras. 111, 113, and 134. The Court went on to conclude that the Minister did not consider or refer to the "language [or] import" of subsection 4(2) of the *CEAA 2012* and therefore did not consider the protection of human health: FC Reasons at paras. 137, and 144. The Federal Court concluded that the Minister's Decision was, accordingly, unreasonable.

[24] Turning to the GIC Decision, the Federal Court determined that the Governor in Council relied on the flawed Minister's Decision and, like the Minister, failed to "meaningfully grapple" with the "direct" SAEE on human health related to air quality: FC Reasons at paras. 160-162. The Court also determined that the Governor in Council did not consider subsection 4(2) of the *CEAA 2012* and therefore failed to consider the protection of human health: FC Reasons at paras. 168-169. The Federal Court concluded that the GIC Decision was, accordingly, unreasonable.

[25] Having concluded that the Minister's Decision and the GIC Decision were both unreasonable, the Federal Court found it unnecessary to consider the conditions in the Decision Statement, but offered some comments in *obiter*: FC Reasons at paras. 171-183.

II. Issues

[26] The central question in these appeals is whether the Minister's Decision and the GIC Decision were unreasonable.

III. Standard of Review

[27] This Court must determine whether the Federal Court correctly selected and applied the standard of review: *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at para. 10 [*Horrocks*], citing *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-47; *Mikisew Cree First Nation v. Canadian Environmental Assessment Agency*, 2023 FCA 191 at para. 72 [*Mikisew*]. In practice, this Court must "step into the shoes" of the Federal Court and review the administrative decisions afresh, giving no deference to the Federal Court: *Horrocks* at para. 10.

[28] However, where "the Federal Court appears to have given a complete answer to all the arguments that it advances, an appellant bears a strong tactical burden to show on appeal that the Federal Court's reasoning is flawed": *Bank of Montreal v. Canada (Attorney General)*, 2021 FCA 189 at para. 4; *Canada (Attorney General) v. Lloyd*, 2022 FCA 127 at para. 27; *Le-Vel Brands, LLC v. Canada (Attorney General)*, 2023 FCA 177 at para. 32.

[29] The Federal Court correctly selected reasonableness as the standard of review for both decisions: FC Reasons at para. 25; *Canada (Minister of Citizenship and Immigration) v. Vavilov*,

2019 SCC 65 at para. 16 [*Vavilov*]. None of the exceptions to the presumption of reasonableness review recognized in *Vavilov* apply here.

[30] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Vavilov* at para. 85. The standard is not perfection. The reviewing court must review the reasons with sensitivity to the institutional setting, in light of the record, holistically and contextually: *Vavilov* at paras. 91 and 96-97. Any shortcomings and flaws must be "sufficiently central or significant" to render the decision unreasonable: *Vavilov* at para. 100.

[31] The appellants have established that the Federal Court failed to properly apply these principles and erred in its reasonableness review. For the reasons that follow, I have concluded that both decisions are reasonable.

IV. The Post-Hearing Motion

[32] Following the hearing, the Halton Region respondents brought a motion asking this Court to "take notice" of: (i) an order of case management Judge Molgat of the Federal Court dated May 23, 2023, granting leave to amend their notice of application; and (ii) the amended notice of application. The amended notice of application indicates that the Halton Region respondents sought judicial review of two decisions made by the Minister under section 52. While it is unnecessary to issue an order taking notice of documents that are part of the record, I have considered the parties' motion submissions.

[33] The Halton Region respondents submit, their position having evolved over the course of the appeals, that two decisions of the Minister are recorded in the September 1, 2020 Agency memorandum with which the Minister concurred: a decision under subsection 52(1), that the Project is likely to cause SAEEs, and a "referral decision" under subsection 52(2), referring the SAEEs to the Governor in Council. CN and the Attorney General of Canada submit that the memorandum reflects one decision of the Minister, seemingly disagree as to whether it was made under subsection 52(1) or 52(2), but both take the position that there is no substantive difference between the Minister's decision on the Project's likely SAEEs made under subsection 52(1) and the SAEEs referred to the Governor in Council pursuant to subsection 52(2).

[34] The parties' disagreement is of no consequence. The parties now agree, as do I, that having determined the Project's likely SAEEs pursuant to subsection 52(1), the Minister referred those SAEEs to the Governor in Council pursuant to subsection 52(2). This two-step process, including the mandatory nature of the second step, is prescribed by section 52. Once the Minister determines that a project is likely to cause SAEEs, the Minister "must refer" "those effects" to the Governor in Council for consideration as to whether they are justified in the circumstances. There is no evidence to suggest that the Minister did otherwise here.

[35] Whether the September 1, 2020 memorandum records both the Minister's determination of the Project's likely SAEEs and the referral of those SAEEs, or whether the latter is recorded in the Minister's confidential submissions to the Governor in Council (a view to which I am inclined), is not important. As discussed further below, the debate with respect to the Minister's decision and referral rages over the alleged inconsistency of both with the findings in the review

panel's report on the SAEEs that the Project is likely to cause. In order to assess what the Minister decided, and then referred, on the Project's likely SAEEs, I look to the September 1, 2020 memorandum, referred to herein as the Minister's Decision.

V. Analysis

[36] The Federal Court concluded that the Minister's Decision and the GIC Decision were unreasonable because they: (1) failed to consider the review panel's finding of a "direct" SAEE on human health as it relates to air quality; and (2) failed to consider the protection of human health, as required by subsection 4(2) of the *CEAA 2012*.

[37] The appellants submit that the Federal Court erred in finding the decisions unreasonable. They say that the Federal Court misconstrued the statutory scheme under the *CEAA 2012*, engaged in a formalistic hunt for inconsequential errors, and mistakenly concluded that the Minister's Decision omitted a material conclusion of the review panel's report. They say that the Minister and the Governor in Council considered the protection of human health, consistent with subsection 4(2).

[38] The Halton Region respondents' arguments on appeal and the Federal Court's analysis centre on the alleged failures in the Minister's Decision, with reference to the review panel's report. The Federal Court concluded that the GIC Decision was unreasonable because it "is simply a reflection of the flawed Minister's Referral Decision": FC Reasons at para. 162; see also para. 168. While the Halton Region respondents also raise arguments as to why the GIC

Decision is on its own unreasonable, the crux of these appeals is the reasonableness of the Minister's Decision, which laid the foundation for the GIC Decision.

A. *The Minister's Decision*

(1) Alleged failure to "meaningfully grapple" with the "direct" SAEE on human health related to air quality

[39] The Federal Court's main concern was that while the review panel found that the Project would have six SAEEs, including a "direct" SAEE on human health as it relates to air quality, the Minister's Decision only dealt with the other five: FC Reasons at paras. 6 and 10.

[40] While a "direct" SAEE is not terminology found in the *CEAA 2012*, the Minister's Decision distinguishes between "direct" and cumulative adverse environmental effects, and the Federal Court adopted that terminology. "Direct" in this context means "project-specific" or "non-cumulative": FC Reasons at paras. 40-44.

[41] The Federal Court characterized the failure to address the Project's "direct" SAEE on human health related to air quality in the Minister's Decision as an implicit and unexplained decision by the Minister not to refer that particular SAEE to the Governor in Council: FC Reasons at paras. 95 and 131.

[42] The Halton Region respondents and the Federal Court refer to the bullet point in the Summary portion of the Minister's Decision that describes the review panel's conclusion that the

Project is likely to cause "significant direct adverse environmental effects on local air quality (generally limited to the Municipality of Halton), and significant adverse cumulative effects on air quality and related human health, wildlife habitat and wildlife, and availability of agricultural land (Annex I)". They observe that there is no reference in that bullet point, or the remainder of the Minister's Decision, to the "direct" (i.e., non-cumulative) SAEE on human health as it relates to air quality.

[43] CN and the Attorney General of Canada submit, and I agree, that in reviewing the decisions, the Federal Court took an unduly formalistic approach in searching for an enumerated list of six SAEEs: two "direct" (or project-specific) and four cumulative. The Federal Court, satisfied that the Minister's Decision did not refer to or discuss a "direct" SAEE on human health as it relates to air quality, determined that there was "no reason" to review the decision in detail: FC Reasons at para. 97. This was an error.

[44] *Vavilov* tells us that decisions being reviewed for reasonableness must be read in light of the record, holistically, and contextually: paras. 96-97. A reviewing court must give the reasons "respectful attention", seek to understand the challenged decision, and determine if, as a whole, it is rational and logical—not seize on inconsequential errors or omissions: *Vavilov* at paras. 84-85 and 99-100.

[45] On discovery of a missing reference to a "direct" SAEE in a bullet point in the Summary portion of the Minister's Decision, the Federal Court ought to have considered whether the Minister nonetheless took into account the substance of the review panel's findings on the

adverse effects on human health related to air quality, both project-specific and cumulative. On reviewing the Minister's Decision as a whole, in light of the review panel's report, I have determined that the Minister did just that.

[46] It is important to recall that subsection 19(1) sets out the factors that must be taken into account in an environmental assessment under the *CEAA 2012* —here, conducted by the review panel. These include "the environmental effects of the designated project, including…any cumulative environmental effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out":

Factors	**Éléments**
19 (1) The environmental assessment of a designated project must take into account the following factors:	**19 (1)** L'évaluation environnementale d'un projet désigné prend en compte les éléments suivants :
(a) the environmental effects of the designated project, including the environmental effects of malfunctions or accidents that may occur in connection with the designated project and any cumulative environmental effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out;	**a)** les effets environnementaux du projet, y compris ceux causés par les accidents ou défaillances pouvant en résulter, et les effets cumulatifs que sa réalisation, combinée à celle d'autres activités concrètes, passées ou futures, est susceptible de causer à l'environnement;
(b) the significance of the effects referred to in paragraph (a);	**b)** l'importance des effets visés à l'alinéa a);
…	[…]

[47] Consistent with the requirements of subsection 19(1), the review panel's report made separate findings of project-specific (i.e., "direct") SAEEs and cumulative SAEEs. The Project's "Guidelines for the Preparation of an Environmental Impact Statement", issued by the Agency,

confirm this requirement for the environmental assessment, and explain in detail the process for determining both.

[48] According to the guidelines, baseline conditions are the starting point for assessing the adverse environmental effects of the project. After mitigation measures are applied to determine the "residual" adverse project effects, the significance of those residual effects are assessed. Thus, the "direct" or non-cumulative adverse environmental effects are not viewed in isolation but take into account baseline conditions.

[49] Cumulative effects are broader and take into account the total effects of the project and "other physical activities that have been or will be carried out": para. 19(1)(a), *CEAA 2012*. Thus, cumulative project effects take into account baseline conditions, the project's contributions, and the contributions of other physical activities past, present, and reasonably foreseeable. See also the Agency's "Technical Guidance for Assessing Cumulative Environmental Effects under the *Canadian Environmental Assessment Act, 2012*", dated March 2018.

[50] The Minister's role under the *CEAA 2012* is functionally different from that of the review panel conducting the environmental assessment. Next, I turn to the governing statutory scheme for the Minister's Decision as it is "likely to be the most salient aspect of the legal context relevant to a particular decision": *Vavilov* at para. 108. The relevant statutory provisions establish guardrails for the Minister's decision-making.

[51] Subsections 47(1) and 52(1) of the *CEAA 2012* together require that the Minister, after "taking into account" the review panel's report and the implementation of any mitigation measures, decide whether the project is likely to cause SAEEs within the meaning of subsection 5(1) or 5(2):

Minister's decisions	**Décisions du ministre**
47 (1) The Minister, after taking into account the review panel's report with respect to the environmental assessment, must make decisions under subsection 52(1).	**47 (1)** Après avoir pris en compte le rapport d'évaluation environnementale de la commission, le ministre prend les décisions prévues au paragraphe 52(1).
Decisions of decision maker	**Décisions du décideur**
52 (1) For the purposes of sections 27, 36, 47 and 51, the decision maker referred to in those sections must decide if, taking into account the implementation of any mitigation measures that the decision maker considers appropriate, the designated project	**52 (1)** Pour l'application des articles 27, 36, 47 et 51, le décideur visé à ces articles décide si, compte tenu de l'application des mesures d'atténuation qu'il estime indiquées, la réalisation du projet désigné est susceptible
(a) is likely to cause significant adverse environmental effects referred to in subsection 5(1); and	**a)** d'une part, d'entraîner des effets environnementaux visés au paragraphe 5(1) qui sont négatifs et importants;
(b) is likely to cause significant adverse environmental effects referred to in subsection 5(2).	**b)** d'autre part, d'entraîner des effets environnementaux visés au paragraphe 5(2) qui sont négatifs et importants.

[52] In accordance with subsection 52(2), if the Minister decides that the designated project is likely to cause SAEEs, the Minister must refer to the Governor in Council the matter of whether "those effects" are justified in the circumstances.

Referral if significant adverse environmental effects	**Renvoi en cas d'effets environnementaux négatifs importants**
52 (2) If the decision maker decides that the designated project is likely to cause significant adverse environmental effects referred to in subsection 5(1) or (2), the decision maker must refer to the Governor in Council the matter of whether those effects are justified in the circumstances.	**52 (2)** S'il décide que la réalisation du projet est susceptible d'entraîner des effets environnementaux visés aux paragraphes 5(1) ou (2) qui sont négatifs et importants, le décideur renvoie au gouverneur en conseil la question de savoir si ces effets sont justifiables dans les circonstances.

[53] Identifying SAEEs under subsection 5(1) or 5(2) is the only type of categorization that the Minister must make in their decision and referral to the Governor in Council. The Minister is not statutorily or otherwise required to characterize the effects as "direct" (or project-specific) and cumulative.

[54] I agree with the appellants that when the Federal Court started with a review of subsection 19(1) and concluded that there were "two main kinds of SAEEs in this proceeding", (i.e., "direct" and cumulative) it erred: FC Reasons at para. 37. That error pervaded the Federal Court's review. Having decided that the distinction was essential, the Federal Court searched the Minister's Decision and the GIC Decision for the two "direct" and four cumulative SAEEs identified in the review panel's report and found the "direct" SAEE on human health related to air quality missing. The Federal Court thus concluded, incorrectly, that there had been an important omission.

[55] I recognize that the Minister's Decision maintained a distinction between the "direct" and cumulative SAEEs on air quality, and this begs the question why that distinction was not

maintained for human health related to air quality. However, the more important question is whether the lack of reference to the "direct" SAEE on human health is "sufficiently central or significant to render the decision unreasonable": *Vavilov* at para. 100. As I explain in greater detail below, it was not—the Minister's Decision did not deviate from the review panel's report in any substantive way.

[56] Before turning to relevant passages in the Minister's Decision, I summarize the review panel's report findings on the adverse effects from the Project on air quality and the impact on human health in order to evaluate what the Federal Court found, and the Halton Region respondents submit, is missing from the Minister's Decision.

[57] The review panel determined that the Project would potentially result in lower overall emissions at the national and provincial level, by transferring long-haul container movement from trucks to more fuel-efficient railcars. However, the Project would release fugitive dust emissions during construction and new sources of diesel emissions associated with train and truck traffic during operation of the Project, resulting in higher concentrations of pollutants of concern in the vicinity. The review panel concluded that the air quality in the area had already deteriorated as a result of rapid urban development and associated vehicular traffic. The Project would therefore contribute air emissions to an already degraded environment.

[58] The review panel identified particular contaminants of concern including Particulate Matter 2.5 ($PM_{2.5}$), Particulate Matter 10 (PM_{10}), benzene, and benzo(a)pyrene. These contaminants of concern are discussed in detail in the review panel's report in both the Air

Quality section (Subsection 5.1, Section 5: Atmospheric Environment) and the Air quality: Health effects section (Subsection 11.1.1, Section 11: Human Environment). The review panel concluded that while the effects of Project air emissions in isolation would be low, when combined with baseline exceedances that are at or near the maximum acceptable level (according to federal and provincial ambient air quality standards), they become significant.

[59] The review panel noted that no safe threshold has been established for human health effects resulting from exposure to particulate matter ($PM_{2.5}$ and PM_{10}), which can cause cardiovascular and respiratory illness, and that benzene and benzo(a)pyrene are known human carcinogens.

[60] Turning now to the Minister's Decision, it summarizes the review panel's findings on the Project's likely SAEE on human health related to air quality as follows:

> The Panel found that the effects of Project air emissions on human health would be low on their own, but significant when combined with existing and anticipated background exceedances. Health Canada recommended to the Panel that CN reduce emissions of contaminants associated with diesel exhaust that may exhibit health effects even at low levels (i.e., non-threshold contaminants in diesel PM, $PM_{2.5}$, and nitrogen dioxide). The Panel indicated that the most effective mitigation for human health effects resulting from air quality is avoidance through emissions controls.
>
> (Minister's Decision, p. 6, Appeal Book, p. 2075)

[61] This summary reflects, almost verbatim, the review panel's finding that "the residual effect of Project air emissions on human health would be low on its own, but becomes significant when combined with existing baseline exceedances and existing exposure ratios that are already

near the maximum acceptable level". It is also loyal to the review panel's further conclusions on this SAEE which read as follows:

> The Panel concludes that the Project, even with the recommended mitigation, is likely to cause a significant adverse environmental effect on human health caused by air quality because it would contribute to exceedances of health-based exposure standards.
>
> The Panel finds that the effects of Project air emissions on human health in isolation would be low, but become significant when combined with baseline exceedances and exposure ratios that are at or near the maximum acceptable level, and when considering there are no safe exposure limits established for non-threshold air contaminants and that some predicted exceedances are known human carcinogens.
>
> (Review Panel's Report, p. 182, Appeal Book, p. 1781)
>
> …
>
> The Panel concludes that the Project, even with the recommended mitigation, in combination with other projects and activities that have been or will be carried out, is likely to cause a significant adverse cumulative environmental effect on human health caused by air quality, because it would further contribute to the existing degraded air quality conditions and associated human health risks.
>
> (Review Panel's Report, p. 193, Appeal Book, p. 1792)

[62] The Halton Region respondents initially submitted that the Minister's Decision "rejected" the review panel's finding on the "direct" SAEE on human health related to air quality, because it only mentioned cumulative effects. However, at the hearing, they conceded that the Minister's Decision captured both. That concession was appropriate in light of the many passages in the Minister's Decision on the Project's adverse effects on human health related to air quality, noted above and below, which address both the Project's "direct effects" (i.e., baseline conditions + Project-related effects) and cumulative effects.

[63] The Halton Region respondents submit, and I accept, that at its core the significance of the Project's "direct" SAEE on human health relating to air quality, as found by the review panel, stems from: (1) the addition of the Project air emissions to baseline exceedances and exposure ratios at or near the maximum acceptable level; and (2) there being no safe exposure limits for non-threshold contaminants and predicted exceedances of known carcinogens. The Minister's Decision addresses these concerns in several places, including as noted above at paragraph 60.

[64] The Minister's Decision also accurately captures the review panel's conclusions on the "direct" SAEE on air quality. Naturally, these coincide substantially with the conclusions on the "direct" SAEE on human health related to air quality, as the "direct" SAEE on human health derives exclusively from adverse effects on air quality. While the review panel's report has separate sections on Air Quality (Subsection 5.1) and Air quality: Health effects (Subsection 11.1.1), the sections cross-reference one another, reflecting the overlap.

[65] The pollutants of concern to air quality are the same as those for human health as it relates to air quality, as are the mitigation measures. The review panel noted that there were no proposed mitigation measures specific to human health as it relates to air quality, but there were measures proposed for air quality generally. The Minister concluded that "any conditions relevant to air quality would serve to address any effects on human health, and therefore have been taken into account": Minister's Decision at p. 7, Appeal Book, p. 2076.

[66] This overlap means that the summary in the Minister's Decision of the review panel's conclusions on the "direct" SAEE on air quality must also be taken into account. It further demonstrates that the substance of the review panel's conclusions on human health related to air quality are captured. The summary passage on air quality in the Minister's Decision provides:

> While the Project's contribution to degraded air quality is relatively small when compared with other contributions from human activities, the direct and cumulative adverse effects of the Project in combination with existing and foreseeable activities will likely still result in significant adverse environmental effects on air quality. In its Report, the Panel noted that air quality in the area of the Project has already deteriorated due to human activities, especially traffic-related emissions, and the Project would further contribute to air pollutants, especially benzo(a)pyrene, benzene, and would be a source of new exceedances for particulate matter (PM). Analyses undertaken by the proponent also predicted exceedances in the Canadian Ambient Air Quality Standards (CAAQS) for nitrogen dioxide and fine particulates under certain scenarios. In the cumulative effects scenarios, concentrations of these particulates are predicted to exceed the CAAQS for one-hour and annual nitrogen dioxide in 2031 at receptor locations.
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> …
>
> (Minister's Decision, p. 4-5, Appeal Book, p. 2073-74)

[67] The summary in the Minister's Decision is entirely consistent with the review panel's findings, which were summarized in the review panel's report as follows:

> The Panel concludes that the Project is likely to cause a significant adverse environmental effect on local air quality because it would further contribute to degraded baseline air quality conditions.
>
> The Panel considers that, even with mitigation, the Project will add to the predicted baseline exceedances of ambient air quality standards for benzene and benzo(a)pyrene and cause new exceedances for PM_{10} and $PM_{2.5}$, resulting in a high magnitude effect that, without improvements to general emissions technology, would be long-term.
>
> …
>
> The Panel concludes that the Project, in combination with other projects and activities that have been or will be carried out, is likely to cause a significant adverse cumulative environmental effect on air quality.

> The Panel finds that baseline air quality standard exceedances and the Project emissions would combine with emissions from planned future developments in the area, and these are expected to cumulatively result, at minimum, in a continuation of the predicted air quality standard exceedances for benzene, benzo(a)pyrene and new exceedances of PM_{10} and $PM_{2.5}$.
>
> (Review Panel's Report, p. 53-54, Appeal Book, p. 1652-53)

[68] In addition, attached to the Minister's Decision is "Annex I: Key Findings of Panel on Adverse Environmental Effects", which summarizes the review panel's conclusions, including on human health and air quality, in greater detail. It expressly deals with the health effects of diesel exhaust from the Project on local residents.

[69] Annex I notes the exceedances of pollutants and recognizes that while the review panel concluded that the Project's contribution to air contaminants would be limited, "the potential increase of benzene, benzo(a)pyrene and new exceedances for Particulate $Matter_{10}$ and Particulate $Matter_{2.5}$ associated with the Project would likely result in a significant direct adverse environmental effect". It also identifies the health risks: "Exposure to diesel exhaust can cause lung cancer, adverse respiratory effects, and is likely causal in the development of adverse cardiovascular and immunological outcomes". It further notes that the review panel did not recommend mitigation measures specific to human health as it relates to air quality, as "the recommendations for air quality would apply to human health (conditions specific to human health only relate to noise and country food)". Annex I reinforces the conclusion that the Minister's Decision is fully consistent with the review panel's conclusions on the SAEE on human health related to air quality.

[70] I conclude that there is no "fundamental gap" in the Minister's Decision that renders it unreasonable: *Vavilov* at para. 96. Insofar as a bullet point in the Summary portion of the Minister's Decision does not refer expressly to a "direct" or Project-specific SAEE on human health as it relates to air quality, this was not "central or significant": *Vavilov* at para. 100. A careful reading of the full decision shows that the Minister did not fail to take into account any significant aspect of the review panel's conclusions on the SAEE on human health related to air quality, whether Project-specific or cumulative.

[71] Rather than reading the decision as a whole, however, the Federal Court and the Halton Region respondents inappropriately focus on the missing reference to a "direct" SAEE in the first bullet point in the Summary portion of the Minister's Decision. As the appellants point out, a few lines down, another bullet point sets out a recommendation (from the Agency) that the Minister conclude, "consistent with the conclusions of the Panel", that there will be SAEEs related to air quality, human health (related to air quality), wildlife habitat and wildlife, and availability of agricultural land—i.e., four SAEEs, not described as either "direct" or cumulative. Similarly, a reporting letter dated January 21, 2021 from the Minister to CN states that the Minister referred four SAEEs (no modifier) to the Governor in Council for a decision on whether they are justified in the circumstances. By contrast, a memorandum dated February 10, 2020 from the Agency to the Minister, informing the Minister of the key findings in the review panel's report, reflects a conclusion on six SAEEs, two "direct" and four cumulative.

[72] I highlight these inconsistencies not to condone a "line-by-line treasure hunt for error" in the Minister's Decision, which is antithetical to a reasonableness review on a holistic basis, but

rather to highlight the danger that comes with undue emphasis on the labels or terminology used, particularly in a one-line summary: *Vavilov* at para. 102, citing *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34 at para. 54. That the Agency and the Minister are inconsistent in distinguishing between "direct" and cumulative SAEEs in various documents confirms the immateriality of this distinction in the Minister's Decision, which evidently and substantively addresses the review panel's findings on the Project's SAEE on human health related to air quality.

[73] In conclusion, I find that the Minister's Decision takes into account the review panel's report findings on the "direct" SAEE on human health as it relates to air quality. The decision is reasonable.

(2) Alleged failure to apply subsection 4(2) of the *CEAA 2012*

[74] The other pillar of the Federal Court's reasoning is an alleged failure by the Minister to apply subsection 4(2) of the *CEAA 2012*. Subsection 4(2) provides that the decision makers under the Act "must exercise their powers in a manner that protects the environment and human health". To be reasonable, a decision must be justified in relation to the factual and legal constraints that bear on it: *Vavilov* at para. 99. Subsection 4(2) is one such constraint.

[75] The Federal Court determined, and I agree, that subsection 4(2) does not operate to bar any project that might adversely affect the environment and human health. Under the *CEAA 2012*, the SAEEs, including those on health, that a project is likely to cause are determined by

the Minister and then referred to the Governor in Council for a decision on whether they are justified in the circumstances. Ultimately, the Governor in Council must balance the benefits and drawbacks of a project—environmental, health-related, economic, or other.

[76] The Federal Court concluded that the Minister's Decision did not consider or refer to subsection 4(2) or its substance and, accordingly, the decision did not "pass muster": FC Reasons at paras. 137, 142, 145, and 168. The Minister's Decision does not refer to subsection 4(2), but the lack of reference does not render the decision unreasonable or mean that the Minister failed to exercise its powers in a manner that protects human health.

[77] A decision is not inherently unreasonable when a decision maker fails to refer to "all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred": *Vavilov* at para. 91. Here, a failure to mention subsection 4(2) is particularly benign as it is a "guiding" provision. As the Federal Court acknowledged, subsection 4(2) does not prescribe outcomes: FC Reasons at paras. 140 and 167.

[78] More important, the Minister's Decision explicitly addressed the Project's SAEE on human health linked to air quality. As discussed above at paragraphs 60-70, the Minister's Decision considered the pollutants of concern resulting from the Project's air emissions, the adverse health consequences from those pollutants, and mitigation measures. It also noted the potential reductions in greenhouse gas emissions by shifting the transportation of goods from roads to railway, resulting in air quality benefits. In my view, and as the Federal Court recognized, the requirement under subsection 4(2) to exercise decision-making powers in a

manner that protects human health is a “duty to consider” the protection of human health: FC Reasons at paras. 141, 144 and 167. That duty was satisfied.

[79] It is difficult to imagine what more the Minister could have done to consider human health. In particular, the conditions imposed by the Minister in the Decision Statement, which were attached to the Minister’s Decision in draft form as Annex III and taken into account as mitigation measures under subsection 52(1), demonstrate that the Minister was very much alive to the Project’s potential impact on human health as it relates to air quality and determined how best to protect it. The recommended conditions included several mitigation measures to reduce the Project’s impact on air quality beyond those recommended by the review panel.

[80] The conditions ultimately imposed included a cap on the number of container trucks entering the Project area (800 per day, based on a monthly average) and an air pollutant and greenhouse gas emissions reduction plan involving electrification of vehicles, reporting requirements, and a follow-up program to determine the effectiveness of mitigation measures pertaining to air quality.

[81] I am not persuaded that the Minister failed to apply subsection 4(2) of the *CEAA 2012*. To the contrary, the Minister’s Decision reflects an exercise of power in a manner that duly considers and thus protects human health in accordance with the requirements in the *CEAA 2012*.

B. *The Governor in Council Decision*

(1) Is the GIC Decision flawed because it is based on a flawed Minister's Decision?

[82] The Federal Court determined that the GIC Decision was unreasonable because it is "simply a reflection" of the flawed Minister's Decision—i.e., because the GIC Decision, like the Minister's Decision, "only" refers to five SAEEs and not the "direct" SAEE on human health (related to air quality): FC Reasons at paras. 7 and 162. The list of five SAEEs in the GIC Decision is in the recital describing the Minister's Decision.

[83] The Halton Region respondents make the same argument in this Court. They submit that because the Minister did not refer the "direct" SAEE on human health related to air quality to the Governor in Council, the Governor in Council was deprived of material information for its decision, rendering it unreasonable. I do not accept this characterization or conclusion.

[84] I accept that if a decision of the Governor in Council were based on a materially flawed Minister's decision, the Governor in Council decision could be unreasonable on that basis. That is not what happened here. For the reasons already expressed, I have determined that the Minister's Decision is not fundamentally flawed; the full substance of the review panel's report on the Project's SAEE on human health related to air quality was captured in the Minister's decision on the Project's likely SAEEs and referral to the Governor in Council.

[85] I conclude that the GIC Decision is not unreasonable solely because it was based on the Minister's Decision.

(2) Alleged failure to apply subsection 4(2) of the *CEAA 2012*

[86] The Federal Court also concluded that the GIC Decision did not consider or refer to subsection 4(2) or its substance and, accordingly, the decision did not "pass muster": FC Reasons at paras. 168-169. Like the Minister's Decision, the GIC Decision does not refer to subsection 4(2), but the lack of reference does not render the decision unreasonable or mean that the Governor in Council failed to exercise their powers in a manner that protects human health.

[87] More important, the Governor in Council considered the Project's effects on human health, including related to air quality. The recitals in the GIC Decision refer to the Minister's Decision regarding SAEEs on air quality and human health. The Governor in Council concludes that these SAEEs are "justified in the circumstances"; the adverse implications were considered. This, in my view, satisfies the "duty to consider" the protection of human health pursuant to subsection 4(2).

[88] Further, the GIC Decision refers to the mitigation measures proposed by CN and additional mitigation measures identified by the Minister. As described earlier, these included a limit on the number of trucks entering and exiting the site, emissions controls, and other mitigation measures pertaining to the Project's adverse effects on air quality and human health related to air quality. The reference to mitigation measures demonstrates that the Governor in

Council was aware of the Project's SAEE on human health as it relates to air quality and considered how best to protect it.

[89] I am not persuaded that the Governor in Council failed to apply subsection 4(2) of the *CEAA 2012*. To the contrary, the GIC Decision reflects an exercise of power in a manner that duly considers and thus protects human health in accordance with the requirements in the *CEAA 2012*.

(3) Alleged failure to provide reasons for why the SAEEs were "justified in the circumstances"

[90] The Halton Region respondents also submit that the GIC Decision was unreasonable because the Governor in Council was required, given subsection 4(2), to "explain how it exercised its power…in a manner that protected human health". They say the decision should have included additional reasons on how the SAEEs on human health were "justified in the circumstances". I disagree.

[91] When reviewing the reasonableness of a decision, the statutory language defining the decision-making authority is key: *Vavilov* at para. 108; *Innovative Medicines Canada v. Canada (Attorney General)*, 2022 FCA 210 at para. 40 [*Innovative Medicines*]. Where the legislature uses "broad, open-ended, or highly qualitative language" such as "in the public interest" to describe the decision maker's powers, it contemplates flexibility for the decision maker in interpreting the relevant statute: *Vavilov* at para. 110; *Gitxaala Nation v. Canada*, 2016 FCA 187 at para. 144 [*Gitxaala*].

[92] Here, the language of subsection 52(4)—which requires the Governor in Council to determine whether the SAEEs identified by the Minister are "justified in the circumstances"—indicates that Parliament has afforded the Governor in Council broad discretion in its decision-making:

Governor in Council's decision	**Décision du gouverneur en conseil**
52 (4) When a matter has been referred to the Governor in Council, the Governor in Council may decide	**52 (4)** Saisi d'une question au titre du paragraphe (2), le gouverneur en conseil peut décider :
(a) that the significant adverse environmental effects that the designated project is likely to cause are justified in the circumstances; or	**a)** soit que les effets environnementaux négatifs importants sont justifiables dans les circonstances;
(b) that the significant adverse environmental effects that the designated project is likely to cause are not justified in the circumstances.	**b)** soit que ceux-ci ne sont pas justifiables dans les circonstances.

There is no prescribed list of factors that may or must be considered: *Reference re Impact Assessment Act*, 2023 SCC 23 at para. 26.

[93] Decisions of the Governor in Council, like the one under review, may involve "public interest determinations based on wide considerations of policy and public interest, assessed on 'polycentric, subjective or indistinct criteria and shaped by the administrative decision makers' view of economics, cultural considerations and the broader public interest'": *Mikisew* at para. 118; *Roseau River First Nation v. Canada (Attorney General)*, 2023 FCA 163 at para. 13 [*Roseau River*]; *Raincoast Conservation Foundation v. Canada (Attorney General)*, 2019 FCA 224 at paras. 18-19 [*Raincoast*]; *Gitxaala* at para. 150. These decisions are owed the "widest margin of appreciation" on judicial review: *Raincoast* at paras. 18-19; *Mikisew* at para. 119.

[94] As the Supreme Court held in *Vavilov*, reasonableness review accounts for context, including the institutional setting and applicable constraints: paras. 88-98. The Governor in Council is limited in what it can provide by way of explanation for its decision, for practical and legal reasons, including Cabinet confidentiality. Cabinet confidentiality extends not only to records of Cabinet deliberations, but also to documents that reflect the content of those deliberations: *British Columbia (Attorney General) v. Provincial Court Judges' Association of British Columbia*, 2020 SCC 20 at para. 97; *Babcock v. Canada (Attorney General)*, 2002 SCC 57 at para. 18.

[95] A claim of Cabinet confidentiality was made under section 39 of the *Canada Evidence Act*, R.S.C. 1985, c. C-5 in respect of the material submitted by the Minister to the Governor in Council. Accordingly, and not atypically, the only "reasons" for the GIC Decision are in the Order in Council. I nonetheless agree with the Federal Court's decision not to draw an adverse inference from the non-disclosure: FC Reasons at paras. 146-150 and 170. I decline to conclude that the GIC Decision was unsupported or based on an incomplete record: see, e.g., *Parker v. Canada (Attorney General)*, 2023 FC 1419 at para. 222; *Canadian Frontline Nurses v. Canada (Attorney General)*, 2024 FC 42 at para. 218. Indeed, the section 39 certificate reveals that the Minister's submission to the Governor in Council included a letter from the Minister to the President of the Treasury Board, a signed ministerial recommendation, a draft Order in Council, and accompanying materials from September and December 2020.

[96] I also conclude that the claim of Cabinet confidentiality does not thwart a proper review of the GIC Decision. Where reasons are limited, the reviewing court can nonetheless assess

reasonableness by considering the decision, the outcome, and "surrounding documents and circumstances and whatever bits of reasoning and rationale, if any, it has before it": *Portnov v. Canada (Attorney General)*, 2021 FCA 171 at para. 54 [*Portnov*], citing *Vavilov* at paras. 136-138. A review conducted in this manner can be meaningful and effective: *Portnov* at para. 54.

[97] This Court can meaningfully and effectively review the GIC Decision through the text of the Order in Council and the outcome of the decision, in light of the process that led to it. The GIC Decision, while brief, allows this Court to "discern a reasoned explanation of the decision", which *Vavilov* demands: *Innovative Medicines* at para. 48. It allows this Court to understand why the Governor in Council determined that the Project's likely SAEEs were "justified in the circumstances".

[98] The Order in Council begins with an observation that the Project was subject to an environmental assessment by the review panel under the *CEAA 2012*. It then lists the likely SAEEs determined and referred by the Minister, including the SAEE on air quality and cumulative SAEEs on air quality and human health, noting that the Minister did so "after having considered the environmental assessment report of the review panel…and having taken into account the implementation of mitigation measures that the Minister of the Environment considered appropriate". Of particular note, the Order in Council goes on to say that the Governor in Council "considered the project-specific mitigation measures proposed by [CN]" and was "satisfied that additional measures will be implemented to mitigate the [SAEEs] identified by the Minister".

[99] These recitals confirm that the GIC Decision was not made in a vacuum but was constrained by the Minister's Decision and the review panel's report. It was the culmination of a statutory process in which the decisions are like nesting dolls: the Minister's Decision is based on the review panel's report and the GIC Decision is, in turn, based on the Minister's decision and referral. The recitals also confirm that the Governor in Council itself reviewed the mitigation measures and thus turned its mind to the protection of human health and other aspects of the environment affected by the SAEEs the Project is likely to cause.

[100] The Order in Council also refers to policy and public interest considerations such as the concerns and interests of Aboriginal peoples, including the Project's potential impacts on Aboriginal rights; economic prosperity; regional economic activity, including the creation of jobs for Canadians; and environmentally sustainable trade and shipping. The listed considerations in favour of the Project indicate further why the Governor in Council concluded that the Project's SAEEs, including those on human health, were justified in the circumstances.

[101] The variety of factors taken into account, some competing, reflect a decision that is quintessentially executive in nature: *Roseau River* at para. 13; *Vavilov* at para. 88. Given the "broad, open-ended, and highly qualitative" language of subsection 52(4), the wide margin of appreciation to be afforded this kind of policy-laden decision, and the fact that the Order in Council provides a "reasoned explanation" for concluding that the SAEEs were "justified in the circumstances", the GIC Decision was reasonable.

[102] In this context—decision-making at the "apex of the executive"—it would be inappropriate to insist on more extensive reasons in the GIC Decision "grappling with" the Project's likely SAEE on human health as it relates to air quality or explaining why it was "justified in the circumstances": *Vavilov* at paras. 88-90; *Innovative Medicines* at paras. 40 and 48; *Portnov* at para. 54. Brief explanations can suffice: *Portnov* at para. 34.

[103] I am not persuaded that the GIC Decision fails to meet the standard of justification, transparency, or intelligibility: *Vavilov* at para. 99. To the contrary, the reasons are sufficient, whether with regard to subsection 4(2) or otherwise.

C. *Did the Decisions Reflect the Stakes?*

[104] Before concluding, I address a submission of the Halton Region respondents made in respect of both the Minister's Decision and the GIC Decision.

[105] The Halton Region respondents submit, and the Federal Court concluded, that the Minister's Decision and the GIC Decision did not adequately "reflect the stakes": FC Reasons at paras. 10, 126, and 133. *Vavilov* refers to a heightened responsibility in providing reasons where the decision has severe consequences on an individual's rights, including those that threaten life, liberty, dignity or livelihood: paras. 133-135. Even if the Minister's Decision or the GIC Decision is of the type contemplated in *Vavilov*, I am not persuaded that the principle of responsive justification—which lies at the core of the cited passage in *Vavilov* —was violated.

[106] As I have explained at length, the Minister and the Governor in Council were clearly aware of the Project's SAEE on human health regarding air quality, including the risks of serious illness emphasized by the Federal Court and the Halton Region respondents. Both decisions reflect a consideration of the Project's impact in this regard, and in the case of the GIC Decision, as the *CEAA 2012* requires, why those adverse effects are "justified in the circumstances".

VI. Conclusion

[107] For the foregoing reasons, I have concluded that the Minister's Decision and the GIC Decision are reasonable. I would allow the appeals, with costs, set aside the judgment of the Federal Court, including its costs award, and dismiss the underlying application for judicial review of the decisions, with costs. The parties advised that they have an agreement as to the details of the costs to be paid by the Halton Region respondents and that no order was necessary to set out those details.

"Monica Biringer"
J.A.

"I agree.
Mary J.L. Gleason J.A."

"I agree.
K. A. Siobhan Monaghan J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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CONCURRED IN BY:	GLEASON J.A. MONAGHAN J.A.
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