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[ENGLISH TRANSLATION]

Montréal, Quebec, July 30, 2021

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

CITY OF MONTRÉAL

Applicant

and

OLD PORT OF MONTRÉAL CORPORATION

Respondent

and

ATTORNEY GENERAL OF CANADA

Intervener

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I. Introduction

[1] The Tavern on the Green restaurant in New York City is an entertainment venue, a veritable landmark, but it would be difficult to argue that its commercial nature strips Central Park of its essence as a park. Would adding a zoo strip the park of this essence? If not, what would happen to the park if one were to add an IMAX theatre, a science centre, a Ferris wheel, a night club, a spa and grounds for the Cirque du Soleil? Have we crossed the Rubicon and transformed the space from a park into an entertainment site? If so, at what moment did this occur? At what point did we cease to see the Tivoli Gardens, with their pretty flowers, bandstands, rides and boat tours on the lake as a garden with a handful of amusements and begin to see it as one of the largest amusement parks in Copenhagen? I know that the moment of this mutation cannot be pinned down to the second, but, to paraphrase the immortal words of Justice Potter Stewart, I may not be able to define the tipping point very precisely, but I know it when I see it.

[2] Crown properties are immune from taxation. To balance tax fairness for municipalities with the preservation of this constitutional immunity from taxation, and to compensate for the taxes that the municipalities would otherwise have levied, the federal government created a regime of discretionary and voluntary payments in lieu of taxes [PILTs] within the meaning of the *Payments in Lieu of Taxes Act*, RSC 1985, c M-13 [PILT Act]. When the properties covered

by the PILT scheme belong to a federal Crown corporation, the latter becomes responsible for the management of the regime set out in the PILT Act.

[3] The Old Port of Montréal Corporation [OPMC], a corporation exclusively controlled by the Canada Lands Company Ltd. mentioned in Schedule III to the PILT Act, is such a corporation. All of the Old Port of Montréal site [Old Port site] belongs to it, except for the Alexandra Quay, which the OPMC leased from the Port of Montréal until December 31, 2015. Each year, the OPMC receives a PILT request from Ville de Montréal [City], a legal person established in the public interest incorporated under the *Charter of Ville de Montréal*, RSQ, c C-11.4 [City Charter], and a taxing authority within the meaning of the PILT Act with the power to collect taxes and other charges from owners of real property situated in its territory. In response to this request, the OPMC sends to the City each year a decision in which it provides a summary explanation of the amount of its PILT and, if applicable, the exclusions from the concept of "federal property" that it relies on to establish the amount of the payment.

[4] Since 2014, there has been disagreement between the City and the OPMC as to the property value and the composition of the "federal property" within the meaning of the PILT Act of lots 1 180 167, 4 132 346, 4 132 347, 4 132 348, 4 132 350, 4 132 354, 4 132 355, 4 132 356, 4 171 037 and 4 171 038 in the Quebec cadastre, namely, the Old Port site. One of the OPMC's arguments is that the Old Port site, as a whole, including the Alexandra Quay, is a park (and therefore not "federal property" within the meaning of the PILT Act) and that it should therefore not be required to make PILTs for this territory on the basis of an exemption set out in the PILT Act. In the alternative, the OPMC argues that several other features of the Old Port site do not

meet the definition of “federal property” in the PILT Act in accordance with other exemptions set out in that act and that these features are therefore not covered by the PILT scheme.

[5] Because of this position, taken between 2014 and 2020, the City is seeking judicial review of the annual decisions rendered by the OPMC determining the amount of the PILT owing [the OPMC decisions], which the City deemed insufficient and unreasonable. At the request of the parties, the Court ordered the consolidation of proceedings in dockets T-1262-14, T-2147-14, T-635-15, T-613-16, T-592-17, T-714-18, T-650-19 and T-836-20 so that these could be handled in a single hearing.

[6] To be clear, the parties are not asking the Court to decide the effective rate to be applied to the properties, or the property value of these properties given that these issues must be determined at a later stage. What must be considered here is the establishment by the OPMC of the Old Port site’s property base; the issues involve (i) the interpretation of the concept of “federal property” within the meaning of the PILT Act so that the features constituting the properties subject to PILTs might be determined, (ii) the applicability of the *By-law concerning property taxes on parking lots*, adopted each year by the City for fiscal years 2013 to 2017 [Parking Lot By-law], and (iii) the OPMC’s position that certain parts of the Old Port are situated [TRANSLATION] “in deep water”.

[7] Finally, I must address the issue of the OPMC’s right to effect compensation between its alleged overpayment for the 2013 fiscal year and the payments for subsequent years.

[8] I should note that I have made visits to the Old Port site myself over the course of many years, visits that I have appreciated; I have taken boat trips on the river, attended movies and concerts and enjoyed a glass or two at the Belvedere at private events. The parties even organized a visit to the Old Port site for me before the hearing in this case so that I might understand the features of the Old Port site being debated here.

[9] The parties agree that some features of the Old Port site—such as the linear park and most of the Bonsecours Basin—are indeed parks by nature and have been developed as such. These features do not, therefore, fall within the definition of "federal property" within the meaning of the PILT Act. That said, I am of the view that, as a whole, the Old Port site is not a "park" within the meaning of the PILT Act. Moreover, and with some exceptions, I am persuaded that it was unreasonable for the OPMC to decide that the controversial features of the Old Port site did not fall within the definition of "federal property" set out in the PILT Act.

[10] For the reasons that follow, I allow the application for judicial review, with costs.

II. A brief history

[11] At the end of the 18th century, those who frequented what we now know as De la Commune Street in Old Montréal could not enjoy the current attractions of the Old Port site, such as the science centre, the IMAX theatre or even the parkades. In fact, it would have been

impossible for them even to walk where those attractions are located since, at that time, there was nothing but the St. Lawrence River beyond this street.

[12] All that changed in the early 19th century when Montréal merchants, mainly lumber merchants, began to extend the solid ground with landfill to build quays in front of their warehouses on De la Commune Street.

[13] Toward the end of the 19th century and beginning of the 20th century, with the development and expansion of the Port of Montréal, the entrance of which was marked by the historic Clock Tower, and to serve larger ocean-going vessels with deeper draughts and ensure better protection against ice and flooding, the old quays were filled in and new cribs were installed when the quays were raised. This cribwork, which is also under the sidewalk and roadway of the Old Port promenade towards De la Commune Street, remains to this day one of the components of the quays forming the foundation of the Old Port site. These quays are composed of cribwork made of timber, poured concrete and various other materials, and they extend the solid ground by more than 300 metres into what had previously been the St. Lawrence River.

[14] The OPMC was founded in 1981, a few years after the eastward shift of most of the harbour activities of the Port of Montréal and following the federal government's announcement of its intention to redevelop the old section of the port located in Old Montréal. Although Her Majesty the Queen owned the land currently known as the Old Port site, the PILTs were managed by the Minister of Public Works and Government Services Canada [PWGSC]—now

called the Minister of Public Services and Procurement Canada—who is an intervener in this case. At the time, the City and PWGSC were in agreement on which portions of the Old Port site were subject to PILTs and which were excluded.

[15] On November 2, 2009, ownership of the Old Port site was transferred from Her Majesty the Queen in right of Canada to the OPMC, at which time PWGSC ceased managing its PILTs. However, the Attorney General of Canada is nevertheless intervening in this case as a representative of PWGSC on the basis that the issues require a decision regarding key concepts for the PILT program that PWGSC must administer on a regular basis throughout the country.

[16] The Crown corporations listed in schedules III and IV to the PILT Act (including the OPMC) manage their own PILT programs directly and are fully responsible for determining the property base, the value of the property constituting it and the applicable effective rate. PWGSC has no power of supervision or direction with respect to the management of PILT programs by these Crown corporations.

[17] It was following the transfer of ownership of the property at issue to the OPMC that the trouble regarding PILTs began. The difficulties came to a head when, starting in the 2014 taxation year, the OPMC began to rely on new exemptions from the concept of federal property and to claim that some of its lots were situated in deep water and should therefore be subject to a nominal assessment.

[18] For the City, this position sharply reduced the property base and the value of the property that was previously subject to PILTs, resulting in a decrease in PILTs from more than $3.7 million in 2013 to about $500,000 annually for the years 2014 to 2019. At the same time, the OPMC reassessed the amount of the PILTs that should have been paid in 2013, taking into account its new reasons, and effected compensation between the so-called overpayment of 2013 and the annual amounts paid by the OPMC to the City as PILTs from 2014 to 2020, resulting in an additional reduction of those amounts.

[19] Moreover, as of 2015, the OPMC advanced the position that the Parking Lot By-law was inapplicable to parking areas situated on quays, as the latter were, in its view, situated in the St. Lawrence River and therefore beyond the By-law's territorial limits.

[20] The OPMC continues to hold these positions, and each of the OPMC's annual decisions regarding PILTs is subject to an application for judicial review by the City. In this case, therefore, the issue is whether the positions adopted by the OPMC are reasonable.

III. Issues

[21] The five issues are the following:

1. What is the applicable standard of review?
2. Does the disputed property constitute federal property within the meaning of the PILT Act?
3. Are the OPMC's parking lots subject to the Parking Lot By-Law?

4. Is the OPMC's land situated "in deep water"?

5. Was it open to the OPMC to effect compensation between the amount it had allegedly overpaid in 2013 and the payments for the following years?

IV. The relevant legislation

[22] The provisions applicable to this case can be found in the appendix to this decision.

[23] Under the federal PILT program, which is governed by the PILT Act and its regulations, the federal Crown agrees to pay, subject to certain conditions, payments in lieu of taxes to municipalities on its "federal properties" within the meaning of the PILT Act. The purpose of this legislative scheme is to administer payments in lieu of taxes fairly and equitably while at the same time preserving the fiscal immunity set out at section 125 of the *Constitution Act, 1867*, 30 & 31 Victoria, c 3 [the Constitution]. This dual objective was eloquently described by Justice LeBel in a unanimous decision of the Supreme Court in *Montréal (City) v Montreal Port Authority*, 2010 SCC 14 (CanLII), [2010] 1 SCR 427 [*MPA 2010*]:

> [20] It is clear from the *PILT Act* that Parliament intended to uphold the immunity of federal Crown property from taxation. Section 15 of the Act provides that "[n]o right to a payment is conferred by this Act." Parliament therefore did not intend to give municipalities the status of creditors of the Crown for payments in lieu of taxes. Instead, it has, through the *PILT Act*, established a system in which municipalities expect to receive payments but the payments are made within the statutory and regulatory framework that Parliament established without renouncing the principle of immunity from taxation. Thus, the *PILT Act* is designed to reconcile different objectives — tax fairness for municipalities and the preservation of constitutional immunity from taxation — that can be attained only by retaining a structured administrative discretion where the setting of the amounts of payments in lieu is concerned. For the purpose of establishing those amounts, the

> *PILT Act* must define the relationship between the system for setting payments in lieu, on the one hand, and the provincial and municipal tax systems, which can vary from place to place in Canada, on the other.
>
> [Emphasis added.]

[24] According to section 15 of the PILT Act, no right to a payment is conferred by this scheme. Nor does the Act subject the Crown to provincial legislation or municipal by-laws governing taxes or property taxes (*MPA 2010* at paras 12 to 24).

[25] The *Crown Corporation Payments Regulations*, SOR/81-1030 [CCPR], adapt the PILT scheme for the Crown corporations and other federal bodies enumerated in Schedule III to the PILT Act (Crown corporations), to which the OPMC belongs given its connection to the Canada Lands Company.

[26] Sections 5 and 6 of the CCPR state that Crown corporations pay PILTs in respect of any property that would be federal property if it were under the management, charge and direction of a federal minister. Therefore, like the minister, the Crown corporation (the OPMC) must also determine whether the immovable that is the subject of the application received from the taxing authority meets the definition of "federal property" within the meaning of the PILT Act.

V. Discussion

A. *Preliminary issues*

[27] In its memorandum, the City submits that the doctrine of promissory estoppel applies to the OPMC, with the effect that it was not open to the latter to change position in 2014 and decide

not to pay PILTs on certain property previously included in the concept of federal property. It appears that, prior to 2014, the City and the OPMC applied the agreement that had been reached by the parties as to which areas should or should not be considered "urban park" not subject to PILTs. However, it is not necessary to address this issue, as the City withdrew this argument at the hearing.

[28] Moreover, considering that the dispute spans several years and that during this period the uses of the immovables and real property making up the Old Port site have changed, as has the operator in the case of the Alexandra Quay, with the consent of the parties, I will render my decision by considering the Old Port site on the basis of the state of the immovables and real property under the OPMC's control at the time of its 2014 decision.

[29] Over the years, and even at the hearing before me, the parties have found common ground, and several exemptions claimed by the OPMC, or that the City believed the OPMC was claiming, have been dropped, such as the Lachine Canal Historic Site and the Bonsecours Basin. It is therefore unnecessary to discuss these exclusions here. I will therefore address only the issues that remain controversial.

[30] Finally, despite the fact that at the hearing, the parties and the Court engaged in debates on interesting questions of law regarding what constitutes the subsurface of the Old Port site and regarding the historical provenance of the riverbed on which the quays were built, from the City's perspective, the foundations of the Old Port site are of no importance. For tax purposes, the City is interested in the surface of the land rather than what makes up the land below the

surface. According to the City, when land is created—in this case the Old Port site—whether it is by way of simple landfill, mixed landfill or cribwork, or anything else—this land becomes, for the purposes of municipal taxation and PILTs, taxable federal property or property for which PILTs may be paid. I accept the City’s position on this point with respect to the application of the PILT Act.

B. *The applicable standard of review*

[31] The parties agree that the applicable standard of review is reasonableness. I concur. Reasonableness is presumed to be the standard of review, and I can identify in this case none of the exceptions to this presumption that would require the application of the standard of correctness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 31 and 53 [*Vavilov*]); *MPA 2010* at paras 36–38; *Halifax (Regional Municipality) v Canada (Public Works and Government Services)*, 2012 SCC 29 at paras 43–44 [*Halifax*]).

[32] The Attorney General points out that the issues to be resolved here are of considerable importance to the PILT program, while the case law is negligible or even non-existent with respect to several of the issues raised in this case. At the hearing, it was asked whether, given the lack of jurisprudence interpreting the exceptions to the concept of federal property according to the PILT Act and the need for generalized standards in the administration of the PILT program across the country, the issues raised in this case could be considered general questions of law of central importance to the legal system as a whole, making the standard of correctness appropriate (*Vavilov* at paras 58 to 62). I am of the view that this is not the case.

[33] Fundamentally, this case involves the interpretation of concepts contained in the PILT Act, and the issue of whether the OPMC's interpretation of these concepts was reasonable. There is indeed very little case law on how to interpret the exemptions from the concept of federal property under the PILT Act; that said, this case is essentially one of statutory interpretation. As the Supreme Court observed in *Vavilov*, "the mere fact that a dispute is 'of wider public concern' is not sufficient for a question to fall into this category" (*Vavilov* at para 61). In fact, in *MPA 2010*, the Supreme Court held that the reasonableness standard applied in determining whether the port's silos fell within the exemption for "reservoirs" listed in Schedule II to the PILT Act (*MPA 2010* at para 48).

[34] In *Vavilov*, the Supreme Court clearly described the principles of judicial review that apply when an administrative decision maker interprets a legislative provision in the course of rendering a decision:

> [121] The administrative decision maker's task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue. It cannot adopt an interpretation it knows to be inferior — albeit plausible — merely because the interpretation in question appears to be available and is expedient. The decision maker's responsibility is to discern meaning and legislative intent, not to "reverse-engineer" a desired outcome.
>
> . . .
>
> [124] Finally, even though the task of a court conducting a reasonableness review is *not* to perform a *de novo* analysis or to determine the "correct" interpretation of a disputed provision, it may sometimes become clear in the course of reviewing a decision that the interplay of text, context and purpose leaves room for a single reasonable interpretation of the statutory provision, or aspect of the statutory provision, that is at issue: *Dunsmuir*, at paras. 72-76. One case in which this conclusion was reached was *Nova Tube Inc./Nova Steel Inc. v. Conares Metal Supply Ltd.*, 2019 FCA 52., in which Laskin J.A., after analyzing the reasoning of the

> administrative decision maker (at paras. 26-61 (CanLII)), held that the decision maker's interpretation had been unreasonable, and, furthermore, that the factors he had considered in his analysis weighed so overwhelmingly in favour of the opposite interpretation that that was the only reasonable interpretation of the provision: para. 61. As discussed below, it would serve no useful purpose in such a case to remit the interpretative question to the original decision maker. Even so, a court should generally pause before definitively pronouncing upon the interpretation of a provision entrusted to an administrative decision maker.
>
> . . .
>
> [131] Whether a particular decision is consistent with the administrative body's past decisions is also a constraint that the reviewing court should consider when determining whether an administrative decision is reasonable. Where a decision maker *does* depart from longstanding practices or established internal authority, it bears the justificatory burden of explaining that departure in its reasons. If the decision maker does not satisfy this burden, the decision will be unreasonable. In this sense, the legitimate expectations of the parties help to determine both whether reasons are required and what those reasons must explain: *Baker*, at para. 26. We repeat that this does not mean administrative decision makers are bound by internal precedent in the same manner as courts. Rather, it means that a decision that departs from longstanding practices or established internal decisions will be reasonable if that departure is justified, thereby reducing the risk of arbitrariness, which would undermine public confidence in administrative decision makers and in the justice system as a whole.
>
> [Emphasis added.]

[35] That said, the parties do not fully agree on how the standard of reasonableness is to be applied, and specifically on the degree of deference owed to the OPMC in this case or the scope of the findings that could reasonably be made by the OPMC when it rendered the impugned decisions. I must point out, however, that in a post-*Vavilov* world, in seeking to determine whether a given decision is reasonable, one must no longer consider whether it falls within a "'range' of possible conclusions that would have been open to the decision maker", but rather

"whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at paras 83 and 99). As Justice LeBel observed in *MPA 2010*, "[t]he concept of 'reasonableness' . . . also encompasses a quality requirement that applies to those reasons and to the outcome of the decision-making process " (*MPA 2010* at para 38).

[36] The City argues that the degree of deference to be granted to the OPMC's decisions must take into account the fact the OPMC possesses no specialized expertise or qualifications when it comes to applying the PILT Act and interpreting the term "federal property". The City also submits that the OPMC is not acting, in the words of Justice LeBel in *MPA 2010* at paragraph 14, "as [would] good residents of the municipalit[y]" given that it has demonstrated in its decisions a certain [TRANSLATION] "zeal for cutting costs to the maximum extent possible" by raising the most unlikely grounds for exemption from the concept of "federal property".

[37] I must admit that I find this situation, in which the decision maker certainly has a direct interest in the outcome of the decision, rather strange. Given the realities of annual budgets and financial performances and expectations, it is easy for a perceived conflict of interest to arise in the decision-making process, no matter how hard the decision maker tries to be fair and equitable. This impression may become even stronger in cases where, as here, the decision maker makes a new determination that differs suddenly and drastically from what had previously been a well-established protocol between the decision maker and the person affected by the decision, the OPMC and the City in this case, as to what constitutes federal property within the meaning of the PILT Act.

[38] On this same point, and regardless of the fact that the City has dropped its promissory estoppel argument, the fact remains that "[w]here a decision maker does depart from longstanding practices or established internal authority, it bears the justificatory burden of explaining that departure in its reasons. If the decision maker does not satisfy this burden, the decision will be unreasonable" (*Vavilov* at para 131).

[39] The Supreme Court has clearly stated that the purpose of the PILT Act "is to provide for the fair and equitable administration of payments in lieu of taxes" and that although the Act "confirms both the principle that federal property is immune from taxation and the voluntary nature of payments in lieu, the intention was that the calculation of such payments would be consistent with the objective of equity and fairness in dealing with Canadian municipalities" (*MPA 2010* at para 43). However, while fairness and good faith on the part of federal Crown corporations are cornerstones of the PILT program, there is no evidence that the OPMC had a hidden agenda when it made its decisions.

[40] It appears that the trigger for the OPMC's increased focus on whether it was correctly applying the exemptions to federal property under the PILT Act was the coming into force of the Parking Lot By-law, imposed by the City starting in 2011. This by-law was adopted to increase the tax burden on operators of outdoor parking facilities within the City's territory. Because the OPMC has large outdoor parking lots, the introduction of this tax caused the amount of PILTs sought by the City each year to increase by 50%. It was at this point that the OPMC began to conduct analyses to determine whether certain exemptions that had not previously been invoked with respect to PILTs could be used.

[41] While I must admit that some of the exemptions invoked by the OPMC stretch the imagination, I am not prepared to conclude that the OPMC exhibited an excessive amount of zeal in applying the exemptions to the concept of federal property within the meaning of the PILT Act.

[42] However, given that it departed from a long-standing practice (followed by the OPMC and previously by PWGSC) regarding how the Old Port site should be treated for PILT purposes, I find that it was incumbent on the OPMC to justify this departure, which would have reduced "the risk of arbitrariness" (*Vavilov* at para 131).

[43] As for the issue of the degree of deference I must give to the OPMC's decisions, the Supreme Court has made it clear that, while an administrative decision maker's expertise is no longer relevant to the determination of the standard of review, "expertise remains a relevant consideration in conducting reasonableness review" (*Vavilov* at paras 31, 58).

[44] The Minister of PWGSC is responsible for administering the PILT Act. PWGSC is intervening in this case because, in its view, the decision that I will render will set precedents with respect to several concepts at issue, such as the concepts of "park", "road", "public highway" and "snow shed" and the treatment of parking areas. PWGSC therefore wishes to intervene with respect to these concepts and the aspects of the PILT program that come up regularly in its decisions.

[45] According to the testimony of Colin Boutin, National Manager, Policy and Strategic Initiatives—PWGSC's PILT program—filed in support of the intervener's position, the PILT program is administered by PWGSC on behalf of all federal departments. According to Mr. Boutin, the objective is to make fair, equitable and predictable PILTs resembling the taxes paid by owners of taxable property with comparable property, to local taxing authorities whose tax jurisdiction includes federal properties. Each year, PWGSC deals with hundreds of PILT applications, valued at close to $600 million and involving, in 2016–2017, approximately 1,250 taxing authorities across the country, except, as in this case with the OPMC, for amounts paid by Crown corporations that own property and manage their own PILT programs; in such cases, PWGSC has no authority over the Crown corporations' decisions.

[46] According to the evidence, if anyone has expertise in applying the PILT Act, it is PWGSC rather than the OPMC. In fact, the OPMC's annual PILT decisions are prepared on the basis of assessment reports prepared by external evaluators mandated by the OPMC to assess and identify the OPMC immovables that constitute "federal property" within the meaning of the PILT Act, in light of the exclusions set out in subsection 2(3) of the PILT Act, thereby enabling the OPMC to determine the PILT to be made each year.

[47] In the circumstances, it is not necessary to accord a high level of deference to the OPMC's decisions, particularly when the issues submitted to this Court involve the interpretation of concepts contained in the PILT Act.

C. *The interpretation of the PILT Act*

[48] Before discussing the exclusions at issue, I will set out the approach to statutory interpretation that will guide my consideration of the PILT Act, as the parties have argued in favour of different interpretive methods.

[49] The OPMC cites *Johns-Manville Canada v The Queen*, [1985] 2 SCR 46, as well as *Québec (Communauté urbaine) v Corp. Notre-Dame de Bon-Secours*, [1994] 3 SCR 3, in support of its position that the residual presumption in favour of the taxpayer applies here, and that the PILT Act must be interpreted in favour of the "taxpayer" because it has certain tax aspects, like the *Income Tax Act*, RSC 1952, c 148. The OPMC argues that there is a parallel between the concepts of a taxpayer's tax base and federal property, and another between the concepts of taxes and PILTs. The OPMC also submits that, in both cases, several exceptions apply to what may be taxed (or with respect to what it is possible to make a PILT).

[50] I cannot accept the OPMC's argument. There is no doubt that some aspects of the PILT Act are similar to elements that may be found in a taxation statute, because the very purpose of the Act, to put it simply, is to make payments to municipalities in lieu of taxes normally collected, while preserving the Crown's constitutional immunity from taxation. To achieve this, the PILT Act must necessarily be similar, to some extent, to a taxation statute.

[51] However, while there are similarities, the approach chosen to meet this objective is not at all in the nature of a tax: this is precisely what Parliament wished to avoid. Obviously, a taxation statute necessarily includes an obligatory collection of the amount owing. However, as stated

above, the method adopted by Parliament in this case was to create a regime of discretionary and voluntary payments in lieu of taxes to avoid creating an obligation to the taxing authority.

[52] Thus, the mandatory nature of the payments owing under a taxation statute conflicts with the immunity from taxation set out in the Constitution and the discretionary nature of PILTs (section 125 of the Constitution; section 3 of the PILT Act). In other words, the State (in this case the City) is not reaching into the pocket of the taxpayer (in this case the OPMC as a Crown corporation), unlike the usual situation with taxation statutes. On the contrary, it is the OPMC as "taxpayer" that decides how much "tax" to pay—a situation that most taxpayers would surely envy.

[53] Although sections 2.1 and 3 of the PILT Act state that the Minister (or Crown corporation) "may" make a PILT in the spirit of fairness to municipalities and that under Canadian administrative law, this power must be exercised reasonably, the power dynamic between the taxing authority and the "taxpayer" remains radically different from that which would exist in the context of a taxation statute. I also note that section 15 of the PILT Act provides that no right to payment is conferred by this Act. The parties are, in the context of the PILT Act, on equal footing. With all due respect to the taxing authorities, I do not believe that one could honestly claim the same to be true of their relationship with taxpayers.

[54] Accordingly, I cannot accept the OPMC's position that the principle of interpreting taxation statutes in favour of the "taxpayer" applies here.

[55] The City, on the other hand, argues in favour of interpreting the exclusions from the concept of federal property in a purposive and restrictive manner (that is, as exceptions). I agree. In my view, the following comments by the Supreme Court in *Vavilov* are applicable:

> [118] This Court has adopted the "modern principle" as the proper approach to statutory interpretation, because legislative intent can be understood only by reading the language chosen by the legislature in light of the purpose of the provision and the entire relevant context: Sullivan, at pp. 7-8. Those who draft and enact statutes expect that questions about their meaning will be resolved by an analysis that has regard to the text, context and purpose, regardless of whether the entity tasked with interpreting the law is a court or an administrative decision maker. An approach to reasonableness review that respects legislative intent must therefore assume that those who interpret the law — whether courts or administrative decision makers — will do so in a manner consistent with this principle of interpretation.
>
> [Emphasis added.]

[56] It appears to me that while the process of determining PILTs does imply a certain discretion on the OPMC's part, the resulting decisions should nevertheless not distort the language chosen by Parliament; an administrative decision must always be "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). A discretionary power is not absolute and untrammelled because it is constrained by the scheme and object of the statute that confers it (*CUPE v Ontario (Minister of Labour)*, [2003] 1 SCR 539 at para 107).

[57] Moreover, the "exercise of this power must be reasonable in light of the circumstances of each case and the need to preserve the fiscal stability of municipalities" (*Trois-Rivières (City) v Trois-Rivières Port Authority and Canada (Attorney General)* 2015 FC 106 at para 64 [*Trois-Rivières (City)*]).

[58] Recall that the Supreme Court also teaches that the PILT Act and its regulations “define the scope of the discretion and the principles governing the exercise of the discretion, and they make it possible to determine whether it has in fact been exercised reasonably” (*MPA 2010* at para 33). Furthermore, as the Supreme Court observes in *Vavilov* at paragraphs 108 to 110:

> That administrative decision makers play a role, along with courts, in elaborating the precise content of the administrative schemes they administer should not be taken to mean that administrative decision makers are permitted to disregard or rewrite the law as enacted by Parliament and the provincial legislatures. Thus, for example, while an administrative body may have considerable discretion in making a particular decision, that decision must ultimately comply “with the rationale and purview of the statutory scheme under which it is adopted” . . . Although a decision maker’s interpretation of its statutory grant of authority is generally entitled to deference, the decision maker must nonetheless properly justify that interpretation. Reasonableness review does not allow administrative decision makers to arrogate powers to themselves that they were never intended to have, and an administrative body cannot exercise authority which was not delegated to it. . . . What matters is whether, in the eyes of the reviewing court, the decision maker has properly justified its interpretation of the statute in light of the surrounding context. It will, of course, be impossible for an administrative decision maker to justify a decision that strays beyond the limits set by the statutory language it is interpreting.
>
> [Emphasis added.]

[59] Section 12 of the *Interpretation Act*, RSC 1985, c I-21, reads as follows:

Enactments deemed remedial	**Principe et interprétation**
Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.	Tout texte est censé apporter une solution de droit et s’interprète de la manière la plus équitable et la plus large qui soit compatible avec la réalisation de son objet.

[60] The words of the Act, including in this case the exclusions from the concept of federal property, must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament, even when a provision seems clear and conclusive (*Bell ExpressVu Limited Partnership v Rex*, [2002] 2 SCR 559; *Pharmascience Inc. v Binet*, [2006] 2 SCR 513). Exceptions, in this case exceptions to the concept of federal property, must be interpreted narrowly (*Corporation d'Urgences-santé c Syndicat des employées et employés d'Urgences-santé (CSN)*, 2015 QCCA 315 at para 47; *Québec (Procureur général) c Paulin*, 2007 QCCA 1716 at paras 30 *et seq*).

[61] Ultimately, the modern approach to statutory interpretation is the appropriate framework for considering the exemptions claimed by the OPMC. The PILT Act must be interpreted like any other statute, harmoniously with its object of administering PILTs fairly and equitably, within the larger context of the need to reconcile “different objectives — tax fairness for municipalities and the preservation of constitutional immunity from taxation” (section 2.1 of the PILT Act; *MPA 2010* at paras 20 and 43).

D. *The merits of the case*

[62] Essentially, the City submits that several of the exemptions from the concept of federal property, which forms the property base on which PILTs may be paid, have been unreasonably relied upon by the OPMC because they do not result from a reasonable interpretation of the PILT Act. Moreover, the City argues that the City could not effect compensation between the 2013 payment and the payments for subsequent years, as the 2013 payment was final.

[63] The City adds that it was unreasonable for the OPMC to conclude that its land was situated in deep water and that its value should therefore be assessed at a nominal amount, as this position has no legal merit.

[64] Finally, according to the City, the Parking Lot By-law is fully applicable to the Old Port site as this site is not situated in the St. Lawrence River, which is the boundary of the territorial application of this by-law.

[65] Before me, the City has also noted that there is an additional consideration in this debate, relating to the rail yard. The City submits that the rail yard issue was never fully fleshed out by the OPMC, the latter merely having stated in its decisions that the rail yard and the servitude—the railway right-of-way—interfered with the operation of the park. However, the OPMC did not express a view on the issue of whether or not there should be compensation. Therefore, according to the City, the OPMC did not rely on an exclusion, per se, from the concept of federal property, and this point was never fully elaborated on in its decisions, although it does appear to be mentioned as a consideration for the purposes of the OPMC's final decision regarding the payment of PILTs.

1. Does the property in dispute between the parties constitute federal property within the meaning of the PILT Act?

[66] For the purposes of this decision, the disputed features of the site are the following:

- The Bonsecours Basin Pavilion, including buildings 4 and 5, namely, the Terrasse Bonsecours and the pavilion (Chalet Bonsecours);
- The Jacques Cartier Quay, including the Jacques Cartier Pavilion commercial building, warehouse and restrooms, buildings 2, 2A and 3;

- The Jacques Cartier Quay's elevated walkway;
- The King Edward Quay, including buildings 13 to 18, namely:
  - King Edward Quay Promenade;
  - Central street (King Edward Quay Street);
  - Montréal Science Centre, building 13;
  - IMAX theatre, building 14;
  - Outdoor parkades on King Edward Quay, building 15;
  - Food court, building 16;
  - Parking and Belvedere, building 17;
  - Elevated walkway between Science Centre and food court, building 18;
- The outdoor parking lots of the Clock Tower Basin;
- The outdoor parking lots of the Clock Tower Quay;
- The outdoor street parking on the Port Road;
- The outdoor parkades on Alexandra Quay;
- The indoor parking lots of hangar 16 of the Clock Tower Quay, building 20;
- The indoor parking lots of the Alexandra Quay (inside hangars 4 and 6);
- The land underlying the Clock Tower Quay, Jacques Cartier Quay, King Edward Quay and Alexandra Quay;
- The public highways of the Old Port, namely, the southern portion of De la Commune Street, the Clock Tower Quay entrance, the Bonsecours Basin entrance, the Jacques Cartier Quay entrance, the King Edward Quay entrance, the Clock Tower Basin and Clock Tower Quay street, the Port Road, the Alexandra Quay entrance, the Saint-Pierre entrance, the Old Port Promenade and the Promenade des Artistes.
- The land covered by the right-of-way for the railway tracks and rail yard in the Old Port site, the surface area of which OPMC estimates to be approximately 41,560.5 metres or 447,353 square feet.

a) *The exclusions at issue*

i. Urban parks – paragraph 2(3)(c) of the PILT Act

[67] As indicated above, section 3 of the PILT Act governs the potential payment of PILTs to the applicable taxing authority for federal properties situated within its boundaries. Paragraph 2(3)(c) of the PILT Act excludes the following from the definition of *federal property*:

[…]	[…]
any real property or immovable developed and used as a park and situated within an area defined as *urban* by Statistics Canada, as of the most recent census of the population of Canada taken by Statistics Canada, other than national parks of Canada, national marine parks of Canada, national park reserves of Canada, national marine park reserves of Canada, national historic sites of Canada, national battlefields or heritage canals;	les immeubles et les biens réels aménagés en parc et utilisés comme tels dans une zone classée comme « urbaine » par Statistique Canada lors de son dernier recensement de la population canadienne, sauf les parcs nationaux du Canada, les parcs marins nationaux du Canada, les réserves à vocation de parc national du Canada ou de parc marin national du Canada, les lieux historiques nationaux, les champs de bataille nationaux et les canaux historiques;
[…]	[…]
[Emphasis added.]	[Je souligne.]

[68] Although the concepts "immovable" and "real property" are not defined in the PILT Act, they are defined in section 2 of the *Federal Real Property and Immovables Act*, SC 1991, c 50. Essentially, "immovable" is a civil law concept applicable in Quebec, while "real property" is a common law concept applicable in the other provinces (see sections 8.1 and 8.2 of the *Interpretation Act*). As the Old Port site is situated in the province of Quebec, we must turn to

the *Civil Code of Québec*, c CCQ-1991, which states, at article 900, that land, and any constructions and works of a permanent nature located thereon, are “immovables”. Accordingly, and unlike the case for most of the other exclusions from the concept of federal property set out in the PILT Act, the exclusion of “parks” covers both the land underlying them and any constructions or permanent works located on them.

[69] The PILT Act does not define “park”. However, a site must meet the following three criteria to be considered a park within the meaning of paragraph 2(3)(c):

> • it must be situated within an area defined as urban by Statistics Canada;
>
> • it must have been developed as a park; and
>
> • it must be used as a park by the public.

[70] Relying on subsection 4(1) of the *Canada National Parks Act*, SC 1997, c 37 [*National Parks Act*] and section 4 of the *Saguenay-St. Lawrence Marine Park Act*, SC 1997, c 37 [*Marine Park Act*], the OPMC proposes the following definition of “park”:

> [TRANSLATION]
>
> A space developed for the public for its benefit, education and enjoyment, with the intention that it be used primarily for educational, recreational and scientific purposes.

[71] According to the OPMC, the entirety of the Old Port site is intended for this purpose, making it fit the definition of “park” within the meaning of the PILT Act. The “park” designation covers not only the green spaces developed with trees, benches and ponds—spaces already recognized as parks by the City—but also the Old Port site’s more imposing buildings, such as

the Montréal Science Centre and the IMAX theatre, since these buildings are used for educational, recreational and scientific purposes. The OPMC argues that most of Montréal's large parks include such buildings, for instance, the various buildings of the Botanical Garden.

[72] The OPMC also argues that the parking areas, food courts and restrooms as well as the land, promenades, roads and public highways are covered by the exemption because they are incidental and necessary to the park's operation, and therefore essential for enabling six million visitors to access the Old Port site annually, or about 16,000 visitors per day on average. The OPMC submits that all parks require parking for access, and that all of Montréal's large parks, for example, have parking areas.

[73] I cannot accept the OPMC's reasoning. First, neither the *National Parks Act* nor the *Marine Park Act* defines the word "park". However, I acknowledge that Canada's national parks and national marine parks are examples of immovables developed and used as parks as they are specifically covered by paragraph 2(3)(c) of the PILT Act.

[74] To take our national parks as an example, these are vast expanses of land and water set aside for the conservation and enhancement of their ecosystems and wildlife, where visitors can relax and breathe clean air, and where commercial development, if any, is limited. At the very least, commercial activity is never the primary objective. Any buildings used for educational or scientific purposes, like interpretation or observation centres, are built and developed so as to ensure that the link with nature is not disrupted. Usually, they are even designed to highlight the

natural surroundings and help visitors better understand the environment in which they find themselves and the fauna living there.

[75] The Canadian Oxford English Dictionary Online defines the word "park" as "a piece of land [usually] with lawns, gardens, etc. in a town or city, maintained at public expense for recreational use". Merriam-Webster, in its online dictionary, defines the word "park" as "a piece of ground in or near a city or town kept for ornament and recreation . . . [;] an area maintained in its natural state as a public property".

[76] As I shall demonstrate, it is possible to build many phrases with the work "park". However, the context of the PILT Act is important, and I do not believe that when Parliament used the word "park" at paragraph 2(3)(c) of the PILT Act, it intended to include every site of shared use or activity, such as a research park, industrial park, parking lot [*parc de stationnement* or *parc d'automobiles* in French], amusement parks, building inventory [*parc immobilier* in French] or even container yard [*parc à conteneurs* in French], as the OPMC appears to be submitting. If that were the case, most of the downtown core of any city, as long as it is operated by a federal Crown corporation, would be excluded from the application of the PILT Act as a commercial, real estate or industrial park. If Parliament had wished to exclude these types of parks from the concept of federal property, it would have done so explicitly.

[77] When using the word "park" on its own, Parliament is instead referring to a natural urban park, developed as such for the benefit of the community. It is understandable that Parliament would intend to exclude this kind of park (not only the buildings situated on it, but also the land

on which it is situated) from PILTs, as such parks represent a service provided by the Minister or the Crown corporation to the municipality, namely, providing access to peaceful green space for urban citizens, rather than using the land for, say, commercial development. This interpretation of the purpose of the provision is confirmed by the fact that paragraph 2(3)(c) excludes from the concept of federal property only those parks situated in urban areas, therefore only parks situated in densely populated zones. The wording of this provision does not exclude rural parks.

[78] As for the plain and ordinary meaning of the words, I do not believe that a reasonable person would imagine that I was heading to an IMAX theatre, food court or science centre if I said I was going to the park.

[79] Therefore, the word "park" appearing in paragraph 2(3)(c) fundamentally designates land and implies nature and the outdoors. This is not, as the OPMC claims, incompatible with use [TRANSLATION] "for educational, recreational and scientific purposes". Nor is there any reason that certain buildings incidental to a park cannot be included in the meaning of the word "park" in the PILT Act. As I have stated above, a park can include certain dependencies necessary to its operation, such as benches, playgrounds and play structures, swings, trails, picnic tables, interpretive panels about nature, a pergola, and even restrooms and parking areas. In my view, this finding does not exclude the possibility of recognizing a commercial space situated in a park as being an integral part of the park, if that space were complementary. For example, a museum dedicated to the park could, depending on the facts of the case, be sufficiently incidental to the park to be included within the designation. However, as I wrote in the introduction to these reasons, these commercial activities must not distract from the essential nature of a park.

[80] It appears to me that, basically, a park within the meaning of paragraph 2(3)(c) of the PILT Act is supposed to be "developed and used as a park" so that it can be sought out by the public as a refuge from the hustle and bustle of daily urban life, a bubble of tranquility, so to speak. If a building or commercial development is part of this environment, it must have a relationship of dependency with the park, to a certain degree, and also be developed and used in a way that is proportional and complementary to the primary use—such a development might facilitate or add to the use, understanding and appreciation of the park.

[81] Apart from some of the rail yard land, which I will address separately, the OPMC is including all of the disputed features of the Old Port site in the concept of "park" as it appears in paragraph 2(3)(c) of the PILT Act. These remaining features can be grouped into three major categories:

1) the Old Port site as a whole, except for the western portion of the Old Port that forms part of the Lachine Canal National Historic Site, including the grounds, promenades, roads, public highways and the underlying land;

2) the quays and buildings, such as the Science Centre, IMAX theatre, Bonsecours Pavilion, food court and restrooms, and including the commercial building and warehouse of the Jacques Cartier Pavilion and the Belvedere portion of the parking lot, namely building 17, on King Edward Quay; and

3) the outdoor and indoor parking lots and the parkades.

a. The Old Port site as a whole

[82] The Old Port site is situated in an urban area and is accessible at all times, except for some of the buildings. The OPMC also submits that even if certain buildings were not considered parks (because they are included in the concept of federal property under another section of the PILT Act, for example), the land underlying them could be exempt from PILTs because of the characterization of the Old Port as a park.

[83] As indicated, the word “park” can evoke different concepts when accompanied by an adjective, like an industrial park, a business park or an amusement park. The Old Port site, with its many attractions, including a Ferris wheel (open to the public since September 2017), a Science Centre, an IMAX theatre, a concert space and a food court, is more akin to a theme park or an amusement park than to the natural, traditional park referred to in the PILT Act. According to the evidence before me, the OPMC’s first priority does not appear to be the “maintenance or restoration of ecological integrity, through the protection of natural resources and natural processes” (subsection 8(2) of the *National Parks Act*).

[84] The OPMC defines its mission as follows on its website: “to manage, develop and hold activities on a large urban site dedicated to recreation, tourism and culture”. Once again, it seems to me that if Parliament had wished to exclude such “parks” from the concept of federal property, it would have done so explicitly. However, by using the word “park” on its own, Parliament is referring, as we have seen, to a natural park. The Old Port site, as a whole, has not been developed as a traditional park, nor is it used as such.

[85] The degree of commercial activity also plays a role in the fair and equitable administration of the relationship between the taxing authority and the Crown corporation. A traditional park is not expected to rely on the same level of municipal services as a large commercial operation with millions of visitors per year. I understand, however, that the OPMC is itself responsible for maintaining the Old Port site, by taking care of the trees, the grass, snow removal and garbage collection. This maintenance may be taken into account in calculating PILTs, but it has no relevance to the reasonableness of the exceptions to the concept of federal property on which the OPMC relied.

[86] While some people may well use some parts of the Old Port site as a haven of tranquility in which to reconnect with nature, the site as a whole, which, according to the City, is currently considered the number one tourist destination not only in Montréal, but in Quebec, is far from the peaceful setting described above. There may be pockets of tranquility within the site, such as green spaces, skating rinks and river boats, but these do not make the entire Old Port site a park; the Old Port site as a whole does not leave an impression of peaceful serenity on its visitors. It seems to me, rather, that the Old Port site has been developed as an urban entertainment destination, with vendors and kiosks scattered throughout to meet the needs of a paying public. In recent years, the Old Port site has been developed as an amusement park with its Ferris wheel, the IMAX theatre, spaces for taking in a concert, the Bota Bota spa, and the Cirque de Soleil every two years. The primary purpose of the site is therefore commercial.

[87] As I have explained, a true park is the opposite: nature is the principal attraction, and the objective is to enhance it while creating a bubble of tranquility. Incidental buildings may be present, but they must not detract from the natural setting.

[88] That said, development is often gradual, and identifying the moment when the Rubicon has been crossed may not be obvious, but in my view, the Old Port site has definitely made this transition. While certain parts of the site could certainly be equated to parks, it cannot be said that the site as a whole currently constitutes a park within the meaning of the PILT Act.

[89] The OPMC cites the affidavit of Daniel Pinard, an evaluator for AEC Symmaf (now called Ryan), to point out the various buildings within the City's large urban parks that are designed for entertainment, public education, recreational or scientific purposes, and the fact that many of these parks have parking areas to enable the public to access them.

[90] There is no doubt that many large parks include buildings, like Mount Royal Park's Chalet and Belvedere, Maisonneuve Park's Chalet and the Botanical Garden's buildings. However, it is important to look not only at the buildings in question, but also at the park as a whole and how the buildings and park relate to each other. We must not miss the forest for the trees. In the parks pointed to by the OPMC, the buildings mentioned have a very small footprint in relation to the park as a whole and are designed to improve the overall experience of the park. This is certainly not the case for the IMAX theatre or the Science Centre.

[91] The OPMC argues, for example, that the City treats the Space for Life, a museum complex comprising the facilities of Montréal's Botanical Garden, Planetarium, Biodome and Insectarium, all of which have educational and scientific purposes, as a park.

[92] However, setting aside the fact that this complex does have as a unifying theme a focus on the natural sciences as well as the fact that the complex may not even be classified as a park by the City, I am of the view that the OPMC's approach of comparing the City's so-called municipal parks with the Old Port site is not very useful, since municipal parks are subject to an entirely different tax regime than that to which the Old Port site is subject. Furthermore, the PILT Act is an independent statute with its own terminology. The City correctly argues that, in applying the PILT scheme, it is not the role of the City and the OPMC to harmonize federal and provincial tax legislation with respect to parks. The OPMC's argument is based on the supposition that the PILT Act is a taxation statute. I have already held that this is not the case.

[93] To close this issue, the Attorney General has summarized the Minister's position with respect to determining the scope of federal property on a large site such as the Old Port site: it is not the property as a whole that matters; instead, one must assess each feature of the site to determine whether an exclusion from the concept of federal property is specifically applicable to it. Therefore, the correct approach to determining whether a particular feature is to be excluded from the concept of federal property is to connect that feature with one of the exceptions set out in the PILT Act, not to examine the site as a whole to determine whether one of the exceptions applies to it. In short, the Minister argues, one cannot decide that a property is a park and as such excluded from the concept of federal property under paragraph 2(3)(c) of the PILT Act, only to

turn around and build things like hotels, bars and IMAX theatres on it, and then claim that because parks sometimes contain such buildings, the site as a whole continues to be covered by the park exclusion. One must instead look at each feature of the federal property at issue, not at the property as a whole.

[94] It is clear that the parties are approaching this issue from different perspectives. The OPMC submits that the Old Port site as a whole is a park, subject to certain features that do not correspond to any exemptions from the concept of federal property. The Attorney General, on the other hand, submits that the site as a whole cannot be a park because each of its features must be considered separately.

[95] Before me, the City did go so far as to concede that it could potentially accept a finding that the Old Port site as a whole constitutes a park, but it added that the individual features that it is challenging (except for the underlying land, which would be a park) should nevertheless not be covered by such an exemption from the concept of federal property, given the other inclusions listed in the PILT Act.

[96] In this context, the relativity and proportionality of the structures in relation to the surrounding land must also be taken into account to determine whether a particular area, regardless of its size, has been developed as a park. No one feature taken individually is necessarily responsible for making the Old Port site lose its essence as a park. A restaurant, a museum, a science centre or a few parking areas will not necessarily constitute the tipping point. However, given the manner in which the Old Port site has been developed, with its infinite

offerings of attractions occupying a disproportionate space compared with what one would expect in a traditional park, the Old Port site has crossed the threshold to become an entertainment venue and therefore does not constitute a park within the meaning of the PILT Act.

[97] Even if it can be said that the Old Port site, as a whole, was once a park in the traditional sense, it seems to me that it ceased being a park some time ago. The commercial operations of the IMAX theatre, the Science Centre, the Bota Bota spa, the Ferris wheel and the developments on the Jacques Cartier Quay have caused it to lose the essence it may have had in the past. The IMAX theatre and Science Centre certainly have broad educational and scientific goals, with a focus, as the OPMC explained at the hearing, on stimulating children's interest in science generally. They do, however, have a separate commercial objective and are not designed to help visitors better understand the nature around them, such as the whales and other animals that make up the fauna of the St. Lawrence River.

[98] I accept the idea that what constitutes an urban park is more subjective than, for instance, what constitutes a snow shed, and that the Crown or a Crown corporation must have some room to manoeuvre in exercising its discretion to make such a determination. Once again, however, this discretionary power is not unlimited.

[99] It is important to remember the following statements made by the Supreme Court in *Vavilov*: "[the administrative decision maker] cannot adopt an interpretation it knows to be inferior — albeit plausible — merely because the interpretation in question appears to be available and is expedient." Therefore, and with the exception of certain sections that the City

recognizes as parks within the meaning of the PILT Act, for example, the Bonsecours Basin excluding the Chalet and the Pavilion, the Clock Tower Quay and the linear park along De la Commune Street, such is not the case for the Old Port site as a whole.

[100] Finally, and although the OPMC is attempting to justify its decision that the Old Port site is a park by bringing to the Court's attention features of other parks, like buildings and parking areas, to draw a parallel with the Old Port site, at no point in its decisions does the OPMC truly attempt to define what a park is under paragraph 2(3)(c) of the PILT Act. It seems to me that the OPMC should have provided reasons for its decision if it wished to depart from its long-standing practice of treating the Old Port site, as a whole, as not being excluded from the concept of federal property (*Vavilov* at para 131).

[101] Accordingly, the OPMC's decision on this issue is not transparent, intelligible or justified.

b. The quays, promenades and buildings

[102] Independently of the consideration of the Old Port site as a whole, I have been asked to determine whether certain parts of the site could, individually, be considered to have been developed as parks, or at least as incidental and complementary to other parts already considered parks, and therefore falling under the exception to paragraph 2(3)(c) of the PILT Act.

[103] Therefore, the OPMC submits that the buildings on Kind Edward Quay, namely, the Science Centre, the IMAX theatre and their parking lots and more generally all of the other

buildings and constructions on the Old Port site that serve to host visitors, form an integral part of the parks found on the site. However, before me, it conceded that this position could only stand if I first held that the Old Port site as a whole was itself a park within the meaning of paragraph 2(3)(c) of the PILT Act. Having found that the Old Port site as a whole is not a park, it follows that neither the buildings nor the parking lots can be characterized as parks as per paragraph 2(3)(c) of the PILT Act.

i. The Old Port Promenade and the Promenade des Artistes

[104] The Old Port Promenade (including the Promenade des Artistes) is a pedestrian area that is closed to car traffic. Visitors to the Old Port site may walk, run, rollerblade or bike (quadricycles and Segway scooters can be rented) or simply sit on the benches and look across the river at the architectural wonder that is Habitat 67. It is an outdoor promenade from the Saint-Pierre entrance at the western end of the Old Port site to the entrance to the Clock Tower Quay at the eastern end. The Promenade is adjacent to spaces already recognized by the City as developed and used as parks within the Old Port site, namely the space on the north side of the Promenade, except for the Saint-Pierre parking and the railway tracks, rail yard and entrances. However, this area is the main link between the different areas and attractions of the Old Port site, dotted with small commercial food and souvenir offerings.

[105] In these circumstances, while I would not personally conclude that the Promenade was incidental to the adjacent area, I also cannot say that it is unreasonable to consider it to be complementary to the adjacent parks, and thus to exclude it from the concept of federal property within the meaning of 2(3)(c) of the PILT Act.

ii. The Clock Tower Quay

[106] As stated above, the City recognizes that the OPMC has developed part of the Clock Tower Quay as a park and that it is used as such. However, most of the quay has not been developed as a park. Instead, it has been transformed into a large parking lot for the entire Old Port site and the commercial area of Old Montréal. I do not see how it could be reasonably argued that this area has been developed as a park.

iii. The Bonsecours Basin Pavilion, including buildings 4 and 5, namely, the Terrasse Bonsecours and the pavilion (Chalet Bonsecours)

[107] The City concedes that the Bonsecours Basin area as a whole is a park generally designed for recreational purposes and featuring, depending on the season, a skating rink, pedal boat rentals, a Ferris wheel, a zipline and the Voiles en Voiles adventure park. The City does, however, submit that the Bonsecours Basin Pavilion, including buildings 4 (the Terrasse Bonsecours) and 5 (the Chalet Bonsecours), must be considered federal property in light of its commercial and independent function as a restaurant. I agree. Although a small part of the Chalet is used as a shelter for skaters in the winter and as a kiosk for skate rentals, the Bonsecours Basin Pavilion, and the Terrasse Bonsecours in particular, has been developed as a large, two-storey restaurant with ample space for outdoor dining. The Pavilion is an ideal place to enjoy an Aperol Spritz; it also includes a night club featuring weekly events.

[108] It is unreasonable to submit that the Bonsecours Basin Pavilion contributes in a complementary and proportional manner to the enjoyment of the adjacent space already recognized as a park. This is no mere counter, kiosk or snack bar where parents can offer their

children a hot dog, an ice cream and a bathroom break before taking on the tumultuous waters of the basin after an exhilarating ride on the Zipline.

iv. The Jacques Cartier Quay

[109] Given the manner in which it is currently developed, it is not unreasonable to claim that the Jacques Cartier Quay, including the Jacques Cartier Pavilion commercial building, warehouse and restrooms, buildings 2, 2A and 3, falls within the park exclusion.

[110] The Terrasses de la Marina is a rather upscale restaurant, offering two levels of terraces and the possibility of making online reservations. It is an ideal spot for young downtown professionals wishing to enjoy a drink and good food while basking in the sun. It is not a park.

[111] The quay is developed and used for entertainment events such as concerts and, in recent years, the Cirque du Soleil. While such events do not take place on the quay at all times, the pilings used to host them are permanently installed with fences all around; the area is therefore not accessible to the public, except for people attending Cirque du Soleil shows. The land is therefore not developed or used as a park. The public restrooms on the quay also appear to be intended more for the spectators at these events than for the users of the Old Port site's park spaces.

[112] Finally, the other buildings on the quay, some of which are used as warehouse space, are clearly not parks.

a. The Jacques Cartier Quay Promenade

[113] The Jacques Cartier Quay Promenade is the pedestrian walkway surrounding the quay, with a width of 20 to 35 feet depending on the precise location. This walkway includes small dependencies like park benches. Although the walkway does accommodate joggers, cyclists and anyone simply wishing to stroll or sit on the benches and enjoy the views of the river to the west, south and east, it is primarily a ring around the area built to house concerts and the Cirque du Soleil. It is not a place that promotes peaceful enjoyment, and I therefore do not believe that it was reasonable for the OPMC to conclude that it was developed as a park.

v. The King Edward Quay

[114] The Science Centre (building 13) and the IMAX theatre (building 14) on the King Edward Quay are clearly not sufficiently incidental or necessary to the operation of the adjacent parks to be exempted from PILTs on this basis. They are in fact commercial operations without any connection to the surrounding nature, namely, the wooded areas and the river. They do not operate outdoors, one has to pay to access them, and they are not thematically linked to the adjacent parks. These businesses could be located in the middle of a downtown or shopping centre and have the same purpose.

[115] For similar reasons, I consider it unreasonable to view the food court (building 16) as a park. Indeed, that building is also commercially operated independently of the adjacent parks. It follows from my two previous conclusions that it is unreasonable to argue that the enclosed walkway (i.e., with a roof) between the Science Centre and the food court (building 18) is incidental to a park and therefore excluded from the concept of federal property.

[116] King Edward Quay's central street (King Edward Quay Street) is obviously not a park either, as its primary function is to provide access to the buildings and parking lots on the quay. The exclusion of this street on the basis that it is a park is therefore unreasonable.

[117] The Belvedere (building 17), a trendy downtown reception hall, cannot reasonably be characterized as a park. This space has been developed as a reception hall and is not incidental to the adjacent spaces already recognized as parks.

a. The King Edward Quay Promenade

[118] The King Edward Quay Promenade is not at all developed as park. It is a paved road that is probably best described as a building maintenance access road for cars and trucks delivering supplies and collecting garbage. This promenade is in no way developed as a park or as a complement to a park.

vi. The Alexandra Quay

[119] Today, the Alexandra Quay serves as the main cruise terminal for the Port of Montréal; however, until 2016, the OPMC leased outdoor and indoor parking, storage space and office space.

[120] Having already found that the Old Port site as a whole is not a park, I see no evidence to suggest that Alexandria Quay constitutes a park. Indeed, the OPMC does not argue that it is.

c. The parking areas

[121] The Old Port site is served by a number of outdoor and indoor parking lots operated by the OPMC. Starting on the east side, there are the outdoor parking lots of the Clock Tower Basin and Clock Tower Quay, which are commercially advertised—signs are located throughout downtown Montréal—listing fixed rates. There is also the outdoor street parking on the Port Road located outside the site gatehouse, with pay-and-display machines. In this area, there is also indoor parking in hangar 16 of the Clock Tower Quay (building 20).

[122] On King Edward Quay, there are parkades (building 15) and the parking attached to the Belvedere (building 17). Finally, on the Alexandra Quay, there are parkades and indoor parking in hangars 4 and 6. Except for the outdoor street parking along the Port Road, all of the parking areas are covered by the same commercial signage and operate with the same fixed rates.

[123] I have already held that the Old Port site as a whole does not constitute a park; accordingly, parking areas whose purpose is to serve this site cannot be considered parks.

[124] Moreover, the Old Port site parking lots are advertised by commercial signage. The parking fees are not the problem: the fact is that many Montréal parks, including Mount Royal Park, offer paid parking. The problem is rather that the OPMC's parking spaces are advertised in several downtown locations, targeting a clientele significantly larger than the population of visitors to the site; this is all the more true for the population of visitors to the site's green spaces.

[125] The OPMC submits that the City is equating parking areas situated within municipal parks with parks, but that is irrelevant to this dispute. It is true that the OPMC is deemed to be a private owner for PILT purposes, but this is relevant to the calculation of the effective tax rate and the property value applicable to these assets, not to the question of which assets are compensable or which are included in the property base (*MPA 2010* at para 40). The PILT Act is a complete code establishing which types of property are and are not included in the concept of federal property and therefore which are subject to PILTs. In any case, the Old Port site is a not a park.

[126] These parking areas have a commercial use that is independent of the operation of the Old Port site: they enable visitors to Old Montréal to access the other attractions in this part of the city and visitors to the Old Port site to access the site's commercial activities.

[127] Accordingly, the parking lots are compensable as federal property, at least from a property tax perspective. As for the applicability of the Parking Lot By-law to the taxes on these parking areas, other arguments have been raised, including the OPMC's argument that the parking areas are located outside of the territory covered by this by-law.

ii. Any structure or work – paragraph 2(3)(a) of the PILT Act

[128] Paragraph 2(3)(a) of the PILT Act excludes the following from the definition of *federal property*:

[…]	[…]
(a) any structure or work, <u>unless</u> it is	a) les constructions ou ouvrages, <u>sauf</u> :

(i) a building designed primarily for the shelter of people, living things, fixtures, personal property or movable property,	(i) les bâtiments dont la destination première est d'abriter des êtres humains, des animaux, des plantes, des installations, des biens meubles ou des biens personnels,
[…]	[…]
(v) paving or other improvements associated with employee parking, or	(v) l'asphaltage des stationnements pour employés et les autres améliorations s'y rattachant,
[…]	[…]
[Emphasis added.]	[Je souligne.]

[129] The parties agree that the concept of "structure or work" referred to in paragraphs 2(3)(a) and 2(3)(b) and Schedule II to the PILT Act covers surface features and not the underlying land.

a. The Jacques Cartier Quay's elevated walkway

[130] It is not unreasonable to exclude the Jacques Cartier Quay's elevated walkway, which extends from the upper floor of the Marina des Terrasses to approximately half the length of the quay, on the west side, as a structure or work within the meaning of paragraph 2(3)(a) of the PILT Act. The walkway is open and therefore not used to shelter visitors to the site, meaning that it does not fall within the inclusion provided for in subparagraph 2(3)(a)(i) of the PILT Act.

b. The parking areas

[131] The OPMC raises two grounds of exclusion for uncovered outdoor parking areas, namely, the park exclusion (paragraph 2(3)(c) of the PILT Act) and the structure and work exclusion (paragraph 2(3)(a) of the PILT Act) and, in the case of parkades and indoor parking lots, the OPMC raises, in addition to these two exclusions, an exemption based on the concept of snow sheds under paragraph 2(3)(b) and item 12 of Schedule II to the PILT Act.

[132] I should start by noting that parking areas, by their very nature, are not excluded from the concept of federal property. Furthermore, I have already held that it was unreasonable for the OPMC to characterize the parking areas (and therefore the underlying land) as being incidental to a park.

[133] The OPMC submits that its uncovered outdoor parking areas and its parkades and indoor parking lots, as site improvements, constitute "structure[s] or work[s]" within the meaning of paragraph 2(3)(a) of the PILT Act and are therefore excluded from the concept of federal property. It therefore excluded from its PILT calculations the surface features of the outdoor parking areas, and the structure and surface features of the open parkades and indoor parking areas, but not the underlying land.

[134] The City rejects these grounds with respect to parkades and indoor parking lots, arguing that while it may be possible to exclude from PILTs the paving of parking areas (the totality of the site improvements for uncovered outdoor parking) the parkades and indoor parking lots are not covered by the concept of "structure or work" within the meaning of subparagraph 2(3)(a)(i)

of the PILT Act and therefore qualify for PILTs. The City confirms that its PILT request with respect to the uncovered outdoor parking areas only covered the underlying land, and not the surface improvements, as these include only the value of the paving within the meaning of item 11 of Schedule II to the PILT Act.

[135] This issue, however, is still relevant for the OPMC, even with respect to these uncovered outdoor parking areas, since if the surface features are exempt and do not constitute federal property, the OPMC argues that it follows from this that no other property taxes, like the parking lot tax, can be levied. The OPMC submits that because the Parking Lot By-law is a property tax levied on the surface area of the parking area and not on the value of the underlying land, if the improvements to the parking area—the paving and the gravel beneath it—are excluded from the concept of federal property, the City can no longer levy this tax on parking areas because there is nothing left that could be called a parking area; one cannot levy a tax on a parking area while ignoring the fact that it is a structure or work, and, as such, excluded from the concept of “federal property”. Accordingly, in the OPMC’s view, the Parking Lot By-law can only be applied to a federal property, and if it is found that the surface is no longer a federal property, the City cannot levy any tax on this surface.

[136] This distinction strikes me as being too artificial and a misinterpretation of the plain words of the PILT Act. Surfaces and surface areas are irrelevant. The only concepts we are dealing with here are works and underlying land; the PILT Act makes no distinction, at paragraph 2(3)(a), between the underlying land and its surface. The purpose of this paragraph is

simply to exclude structures and works found above the surface of the land. Nor is the commercial use to which the federal property is put relevant under the PILT Act.

[137] Regarding uncovered outdoor parking areas, the surface improvements constitute “structure[s] or works[s]”. The City has already recognized that the paving of uncovered outdoor parking areas is excluded from the concept of federal property within the meaning of paragraph 2(3)(b) and item 11 of Schedule II to the PILT Act. It is unreasonable, however, to exclude the land underlying these parking areas: they are not parks, and paragraph 2(3)(a) does not include an exemption for the underlying land.

[138] On the other hand, it would be unreasonable to decide that parkades and indoor parking lots are excluded from the concept of federal property on the ground that they are covered by paragraph 2(3)(a) of the PILT Act. Such buildings are expressly included in the definition under subparagraph 2(3)(a)(i) of the PILT Act.

[139] The term “building” is broad enough to encompass any solid and permanent construction designed to shelter people, animals or property. Although the parkades are open steel structures with a roof and no walls, they are nevertheless, in my view, buildings the primary purpose of which is to shelter moveable property, in this case vehicles. The vehicles parked on the outside perimeter are somewhat less protected, perhaps, but the fact remains that, for the most part, the primary feature of these structures is the protection they offer from wind, rain and snow to vehicles and their passengers.

[140] While the verb “to shelter” can have several layers of meaning—for instance, we might say we wish to be sheltered from environmental factors like rain, snow, wind or sun, or be sheltered from dangers like wild animals—ultimately, it seems to me that “to shelter” means to protect the people or objects being sheltered from elements that might harm or damage them.

[141] Finally, and once again, I must point out that, in its decisions, the OPMC has not adequately explained the logic behind its new attitude towards its parking areas.

iii. Snow sheds – paragraph 2(3)(b) – Schedule II – item 12

[142] This is not one of the OPMC’s best arguments. Paragraph 2(3)(b) of the PILT Act and Schedule II state that the definition of *federal property* does not include:

[…]	[…]
(b) any structure, work, machinery or equipment that is included in Schedule II;	b) les constructions, les ouvrages, les machines ou le matériel mentionnés à l’annexe II;
[…]	[…]
SCHEDULE II **(Section 2)**	**ANNEXE II** **(article 2)**
[…]	[…]
2 […] lathes […]	2 […] tours […]
[…]	[…]
7 Monuments	7 Monuments
[…]	[…]
12 Snow shelters	12 Abris contre la neige […]

[…] […]

[143] Over the years, the issue of whether the Clock Tower should be excluded from the concept of federal property as a “tower” or “monument” within the meaning of items 2 (of the French version of Schedule II) and 7 of Schedule II has remained controversial. However, during the hearing, the parties informed me that they had reached an agreement on this issue. Moreover, as the City has dropped the issue of whether the Clock Tower Basin is excluded as a “dock” within the meaning of item 3 of the same schedule, all that remains is to consider whether parkades and indoor parking lots are “snow sheds” [“*abris contre la neige*” in French] within the meaning of item 12 of Schedule II to the PILT Act.

[144] Starting in 2016 for the King Edward Quay and in 2017 for the Clock Tower Quay, the OPMC began to rely on the concept of snow sheds under paragraph 2(3)(b) and item 12 of Schedule II to the PILT Act for its parkades and indoor parking lots, as these protect vehicles from snow. The parties agree that this exclusion is not meant to apply to the underlying land, but to the building itself.

[145] The issue is whether the Belvedere, a section of building 17 with a parkade on King Edward Quay, falls within this exemption because it serves to shelter [“*abriter*”] people who wish to gather to celebrate a special occasion. For the same reasons applicable to the parkades and indoor parking lots, such an interpretation of the French term “*abri contre la neige*” [“snow shed” in English] is unreasonable; the Belvedere must therefore be included pursuant to subparagraph 2(3)(a)(i) of the PILT Act.

[146] The OPMC is claiming the “snow shed” exemption on the basis that the parkades and indoor parking lots protect fully or partially against snow in the winter; however, their primary use is not to *shelter* vehicles, but rather to provide parking spots. Consequently, the exception set out in subparagraph 2(3)(a)(i) of the PILT Act does not apply to them.

[147] As we have seen above, the City is of the opinion that these works must be included in the concept of federal property as buildings designed primarily for the shelter of movable property (vehicles) within the meaning of subparagraph 2(3)(a)(i) of the PILT Act. The City also submits that the late and irregular use of the exemption in item 12 of Schedule II to the PILT Act for the parkades and indoor parking lots on the Old Port site that crept in over time further supports the argument that the OPMC’s decisions are unreasonable.

[148] In fact, the OPMC argues that the parkades and indoor parking lots are not designed to *shelter* vehicles within the meaning of subparagraph 2(3)(a)(i), while simultaneously claiming that these same parking areas are technically “snow sheds” within the meaning of item 12 of Schedule II to the PILT Act on the basis that they shelter vehicles from snow.

[149] I find the OPMC’s position on this point contradictory and difficult to follow; either these parking areas shelter vehicles, or they do not.

[150] As indicated above, given the plain meaning of the terms “movable property”, “building” and “shelter”, it is clear that the parkades and indoor parking lots are indeed covered by subparagraph 2(3)(a)(i) and included in the concept of federal property.

[151] As for the applicability of Schedule II, item 12, I must admit to the OPMC that its parkades and indoor parking lots provide shelter against snow. However, the mere fact that a property provides shelter against snow does not automatically make it a "snow shed" within the meaning of the PILT Act. If that were the case, every building with a roof on the Old Port site would be a snow shed under this statute. This is certainly not what Parliament intended when it included the term "snow sheds" in Schedule II, item 12.

[152] It is my view that a parkade or indoor parking lot is a space designed for the safe storage of vehicles that are not in use. Providing shelter from snow is not the sole purpose of this type of parking area, although it is an advantage. It is also worth noting that these same types of structures can be found in places that lack snow.

[153] This is not the sole argument supporting a finding that the OPMC's determination on this issue is unreasonable. Indeed, the meaning of the French term "*abri contre la neige*" is easily determined by studying the arrangement of the words of Schedule II, item 12, and by reference to the English version of the exemption, which uses the term "snow shed", meaning a shelter against avalanches covering a road or railway tracks in a mountainous area.

[154] I share Justice Martineau's opinion on a point that the Supreme Court did not call into question: when an item in Schedule II to the PILT Act mentions several things, they share common characteristics (*City of Montréal v Montréal Port Authority*, 2007 FC 701 at para 132).

[155] Like the rest of the property enumerated in Schedule II, a "snow shed" is a very specific type of structure. The types of property listed in item 12 of Schedule II—snow sheds, tunnels, bridges and dams—are structures related to protection from or management or control of a natural element to promote safe passage, traffic or flow. They are also structures that are only meant to be passed through and are not intended as temporary or permanent shelters for people or property.

[156] A principle of bilingual statutory interpretation holds that when one version of a statute is broader and more ambiguous and the other is unambiguous, the latter is to be preferred (see, for example, *Pfizer Co. Ltd. v Deputy Minister of National Revenue*, [1977] 1 SCR 456 and *Gravel v City of St-Léonard*, [1978] 1 SCR 660).

[157] For these reasons, I find that the OPMC's interpretation of the exclusion set out in item 12 of Schedule II to the PILT Act is unreasonable. While they do "shelter" vehicles ["*abritent*" in French], the OPMC's parkades and indoor parking lots cannot be considered snow sheds ["*abris contre la neige*"], which are excluded from the base on which PILTs are calculated under Schedule II to the PILT Act. Therefore, the interpretation put forward by the OPMC respects neither the text of the PILT Act nor the will of Parliament.

[158] It bears remembering that the PILT Act must be interpreted in accordance with its purpose, which is "the fair and equitable administration of payments in lieu of taxes" (section 2.1 of the PILT Act). Its interpreter must not attempt to minimize PILTs by desperately hunting for exclusions with a magnifying glass. Nor is it acceptable to exploit "ambiguities", "gaps" or

“double meanings” to maximize exclusions (or, on the contrary, to minimize them). The interpreter’s mission is to find a fair and equitable interpretation of the texts on the basis of their plain and ordinary meaning, without engaging in acrobatics or exaggeration.

[159] In this case, I note that the OPMC has engaged in some questionable mental gymnastics, unreasonably attempting to slot these parkades and indoor parking lots into one of the exceptions to the concept of federal property, and has, in so doing, disregarded the purpose of the PILT Act.

iv. Public highways

[160] Paragraph 2(3)(g) of the PILT Act states that public highways are excluded from the definition of *federal property*:

[…]	[…]
g) immovables and real property constructed or used as public roads and not having, according to the Minister, the primary function of allowing direct access to an immovable or real property belonging to Her Majesty in right of Canada;	g) les immeubles et les biens réels aménagés ou utilisés comme voies publiques et n’ayant pas, selon le ministre, pour fonction première de permettre l’accès direct à un immeuble ou à un bien réel appartenant à Sa Majesté du chef du Canada;
[…]	[…]

[161] The OPMC is claiming this exclusion for the numerous roads on its site by classifying them as public highways within the meaning of paragraph 2(3)(g) of the PILT Act. As is the case for the parks, this exclusion, which applies to “real property or immovables”, includes the underlying land and the property attached to it.

[162] The OPMC initially claimed this exemption for the southern part of De la Commune Street, but without ever providing justification. When questioned about this at the hearing, the OPMC decided to drop this claim.

[163] Accordingly, the public highways still at issue are the Clock Tower Quay entrance, the Bonsecours Basin entrance, the Jacques Cartier Quay entrance, the King Edward Quay entrance, the Old Port Promenade and the Promenade des Artistes, the Clock Tower Basin and Clock Tower Quay street, the Port Road, the Alexandra Quay entrance, King Edward Quay Street and the Saint-Pierre entrance.

[164] According to the City, apart from the Port Road, not one of these other highways provides access to any private property whatsoever located outside of the federal property; they therefore do not meet the requirements of paragraph 2(3)(g) of the PILT Act. However, it concedes that while the public highways in question are covered by the concept of federal property, the paving of these highways should nevertheless be excluded pursuant to Schedule II, item 11; paragraph 2(3)(b) of the PILT Act, which refers to Schedule II, does not include "real property or immovables", so this paving exception to federal property does not include the underlying land.

[165] To defend its decision, the OPMC argues that these highways provide access to several businesses leasing space on the Old Port site as concession holders, such as gift and clothing boutiques, food stands, and cruise ship or tour boat operators. The OPMC notes that these lessees are deemed "owners" of the parts of the Old Port site that they lease within the meaning of

sections 204 and 208 of the *Act respecting municipal taxation*, CQLR c F-2.1 [AMT], and that they are therefore liable for any property taxes owing on those parts. The public highways at issue are therefore necessary to provide these "owners" with access, bringing these roads within the exclusion set out at paragraph 2(3)(g) of the PILT Act.

[166] The OPMC is relying in part of the decision in *MPA 2010*, which states that the actual tax situation in the place where the federal property is located must be taken into account in the calculation of PILTs. In the case at hand, the OPMC submits that, according to section 208 of the AMT, these lessees or occupants are deemed to be owners, so if these public highways did not exist, the public would not be able to access these spaces characterized by the OPMC as "private property".

[167] Sections 204 and 208 of the AMT read as follows:

204. The following are exempt from all municipal or school property taxes:	204. Sont exempts de toute taxe foncière, municipale ou scolaire :
(1) an immovable included in a unit of assessment entered on the roll in the name of the State or of the Société québécoise des infrastructures;	1 un immeuble compris dans une unité d'évaluation inscrite au nom de l'État ou de la Société québécoise des infrastructures;
(1.1) an immovable included in a unit of assessment entered on the roll in the name of the Crown in right of Canada or a mandatary thereof;	1.1 un immeuble compris dans une unité d'évaluation inscrite au nom de la Couronne du chef du Canada ou d'un mandataire de celle-ci;
[…]	[…]
208. Where an immovable that is not taxable under paragraph 1 or 1.1 of section	208. Lorsqu'un immeuble non imposable en vertu du paragraphe 1° ou 1.1° de

204 is occupied by a person other than a person referred to in that section or a corporation that is a mandatary of the State, unless its owner is the Société québécoise des infrastructures, the property taxes to which that immovable would be subject without that exemption are levied on the lessee or, if there is no lessee, on the occupant, and are payable by the lessee or occupant. However, that rule does not apply in the case of an immovable referred to in paragraph 1.1 of section 204 where, according to the legislation of the Parliament of Canada relating to subsidies to municipalities that are to stand in lieu of property taxes, and according to the instruments made under that legislation, such a subsidy is paid in respect of the immovable notwithstanding its being occupied as described in this paragraph.	l'article 204 est occupé par un autre qu'une personne mentionnée à cet article ou qu'une société qui est mandataire de l'État, sauf si son propriétaire est la Société québécoise des infrastructures, les taxes foncières auxquelles cet immeuble serait assujetti sans cette exemption sont imposées au locataire ou, à défaut, à l'occupant, et sont payables par lui. Toutefois, cette règle ne s'applique pas dans le cas d'un immeuble visé au paragraphe 1.1° de l'article 204 lorsque, suivant la législation du Parlement du Canada relative aux subventions aux municipalités pour tenir lieu des taxes foncières et selon les actes pris en vertu de cette législation, une telle subvention est versée à l'égard de l'immeuble malgré l'occupation visée au présent alinéa dont il fait l'objet.
[…]	[…]
[Emphasis added.]	[Je souligne.]

[168] First, it is clear from the provision itself that this rule is inapplicable to PILTs.

[169] It is equally clear that the AMT provisions cited by the OPMC do not grant ownership in an immovable to the merchants: instead, they create a legal fiction for tax purposes specific to that statute. Legally, the ownership of the leased sites remains with the OPMC. The fact that the

roads at issue provide access to lessees located on the Old Port site simply confirms that these roads really give access to property "owned" by the OPMC.

[170] In any case, I cannot accept the OPMC's arguments regarding the applicability of the decision in *MPA 2010*. That Supreme Court decision involved a situation in which the Crown corporation was calculating PILTs on the basis of a tax rate that had been in effect at the time but that had subsequently been abolished by the taxing authority. The Supreme Court observed that, although the definition of "effective rate" recognized that Crown corporations have to decide on the appropriate tax rate, they cannot base their PILT calculations on a fictitious tax system that they themselves have created arbitrarily.

[171] As stated above, I accept the idea that the OPMC is deemed to be a private owner under the PILT system, but this is for the purpose of calculating the effective rate of tax and the value of its property, not for the purpose of determining what property is compensable or what is to be included in the property base (*MPA 2010* at para 40). The PILT Act is a complete code that determines what property is included in or excluded from the concept of federal property and therefore which are subject to PILTs, and nowhere in *MPA 2010* does it state that the existing tax system may be used to interpret, qualify or amend the exceptions to the concept of federal property set out in the PILT Act.

[172] The only public highway with respect to which I am inclined to agree with the OPMC is the Port Road. It is true that this road gives access to the Clock Tower Quay and to outdoor parking lots owned by the OPMC, but it is the sole road giving access to a complex of private

residential condominiums west of the Old Port site—these condominiums are not on the Old Port site and their construction was completed before 2014. Moreover, if one were to continue moving west along the Port Road, one would reach the access gate to the Port of Montréal. I have used that road myself many times to reach the Port of Montréal.

[173] However, automatically excluding a federal highway from the PILT base simply because it also provides access to private property seems to me to be contrary to the intent of the PILT Act and to the text of paragraph 2(3)(g) itself. In applying this provision, one must look to the primary purpose of the highway in question; it is not enough to simply equate access to private properties with exclusion. Paragraph 2(3)(g) of the PILT Act provides that public highways are to be classified as federal property if their primary function is to provide immediate access to real property or immovables owned by the Crown. For example, a network of roads within a federal property giving access to the site's various attractions and buildings would not fall within the paragraph 2(3)(g) exclusion. The Trans Canada Highway, on the other hand, which simply crosses through federal properties and does not have as its primary function the provision of immediate access to properties of the Crown, would be captured by the exclusion.

[174] In this case, there is no evidence that the Port Road's primary function is to provide immediate access to the Old Port site, so the City has not persuaded me that the OPMC's exercise of discretionary power and its determination with regard to this issue were unreasonable.

[175] Accordingly, apart from the Port Road, I do not find that the exclusions claimed in this case by the City are reasonable. I confirm, however, that it was not unreasonable for the OPMC to have excluded the paving of the public highways at issue pursuant to Schedule II, item 11.

b) *Conclusion on exclusions*

[176] It is certain that the decision to make PILTs remains with the OPMC; it is the OPMC's discretionary power that is exercised in the final determination of such payments. However, this power is not absolute, and, although in this case the OPMC did not go beyond the scope of the PILT Act, its interpretation of most of the exceptions to the definition of federal property amount to an unreasonable exercise of this power.

[177] According to the City, there are several discrepancies between the interpretation given to the exceptions to the concept of federal property by PWGSC, which is responsible for administering the PILT program across the entire country, and by the OPMC, which administers it locally in the Old Port of Montréal. This would indicate that OPMC has no particular expertise, and in fact is not seeking an interpretation that is reasonable or fair and equitable to the City, but rather is seeking to benefit from as many exclusions as possible in its interpretation of the term "federal property".

[178] For my part, although I have been puzzled by some of the exceptions invoked by the OPMC, I am not prepared to impute to it any ulterior motives in the exercise of its discretion. As all parties have made clear, there is little case law on how to interpret many of the exceptions to what constitutes federal property in the PILT Act. There has also been some changing of the

guard at the OPMC, perhaps with more ambitious site development plans than those of PWGSC and thus more reason to question whether the more traditional interpretation of the PILT Act should continue to be followed.

[179] However, when the OPMC rendered its decision, other than for the Port Road, the Jacques Cartier Quay's elevated walkway and the Old Port Promenade and the Promenade des Artistes, it respected neither the principles of statutory interpretation applicable to the PILT Act nor the intent of Parliament. Accordingly, it exercised its discretionary power unreasonably. To borrow the words of Justice LeBel, and setting aside the above-mentioned exceptions, the OPMC's proposed interpretation "is not consistent with the words of the statute, with Parliament's intention or with any of the ordinary meanings of the words used in Schedule II to the PILT Act. It must therefore be concluded that the MPA's interpretation is unreasonable" (*MPA 2010* at para. 48).

2. Are the OPMC's parking lots subject to the Parking Lot By-law?

[180] The Parking Lot By-law was adopted pursuant to a power previously contained in section 151.8 of the City Charter, which has since been transferred section 500.1 of the *Cities and Towns Act*, CQLR, c C-19. This by-law concerns a property tax specifically applicable to parking lots over and above the ordinary property tax, calculated according to the area with different rates for indoor and outdoor parking lots. Private parking lots owners in Montréal must pay their own property tax, plus the property tax for parking lots.

[181] The OPMC raises two separate grounds for the inapplicability of this by-law to its parking lots: the City does not have the authority to impose this tax on it, and its parking lots are not situated within the sectors to which this tax applies. I will address each of these arguments in detail.

a) *Is the City authorized to levy this tax?*

[182] The OPMC is challenging the applicability of the Parking Lot By-law on the basis that, unlike the property tax imposed under sections 149 to 151.6 of the City Charter, a tax imposed under section 151.8, such as the parking lot property tax, is not applicable to persons covered by section 151.9 of the City Charter (applicable at the time), including the Crown in right of Canada and its agents. The OPMC therefore submits that it was not required to take this tax into account as it was not applicable to it.

[183] The City, on the other hand, argues that it does not impose the Parking Lot By-law on federal properties, but rather it imposes it on all parking lots as a general tax. Thus, and because the PILT Act creates the legal fiction that the federal Crown corporation must pay as if it were a taxable taxpayer, under that statute, the OPMC must be treated as if it were an individual owner, owning that land. The exclusion set out in section 151.9 of the City Charter is therefore inapplicable in this context, and, in any event, this exclusion adds nothing to the debate because it simply restates the basic tax immunity that is provided by section 125 of the Constitution.

[184] It is worth recalling here how PILTs are calculated under the PILT Act. Section 4 provides that the amount of the PILT is the product of the following two factors: the effective

rate and the property value. The effective rate is defined in section 2 of the PILT Act as "the rate of real property tax or of frontage or area tax that, in the opinion of the Minister, would be applicable to any federal property if that property were taxable property".

[185] In the case of parking lots, this rate includes the rate of the property tax set out in the Parking Lot By-law. The OPMC had to refer first to the provisions of the PILT Act and its regulations to determine what payments were due. This is not a case in which the City is imposing a tax on the OPMC. The provision in the provincial enabling legislation is not relevant to the determination of PILTs because the effective rate must be determined from the tax rates that would be applicable if the OPMC parking lots were privately owned and therefore taxable. Section 151.9 of the City Charter is only intended to affirm the Crown's tax immunity.

[186] The Crown corporations involved in *MPA 2010* had refused to take into account the taxing authority's tax reform, which resulted in an increased effective rate following the abolition of a commercial occupancy tax for which no tax was payable. In calculating their PILTs, the Crown corporations decided to deduct amounts equivalent to the portion of the property tax increase that resulted from the abolition of the business tax. The Supreme Court's doctrine on this issue could not be clearer:

> [40] However, there is a fundamental flaw in this interpretation and application of the *PILT Act* and the *Regulations*. As I have indicated, the two corporations certainly have a discretion. It is clear from the definition of "effective rate" that Crown corporations have to decide on the appropriate tax rate. However, they cannot base their calculations on a fictitious tax system they themselves have created arbitrarily. On the contrary, those calculations must be based on the tax system that actually exists at the place where the property in question is located. The *PILT Act* and the *Regulations* require that the tax rate be calculated as if the

> federal property were taxable property belonging to a private owner. In s. 2 of the *Regulations* and the corresponding provision of the *PILT Act*, it is assumed that the corporations begin by identifying the tax system that applies to taxable property in the municipality in order to establish the property value and effective rate of tax. They cannot do so on the basis of a system that no longer exists.
>
> [41] In these appeals, the relevant tax system is well established. The business occupancy tax had been abolished in 2003. Under Quebec municipal legislation, municipalities had the power to impose variable-rate property taxes. The City exercised that power. The respondents therefore had to calculate their effective rates having regard to the fact that the business occupancy tax no longer existed. They could not reintroduce that tax in their calculations for an indefinite period of time or indirectly force the municipality to maintain a tax system it had changed as it was authorized to do under provincial law. Indeed, the respondents' position would in practice mean that they would, in establishing the amounts of their PILTs, be entitled — not only now, but also 10 or 20 years from now — to make increasingly complex and illusory theoretical calculations based on taxes that had long since disappeared.
>
> [42] The respondents' position is also contrary to the objective of the *PILT Act* and the *Regulations*. Parliament intended Crown corporations and managers of federal property to make payments in lieu on the basis of the existing tax system in each municipality, to the extent possible as if they were required to pay tax as owners or occupants.
>
> [Emphasis added.]

[187] As in the case above, not including the tax provided for by the Parking Lot By-law in the PILT calculation amounts to creating a fictitious tax system, which would be inequitable with respect to the other taxpayers. I cannot accept this solution. The issue here is whether it was reasonable for the OPMC to conclude that if the parking areas had belonged to a private owner and been taxable, the tax rate applicable to them would have excluded the tax imposed by the Parking Lot By-law. In my view, the response to this question must be negative.

[188] Section 3 of the PILT Act clearly sets out the terms applicable to PILTs. It allows for payments in lieu of any taxes applicable within the areas in which the federal properties at issue are situated. This was confirmed by the Supreme Court in *MPA 2010* at paragraph 40, cited above: "those calculations must be based on the tax system that actually exists at the place where the property in question is located". This is a territorial condition rather than a material or formal condition. The OPMC has not pointed to any wording in the PILT Act that limits PILTs on the basis of provisions in a provincial enabling statute. The issue of the territorial applicability of the by-law at issue is precisely the second ground of the OPMC's challenge, which I will discuss shortly.

[189] Essentially, section 151.9 of the City Charter prohibits the imposition of a tax in respect of certain persons. In my view, it is only if the City imposes a tax on the OPMC that this section and section 125 of the Constitution are applicable. This is not a situation in which the City is imposing the Parking Lot By-law on the OPMC; the by-law must simply be taken into account when the OPMC exercises its discretion in calculating the annual PILT. If this by-law is ignored, the end result will be a fictitious tax rate for the PILTs, as not all the taxes making up the effective rate would be taken into account—a situation that was deemed unacceptable in *MPA 2010*. It is unreasonable to believe that the City imposed a tax on the OPMC through its PILT applications, as it is the PILT Act that governs this type of application (subsection 3(1) of the PILT Act).

[190] As we have already seen, subsection 204(1.1) of the AMT states that "an immovable included in a unit of assessment entered on the roll in the name of the Crown in right of Canada

or a mandatary thereof" is "exempt from all municipal or school property taxes". However, the OPMC is not challenging the applicability of all of the property taxes with respect to its properties. This is all the more revealing of the unreasonableness of its position.

b) *Are the parking lots situated outside the areas in which this tax is applicable?*

[191] Article 11 of the Parking Lot By-law reads as follows:

> A property tax on parking lots, at the rates shown below, is imposed and levied on and for any taxable immovable forming part of a unit assessment belonging to a category of non-residential immovables, entered on the property assessment roll, that contains a parking lot or part of such a lot, and that is situated in sector A, B or C: . . .

[192] It is not in dispute between the parties that the Old Port site is part of the City's territory and that, in accordance with article 1 of the Parking Lot By-law and section 8 of the *Compendium of Tariffs of Private Transportation by Taxi*, RRQ, c S-6.01, r 4, the relevant territorial boundary of the area in question, namely Sector B, for the purposes of the Parking Lot By-law is "the St. Lawrence River". There is also no controversy as to the definition of the word "river" in this context, which is [TRANSLATION] "a major watercourse flowing into the ocean".

[193] However, according to the OPMC, it is indisputable that the Old Port's quays and piers are situated in the St. Lawrence River. Thus, King Edward Quay projects 380 metres over the riverbed, and Jacques Cartier Quay projects 344 metres over the riverbed. It points to a historical map from 1815 in support of its argument that the quays are situated in what was then the riverbed. The OPMC attaches great importance to the fact that boats can moor to its quays,

further proving that that they are situated [TRANSLATION] “in the St. Lawrence River”. Accordingly, because these parking lots are situated on cribwork quays situated in the river, the OPMC takes the position that its parking lots are outside the scope of the Parking Lot By-law.

[194] Accepting the OPMC’s position would be tantamount to saying that all of the infilled land on what was once the St. Lawrence River is also “in the river”. I can imagine the inevitable squabbles between taxi drivers and passengers over whether the airport fare remains applicable between the entrance to the Old Port on De la Commune Street and the front doors of the IMAX theatre or to a car parked in one of parking lots on the Old Port site. This idea does not stand up to scrutiny.

[195] Presumably, the decision to designate the St. Lawrence River as a boundary to the application of the Parking Lot By-law was made in light of the geography of Montréal Island at the time the decision was made. In other words, it cannot seriously be argued that in defining this boundary the drafters had in mind the mapping of Montréal Island 200 years ago when the river reached De la Commune Street.

[196] While the OPMC also concedes that the Old Port site is part of the City’s territory and that the City’s boundaries extend to the middle of the river, it seems to me that the mere fact that the City defines the applicable territory of the Parking Lot By-law as being bounded by the river does not preclude what is built into the river in this case. For all intents and purposes, the City's territory has, with the development of what is now known as the Old Port site, extended into the

river. The fact that this extension is composed of landfill with timber and cement cribs rather than earth landfill or other material is of no consequence.

[197] I would simply add in conclusion that just because the OPMC is unhappy with the imposition of a tax does not mean that it should be exempted (*Catalyst Paper Corp. v North Cowichan (District)*, 2012 SCC 2 at paras 4 and 19).

[198] The OPMC's decision with respect to this issue was therefore unreasonable.

3. Is the OPMC's land situated in deep water?

[199] There is no doubt that at the beginning of the 19th century, most, if not all, of the area of what is today the Old Port site was made up of water, as the St. Lawrence River reached as far as De la Commune Street. It is true that the area we know today as the Old Port site was built up over the years by the use of landfill to widen the south side of De la Commune Street into the St. Lawrence River and by the construction of quays with cribwork and cement pillars that extend even further into the river to allow for the loading and unloading of ships. The City argues that this is not unlike much of its expansion by means of dry materials and landfill on the riverfront, such as parts of Griffintown, as well as Notre Dame Island and the 1967 expansion of St. Helen's Island.

[200] No one doubts today that with this accession and emergence of land, these areas of the City that have wondrously materialized from the St. Lawrence River are now dry land subject to property tax. The City argues that the Old Port site is no different and, therefore, for the purposes

of the PILT Act, the area of the Old Port site must be recognized as federal property consisting of dry land and subject to the City's zoning by-law.

[201] I have already found that for the purposes of calculating the applicable PILT, the nature of the landfill that allowed for the extension of the City's territory is of no consequence with respect to the application of municipal taxes.

[202] The OPMC argues that its lands should be assessed as deep-water lands and not as dry land. In fact, the City's property roll assessments are only for the value of the buildings and the value of the land. According to the OPMC, it is the value of the river bottom on which the cribs are embedded, and not the surface of the quays, that should be assessed for property tax purposes.

[203] The origins of the OPMC's deep water theory are somewhat mysterious. The act of acquisition of the Old Port site by the OPMC from Her Majesty the Queen in right of Canada refers in the designations to [TRANSLATION] "Land" sold with [TRANSLATION] "all its improvements, buildings, accessories and dependencies . . .". The sole mention of a [TRANSLATION] "lot in deep water" is in the 1870 definition of the origin of the right of ownership for one of the ten lots that presently constitute the Old Port site, [TRANSLATION] "described as a lot in deep water in the plan and book of reference . . .". According to cadastral plan number PC-13516, this [TRANSLATION] "lot in deep water" from 1870 is currently dry land making up part of the OPMC's property and is not on the riverbed. I assume that the portion of the river that ran along the shoreline has been consumed over time by landfill.

[204] The City argues that the fact that a very old map might show that portions of the land were once in a watercourse, which has since been filled in, does not change the fact that the land in its present state is dry land. I agree.

[205] For property assessment purposes, the condition of the assessment unit on the date of reference must be taken into account (section 46 of the AMT). In this case, given the manner in which the unit is constituted, for property tax assessment purposes, each of the quays making up the Old Port site is used for commercial or parking purposes. The City does not distinguish between surfaces composed solely of landfill and surfaces supported by cribwork—posts made of timber, concrete or steel that serve as exterior perimeter walls rising from the riverbed out of the water—filled with landfill and covered with a layer of asphalt, but excluding the paving.

[206] The OPMC points to a lease for a [TRANSLATION] "lot in deep water", a lot in the Quebec cadastre that is described as [TRANSLATION] "riverbed of the St. Lawrence River". However, the plan of this water lot shows the waters of the river forming the outline of the footprint of the Old Port property—the boundary between dry land and water—without encroaching on the footprint itself, but that is not part of the debate in this case. The Alexandra, King Edward and Jacques Cartier basins are owned by the Port of Montréal, and although the Jacques Cartier Basin was leased to the OPMC by the Port of Montréal during all the years covered by the PILT applications at issue, the basins do not appear on the City's property assessment roll as far as the OPMC is concerned and have never been the subject of a PILT application.

[207] The quays as structures have never been the subject of a PILT application by the City either, and their actual value does not take into account the building materials that comprise them. The issue, therefore, is whether the federal property on which the property tax—and thus the discretionary PILT determination by the OPMC—is calculated is the river bottom beneath the quays, or rather the elevated usable surface of the quays.

[208] According to the OPMC, its lots that are allegedly in deep water should be assessed on the basis of the area of the riverbed supporting the quays at a nominal value, or, in the alternative, at a much lower value than that determined by the City. In support of its position, the OPMC points out that the timber cribs on which the quays rest are not landfill and therefore do not constitute dry land. The OPMC also compares its land to other land situated in deep water, such as the Jacques Cartier Basin, which is adjacent to the Old Port site, and a quay located in Sorel-Tracy. The value attributed to these two lots is much lower than that attributed to the Old Port site.

[209] The OPMC argues that the issue of the assessment of the area occupied by its quays was treated by its evaluators as the value of the land underneath the quay, namely, the riverbed, because a quay built with cribbing requires maintenance, and if left unmaintained, it will eventually fall apart. Therefore, the evaluators determined the value of the quays on an income basis, and thus the value that the underlying land allows to be extracted from the quay built on top of it.

[210] First, this is an issue that goes to the heart of the property value of the OPMC's immovables. The objective in this case is not to determine the value to be placed on the underlying OPMC lands, but simply to determine whether those lands are located on or under the quays for assessment purposes, as the City intends to refer any residual disputes about the assessment of the OPMC property to the PILT Dispute Advisory Panel established pursuant to section 11.1 of the PILT Act.

[211] In accordance with the definition of "property value" in subsection 2(1) of the PILT Act, the OPMC must attribute a property value to its immovables consistent with that which would be payable if the immovables were privately owned. Similarly, section 46 of the AMT provides that, in assessing the immovable, "the condition of the unit of assessment on [the reference date] . . . [is] taken into account".

[212] In this case, I am of the view that, for PILT purposes, the property value of the OPMC's "land" must be calculated as if the land were situated on the quays—the usable surface—just as if it were situated on any infilled area within the City's territory. These quays are permanently fixed to dry land, cannot be removed and are the site of important immovables that support lucrative commercial activities, such as parkades and indoor parking lots, the Science Centre and the IMAX theatre. I therefore find that it would be unreasonable and contrary to the spirit of fairness in the PILT Act to assess the land at issue as deep-water lots of nominal value. The fact that the quays are supported in part by cribwork filled with a combination of landfill and other materials rather than landfill alone has no impact whatsoever on this finding, given that the

surface usable for commercial development is situated on the quays, above the water, in an area that is essentially an extension of Old Montréal.

[213] Accordingly, if there is to be a comparison of the value of the sites, it seems to me more consistent with the objective of the fair and equitable administration of the PILT Act that the OPMC consider the value of the adjacent sites in the Old Montréal area, just north of De la Commune Street, with appropriate adjustments given the reality that the underlying quays may require maintenance. The way in which the OPMC's underlying land has been compared to the adjacent undeveloped basin or to a marine wharf in a smaller city downstream for PILT purposes strikes me as neither intelligible nor transparent.

[214] The acts of assignment of the Old Port site from Her Majesty the Queen to the OPMC are of no assistance in determining the assessment method applicable to the Old Port site. Whether these acts refer to the land as the riverbed or the surface of the quays is immaterial. Any such designation was made for the purpose of identifying the property being assigned, not for determining the value attributable to the land.

[215] According to the OPMC, the City received its decisions with the assessment reports in which the OPMC clearly states that what its evaluators were assessing was the land under the quays, and that this has consistently been the OPMC's position throughout the years under consideration. The OPMC therefore argues that if, at any time during this period, the City had wished to take the position that it was instead the surface of the quays that was being assessed, it should have confirmed this in the PILT application. However, there did not appear to be any

disagreement as to the value of the sites considered for the PILT calculation prior to 2014, so to claim now that there was a misunderstanding as to the basis on which the City was making its PILT application comes across as grasping at straws.

[216] Before me, the OPMC conceded that if the land constituting the Old Port site had been composed only of landfill, it would be dry land for tax purposes. However, while this was not argued in its written submissions, the OPMC claimed at the hearing that the quays are instead "structure[s] or works[s]" to be excluded from the concept of federal property under paragraph 2(3)(a) of the PILT Act.

[217] This is a new argument that has never appeared in the OPMC's decisions; however, I fail to see how this advances the OPMC's case. As noted above, the City submits that the quays are not assessed as such and that the property value does not take into consideration the materials making up the quays, such as landfill, cement or timber. Nor is it required to do so. In assessing land in the City's various boroughs, the composition of the dry land is not taken into account. The fact that one sector is made of rock and gravel while another is situated on landfill is irrelevant.

[218] Furthermore, the City submits that the riverbed on which the quays rest is owned by the Province of Quebec rather than the federal government. As stated above, the City's jurisdiction extends to what is under federal jurisdiction, above the riverbed; therefore, if the OPMC wishes to defend the position, as it now appears to be doing for the first time, that the land to be taxed is

the riverbed and not the area above it, then OPMC will have to find another mechanism for the payment of the levy to the City as the PILT system would no longer apply.

[219] It is not necessary to decide this issue in the context of these judicial review proceedings. Suffice it to say that what is being assessed by the City is the market value of the site, which is the surface of the quay. Given that these quays are no longer being used in accordance with their original purpose and construction and that they are now an elevation of the ground below the water level, the manner in which the OPMC has assessed its sites to determine the amount of the PILT or its rationale for deciding to depart from its previous decisions to accept the site's property value was not clearly justified in its decisions. Its decisions on this issue are therefore unreasonable.

[220] In any event, for PILT purposes, I see no reason to treat the Old Port site differently just because it was built with landfill south of De la Commune Street up to a certain point, and after that point with the addition of cribwork to reinforce the structure rather than occupying the surface of the riverbed with landfill only. The OPMC's decision on this point was neither intelligible nor transparent in light of the objectives of the PILT Act and is therefore unreasonable in the circumstances. However, the question of what the true value of the land is will have to be resolved at a later date by the Dispute Advisory Panel, in keeping with the will of the parties and the scheme of the PILT Act.

4. Was it open to the OPMC to effect compensation between the amount it had allegedly overpaid in 2013 and the payments for the following years?

[221] The OPMC admits that the payment made in 2013 was final. Recovering overpayments for this type of payment is nevertheless permitted, in its view, by section 4 of the *Interim Payments and Recovery of Overpayments Regulations*, SOR/81-226 [IPROR], which governs payments made by the Minister under section 3 of the PILT Act or interim payments made by the Minister under section 3 of the IPROR. According to the OPMC, nothing in these regulations states that they cover only the Minister, to the exclusion of Crown corporations. On the contrary, the OPMC submits, section 4 states that it applies to any payment made under the PILT Act, not just payments made by the Minister. This recovery mechanism therefore would allow the OPMC to deduct its 2013 overpayments from payments for subsequent years. It adds that this mechanism was confirmed in *Trois-Rivières (City)* at paragraphs 80 to 83.

[222] I reject this argument. First, *Trois-Rivières (City)* involved an interim payment made by the Crown corporation under section 3 of the IPROR, in a context in which the parties were unable to determine definitively the amount of the PILT for the year at issue. Once a final decision was reached for that year and the final amount of the PILT proved to be lower than the amount of the interim payment, the Crown corporation's right to deduct the overpayment from the payment of the following year's PILT was confirmed.

[223] In this case, unlike the facts in *Trois-Rivières (City)*, the 2013 payment was made by the OPMC following a final decision on its part with regard to the PILT, in the absence of a dispute; it was not a partial payment, an interim payment, a payment under protest, or the like. Moreover,

the Federal Court of Appeal has already clearly decided that the IPROR do not apply to Crown corporations (*Montréal Port Authority v Montréal (City)*, 2008 FCA 278 at paras 110 and 111 [*MPA 2008*], reversed on other grounds by the Supreme Court in *MPA 2010*). The OPMC has not persuaded me that this Federal Court of Appeal jurisprudence should be repudiated. The OPMC cannot, therefore, rely on the IPROR as the source of an entitlement to recover the alleged overpayment of 2013.

[224] Finally, the OPMC submits that even if section 4 of the IPROR were not applicable to it, the same solution would have to be adopted under sections 6, 7 and 12 of the CCPR (*MPA 2008* at paras 118–119, reversed on other grounds in *MPA 2010)*.

[225] It is true that the CCPR allows for the recovery of certain payments made by Crown corporations. However, this possibility is clearly limited to interim payments made in the context of a challenge, which is not the case here (*MPA 2008* at paras 113 to 119, reversed on other grounds in *MPA 2010*; *Trois-Rivières (City)*). In fact, the possibility of recovering overpayments of interim payments was specifically recognized to give full effect to the interim nature of the payments made under section 12 of the CCPR (*Trois-Rivières (City)* at para 83).

[226] The City correctly submits that, its final payment having been made for the year 2013, it was unreasonable for the OPMC to re-evaluate this decision the following year and effect compensation between the so-called overpayment and the PILTs due for the years from 2014 until the balance of the overpayment was exhausted in 2020. If I were to accept this approach, Crown corporations could revise after the fact the amounts they had decided to pay, an idea that I

believe must be rejected. I can easily imagine the destabilizing effect this could have on the finances of taxing authorities, which would run counter to the objectives of fairness and equity set out in the PILT Act.

[227] In this case, as the 2013 payment was final, it was unreasonable for the OPMC to effect compensation between the so-called overpayment of that year and the payments for subsequent years.

5. The land under the right-of-way for the railway tracks and rail yard

[228] At the time when a large part of the area was operated by the Port of Montréal, railway tracks were installed to serve the port. The railway tracks remained in place after the transfer of the site from the Old Port to the OPMC in 2009. Today, the Old Port site is crossed from its western boundary to the Bonsecours Basin entrance by this set of railway tracks operated by the Montréal Port Authority [MPA] and Canadian National to run freight trains loaded and unloaded in the Port of Montréal, intermodal trains and railway vehicles. Between the Bonsecours Basin entrance and the eastern boundary of the Old Port site, the single set of tracks subdivides into a rail yard made up of a series of tracks.

[229] The railway tracks are fenced off along their entire length, except where crossed by the alleged public highways mentioned above, to enable the public to access the parts of the Old Port site located south of the track. The land covered by the right-of-way for the railway tracks and rail yard belong to the OPMC but are subject to a servitude of right-of-way in favour of the MPA for the railway tracks and rail yard, so that this infrastructure may be used for trains. These trains

also benefit from a servitude of tolerance to noise, air quality, odours, vibrations and visual factors to allow for rail transportation.

[230] Since 2015, the OPMC's decisions have referred to this rail infrastructure; the OPMC submits that it does not have enjoyment of the land covered by the right-of-way for the railway tracks and rail yard; that it is not the occupant; and that, because of the existence of these tracks, access to the Old Port site south of the tracks is interrupted several times a day for periods of unpredictable duration and by the passage and halting of freight trains, which results in operational constraints for the OPMC and users of the Old Port site.

[231] In its decisions for the years 2015 to 2019, the OPMC claimed that, applying the exclusion provided for railway tracks in item 11 of Schedule II to the PILT Act, the railway tracks and the rail yard in the Old Port site do not constitute "federal property" within the meaning of the PILT Act. As seen above, the exceptions set out in Schedule II (paragraph 2(3)(b) of the PILT Act) apply only to the improvements made to the surface of the land, so the text is silent with respect to the underlying land.

[232] However, since its decision for 2016, the OPMC has added that it will not pay any amount in PILTs with respect to the "land" covered by the right-of-way for the railway tracks and rail yard [TRANSLATION] "because the property taxes to which it could be subject without the exemption enjoyed by the OPMC must be levied on its occupants and paid by them pursuant to the first paragraph of section 208 of the AMT".

[233] At the start of the debates, the OPMC conceded that the land covered by the right-of-way for the railway tracks and rail yard are compensable under the PILT Act because they are not excluded from the concept of federal property within the meaning of the PILT Act. However, as seen above, according to section 208 of the AMT, the lessees or occupants are deemed owners for the purposes of municipal taxation, including with respect to property taxes on land. The OPMC submits that the rail yard and railway tracks are [TRANSLATION] "occupied" by the Port of Montréal and the railways that run the trains and that the OPMC [TRANSLATION] "does not occupy" this territory even if it owns it; therefore, if property taxes are owed to the City, even if it is accepted that the land is compensable under the PILT Act, the railways are liable for the taxes under the AMT.

[234] Thus, the OPMC submits that it should be treated the same way that the City treats other landowners: the lessees and occupants of the site (in this case the MPA or CN) should pay their municipal taxes directly to the City into a separate tax account, and that the OPMC need therefore make no PILTs for this part of its territory. However, this system developed by the City under section 208 of the AMT is not applicable to the rail yard and railway tracks, as the City has not created a separate tax account for the MPA, which is the "occupant" of the land in question.

[235] First, the City did not rigorously defend before me the argument that the exclusion set out by item 11 of Schedule II to the PILT Act does not cover the rails or the railway ties that hold the rails, or the groundwork with landfill beneath the rails. I note that the exclusion is very clear and that it covers "railway tracks", which, it seems to me, must logically include any supporting infrastructure that secures the tracks to the ground.

[236] Because the land in question is owned by the OPMC, it is included in the property base for the City's annual PILT applications; it is also clear that there is no exclusion per se from the concept of federal property under the PILT Act for the underlying land supporting a railway track and a rail yard.

[237] As for the applicability of section 208 of the AMT, I reject the OPMC's argument.

[238] First, the agreement between Her Majesty the Queen in right of Canada and the MPA registered on November 3, 2009, created, among other servitudes, a real and perpetual servitude of railway right-of-way for the railway tracks and rail yard on the Old Port site. Under the terms of this agreement, the Port of Montréal must, among other things, maintain the tracks at all times. Also under this agreement, the OPMC is responsible for ensuring the safety of visitors to the Old Port site; maintaining the fences, gates and safety devices located on the land covered by the railway tracks and rail yard; providing an adequate drainage system and indemnifying the company using the railway system for all losses and damages relating to the injury or death of any person on the site of the servitude.

[239] In any event, even if the conditions of the servitude made the MPA or one the railway companies using the railway tracks and rail yard an "occupant" of the land, section 208 of the AMT do not apply when the "occupant" is a person included in subsection 204(1.1) of the AMT. The Crown in right of Canada and its mandataries are specifically covered by this provision; in this case, the MPA is a mandatary of Her Majesty the Queen in right of Canada (see

subsections 6(1) and 7(1), as well as item 4 of Part 1 of the Schedule to the *Canada Marine Act*, SC 1998, c 10). Accordingly, the rule in section 208 of the AMT does not apply to the OPMC.

[240] But the story of the land covered by the railway tracks and rail yard does not end there.

[241] Despite not having raised it in its written submissions or in its initial arguments before me, the OPMC raised in reply a new argument regarding this land, based on the exception to the concept of federal property under paragraph 2(3)(g) of the PILT Act, again relying on the idea of "the occupant" in support of the position that the land covered by the railway tracks and rail yard, being occupied by the MPA, is excluded from the concept of federal property.

[242] Ignoring for the moment the fact that an argument advanced for the first time in reply should not even be considered by the Court and that such an exemption was never requested by the OPMC in any of its PILT decisions, the OPMC has not presented anything to me to support the idea that, in the case of a servitude, the owner of the dominant land in favour of whom the servitude has been granted is the "occupant" of the servient land. In fact, given the OPMC's obligations under the terms of the servitude, including its responsibility for securing the perimeter of the land and the duty to indemnify, I find that it is unreasonable to believe that the right-of-way created by the servitude makes the MPA or the railway companies using it an "occupant" of the land under the railway tracks and rail yard for the purposes of paragraph 2(3)(g) of the PILT Act.

[243] Accordingly, the OPMC's decision to make no PILT with respect to the "land" covered by the right-of-way for the railway tracks and rail yard is neither intelligible nor transparent; it is therefore unreasonable.

6. Conclusion and discretion with respect to measurement

[244] One of the remedies sought by the City is a declaration by this Court that the features of the Old Port site at issue are covered by the definition of "federal property" and should be subject to a PILT. However, I am not prepared to go that far in this case.

[245] In *Vavilov*, the Supreme Court considered the issue of remedial discretion and made the following comments:

> [140] Where the reasonableness standard is applied in conducting a judicial review, the choice of remedy must be guided by the rationale for applying that standard to begin with, including the recognition by the reviewing court that the legislature has entrusted the matter to the administrative decision maker, and not to the court, to decide . . . .

[246] After setting out certain other factors that must guide the issue of relief, such as concerns related to the proper administration of the justice system and the need to ensure access to justice, the Court continued as follows:

> [141] Giving effect to these principles in the remedial context means that where a decision reviewed by applying the reasonableness standard cannot be upheld, it will most often be appropriate to remit the matter to the decision maker to have it reconsider the decision, this time with the benefit of the court's reasons. . . .

[247] I cannot conclude that the facts in this case are exceptional or fall within the limited scenarios outlined in *Vavilov* in which the issue entrusted to an administrative decision maker should otherwise be decided by this Court (*Vavilov* at para 142). I understand from the parties that, apart from the controversial issues before the Court in this case, the parties have found common ground on a number of the other issues to which the OPMC's decisions related. Therefore, the OPMC's decisions already include elements that the parties have agreed to modify, in which case a reconsideration and re-issuance of the OPMC's decisions may be the best way to proceed in this case, having regard to these reasons (*Cold Lake (City) v Canada (Public Services and Procurement)*, 2021 FC 405 at paras 64 and 65).

[248] Therefore, in light of my decision, it was unreasonable for the OPMC to have removed the following features from the concept of federal property:

- The Bonsecours Basin Pavilion, including buildings 4 and 5, namely, the Terrasse Bonsecours and the pavilion (Chalet Bonsecours);
- The Jacques Cartier Quay, including the Jacques Cartier Pavilion commercial building, warehouse and restrooms, buildings 2, 2A and 3;
- The King Edward Quay, including buildings 13 to 18, namely:
    - King Edward Quay Promenade;
    - Central street (King Edward Quay Street);
    - Montréal Science Centre, building 13;
    - IMAX theatre, building 14;
    - Outdoor parkades on King Edward Quay, building 15;
    - Food court, building 16;
    - Parking and Belvédère, building 17;
    - Elevated walkway between Science Centre and food court, building 18;

- The outdoor parking lots of the Clock Tower Basin;
- The outdoor parking lots of the Clock Tower Quay;
- The outdoor street parking on the Port Road;
- The outdoor parkades on Alexandra Quay;
- The indoor parking lots of hangar 16 on the Clock Tower Quay, building 20;
- The indoor parking lots on the Alexandra Quay (inside hangars 4 and 6);
- The land underlying the Clock Tower Quay, Jacques Cartier Quay, King Edward Quay and Alexandra Quay;
- The public highways of the Old Port, namely:
    - the southern portion of De la Commune Street;
    - the Clock Tower Quay entrance;
    - the Bonsecours Basin entrance;
    - the Jacques Cartier Quay entrance;
    - the King Edward Quay entrance;
    - the Clock Tower Basin and Clock Tower Quay street;
    - the Alexandra Quay entrance; and
    - the Saint-Pierre entrance.
- The land covered by the right-of-way for the railway tracks and rail yard on the Old Port site.

[249] However, it was not unreasonable for the OPMC in its decisions to have withdrawn the following features from the concept of federal property:

- the Jacques Cartier Quay’s elevated walkway;
- the Old Port Promenade and the Promenade des Artistes; and
- the Port Road.

[250] It was not open to the OPMC to reverse its 2013 decision and use the amount it viewed as an overpayment to effect compensation. It would therefore be reasonable and consistent with these reasons for the OPMC to exercise the discretion conferred on it by subsections 3(1.1) and 3(1.2) of the PILT Act to pay a late payment supplement to the City, in addition to the principal amount due on any amounts owed to the City, including any amounts deducted by way of compensation from the amounts paid to the City in 2013.

[251] I find that the OPMC's parking areas are subject to the *By-law concerning Property Taxes on Parking Lots* adopted each year by the City of Montréal.

7. Costs

[252] The costs will naturally be paid by the OPMC to the City. The parties will have to discuss the amount and inform the Court of any agreement within the next 30 days. If no agreement can be reached within this time frame, each of the parties will be required to provide up to five pages of written submissions within the two subsequent weeks, setting out their positions on costs, including a draft bill of costs that is not to be included in the maximum page number set for the submissions.

JUDGMENT in T-1262-14;
T-2147-14; T-635-15; T-613-16; T 592 17; T-714-18; T-650-19 and T-836-20

THIS COURT'S JUDGMENT is as follows:

1. The application is allowed, and the decision of the Old Port of Montréal Corporation of April 22, 2014, as well as the decisions in dockets T-1262-14, T-2147-14, T-635-15, T-613-16, T- 592-17, T-714-18, T-650-19 and T-836-20 are set aside;

2. This matter is remitted to the Old Port of Montréal Corporation for redetermination within 30 days of this decision for each of the years 2013 to 2020, in accordance with the reasons and findings of this Court in this judgment;

3. The whole, with costs to be paid by the Old Port of Montréal Corporation in accordance with my findings set out above. I will remain seized of this matter until I render a further order in respect to costs.

4. A copy of this decision shall be placed in each of the other dockets.

"Peter G. Pamel"

Judge

VI. APPENDIX

A. **Federal acts and regulations**:

Payments in Lieu of Taxes Act, RSC 1985, c M-13

Definitions	**Définitions**
2(1) In this Act,	2(1) Les définitions qui suivent s'appliquent à la présente loi.
[…]	[…]
federal property means, subject to subsection (3),	***propriété fédérale*** Sous réserve du paragraphe (3) :
(a) real property and immovables owned by Her Majesty in right of Canada that are under the administration of a minister of the Crown	a) immeuble ou bien réel appartenant à Sa Majesté du chef du Canada dont la gestion est confiée à un ministre fédéral;
[…]	[…]
effective rate means the rate of real property tax or of frontage or area tax that, in the opinion of the Minister, would be applicable to any federal property if that property were taxable property;	***taux effectif*** Le taux de l'impôt foncier ou de l'impôt sur la façade ou sur la superficie qui, selon le ministre, serait applicable à une propriété fédérale si celle-ci était une propriété imposable.
property value means the value that, in the opinion of the Minister, would be attributable by an assessment authority to federal property, without regard to any mineral rights or any ornamental, decorative or non-functional	***valeur effective*** Valeur que, selon le ministre, une autorité évaluatrice déterminerait, compte non tenu des droits miniers et des éléments décoratifs ou non fonctionnels, comme base du calcul de l'impôt foncier qui

features thereof, as the basis for computing the amount of any real property tax that would be applicable to that property if it were taxable property; (*valeur effective*)	serait applicable à une propriété fédérale si celle-ci était une propriété imposable.
Property not included in the definition *federal property*	**Exclusions : propriété fédérale**
(3) For the purposes of the definition *federal property* in subsection (1), federal property does not include	(3) Sont exclus de la définition de *propriété fédérale* au paragraphe (1) :
(a) any structure or work, unless it is	a) les constructions ou ouvrages, sauf :
(i) a building designed primarily for the shelter of people, living things, fixtures, personal property or movable property,	(i) les bâtiments dont la destination première est d'abriter des êtres humains, des animaux, des plantes, des installations, des biens meubles ou des biens personnels,
[…]	[…]
(v) paving or other improvements associated with employee parking, or	(v) l'asphaltage des stationnements pour employés et les autres améliorations s'y rattachant,
[…]	[…]
(b) any structure, work, machinery or equipment that is included in Schedule II;	b) les constructions, les ouvrages, les machines ou le matériel mentionnés à l'annexe II;
(c) any real property or immovable developed and used as a park and situated within an area defined as urban by Statistics Canada, as of the most recent census of	c) les immeubles et les biens réels aménagés en parc et utilisés comme tels dans une zone classée comme « urbaine » par Statistique Canada lors de son dernier recensement de

the population of Canada taken by Statistics Canada, other than national parks of Canada, national marine parks of Canada, national park reserves of Canada, national marine park reserves of Canada, national historic sites of Canada, national battlefields or heritage canals;	la population canadienne, sauf les parcs nationaux du Canada, les parcs marins nationaux du Canada, les réserves à vocation de parc national du Canada ou de parc marin national du Canada, les lieux historiques nationaux, les champs de bataille nationaux et les canaux historiques;
[…]	[…]
(g) any real property or immovable developed or used as a public highway that, in the opinion of the Minister, does not provide, as its primary function, immediate access to real property or immovables owned by Her Majesty in right of Canada;	g) les immeubles et les biens réels aménagés ou utilisés comme voies publiques et n’ayant pas, selon le ministre, pour fonction première de permettre l’accès direct à un immeuble ou à un bien réel appartenant à Sa Majesté du chef du Canada;
Purpose	**Objet**
2.1 The purpose of this Act is to provide for the fair and equitable administration of payments in lieu of taxes.	2.1 La présente loi a pour objet l’administration juste et équitable des paiements versés en remplacement d’impôts.
Authority to make payments	**Paiements**
3(1) The Minister may, on receipt of an application in a form provided or approved by the Minister, make a payment out of the Consolidated Revenue Fund to a taxing authority applying for it	3(1) Le ministre peut, pour toute propriété fédérale située sur le territoire où une autorité taxatrice est habilitée à lever et à percevoir l’un ou l’autre des impôts mentionnés aux alinéas a) et b), et sur réception d’une demande à cet effet établie en la forme qu’il a fixée ou approuvée, verser sur le Trésor un paiement à l’autorité taxatrice :

(a) in lieu of a real property tax for a taxation year, and

(b) in lieu of a frontage or area tax

in respect of federal property situated within the area in which the taxing authority has the power to levy and collect the real property tax or the frontage or area tax.

a) en remplacement de l'impôt foncier pour une année d'imposition donnée;

b) en remplacement de l'impôt sur la façade ou sur la superficie.

Delayed payments

(1.1) If the Minister is of the opinion that a payment under subsection (1) or part of one has been unreasonably delayed, the Minister may supplement the payment.

Paiement en retard

(1.1) S'il est d'avis que le versement de tout ou partie du paiement visé au paragraphe (1) a été indûment retardé, le ministre peut augmenter le montant de celui-ci.

Maximum payable

(1.2) The supplement shall not exceed the product obtained by multiplying the amount not paid by the rate of interest prescribed for the purpose of section 155.1 of the Financial Administration Act, calculated over the period that, in the opinion of the Minister, the payment has been delayed.

Augmentation maximale

(1.2) L'augmentation ne peut dépasser le produit de la somme non versée par le taux d'intérêt fixé en vertu de l'article 155.1 de la Loi sur la gestion des finances publiques. Elle couvre la période pour laquelle, selon le ministre, il y a eu retard.

Authority to make payments

(2) Notwithstanding anything in this Act, if real property or immovables are prescribed to be included in the definition federal property under paragraph 9(1)(d) or (e), a payment may be made in respect of that property for the

Pouvoir

(2) La prise, au cours d'une année d'imposition, de règlements classant en vertu des alinéas 9(1)d) ou e) un immeuble ou un bien réel comme propriété fédérale permet, malgré toute autre disposition de la présente loi,

entire taxation year in which the prescription is made.

le versement d'un paiement à son égard pour la totalité de l'année d'imposition.

Application to Schedule I corporations

(3) In respect of a corporation included in Schedule I, a payment may be made under this section only in respect of the real property or immovables of the corporation specified in that Schedule or prescribed by the Governor in Council.

Application aux personnes morales de l'annexe I

(3) Dans le cas d'une personne morale mentionnée à l'annexe I, le versement d'un paiement au titre du présent article n'est possible qu'à l'égard des immeubles ou des biens réels de la personne morale précisés à cette annexe ou désignés par règlement du gouverneur en conseil.

Taxing authority

(4) For the purpose of subsection (1), a taxing authority in respect of federal property described in paragraph 2(3)(d) means a council, band or first nation referred to in any of paragraphs (b) to (e) of the definition taxing authority in subsection 2(1).

Autorité taxatrice

(4) Pour l'application du paragraphe (1), l'autorité taxatrice est, à l'égard d'une propriété fédérale visée à l'alinéa 2(3)d), le conseil, la bande ou la première nation visés à l'un des alinéas b) à e) de la définition de autorité taxatrice au paragraphe 2(1).

[…]

[…]

Regulations to be complied with in making grants

11(1) Notwithstanding any other Act of Parliament or any regulations made thereunder,

(a) every corporation included in Schedule III or IV shall, if it is exempt from real property tax, comply with any regulations made under paragraph 9(1)(f) respecting

Observation des règlements

11(1) Par dérogation à toute autre loi fédérale ou à ses règlements :

a) les personnes morales mentionnées aux annexes III ou IV qui sont exemptées de l'impôt foncier sont tenues, pour tout paiement qu'elles versent en remplacement de

any payment that it may make in lieu of a real property tax or a frontage or area tax; and

l'impôt foncier ou de l'impôt sur la façade ou sur la superficie, de se conformer aux règlements pris en vertu de l'alinéa 9(1)f);

(b) every corporation included in Schedule IV shall, if it is exempt from business occupancy tax, comply with any regulations made under paragraph 9(1)(g) respecting any payment that it may make in lieu of a business occupancy tax.

b) les personnes morales mentionnées à l'annexe IV qui sont exemptées de la taxe d'occupation commerciale sont tenues, pour tout paiement qu'elles versent en remplacement de celle-ci, de se conformer aux règlements pris en vertu de l'alinéa 9(1)g).

[…]

[…]

No right conferred

15 No right to a payment is conferred by this Act.

Absence de droit

15 La présente loi ne confère aucun droit à un paiement.

[…]

[…]

Schedule II
(Section 2)

Annexe II
(article 2)

[…]

[…]

2 Conveyor belts and conveyance systems other than elevators and escalators, letter sorting equipment, computers, built-in cranes, lathes, drills, printing presses and weigh scales

2 Tapis roulants et transporteurs autres qu'ascenseurs et escaliers mécaniques, matériel de tri du courrier, ordinateurs, grues fixes, tours, foreuses, presses à imprimer et appareils de pesage

3 Docks, wharves, piers, piles, dolphins, floats, breakwaters, retaining walls, jetties

3 Bassins, appontements, jetées, pilotis, poteaux d'amarrage, quais flottants, brise-lames, murs de soutènement, digues

[…]	[…]
7 Monuments	7 Monuments
[…]	[…]
11 Roads, sidewalks, aircraft runways, paving, railway tracks	11 Chemins, trottoirs, pistes d’envol ou d’atterrissage, pavements, voies ferrées
12 Snow sheds, tunnels, bridges, dams	12 Abris contre la neige, tunnels, ponts, barrages
[…]	[…]
Schedule III **(Section 2)**	**Annexe III** **(article 2)**
[…]	[…]
Canada Lands Company Limited	Société immobilière du Canada limitée
Société immobilière du Canada limitée	*Canada Lands Company Limited*
[…]	[…]
Any corporation	Toute personne morale qui, selon le cas, est propriété exclusive :
(a) that is wholly owned by one of the corporations listed in this Schedule	a) d’une des personnes morales mentionnées à la présente annexe;
[…]	[…]
Schedule IV **(Section 2)**	**Annexe IV** **(article 2)**
[…]	[…]
Canada Lands Company Limited	Société immobilière du Canada limitée

Société immobilière du Canada limitée	*Canada Lands Company Limited*
Any corporation	Toute personne morale qui, selon le cas, est propriété exclusive :
a) that is wholly owned by one of the corporations listed in this Schedule	a) d'une des personnes morales mentionnées à la présente annexe;
[…]	[…]

Constitution Act, 1867, 30 & 31 Victoria, c 3

Exemption of Public Lands, etc.	**Terres publiques, etc., exemptées des taxes**
125. No Lands or Property belonging to Canada or any Province shall be liable to Taxation.	125. Nulle terre ou propriété appartenant au Canada ou à aucune province en particulier ne sera sujette à la taxation.

Interpretation Act, RSC 1985, c I-21

Duality of legal traditions and application of provincial law	**Tradition bijuridique et application du droit provincial**
8.1 Both the common law and the civil law are equally authoritative and recognized sources of the law of property and civil rights in Canada and, unless otherwise provided by law, if in interpreting an enactment it is necessary to refer to a province's rules, principles or concepts forming part of the law of property and civil rights, reference must be made to the rules, principles and concepts in force in the	8.1 Le droit civil et la common law font pareillement autorité et sont tous deux sources de droit en matière de propriété et de droits civils au Canada et, s'il est nécessaire de recourir à des règles, principes ou notions appartenant au domaine de la propriété et des droits civils en vue d'assurer l'application d'un texte dans une province, il faut, sauf règle de droit s'y opposant, avoir recours aux

province at the time the enactment is being applied.	règles, principes et notions en vigueur dans cette province au moment de l'application du texte.
Terminology	**Terminologie**
8.2 Unless otherwise provided by law, when an enactment contains both civil law and common law terminology, or terminology that has a different meaning in the civil law and the common law, the civil law terminology or meaning is to be adopted in the Province of Quebec and the common law terminology or meaning is to be adopted in the other provinces.	8.2 Sauf règle de droit s'y opposant, est entendu dans un sens compatible avec le système juridique de la province d'application le texte qui emploie à la fois des termes propres au droit civil de la province de Québec et des termes propres à la common law des autres provinces, ou qui emploie des termes qui ont un sens différent dans l'un et l'autre de ces systèmes.
[…]	[…]
Enactments deemed remedial	**Principe et interprétation**
12 Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.	12 Tout texte est censé apporter une solution de droit et s'interprète de la manière la plus équitable et la plus large qui soit compatible avec la réalisation de son objet.

Federal Real Property and Federal Immovables Act, SC 1991, c 50

Definitions	**Définitions**
2 In this Act,	2 Les définitions qui suivent s'appliquent à la présente loi.
[…]	[…]
real property means land in any province other than	***biens réels*** Dans une province autre que le Québec

Quebec, and land outside Canada, including mines and minerals, and buildings, structures, improvements and other fixtures on, above or below the surface of the land, and includes an interest therein. (*biens réels*)

et à l'étranger, les biens-fonds et les intérêts afférents, y compris les mines et minéraux, bâtiments et autres ouvrages, accessoires fixes ou améliorations de surface, de sous-sol ou en surplomb. (*real property*)

[…]

[…]

immovable means

immeuble

(a) in the Province of Quebec, an immovable within the meaning of the civil law of the Province of Quebec, and includes the rights of a lessee in respect of such an immovable, and

a) Dans la province de Québec, immeuble au sens du droit civil de la province de Québec et, par assimilation, tout droit du locataire relativement à l'immeuble;

(b) in jurisdictions outside Canada, any property that is an immovable within the meaning of the civil law of the Province of Quebec, and includes the rights of a lessee in respect of any such property; (*immeuble*)

b) à l'étranger, tout bien qui est un immeuble au sens du droit civil de la province de Québec et, par assimilation, tout droit du locataire relativement au bien. (*immovable*)

Canada National Parks Act, SC 2000, c 32

Parks dedicated to public

Usage public des parcs

4(1) The national parks of Canada are hereby dedicated to the people of Canada for their benefit, education and enjoyment, subject to this Act and the regulations, and the parks shall be maintained and made use of so as to leave them unimpaired for the enjoyment of future generations.

4(1) Les parcs sont créés à l'intention du peuple canadien pour son bienfait, son agrément et l'enrichissement de ses connaissances, sous réserve de la présente loi et des règlements; ils doivent être entretenus et utilisés de façon à rester intacts pour les générations futures.

[…]	[…]
Ecological integrity	**Intégrité écologique**
8(2) Maintenance or restoration of ecological integrity, through the protection of natural resources and natural processes, shall be the first priority of the Minister when considering all aspects of the management of parks.	8(2) La préservation ou le rétablissement de l'intégrité écologique par la protection des ressources naturelles et des processus écologiques sont la première priorité du ministre pour tous les aspects de la gestion des parcs.

Saguenay-St. Lawrence Marine Park Act, SC 1997, c 37

Purpose	**Objet de la loi**
4 The purpose of this Act is to increase, for the benefit of the present and future generations, the level of protection of the ecosystems of a representative portion of the Saguenay River and the St. Lawrence estuary for conservation purposes, while encouraging its use for educational, recreational and scientific purposes.	4 La présente loi a pour objet de rehausser, au profit des générations actuelles et futures, le niveau de protection des écosystèmes d'une partie représentative du fjord du Saguenay et de l'estuaire du Saint-Laurent aux fins de conservation, tout en favorisant son utilisation à des fins éducatives, récréatives et scientifiques.

Canada Marine Act, SC 1998, c 10

Application of Part	**Application de la présente partie**
6(1) This Part applies to every port authority set out in the schedule and to every port authority for which letters patent of incorporation are issued or that has been	6(1) La présente partie s'applique aux administrations portuaires inscrites à l'annexe et à celles pour lesquelles des lettres patentes ont été délivrées ou qui ont été prorogées sous le régime de la

continued under this Part and that has not been dissolved.	présente partie et n’ont pas été dissoutes.
[…]	[…]
Agent of Her Majesty	**Mandataire de Sa Majesté : administration portuaire**
7(1) Subject to subsection (3), a port authority is an agent of Her Majesty in right of Canada only for the purposes of engaging in the port activities referred to in paragraph 28(2)(a).	7(1) Sous réserve du paragraphe (3), les administrations portuaires ne sont mandataires de Sa Majesté du chef du Canada que dans le cadre des activités portuaires visées à l’alinéa 28(2) a).
[…]	[…]
Schedule (Section 6 and subsection 12(1))	**ANNEXE (article 6 et paragraphe 12(1))**
[…]	[…]
4 Montreal Port Authority	4 Administration portuaire de Montréal
[…]	[…]

Crown Corporation Payments Regulations, SOR/81-1030

General	**Dispositions générales**
5 In this Part, *corporation* means, in respect of any payment that may be made by it, every corporation included in Schedule III or IV to the Act.	5 Dans la présente partie, *société* s’entend, à l’égard de tout paiement qu’elle peut verser, de toute société mentionnée aux annexes III ou IV de la Loi.
6 The payment made by a corporation in lieu of a real property tax or frontage or area tax in respect of any	6 Le paiement effectué par une société en remplacement de l’impôt foncier ou de l’impôt sur la façade ou sur la

corporation property that would be federal property if it were under the management, charge and direction of a minister of the Crown is made without any condition, in an amount that is not less than the amount referred to in sections 7 to 11.	superficie à l'égard d'une propriété qui serait une propriété fédérale si un ministre fédéral en avait la gestion, la charge et la direction n'est assorti d'aucune condition et ne doit pas être inférieur aux sommes visées aux articles 7 et 11.

Interim Payments and Recovery of Overpayments Regulations, SOR/81-226

Interim Payments	**Versements provisoires**
3 When, in respect of an application made by a taxing authority under section 3 of the Act, a final determination of the amount of the payment cannot be made within 50 days after receipt of the application, or within 90 days in the case of an application made for the first time, the Minister may	3 S'il est impossible de déterminer de façon définitive le montant du paiement dans les cinquante jours suivant la réception de la demande présentée en vertu de l'article 3 de la Loi par l'autorité taxatrice ou, dans le cas de la demande présentée pour la première fois, dans les quatre-vingt-dix jours suivant sa réception, le ministre peut :
(a) estimate, on the basis of the information available to the Minister, the amount that may be paid to the taxing authority under section 3 of the Act; and	a) estimer, en se fondant sur les renseignements dont il dispose, la somme pouvant être versée à l'autorité taxatrice en vertu de cet article;
(b) make an interim payment to the taxing authority in an amount that does not exceed the amount referred to in paragraph (a).	b) faire, à l'égard du paiement, un versement provisoire ne dépassant pas la somme visée à l'alinéa a).
Recovery of Overpayments	**Recouvrement de trop-perçu**
4 If any payment made to a taxing authority under the Act	4 Si le montant d'un paiement versé à une autorité taxatrice

or these Regulations is greater than the amount that may be paid to the taxing authority under section 3 of the Act, the amount of the overpayment and interest on that amount prescribed for the purpose of section 155.1 of the *Financial Administration Act* may be	au titre de la *Loi ou du présent règlement* est plus élevé que ce qui aurait dû être versé en vertu l'article 3 de la Loi, le trop-perçu et les intérêts fixés en vertu de l'article 155.1 de la Loi sur la gestion des finances publiques peuvent être, selon le cas :
(a) set off against other payments that may otherwise be paid to the taxing authority under section 3 of the Act or these Regulations; or	a) portés en diminution de tout autre paiement pouvant être versé à l'autorité taxatrice en vertu de cet article ou du présent règlement;
(b) recovered as a debt due to Her Majesty in right of Canada by the taxing authority.	b) recouvrés à titre de créance de Sa Majesté du chef du Canada.

B. Provincial acts and regulations

Act respecting Municipal Taxation, RSQ, c F-2.1

46. For the purposes of establishing the actual value used as a basis for the value entered on the roll, the condition of the unit of assessment on 1 July of the second fiscal year preceding the first of the fiscal years for which the roll is made, the property market conditions on that date and the most likely use made of the unit on that date are taken into account.	46. Aux fins d'établir la valeur réelle qui sert de base à la valeur inscrite au rôle, on tient compte de l'état de l'unité d'évaluation et des conditions du marché immobilier tels qu'ils existent le 1er juillet du deuxième exercice financier qui précède le premier de ceux pour lesquels le rôle est fait, ainsi que de l'utilisation qui, à cette date, est la plus probable quant à l'unité.
However, where an event referred to in any of paragraphs 6 to 8, 12, 12.1, 18 or 19 of section 174 occurs after the date determined under the first paragraph, the	Toutefois, lorsque survient, après la date déterminée en application du premier alinéa, un événement visé à l'un des paragraphes 6° à 8°, 12°, 12.1°, 18° et 19° de l'article

condition of the unit of assessment taken into account is the condition existing immediately after the event, regardless of any change in the condition of the unit since the date determined under the first paragraph, arising from a cause other than an event referred to in the abovementioned paragraphs. The most likely use taken into account in such a case is the use inferred from the condition of the unit.

174, l'état de l'unité d'évaluation dont on tient compte est celui qui existe immédiatement après l'événement, abstraction faite de tout changement dans l'état de l'unité, produit depuis la date déterminée en application du premier alinéa, par une autre cause qu'un événement visé à un tel paragraphe. L'utilisation la plus probable qui est prise en considération est alors celle qui découle de l'état de l'unité dont on tient compte.

The condition of a unit includes, in addition to its physical condition, its economic and legal situation, subject to section 45.1, as well as its physical surroundings.

L'état de l'unité comprend, outre son état physique, sa situation au point de vue économique et juridique, sous réserve de l'article 45.1, et l'environnement dans lequel elle se trouve.

Where the unit for which an actual value is being established does not correspond to any unit on the roll in force on the applicable date under the first or second paragraph, the immovables that existed on that date and that form part of the unit for which the actual value is being established are deemed to have constituted the corresponding unit on that date.

Lorsque l'unité dont on établit la valeur réelle ne correspond à aucune unité du rôle qui était en vigueur à la date applicable en vertu du premier ou du deuxième alinéa, les immeubles qui existaient à cette date et qui font partie de l'unité dont on établit la valeur réelle sont réputés avoir constitué l'unité correspondante à cette date.

For the purposes of determining market conditions on the date contemplated in the first paragraph, the information relating to transfers of ownership that have occurred before and after

Aux fins de déterminer les conditions du marché à la date visée au premier alinéa, on peut notamment tenir compte des renseignements relatifs aux transferts de propriété

that date, may, in particular, be taken into account.

survenus avant et après cette date.

[…]

204. The following are exempt from all municipal or school property taxes:

(1) an immovable included in a unit of assessment entered on the roll in the name of the State or of the Société québécoise des infrastructures;

(1.1) an immovable included in a unit of assessment entered on the roll in the name of the Crown in right of Canada or a mandatary thereof;

[…]

208. Where an immovable that is not taxable under paragraph 1 or 1.1 of section 204 is occupied by a person other than a person referred to in that section or a corporation that is a mandatary of the State, unless its owner is the Société québécoise des infrastructures, the property taxes to which that immovable would be subject without that exemption are levied on the lessee or, if there is no lessee, on the occupant, and are payable by the lessee or occupant. However, that rule does not apply in the case of an immovable referred to in paragraph 1.1 of section 204 where, according to the legislation of the Parliament of Canada relating to

[…]

204. Sont exempts de toute taxe foncière, municipale ou scolaire :

1°un immeuble compris dans une unité d'évaluation inscrite au nom de l'État ou de la Société québécoise des infrastructures;

1.1°un immeuble compris dans une unité d'évaluation inscrite au nom de la Couronne du chef du Canada ou d'un mandataire de celle-ci;

[…]

208. Lorsqu'un immeuble non imposable en vertu du paragraphe 1° ou 1.1° de l'article 204 est occupé par un autre qu'une personne mentionnée à cet article ou qu'une société qui est mandataire de l'État, sauf si son propriétaire est la Société québécoise des infrastructures, les taxes foncières auxquelles cet immeuble serait assujetti sans cette exemption sont imposées au locataire ou, à défaut, à l'occupant, et sont payables par lui. Toutefois, cette règle ne s'applique pas dans le cas d'un immeuble visé au paragraphe 1.1° de l'article 204 lorsque, suivant la législation du Parlement du Canada relative aux subventions aux municipalités

subsidies to municipalities that are to stand in lieu of property taxes, and according to the instruments made under that legislation, such a subsidy is paid in respect of the immovable notwithstanding its being occupied as described in this paragraph.

pour tenir lieu des taxes foncières et selon les actes pris en vertu de cette législation, une telle subvention est versée à l'égard de l'immeuble malgré l'occupation visée au présent alinéa dont il fait l'objet.

Where an immovable contemplated in another paragraph of section 204, except paragraph 10, is occupied by a person other than a person referred to in that section, it becomes taxable and the property taxes to which it is subject are levied on the lessee or, if there is no lessee, on the occupant, and are payable by the lessee or occupant. That rule also applies in the case of an immovable referred to in subparagraph 1 of the second paragraph of section 255 or in the fifth paragraph of that section.

Lorsqu'un immeuble visé par un autre paragraphe de l'article 204, hormis le paragraphe 10°, est occupé par un autre qu'une personne mentionnée à cet article, il devient imposable et les taxes foncières auxquelles il est assujetti sont imposées au locataire ou, à défaut, à l'occupant, et sont payables par lui. Cette règle s'applique également dans le cas d'un immeuble visé au paragraphe 1° du deuxième alinéa de l'article 255 ou au cinquième alinéa de cet article.

The exemptions provided for in the first and second paragraphs and applicable to the lessee or occupant of an immovable referred to in section 204 apply to the Caisse de dépôt et placement du Québec or one of its subsidiaries referred to in section 88.15 of the Transport Act (chapter T-12) where the Caisse de dépôt et placement du Québec or the subsidiary is the lessee or occupant of an immovable referred to in those paragraphs but only if it carries on an activity related

Les exemptions prévues aux premier et deuxième alinéas qui sont applicables au locataire ou à l'occupant d'un immeuble mentionné à l'article 204 s'appliquent à la Caisse de dépôt et placement du Québec ou à une de ses filiales visées à l'article 88.15 de la Loi sur les transports (chapitre T-12) lorsque celle-ci est locataire ou occupante d'un immeuble visé à ces alinéas uniquement si elle exerce une activité liée à la réalisation ou à la gestion de l'infrastructure de transport

to the construction or management of the shared transportation infrastructure that is the subject of an agreement entered into under section 88.10 of that Act.

collectif ayant fait l'objet d'une entente conclue en vertu de l'article 88.10 de cette loi.

The taxation rules set out in the first and second paragraphs do not apply where the lessee or occupant of an immovable that is the subject of an agreement entered into under section 88.10 of the Transport Act is

Les règles d'imposition prévues aux premier et deuxième alinéas ne s'appliquent pas lorsque le locataire ou l'occupant d'un immeuble ayant fait l'objet d'une entente conclue en vertu de l'article 88.10 de la Loi sur les transports est l'un des suivants:

(1) a limited partnership, where the Government or a mandatary of the State holds 10% or more of the instruments of the partnership's common stock and the general partner is a business corporation with respect to which the Government or such a mandatary may exercise 10% or more of the voting rights conferred by the shares issued by that corporation, which limited partnership leases or occupies the immovable to carry on an activity related to the construction or management of the shared transportation infrastructure that is the subject of an agreement entered into under section 88.10 of that Act; or

1°une société en commandite, lorsque, à la fois, le gouvernement ou un mandataire de l'État détient 10% ou plus des titres de son fonds commun et le commandité est une société par actions à l'égard de laquelle le gouvernement ou un tel mandataire a la faculté d'exercer 10% ou plus des droits de vote que confèrent les actions émises par cette société, qui loue ou occupe l'immeuble aux fins d'exercer une activité liée à la réalisation ou à la gestion de l'infrastructure de transport collectif ayant fait l'objet d'une entente conclue en vertu de l'article 88.10 de cette loi;

(2) a contracting party of the Caisse de dépôt et placement du Québec, of one of its subsidiaries referred to in section 88.15 of that Act or of

2°le cocontractant de la Caisse, de l'une de ses filiales visées à l'article 88.15 de cette loi ou d'une personne mentionnée au paragraphe 1°,

a person referred to in subparagraph 1, which contracting party leases or occupies the immovable to carry on, on behalf of the person, an activity related to the construction or management of the shared transportation infrastructure that is the subject of an agreement entered into under section 88.10 of that Act.

qui loue ou occupe l'immeuble aux fins d'exercer, pour cette dernière, une activité liée à la réalisation ou à la gestion de l'infrastructure de transport collectif ayant fait l'objet d'une entente conclue en vertu de l'article 88.10 de cette loi.

The immovable is entered in the name of the person who must pay the property tax.

L'immeuble est inscrit au nom de celui qui doit payer les taxes foncières.

Where the value of a part of an immovable referred to in any of paragraphs 13 to 17 of section 204 that is occupied by a person other than a person referred to in that section or, as the case may be, the total value of the aggregate of those parts is less than the lesser of $50,000 and the amount equal to 10% of the value of the immovable, the second and fifth paragraphs of this section do not apply, notwithstanding section 2, to such a part. That rule also applies in the case of an immovable referred to in the second sentence of the second paragraph.

Lorsque la valeur de la partie d'un immeuble visé à l'un des paragraphes 13° à 17° de l'article 204 qui est occupée par quelqu'un d'autre qu'une personne mentionnée à cet article ou, selon le cas, la valeur totale de l'ensemble de telles parties est inférieure au moins élevé entre 50 000 $ et le montant correspondant à 10% de la valeur de l'immeuble, les deuxième et cinquième alinéas du présent article ne s'appliquent pas, malgré l'article 2, à une telle partie. Cette règle s'applique également dans le cas d'un immeuble visé à la deuxième phrase du deuxième alinéa.

Where the value of an immovable referred to in paragraph 3 of section 204 and occupied by a person other than a person mentioned in that section is less than $50,000, the second and fifth paragraphs of this section do not apply to that immovable.

Lorsque la valeur d'un immeuble visé au paragraphe 3° de l'article 204 et occupé par quelqu'un d'autre qu'une personne mentionnée à cet article est inférieure à 50 000 $, les deuxième et cinquième alinéas du présent article ne s'appliquent pas à cet

The same applies, notwithstanding section 2, where the value of the part so occupied of an immovable referred to in that paragraph is less than that amount.	immeuble. Il en est de même, malgré l'article 2, lorsque la valeur de la partie ainsi occupée d'un immeuble visé à ce paragraphe est inférieure à ce montant.
For the purposes of the first five paragraphs, a person residing in a dwelling is not deemed to be the lessee of the dwelling or to occupy it and the person who administers the dwelling but does not reside in it is deemed to occupy it.	Pour l'application des cinq premiers alinéas, la personne qui réside dans un logement n'est pas réputée en être le locataire ni l'occuper et celle qui l'administre sans y résider est réputée l'occuper.
Notwithstanding the first four paragraphs, where recognition has been granted under the second paragraph of section 243.3 and is in force in respect of the immovable, the recognized lessee or occupant is exempt from the payment of property taxes.	Malgré les quatre premiers alinéas, lorsque l'immeuble est visé par une reconnaissance en vigueur et prévue au deuxième alinéa de l'article 243.3, le locataire ou l'occupant reconnu est exempté du paiement des taxes foncières.

By-law Concerning Property Taxes on Parking Lots, Council of the City of Montréal, Fiscal Year 2013, 12-057, adopted on December 17, 2012; Fiscal Year 2014, 14-008, adopted on February 24, 2014; Fiscal Year 2015, 14-046, adopted on December 10, 2014; Fiscal Year 2016, 15-093, adopted on December 9, 2015; Fiscal Year 2017, 16-067, adopted on December 14, 2016 [note: The wording of section 11 remained unchanged from 2012 to 2017, except for the addition of Sector C as of Fiscal Year 2013]

11. A property tax on parking lots, at the rates shown below, is imposed and levied on and for any immovable forming part of a unit assessment belonging to a category of nonresidential immovables, entered on the property assessment roll, that contains a parking lot or part of such a	11. Il est imposé et il sera prélevé sur et à l'égard de tout immeuble imposable faisant partie d'une unité d'évaluation appartenant à la catégorie des immeubles non résidentiels, inscrit au rôle d'évaluation foncière, qui comporte un parc de stationnement ou une partie d'un tel parc et qui est situé dans l'un des secteurs A, B ou

lot, and that is situated in sector A, B or C.	C, une taxe foncière sur les parcs de stationnement aux taux fixés ci-après :
[…]	[…]

Civil Code of Québec, c CCQ-1991

900. Land, and any constructions and works of a permanent nature located thereon and anything forming an integral part thereof, are immovables.	900. Sont immeubles les fonds de terre, les constructions et ouvrages à caractère permanent qui s'y trouvent et tout ce qui en fait partie intégrante.
Plants and minerals, as long as they are not separated or extracted from the land, are also immovables. Fruits and other products of the soil may be considered to be movables, however, when they are the object of an act of disposition.	Le sont aussi les végétaux et les minéraux, tant qu'ils ne sont pas séparés ou extraits du fonds. Toutefois, les fruits et les autres produits du sol peuvent être considérés comme des meubles dans les actes de disposition dont ils sont l'objet.

Cities and Towns Act, RSQ, c C-19

Every municipality may, by by-law, impose a municipal tax in its territory, provided it is a direct tax and the by-law meets the criteria set out in the fourth paragraph.	500.1 Toute municipalité peut, par règlement, imposer sur son territoire toute taxe municipale, pourvu qu'il s'agisse d'une taxe directe et que ce règlement satisfasse aux critères énoncés au quatrième alinéa.
The municipality is not authorized to impose the following taxes:	La municipalité n'est pas autorisée à imposer les taxes suivantes:
(1) a tax in respect of the supply of a property or a service;	1°une taxe à l'égard de la fourniture d'un bien ou d'un service;

(2) a tax on income, revenue, profits or receipts, or in respect of similar amounts;	2°une taxe sur le revenu, les recettes, les bénéfices, les encaissements ou à l'égard de montants semblables;
(3) a tax on paid-up capital, reserves, retained earnings, contributed surplus or indebtedness, or in respect of similar amounts;	3°une taxe sur le capital versé, les réserves, les bénéfices non répartis, les surplus d'apport, les éléments de passif ou à l'égard de montants semblables;
(4) a tax in respect of machinery and equipment used in scientific research and experimental development or in manufacturing and processing or in respect of any assets used to enhance productivity, including computer hardware and software;	4°une taxe à l'égard des machines et du matériel utilisés dans le cadre d'activités de recherche scientifique et de développement expérimental ou de fabrication et de transformation et à l'égard de tout élément d'actif servant à accroître la productivité, notamment le matériel et les logiciels informatiques;
(5) a tax in respect of remuneration that an employer pays or must pay for services, including non-monetary remuneration that the employer confers or must confer;	5°une taxe à l'égard d'une rémunération qu'un employeur verse ou doit verser pour des services, y compris une rémunération non monétaire que l'employeur confère ou doit conférer;
(6) a tax on wealth, including an inheritance tax;	6°une taxe sur la fortune, y compris des droits de succession;
(7) a tax on an individual because the latter is present or resides in the territory of the municipality;	7°une taxe relative à la présence ou à la résidence d'un particulier sur le territoire de la municipalité;
(8) a tax in respect of alcoholic beverages within the meaning of section 2 of the Act respecting offences	8°une taxe à l'égard des boissons alcooliques au sens de l'article 2 de la Loi sur les infractions en matière de

relating to alcoholic beverages (chapter I-8.1);	boissons alcooliques (chapitre I-8.1);
(9) a tax in respect of tobacco or raw tobacco within the meaning of section 2 of the Tobacco Tax Act (chapter I-2);	9°une taxe à l'égard du tabac ou du tabac brut au sens de l'article 2 de la Loi concernant l'impôt sur le tabac (chapitre I-2);
(10) a tax in respect of fuel within the meaning of section 1 of the Fuel Tax Act (chapter T-1);	10°une taxe à l'égard d'un carburant au sens de l'article 1 de la Loi concernant la taxe sur les carburants (chapitre T-1);
(10.1) a tax in respect of cannabis within the meaning of section 2 of the Cannabis Act (S.C. 2018, c. 16);	10.1°une taxe à l'égard du cannabis au sens de l'article 2 de la Loi sur le cannabis (L.C. 2018, c. 16);
(11) a tax in respect of a natural resource;	11°une taxe à l'égard d'une ressource naturelle;
(12) a tax in respect of energy, in particular electric power; or	12°une taxe à l'égard de l'énergie, notamment l'électricité;
(13) a tax collected from a person who uses a public highway within the meaning of section 4 of the Highway Safety Code (chapter C-24.2), in respect of equipment placed under, on or above a public highway to provide a public service.	13°une taxe prélevée auprès d'une personne qui utilise un chemin public, au sens de l'article 4 du Code de la sécurité routière (chapitre C-24.2), à l'égard de matériel placé sous ou sur le chemin public, ou au-dessus de celui-ci, pour fournir un service public.
For the purposes of subparagraph 1 of the second paragraph, "property", "supply" and "service" have the meanings assigned to them by the Act respecting the Québec sales tax (chapter T-0.1).	Pour l'application du paragraphe 1° du deuxième alinéa, les expressions « bien » , «fourniture» et «service» ont le sens que leur donne la Loi sur la taxe de vente du Québec (chapitre T-0.1).

The by-law referred to in the first paragraph must state	Le règlement visé au premier alinéa doit remplir les conditions suivantes:
(1) the subject of the tax to be imposed;	1°il doit indiquer l'objet de la taxe qui doit être imposée;
(2) the tax rate or the amount of tax payable; and	2°il doit indiquer soit le taux de la taxe, soit le montant de la taxe à payer;
(3) how the tax is to be collected and the designation of any persons authorized to collect the tax as agents for the municipality.	3°il doit indiquer le mode de perception de la taxe, y compris la désignation des personnes qui sont autorisées à la percevoir à titre de mandataires de la municipalité.
The by-law referred to in the first paragraph may prescribe	Le règlement visé au premier alinéa peut prévoir ce qui suit:
(1) exemptions from the tax;	1°des exonérations de la taxe;
(2) penalties for failing to comply with the by-law;	2°des pénalités en cas de contravention au règlement;
(3) collection fees and fees for insufficient funds;	3°des frais de recouvrement et des frais pour provision insuffisante;
(4) interest and specific interest rates on outstanding taxes, penalties or fees;	4°des intérêts, y compris le taux, sur la taxe, les pénalités et les frais impayés;
(5) assessment, audit, inspection and inquiry powers;	5°des pouvoirs de cotisation, de vérification, d'inspection et d'enquête;
(6) refunds and remittances;	6°des remboursements et des remises;
(7) the keeping of registers;	7°la tenue de registres;
(8) the establishment and use of dispute resolution mechanisms;	8°la mise en œuvre et l'utilisation de mécanismes de règlement de différends;

(9) the establishment and use of enforcement measures if a portion of the tax, interest, penalties or fees remains unpaid after it is due, including measures such as garnishment, seizure and sale of property;

9°la mise en œuvre et l'utilisation de mesures d'exécution si un montant de la taxe, des intérêts, des pénalités ou des frais demeure impayé après sa date d'échéance, notamment la saisie-arrêt, la saisie et la vente des biens;

(10) considering the debt for outstanding taxes, including interest, penalties and fees, to be a prior claim on the immovables or movables in respect of which it is due, in the same manner and with the same rank as the claims described in paragraph 5 of article 2651 of the Civil Code, and creating and registering a security by a legal hypothec on the immovables or movables; and

10°l'assimilation de la créance pour taxe impayée, y compris les intérêts, les pénalités et les frais, à une créance prioritaire sur les immeubles ou meubles en raison de laquelle elle est due, au même titre et selon le même rang que les créances visées au paragraphe 5° de l'article 2651 du Code civil, de même que la création et l'inscription d'une sûreté par une hypothèque légale sur ces immeubles ou sur ces meubles, selon le cas;

(11) criteria according to which the rate and the amount of the tax payable may vary.

11°tout critère en fonction duquel le taux de la taxe ou le montant de la taxe à payer peut varier.

Charter of Ville de Montréal, Metropolis of Québec, CQLR, c C-11.4

151.9. The city is not authorized to impose a tax under section 151.8 in respect of any of the following:

151.9. La ville n'est pas autorisée à imposer une taxe en vertu de l'article 151.8 à l'égard des personnes suivantes :

(1) the State, the Crown in right of Canada or one of their mandataries;

1 l'État, la Couronne du chef du Canada ou l'un de leurs mandataires;

[…]

[…]

Compendium of tariffs of private transportation by taxi, RRQ, c S-6.01, r 4

8. The price of a trip between the airport and downtown Montréal, whatever the number of passengers, is as follows:	8. Le prix d'une course entre l'aéroport et le centre-ville de Montréal, peu importe le nombre de passagers, est le suivant :
[…]	[…]
For the purpose of this section, downtown Montréal is bounded as follows:	Pour l'application du présent article, le centre-ville de Montréal est délimité comme suit:
— westward: Avenue Atwater to the Lachine Canal; the Lachine Canal to the foot of Rue de Condé; Rue de Condé to Rue Saint-Patrick; Rue Saint-Patrick eastward to Rue Bridge; Rue Bridge to the Victoria Bridge;	— à l'ouest : l'avenue Atwater jusqu'au canal Lachine; le canal Lachine jusqu'au pied de la rue de Condé; la rue de Condé jusqu'à la rue Saint-Patrick; la rue Saint-Patrick, vers l'est, jusqu'à la rue Bridge; la rue Bridge jusqu'au pont Victoria;
— eastward: Avenue Papineau;	— à l'est : l'avenue Papineau;
— southward: the St. Lawrence River;	— au sud : le fleuve Saint-Laurent;
— northward: Avenue des Pins; Rue Saint-Denis, from Avenue des Pins to Rue Cherrier; Rue Cherrier, from Rue Saint-Denis to Rue Sherbrooke; Rue Sherbrooke, from Rue Cherrier to Avenue Papineau.	— au nord : l'avenue des Pins; la rue Saint-Denis, de l'avenue des Pins à la rue Cherrier; la rue Cherrier, de la rue Saint-Denis à la rue Sherbrooke; la rue Sherbrooke, de la rue Cherrier à l'avenue Papineau.
Houses and buildings on either side of bordering streets are part of downtown Montréal.	Les maisons et édifices de chaque côté des rues limitrophes font partie du centre-ville de Montréal.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1262-14
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APPEARANCES:

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François Barette	FOR THE RESPONDENT
Isabelle Mathieu-Millaire Lindy Rouillard-Labbé	FOR THE INTEVENER

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