

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20181119**

**Docket: A-225-17**

**Citation: 2018 FCA 213**

**CORAM: NADON J.A.  
GLEASON J.A.  
RIVOALEN J.A.**

**BETWEEN:**

**VIA RAIL CANADA INC. and  
CANADIAN NATIONAL RAILWAY COMPANY**

**Appellants**

**and**

**THE CANADIAN TRANSPORTATION AGENCY  
and JONATHAN SHER**

**Respondents**

Heard at Ottawa, Ontario, on November 19, 2018.  
Judgment delivered from the Bench at Ottawa, Ontario, on November 19, 2018.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**NADON J.A.**

**Federal Court of Appeal**



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AGENCY AND JONATHAN SHER**

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Ottawa, Ontario, on November 19, 2018).**

**NADON J.A.**

[1] We are in agreement that the appeal should be dismissed.

[2] There can be no doubt that the appellants are not challenging the decision (decision 34 – R - 2017 dated February 17, 2017) rendered by the Canadian Transportation Agency (the Agency) as the decision does not order the disclosure of the information which the appellants seek to prevent disclosure of.

[3] The reality of the appeal is that the appellants are challenging the Agency's Reasons and not the remedy granted in that they do not accept the Agency's reasoning regarding subsection 152.4(1) of the *Canada Transportation Act*, S.C. 1996, c. 10 (the Act). In other words, the appellants say that the Agency's interpretation of subsection 152.4(1) is unreasonable.

[4] However, because the Agency exempted from disclosure the amounts to be paid, as set out in the Agreement at issue, *i.e.* the Rail Train Service Agreement (the Agreement) of January 2009 between the appellants, the matter is, in our view, moot. Although the language used by the Agency restricts the exemption from disclosure to "the amounts to be paid", this must necessarily include any formula or methodology found in the Agreement allowing the calculation of the amounts to be paid. Otherwise, the exemption from disclosure would, in our respectful opinion, be meaningless.

[5] In coming to this conclusion, we are not to be taken to be endorsing either the Agency's interpretation of subsection 152.4(1) of the Act nor its reasons from departing from its previous interpretation of the subsection in the *Goderich-Exeter Railway Company Limited* decision (LET-R-81-2010).

[6] Although the Agency's power to grant the exemption from disclosure of certain parts of the information founded in the Agreement was not in issue in the appeal, we are also not to be taken as endorsing the Agency's power to exempt the material from disclosure.

[7] Consequently, the appeal will be dismissed but, in the circumstances, no order as to costs will be made.

"M Nadon"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-225-17

**STYLE OF CAUSE:** VIA RAIL CANADA INC. and  
CANADIAN NATIONAL  
RAILWAY COMPANY v. THE  
CANADIAN TRANSPORTATION  
AGENCY and JONATHAN SHER

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** NOVEMBER 19, 2018

**REASONS FOR JUDGMENT OF THE COURT BY:** NADON J.A.  
GLEASON J.A.  
RIVOALEN J.A.

**DELIVERED FROM THE BENCH BY:** NADON J.A.

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