

## ***Ontario Court Gets Environmental Assessment for Rail Hub Back on Track***

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The Superior Court suspended Halton Region’s application for a declaration that provincial and municipal laws of general application applied to Canadian National Railway’s federal environmental assessment for a rail hub.<sup>1</sup> The Court granted CNR’s motion to stay Halton’s application, pending the completion of the EA process.

In *obiter*, the Court said that Halton would have a strong position if it needed to resume its application.

This decision should caution federal project proponents to consider local environmental matters.

### **Background**

CNR is the proponent of an intermodal rail hub in Milton.<sup>2</sup> An intermodal rail hub is a facility designed to transfer containers between rail and trucks.

The federal government has the exclusive authority to regulate railways. Provincial laws and municipal bylaws do not apply to railway projects if the law would substantially interfere with the federal government’s ability to manage railway projects.<sup>3</sup> However, CNR must still comply with all other provincial laws and local by-laws, that is, laws that do not bear “essentially upon the management and control” of CNR’s railway project.<sup>4</sup>

CNR needed to complete a federal environmental assessment for its project. The Minister of the Environment and Climate Change referred CNR’s project to an independent review panel.<sup>5</sup> The panel required CNR to identify the project’s environmental effects in an Environmental Impact Statement. After reviewing the EIS, the panel commenced public hearings.<sup>6</sup>

Halton is a participant in the environmental assessment. It asked the panel to use local land use and planning standards to assess the project’s environmental effects.<sup>7</sup>

Halton was concerned that CNR would not address local environmental issues. CNR argued that the panel should not consider local bylaws and provincial laws because these laws interfere with the management and control of railways.<sup>8</sup>

<sup>1</sup> 2018 ONSC 6095 [*Halton v CNR*].

<sup>2</sup> *Ibid* at paras 3, 55.

<sup>3</sup> *Rogers Communications Inc c Châteauguay (Ville)*, 2016 SCC 23 [*Rogers*].

<sup>4</sup> *R v Canadian Pacific Ltd* (1993), 103 DLR (4th) 255 at para 22.

<sup>5</sup> *Canadian Environmental Assessment Act, 2012*, SC 2012, c19, s 52, s 38 [*CEAA, 2012*].

<sup>6</sup> *Halton v CNR*, *supra* note 1 at paras 33-45.

<sup>7</sup> *Ibid* at para 67.

<sup>8</sup> *Ibid* at paras 86, 88.

Before the panel completed public hearings, Halton, several other municipalities, and the Province applied to the Court for a declaration that provincial laws and local by-laws apply to the project. CNR brought a motion to suspend Halton's application until the panel and the Minister completed the project's environmental assessment.

### **CNR's Position**

CNR made the following arguments.

- ◆ Halton's case was premature. The panel had not fully reviewed the project. This meant it was still open for the panel to recommend that the Minister reject the project.<sup>9</sup>
- ◆ The Court should not interfere with an ongoing environmental assessment. CNR asserted that Halton was trying to circumvent the project's environmental assessment.<sup>10</sup>

### **Halton's Position**

Halton made the following arguments.

- ◆ Halton's case must be heard before the panel can make recommendations to the panel. The panel and the Minister do not have the power to rule on whether local bylaws and municipal laws apply to its project.<sup>11</sup>
- ◆ A declaration from the Court would prevent future challenges to the decision. Halton raised the possibility "of a federal environmental review process reaching a conclusion that 'gets it wrong' after a prolonged hearing, which would result in wasted resources."<sup>12</sup>

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<sup>9</sup> *Ibid* at para 12.

<sup>10</sup> *Ibid* at para 117.

<sup>11</sup> *Ibid* at paras 16.

<sup>12</sup> *Ibid* at para 15.

## Court's Reasons

The Court suspended Halton's application pending the completion of the environmental assessment.<sup>13</sup> The Court granted the stay because:

- ♦ the panel was mandated to consider provincial and local environmental issues when it reviewed the project's environmental effects.<sup>14</sup>
- ♦ although the panel cannot rule on whether provincial laws and local by-laws apply, the panel's consideration of local environmental issues touched on Halton's case.<sup>15</sup>
- ♦ Halton's case was premature. The panel's ultimate recommendation to the Minister was still unknown.<sup>16</sup>
- ♦ the Court's ruling would interfere with the environmental assessment. The Court found that Halton could not use a ruling to instruct the panel on constitutional issues.<sup>17</sup>

The Court concluded that the situation would be different if the panel was refusing to consider provincial laws and local bylaws.

In *obiter*, the Court found that Halton would have an arguable case if the panel refused to consider provincial laws and local bylaws.<sup>18</sup> The Court found that the federal and provincial government's powers overlapped, and were not "water-tight compartments."<sup>19</sup>

The panel has not yet made a recommendation to the Minister. We look forward to discussing these recommendations in our next article.

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Document #: 1510954

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<sup>13</sup> *Ibid* at para 147.

<sup>14</sup> *Ibid* at paras 75, 97.

<sup>15</sup> *Ibid* at para 98.

<sup>16</sup> *Ibid* at paras 106, 113.

<sup>17</sup> *Ibid* at para 123.

<sup>18</sup> *Ibid* at para 113.

<sup>19</sup> *Ibid* at para 95.