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PRACTICE AND PROCEDURE BEFORE ADMINISTRATIVE TRIBUNALS

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AUTHOR'S NOTE

In *Canadian National Railway Company v. Canada (Transportation Agency)*, 2025 CAF 184, 2025 FCA 184, 2025 CarswelNat 4168, 2025 CarswelNat 4169 (F.C.A.), the Federal Court of Appeal reiterated and refined the modern approach to statutory interpretation, and more specifically, the use of the text of statutory provisions as the "anchor" of that analysis.

The appeal concerned the Canadian Transportation Agency's rate-setting for "interswitching" for railroads. The Federal Court of Appeal concluded the Agency erred in interpreting the legislation governing this rate-setting, and the considerations relevant to it, and remitted the matter back for redetermination. At issue was the definition of a provision in the *Canada Transportation Act* which stipulates that a rate established by the Agency "must be commercially fair and reasonable to all parties".

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As Stratas J.A. observed in his reasons, at para. 21, "Fair and reasonable" is one of the broadest phrases in the statute book. Broad discretionary provisions of this kind empower administrative decision-makers to consider "broad policy considerations" as well as "regulatory experience", "policy appreciation" and "expertise about the regulated sector", including "subjective judgment calls" and "subjective weighings and assessments" (citing *Teksavvy Solutions Inc. v. Bel Canada*, 2024 FCA 121, 2024 CarswelNat 2812 (F.C.A.), leave to appeal refused 2025 CarswelNat 967, 2025 CarswelNat 968 (S.C.C.) at para. 22, among other cases).

Stratas J.A.s' reminder about the practical and policy expertise of regulatory decision-makers, and the role deference to this expertise plays in the context of modern statutory interpretation makes this case particularly noteworthy. Stratas J.A., using the text of the provision as the "anchor" of the statutory interpretation analysis, concluded that the Canadian Transportation Agency erred in failing to consider evidence of market factors, which was further reinforced by the context and purpose of the provision.

Stratas J.A. added that it appeared the Agency had not undertaken a complete interpretation of the Act, but rather had made conclusory statements as to its meaning. Stratas J.A. concluded, at para. 44, "Cutting corners and conclusory statements, without more, are not how the Agency should roll."

This release features developments in several areas of administrative law.

In *Rogers v. Director of Maintenance Enforcement Program*, 2025 YKCA 12, 2025 CarswelYukon 86, 20 R.F.L. (9th) 4 (Yukon C.A.), the Yukon Court of Appeal considered the question of whether a Commissioner's failure to enact regulations regarding a minimum income for purposes of child support program was unlawful. The Court concluded that the Commissioner's inaction was justiciable, and that the statutory authority in question compelled the Commissioner to prescribe a minimum income to be retained by payors, so that they could retain enough income to meet their basic needs while still fulfilling their maintenance obligations. By failing to prescribe a minimum, the Commissioner was found to have thwarted the intention of the Legislature, and this inaction, therefore, was unlawful.

The chambers judge dismissed the petition without considering its merits, on the grounds that she could not make an order requiring the Commissioner to enact a regulation, and that enforcement proceedings against the petitioner could not be stayed, and his support obligations only varied through a *Divorce Act* proceeding. The only substantive issue on appeal was whether the Commissioner had an obligation to enact regulations regarding a minimum income. The Court concluded that the Commissioner did owe this obligation and failed to discharge it.

In *Song v. The Law Society of Alberta*, 2025 ABKB 525, 2025 CarswellAlta 2101, 88 Alta. L.R. (7th) 120 (Alta. K.B.), the Alberta Court of King's Bench dismissed a challenge to the validity of the Law Society of Alberta's mandatory continuing professional development (CPD) program addressing Indigenous cultural competency, and amending its *Code of Conduct* to deal with discrimination and sexual harassment.

In *Pickle v. University of Lethbridge*, 2025 ABCA 318, 2025 CarswellAlta 2198 (Alta. C.A.), the Alberta Court of Appeal dismissed an appeal from a chambers judge denying claimants an opportunity to amend their application for judicial review to strike down provisions of the *Occupational Health and Safety Act*, SA 2020, c. O-2.2 on *Charter* grounds. The underlying dispute concerned a scheduled guest lecture at the University of Lethbridge on "How Does Woke-ism Threaten Academic Freedom." The lecture was cancelled citing certain provisions of the impugned Act, though it did proceed online.

L.S.