Federal Court of Appeal | Cour d'appel fédérale

**Date: 20250909**

**Docket: A-343-23**

**Citation: 2025 FCA 160**

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

**BETWEEN:**

**CANADIAN NATIONAL RAILWAY COMPANY**

**Applicant**

**and**

**ALBERTA PACIFIC FOREST INDUSTRIES INC.**

**Respondent**

Heard at Toronto, Ontario, on March 20, 2025.

Judgment delivered at Ottawa, Ontario, on September 9, 2025.

REASONS FOR JUDGMENT BY: GLEASON J.A.

CONCURRED IN BY: BOIVIN J.A.
BIRINGER J.A.

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**REASONS FOR JUDGMENT**

**GLEASON J.A.**

[1] The applicant, Canadian National Railway Company (CN), seeks to judicially review the decision of the Canadian Transportation Agency (the Agency), CONF-R-12-2023 issued November 9, 2023 [the *Decision*], in which the Agency concluded that CN failed to meet the level of service obligations it owed to the respondent, Alberta Pacific Forest Industries Inc.

[2] Under section 41 of the *Canada Transportation Act*, S.C. 1996, c. 10 [the *CTA*], an appeal lies to this Court, with leave, from Agency decisions on "questions of law or jurisdiction". Because CN wishes to contest factual findings made by the Agency in the *Decision*, it did not seek leave to appeal the Decision under section 41 of the *CTA* but, rather, commenced a judicial review application to this Court under section 28 of the *Federal Courts Act*, R.S.C. 1985, c. F-7 [the *FCA*].

[3] Since the decision of this Court in *Canadian National Railway Company v. Emerson Milling Inc.*, 2017 FCA 79 [*Emerson*] (if not before), it has been clear that questions of fact may not be appealed to this Court under section 41 of the *CTA*: *Emerson* at para. 13.

[4] Section 18.5 of the *FCA* provides that matters that may be appealed to the Federal Court, the Federal Court of Appeal, the Tax Court of Canada, the Court Martial Appeal Court of Canada, the Supreme Court of Canada, the Governor in Council or the Treasury Board may not be judicially reviewed under section 28 or 18 of the *FCA* (which provide for judicial review, to this Court or the Federal Court, of decisions of federal boards, commissions or other tribunals, as defined in section 2 of the *FCA*).

[5] Section 40 of the *CTA* provides the Governor in Council authority to vary or rescind Agency decisions.

[6] In *Canadian National Railway Company v. Scott*, 2018 FCA 148 [*Scott*], this Court held that the combined effect of section 18.5 of the *FCA* and section 40 of the *CTA* deprives this

Court of jurisdiction to hear applications for judicial review contesting factual determinations of the Agency.

[7] CN submits that subsequent case law has overtaken the decision in *Scott* and that it is no longer good law. In the alternative, it argues that section 18.5 of the *FCA* is unconstitutional and cannot bar its constitutionally protected right to judicially review factual determinations of the Agency. CN accordingly asserts that this Court has jurisdiction to hear its judicial review application of the *Decision*.

[8] With respect, I disagree and, for the reasons that follow, would find that *Scott* has not been overtaken and is binding on this Court. I would also find that section 18.5 of the *FCA* is not unconstitutional. I would therefore dismiss this application, with costs, and find that this Court lacks jurisdiction to consider CN's application for judicial review.

## I. Relevant Statutory Background and Case law

[9] It is useful to commence by laying out in more detail the relevant statutory background and case law.

[10] The relevant provisions in the *CTA* read as follows:

| | |
|---|---|
| **Fact finding is conclusive** | **Décision définitive** |
| **31** The finding or determination of the Agency on a question of fact within its jurisdiction is binding and conclusive. | **31** La décision de l'Office sur une question de fait relevant de sa compétence est définitive. |

[…]

**Governor in Council may vary or rescind orders, etc.**

**40** The Governor in Council may, at any time, in the discretion of the Governor in Council, either on petition of a party or an interested person or of the Governor in Council's own motion, vary or rescind any decision, order, rule or regulation of the Agency, whether the decision or order is made inter partes or otherwise, and whether the rule or regulation is general or limited in its scope and application, and any order that the Governor in Council may make to do so is binding on the Agency and on all parties.

**Appeal from Agency**

**41 (1)** An appeal lies from the Agency to the Federal Court of Appeal on a question of law or a question of jurisdiction on leave to appeal being obtained from that Court on application made within one month after the date of the decision, order, rule or regulation being appealed from, or within any further time that a judge of that Court under special circumstances allows, and on notice to the parties and the Agency, and on hearing those of them that appear and desire to be heard.

**Time for making appeal**

**(2)** No appeal, after leave to appeal has been obtained under subsection (1), lies unless it is entered in the Federal Court of Appeal within sixty days after the

[…]

**Modification ou annulation**

**40** Le gouverneur en conseil peut modifier ou annuler les décisions, arrêtés, règles ou règlements de l'Office soit à la requête d'une partie ou d'un intéressé, soit de sa propre initiative; il importe peu que ces décisions ou arrêtés aient été pris en présence des parties ou non et que les règles ou règlements soient d'application générale ou particulière. Les décrets du gouverneur en conseil en cette matière lient l'Office et toutes les parties.

**Appel**

**41 (1)** Tout acte — décision, arrêté, règle ou règlement — de l'Office est susceptible d'appel devant la Cour d'appel fédérale sur une question de droit ou de compétence, avec l'autorisation de la cour sur demande présentée dans le mois suivant la date de l'acte ou dans le délai supérieur accordé par un juge de la cour en des circonstances spéciales, après notification aux parties et à l'Office et audition de ceux d'entre eux qui comparaissent et désirent être entendus.

**Délai**

**(2)** Une fois l'autorisation obtenue en application du paragraphe (1), l'appel n'est admissible que s'il est interjeté dans les soixante jours suivant le prononcé de l'ordonnance l'autorisant.

order granting leave to appeal is made.

**Powers of Court**

**(3)** An appeal shall be heard as quickly as is practicable and, on the hearing of the appeal, the Court may draw any inferences that are not inconsistent with the facts expressly found by the Agency and that are necessary for determining the question of law or jurisdiction, as the case may be.

**Agency may be heard**

**(4)** The Agency is entitled to be heard by counsel or otherwise on the argument of an appeal.

**Pouvoirs de la cour**

**(3)** L'appel est mené aussi rapidement que possible; la cour peut l'entendre en faisant toutes inférences non incompatibles avec les faits formellement établis par l'Office et nécessaires pour décider de la question de droit ou de compétence, selon le cas.

**Plaidoirie de l'Office**

**(4)** L'Office peut plaider sa cause à l'appel par procureur ou autrement.

[11] The relevant provisions in the *FCA* state:

**Extraordinary remedies, federal tribunals**

**18 (1)** Subject to section 28, the Federal Court has exclusive original jurisdiction

**(a)** to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and

**(b)** to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain

**Recours extraordinaires : offices fédéraux**

**18 (1)** Sous réserve de l'article 28, la Cour fédérale a compétence exclusive, en première instance, pour :

**a)** décerner une injonction, un bref de *certiorari*, de *mandamus*, de prohibition ou de *quo warranto*, ou pour rendre un jugement déclaratoire contre tout office fédéral;

**b)** connaître de toute demande de réparation de la nature visée par l'alinéa a), et notamment de toute procédure engagée contre le procureur général du Canada afin d'obtenir réparation de la part d'un office fédéral.

relief against a federal board, commission or other tribunal.

[…]

**Application for judicial review**

**18.1 (1)** An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.

[…]

**Exception to sections 18 and 18.1**

**18.5** Despite sections 18 and 18.1, if an Act of Parliament expressly provides for an appeal to the Federal Court, the Federal Court of Appeal, the Supreme Court of Canada, the Court Martial Appeal Court, the Tax Court of Canada, the Governor in Council or the Treasury Board from a decision or an order of a federal board, commission or other tribunal made by or in the course of proceedings before that board, commission or tribunal, that decision or order is not, to the extent that it may be so appealed, subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with, except in accordance with that Act.

[…]

**Judicial review**

**28 (1)** The Federal Court of Appeal has jurisdiction to hear and determine applications for judicial review made in respect of any of the following federal boards, commissions or other tribunals:

[…]

[…]

**Demande de contrôle judiciaire**

**18.1 (1)** Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.

[…]

**Dérogation aux art. 18 et 18.1**

**18.5** Par dérogation aux articles 18 et 18.1, lorsqu'une loi fédérale prévoit expressément qu'il peut être interjeté appel, devant la Cour fédérale, la Cour d'appel fédérale, la Cour suprême du Canada, la Cour d'appel de la cour martiale, la Cour canadienne de l'impôt, le gouverneur en conseil ou le Conseil du Trésor, d'une décision ou d'une ordonnance d'un office fédéral, rendue à tout stade des procédures, cette décision ou cette ordonnance ne peut, dans la mesure où elle est susceptible d'un tel appel, faire l'objet de contrôle, de restriction, de prohibition, d'évocation, d'annulation ni d'aucune autre intervention, sauf en conformité avec cette loi.

[…]

**Contrôle judiciaire**

**28 (1)** La Cour d'appel fédérale a compétence pour connaître des demandes de contrôle judiciaire visant les offices fédéraux suivants :

[…]

| | |
|---|---|
| **(k)** the Canadian Transportation Agency established by the *Canada Transportation Act*; | **k)** l'Office des transports du Canada constitué par la *Loi sur les transports au Canada*; |

[12] The case law of this Court and of the Supreme Court of Canada establishes that normal appellate rules apply in statutory appeals: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 [*Vavilov*] at para. 37. See also *Telus Communications Inc. v. Federation of Canadian Municipalities*, 2025 SCC 15 at para. 25; *Dow Chemical Canada ULC v. Canada*, 2024 SCC 23 at para. 83; *Yatar v. TD Insurance Meloche Monnex*, 2024 SCC 8 [*Yatar*] at para. 48; *Ward v. Quebec (Commission des droits de la personne et des droits de la jeunesse)*, 2021 SCC 43, [2021] 3 SCR 176 at para. 25; *Emerson* at paras. 23–26. Thus, in a statutory appeal, questions of law are reviewable for correctness whereas questions of fact or of mixed fact and law, which do not contain an extricable legal issue, are reviewable for palpable and overriding error.

[13] Conversely, in an application for judicial review, determinations of both law and fact made by the administrative decision-maker are generally reviewable for reasonableness: *Vavilov* at paras. 89–90 and 99.

[14] In *Vavilov* and *Yatar*, the Supreme Court of Canada held that the existence of a limited right to appeal questions of law, in and of itself, does not foreclose the right to judicially review factual findings that fall outside the scope of the limited statutory appeal: *Yatar* at paras. 3 and 60–63; *Vavilov* at para. 45.

[15] In paragraph 24 of *Vavilov*, the majority noted that "because judicial review is protected by s. 96 of the *Constitution Act, 1867*, legislatures cannot shield administrative decision making from curial scrutiny entirely". The majority added at paragraph 52 of *Vavilov* that:

> … statutory appeal rights are often circumscribed, as their scope might be limited with reference to the types of questions on which a party may appeal (where, for example, appeals are limited to questions of law) or the types of decisions that may be appealed (where, for example, not every decision of an administrative decision maker may be appealed to a court), or to the party or parties that may bring an appeal. However, the existence of a circumscribed right of appeal in a statutory scheme does not on its own preclude applications for judicial review of decisions, or of aspects of decisions, to which the appeal mechanism does not apply, or by individuals who have no right of appeal. But any such application for judicial review is distinct from an appeal, and the presumption of reasonableness review that applies on judicial review cannot then be rebutted by reference to the statutory appeal mechanism.

[16] In *Yatar*, the Supreme Court expanded on the foregoing observations and confirmed that a court cannot refuse to hear a judicial review application challenging factual determinations of an administrative decision-maker merely because there is a limited right to appeal on questions of law arising from the decision of such a decision-maker. In so deciding, the Supreme Court noted that it had stated in *Immeubles Port Louis Ltée v. Lafontaine (Village)*, 1991 CanLII 82 (SCC), [1991] 1 S.C.R. 326, "that "[t]he principle that public authorities are subordinate to the supervisory power of the superior courts is the cornerstone of the Canadian and Quebec system of administrative law. Such judicial review is a necessary consequence of the rule of law" (p. 360)" (*Yatar* at para. 45). It also cited with approval, at paragraph 46 of *Yatar*, the following passage from paragraph 27 in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190:

> As a matter of constitutional law, judicial review is intimately connected with the preservation of the rule of law. It is essentially that constitutional foundation which explains the purpose of judicial review and guides its function and operation. Judicial review seeks to address an underlying tension between the rule

> of law and the foundational democratic principle, which finds an expression in the initiatives of Parliament and legislatures to create various administrative bodies and endow them with broad powers.

[17] The Supreme Court further noted in *Yatar* that judicial review is a discretionary remedy and that, in determining whether to exercise its discretion to hear an application for judicial review, a reviewing court should apply the principles set out in *Strickland v. Canada (Attorney General)*, 2015 SCC 37, [2015] 2 S.C.R. 713 [*Strickland*]: *Yatar* at paras. 3 and 51. These allow the reviewing court to consider whether judicial review is appropriate, which, in turn, requires the court to consider the adequacy of any available alternatives to judicial review: *Strickland* at para. 40. The Supreme Court held that a limited right of appeal on questions of law is not an adequate alternative to an application for judicial review, challenging factual determinations, as a statutory appeal on legal issues does not allow for review of the decision-maker's factual determinations. However, it found that adequate alternative remedies do exist where an internal review process has not been exhausted or where there is a full statutory right of appeal that allows for appeal of questions of both fact and law.

[18] In *Yatar*, the Supreme Court left open the issue of whether similar conclusions would apply where there is a privative clause in the administrative decision-maker's constituent statute.

[19] This Court has held that factual issues may be judicially reviewed, where a limited right of appeal on questions of law or jurisdiction is provided in an administrative decision-maker's constituent statute where that statute contains a privative clause: *Canada (Attorney General) v. Best Buy Canada Ltd.*, 2021 FCA 161 [*Best Buy*]. See also *Best Buy Canada Ltd. v. Canada (Border Services Agency)*, 2025 FCA 45 at para. 10; *Democracy Watch v. Canada (Attorney*

*General)*, 2024 FCA 158 at paras. 95–96 [*Democracy Watch*]; *Maritime Employers Association v. Syndicat des débardeurs (Canadian Union of Public Employees, Local 375)*, 2023 FCA 93 at paras. 115–17; *Canada (Attorney General) v. Pier 1 Imports (U.S.), Inc.*, 2023 FCA 209 at paras. 29–30; *BCE Inc. v. Québecor Média Inc.*, 2022 FCA 152 at para. 58. I note that this approach has been questioned by Chief Justice de Montigny, in *obiter* or non-binding comment, in *Democracy Watch* at paras. 58–78.

[20] The Supreme Court's holding in *Yatar* that an internal administrative review that has not been exhausted is an adequate alternate remedy that can lead a court to decline to hear an application for judicial review has been variously characterized in previous case law as the doctrine of exhaustion, the doctrine of adequate alternate remedy, the rule against the bifurcation of administrative proceedings, the principle preventing interlocutory judicial reviews, and an objection to premature judicial review. As noted by Justice Stratas, writing for this Court at paragraphs 30–32 of *C.B. Powell Limited v. Canada (Border Services Agency)*, 2010 FCA 61 (CanLII), [2011] 2 FCR 332:

> [30] The normal rule is that parties can proceed to the court system only after all adequate remedial recourses in the administrative process have been exhausted. The importance of this rule in Canadian administrative law is well demonstrated by the large number of decisions of the Supreme Court of Canada on point: *Harelkin v. University of Regina*, 1979 CanLII 18 (SCC), [1979] 2 S.C.R. 561; *Canadian Pacific Ltd. v. Matsqui Indian Band*, 1995 CanLII 145 (SCC), [1995] 1 S.C.R. 3; *Weber v. Ontario Hydro*, 1995 CanLII 108 (SCC), [1995] 2 S.C.R. 929; *R. v. Consolidated Maybrun Mines Ltd.*, 1998 CanLII 820 (SCC), [1998] 1 S.C.R. 706, at paragraphs 38-43; *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, 2000 SCC 14, [2000] 1 S.C.R. 360, at paragraphs 31 and 34; *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 460, at paragraphs 14–15, 58 and 74*; Goudie v. Ottawa (City)*, 2003 SCC 14, [2003] 1 S.C.R. 141; *Vaughan v. Canada*, 2005 SCC 11, [2005] 1 S.C.R. 146, at paragraphs 1–2; *Okwuobi v. Lester B. Pearson School Board; Casimir v. Quebec*

*(Attorney General*); Zorrilla v. Quebec (Attorney General), 2005 SCC 16, [2005] 1 S.C.R. 257, at paragraphs 38–55; *Canada (House of Commons) v. Vaid*, 2005 SCC 30, [2005] 1 S.C.R. 667, at paragraph 96.

[31] Administrative law judgments and textbooks describe this rule in many ways: the doctrine of exhaustion, the doctrine of adequate alternative remedies, the doctrine against fragmentation or bifurcation of administrative proceedings, the rule against interlocutory judicial reviews and the objection against premature judicial reviews. All of these express the same concept: absent exceptional circumstances, parties cannot proceed to the court system until the administrative process has run its course. This means that, absent exceptional circumstances, those who are dissatisfied with some matter arising in the ongoing administrative process must pursue all effective remedies that are available within that process; only when the administrative process has finished or when the administrative process affords no effective remedy can they proceed to court. Put another way, absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted.

[32] This prevents fragmentation of the administrative process and piecemeal court proceedings, eliminates the large costs and delays associated with premature forays to court and avoids the waste associated with hearing an interlocutory judicial review when the applicant for judicial review may succeed at the end of the administrative process anyway: see, e.g., *Consolidated Maybrun*, above, at paragraph 38; *Greater Moncton International Airport Authority v. Public Service Alliance of Canada*, 2008 FCA 68, at paragraph 1; *Ontario College of Art v. Ontario (Human Rights Commission)* (1993), 1993 CanLII 3430 (ON SCDC), 11 O.R. (3d) 798 (Div. Ct.). Further, only at the end of the administrative process will a reviewing court have all of the administrative decision-maker's findings; these findings may be suffused with expertise, legitimate policy judgments and valuable regulatory experience: see, e.g., *Consolidated Maybrun*, above, at paragraph 43; *Delmas v. Vancouver Stock Exchange* (1994), 1994 CanLII 3350 (BC SC), 119 D.L.R. (4th) 136 (B.C.S.C.), affd (1995), 1995 CanLII 1305 (BC CA), 130 D.L.R. (4th) 461 (B.C.C.A.); *Jafine v. College of Veterinarians of Ontario* (1991), 1991 CanLII 7126 (ON SC), 5 O.R. (3d) 439 (Gen. Div.). Finally, this approach is consistent with and supports the concept of judicial respect for administrative decision makers who, like judges, have decision-making responsibilities to discharge: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paragraph 48.

## II. Analysis

[21] With this background in mind, I turn now to the questions that arise in this appeal.

[22] I deal first with CN's assertion that the foregoing case law, and in particular, the decision of the Supreme Court of Canada in *Yatar*, has overtaken *Scott*. As noted, I disagree. I find that the relevant holdings in *Scott* for purposes of the present application are that: (1) factual findings of the Agency can be put before the Governor in Council, by way of petition under section 40 of the *CTA*; and (2) such a petition constitutes an appeal within the meaning of section 18.5 of the *FCA*, which bars an application to this Court for judicial review of the Agency's factual findings. In arriving at this conclusion, this Court relied on the statements made by Justice Stratas at paragraph 12 of *Emerson*, where, writing for the Court, he stated as follows:

> [12] Under the [*CTA*], the Agency is continued and empowered as a specialized regulator in the transportation sector. Its decisions are informed by understandings of how the sector operates and other specialized appreciations and policy considerations, such as the National Transportation Policy set out in section 5 of the Act. Indeed, under sections 24 and 43 of the Act, the Governor in Council can issue policy directions concerning any matter that comes within the jurisdiction of the Agency and the Agency must follow them. Appeals are not available for pure questions of fact (see section 31 of the Act). But appeals to the Governor in Council are available under section 40 of the Act; this provides a way to appeal, among other things, factually suffused and policy-imbued decisions of the Agency: *Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40, [2014] 2 S.C.R. 135 [*CN SCC*].
>
> [emphasis added.]

[23] This Court in *Scott* also rejected the suggestion made by CN — similar to its submission in the instant case — that petitions to the Governor in Council do not provide an adequate alternative to judicial review because the Governor in Council is unlikely to consider a petition on a factual issue largely of concern only to the parties to the Agency decision. In *Scott*, this Court held that the Supreme Court of Canada had decided otherwise in *CN SCC*, where it held that the Governor in Council, under section 40 of the *CTA*, acts in an adjudicative capacity and

determines *de novo* the issues — of fact, law or policy — that were before the Agency. Writing for this Court, Justice Nadon concluded as follows at paragraphs 56 and 57 of *Scott*:

> [56] It follows from the Supreme Court's decision in [*CN SCC*], that there is a meaningful acceptable alternate remedy open to CN to challenge factual findings and determinations made by the Agency. It also follows from [*CN SCC*] that decisions made by the Governor in Council under section 40 are adjudicative decisions which are subject to judicial review before the Federal Court whose decisions can be appealed to this Court.
>
> [57] Consequently, contrary to what CN asserts, Parliament did not remove the Courts' judicial review powers by enacting section 40 of the [*CTA*]. The remedy open to CN may not be the one that it would have liked to have but the remedy created by Parliament, as I have already indicated, is a meaningful remedy, the effect of which is to prevent this Court from hearing and determining CN's judicial review application brought under section 28 of the [*FCA*].

[24] I see nothing in *Yatar*, *Vavilov*, or *Best Buy* that undercuts these holdings as none of them deals with the issue of whether section 40 of the *CTA* is an adequate alternate remedy to judicial review. Indeed, in *Best Buy* the majority distinguished *Emerson* on the basis of the presence of the remedy under section 40 of the *CTA* as being the reason why factual determinations of the *CTA* are not judicially reviewable (see paragraph 127 of *Best Buy*). *Scott* was also applied and considered to be dispositive in *Canadian National Railway Company v. Louis Dreyfus Commodities Canada Ltd.*, 2019 FCA 9.

[25] This Court has adopted a narrow view as to when a three-judge panel of the Court may depart from the holding in a previously decided case. In *Miller v. Canada (Attorney General)*, 2002 FCA 370, Justice Rothstein, writing for the Court, stated at paragraph 10 that "the test used for overruling a decision of another panel of this Court is that the previous decision is manifestly wrong, in the sense that the Court overlooked a relevant statutory provision, or a case that ought

to have been followed". The decision in *Scott* cannot be said to be manifestly wrong. Nor has it been overtaken or attenuated by subsequent case law. I accordingly conclude that *Scott* remains a binding authority that we must follow.

[26] I turn next to CN's assertion that section 18.5 of the *FCA* violates a constitutionally guaranteed right to judicial review. Assuming, without deciding that such a right exists (as *Vavilov*, *Yatar*, and *Best Buy* would appear to suggest), I see nothing in section 18.5 of the *FCA* that would violate any such right. All section 18.5 does is codify the well-established principles, outlined above, regarding the need to exhaust alternate remedies before commencing a judicial review application.

## III. Proposed Disposition

[27] I would therefore dismiss CN's application for judicial review, with costs, and find that, by virtue of the holding in *Scott*, this Court lacks jurisdiction to hear the application.

"Mary J.L. Gleason"
J.A.

"I agree.
Richard Boivin J.A."

"I agree.
Monica Biringer J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | A-343-23 |
| **STYLE OF CAUSE:** | CANADIAN NATIONAL RAILWAY COMPANY v. ALBERTA PACIFIC FOREST INDUSTRIES INC. |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | MARCH 20, 2025 |
| **REASONS FOR JUDGMENT BY:** | GLEASON J.A. |
| **CONCURRED IN BY:** | BOIVIN J.A.<br>BIRINGER J.A. |
| **DATED:** | SEPTEMBER 9, 2025 |

**APPEARANCES:**

| | |
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| Lucia Stuhldreier | FOR THE RESPONDENT |

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