

Date: 20070705

Docket: T-631-05

Citation: 2007 FC 700

Ottawa, Ontario, the 5th day of July 2007

Present: The Honourable Mr. Justice Martineau

BETWEEN:

CITY OF MONTRÉAL

Applicant

and

CANADIAN BROADCASTING CORPORATION

Respondent

and

ATTORNEY GENERAL OF CANADA

Intervener

REASONS FOR ORDER AND ORDER

[1] The administrative decision whose lawfulness is challenged by the applicant was made in March 2005 by a manager of the respondent, Lise G. Powers (the tribunal). Except where otherwise indicated in these reasons, the amounts of the adjustments made by the tribunal to the applicant's applications in lieu of payment of real property taxes for the years 2003, 2004 and 2005 are those found in the amended motion to institute proceedings filed by the respondent in the Quebec

Superior Court (docket No. 500-17-019933-046) and served on the applicant on or about March 16, 2005 (the impugned decision).

[2] The applications for payment were submitted to the respondent in accordance with Part I of the *Crown Corporation Payments Regulations*, SOR/81-1030, as amended (CCPR). The adjustments found in the impugned decision were made by the tribunal on behalf of the respondent under the supposed authority of section 7 of the CCPR and section 4 of the *Interim Payments and Recovery of Overpayments Regulations*, SOR/81-226, as amended (the IPROR), which in the latter case allows recovery of an overpayment made to a taxing authority under the *Payment in Lieu of Taxes Act*, R.S.C. 1985, c. M-13 (the PLTA), or the IPROR.

[3] First of all, the tribunal reduced the amount of the payment in lieu of real property tax (PLRT) to be paid by the respondent for the 2003 and 2004 taxation years to \$2,037,931.94 and \$2,137,832.35 respectively. Secondly, the tribunal assessed the amount of the PLRT payable by the respondent for the 2005 taxation year at \$1,947,397.80. Accordingly, the tribunal concluded that the total amount payable to the applicant as a PLRT for the years 2003, 2004 and 2005 was \$6,123,162.09. On March 16, 2005, the amounts already paid by the respondent added up to \$6,763,337.72. Accordingly, the respondent did not have to make any PLRT for the year 2005; instead, the applicant owes it \$640,175.63 for the overpayment.

[4] In its originating notice filed in the Court on April 12, 2005, the applicant submits that the tribunal acted arbitrarily and unlawfully in not using the real property tax rate usually applicable to non-residential immovables when calculating the effective rate specified in section 7 of the CCPR.

Accordingly, the respondent acted arbitrarily and unlawfully in retroactively reducing the total payment of \$4,357,107.74 already made to the applicant for the 2003 taxation year by an amount of \$2,319,235.79 and the first instalment of \$2,406,229.98 already paid to the applicant for 2004 by \$2,611,883.54, and by claiming an amount of \$640,175.63 from the applicant in March 2005 as an overpayment. In the alternative, the applicant submits that even if the respondent may apply a different real property tax rate, it cannot do so retroactively. In addition, the respondent breached the principles of procedural fairness in rendering the impugned decision.

[5] The relevant statutory and regulatory provisions are reproduced in the annex to these reasons.

1. Municipal tax rules in the province of Quebec

[6] The applicant is a legal person established in the public interest under the *Charter of Ville de Montréal*, R.S.Q., c. C-11.4 (the Charter), which specifies that the applicant is a municipality governed under the *Cities and Towns Act*, R.S.Q., c. C-19 (the CTA).

[7] Under section 485 of the CTA, a municipal council may, subject to the *Act respecting municipal taxation*, R.S.Q. c. F-2.1 (the AMT), impose and levy annually on all taxable immovables in the territory of the municipal territory a tax based on their value as shown on the assessment roll.

[8] For these purposes, under the AMT, all immovables situated in the territory of a local municipality are entered on the property assessment roll, except for those described in sections 63 to 68 of the AMT, which are not entered on the roll (section 31 of the AMT). In practice, the

tax base, that is, the basis for real property taxation, is established by registering immovables on the roll. Any challenge regarding an entry on the property assessment roll may be brought before the Administrative Tribunal of Québec (ATQ) if the person applying for review has not entered into an agreement with the assessor on an alteration to the roll (sections 138.4 and 138.5 of the AMT).

[9] That being said, wherever the law provides that only part of the value of an immovable is taxable or that it is exempt from property taxes, the roll must state the taxable value of the immovable or the fact that it is exempt, as the case may be. Where applicable, the entry must be accompanied with a reference to its legislative source (section 55 of the AMT). More specifically, the AMT provides that immovables included in a unit of assessment entered on the roll in the name of the Crown or of a Crown corporation are exempt from all municipal or school property taxes (section 204, paragraphs 1 and 1.1 of the AMT). The provincial exemption is consistent with section 125 of the *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, reproduced in R.S.C. 1985, App. II, No. 5, which provides that no property or lands belonging to Canada or any province shall be liable to taxation.

[10] When a non-taxable immovable included in a unit of assessment entered on the roll in the name of the Crown or of a Crown corporation is occupied by a person other than the Crown or a Crown corporation, 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 the occupant. However, the rule does not apply where, according to federal law, a payment in lieu of real property tax (PLRT) is paid in respect of the immovable (section 208 of

the AMT). (In this case, the AMT uses the term “subsidy”, which until 2001 was used in federal legislation).

[11] Finally, every local municipality may, by by-law, impose a business tax on any person entered on its roll of rental values carrying on, for pecuniary gain or not, an economic or administrative activity in matters of finance, trade, industry or services, a calling, an art, a profession or any other activity constituting a means of profit, gain or livelihood, except an employment or charge. The tax is imposed, according to the roll, on the occupant of each business establishment on the basis of its rental value, at the rate fixed in the by-law (section 232 of the AMT). However, no business tax may be imposed by reason of any activity carried on by the Crown or a Crown corporation (section 236 of the AMT).

2. Federal program for payment in lieu of property tax PLPT)

[12] As noted in the preceding, section 125 of the *Constitution Act, 1867* is intended to prevent inroads, by way of taxation, upon the property one level of government, by another level of government. Thus, the immunity conferred by this provision must override the express powers of taxation contained in subsections 91(3) and 92(2) of the *Constitution Act, 1867 (Re Exported Natural Gas Tax*, [1982] 1 S.C.R. 1004, at pages 10765 and 1067).

[13] Although it is true that the Crown and its agents are exempted from paying any form of property tax on their properties, they are nonetheless on equal footing with other property owners insofar as access to vital municipal services are concerned. Accordingly, in 1939, the Rowell-

Sirois Royal Commission on Dominion-Provincial Relations recommended that the federal government voluntarily pay real property taxes on Crown property.

[14] However, it was not until 1951 that Parliament enacted the *Municipal Grants Act*, S.C. 1950-51, c. 54, which allowed the federal government to pay grants to municipalities in lieu of real property taxes. This Act was amended several times and became the *Payments in Lieu of Taxes Act*, R.S.C., 1985, c. M-13, as amended (the PLTA). In 1967, the federal cabinet issued a directive to the effect that all Crown corporations were also to make payments in lieu of taxes, and in 1980 the PLTA was amended to include all entities now designated as Crown corporations. These Crown corporations are listed in schedules III and IV to the PLTA.

[15] The purpose of the PLTA is to provide for the fair and equitable administration of payments in lieu of taxes (PILT) to taxing authorities, including municipalities, on a voluntary basis (sections 2.1 and 15 of the PLTA). It should be noted that this legislative scheme is distinct from those which may exist in each province with respect to the provincial Crown. For example, in Quebec, payments in lieu of taxes are also made by the provincial government (sections 254 to 258 of the AMT).

[16] In the case at bar, the applicant is a “taxing authority” within the meaning of the PLTA, and the respondent’s name appears in Schedule III to the PLTA.

[17] For the purposes of applying the PLTA and the CCPR, PILTs may be paid in respect of any immovable and real property meeting:

- (a) the definition of “federal property”, in the case of a PILT made by the Minister of Public Works and Government Services Canada (the Minister) (section 2 of the PLTA); or
- (b) the definition of “corporation property”, in the case of a PILT made by a corporation included in Schedule III or IV to the PLTA (section 2 of the CCPR).

[18] The PLTA refers to three types of PILTs:

- (a) payments in lieu of a real property tax (PLRT),
- (b) payments in lieu of a frontage or area tax (PLFAT), and
- (c) payments in lieu of a business occupancy tax (PLBOT).

[19] PLRTs and PLFATs are made to taxing authorities by the Minister and by the corporations listed in schedules III and IV to the PLTA (section 3 and paragraph 11(1)(a) of the PLTA and section 6 of the CCPR). However, only the corporations included in Schedule IV to the PLTA make PLBOTs to taxing authorities (paragraph 11(1)(b) of the PLTA and section 15 of the CCPR).

[20] The conditions for PLRTs and PLFATs made by the Minister are specified in the PLTA itself (see sections 3 to 8 of the PLTA, which must be read together with the definitions in section 2 of the PLTA).

[21] Needless to say, the Canadian government is the biggest land owner in the country. In practice, managers from the Department of Public Works and Government Services Canada

(PWGSC) administer the PILT Program for federal properties managed by federal departments (department properties). In 2004, PWGSC paid approximately \$426 million to some 1,300 taxing authorities, which obviously excludes payments made by Crown corporations not under the Minister's responsibility.

[22] Accordingly, the conditions governing PLRTs and PLFATs made by the corporations included in schedules III and IV to the PLTA are specified in Part I of the CCPR (see sections 5 to 13 of the CCPR, which must be read together with the definitions in section 2 of the CCPR). However, the conditions governing PLBOTs made by corporations included in Schedule IV of the PLTA are specified in Part II of the CCPR (see sections 14 to 18 of the CCPR, which must also be read together with the definitions in section 2 of the CCPR).

3. Time and manner of payments in lieu of taxes

[23] As has already been noted, in principle, the PLTA does not confer any right to a payment (section 15 of the PLTA). However, in practice, the fact that an application for payment has been made pursuant to the PLTA—and, where applicable, the CCPR—creates a legitimate expectation on the part of the taxing authority to the effect that its application will be dealt with in accordance with the law by the Minister or the corporation included in Schedule III or IV of the PLTA, as the case may be. Therefore, once the amount of the payment has been calculated in accordance with the PLTA or the CCPR, the taxing authority may expect to receive payment within the time limits prescribed by regulation.

[24] There is no doubt that in all municipalities in which the federal government or its agents have a significant presence, the failure to make a PILT which these municipalities reasonably expect to receive may have considerable negative consequences.

[25] In 1995, the Joint Technical Committee on Payments in Lieu of Taxes complained that the federal government was not obliged to comply with the municipalities' invoicing schedules for real property taxes and had not adopted a payment timetable of its own to give municipalities some assurance as to their cash flow. Several municipalities were running deficits because the due dates for final payments were not being respected. They then had to make up for these deficits by seeking provisional financing or by dipping into reserve funds (Federation of Canadian Municipalities, Treasury Board Secretariat and Public Works and Government Services Canada, *Report of the Joint Technical Committee on Payments in Lieu of Taxes*, Ottawa, December 28, 1995, at pages 3 and 11. (Chairman: James Knight)).

[26] I note that paragraphs 10(b) and (c) of the PLTA provide that the Minister may make regulations respecting the making of an interim payment in respect of a payment under the PLTA and respecting the recovery of any overpayments made to a taxing authority, including recovery by way of set-off against other payments under the PLTA. These last two aspects are effectively governed by sections 3 and 4 of the IPROPR, on which the respondent relies in this case. In the case of corporations included in schedules III and IV to the PLTA, it is the Governor in Council (not the Minister) who has the authority under paragraphs 9(1)(f) and (g) of the PLTA to make regulations respecting the payments to be made by these corporations. This aspect is effectively governed by section 12 of the CCPR.

[27] Moreover, to give municipal administrations greater stability in terms of budgeting and taxation, the PLTA and the CCPR were respectively amended in 2000 and 2001 (*An Act to amend the Municipal Grants Act, S.C. 2000, c. 8 and Regulations Amending Certain Regulations made under the Payments in Lieu of Taxes Act and Schedules I to III to that Act, SOR/2001-494* (November 8, 2001)). For example, paragraph 12(1)(b) of the CCPR specifies that a corporation must make a payment in lieu of real property taxes (PLRT) or in lieu of frontage or area tax (PLFAT) within 50 days after receipt of an application for the payment. In addition, where a corporation is unable to make a final determination of the amount of a payment, subsection 12(2) of the CCPR provides that the corporation shall make, within that time, an interim payment that corresponds to the estimated total payment to be made.

4. Calculation of the amount of the payment in lieu of real property taxes (PLRT)

[28] Under paragraph 11(1)(a) of the PLTA, corporations included in Schedule III or IV of the PLTA shall, if they are exempt from real property taxes, comply with any regulations made by the Governor in Council under paragraph 9(1)(f) of the PLTA respecting any payment that they may make in lieu of a real property tax (PLRT) or a frontage or area tax (PLFAT). In Part I of the CCPR, which regulates these two types of PILT, the term “corporation” means every corporation included in Schedule III or IV to the PLTA (section 5 of the CCPR).

[29] More specifically, section 6 of the CCPR specifies that the PLRT made by a corporation is made without any condition, in an amount that is not less than the amount referred to in

section 7 of the CCPR. Under subsection 7(1) of the CCPR, the amount of the PLRT shall not be less than the product of the following two factors:

- (a) the corporation effective rate in the taxation year applicable to the corporation property in respect of which the payment may be made; and
- (b) the corporation property value in the taxation year of that corporation property.

[30] Section 2 of the CCPR defines the expressions “corporation effective rate” and “corporation property value” as follows:

- (a) “Corporation effective rate” is defined as “the rate of real property tax or of frontage or area tax that a corporation would consider applicable to its corporation property if that property were taxable property”; and
- (b) “Corporation property value” is defined as “the value that a corporation would consider to be attributable by an assessment authority to its corporation property, without regard to any mineral rights or any ornamental, decorative or non-functional 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”.

[31] Where the real property tax rate includes school taxes, a special rate calculated according to paragraphs 7(2)(c) and (d) of the CCPR can be substituted for the corporation effective rate in paragraph 7(1)(a) of the CCPR. In addition, under section 9 of the CCPR, there may be deducted from the payment described in section 7 of the CCPR an amount corresponding to certain special services provided or financed by the corporation or an amount equal to any cancellation, reduction

or refund in respect of a real property tax that would be applicable to its corporation property if it were taxable property.

[32] The “assessment authority” to which section 2 of the CCPR refers means an authority that has power by or under an Act of Parliament or the legislature of a province to establish the assessed dimension or assessed value of real property or immovables (subsection 2(1) of the PLTA). In Quebec, the competent authority under provincial legislation is the assessor appointed under the AMT. For the 2003, 2004 and 2005 taxation years, the property value of the properties in issue is therefore the value entered on the property assessment roll (as corrected, where appropriate, by the competent provincial authority).

[33] On this point, I note that the PLTA was amended in 2000 to add section 11.1, which provides for the appointment of an advisory panel tasked with giving advice to the Minister in the event that a taxing authority disagrees with the property value, property dimension or effective rate applicable to any federal property. The advisory panel may also recommend to the Minister that a payment be supplemented if it has been unreasonably delayed. In addition, the CCPR were amended to specify that section 11.1 of the PLTA applies to a corporation as if the reference to “the Minister” were a reference to “a corporation” and any reference to “federal property” were a reference to “corporation property” (section 12.1 CCPR). However, when the tribunal made the impugned decision, the advisory panel provided for in section 11.1 of the PLTA had not yet been appointed by the Governor in Council. Normally, the advisory panel would have been able to take charge of this case and advise the Minister on the applicable effective rate, since there was at the

time a disagreement with the applicant as to the effective rate applicable to the corporation properties.

[34] Before going any further, let us review. Upon application by a taxing authority, a corporation must first of all determine if this application actually does concern property subject to a payment and then refer to the property value and to the applicable effective rate. The product of these two amounts is the amount of the payment which must be made by the corporation within 50 days following receipt of the application (sections 2, 5, 6, 7 and 12 of the CCPR). Finally, I note that the adjustments to the effective rate and the possible deductions from the amount of the payment specified in subsection 7(2) and section 9 of the CCPR do not apply in this case.

5. Properties involved in this case

[35] The respondent is a corporation incorporated under the *Broadcasting Act*, S.C. 1991, c. 11 as amended (the BA), and an agent of Her Majesty in right of Canada.

[36] The respondent may acquire any real or personal property it deems necessary or convenient for carrying out its objects, and this property belongs to Her Majesty (subsection 47(3), sections 48 and 49 of the BA). It must be presumed that the properties belonging to Her Majesty are occupied and operated by the respondent exclusively on behalf of Canada (*City of Halifax v. Halifax Harbour Commissioners*, [1935] S.C.R. 215 ; *Re the City of Toronto and the Canadian Broadcasting Corporation*, [1938] O.W.N. 507 (Ont. C.A.)).

[37] The immovables or real property of the respondent that are the subject of this dispute are located in the sector corresponding to the former city of Montréal (Montréal sector), that is: 1400 René Lévesque Boulevard East; 2120 Pierre Dupuy Avenue and the lot in the Port of Montréal, which the respondent moved out of in 2004; and the Wolfe lot on the island of Montréal.

[38] These immovables or real property are occupied exclusively by the respondent and therefore are not taxable. All these immovables are entered on the property assessment roll as required by provincial law (sections 31, 55 and 204 of the AMT). As already noted, the tribunal uses the value entered on the roll as the basis for calculating the real property tax which would otherwise be applicable to the properties in question if they were taxable by law. The assessed value of these immovables ranged from \$105 million to \$118 million over the period from 2003 to 2005.

[39] On this point, at the hearing before this Court, the applicant submitted a decision of the ATQ dated July 21, 2006, which held that the real value of the assessment unit for the immovable located at 1400 René Lévesque Boulevard East to be entered on the roll was \$100,000,000 for the period from January 1, 2004 to January 19, 2004, and \$98,800,000 for the period from January 20, 2004 to December 31, 2006 (*Société Radio-Canada c. Ville de Montréal* (July 21, 2006), No. SAI-M-105370-0505 (Administrative Tribunal of Québec)).

[40] In the case at bar, the dispute between the parties concerns the decision of the tribunal to apply in the respondent's case an effective real property tax rate different from the one applicable to non-residential immovables under the applicant's by-laws.

6. Tax by-laws of the applicant

[41] In 2003, the applicant made sweeping changes to its real property tax rates following the municipal mergers that occurred on the island of Montréal.

[42] For all fiscal years prior to 2003, the applicant used one general real property tax rate applicable to all immovables and added a special additional real property tax (surtax) on non-residential buildings. The applicant's tax structure also provided for business, water and services taxes levied directly on occupants of non-residential immovables carrying out commercial or professional activities on the premises.

[43] In the sector corresponding to the former city of Montréal, the general real property tax rate in 2002 was 1.9702, and the tax rate on non-residential immovables was 0.3348 per \$100 of assessment. In 2002, the business tax rate was 12.99%. For comparison purposes, in 2002, the business tax generated revenues equivalent to a real property tax rate of 1.6360 per \$100 of assessment. Therefore, in that year, the combined rate for non-residential immovables (general real property tax, non-residential immovables tax and business tax equivalent) was 3.9410 per \$100 of assessment (2003 budget, table 35 at page 89).

[44] When it tabled its 2003 budget, the applicant decided to harmonize the tax structure of the new city of Montréal, opting for a variable property tax rate system. Among other things, this change in rates allowed the new city of Montréal to do away with an outdated and inequitable method of taxation and simplify the management of tax income (see the budget adopted by

Montréal city council on December 18, 2002, 2003 budget, at pages 31-32 and at pages 77 *et seq.*).

[45] In practice, this harmonization had the following effects.

[46] First of all, the applicant abolished the business tax. In 2002, this tax on occupants of non-residential immovables was levied by only 10 of the 28 former municipalities. Its repeal in 2003 entailed an increase in the real property tax applicable to non-residential immovables located in a sector corresponding to one of the 10 municipalities in question.

[47] In the other 18 municipalities where there was no business tax, there was no noticeable tax impact. Such was the case with non-residential immovables in the Montréal-Est sector, where the business tax had been abolished in 1993. In 2002, in the former city of Montréal-Est, the general real property tax rate was 1.4878 per \$100 of assessment, while the tax on non-residential immovables was 2.7875 per \$100 of assessment. Therefore, the combined tax rate for non-residential immovables was 4.2753 per \$100 of assessment in 2002 (2003 budget, table 5 at page 89).

[48] Secondly, the introduction of a variable property tax rate system means that, in 2003, the revenues from the various real property taxes, such as the tax on non-residential immovables and the surtax on serviced vacant lots, could no longer be distinguished from each other. Therefore, in 2003, the new real property tax for non-residential immovables in the Montréal sector was at a

rate of 4.1722 per \$100 of assessment. In comparison, in the Montréal-Est sector, this tax was at a rate of 4.2353 per \$100 of assessment in 2003 (2003 budget, table 35, at page 89).

[49] Thirdly, to ensure an orderly transition, the applicant offered tax subsidy programs to compensate for some of the shifts in the tax burden brought about by these changes to the taxation system. To this end, by-laws granting subsidies or tax credits based on the general property tax that came into force before January 1, 2003, and under which an amount of subsidy was paid after December 31, 2002, must be read as granting a subsidy based on the basic rate of the variable-rate general property tax (section 2 of By-law 02-253 of the applicant, entitled *By-law concerning certain subsidy by-laws*).

[50] Fourthly, according to the applicant's budget estimates, in 2003, the change in the tax system allowed approximately \$8.1 million in additional revenue to be entered into the books for PILTs from the federal government (2003 budget, pages 34 and 88). In fact, according to the evidence on the record, the new real property tax rate set by the applicant in 2003 represents an approximately \$7.5 million increase for the federal government (excluding Crown corporations) in terms of payments made directly by the Minister. In the case of the respondent, the change in tax system represents an increase of \$2,319,235.79, \$2,611,883.54 and \$2,582,969.40 for the years 2003, 2004 and 2005 respectively.

[51] To this very day, the variable-rate property tax system is still in force, and the applicant has used it in every fiscal year since 2003, including 2004 and 2005, the years which are the subject of this review. As a result, every year, the application has adopted a tax by-law requiring

that a variable-rate general property tax be levied on and collected for every taxable immovable that is entered on the property assessment roll and located in one of the sectors described in section 149 of the Charter.

[52] The properties in question are in the sector identified in by-laws 02-249, 03-201 and 04-166 under the name of the former local municipality listed in section 5 of the Charter, in this case, the former city of Montréal (Montréal sector).

[53] In the case at bar, section 3, item 13 of the *By-law concerning taxes (fiscal 2004)* (By-law 02-249), the general property tax rates applied in 2003 to the assessed value of the immovables concerned in the Montréal sector were as follows:

- (a) non-residential immovables: 4.1722%
- (b) immovables containing six or more dwelling units: 2.0992%
- (c) serviced vacant lots: 3.9044%
- (d) residual: 1.9522%.

[54] Under section 3, item 13 of the *By-law concerning taxes (fiscal 2004)* (By-law 03-201), the general property tax rates applied in 2004 to the assessed value of the immovables concerned in the Montréal sector were as follows:

- (a) non-residential immovables: 4.0547%
- (b) immovables containing six or more dwelling units: 1.9917%
- (c) serviced vacant lots: 3.6064%
- (d) residual: 1.8032%.

[55] Finally, under section 3, item 13 of the *By-law concerning taxes (fiscal 2005)* (By-law 04-166), the general property tax rates applied in 2005 to the assessed value of the immovables concerned in the Montréal sector were as follows:

- (a) non-residential immovables: 3.8812%
- (b) immovables containing six or more dwelling units: 1.8455%
- (c) serviced vacant lots: 3.2546%
- (d) residual: 1.6273%.

[56] However, since 2004, the applicant has levied and collected a special variable-rate water tax on every immovable entered on the property assessment roll. In 2004 and 2005, the rate applicable to non-residential immovables was 0.04% and 0.0720% respectively (section 4, item 1 of By-law 03-201 and section 5, item 1 of By-law 04-166). The respondent does not contest that this special tax constitutes a form of property tax.

7. Decisions rendered by the tribunal in 2003, 2004 and 2005

[57] In January 2003, 2004 and 2005, Diane Loiseau, a revenue analyst working for the applicant, sent the respondent a number of PILT application under the PLTA and the CCPR for the 2003, 2004 and 2005 taxation years in respect of the respondent's immovables or real property entered on the property assessment roll (the 2003, 2004 and 2005 applications).

2003 Taxation Year

[58] The 2003 application totals \$4,357,107.73 and was based on the non-residential immovables rate of 4.1722% per \$100 of assessment, which was applied to the value of the respondent's immovables entered on the real property assessment roll. The respondent paid this amount in two instalments of \$2,178,553.87, in March and September 2003.

[59] On November 25, 2003, an additional PILT application totalling \$15,777.53 was sent to the respondent following changes made to a building occupied by the respondent during the 2002 and 2003 taxation years. In March 2004, the applicant claimed a \$46,704.97 supplement in lieu of interest in connection with the second instalment, which it claimed was late. According to the applicant, the respondent did not pay these two amounts.

2004 Taxation Year

[60] The 2004 application totals \$4,812,459.96 and was based on a combined rate of 4.0947% per \$100 of assessment applied to the value of the respondent's immovables entered on the property assessment roll. The rate indicated by the applicant in its 2004 application is composed of the non-residential immovables rate of 4.0547%, plus the special water tax rate of 0.04% (section 3, item 13 and section 4, item 1 of By-law 03-201).

[61] The respondent made a first payment of \$2,406,229.98 in February 2004. Subsequently, on March 31, 2005, following some changes made to the property assessment roll, Ms. Loiseau adjusted the total amount claimed for the 2004 taxation year to \$4,749,715.89, which reduced the

total amount claimed for the second instalment to \$2,343,485.91. According to the applicant, the respondent did not pay the second instalment.

2005 Taxation Year

[62] The 2005 application totals \$4,636,645.03 and was based on a combined rate of 3.9532% per \$100 of assessment applied to the value of the respondent's immovables entered on the property assessment roll. The rate indicated by the applicant in its 2005 application was composed of the non-residential immovable rate of 3.8812%, plus the special water tax rate of 0.0720% (section 3, item 13 and section 5, item 2 of By-law 04-166). Subsequently, on March 31, 2005, following some changes made to the property assessment roll, Ms. Loiseau adjusted the total amount claimed for the year 2005 to \$4,530,367.20.

[63] This being said, in the impugned decision, the tribunal retroactively reduced the amount of the payments for 2003 and 2004 to \$2,037,931.94 and \$2,137,832.35 respectively. In addition, it calculated the amount of the PLRT payable by the respondent for 2005 to be \$1,947,397.80, which is the amount claimed in the 2005 application. On this basis, the respondent claims \$640,175.63 as an overpayment received by the applicant (that is, \$6,763,337.72 minus \$6,123,162.09).

8. The present application and related litigation

[64] The reasons given by the tribunal to justify the retroactive revision in March 2005 of the effective real property tax rates, and thus of the PLRTs already made in 2003 and 2004, are found in a motion for declaratory judgment filed by the respondent in the Superior Court in March 2004 and amended in March 2005. Essentially, the respondent is of the opinion that the real property tax rates

for the years 2003, 2004 and 2005 include a portion related to the former business tax repealed in 2003.

[65] Given that the respondent was not legally required to make a PLBOT, it was decided that an equivalent amount would be subtracted from the effective rate. On this basis, in her affidavit dated November 22, 2005, Ms. Powers explains that the respondent is subject only to the rates of 1.9522, 1.8032 and 1.6273 per \$100 of assessment under section 3, paragraph 1, item 13(d) of by-laws 02-249, 03-201 and 04-166. These are the rates applicable to the “residual” class.

[66] On February 1, 2006, the Court dismissed the respondent’s motion seeking a declaration that the Court does not have jurisdiction to hear this application for judicial review and, in the alternative, the dismissal of the application on the ground that it was not filed within the time limit prescribed by law, or a stay of proceedings pending the Superior Court’s ruling on the respondent’s motion for declaratory judgment (*City of Montréal v. Canadian Broadcasting Corporation*, 2006 FC 113).

[67] Although this application for judicial review only concerns the decision rendered by the tribunal in March 2005 for the 2003, 2004 and 2005 taxation years, it must be noted that the applicant filed another application for judicial review, in docket No. T-761-06, against a decision of the tribunal rendered in April 2006 for the 2006 taxation year.

[68] A brief analysis of the notice of application filed by the applicant in T-761-06 shows that once again the dispute mainly concerns the effective rate applicable to the respondent’s properties.

The notice of application also mentions a review procedure before the ATQ undertaken by the respondent in April 2005 under the AMT to change the value of this property as entered on the assessment roll. However, since the filing of the application for judicial review in T-761-06, the ATQ rendered a decision on this issue on July 21, 2006, such that the effective value of the respondent's properties for the period from January 1, 2004 to December 31, 2006 no longer appears to be in dispute.

[69] Following a direction issued on July 25, 2006, by the undersigned justice, the parties agreed that the application for judicial review filed in T-761-06 be stayed pending a final decision in this file. The Court gave effect to the wills of the parties' agreement and ordered a stay of proceedings in T-761-06 on August 4, 2006.

[70] It was therefore on this basis that this application was heard by the Court in January and February 2007. Consequently, the Court expects the parties to apply the principles set out in the present decision to the other related files in which there is a dispute between them on the matter of the effective real property tax rate or about the issue of compensation (set-off). This being said, a party may undertake or continue any application for judicial review before the Court and any proceeding before the advisory panel, the Administrative Tribunal of Québec or any other body or tribunal having jurisdiction in connection with any dispute for any given taxation year concerning property value, property dimension, claims that a payment should be supplemented because of unreasonable delay, or any amendment to an entry on the property assessment roll.

9. Issues and positions of the parties

[71] The issue to be decided today is whether the tribunal exceeded its jurisdiction, breached a principle of procedural fairness, acted unlawfully, or otherwise rendered a decision based on an error in law or an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it:

- (a) by determining that the property tax rate that would be applicable to the respondent's property, if it were taxable property, corresponds to the rate applicable to the "residual" category, rather than the rate applicable to the "non-residential immovables" category, these rates being set by the applicant's by-laws (the effective real property tax rate issue);
- (b) by retroactively reducing the amounts already paid to the applicant by the respondent as payments in lieu of real property tax (PLRT) for the 2003 and 2004 taxation years, and by claiming \$640,175.63 as an overpayment for the year 2005 (the compensation issue).

[72] For the purposes of the hearing, this application was joined with the application made by the applicant in T-795-04, in which the legality of a decision rendered in March 2004 by a manager of the Montréal Port Authority is also the subject of an application for judicial review before this Court.

[73] The oral and written submissions made by counsel for the applicant in both files, on the one hand, and by the respondent in this file and the respondent in the other, tend to overlap or

complement each other. Therefore, as regards the effective real property tax rate, it seems to me to be easier to group the various submissions together and apply them *mutatis mutandis* to the particular situation in each of these two files.

(a) *The effective real property tax rate issue*

[74] First of all, the applicant and the respondent do not agree on the effective real property tax rate that would be applicable to the non-taxable properties in question if they were taxable for the purposes of calculating the amount due under the PLTA and the CCPR for each of the taxation years in question.

[75] The applicant submits that by not using the real property tax rate usually levied on owners of non-residential immovables, the tribunal acted arbitrarily and capriciously, and that its decision is based on an error in law and is contrary to the law and the obligations imposed on the respondent by the PLTA and the CCPR.

[76] The applicant submits that the respondent must comply to section 7 of the CCPR, which provides that the PLRT shall not be less than the product of the corporation effective rate and the corporation property value in the taxation year of that corporation property. In this case, the only adjustments allowed are those authorized by regulation at subsection 7(2) and section 9 of the CCPR. Furthermore, under section 2 of the CCPR, the “corporation effective rate” is either the real property tax rate or the frontage or area tax rate applicable to the corporation property if it were taxable. Therefore, the applicant submits that the respondent had no choice but to apply the rates

applicable to non-residential properties entered on the assessment roll, as set out in the applicant's by-laws.

[77] In contrast, the respondent argues that it has the discretion to choose a different real property tax rate and to make retroactive adjustments to the PLRT for the 2003 and 2004 taxation years while not having to make a PLRT for the 2005 taxation year. Accordingly, the respondent submits that the expression "that a corporation would consider applicable" in section 2 of the CCPR must be interpreted to give it such discretion in determining the applicable effective rate.

[78] The respondent submits that in determining the applicable real property tax rate, it is not in any way supplanting the taxing authority; rather, it is exercising the authority specifically granted to it under the PLTA and the CCPR to determine the amount of the PLRT payable to the applicant. Since only those corporations included in Schedule IV to the PLTA are legally required to make a payment in lieu of the business occupancy tax (PLBOT), the respondent submits that it did not act arbitrarily or in a capricious manner by not using the real property equivalent of the former business tax, especially considering that it has a constitutional immunity (*Re Exported Natural Gas Tax, supra*).

[79] Finally, The respondent also submits that if one accepts the applicant's argument that a Crown corporation does not have any discretion as to the determination of the effective rate, this in a way creates a right to payment, which is directly contrary to sections 3 and 15 of the PLTA, as well as section 6 of the CCPR. To sum up, if the respondent cannot deduct the real property

equivalent of the former business occupancy tax from the amount of the PLRT,, this would strike down the CCPR or render them inapplicable, since only the corporations included in Schedule IV to the PLTA are legally obliged to make a PLBOT.

(b) *The compensation issue*

[80] As explained in the preceding, on March 31, 2005, the respondent set up “compensation” (set-off) with respect to the instalments already paid in 2004, thus refusing to make the second instalment for 2004, the two instalments for 2005 and payments for various amounts claimed by the applicant for the 2003 taxation year.

[81] Assuming that the respondent had the legal authority to use the residual rate (which the applicant contests), the respondent submits in the alternative that the tribunal could not in any way revise the decisions it had rendered in 2003 and 2004, as it was *functus officio* when in March 2005 it changed the real property tax rates which would have been applicable to the respondent’s properties if they were taxable. Consequently, the tribunal did not have jurisdiction to retroactively adjust the amounts of the PLRT already made by the respondent for the 2003 and 2004 taxation years. Likewise, the respondent could not set up compensation or take any steps to recover from the applicant the amount of the overpayment calculated in March 2005 by the tribunal. Moreover, the tribunal did not abide by the rules of procedural fairness in rendering the impugned decision. In fact, it was only on March 16, 2005, when the amended motion for declaratory judgment was served, that the applicant was advised of the respondent’s decision to retroactively revise the amount of the PLRT.

[82] In contrast, the respondent submits that the tribunal was not *functus officio* in March 2005 and that it always has the authority to revise any previous decision setting the real property tax rate applicable to the respondent's properties if they were taxable. Accordingly, the respondent could set up compensation retroactively on the payments it had already made to the applicant for the 2003 and 2004 taxation years. On this point, the respondent submits that it had already advised the applicant in previous letters of its reservations, stating that it might reduce the amount of a future PLRT if there was an overpayment. Finally, the amended motion for declaratory judgment filed by the respondent in March 2005 in Superior Court, which related the impugned decision of the tribunal, merely added the 2005 taxation year and set up the announced compensation.

[83] The respondent also argues that its authority to retroactively reduce the amount of the PLRT derives from section 4 of the IPROR, which provides *inter alia* that if a payment made to a taxing authority under the PLTA or IPROR is greater than the amount that may be paid to the taxing authority under section 3 of the PLTA, the amount of the overpayment and interest on that amount prescribed for the purpose of section 155.1 of the *Financial Administration Act*, R.S.C. 1985, c. F-11, may be set off against other payments that may otherwise be paid to the taxing authority under section 3 of the PLTA or the IPROR.

[84] In contrast, the applicant submits that section 4 of the IPROR does not apply in this case. The IPROR is a regulation made by the Minister pursuant to paragraph 10(c) of the PLTA. The IPROR strictly concerns "federal properties". The respondent's properties are, however, "corporation properties" under section 2 of the CCPR. In this case, under section 12 of the CCPR,

interim payments may be made where a corporation is unable to make a final determination of the amount of a PLRT, which is not the case here.

(c) Intervention by the Attorney General of Canada

[85] The Attorney General of Canada (AGC) was granted leave to intervene in this case.

[86] The AGC notes that the tribunal's decision in this case to reduce the effective rate of the real property tax claimed by the applicant was not the decision the Minister would have made in the same circumstances under section 3 of the PLTA. In addition, the impugned decision of the tribunal is contrary to the applicable provisions of the CCPR and the objectives of the PLTA.

[87] The AGC submits in this case that PWGSC complies with the various tax structures established by the numerous Canadian municipalities that receive PILTs. When the applicant decided to abolish the business tax and increase the property tax rate in 2003, PWGSC decided that the effective rate for the department's properties was the one claimed by the applicant on the basis of the rate applicable to non-residential immovables.

[88] Thus, according to the AGC, the PLTA and the CCPR allow PILTs to be calculated on the basis of a variable-rate real property tax. In addition, these payments are perfectly in harmony with the general purpose of the PLTA, which is to provide for the fair and equitable administration of PILTs. Moreover, the AGC submits that more and more provinces and municipalities in Canada are planning to abolish or have abolished their business taxes. Nova Scotia, New Brunswick, Prince Edward Island, Quebec, Ontario, Saskatchewan and British

Columbia have already decided to eliminate business taxes, and some other provinces are studying this possibility.

[89] As regards the compensation issue, the AGC avoided making any formal submissions on this point or delving into it in any detail, although the AGC appears to suggest in its memorandum that the tribunal did not breach any principles of procedural fairness. In fact, the matter of compensation was not mentioned in the order of the Court dated December 5, 2005, which specified the points which the AGC's intervention would address.

10. Standard of judicial review

[90] Under sections 2 and 18 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, as amended, (the FCA), this Court has exclusive jurisdiction to review the impugned decision (see *City of Montréal v. Canadian Broadcasting Corporation*, 2006 FC 113 and the case law cited in that decision). Parliament has already specified in paragraph 18.1(4)(c) of the FCA that if the Federal Court is satisfied that a tribunal "erred in law in making a decision or an order, whether or not the error appears on the face of the record", it may review that decision or order. At first glance, this seems to suggest that standard of review that applies to errors of law is correctness. However, when an error of fact is alleged to have been made by a federal board, commission or other tribunal, paragraph 18.1(4)(d) of the FCA requires a demonstration that it "based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it". This seems to suggest that where errors of fact are concerned, the standard of review is patent unreasonableness.

[91] In any event, the Supreme Court has developed a pragmatic and functional approach which applies wherever the standard of review is not specified in the act itself (see *R. v. Owen*, 2003 SCC 33). Accordingly, four factors are usually weighed in determining the appropriate standard of review: the presence or absence of a privative clause or statutory right of appeal; the expertise of the tribunal relative to that of the reviewing court on the issue in question; the purposes of the legislation and the provision in particular; and, the nature of the question—law, fact, or mixed law and fact (*Dr. Q v. College of Physicians and Surgeons of British Columbia*, 2003 SCC 19 at paragraph 26). The Supreme Court has already stated that a pragmatic and functional approach is not to be used where the issue is whether there was a breach of a principle of natural justice or procedural fairness (see: *Canadian Union of Public Employees (C.U.P.E) v. Ontario (Minister of Labour)*, [2003] S.C.J. No. 28, 2003 SCC 29).

[92] In the case of the impugned decision of the tribunal, these four factors lead to the conclusion that the applicable standard of review is correctness.

First factor

[93] Under section 3 of the PLTA, the Minister may make a PLRT out of the Consolidated Revenue Fund in respect of federal properties not administered by a corporation included in schedules III and IV to the PLTA, whereas the corporations included in schedules III and IV of the PLTA themselves process the applications for payment sent to them by the taxing authorities. In both cases, the Minister or the corporation has jurisdiction *ratione materiae*.

[94] In this regard, neither the PLTA nor the CCPR contains any privative clause or provides for a right of appeal from a decision rendered by the Minister or the corporations included in Schedule III or IV to the PLTA. Accordingly, this first factor is neutral in the analysis of the degree of deference required.

Second factor

[95] As far as the expertise of the tribunal in this case is concerned, this factor favours a low degree of deference.

[96] In the case at bar, the Minister or the corporations included in schedules III and IV to the PLTA are not a “specialized tribunal” in the usual sense. The “decisions” which the Minister or the corporations included in schedules III and IV to the PLTA render are in fact made by managers whose personal knowledge and expertise in municipal taxation matters may vary considerably.

[97] I note that under section 11.1 of the PLTA and section 12.1 of the CCPR, the Minister or the corporation may request non-binding advice in case of a disagreement with the taxing authority about, *inter alia*, the property value or effective rate. The members of the advisory panel are appointed by the Governor in Council and have a specialized jurisdiction. They serve during good behaviour for a set term and must have relevant training or experience. The appointment of such an advisory panel seems to suggest that, from an institutional standpoint, the Minister and Crown corporations have relatively little or less expertise than the members of the advisory panel do, especially where questions of property values or effective rates are concerned.

[98] However, the tribunal in question and the advisory panel are not in a better position than this Court to answer the questions of jurisdiction and of law disputed by the parties.

Third factor

[99] The purpose of the PLTA is another factor in favour of a low degree of deference. Although the purpose of the PLTA is the fair and equitable administration of PILTs, in practice, their calculation and payment are subject to certain statutory or regulatory conditions, which leaves little practical discretion to the tribunal in question, or for that matter to the Minister or Crown corporations. However, every PILT application must be studied individually by the tribunal. Accordingly, in this case, it cannot be said that the decision in question raises a “polycentric” issue which would require the weighing of opposing interests.

Fourth factor

[100] Finally, the nature of the issue is the most important factor in this case.

[101] The dispute between the applicant and the respondent concerns above all the determination of the effective real property tax rate which is to be used as the basis for calculating the amount of the PLRT payable by the respondent to the applicant. The tribunal claims the discretion to replace the real property tax rate which is usually payable by other owners of non-residential immovables with a different rate unique to the respondent. This is essentially a jurisdictional issue.

[102] The issue of whether or not the tax levied by the taxing authority is a real property tax is a question of mixed law and fact.

[103] The issue of whether tribunal may subsequently reduce the amount of a PLRT to be made for a given taxation year on the ground that, in the tribunal' opinion, the amount of a PLRT already made for a previous taxation year was too high is also a jurisdictional issue.

[104] In all these cases, the Court will have to interpret the act and regulations in question to determine their exact scope, and this favours the standard of correctness.

[105] Where the standard of correctness applies, the Court may undertake its own reasoning process to arrive at the result it judges correct. This is what the undersigned did in this case. After analysing the applicable federal statutes and regulations and thoroughly reviewing the evidence on the record and the facts on which the tribunal based its decision, I conclude that the impugned decision of the tribunal must be set aside in part. In my opinion, the decision is contrary to law or otherwise erroneous in law.

11. The effective real property rate issue

[106] First of all, the jurisdiction granted to the tribunal under the CCPR to determine the effective rate must be characterized. The respondent is not in the same situation as an ordinary taxpayer who receives a municipal tax bill. As a physical or legal person, the taxpayer must pay the specified amount upon receipt of the tax bill. This amount is a debt owed to the municipality, and if the taxpayer does not pay it, the municipality may institute legal proceedings to recover it.

This is not possible in the case at bar, because in principle the PLTA does not confer any right to a payment.

[107] This being said, when it makes a payment, as explained above, the respondent is nevertheless legally required to comply with the regulations enacted by the Governor in Council under paragraph 9(1)(f) of the PLTA. Under subsection 7(1) of the CCPR, the amount of the PLRT made by a corporation included in schedules III and IV of the PLTA must not be less than the product of the following two factors:

- (a) the corporation effective rate in the taxation year applicable to the corporation property in respect of which the payment may be made; and
- (b) the corporation property value in the taxation year of that corporation property.

[108] However, section 2 of the CCPR specifies that the “corporation effective rate” is the rate of real property tax or of frontage or area tax “that a corporation would consider applicable” to its property if that property were taxable.

[109] The respondent submits that by using the expression “that a corporation would consider applicable”, the Governor in Council intended to give Crown corporations sweeping discretion in this area. Therefore, the respondent could ignore the real property tax rate applicable to other owners of taxable non-residential immovables and choose a real property tax rate which excludes the tax equivalent of the former business occupancy tax abolished by the applicant in 2003.

[110] I do not think that the use of the term “that a corporation would consider applicable” in the definition of “corporation effective rate” in section 2 of the CCPR confers the power to ignore the real property tax rate which usually applies to non-residential immovables. In my opinion, the use of the expression “that a corporation would consider applicable” simply reflects the fact that it is the corporation which determines the effective real property tax rate by referring to the real property tax rate prescribed by the taxing authority. If the Governor in Council had intended to grant the absolute discretion which the respondent claims with respect to determining the effective rate, he could have done so by using much broader terms, such as “the rate it considers to be reasonable”.

[111] It goes without saying that the tribunal must exercise its jurisdiction within the limits of the law. If the discretion granted to the respondent’s manager is to be discussed here, I would say that it is a “bound” discretion. Accordingly, the tribunal cannot ignore the real property tax rate which would otherwise apply to the respondent’s property if it were taxable property. The definition of “corporation effective rate” in the CCPR must be read in its entirety. In short, what must be determined is the real property tax rate “that a corporation would consider applicable to its corporation property if that property were taxable property”.

[112] The immovables and real property of the respondent are not taxable. If they were taxable, they would then fall within the category of non-residential immovables. For the years 2003, 2004 and 2005, the general real property tax rate applicable to non-residential immovables located in the Montréal sector was 4.172%, 4.0547%, and 3.8812% respectively.

[113] I agree that these rates represent a significant increase of the real property tax rate in comparison with previous years, since in 2002 the general real property tax rate was 1.9702% and the tax rate for non-residential immovables was 0.3384% in the former city of Montréal. This increase is explained by the repeal in 2003 of the former business tax. This is a legislative choice which belongs exclusively to the applicant, and the validity of this choice is not directly challenged in these proceedings.

[114] On this point, it is useful to refer to section 2 of the PLTA, which defines “real property tax” as meaning a tax of general application:

- (a) levied by a taxing authority on owners of real property or immovables or, if the owner is exempt from the tax, on lessees or occupiers of real property or immovables, other than those lessees or occupiers exempt by law, and
- (b) computed by applying a rate to all or part of the assessed value of taxable property.

[115] I note that in *Germain v. City of Montréal*, [1995] R.J.Q. 2313, affd [1997] 1 S.C.R.1144, the Quebec Court of Appeal ruled that the surtax levied by the respondent on non-residential immovables in Montréal was actually a direct tax and could not be considered to be an indirect tax simply because the owner might pass on the cost of the tax to a lessee. The Court stated the following at page 2322:

[TRANSLATION]

The surtax on non-residential immovables meets the criteria of a real property tax. It is levied on an immovable, must be paid by the owner, is set on the basis of the value of the immovable, and constitutes a charge on the owner.

[116] Since 2003, the applicant has chosen to apply a tax system which uses a variable-rate general real property tax. Under this system, a different real property tax rate applies to each of the four categories to which the assessment units belong. These categories are as follows: (1) non-residential immovables; (2) immovables containing six or more dwelling units; (3) serviced vacant lots; (4) residual.

[117] In the case at bar, the variable-rate general real property tax meets the criteria of a real property tax as set out in *Germain*: it is levied on immovables entered on the applicant's assessment roll; it is levied on the basis of the value appearing on the assessment role; and, finally, it is payable by the owner. The fact that some rates were increased to recover the tax equivalent of the former business occupancy tax—which incidentally had already been repealed by a large number of taxing authorities on the island of Montréal, including the former city of Montréal-Est, before the municipal mergers—does not change the eminently “real property” character of the new variable-rate tax. In fact, even the Minister uses the real property tax rate applicable to non-residential immovables, as set out in the applicant's by-laws, when calculating the amount of the PLRT payable under section 3 of the PLTA.

[118] I reject any argument to the effect that the payment of the tax equivalent, in the form of a PLRT, of a variable-rate real property tax based on the category of immovables applicable in this case would be contrary to the purpose of the PLTA and the provisions of the CCPR. The various constitutional arguments made by the respondent do not apply in this case.

[119] In this case, the tribunal chose the rate for immovables belonging to the “residual” class, which more or less corresponds to the former “base rate”. I am of the opinion not only that the impugned decision is contrary to law and erroneous in law, but also that the tribunal acted in a perverse or capricious manner in opting to use the “base” or “residual” rate, such that no matter what standard of review applies in this case, the final result is the same.

[120] Needless to say, the “residual” class includes immovables containing five dwelling units or less. The immovables in question do not meet this last criterion. Consequently, it is the rate for non-residential immovables that would apply to the respondent’s properties if they were non-taxable.

[121] According to the evidence on record, by reducing the effective real property tax rate by half, the decision of the tribunal allowed the respondent to save, at the applicant’s expense, the following amounts:

- | | | |
|-----|--------------------|-----------------|
| (a) | for the year 2003: | \$2,319,235.79 |
| (b) | for the year 2004: | \$2,611, 883.54 |
| (c) | for the year 2005: | \$2,582,969.40 |

Furthermore, the respondent’s March 2005 decision to retroactively reduce the PLRT for the 2003 and 2004 taxation years and to not make any PLRT for the 2005 taxation year is contrary to section 6 of the CCPR and to the very purpose of the PLTA, which provides for fair and equitable payments to municipalities.

[122] Therefore, the Court is warranted in intervening and setting aside the impugned decision rendered by the tribunal in March 2005.

12. The compensation issue

[123] There is nothing to indicate that when the respondent made payments to the applicant in March and September 2003 and in March 2004, the tribunal was, in fact, unable to make a final determination of the amounts of the PLRTs that the respondent would have to make to the applicant for each of the taxation years in question. The letters from Lise Powers that accompanied the payment cheques are rather terse and simply state that the payments in question should not be construed as an admission by the respondent as to the validity of the applications for payment made by the applicant. The respondent did not make any PLRT for the 2005 taxation year and instead claimed \$640,175.63 as an overpayment.

[124] When considering the legality of a decision, the Court usually looks to the evidence before the decision-maker at that time. On this point, the impugned decision, the content of which is reflected in the motion to institute proceedings in the Superior Court dated March 16, 2005, indicates that, in respect of the Port of Montréal lot, a real property value of \$3,100 was used to arrive at the amount of \$2,037,931.44 for the 2003 taxation year.

[125] However, in her affidavit signed and dated November 22, 2005, Ms. Powers used a real property value of \$246,800 in respect of the Port of Montréal lot to arrive at an amount of \$2,043,477.00 for the year 2003. Although Ms. Powers did not make any comment on this point, this real property value was submitted by the applicant to the respondent in its letter dated

November 25, 2003, which is the basis of the supplemental application for \$15,777.53. Thus, according to the calculations in the affidavit of Ms. Powers, the overpayment for 2003 was \$634,630.57 and not \$640,175.63.

[126] This being said, in her affidavit, Ms. Powers also mentions the calculations made by an expert who was hired by the respondent, but whose report was not admitted in evidence by the Court. He arrived at an amount of \$6,592,489 for the years 2003, 2004 and 2005. Ms. Powers added to this the amounts claimed by the applicant for what is commonly called the “blue tax” (*taxe bleue*), whose purpose is to create a dedicated fund for water supply infrastructure. Consequently, if the evidence subsequent to the impugned decision and the respondent’s own admission are taken into account, the amount of \$640,175.63 claimed under the supposed authority of section 4 of the CCPR as an overpayment is incorrect and should be \$42,294.98 instead.

[127] In any event, considering the conclusion which I reached above, and because the respondent could not legally disregard the real property tax rate generally applicable to owners of non-residential immovables, I conclude that the applicant could not retroactively revise its previous decisions for the years 2003 and 2004 or legally set up compensation in respect of the payments to be made for the second half of 2004 and all of 2005.

[128] Thus, the March 2005 decision of the tribunal is invalid and unlawful. As a result, the payments made in whole or in part to the applicant under sections 6 and 12 of the CCPR were unlawfully or unreasonably delayed by the respondent. Without determining whether or not section 4 of the CCPR applies, I conclude that the conditions for invoking this provision have not been met

in this case by the respondent and that, on the basis of the evidence on record, there was no overpayment in 2003, 2004 or 2005.

13. Conclusion and remedies

[129] For the reasons given above, the application for judicial review is allowed.

[130] In closing, it is important to clarify a few points regarding the remedies available to the Court under sections 18 and 18.1 of the FCA. On the one hand, the Court does not have jurisdiction to order the respondent or the tribunal to pay the applicant any amount of money whatsoever, including any interest at the legal rate. On the other hand, the respondent acts as a federal board, commission or other tribunal when it makes a decision, takes action, or makes a payment under the PLTA and the CCPR. Whenever such a decision, action or payment is contrary to law, the Court has jurisdiction to render a declaratory judgment against the respondent and order it to comply with the law, as well as to declare the impugned decision to be invalid or unlawful and refer the matter back to the respondent for determination in accordance with such directions as the Court considers to be appropriate (subsections 18(1) and 18.1(3) of the FCA).

[131] Therefore, it would be inappropriate to specify in the accompanying order the exact amounts of the PLRTs which the applicant could reasonably expect to receive from the respondent for 2003, 2004 and 2005. It is enough to simply quash the impugned decision and refer the matter back to the respondent so that the exact amounts may be calculated by the tribunal in compliance with the Act and the applicable regulations.

[132] It would also be inappropriate to make a final ruling on the issue of whether the tribunal has the authority to supplement the amounts calculated pursuant to section 7 of the CCPR to take into consideration the fact that the final payment was not made within the time limit prescribed by regulation. This issue was not debated before the Court by counsel for the parties. On this point, I simply note that a corporation must make a payment in lieu of real property tax (PLRT) within 50 days after receipt of an application for the payment. The amounts which the applicant could reasonably have expected to receive were not paid by the respondent within the time limit prescribed by regulation. Accordingly, the applicant should be allowed to adduce any evidence and make any additional submissions to the tribunal about the exact amounts to be paid as a PLRT, including the legal authority for and appropriateness of granting a supplement for the delay in payment.

[133] Following submissions by counsel, there will be no order as to costs.

ORDER

THE COURT DECLARES AND ORDERS that:

1. This application for judicial review is allowed in part.
2. For every taxation year after 2002, the effective rate applicable to the respondent's properties is the general real property tax rate applicable to non-residential immovables in the sector or sectors where the respondent's properties are located, to which is added, where appropriate, the special water tax rate applicable to immovables in that class.
3. For every taxation year after 2002, the respondent must not exclude from the calculation of the effective rate, or deduct from the payment in lieu of real property tax, the tax equivalent of the former business tax repealed by the applicant in 2002.
4. The impugned decision rendered by the tribunal in March 2005 is invalid and unlawful, and the respondent could not make adjustments in the amounts of \$2,319,235.79 for the year 2003, \$2,611,883.54 for the year 2004 and \$2,582,969.40 for the year 2005, nor could it claim under section 4 of the *Interim Payments and Recovery of Overpayments Regulations* (IPROR) the amount of \$640,175.63 as an overpayment, or any other amount calculated by the tribunal further to the impugned decision.
5. The impugned decision of the tribunal rendered in March 2005 is set aside, and the matter is referred back to the respondent so that the tribunal may render a new decision and so that the respondent may make a payment in lieu of real property tax (PLRT) pursuant to the Act and the applicable regulations within 50 days after the expiry of the time limit specified in paragraph 8 or after the date on which the applicant advises the

respondent that no additional submissions will be made or evidence adduced under paragraph 7, whichever deadline or event comes first, as the case may be.

6. The new decision of the tribunal and the amount of any PLRT made by the respondent shall be in accordance with the following declarations:
 - (a) The applicable effective rate for the year 2003 is 4.1722% per \$100 of assessment applied to the value of the respondent's immovables entered on the property assessment roll;
 - (b) The applicable effective rate for the year 2004 is 4.0947% per \$100 of assessment applied to the value of the respondent's immovables entered on the property assessment roll;
 - (c) The applicable effective rate for the year 2005 is 3.9532% per \$100 of assessment applied on the value of the respondent's immovables entered on the property assessment roll;
 - (d) The only rate substitutions or payment deductions authorized are those expressly set out in sections 7 and 9 of the *Crown Corporation Payments Regulations* (CCPR).
7. Before rendering a new decision, the tribunal must allow the applicant to adduce any additional evidence and make any additional submissions concerning the exact amount of the payment to be made under section 6 of the CCPR, including the legal authority for and appropriateness of granting any supplements for delayed payments, where applicable.

8. The additional evidence or submissions mentioned in paragraph 7 may be filed with the tribunal within 30 days after the date of this order.

9. There will be no order as to costs.

“Luc Martineau”

Judge

Certified true translation
Michael Palles

ANNEX

Payments in Lieu of Taxes Act, R.S.C. 1985, c. M-13

2. (1) In this Act,	2. (1) Les définitions qui suivent s'appliquent à la présente loi.
"taxation year" «année d'imposition » "taxation year" means the fiscal year of a taxing authority;	«année d'imposition » "taxation year" «année d'imposition » L'exercice de l'autorité taxatrice.
"assessment authority" «autorité évaluatrice » "assessment authority" means an authority that has power by or under an Act of Parliament or the legislature of a province to establish the assessed dimension or assessed value of real property or immovables;	«autorité évaluatrice » "assessment authority" «autorité évaluatrice » Autorité habilitée en vertu d'une loi fédérale ou provinciale à déterminer les dimensions fiscales ou la valeur fiscale d'un immeuble ou d'un bien réel.
"taxing authority" «autorité taxatrice » "taxing authority" means	«autorité taxatrice » "taxing authority" «autorité taxatrice »
(a) any municipality, province, municipal or provincial board, commission, corporation or other authority that levies and collects a real property tax or a frontage or area tax pursuant to an Act of the legislature of a province,	a) Municipalité ou province, organisme municipal ou provincial, ou autre autorité qui, sous le régime d'une loi provinciale, lève et perçoit un impôt foncier ou un impôt sur la façade ou sur la superficie;
(b) any council of a band within the meaning of the <i>Indian Act</i> that levies and collects a real property tax or a frontage or area tax pursuant to an Act of Parliament,	b) conseil de la bande — au sens de la <i>Loi sur les Indiens</i> — qui, sous le régime d'une loi fédérale, lève et perçoit un impôt foncier ou un impôt sur la façade ou sur la superficie;
(c) any band within the	c) bande — au sens de la <i>Loi</i>

- meaning of the *Cree-Naskapi (of Quebec) Act*, chapter 18 of the Statutes of Canada, 1984, that levies and collects a tax on interests in Category IA land or Category IA-N land as defined in that Act,
- (d) the Council within the meaning of the *Sechelt Indian Band Self-Government Act*, chapter 27 of the Statutes of Canada, 1986, if it levies and collects a real property tax or a frontage or area tax in respect of Sechelt lands, as defined in that Act,
- (e) a first nation named in Schedule II to the *Yukon First Nations Self-Government Act*, if it levies and collects a real property tax or a frontage or area tax in respect of settlement land, as defined in that Act, or in respect of lands in which an interest is transferred or recognized under section 21 of that Act,
- (f) the Nisga'a Nation or a Nisga'a Village, as defined in the Nisga'a Final Agreement given effect by the *Nisga'a Final Agreement Act*, if it levies and collects a real property tax or a frontage or area tax in respect of Nisga'a Lands, as defined in that Agreement,
- (g) the Tlicho Government, as defined in section 2 of the
- sur les Cris et les Naskapis du Québec*, chapitre 18 des Statuts du Canada de 1984 — qui lève et perçoit un impôt sur les droits sur les terres de catégorie IA ou IA-N, au sens de cette loi;
- d) le conseil — au sens de la *Loi sur l'autonomie gouvernementale de la bande indienne sechelte*, chapitre 27 des Statuts du Canada de 1986 —, s'il lève et perçoit un impôt foncier ou un impôt sur la façade ou sur la superficie sur les terres secheltes, au sens de la même loi;
- e) la première nation dont le nom figure à l'annexe II de la *Loi sur l'autonomie gouvernementale des premières nations du Yukon*, qui lève et perçoit un impôt foncier ou un impôt sur la façade ou sur la superficie d'une terre désignée, au sens de cette loi, ou d'une terre dont le droit de propriété lui est transféré ou lui est reconnu en vertu de l'article 21 de cette loi;
- f) la Nation nisga'a ou un village nisga'a, au sens de l'Accord définitif nisga'a mis en vigueur par la *Loi sur l'Accord définitif nisga'a*, qui lève et perçoit un impôt foncier ou un impôt sur la façade ou sur la superficie relativement aux Terres-Nisga'a, au sens de l'accord;
- g) le gouvernement tlicho, au sens de l'article 2 de la *Loi sur*

Tlicho Land Claims and Self-Government Act, if it levies and collects a real property tax or a frontage or area tax in respect of Tlicho lands, as defined in section 2 of the *Mackenzie Valley Resource Management Act*; or

les revendications territoriales et l'autonomie gouvernementale du peuple tlicho, qui lève et perçoit un impôt foncier ou un impôt sur la façade ou sur la superficie relativement aux terres tlichos, au sens de l'article 2 de la *Loi sur la gestion des ressources de la vallée du Mackenzie*;

(h) the Nunatsiavut Government, as defined in section 2 of the *Labrador Inuit Land Claims Agreement Act*, or an Inuit Community Government, as defined in section 1.1.1 of the Labrador Inuit Land Claims Agreement approved by that Act, if it levies and collects a real property tax or a frontage or area tax in respect of Labrador Inuit Lands or Community Lands, as defined in section 1.1.1 of that Agreement, as the case may be.

h) le gouvernement nunatsiavut, au sens de l'article 2 de la *Loi sur l'Accord sur les revendications territoriales des Inuit du Labrador*, ou l'administration de toute communauté inuite, au sens de la définition de «gouvernement de communauté inuite» à l'article 1.1.1 de l'accord sur des revendications territoriales approuvé aux termes de cette loi, s'il lève et perçoit un impôt foncier ou un impôt sur la façade ou sur la superficie relativement aux terres des Inuit du Labrador ou aux terres communautaires, selon le cas, au sens de l'article 1.1.1 de l'accord.

"real property tax"
« impôt foncier »
"real property tax" means a tax of general application to real property or immovables or any class of them that is

« impôt foncier »
"real property tax"
« impôt foncier » Impôt général :

(a) levied by a taxing authority on owners of real property or immovables or, if the owner is exempt from the tax, on lessees or occupiers of real property or immovables, other than those lessees or occupiers exempt by

a) levé par une autorité taxatrice sur les immeubles ou biens réels ou les immeubles ou biens réels d'une catégorie donnée et auquel sont assujettis les propriétaires et, dans les cas où les propriétaires bénéficient

law, and	d'une exemption, les locataires ou occupants autres que ceux bénéficiant d'une exemption;
(b) computed by applying a rate to all or part of the assessed value of taxable property;	b) calculé par application d'un taux à tout ou partie de la valeur fiscale des propriétés imposables.
"department" «ministères » "department" means	«ministères » "department" «ministères »
(a) any department named in Schedule I to the <i>Financial Administration Act</i> ,	a) Les ministères mentionnés à l'annexe I de la <i>Loi sur la gestion des finances publiques</i> ;
(a.1) any division or branch of the federal public administration named in Schedule I.1 to that Act,	a.1) tout secteur de l'administration publique fédérale mentionné à l'annexe I.1 de cette loi;
(a.2) any commission under the <i>Inquiries Act</i> designated as a department for the purposes of the <i>Financial Administration Act</i> ,	a.2) toute commission nommée sous le régime de la <i>Loi sur les enquêtes</i> désignée comme tel pour l'application de la <i>Loi sur la gestion des finances publiques</i> ;
(b) any corporation established by or under an Act of Parliament or performing a function on behalf of the Government of Canada included in Schedule I to this Act;	b) les personnes morales constituées sous le régime d'une loi fédérale ou exerçant des fonctions pour le compte du gouvernement du Canada et mentionnées à l'annexe I.
"Minister" «ministre » "Minister" means the Minister of Public Works and Government Services;	«ministre » "Minister" «ministre » Le ministre des Travaux publics et des Services gouvernementaux.
"federal property" «propriété fédérale » "federal property" means,	«propriété fédérale » "federal property" « propriété fédérale » Sous

subject to subsection (3),	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;
(b) real property and immovables owned by Her Majesty in right of Canada that are, by virtue of a lease to a corporation included in Schedule III or IV, under the management, charge and direction of that corporation,	b) immeuble ou bien réel appartenant à Sa Majesté du chef du Canada et relevant, en vertu d'un bail, d'une personne morale mentionnée aux annexes III ou IV;
(c) immovables held under emphyteusis by Her Majesty in right of Canada that are under the administration of a minister of the Crown,	c) immeuble dont Sa Majesté du chef du Canada est emphytéote et dont la gestion est confiée à un ministre fédéral;
(d) a building owned by Her Majesty in right of Canada that is under the administration of a minister of the Crown and that is situated on tax exempt land owned by a person other than Her Majesty in right of Canada or administered and controlled by Her Majesty in right of a province, and	d) bâtiment appartenant à Sa Majesté du chef du Canada, dont la gestion est confiée à un ministre fédéral mais qui est situé sur un terrain non imposable qui n'appartient pas à Sa Majesté du chef du Canada ou qui est contrôlé et administré par Sa Majesté du chef d'une province;
(e) real property and immovables occupied or used by a minister of the Crown and administered and controlled by Her Majesty in right of a province;	e) immeuble ou bien réel occupé ou utilisé par un ministre fédéral et administré et contrôlé par Sa Majesté du chef d'une province.
"taxable property" «propriété imposable » "taxable property" means real property and immovables in respect of which a person may	«propriété imposable » "taxable property" «propriété imposable » Immeuble ou bien réel pouvant être assujetti par une autorité

<p>be required by a taxing authority to pay a real property tax or a frontage or area tax;</p>	<p>taxatrice à un impôt foncier ou un impôt sur la façade ou sur la superficie.</p>
<p>"effective rate" «taux effectif » "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;</p>	<p>«taux effectif » "effective rate" «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.</p>
<p>"business occupancy tax" «taxe d'occupation commerciale » "business occupancy tax" means a tax levied on occupants in respect of their use or occupation of real property or immovables for the purpose of or in connection with a business;</p>	<p>«taxe d'occupation commerciale » "business occupancy tax" «taxe d'occupation commerciale » Impôt auquel sont assujettis les occupants d'un immeuble ou d'un bien réel du fait qu'ils l'occupent ou l'utilisent, directement ou indirectement, pour leurs activités commerciales ou professionnelles.</p>
<p>"property value" «valeur effective » "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 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;</p>	<p>«valeur effective » "property value" «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 serait applicable à une propriété fédérale si celle-ci était une propriété imposable.</p>
<p>"assessed value" «valeur fiscale » "assessed value" means the</p>	<p>«valeur fiscale » "assessed value" «valeur fiscale » Valeur</p>

value established for any real property or immovable by an assessment authority for the purpose of computing a real property tax;

(2) For the purposes of the definition “taxing authority” in subsection (1), where one authority collects a real property tax or a frontage or area tax that is levied by another authority, the authority that collects the tax shall be deemed to be the authority that levies and collects the tax.

...

2.1 The purpose of this Act is to provide for the fair and equitable administration of payments in lieu of taxes.

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

(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.

attribuée à un immeuble ou à un bien réel par une autorité évaluatrice pour le calcul de l’impôt foncier.

(2) Dans les cas où une autorité perçoit un impôt foncier ou un impôt sur la façade ou sur la superficie qui est levé par une autre autorité, c’est celle qui perçoit l’impôt qui, pour l’application de la définition de « autorité taxatrice » au paragraphe (1), est réputée être l’autorité qui lève et perçoit l’impôt.

[...]

2.1 La présente loi a pour objet l’administration juste et équitable des paiements versés en remplacement d’impôts.

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) 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.

(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.

...

4. (1) Subject to subsections (2) and (3) and 5(1) and (2), a payment referred to in paragraph 3(1)(a) shall not exceed the product of

(a) the effective rate in the taxation year applicable to the federal property in respect of which the payment may be made, and

(b) the property value in the taxation year of that federal property.

...

9. (1) The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and, without restricting the generality of the foregoing, may make regulations

(f) respecting any payment that may be made in lieu of a real property tax or a frontage or area tax by any corporation included in Schedule III or IV and, without limiting the generality of the foregoing, providing that any payment that may be made shall be determined on a basis at least equivalent to that provided in this Act;

(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.

[...]

4. (1) Sous réserve des paragraphes (2), (3) et 5(1) et (2), le paiement visé à l'alinéa 3(1)a ne peut dépasser le produit des deux facteurs suivants :

a) le taux effectif applicable à la propriété fédérale en cause pour l'année d'imposition;

b) la valeur effective de celle-ci pour l'année d'imposition.

[...]

9. (1) Le gouverneur en conseil peut, par règlement, prendre toutes mesures utiles à l'application de la présente loi et, notamment :

f) régir les paiements à verser par les personnes morales mentionnées aux annexes III ou IV en remplacement de l'impôt foncier ou de l'impôt sur la façade ou sur la superficie et prévoir, entre autres, que leur base de calcul sera au moins équivalente à celle prévue par la présente loi;

- | | |
|--|---|
| (g) respecting any payment that may be made in lieu of a business occupancy tax by every corporation included in Schedule IV; | g) régir les paiements à verser par les personnes morales mentionnées à l'annexe IV en remplacement de la taxe d'occupation commerciale; |
| 10. The Minister may make regulations | 10. Le ministre peut, par règlement : |
| (a) establishing a form of application for a payment under this Act; | a) établir la formule de demande à employer pour les paiements visés par la présente loi; |
| (b) respecting the making of an interim payment in respect of a payment under this Act; and | b) régir tout versement provisoire relatif à un paiement visé par la présente loi; |
| (c) respecting the recovery of any overpayments made to a taxing authority, including recovery by way of set-off against other payments under this Act to the taxing authority. | c) régir le recouvrement des trop-payés à une autorité taxatrice, y compris par déduction sur les paiements à verser à celle-ci en vertu de la présente loi. |
| 11. (1) Notwithstanding any other Act of Parliament or any regulations made thereunder, | 11. (1) Par dérogation à toute autre loi fédérale ou à ses règlements : |
| (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 any payment that it may make in lieu of a real property tax or a frontage or area tax; and | 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 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 | b) les personnes morales mentionnées à l'annexe IV qui sont exemptées de la taxe d'occupation commerciale sont |

any regulations made under paragraph 9(1)(g) respecting any payment that it may make in lieu of a business occupancy tax.

...

11.1 (1) The Governor in Council shall appoint an advisory panel of at least two members from each province and territory with relevant knowledge or experience to hold office during good behaviour for a term not exceeding three years, which term may be renewed for one or more further terms. The Governor in Council shall name one of the members as Chairperson.

(1.1) A member appointed under subsection (1) may be removed for cause by the Governor in Council.

(2) The advisory panel shall give advice to the Minister in the event that a taxing authority disagrees with the property value, property dimension or effective rate applicable to any federal property, or claims that a payment should be supplemented under subsection 3(1.1).

(3) The Chairperson shall supervise and direct the operation and functioning of the advisory panel.

(4) The Chairperson may establish divisions of the

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).

[...]

11.1 (1) Le gouverneur en conseil constitue un comité consultatif composé d'au moins deux membres de chaque province et territoire — dont un président — possédant une formation ou une expérience pertinentes. Les membres sont nommés à titre inamovible pour un mandat renouvelable d'au plus trois ans.

(1.1) Les membres du comité nommés en vertu du paragraphe (1) le sont sous réserve de révocation motivée par le gouverneur en conseil.

(2) Le comité a pour mandat de donner des avis au ministre relativement à une propriété fédérale en cas de désaccord avec une autorité taxatrice sur la valeur effective, la dimension effective ou le taux effectif ou sur l'augmentation ou non d'un paiement au titre du paragraphe 3(1.1).

(3) Le président assure la direction du comité.

(4) Le président peut constituer au sein du comité des

advisory panel, and all or any of the powers, duties and functions of the panel may be exercised or performed by all or any of those divisions.

(5) Each member of the advisory panel is entitled to be paid, unless the member is employed in the federal public administration,

(a) remuneration in an amount fixed by the Governor in Council for each day or part of a day that the member is performing duties under this Act; and

(b) reasonable travel and other expenses incurred in the course of their duties under this Act while absent from their ordinary place of residence.

...

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

formations pouvant exercer tout ou partie des attributions du comité.

(5) Sauf s'ils font partie de l'administration publique fédérale, les membres du comité reçoivent la rémunération fixée par le gouverneur en conseil pour les jours ou fractions de jour pendant lesquels ils accomplissent leurs fonctions et sont indemnisés des frais de déplacement et de séjour entraînés par l'accomplissement, hors de leur lieu ordinaire de résidence, de leurs fonctions.

[...]

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

Crown Corporation Payments Regulations, SOR/81-1030

Interpretation

2. In these Regulations,

"corporation effective rate" means the rate of real property tax or of frontage or area tax that a corporation would consider applicable to its corporation property if that property were taxable property; (taux effectif applicable à une société)

Définitions

2. Les définitions qui suivent s'appliquent au présent règlement.

«taux effectif applicable à une société» Le taux de l'impôt foncier ou de l'impôt sur la façade ou sur la superficie qui, de l'avis de la société, serait applicable à sa propriété si celle-ci était une propriété imposable. (corporation effective rate)

"corporation property value" means the value that a corporation would consider to be attributable by an assessment authority to its corporation property, without regard to any mineral rights or any ornamental, decorative or non-functional 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 de la propriété d'une société)

«valeur effective de la propriété d'une société» La valeur qui, de l'avis de la société, serait déterminée par une autorité évaluatrice, abstraction faite de tous droits miniers et de tous éléments décoratifs ou non-fonctionnels, comme base du calcul de l'impôt foncier applicable à sa propriété si celle-ci était une propriété imposable. (corporation property value)

PART I

PARTIE I

PAYMENTS IN LIEU OF A REAL PROPERTY TAX OR A FRONTAGE OR AREA TAX

PAIEMENTS VERSÉS EN REMPLACEMENT DE L'IMPÔT FONCIER OU DE L'IMPÔT SUR LA FAÇADE OU SUR LA SUPERFICIE

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 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.

6. Le paiement effectué par une société en remplacement de l'impôt foncier ou de l'impôt sur la façade ou sur la 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.

Calculation of Payments

Calcul des paiements

7. (1) Subject to subsection (2), a payment made by a corporation in lieu of a real property tax for a taxation year shall be not less than the product of

7. (1) Sous réserve du paragraphe (2), un paiement versé par une société en remplacement de l'impôt foncier pour une année d'imposition ne doit pas être inférieur au produit des deux facteurs suivants :

(a) the corporation effective rate in the taxation year applicable to the corporation property in respect of which the payment may be made; and

a) le taux effectif applicable à la société dans l'année d'imposition en cause à l'égard de la propriété de celle-ci pour laquelle le paiement peut être versé;

(b) the corporation property value in the taxation year of that corporation property.

b) la valeur effective de la propriété de la société pour cette année d'imposition.

(2) Where all or part of the real property tax levied by a taxing authority in a taxation year is for school purposes and is levied at different rates

(2) Dans le cas où tout ou partie de l'impôt foncier levé par une autorité taxatrice pour une année d'imposition est une taxe scolaire et que le taux de celle-ci varie :

(a) for taxpayers of different religious denominations, or

a) soit selon la religion du contribuable, ou

(b) for taxpayers of different religious denominations and for different classes of taxable property,

b) soit à la fois selon la religion du contribuable et selon la catégorie de propriétés imposables,

there shall be substituted for the corporation effective rate referred to in paragraph (1)(a), a rate equal to the aggregate of

le taux effectif applicable d'une société visé à l'alinéa (1)a) peut être remplacé par le taux qui est égal à la somme des éléments suivants :

d'une part :

- | | |
|--|--|
| <p>(c) that part of the corporation effective rate in the taxation year that is used in determining the amount of the real property tax that is levied for purposes other than school purposes,</p> <p>and</p> | <p>c) la partie du taux effectif applicable à une société qui s'applique à la partie de l'impôt foncier qui n'est pas une taxe scolaire,</p> <p>d'autre part, un taux de taxe scolaire déterminé de la façon suivante :</p> |
| <p>(d) if paragraph (a) applies, a rate for school purposes obtained by dividing</p> | <p>d) s'il s'agit du cas prévu à l'alinéa a), ce taux est le quotient résultant de la division du montant visé au sous-alinéa (i) par le montant visé au sous-alinéa (ii) :</p> |
| <p>(i) the portion of the real property tax levied for school purposes by the taxing authority in the taxation year, by</p> | <p>(i) la partie de l'impôt foncier qui constitue la taxe scolaire,</p> |
| <p>(ii) the assessed value of all taxable property under the jurisdiction of the taxing authority in respect of which such portion of the real property tax for school purposes is levied in the taxation year, or</p> | <p>(ii) le montant de l'évaluation de toutes les propriétés imposables qui sont du ressort de l'autorité taxatrice et qui constituent, pour l'année d'imposition, l'assiette de la partie de l'impôt foncier qui est une taxe scolaire,</p> |
| <p>(e) if paragraph (b) applies, a rate for school purposes for each class of taxable property determined by dividing</p> | <p>e) s'il s'agit du cas prévu à l'alinéa b), le taux de la taxe scolaire qui s'applique à chaque catégorie de propriétés imposables est le quotient résultant de la division du montant visé au sous-alinéa (i) par le montant visé au sous-alinéa (ii) :</p> |
| <p>(i) the portion of the real property tax levied for school</p> | <p>(i) la partie de l'impôt foncier qui constitue la taxe scolaire</p> |

purposes by the taxing authority in respect of property of such class in the taxation year, by

pour la catégorie concernée,

(ii) the assessed value of all taxable property of such class under the jurisdiction of the taxing authority in respect of which such portion of the real property tax for school purposes is levied in the taxation year.

(ii) le montant de l'évaluation de toutes les propriétés imposables de cette catégorie qui sont du ressort de l'autorité taxatrice et qui constituent, pour l'année d'imposition, l'assiette de la partie de l'impôt foncier qui est une taxe scolaire.

Deductions

Déductions

9. In determining the amount of a payment for a taxation year under section 7, there may be deducted

9. Dans le calcul du paiement visé à l'article 7 pour une année d'imposition donnée, peut être déduit :

(a) if there is in effect a special arrangement for the provision or financing of an education service by the corporation, the amount established by that arrangement;

a) au titre d'un service d'enseignement que la société fournit ou finance, aux termes d'une entente spéciale en vigueur, la somme calculée conformément à celle-ci;

(b) if there is in effect a special arrangement for an alternative means of compensating a taxing authority, or a body on behalf of which the authority collects a real property tax, for providing a service, the amount established by that arrangement;

b) au titre d'un autre service pour lequel l'autorité taxatrice ou l'organisme pour le compte duquel elle perçoit un impôt foncier sont dédommés en vertu d'une entente spéciale en vigueur, la somme calculée conformément à celle-ci;

(c) if a taxing authority, or a body on behalf of which the authority collects a real property tax, is, in the opinion of the corporation, unable or unwilling to provide the

c) au titre d'un service — non visé par une entente spéciale — que, selon la société, l'autorité taxatrice ou l'organisme pour le compte duquel elle perçoit un impôt foncier ne veulent ou ne

corporation property with a service, and no special arrangement exists, an amount that, in the opinion of the corporation, does not exceed reasonable expenditures incurred or expected to be incurred by the corporation to provide the service; and

(d) an amount that, in the opinion of the corporation, is equal to any cancellation, reduction or refund in respect of a real property tax that the corporation considers would be applicable to the taxation year in respect of its corporation property if it were taxable property.

peuvent pas fournir à une propriété de la société, une somme qui, selon la société, ne dépasse pas les frais raisonnables qu'elle a engagés ou estime devoir engager pour fournir le service;

d) une somme égale, selon la société, à tout remboursement, suppression ou réduction de l'impôt foncier qui, pour l'année d'imposition, s'appliquerait, selon elle, à ses propriétés si celles-ci étaient des propriétés imposables.

Time and manner of payments

12. (1) Subject to subsection (2), where a corporation makes a payment in accordance with section 6, it shall be made

(a) only to the taxing authority for the area in which the corporation property is situated; and

(b) within 50 days after receipt of an application for the payment.

(2) Where a corporation is unable to make a final determination of the amount of a payment made in accordance with section 6 within the time referred to in paragraph (1)(b), the corporation shall make,

Modalités de versement

12. (1) Sous réserve du paragraphe (2), le paiement effectué par une société en application de l'article 6 est versé :

a) uniquement à l'autorité taxatrice du lieu où la propriété est située;

b) dans les cinquante jours suivant la réception de la demande de paiement.

(2) Lorsqu'une société est incapable de déterminer de façon définitive le montant du paiement à verser aux termes de l'article 6 au cours du délai visé à l'alinéa (1)b), elle doit, au cours de ce délai, effectuer un

<p>within that time, an interim payment that corresponds to the estimated total payment to be made.</p>	<p>versement provisoire qui correspond au montant estimatif total du paiement.</p>
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Advisory panel

Comité consultatif

12.1 Section 11.1 of the Act applies to a corporation with respect to payments in lieu of a real property tax or a frontage or area tax, as if the reference to “the Minister” were a reference to “a corporation” and any reference to “federal property” were a reference to “corporation property”.

12.1 L’article 11.1 de la Loi s’applique à toute société en ce qui touche les paiements versés en remplacement de l’impôt foncier ou de l’impôt sur la façade ou sur la superficie, les mentions du ministre et des propriétés fédérales valant respectivement mention de la société et des propriétés de la société.

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

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

b) faire, à l’égard du paiement, un versement provisoire ne dépassant pas la somme visée à l’alinéa a).

paragraph (a).

4. If any payment made to a taxing authority under the Act 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

(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

(b) recovered as a debt due to Her Majesty in right of Canada by the taxing authority.

4. Si le montant d'un paiement versé à une autorité taxatrice 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) portés en diminution de tout autre paiement pouvant être versé à l'autorité taxatrice en vertu de cet article ou du présent règlement;

b) recouvrés à titre de créance de Sa Majesté du chef du Canada.

Municipal Taxation Act, R.S.Q. c. F-2.1:

CHAPTER V

CONTENTS OF THE
PROPERTY ASSESSMENT
ROLL

DIVISION I

UNITS OF ASSESSMENT

§ 1. — General rule

Immovables.

31. Subject to Division IV, the

CHAPITRE V

CONTENU DU RÔLE
D'ÉVALUATION FONCIÈRE

SECTION I

UNITÉ D'ÉVALUATION

§ 1. — Règle générale

Immeubles.

31. Sous réserve de la section

immovables situated in the territory of a local municipality shall be entered on the property assessment roll.	IV, les immeubles situés sur le territoire d'une municipalité locale sont portés au rôle d'évaluation foncière.
“roll”.	«rôle».
For the purposes of this chapter, the word “roll” means the property assessment roll.	Pour l'application du présent chapitre, le mot «rôle» signifie le rôle d'évaluation foncière.
DIVISION III	SECTION III
OTHER PARTICULARS	AUTRES MENTIONS
Taxable value.	Valeur imposable.
55. Whenever the law provides that only part of the value of an immovable is taxable or that it is exempt from property taxes, the roll must state the taxable value of the immovable or the fact that it is exempt, as the case may be.	55. Chaque fois que la loi dispose que seule une partie de la valeur d'un immeuble est imposable ou qu'il est exempt de taxe foncière, le rôle fait état de la valeur imposable de cet immeuble ou du fait de son exemption, selon le cas.
Reference to legislative source.	Renseignement inscrit.
All information entered pursuant to this section must be accompanied with a reference to its legislative source.	Chaque renseignement inscrit en vertu du présent article est accompagné d'une mention de sa source législative.
CHAPTER X	CHAPITRE X
ADMINISTRATIVE REVIEW AND PROCEEDING BEFORE THE TRIBUNAL	RÉVISION ADMINISTRATIVE ET RECOURS DEVANT LE TRIBUNAL
DIVISION I	SECTION I
ADMINISTRATIVE REVIEW	RÉVISION ADMINISTRATIVE

Agreement.

138.4. The applicant may, where the applicant has not brought a proceeding under section 138.5, enter into an agreement with the assessor on an alteration to the roll.

Time limit.

The agreement may be entered into

1) on or before the thirtieth day following the sending by the assessor of the writing required under the first paragraph of section 138.3 ;

2) before the expiry of the applicable time limit for the sending of the writing required under the first paragraph of section 138.3, if the assessor has not sent the writing within that time limit.

Date of effect.

The agreement must be in writing and specify the date from which the alteration to the roll resulting from the agreement is to have effect.

Agreement null.

An agreement entered into after the expiry of the time limit set out in the second paragraph is null.

DIVISION II

PROCEEDINGS BEFORE

Modification au rôle.

138.4. Le demandeur peut, s'il n'a pas formé le recours prévu à l'article 138.5, conclure avec l'évaluateur une entente sur une modification au rôle.

Entente.

L'entente peut être conclue :

1° au plus tard le trentième jour qui suit l'expédition par l'évaluateur de l'écrit prévu au premier alinéa de l'article 138.3;

2° avant l'expiration du délai applicable pour l'expédition de l'écrit prévu au premier alinéa de l'article 138.3, si l'évaluateur ne l'a pas expédié dans ce délai.

Écrit.

L'entente doit être écrite et prévoir la date de prise d'effet de la modification au rôle qui en découle.

Nullité.

Toute entente conclue après l'expiration du délai prévu au deuxième alinéa est nulle.

SECTION II

RECOURS DEVANT LE

THE TRIBUNAL

TRIBUNAL

Proceeding before Tribunal.

Recours au Tribunal.

138.5. The person having filed the application for review may, if the person has not entered into an agreement under section 138.4, bring before the Tribunal a proceeding relating to the same subject-matter as the application.

138.5. La personne qui a fait la demande de révision peut, si elle n'a pas conclu une entente en vertu de l'article 138.4, former devant le Tribunal un recours ayant le même objet que la demande.

Filing of complaint.

Délai.

If such an agreement is entered into, the following persons other than the person having made the application for review may, in the circumstances mentioned, if applicable, bring a proceeding before the Tribunal to contest the alteration arising from the agreement:

Si une telle entente est conclue, les personnes suivantes autres que celle qui a fait la demande de révision peuvent, dans les circonstances mentionnées le cas échéant, former un recours devant le Tribunal pour contester la modification découlant de l'entente:

1) the person in whose name the unit of assessment or business establishment concerned by the alteration is entered on the roll or was entered thereon immediately before the alteration;

1° la personne au nom de laquelle l'unité d'évaluation ou l'établissement d'entreprise visé par la modification est inscrit au rôle ou l'était immédiatement avant celle-ci;

2) the person who, as a result of the alteration, was entered on the roll as lessee or occupant of the unit of assessment;

2° la personne qui, par l'effet de la modification, a été inscrite au rôle à titre de locataire ou d'occupant de l'unité d'évaluation;

3) the local municipality, the school board or the municipal body responsible for assessment concerned, if the alteration concerns a unit of assessment or

3° la municipalité locale, la commission scolaire ou l'organisme municipal responsable de l'évaluation intéressé, si la modification

a business establishment that is not entered on the roll in its name and if the proceeding is based on a question of law;

concerne une unité d'évaluation ou un établissement d'entreprise qui n'est pas inscrit au rôle à son nom et si le recours est fondé sur une question de droit;

4) the Minister, if the alteration concerns an entry used in calculating a sum payable by the Government under section 210, 254 or 257;

4° le ministre, si la modification concerne une inscription utilisée dans le calcul d'une somme payable par le gouvernement en vertu de l'un des articles 210, 254 et 257;

5) (subparagraph repealed).

5° (paragraphe abrogé).

...

[...]

CHAPTER XVIII

CHAPITRE XVIII

FISCAL PROVISIONS

DISPOSITIONS FISCALES

DIVISION I

SECTION I

TAXABLE IMMOVABLES

IMMEUBLES IMPOSABLES

§ 2. — Exceptions

§ 2. — Exceptions

Immovables exempt from tax.

Immeubles exempts de taxes.

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 immobilière du Québec;

1° un immeuble compris dans une unité d'évaluation inscrite au nom de l'État ou de la Société immobilière du Québec;

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;

...

[...]

Taxable immovable.

Paiement de taxes foncières.

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 immobilière du Québec, 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.

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 immobilière du Québec, les taxes foncières auxquelles cet immeuble serait assujéti 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.

...

[...]

DIVISION III

SECTION III

BUSINESS TAX

TAXE D'AFFAIRES

Business tax.

Taxe d'affaires.

232. Every local municipality

232. Toute municipalité locale

may, by by-law, impose a business tax on any person entered on its roll of rental values carrying on, for pecuniary gain or not, an economic or administrative activity in matters of finance, trade, industry or services, a calling, an art, a profession or any other activity constituting a means of profit, gain or livelihood, except an employment or charge.

peut, par règlement, imposer une taxe d'affaires sur toute personne inscrite à son rôle de la valeur locative qui exerce, à des fins lucratives ou non, une activité économique ou administrative en matière de finance, de commerce, d'industrie ou de services, un métier, un art, une profession ou toute autre activité constituant un moyen de profit, de gain ou d'existence, sauf un emploi ou une charge.

Imposition.

Imposition.

The tax shall be imposed, according to the roll, on the occupant of each business establishment on the basis of its rental value, at the rate fixed in the by-law.

La taxe est imposée, selon le rôle, à l'occupant de chaque établissement d'entreprise sur la base de la valeur locative de celui-ci, au taux fixé dans le règlement.

[...]

[...]

Exemptions.

Taxes d'affaires.

236. No business tax may be imposed by reason of

236. La taxe d'affaires ne peut être imposée en raison:

1) an activity carried on by

1° d'une activité exercée par:

(a) the State or the Crown in right of Canada, a mandatary of the Crown in right of Canada, the Société immobilière du Québec, the Corporation d'hébergement du Québec, the Régie des installations olympiques, the Agence métropolitaine de transport, the Société de la Place des Arts de Montréal or the École nationale de police du Québec;

a) l'État ou la Couronne du chef du Canada, un mandataire de la Couronne du chef du Canada, la Société immobilière du Québec, la Corporation d'hébergement du Québec, la Régie des installations olympiques, l'Agence métropolitaine de transport, la Société de la Place des Arts de Montréal ou l'École nationale de police du Québec;

- (b) a local municipality, a community, a regional county municipality, a mandatory of any such body or a transit corporation whose budget is, by law, submitted to an elected municipal body;
- (c) a school board, a general and vocational college, a university establishment within the meaning of the University Investments Act (chapter I-17) or the Conservatoire de musique et d'art dramatique du Québec;
- (d) a private educational institution operated by a non-profit body under a permit issued under the Act respecting private education (chapter E-9.1), a private educational institution accredited for purposes of subsidies under that Act or an institution whose instructional program is the subject of an international agreement within the meaning of the Act respecting the Ministère des Relations internationales (chapter M-25.1.1);
- (e) a public institution within the meaning of the Act respecting health services and social services (chapter S-4.2), a health and social services agency referred to in that Act or a public institution within the meaning of the Act respecting health services and social services for Cree Native persons (chapter S-5);
- b) une municipalité locale, une Communauté, une municipalité régionale de comté, un mandataire de l'une d'elles ou une société de transport dont le budget, selon la loi, est soumis à un collège d'élus municipaux;
- c) une commission scolaire, un collège d'enseignement général et professionnel, un établissement universitaire au sens de la Loi sur les investissements universitaires (chapitre I-17) ou le Conservatoire de musique et d'art dramatique du Québec;
- d) un établissement d'enseignement privé tenu par un organisme à but non lucratif conformément à un permis délivré en vertu de la Loi sur l'enseignement privé (chapitre E-9.1), un établissement d'enseignement privé agréé aux fins de subventions en vertu de cette loi ou un établissement dont le régime d'enseignement est l'objet d'une entente internationale au sens de la Loi sur le ministère des Relations internationales (chapitre M-25.1.1);
- e) un établissement public au sens de la Loi sur les services de santé et les services sociaux (chapitre S-4.2), une agence de la santé et des services sociaux visée par cette loi ou un établissement public au sens de la Loi sur les services de santé et les services sociaux pour les autochtones cris (chapitre S-5);

- | | |
|--|---|
| <p>(f) a private institution defined in paragraph 3 of section 99 or in section 551 of the first Act referred to in subparagraph e of this paragraph or defined in section 12 of the second Act referred to, under a permit issued to the institution under the Act that is applicable to the institution, and which is an activity inherent in the mission of a local community service centre, a residential and long-term care centre or a rehabilitation centre within the meaning of the first Act referred to or of a reception centre within the meaning of the second Act referred to;</p> | <p>f) un établissement privé visé au paragraphe 3° de l'article 99 ou à l'article 551 de la première loi mentionnée au sous-paragraphe e du présent paragraphe ou visé à l'article 12 de la seconde, conformément à un permis délivré à l'établissement en vertu de celle de ces lois qui lui est applicable, et qui constitue une activité propre à la mission d'un centre local de services communautaires, d'un centre d'hébergement et de soins de longue durée ou d'un centre de réadaptation au sens de la première de ces lois ou d'un centre d'accueil au sens de la seconde;</p> |
| <p>(g) a cooperative or non-profit organization under a childcare centre or day care centre permit or an accredited home childcare coordinating office pursuant to the Educational Childcare Act (chapter S-4.1.1);</p> | <p>g) une coopérative ou un organisme à but non lucratif conformément à un permis de centre de la petite enfance ou de garderie ou conformément à un agrément à titre de bureau coordonnateur de la garde en milieu familial qui lui a été délivré en vertu de la Loi sur les services de garde éducatifs à l'enfance (chapitre S-4.1.1);</p> |
| <p>(h) a person recognized as a person responsible for home childcare under the Act mentioned in subparagraph g, and which is an activity inherent in the mission of such a person;</p> | <p>h) une personne reconnue à titre de responsable d'un service de garde en milieu familial, en vertu de la loi mentionnée au sous-paragraphe g, et qui constitue une activité propre à la mission d'un tel responsable;</p> |
| <p>2) an activity carried on by a public body or any person mentioned in section 204 for the purpose of allowing the use</p> | <p>2° de l'activité d'un organisme public ou d'une autre personne mentionnée à l'article 204 exercée dans le but de fournir</p> |

of a public road or works forming part of it, or the use of works used for the protection of wildlife or of the forest and situated in an unorganized territory;	l'usage d'une voie publique ou d'un ouvrage qui en fait partie, ou l'usage d'un ouvrage utilisé pour la protection de la faune ou de la forêt et situé dans un territoire non organisé;
3) an activity carried on by an episcopal corporation, a fabrique, a religious institution or a Church constituted as a legal person, as part of the exercise of public worship;	3° de l'activité d'une corporation épiscopale, d'une fabrique, d'une institution religieuse ou d'une Église constituée en personne morale qui entre dans le cadre de l'exercice du culte public;
4) an activity carried on without pecuniary gain by a religious institution or a fabrique in the immediate pursuit of the religious or charitable objects for which it was established;	4° de l'activité exercée dans un but non lucratif dans la poursuite immédiate de ses objets constitutifs de nature religieuse ou charitable par une institution religieuse ou une fabrique;
5) an activity carried on by the recognized person in the immovable in respect of which the recognition under section 243.4 has been granted and is in force;	5° de l'activité exercée, dans l'immeuble visé par une reconnaissance en vigueur et prévue à l'article 243.4, par la personne reconnue;
6) (paragraph replaced) ;	6° (paragraphe remplacé) ;
7) (paragraph replaced) ;	7° (paragraphe remplacé) ;
8) (paragraph repealed) ;	8° (paragraphe abrogé) ;
9) the operation of a cemetery without pecuniary gain;	9° de l'exploitation dans un but non lucratif d'un cimetière;
10) an activity carried on for agricultural or horticultural exhibition purposes by an agricultural or horticultural society or by any person mentioned in section 204;	10° de l'activité exercée à des fins d'exposition agricole ou horticole par une société d'agriculture ou d'horticulture ou par une autre personne mentionnée à l'article 204;

- | | |
|---|---|
| <p>11) an activity related to an agricultural operation registered in accordance with a regulation adopted pursuant to section 36.15 of the Act respecting the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation (chapter M-14);</p> | <p>11° de l'activité reliée à une exploitation agricole enregistrée conformément à un règlement adopté en vertu de l'article 36.15 de la Loi sur le ministère de l'Agriculture, des Pêcheries et de l'Alimentation (chapitre M-14);</p> |
| <p>12) an activity by reason of which a forest producer's certificate is issued pursuant to section 120 of the Forest Act (chapter F-4.1);</p> | <p>12° de l'activité en raison de laquelle est délivré un certificat de producteur forestier en application de l'article 120 de la Loi sur les forêts (chapitre F-4.1);</p> |
| <p>13) an activity consisting in furnishing to others a residential immovable other than an immovable for which the operator is required to hold a classification certificate issued under the Act respecting tourist accommodation establishments (chapter E-14.2), or in furnishing to the persons residing in the immovable or their guests such goods or related service as are reserved for them, to the extent that the activity is carried on in the immovable or dependencies thereof where the goods or related service are furnished;</p> | <p>13° de l'activité consistant à fournir à autrui un immeuble résidentiel autre qu'un immeuble dont l'exploitant doit être titulaire d'une attestation de classification délivrée en vertu de la Loi sur les établissements d'hébergement touristique (chapitre E-14.2) ou consistant à fournir aux personnes qui résident dans l'immeuble ou à leurs visiteurs un bien ou un service connexe qui leur est réservé, dans la mesure où l'activité est exercée dans l'immeuble ou dans ses dépendances où le bien ou le service connexe est fourni;</p> |
| <p>14) an activity carried on by the Société du Palais des congrès de Montréal in the immovable designated under that name.</p> | <p>14° d'une activité exercée par la Société du Palais des congrès de Montréal dans l'immeuble désigné sous ce nom.</p> |

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-631-05

STYLE OF CAUSE: CITY OF MONTRÉAL, applicant and CANADIAN BROADCASTING CORPORATION, respondent and ATTORNEY GENERAL OF CANADA, intervener

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 29, 2007

REASONS FOR ORDER AND ORDER BY: The Honourable Mr. Justice Martineau

DATED: July 5, 2007

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