Federal Court  Cour fédérale

Date: 20191121

Docket: T-1337-18

Citation: 2019 FC 1481

[REVISED ENGLISH TRANSLATION]

Montréal, Quebec, November 21, 2019

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

VILLE DE LAVAL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Under section 125 of the *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (UK), no lands or property belonging to Canada shall be liable to provincial taxation. A municipality that levies and collects real property taxes or frontage or area taxes can nonetheless expect to receive annual payments in lieu of taxes under subsection 3(1) of the *Payments in Lieu of Taxes Act*, RSC, 1985, c M-13 [PILTA], without the integrity of the federal government's tax immunity being compromised.

[2] The Payment in Lieu of Taxes [PILT] program is administered by Public Services and Procurement Canada [PSPC or decision-maker] on behalf of the Minister of Public Works and Government Services [Minister]. In this case, on June 5, 2018, PSPC authorized a payment of $1,246,097.82 to the applicant, Ville de Laval, as a payment in lieu of taxes for 2018, which included $1,130,785.83 in lieu of real property tax. This dispute relates to the legality of excluding the tunnels identified under code 000TUN in the Schedule of Federal Property Values and Final PILT Calculations [Schedule] enclosed with the impugned decision.

[3] The evidence on the record mentions both [TRANSLATION] "service tunnels" and [TRANSLATION] "underground tunnels" at the Laval penitentiary and training centre [Laval Complex]. The tunnels in question contain the piping needed for the mechanical systems for steam supply, plumbing, electricity, water supply and sewers. They also connect the various buildings of the Laval Complex and essentially give maintenance staff unrestricted access to them. Considering that the tunnels' assessed value is $1,242,365 and that the taxation rate is 0.030093, the applicant claims that it loses $37,386.49 in revenues annually.

[4] The Attorney General of Canada, who is opposing this application for judicial review, is correctly named as the respondent. Therefore, the Correctional Service of Canada and PSPC should be struck from the style of cause (Rule 303 of the *Federal Courts Rules*, SOR/98-106).

[5] According to the applicant, the applicable standard of review is correctness in this case. In short, there is no privative clause; the issue is a pure question of law regarding which the

decision-maker has no more expertise than this Court, and there was no discrete and special administrative regime (*Corporation of the City of Mississauga v Canada (Public Works and Government Services)*, 2011 FC 162 at paras 22–25 [*Mississauga*]). This case does not involve a determination of the assessed value or the taxation rate, to which the reasonableness standard applies based on the case law (see *Montréal (City) v Montreal Port Authority*, 2010 SCC 14 at paras 12–23 (in general) and at paras 36–38 (standard of review) [*Montreal Port Authority*]; *Halifax (Regional Municipality) v Canada (Public Works and Government Services)*, 2012 SCC 29 at paras 10–13 (in general) and at paras 37–44 (standard of review)).

[6] With respect, the applicant did not rebut the well-established presumption that, when the administrative decision-maker applies or interprets its home statute, the reasonableness standard applies (*Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at paras 27–28). Specifically, I am satisfied that the issue of excluding the tunnels from the definition of "federal property" is a nuts-and-bolts question of statutory interpretation confined to a particular context within the decision-maker's specialized expertise, to which the reasonableness standard of review would in theory apply (see *McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at paras 28–30 [*McLean*]).

[7] Section 3 of the PILTA clearly confers on the Minister the task of determining the amount of the payment in lieu of taxes to ultimately be paid to a taxing authority. This administrative determination is contingent on whether a real property or an immovable is eligible. In order to exercise his or her jurisdiction, the Minister must therefore interpret the

PILTA to determine whether a real property or an immovable is “federal property”. In 2010, the Supreme Court itself applied the reasonableness standard to the issue of excluding a work found in Schedule II to the PILTA from the definition of “federal property” (*Montreal Port Authority* at para 48).

[8] In this case, the decision-maker determined that the Laval Complex tunnels are excluded from the definition of “federal property” under paragraph 2(3)(b) of the PILTA because they are works specifically mentioned in section 12 of Schedule II to the PILTA (“Snow sheds, tunnels, bridges, dams”) [emphasis added]. For the reasons that follow, the applicant did not satisfy me that the decision to exclude the Laval Complex tunnels is unreasonable.

[9] The specific reason why the Laval Complex tunnels are excluded is clear and transparent. That said, although the works in question are indeed tunnels, the applicant is nonetheless asking the Court to declare today that the word “tunnels” found in section 12 of Schedule II to the PILTA does not include this particular type of tunnel. Relying on the *noscitur a sociis* rule of interpretation, the applicant notes that the words “snow sheds”, “bridges” and “dams”, which are also found in section 12 refer to [TRANSLATION] “large transportation or civil engineering infrastructure”, which the respondent is correct in challenging.

[10] The applicant is also relying on section 4.1 of Schedule II to the PILTA, which reads as follows:

4.1(1) Fortifications including,	4.1(1) Fortifications,

without limiting the generality of the foregoing, improvements such as ramparts, retaining walls, stockades and outerworks composed of Redan, Salient, Bastion, Demi-Bastion, Tenaille, Curtain and similar elements	notamment les améliorations telles que les suivantes : rempart, mur de soutènement, palissade et travaux externes, constitués de redan, saillant, bastion, demi-bastion, tenaille, courtine et éléments semblables
(2) For the purpose of this item, the following are components of fortifications: escarp walls, courtyard walls, postern tunnels, sallyports, underground tunnels, underground magazines, earth ramparts, gun emplacements, parapets, banquettes, fraises, terre-plein, drawbridges, entrance gates, guérite, machicolation, musketry galleries, ditches, moats, counterscarp galleries, caponniers, mine galleries, glacis, ravelin, reverse fire galleries, entrance cuttings, stockades, embrasures, barbettes, casemates, demi-casemates and lunettes	(2) Pour l'application du présent article, les composantes des fortifications sont les suivantes : mur d'escarpe, mur sur cour, poterne, sallyport, tunnel souterrain, magasin souterrain, rempart en terre, plateforme de canon, parapet, banquette, fraise, terre-plein, pont-levis, porte d'entrée, guérite, mâchicoulis, galerie des mousquets, fossé, douve, galerie de la contrescarpe, caponnière, contre-mine, glacis, ravelin, galerie de tir intérieur, entrée encastrée, palissade, embrasure, barbette, casemate, demi-casemate et lunette
[Emphasis added]	[Je souligne]

[11] Thus, according to the applicant, since the Governor in Council went to the trouble of specifying in subsection 4.1(2) that "tunnels" are part of "fortifications", that means that the word "tunnels" in section 12 of Schedule II does not apply to all tunnels without exception, especially since section 8 of Schedule II specifically excludes "[p]enitentiary walls [and] fencing". I agree with the respondent that sections 4.1 and 8 of Schedule II have no specific usefulness for interpreting the scope of section 12 of Schedule II.

[12] The applicant did not satisfy me that excluding the Laval Complex tunnels is not a "possible, acceptable outcome" (*Dunsmuir v New Brunswick*, 2008 SCC 9). The decision-maker's conclusion is based on the wording of paragraph 2(3)(b) of the PILTA, which refers to "any structure, work, machinery or equipment" included in Schedule II. However, "tunnels" are specifically mentioned in section 12. The parties agree that, in everyday speech, the works in question are indeed tunnels, that is, structures or underground passageways connecting various buildings in the Laval Complex.

[13] In this case, the decision-maker's conclusion is in harmony with the grammatical and ordinary sense of the word "tunnels". The applicant is relying on the *noscitur a sociis* maxim, but the fundamental problem is that the applicant is misconceiving section 12 of Schedule II in characterizing all of its elements as being [TRANSLATION] "large transportation and civil engineering infrastructure". However, nothing indicates that the various works set out in that provision are large or small or that they are related to transportation or roads, as suggested by the applicant.

[14] The general structure of subsection 2(3) and of Schedule II to the PILTA is to list various exclusions concurrently (and non-exclusively, of course). Thus, several real properties and immovables may be excluded from the definition of "federal property" under either of these provisions. It would be wrong to seek at all costs logic in each and every exclusion added by order in council to Schedule II to the PILTA (sections 1 to 13 of Schedule II). Specifically, it is difficult to find a common denominator in the list in section 12 of Schedule II other than the fact

that all its components are “structure[s]” or “work[s]” specifically excluded from the definition of “federal property” by paragraph 2(3)(b) of the PILTA.

[15] What rational link is there between snow sheds and dams? I do not know, and I do not believe that the decision-maker can know the answer. Indeed, dams, bridges and tunnels can all vary a great deal in size and significance. Besides, dams are not part of transportation or road infrastructure. With respect to section 4.1 of Schedule II, it is simply a list clarifying the specific components for a particular type of excluded work, “fortifications” (see the Regulatory Impact Analysis Statement, *Canada Gazette*, Part II, Vol 135, No 24, pp 2639–2641, SOR-2001-494). Lastly, section 8 of Schedule II excludes only penitentiary walls and fencing (as opposed to walls and fencing of other federal buildings).

[16] I am also aware that a statutory or regulatory provision does not always lend itself to several reasonable interpretations. When the usual statutory interpretation methods lead to only one reasonable interpretation, but the administrative decision-maker retains a different one, that one is necessarily unreasonable, and no right to deference can justify affirming it. In that case, the “possible, acceptable outcomes” are necessarily limited to one, which the administrative decision-maker must adopt (*McLean* at para 34). In this case, contrary to the applicant’s submissions, this is not one of those clear cases where the interpretation that the applicant is proposing today was the only possible interpretation.

[17] Therefore, this is a case where the Court must show deference. The PILTA provides a plethora of terms in Schedule II and of more detailed definitions in subsection 2(3), which could easily inspire any lawyer to get creative. It is true that some administrative determinations made on behalf of the Minister by the decision-maker could never be reasonable. For example, in *Montreal Port Authority*, the Supreme Court determined that a grain silo simply could not be considered a "reservoir" under section 10 of Schedule II. That said, the decision-maker must have some flexibility in interpreting the exclusions without this Court's substituting its own interpretation (*Canada (Attorney General) v Heffel Gallery Limited*, 2019 FCA 82 at paras 45–53).

[18] Given this Court's finding, there is no need today to examine the scope of paragraph 2(3)(a) of the PILTA, which creates a general exclusion for "any structure or work" unless it is listed in subparagraphs (i) to (vi). Specifically, under subparagraph 2(3)(a)(i), for a structure or work not to be excluded, it must be a "building designed primarily for the shelter of people, living things, fixtures, personal property or movable property". This is an application for judicial review, not a civil application for declaratory judgment.

[19] The application for judicial review is dismissed. No costs will be awarded since the parties agreed that each party would bear its own costs.

JUDGMENT in Docket T-1337-18

THE COURT'S JUDGMENT IS that the application for judicial review is dismissed without costs.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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