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ENVIRONMENT

Applications for judicial review of three decisions: (i) Referral decision dated September 1, 2020, of Minister of Environment to Governor in Council made pursuant to *Canadian Environmental Assessment Act, 2012*, S.C. 2012, c. 19, s. 52 (Act), s. 52(2) (Minister's Referral Decision); (ii) Governor in Council's justification decision (Order in Council P.C. 2021-0008 dated January 20, 2021) made pursuant to Act, s. 52(4) (Cabinet Justification Decision); (iii) Minister's Decision Statement dated January 21, 2021, establishing conditions with which Canadian National Railway Company (CN) must comply under Act, ss. 53(2), 54(1) — At issue was very large \$250 million intermodal container transfer facility (Project) adjacent to CN's main line and a highway, through and at which containers may be loaded, offloaded from trucks to rail cars, from rail cars to trucks — Project to be used 24/7 by great number of diesel powered trucks (800 round trips, 1,600 one way trips daily) in addition to four intermodal trains daily powered by multiple diesel locomotives, two of which are already moving along Halton Subdivision mainline — Diesel exhaust produced would contain pollutants, some of which are known to be toxic to human health — Expert Review Panel appointed under Act concluded Project, after taking mitigation into account, would likely cause six significant adverse environmental effects: two direct (air quality and human health as it relates to air quality), four cumulative (air quality, human health, wildlife and habitat, agricultural land) — Inexplicably, neither Minister's Referral Decision nor Cabinet Justification Decision considered or referred to second finding, namely that Project would likely cause significant direct adverse environmental effects on human health as it related to air quality of local residents — Of six significant adverse effects likely caused by Project, only five were addressed by Minister — No explanation for absence of sixth effect was provided in Minister's Referral Decision — Likewise only five significant adverse effects were addressed by Cabinet, which also made no mention of Project's significant direct adverse environmental effects on human health of local residents — Issues on application herein were whether any of the three impugned decisions were unreasonable; whether Minister, Cabinet appropriately considered Act, s. 4(2) in terms of protection of human health — Act, s. 19(1)(a), (b) setting out factors to be considered in environmental assessment — Both Impact Assessment Agency of Canada (IAAC), which assisted Minister in Act's review of Project; Minister distinguished between "direct", "cumulative" significant adverse environmental effects — Did so in IAAC's Memorandum to Minister dated September 1, 2020, which, once concurred in, became Minister's Referral Decision — Review Panel did not use that language, referring instead to "significant adverse environmental effects"; "significant adverse cumulative environmental effects" — Act does not use modifier "direct" either but refers to significant adverse cumulative environmental effects — Act refers to "cumulative environmental effects" in describing what must be identified by Review Panel (Act, s. 19(1)(a)) — What Minister, IAAC refer to as "significant direct adverse environmental effects" and what Act means in findings of "significant adverse environmental effects" (without modifier "cumulative") are same thing — Of six adverse environmental effects identified, one at issue here was Review Panel's conclusion Project's addition of toxic diesel pollutants to already degraded local airshed would likely cause significant direct adverse environmental effects on human health as it related to air quality in local area — Review Panel identified three toxic components of diesel exhaust in respect of which there are "no human health thresholds" — While all significant adverse environmental effects important, was obvious that significant direct adverse environmental effects related to humans are of very considerable importance in decision-making under review — To assist Minister in deciding whether and what should be referred to Cabinet, Minister received

Memorandum from IAAC President — Minister’s Referral Decision was inexplicably different from expert Review Panel’s report, from two IAAC Memoranda to Minister — In making Minister’s Referral Decision, Minister decided what significant adverse environmental effects would go to Cabinet — Minister implicitly decided Project’s significant direct adverse environmental effects on human health would not go to Cabinet — Project’s direct consequences for human health as it relates to air quality in local environment was not mentioned or discussed in Minister’s Referral Decision — In this respect, Minister’s Referral Decision was flawed because it did not meaningfully grapple with what was central, important issue, namely Project’s significant direct adverse environmental effects on human health — Thus, Minister’s Referral Decision did not reasonably reflect high stakes raised by specifically identified threat to human health of local residents — In addition, Minister’s Referral Decision did not reflect heightened responsibility Minister had to ensure his reasons demonstrated that he considered this negative direct human health consequence in referring Project to Cabinet to decide if it was justified in the circumstances, as required by *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 — Outcome was also not justified in reasons by decision maker to those to whom decision applied, contrary to *Vavilov* — In this regard, Minister’s Referral Decision was unreasonable — For same reasons, Cabinet’s failure to meaningfully grapple with Project’s significant direct adverse environmental effects on human health was fundamental flaw in Cabinet’s Justification Decision, which was also unreasonable — Both Minister, Cabinet, in making their decisions, were required to consider protection of human health — Protection of human health is required consideration imposed on Minister, Cabinet by express terms of Act, s. 4(2) — Minister, Cabinet not considering this duty — In this respect, both decisions were also unreasonable — Therefore, both decisions were set aside, remanded for redetermination in accordance with reasons herein — Applications allowed.

HALTON (REGIONAL MUNICIPALITY) V. CANADA (ENVIRONMENT), T-330-21, 2024 FC 348, Brown J., reasons for judgment dated March 1, 2024, 62 + 6 pp.)