

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20120301**

**Dockets: A-214-11  
A-216-11**

**Citation: 2012 FCA 70**

**CORAM: SHARLOW J.A.  
DAWSON J.A.  
TRUDEL J.A.**

**BETWEEN:**

**THE CANADIAN TRANSIT COMPANY**

**Appellant**

**and**

**MINISTER OF TRANSPORT, MINISTER OF FISHERIES AND OCEANS,  
MINISTER OF THE ENVIRONMENT, WINDSOR PORT AUTHORITY AND  
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

**Respondents**

Heard at Toronto, Ontario, on March 1, 2012.

Judgment delivered from the Bench orally at Toronto, Ontario, on March 1, 2012.

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

**SHARLOW J.A.**

Federal Court  
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**and**

**MINISTER OF TRANSPORT, MINISTER OF FISHERIES AND OCEANS,  
MINISTER OF THE ENVIRONMENT, WINDSOR PORT AUTHORITY AND  
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

**Respondents**

**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench orally at Toronto, Ontario on March 1, 2012)**

**SHARLOW J.A.**

[1] Despite the forceful and most able submissions of counsel for the appellant, we have not been persuaded that the record discloses any error on the part of Justice Kelen that warrants the intervention of this Court.

[2] In substance, most of the challenges to Justice Kelen's decision turn on his findings of fact. We have been unable to discern any palpable and overriding error in those findings. In our view, they were all reasonably open to him on the record. Further, we cannot conclude that Justice Kelen erred in law in any respect.

[3] These appeals will be dismissed with costs.

“K. Sharlow”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKETS:**

A-214-11 and A-216-11

**APPEAL FROM THE JUDGMENT OF THE HONOURABLE MR. JUSTICE KELEN OF THE FEDERAL COURT, DATED MAY 4, 2011 IN DOCKET NO. T-2189-09.**

**STYLE OF CAUSE:**

THE CANADIAN TRANSIT COMPANY  
v. MINISTER OF TRANSPORT,  
MINISTER OF FISHERIES AND  
OCEANS, MINISTER OF THE  
ENVIRONMENT, WINDSOR PORT  
AUTHORITY AND HER MAJESTY THE  
QUEEN IN RIGHT OF ONTARIO

**PLACE OF HEARING:**

Toronto, Ontario

**DATE OF HEARING:**

March 1, 2012

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

(SHARLOW, DAWSON & TRUDEL JJ.A.)

**DELIVERED FROM THE BENCH BY:**

SHARLOW J.A.

**APPEARANCES:**

Kevin O'Brien  
Lindsay Rauccio

FOR THE APPELLANT

William MacLarkey

FOR THE RESPONDENT (Her  
Majesty the Queen in right of Ontario)

Peter Southey  
Andrea Bourke  
Jon Bricker

FOR THE RESPONDENT (Minister  
of Transport, Minister of Fisheries and  
Oceans, Minister of the Environment,  
Windsor Port Authority)

**SOLICITORS OF RECORD:**

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Myles J. Kirvan  
Deputy Attorney General of Canada  
Toronto, Ontario

FOR THE APPELLANT

FOR THE RESPONDENT (Her  
Majesty the Queen in right of  
Ontario)

FOR THE RESPONDENT  
(Minister of Transport, Minister of  
Fisheries and Oceans, Minister of  
the Environment, Windsor Port  
Authority)