Federal Court  Cour fédérale

Date: 20230123

Docket: T-1909-21

Citation: 2023 FC 103

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 23, 2023

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

MUNICIPALITY OF CHELSEA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

and

NATIONAL CAPITAL COMMISSION

Tribunal in respect of which the application is made

JUDGMENT AND REASONS

I. Overview

[1] The Municipality of Chelsea [Municipality] is seeking judicial review of a decision of the chief executive officer of the National Capital Commission [Commission] dated November 19, 2021, in which the Commission determined, pursuant to the *Payments in Lieu of Taxes Act*, RSC 1985, c M-13 [PILT Act], and the *Crown Corporation Payments Regulations*, SOR/81-1030 [Regulations], the total amount payable as payments in lieu of taxes [PILTs] to the Municipality for the 2018–20 triennial roll in respect of some thirty federal properties within Gatineau Park [Park] that are located within its territory [federal properties].

[2] In the context of the dispute between the parties regarding the calculation of the PILTs and in response to the Commission's opinion in this regard, the Municipality sought the intervention of the advisory panel [Panel], which gave a majority opinion in favour of the Municipality's position, including in respect of the value of the requested amounts. The Commission's final decision reflected some of the Panel's recommendations and disregarded others, in addition to relying on analyses conducted after the opinion was provided to the parties. Overall, the Commission determined that the amounts to be paid as PILTs represented approximately 50% of the amounts requested by the Municipality.

[3] The Municipality contends that, through its conduct, the Commission breached the legitimate expectations it had created, namely, that it undertook to make a decision in accordance with the Panel's recommendations. It also submits that the Commission's decision is unreasonable, as it runs counter to the objective of the statutory regime governing the payment of

PILTs, disregards the Panel's insights on the principles that apply to the assessment of federal properties, and is based on factors that were not disputed before the Panel.

[4] For the following reasons, the Municipality did not satisfy me that the Commission breached its duty of procedural fairness or that its decision was unreasonable. Consequently, this application for judicial review is dismissed in its entirety.

II. Legislative framework

[5] I have provided the statutory and regulatory provisions relevant to this application in the appendix to my decision.

[6] The statutory framework for PILTs has been clearly defined by the jurisprudence of the federal courts and the Supreme Court. For the purposes of this application, it is helpful to recall the essential elements while taking into account the statutory scheme governing the Commission, as contained in its home statute, the *National Capital Act*, RSC 1985, c N-4 [NCA], which also provides for the payment of grants to municipalities to compensate them for the loss of tax.

[7] Under section 125 of the *Constitution Act, 1867*, 30 & 31 Vict, c 3 (UK), reprinted in RSC 1985, Appendix II, No 5, the federal Crown is exempt from provincial and municipal taxation. However, aware that Crown properties form part of the territorial fabric of the provinces and municipalities and recognizing the importance of services provided to these properties by municipalities, the federal legislator put in place a compensation system governed

by the PILT Act and its regulations (*Montréal (City) v Montreal Port Authority*, 2010 SCC 14 at paras 13–14 [*Montreal Port Authority*]).

[8] The PILT Act applies to federal property owned by His Majesty in right of Canada that is under the administration of a minister of the Crown or a corporation included in Schedules III or IV to this act (s. 2). Section 2.1 of the PILT Act states that its purpose is "to provide for the fair and equitable administration of payments in lieu of taxes." As a reference factor, the PILT Act uses the "real property tax" established by a "taxing authority" (s. 2).

[9] The Minister may, on application from a taxing authority, make a payment in lieu of a real property tax for a taxation year in respect of any federal property on its territory (s. 3). As a Crown corporation listed in Schedule III to the PILT Act, the Commission must make PILTs in the manner prescribed in the Regulations. Subsection 7(1) of the Regulations provides that the PILTs paid by a Crown corporation shall not be less than the product of the effective rate and the property value of the property. It should be noted that in this case, the only thing opposing the parties is the determination of the property value of the federal properties. This is the value that a Crown corporation would consider to be attributable by an assessment authority to its Crown corporation property as the basis for computing the amount of any real property tax that would be applicable to that property if it were taxable property.

[10] To this end, the principles guiding the assessment of properties in Quebec are contained in the *Act respecting Municipal Taxation*, CQLR c F-2.1 [AMT], and its regulations. This assessment must take into account not only the condition of the unit of assessment, the property

market conditions and the most likely use made of the unit (section 46), but also the incidence that the realization of the benefits or losses that the unit of assessment may bring, considered objectively, may have on its most likely sale price (s. 45).

[11] Moreover, even before the Regulations were enacted, Parliament, in section 16 of the NCA, conferred on the Commission a compensation authority similar to that provided by the PILT Act. Subsection 16(1) of the NCA provides that the Commission may pay grants to a local municipality not exceeding the taxes that might be levied by the municipality in respect of any real property of the Commission if the Commission were not an agent of His Majesty. Although subsection 16(2) excludes parks from this category, Gatineau Park is reintroduced to it by virtue of subsection 16(3), which provides that the Commission may pay grants to the competent authorities in respect of real property of the Commission situated in Gatineau Park not exceeding in any tax year the amounts estimated by the Commission to be sufficient to compensate such authorities for the loss of tax revenue incurred during that tax year in respect of municipal and school taxes by reason of the acquisition of the property by the Commission. In this case, central to the dispute between the parties as to the appropriate method for computing the property value of the federal properties is the question of taking into account the objective constraints arising from the Commission's acquisition of these properties in order to dedicate them to conservation.

[12] That said, it should be noted that, notwithstanding any other Act of Parliament or its regulations, the Commission, as a corporation listed in Schedule III to the PILT Act, shall comply with the Regulations for any payment made in lieu of real property tax (subs. 11(1) of the PILT Act). In other words, it is the Regulations, adopted pursuant to paragraph 9(1)(f) of the

PILT Act, that determine the method of computing these payments, notwithstanding any other statutory provisions, including section 16 of the NCA.

[13] However, as in this case, disagreements sometimes arise between taxing authorities and Crown corporations as to how to perform the computations leading to the determination of PILTs. For this reason, the PILT Act provides for the appointment of an advisory panel that shall give advice to the Crown corporation on the property value of any federal property, following a process of consultation with the parties (s 11.1 of the PILT Act; s 12.1 of the Regulations). As the Panel was asked for advice in this case, it will be necessary to assess the incidence of the Panel's opinion on the reasonableness of the Commission's decision.

III. Background

[14] Following the deposit of the 2018–20 triennial roll by the Municipalité régionale de comté des Collines-de-l'Outaouais [regional county municipality of the Collines-de-l'Outaouais] [MRC], the Municipality filed applications for PILTs with the Commission in respect of federal properties situated within the Municipality's territory. These applications were based on increases in value in roll ranging from 19% to 25% for these properties. By comparison, the average increase for any immovable type in the municipality of Chelsea was 3.9%.

[15] In response to these seemingly targeted, significant increases, a Commission assessment officer submitted requests for justification to the MRC in November 2017. In response, the MRC sent the Commission a table of [TRANSLATION] "comparable" sales in March 2018. The parcels of land that were sold were generally smaller than the ones under consideration, and their zoning

allowed for residential development. They were situated in developed areas of the Municipality and had mostly been sold by real estate developers.

[16] Subsequently, there were various exchanges and meetings between the Commission, the MRC and the Municipality. In March and June 2018, the Commission made PILTs to the Municipality for its properties on the basis of its own calculations. In an effort to reach an agreement, discussions between the parties continued between September and December 2018, to no avail.

[17] On September 24, 2019, through its lawyers, the Municipality sent the Panel a request for advice on the federal properties for the purposes of the 2018–20 triennial roll. There were two types of property: large parcels of land and smaller parcels of land in residential pockets along Kingsmere and Meech lakes, within which residential construction is permitted. For the purposes of this application, consideration should be given to the parties' submissions to the Panel on the possibility of the Commission aggregating the units of assessment entered separately on the MRC's roll for the purpose of computing the property value of the federal properties, as well as the method for computing the property values of large parcels of land. Since the Municipality has asserted before the Court that the Commission should have followed the Panel's advice in all respects, it follows that the Municipality is contesting only those aspects of the decision that deviate from the advice. As a result, since the Commission accepted the Panel's recommendations regarding the property value of the small parcels of land that it decided not to aggregate with the adjacent large parcels of land, these values and how they were computed are not the subject of any disagreement between the parties.

[18] At the hearing before the Panel, which was held from November 16 to 20, 2020, the Commission heard from Neil Gold, a chartered appraiser and senior director at Altus Group Ltd. Mr. Gold suggested that the Panel aggregate all units of assessment corresponding to the federal properties into one unit. He also proposed an assessment of the federal properties based on highest and best use [H&BU], that is, a natural space dedicated to conservation and recreation, and taking into account their large area. For its part, the Municipality heard from Marc Lépine, a chartered appraiser at LBP Évaluateur, which is also a signatory of the MRC's assessment roll. Mr. Lépine essentially defended a property-value analysis based on the behaviour of local real estate market participants and was opposed to aggregating the units of assessments as proposed by Mr. Gold.

[19] On February 16, 2021, the Panel delivered its advice. In respect of the issue of the aggregation desired by the Commission, the Panel concluded that the large parcels of land and some small parcels of land could be aggregated as this met the conditions set out in section 34 of the AMT. However, it did not recommend doing so because of the impact that such an aggregation would have on immovable categories and therefore the effective rate applicable to the properties.

[20] As to how to compute the property value, the majority of the Panel adopted the Municipality's approach. The Panel was of the view that, despite the lack of sales of institutional land reported by the Municipality's appraiser, the comparison with the local market was more credible than the approach suggested by the Commission's expert. For example, the sales compiled by Mr. Lépine of large parcels of land, albeit smaller than the federal properties and

used for different purposes, were more likely to show what the Commission would have to pay if it were both the purchaser and the seller of these properties, in accordance with section 44 of the AMT. The Panel also analyzed section 16 of the NCA and concluded that in order to determine the loss in municipal and school taxes resulting from the Commission's acquisition of the properties, the Panel had to consider alternative uses and observe the local market's behaviour. The Panel therefore assessed a total property value of $106,372,900 for the large parcels of land whose value on the roll was $115,406,500.

[21] Upon receipt of the opinion, the Commission noted the importance the Panel attached to the location of comparable sales and the Panel's findings preferring Mr. Lépine's comparables but rejecting those of its own expert. But the Commission found that the Panel was wrong in not considering the H&BU and the surface area of the parcels of land as relevant factors in determining the property value of the federal properties. The Commission therefore carried out additional analyses to obtain measurements in order to be able to adjust the values identified by the Municipality's expert, taking into account location, H&BU and area.

[22] The Commission also recognized that a single unit of assessment created by aggregating all the parcels of land would be so large that it would become very difficult to find truly comparable transactions in terms of use, surface area and location in order be able to establish the value of that unit. Therefore, the Commission did not adopt its initial approach to aggregate the large parcels of land. However, it was of the view that seven small parcels of land met all the conditions applicable in order to be aggregated with neighbouring large parcels of land, in accordance with section 34 of the AMT.

[23] On September 28, 2021, in light of these considerations, the Commission sent the Municipality the contents of its additional analyses and the new values resulting from its calculations, asking it to provide comments before the Commission finalized its recommendation to the Chief Executive Officer.

[24] On October 7, the Municipality formally demanded that the Commission make a final decision in accordance with the findings in the Panel's advice, stating that it considered the new factors submitted by the Commission to be inadmissible, in part because they had not been submitted to the Panel. The Municipality was also of the view that the Commission had previously undertaken to make a decision on the basis of the Panel's recommendations. In its letter of reply dated October 15, 2021, the Commission informed the Municipality that it considered the advice to be a recommendation to which new factors could be added and again asked the Municipality to comment on or to respond to them, and to provide any other item deemed relevant. The Municipality reiterated its objection to the Commission's new approaches and insisted that the Commission issue a decision within 10 days, which it did on November 19, 2021.

[25] The Commission's decision identifies the amounts to be paid to the Municipality as PILTs for the aggregated large and small parcels of land, namely, $358,119.81 for 2018; $370,632.02 for 2019; and $383,240.85 for 2020, calculated on the basis of a property value of $48,309,700 for these parcels of land. The decision recognizes the importance of seriously considering the Panel's recommendations but notes that the Commission is not bound by them as its role is to make a decision it considers to be consistent with all the facts before it and with the

applicable principles. In this regard, the decision states that the Commission considered not only the Panel's opinion and the positions of the Municipality and the Commission's PILT team but also the land assessment principles applicable in Quebec in order to determine the property value of the federal properties.

IV. Issues

[26] The issues raised by this application, worded similarly by the parties, can be summarized as follows:

A. Did the Commission, through its conduct, undertake to follow the recommendations made by the Panel in its opinion of February 16, 2021?

B. Is the Commission's decision reasonable?

C. If the Commission's decision is unreasonable, what are the appropriate remedies?

D. Does the Commission's conduct justify reimbursement of the extrajudicial fees incurred by the Municipality?

V. Standard of review

[27] The first issue raised by the Municipality engages the doctrine of legitimate expectations, which has been recognized by the Supreme Court as an extension of the rules of natural justice and procedural fairness (*Mount Sinai Hospital Center v Quebec (Minister of Health and Social Services*), 2001 SCC 41 at para 32 [*Mount Sinai*]; *Old St. Boniface Residents Assn. Inc. v Winnipeg (City)*, [1990] 3 SCR 1170 at 1204). On this issue, the Court must ask "whether the procedure was fair having regard to all of the circumstances" and the ultimate question is "whether the applicant knew the case to meet and had a full and fair chance to respond"

(*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54, 56; *Fortier v Canada (Attorney General)*, 2022 FC 374 at para 15 [*Fortier*]).

[28] Furthermore, it is not disputed that the standard of review applicable to the Commission's decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*]). The role of the Court is to determine whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Vavilov* at paras 85, 99). The latter aspect of the analysis is all the more central in this case. The Commission's decision is far from being the result of a binary choice and, on the contrary, requires the assessment of many complex factors, which increases the possibilities for both the decision-making process used and the final outcome. The Court must therefore examine the Commission's reasons with respectful attention and seek to understand the reasoning process it followed to arrive at its conclusions in order to decide whether the decision as a whole is one that is based on an internally coherent and rational chain of analysis (*Vavilov* at paras 84–85).

VI. Analysis

A. *Did the Commission, through its conduct, undertake to follow the recommendations made by the Panel in its opinion of February 16, 2021?*

[29] The Municipality contends that the Commission, through its conduct, undertook to follow the Panel's recommendations. It identifies three factors that it believes created legitimate expectations on its part to this effect, namely, that the Commission asked it to address the Panel,

insisted that three members sit on the Panel, and made a commitment to the public to follow the Panel's insights.

[30] The Municipality claims that it filed a first application with the Panel on September 13, 2018, and a second application on September 24, 2019, on the basis of information given to it by the Commission regarding the possibility for a taxing authority that is unsatisfied with the PILT amount paid to submit an application for review to the advisory panel. The Municipality also alleges that the Commission's representatives told it that they hoped to reach a consensus through this process and to implement a sustainable approach for the years to come. They also apparently reassured the Municipality's representatives on several occasions, asking them to trust the statutory process to resolve their dispute and affirming that it was a [TRANSLATION] "good process." Given the lengthiness of this process and the significant costs involved, the Municipality expected the Commission to follow the recommendations.

[31] The Municipality further submits that the Commission insisted that three expert members sit on the Panel at the hearing. According to the Municipality, this request demonstrates the importance that the Commission attached to the process before the Panel when its claims had not yet been rejected, and its willingness to seek the insights of three pan-Canadian experts in order to make a decision in line with the applicable legal principles.

[32] Finally, the Municipality refers to two letters dated January 8, 2019, sent by the Commission's CEO to residents concerned about the impact of the future PILT decisions on the Municipality's taxpayers. The first one, written in English, stated that "the [Commission] will

respect the established process of the Payment in-Lieu of Taxes Dispute Advisory Panel and will follow the conclusions that will ensue", while the second one, written in French, stated that [TRANSLATION] "the [Commission] will respect the process of the Payments in Lieu of Taxes Dispute Advisory Panel and will take its findings into account" [emphasis added]. The Municipality submits that these statements by the Commission demonstrate that it agreed to consider the Panel's findings and to apply them. The Municipality contends that the combination of these factors justifies the application of the doctrine of legitimate expectations, which compels the Commission to make a decision in accordance with the Panel's advice.

[33] In my view, the arguments put forward by the Municipality are unlikely to permit the application of the doctrine of legitimate expectations. First, it should be reiterated that the doctrine of legitimate expectations is only one component of procedural fairness because it is one of the five contextual, non-exhaustive factors established by the Supreme Court in *Baker* to define the procedural rights required by the duty of fairness in given circumstances (*Baker v Canada (Minister of Citizenship and Immigration*), [1997] 2 SCR 817 at paras 22–28). Thus, it is not sufficient for the Municipality to demonstrate that the Commission did not satisfy the expectations it created; instead, it must be able to prove that this resulted in the Commission's breaching its duty to act fairly (*GCT Canada Limited Partnership v Vancouver Fraser Port Authority*, 2022 FC 1109 at para 248).

[34] That said, in *Canada (Attorney General) v Mavi*, 2011 SCC 30 [*Mavi*], the Supreme Court presented the doctrine of legitimate expectations as follows:

> [68] Where a government official makes representations within the scope of his or her authority to an individual about an

> administrative process that the government will follow, and the representations said to give rise to the legitimate expectations are clear, unambiguous and unqualified, the government may be held to its word, provided the representations are procedural in nature and do not conflict with the decision maker's statutory duty. ... It will be a breach of the duty of fairness for the decision maker to fail in a substantial way to live up to its undertaking: Brown and Evans, p. 7-25 and 7-26.

[35] In *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 [*Agraira*], the Supreme Court raised the possibility that a legitimate expectation is not created by a procedural commitment but by a commitment as to the substantive outcome:

> [94] . . . Likewise, if representations with respect to a substantive result have been made to an individual, the duty owed to him by the public authority in terms of the procedures it must follow before making a contrary decision will be more onerous.
>
> [95] The specific conditions which must be satisfied in order for the doctrine of legitimate expectations to apply are summarized succinctly in a leading authority entitled *Judicial Review of Administrative Action in Canada*:
>
> > The distinguishing characteristic of a legitimate expectation is that it arises from some conduct of the decision-maker, or some other relevant actor. Thus, a legitimate expectation may result from an official practice or assurance that certain procedures will be followed as part of the decision-making process, or that a positive decision can be anticipated. As well, the existence of administrative rules of procedure, or a procedure on which the agency had voluntarily embarked in a particular instance, may give rise to a legitimate expectation that such procedures will be followed. Of course, the practice or conduct said to give rise to the reasonable expectation must be clear, unambiguous and unqualified.
>
> [Emphasis added]

[36] This is what the Municipality is alleges here: The Commission's decision should have been in line with the Panel's opinion, as it had committed to. However, there is nothing in the evidence on the record to suggest that the Commission made such a commitment. Rather, it appears that the Commission considered the appropriateness of engaging in the process set out in section 11.1 of the PILT Act, given the disagreement between the parties, and expressed its confidence in reaching a consensus in this way. I also note that the letters referred to by the Municipality are addressed to two citizens and not to the Municipality itself. In addition, the letters express a different commitment depending on the language used, one indicating that the Commission would apply the Panel's conclusions and the other that it would take them into account. In the absence of any specific explanation as to their impact on the expectations, not of the Municipality's residents but of the Municipality itself, I am not satisfied that these letters are clear, unambiguous and unqualified conduct on the part of the Commission justifying an expectation of the kind that is alleged by the Municipality. Similarly, I find that the Municipality has not demonstrated how the Commission's desire to form a three-member rather than a one-member panel could be interpreted as contributing to the clear expression of a commitment on its part to make a decision that is in line with the Panel's findings.

[37] Furthermore, I find that the Commission's request to the Municipality to refer the matter to the Panel, as well as its comments asking it to trust the consultative process, cannot reasonably be interpreted as an expression of the Commission's waiving its discretion in favour of blindly adopting the Panel's recommendations. Since the authority under the PILT Act, the Regulations and the NCA in respect of the computation of PILTs is unequivocally conferred on the Commission alone, I am of the view that such a waiver would be tantamount to unduly fettering

the exercise of the Commission's discretion. In any event, and even assuming that this was the Commission's original intention, the case law clearly indicates that a public authority cannot be held to its word if its representations conflict with its statutory duty (*Mavi* at para 68; *Mount Sinai* at para 29). In this regard, the Municipality did not provide any explanations as to how the Commission could reasonably implement the alleged waiver without thereby coming into conflict with its statutory remit.

[38] Moreover, the remedy sought by the Municipality is, in my view, incompatible with the remedies provided for by the doctrine of legitimate expectations. As the Supreme Court pointed out, an important limit on the doctrine of legitimate expectations is that it cannot give rise to substantive rights, that is, the Court may only grant appropriate procedural remedies to respond to the legitimate expectation (*Agraira* at para 97). In an administrative proceeding, a legitimate expectation can thus give rise to a right to make representations, a right to be consulted or perhaps, if circumstances require, more extensive procedural rights, but it does not otherwise fetter the discretion of a statutory decision-maker in order to mandate any particular result (*Moreau-Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11 at para 78). However, by requiring that the Commission's decision be consistent with the Panel's advice, the Municipality's expectations necessarily relate to the finality of the decision and mandate a specific result, to which the Commission cannot be legitimately constrained by the application of the doctrine of legitimate expectations.

[39] But there is more. In its correspondence dated September 28 and October 15, 2021, the Commission clearly stated its position on the non-binding nature of the Panel's advice and its

intention to continue its analysis, in addition to asking the Municipality to comment on the results and present its arguments. However, the evidence shows that the Municipality chose not to respond to the Commission's invitations and instead reiterated its opposition to the new approaches taken by the Commission and insisted that it make its decision quickly.

[40] I can understand that the Municipality, as it stated in its memorandum, considered the process before the Panel to be lengthy and costly and was therefore reluctant to continue with the steps involved in resolving its dispute with the Commission. But the remedy provided by the doctrine of legitimate expectations is precisely the possibility of continuing the administrative process in the event that the decision-maker changes course. It appears that, in addition to seeking conclusions that are incompatible with the doctrine of legitimate expectations, the Municipality, at the time when it was reasonable to conclude that its expectations would not be satisfied, knowingly refused to exercise its right to make additional representations, which is precisely the remedy provided by the doctrine it is now relying on in support of its claims.

[41] Consequently, I conclude, first, that the Commission's conduct could not give rise to legitimate expectations on the part of the Municipality and second, that the Commission fulfilled its duty of procedural fairness.

B. *Is the Commission's decision reasonable?*

(1) The extent of the Commission's discretion when a dispute is brought before the advisory panel and the panel gives its opinion

[42] The first issue raised by the Municipality regarding the reasonableness of the decision concerns the extent of the Commission's discretion. Specifically, the Municipality submits that the Panel's opinion substantially limited the range of reasonable outcomes of the exercise of the Commission's discretion. In support of its claims, the Municipality cites *Trois-Rivières (City) v Trois-Rivières Port Authority*, 2015 FC 106 [*Trois-Rivières*], in which Mr. Justice Locke (now with the Federal Court of Appeal) states:

> [68] In my view, the opinion of the Advisory Panel is a relevant factor that would limit the range of possible, reasonable outcomes, but it is not the role of the Minister or a Crown corporation to bring a dispute to the Advisory Panel. . . . This approach deprives the parties of the Advisory Panel's opinion, which, while not binding, would certainly have been subsequently considered by the TPA and, if still necessary, in this application for judicial review.

[43] The Municipality also refers to the *Payments in Lieu of Taxes Dispute Advisory Panel: Rules of Practice* [Rules of Practice], which govern not only the filing of applications for review and the pre-hearing process, but also the rules for the conduct of the hearing and evidence. The Municipality submits that the Panel, in accordance with the Rules of Practice, held an adversarial five-day hearing including cross-examinations, where both parties presented a great deal of evidence through expert reports, lay witnesses and assessment experts. The Municipality therefore contends that the process before the Panel was comprehensive, complete and comparable to a tribunal hearing, seeing it as bearing all the features of a quasi-judicial process.

[44] In addition, the Municipality states that the Panel, made up of three independent expert members, gave a unanimous, reasoned opinion on the evidence and property assessment principles. It contends that the Commission, unlike the Panel, does not have property assessment expertise, citing the objects and purposes of the Commission in section 10 of the NCA:

Objects and purposes of Commission	**Mission de la Commission**
10(1) The objects and purposes of the Commission are to prepare plans for and assist in the development, conservation and improvement of the National Capital Region in order that the nature and character of the seat of the Government of Canada may be in accordance with its national significance.	**10(1)** La Commission a pour mission d'établir des plans d'aménagement, de conservation et d'embellissement de la région de la capitale nationale et de concourir à la réalisation de ces trois buts, afin de doter le siège du gouvernement du Canada d'un cachet et d'un caractère dignes de son importance nationale.

[45] Relying on *Catalyst Paper Corp. v North Cowichan (District)*, 2012 SCC 2 at paragraph 18, the Municipality alleges that the Panel's expertise on the matters submitted, which is provided for in the statutory framework of the PILT Act, combined with the Commission's lack of specialized expertise, provides the Court with greater authority to intervene in the judicial review of the decision. The Municipality submits that although, since *Vavilov*, the administrative authority's expertise has not been taken into account in determining the applicable standard of review, it must nevertheless be taken into account in conducting the judicial review of the decision (*Vavilov* at para 31).

[46] In addition, the Municipality submits that it is clear that the Commission asked the Municipality to turn to the Panel for insights into property value and, in so doing, relied on the

Panel to resolve the dispute between them. The Municipality contends that in receiving the Panel's opinion on such specialized and specific tax issues, the scope of the Commission's discretion was significantly reduced, and that, by departing markedly from the insights in the Panel's opinion, the Commission necessarily made an arbitrary, unreasonable decision that was not within the range of possible outcomes.

[47] I am of the view that the Municipality's arguments cannot be accepted.

[48] First, it is worth reiterating the principles underlying a Crown corporation's discretion in respect of PILTs, namely, the preservation of the Crown's immunity to taxation, the need for flexibility nationwide, practicality in terms of potential disagreements, difficulty of choice of rate or property value; and protection of federal interests (*Toronto (City) v Toronto Port Authority*, 2010 FC 687 at para 44 [*Toronto*]).

[49] Furthermore, I note that while the question of the extent of the discretion has already been analysed from the perspective of a Crown corporation's taking into account the assessments made by taxing or assessment authorities (*Trois-Rivières* at para 65; *Halifax (Regional Municipality) v Canada (Public Works and Government Services)*, 2012 SCC 29 at paras 38–42 [*Halifax*]; *Toronto* at para 57; *Montreal Port Authority* at para 31), it is being debated for the first time here in terms of the effect of an advisory panel's opinion. In *Toronto* and *Halifax*, where such an opinion had been given, both the Toronto Port Authority and the Minister had more or less adopted the opinion in its entirety, so the issue that is before us did not arise there.

[50] In addition, I agree with the Municipality that the administrative decision-maker's expertise, although, since *Vavilov*, no longer relevant in determining the applicable standard of review, continues to be relevant in assessing whether the decision-maker exercised its discretion reasonably.

[51] That said, the Municipality's claims that section 10 of the NCA demonstrates that the Commission does not have any property assessment expertise cannot defeat the evidence in the record to the contrary. This evidence reveals that the Commission has a team specifically responsible for computing PILTs, which includes chartered appraisers whose job it is to assess the fair value of all federal heritage properties managed by the Commission and to make recommendations on this subject to its chief executive officer. As part of the dispute that led the parties before the Panel, the Commission also engaged the services of an independent firm of experts, the Altus Group, and heard from Mr. Gold, a chartered appraiser with over 40 years of experience as an expert witness before the courts. While the Municipality points out that a significant portion of Mr. Gold's arguments were rejected by the Panel, I agree with the Commission that this outcome does not cast doubt on his qualifications as an expert or deprive him of his skills and experience. Thus, I consider the Municipality's argument that the Commission has no specialized expertise to be unfounded.

[52] Furthermore, in the legislation relevant to this application, I do not see the legal basis on which the Municipality is relying to support its claims regarding the quasi-judicial nature of the Panel. Section 11.1 of the PILT Act and section 12.1 of the Regulations, which provide for the creation of the Advisory Panel, simply state that its members must have relevant knowledge or

experience and that their mandate is to give advice to Crown corporations in respect of the making of PILTs. Although the Municipality refers to the Rules of Practice to describe the seriousness of the process before the Panel, there is nothing in the applicable legislation to suggest that a panel that the PILT Act characterizes as an advisory panel and whose role is to render opinions is quasi-judicial in nature.

[53] Similarly, the Municipality's arguments regarding the binding nature of the Panel's opinion on the Commission's decision are not supported in either the statutory system governing the making of PILTs or the case law cited by the Municipality itself. Indeed, property value, the determination of which is central to this dispute, is defined by the Regulations as the value that *a corporation would consider* to be attributable by an assessment authority to its corporation property if the property under review were taxable. On the face of this provision and the decisions that have analyzed it, there is no doubt that the Commission has the final word on this matter (*Montreal Port Authority* at para 22; *Halifax* at para 40).

[54] Furthermore, in *Trois-Rivières,* Locke J. (now with the Federal Court of Appeal) made it clear that the advisory panel's opinion is a relevant factor that would limit the range of possible, reasonable outcomes, but that the Panel's opinion is not binding (*Trois-Rivières* at para 68). I also note the obvious parallel between this principle and the one established by the Supreme Court in *Halifax* regarding the weight to be given to the assessment authority's assessment:

> [40] The Minister's role under the Act is not to review the assessment authority's assessment. The Minister's function with respect to the value of the property is to reach an opinion about the value that would be attributed by an assessment authority. This is done in the context of exercising the discretion to make a PILT that must not exceed the product of the effective rate and the property

> value. While the view of an assessment authority is an important reference point for the Minister, I nonetheless agree with Evans J.A. that in reaching his or her opinion, the Minister is entitled to make an independent determination of the value that would be attributed to the federal property by an assessment authority.
>
> [Emphasis added]

[55] In my view, the same reasoning applies to the Panel's opinion in this case, which was a relevant supplement that the Commission had a duty to consider in the exercise of its discretion, but which was not determinative and, above all, following the Commission's receipt of the opinion, did not deprive it of the freedom to complete its analysis by other means. This is all the more true given the Commission's reservations about how the Panel had disregarded certain key property assessment principles. In this regard, I note that, in both *Toronto* and *Halifax*, the findings in the opinions rendered were to a large extent considered unreasonable by the Court, indicating that an advisory panel is not immune to errors.

[56] The Commission does not dispute that the Panel's opinion is a relevant factor that could limit the range of possible, reasonable outcomes. In any event, the advisory panel is presumed to have relevant knowledge or experience in respect of the matters before it (subs. 11.1(1) of the PILT Act), and any finding of a minister or Crown corporation that deviates from that of the panel must be sufficiently substantiated in this regard to satisfy the requirements of reasonableness. However, the advice of an advisory panel cannot further restrict the exercise of discretion arising from the federal Crown's immunity from taxation. Just as it makes sense that the highly discretionary regime of PILTs be armed to protect federal interests against over-zealous assessment authorities should the need arise (*Halifax* at para 41), a Crown corporation must be able to deviate from the advisory panel's findings if it is of the view that those findings

are inconsistent with the applicable property tax principles, provided that the Crown corporation ensures that it bases its own conclusions on a reasonable analysis of these principles.

(2) The Municipality has failed to show that the Commission's decision was unreasonable

[57] The Municipality claims that the Commission's decision is unreasonable as it (a) is contrary to the purpose of the PILT system and subsection 16(3) of the NCA; (b) ignores the Panel's insights; and (c) includes new factors that were not debated before the Panel. For the purpose of this analysis, I will deal with the Municipality's claims involving the Panel together.

a) *The decision is not contrary to the purpose of the PILT system and subsection 16(3) of the NCA*

[58] I note that the Municipality's first argument is developed in a vague manner and, in many respects, enters into considerations that are more relevant to its second argument regarding the Panel's insights. Nevertheless, I am of the view that it can be summarized essentially as the idea that the constraints arising from the possession of the parcels of land under review by the Commission cannot serve as a basis for justifying the reduced property values submitted by the Municipality. Such an approach contradicts the letter and spirit of the PILT system, which is based on the principle of fairly compensating municipalities for losses arising from tax immunity. It also runs counter to subsection 16(3) of the NCA, specific to the Commission's properties in Gatineau Park, which provides that PILTs are paid to local municipalities to "compensate such authorities for the loss of tax revenue during that tax year in respect of municipal and school taxes by reason of the acquisition of the property by the Commission."

[59] Specifically, the Municipality alleges that the Commission could not justify the reduced values entered on the roll for the federal properties on the grounds that they are currently being used as a park, as this use is solely attributable to the federal government's desire to dedicate them to conservation. Similarly, it submits that the Commission unreasonably based its calculations on the premise that its properties will, in all likelihood, never be used for anything other than a park. In support of its claims, the Municipality cites *Halifax* at paragraphs 55 to 57, where the Court concluded that the method of evaluation adopted by the Minister had the effect of making the inclusion of national historic sites within the ambit of the PILT Act meaningless, thereby frustrating Parliament's intention that PILTs may be made in respect of such sites. However, I must note the significant dissimilarity between the facts of this application and those on which the Supreme Court's conclusions are based.

[60] In *Halifax*, at issue was whether the Minister's opinion that an assessment authority would attribute a nominal value of $10 to a 42-acre glacis located in the heart of downtown Halifax on the basis that the parcel of land could not be developed or used in an economically beneficial way was reasonable. In that case, the Minister's categorical position on the issue confirmed Canada's expert's conclusion that, given its status as a national historic site, the parcel of land in question had no economic value to the owner and so no value in exchange. The Court found that this reasoning was inconsistent with the overall purpose of the PILT Act to deal equitably and fairly with municipalities in relation to PILTs.

[61] In the case of this application, the Commission attributed a total property value of $50,189,600 to all the federal properties and made PILTs totalling $1,155,264.21 to the

Municipality for the 2018–20 triennial roll, which clearly has nothing to do with a nominal value of $10. In doing so, the Commission did consider the restrictions resulting not only from the federal statutory regime but also from the Municipality's zoning and urban planning bylaws, and the provincial statute, in order to conclude that the use recognized by all these legislative authorities, that of natural area dedicated to conservation and recreation, could not be excluded from the assessment process.

[62] Furthermore, I note that the Commission was well aware of the existence in Quebec law of the presumption of nominal value of zoned parkland, and that this presumption was not raised against the Municipality, as evidenced by the amounts mentioned above. As the Municipality points out, it is true that the amounts paid represent a decrease of more than 50% in the value recommended by the Panel. Nevertheless, I am of the view that the Supreme Court's findings in *Halifax* are of no assistance to the Municipality in this case, and that the facts before us do not in any way lead to the conclusion that the Commission's consideration of the conservation status of the properties had the effect of frustrating the overall objective of the PILT legislative regime that the Municipality be treated in a fair and equitable manner.

[63] Furthermore, the Municipality contends that the decision is contrary to the objective of PILTs that federal authorities, in order to deal with municipalities fairly, should be considered as if they were required to pay tax as owners, citing *Montreal Port Authority* at paragraphs 42, 43, and 47. The dispute between the parties in that case arose out of the municipal amalgamations that took place on the island of Montreal starting in 2000, which resulted in the abolition of the business occupancy tax and an increase in property taxes throughout the City of Montréal. The

Crown corporations involved had never made PILTs in respect of the business occupancy tax and were disadvantaged by the increase in property taxes. These corporations had therefore fixed an effective rate of tax allowing them to deduct from their PILTs amounts equivalent to the portion of the property tax increase that resulted from the abolition of the business tax (*Montreal Port Authority* at para 39). The Supreme Court condemned this practice and concluded that Crown corporations had to rely on the current tax regime to determine the property tax value and effective rate of tax that would apply if their properties were taxable, not a system that no longer exists (*Montreal Port Authority* at para 40).

[64] In the case of this application, it is true that the increase in the value of the properties under review is the result of the changes made by the MRC to the 2018–20 triennial roll, changes it is undoubtedly permitted to make under the provisions of the AMT. We know that the Municipality justified this increase, ranging from 19% to 25% for the federal properties, on the basis of sales of residential land, which, with one exception, did not exceed 50 hectares. In line with the Panel's conclusion that these sales were more representative of the local real estate market, the Commission's approach was therefore to consider these values as a starting point for its calculations. It then sought to adjust these amounts to take into account the characteristics that distinguished the federal properties from the retained residential parcels of land, namely, their H&BU as a park and their large area, which, in some cases, exceeded 1,000 hectares.

[65] Contrary to what the Supreme Court determined in *Montreal Port Authority*, I cannot conclude, as the Municipality is asking I do, that the Commission ignored the local tax system, or that it failed to comply with the exercise of considering its properties as if they were taxable

properties belonging to a private owner. In this regard, it is worth recalling the Supreme Court's clarifications in *Halifax* at paragraph 41 regarding the role of municipal assessments in calculating PILTs:

> . . . The calculation of PILTs is not limited to a mechanical application of municipal assessments and tax rates. It must be adaptable to the various locations in which federal properties are situated, and to those properties' circumstances. This is especially so in view of the diverse and sometimes unique nature of federal properties. We need look no further than the Citadel site, 48 acres of 19th-century fortification sitting in the middle of a modern city, for an obvious example. Assessment principles are not self-applying.
>
> [Emphasis added]

[66] However, the facts of this application show that the Commission not only took into account the values entered on the MRC's roll, but also that it sought to adapt them to the particular reality of the Park. The Municipality may disagree with this approach, but that does not make it contrary to the objective of the PILT system, nor does it make the Commission's decision unreasonable.

[67] In my view, the Municipality's argument before this Court would be off different import, and would make the parallel with *Halifax* and *Montreal Port Authority* more productive, were the Municipality expanding and its residential neighbourhoods near the Park gates, and were it obvious that the Park was hindering the Municipality's development and with it the increase in its tax revenues. However, this is far from being the case. The evidence on the record, which is not contradicted by the Municipality, shows that the Municipality's territory that has undergone residential development over the years is almost exclusively on a strip of land approximately three kilometres wide and running along the west shore of the Gatineau River. A special

planning program adopted by the Municipality in 2011 contains the specific development orientations for this area and identifies the residential areas that the Municipality wishes to develop and the specific orientations for this area. However, I note that the federal properties are not in that area. Furthermore, the Municipality admitted that it was not considering any bylaw changes that would allow residential or commercial development in the Park in the short, medium or long term, and that there was no reason to believe that the parcels of land would not remain in their natural state.

[68] The Municipality made much of the objective of subsection 16(3) of the NCA and the importance of receiving fair and equitable compensation for municipal and school tax losses resulting from the Commission's acquisition of the federal properties in Gatineau Park. However, to claim that the value of these losses should be calculated strictly on the basis of residential sales, the Municipality must be able to demonstrate that the potential source of these taxes, that is, the residential areas it is prevented from developing in that particular area, is not just hypothetical. In other words, to justify a loss of this nature it is not enough for the Municipality to claim that it is prevented from building in this area; it also has to prove that it had the intention and the means to do so, had it not been for this impediment. Otherwise, the fairness argument put forward by the Municipality becomes largely academic and thus devoid of merit. Since such a demonstration was not made by the Municipality, I find that to be the case.

b) *The conclusions of the decision that deviate from the recommendations in the Panel's opinion and the new factors that weren't debated before the Panel are not unreasonable*

[69] The Municipality is challenging the elements of the decision that it believes were not in line with the Panel's recommendations. For further clarification, these elements are (i) the Commission's decision to aggregate certain small parcels of land with adjacent large parcels of land; (ii) the consideration of objective constraints related to the properties, which confirm that their H&BU is how they are currently being used (that is, as a natural area dedicated to conservation and recreation); and (iii) the need to adjust the local sales values used to calculate the PILTs in order to reflect the H&BU and the area of the properties under review.

[70] To begin with, I note that nowhere in its memorandum does the Municipality present an independent argument as to the unreasonableness of the Commission's decision, that is, an argument that does not boil down to saying that the Commission did not apply the Panel's insights. However, as I have concluded previously, the Panel's opinion is a relevant factor that the Commission had to consider, but one which it could depart from with a reasonable justification. Thus, without presenting its own arguments based on the property assessment principles in effect in Quebec or explaining in what way the Commission did not respect these principles, the Municipality is essentially asking the Court to determine whether the decision reasonably justifies the Commission's rejection of the Panel's recommendations and incidentally, the Municipality's initial claims, which the Panel accepted.

(i) Aggregation of the properties

[71] The Municipality submits that, in respect of the aggregation of the properties, the Commission did this despite the Panel determining that it was not appropriate. It argues that the Commission thereby based its decision on its own claims, which were rejected by the Panel in its opinion.

[72] On this issue, the Panel considered the criteria for determining units of assessment set out in section 34 of the AMT and applied them to the facts in this case. The Panel found that in respect of the larger properties and some smaller properties adjacent to them, the conditions set out in section 34 of the AMT had been met, and therefore concluded that they could be aggregated into a single unit of assessment. However, the Panel was of the view that it would be inappropriate to aggregate them, given the existing entries on the roll and the significant tax consequences that could result from this.

[73] It should be recalled that, following receipt of the Panel's opinion, the Commission recognized that aggregating all the federal properties into a single unit of assessment would make it considerably more difficult to find truly comparable transactions in terms of use, area, and location in order to establish the property value. For this reason, the Commission abandoned its initial approach, that is, aggregating the large parcels of land. Therefore, the aggregation at issue here relates only to seven small parcels of land that met all the conditions for being aggregated with the large parcels of land adjacent to them, in accordance with section 34 of the AMT.

[74] Furthermore, I note that the Commission specifically took into account the Panel's considerations in its decision, recognizing that the Panel had refused to recommend aggregating the properties for fear that this would result in a change in immovable category and an increase in the tax rate. The Commission also concluded that the latter aspects were not part of the AMT criteria for aggregating properties into a single unit of assessment and that no judicial precedent had been identified in support of the Panel's claims.

[75] In this case, it is up to the Municipality to show that the Commission's conclusion on this point is unreasonable. In the absence of any substantive argument on its part in this regard, and in view of the Panel's recognition of the legality of the aggregation that the Commission ultimately carried out, I cannot conclude that its decision on the matter is unreasonable.

(ii) Consideration of objective constraints related to the properties

[76] First, it is important to remember that section 2 of the Regulations defines Crown corporation property value as the value that a corporation would consider to be attributable by an assessment authority as the basis for computing the amount of any real property tax that would be applicable to that property if it were taxable property. In Quebec, the assessment authority in question is the municipal body responsible for assessment, which shall cause its property assessment roll to be drawn up by its assessor every three years (s 14 of the AMT). The municipal appraiser's main tools are the AMT and its regulations, although legal authorities have clarified many of the principles applicable in this area.

[77] The Municipality alleges that the Commission is attempting to give the decision an aura of reasonableness on the basis of the sales used by the Municipality's expert, and confirmed by the Panel, despite slashing these by 50% on the basis of claims the Panel rejected. The Municipality submits that, although the Panel refused to consider the Commission's mission as part of its analysis, the Commission nevertheless considered the objective constraints related to it in concluding that the H&BU was a park. Without explaining how this approach is contrary to property assessment principles, the Municipality submits that this can only lead to the conclusion that the Commission did everything to justify its going back to its original claims and disregarding the Panel's insights, which, it alleges, makes the decision unreasonable both in light of its justifications and its actual outcome.

[78] In this regard, I note that the recurring issue between municipalities and federal authorities in the determination of PILTs is whether to consider the constraints inherent in the nature of the properties subject to assessment and their status as federal properties. This dilemma, it seems to me, stems from the definition of "property value", which creates a legal fiction that allows property value to be calculated as if the federal property were taxable property belonging to a private owner (*Halifax* at para 51; *Montreal Port Authority* at para 40). Should this fictitious change in ownership be interpreted as eliminating the constraints, namely, the fact they are federal property or even their very nature, whether that is a citadel, an airport or, as in this case, a vast forest area dedicated to conservation and recreational activities?

[79] Generally speaking, municipalities appear to have responded to this question in the affirmative, giving little or no consideration to these constraints, which federal authorities have

strongly opposed (*Halifax* at para 18; *Toronto* at paras 18–19). This conflicting perspective is necessarily reflected in the assessment methods advocated by parties. In *Halifax*, for example, the city had used as the basis for its appraisal of the glacis the market value of surrounding properties with various adjustments, but had given little weight to the use restrictions inherent in the historic site designation. Canada, for its part, took as its starting point that the use restrictions rendered the property effectively valueless except to the extent that it could support commercial uses.

[80] It is my view that in order to satisfactorily answer this question in the context of this application, it is important to first recognize that the legal fiction created by the definition of "property value" is highly incompatible with taking into account the criteria set out in sections 45 and 46 of the AMT in establishing the value of a unit of assessment:

> 45. To establish the actual value of a unit of assessment, particular account must be taken of the incidence that the realization of the benefits or losses it may bring, considered objectively, may have on its most likely sale price.
>
> . . .
>
> 46. For the purposes of establishing the actual value used as a basis for the value entered on the roll, the condition of the unit of assessment on 1 July of the second fiscal year preceding the first of the fiscal years for which the roll is made, the property market conditions on that date and the most likely use made of the unit on that date are taken into account.
>
> . . .
>
> The condition of a unit includes, in addition to its physical condition, its economic and legal situation, subject to section 45.1, as well as its physical surroundings.
>
> . . .

> For the purposes of determining market conditions on the date contemplated in the first paragraph, the information relating to transfers of ownership that have occurred before and after that date, may, in particular, be taken into account.
>
> [Emphasis added]

[81] Thus, two of the three criteria set out in section 46 of the AMT—recognition of the physical condition of the unit of assessment, and its economic and legal situation as well as its physical surroundings, as well as taking account of the most likely use of the unit on the assessment date—can be easily applied without considering the properties and the constraints related to them as they actually exist. The same is true for taking account of the incidence that the realization of the losses a unit of assessment may bring may have on its selling price, in accordance with section 45 of the AMT. The requirement to take account of the property market conditions further perpetuates the ambiguity of the process: if the properties are considered without regard to their characteristics and constraints, they become easily comparable to any form of local sale; but if they are considered as is, their uniqueness makes comparison with the local market impossible for all intents purposes, thus frustrating the application of this requirement.

[82] In this case, much of the debate between the parties before the Panel specifically concerned the difficulties inherent in calculating PILTs that I have just outlined. The experts in the file who testified for both parties acknowledged that there were no truly comparable local sales with characteristics that were identical or similar to the federal properties, which were, in fact, unique to the Park. Although both parties based their assessment on the comparison method, the Municipality preferred an analysis based solely on the behaviour of local, residential real

estate market participants, while the Commission relied on the objective constraints inherent in federal properties and their most likely use, to search for sales of large parcels of land throughout Quebec whose H&BU was conservation and recreation.

[83] The Commission recognized that some of these objective constraints did indeed stem from the federal legislation, but it also noted that the desire to preserve the Park also originated in the provincial legislation and municipal bylaws. In this regard, the Commission noted that the Park was designated and managed as an International Union for Conservation of Nature Category II protected area, a designation recognized by the province of Quebec by its inclusion of the Park in a register maintained by the Minister of Sustainable Development, Environment and Parks under the *Natural Heritage Conservation Act*, CQRL c C-61.01. It further noted that the properties registered in this register may not be assigned to a new use, be sold or exchanged or be the subject of any other transaction that affects their protection status, unless the responsible provincial minister has been informed beforehand.

[84] The Commission also found that the local bylaws governing the Municipality's land use planning, including the development plan, the urban plan and the zoning bylaw, reflect the Municipality's desire to limit the development of the Park for residential purposes, and cited the following passage from the Municipality's zoning bylaw regarding the Gatineau Park:

> [TRANSLATION]
>
> All uses, activities and/or construction within Gatineau Park boundaries must be primarily designed for insertion into a recognized environmental area so designated by the National Capital Commission. Based on this common requirement, the various types of use permitted within Gatineau Park have been combined in a single land use group.

[85] Finally, the Commission took into account the Municipality's admission that no bylaw amendments permitting residential or commercial development in the Park were anticipated in the short, medium or long term. Thus, the Commission was of the view that the likelihood that federal properties would ever be used for purposes other than a park was, to all intents and purposes, non-existent.

[86] As will be explained in more detail below, taking into account the objective constraints inherent in a unit of assessment is a central aspect of determining the H&BU. Furthermore, sections 45 and 46 of the AMT clearly state that, when establishing the actual value of a unit of assessment, the incidence that the realization of objective losses may have on the unit's sale price, and its economic and legal situation as well as its physical surroundings must be taken into account. However, in view of my conclusions regarding the reasonableness of the adjustments made by the Commission to the retained local sales values, it is my view that its decision to take into account the objective constraints inherent in its properties was not unreasonable.

(iii) Adjustment of the retained local sales values

[87] As the Supreme Court reiterated in *Halifax*, while "the Minister is not bound by the valuation arrived at by the relevant assessment authority, it must nonetheless be a reference point" (*Halifax* at para 48). However, the Supreme Court also pointed out in *Montreal Port Authority* that the assessment of federal properties can give rise to significant technical problems related to the application of the principles of property assessment because these properties are very diverse, and can even be quite distinctive, if not unique or almost unique in Canada (*Montreal Port Authority* at para 35). Thus, while the value determined by an assessment

authority should serve as a reference point, its validity is, like the reasonableness of the value determined by the federal authority, subject to the principles of property assessment applicable in the given circumstances. In this case, in order to assess whether the decision on this issue was reasonable, attention should be paid to the correspondence between the criteria the Panel and the Commission analyzed, namely, the location, the H&BU and the surface area of the properties, and the property assessment principles set out in the AMT and how they were applied.

[88] In respect of the location of the federal properties, I think the Panel correctly accepted that this factor was crucial in the assessment of the property values; for example, it was clear to the Panel that the value per hectare of the units of assessment located in Forillon National Park or La Mauricie National Park was lower than that of the Park, at least in the portion of the Park within the Municipality's territory, and that a market comparison that did not reveal this distinction could not lead to a well-founded opinion of property values. Thus, the Panel concluded that the approach of the Commission's expert, who completely disregarded this factor in his analysis in favour of large parcels of land as far away as the Québec area, could not be endorsed.

[89] After the Panel's provided its opinion, the Commission acknowledged this shortcoming in its assessment process and admitted that the comparable sales submitted by the Municipality's expert were more appropriate than its own in terms of location. It was of the view, however, that since it could not rely on properties with the same characteristics, the method of comparison should take into account the dissimilarities between the properties being compared so that the values of the retained sales could be adjusted. In this regard, it noted that neither the

Municipality's expert nor the Panel had adjusted the comparable sales to take into account the H&BU and the area of the properties under review.

[90] With regard to the H&BU, the Commission noted that the case law, as well as other authorities, clearly identifies this factor as the starting point for any land assessment analysis. *Daniel Frigon c Municipalité Saint-Mathieu-Du-Parc*, 2013 QCTAQ 04268, concluded that:

> [TRANSLATION]
>
> [64] Determining the best and most profitable use is therefore fundamental and is the most important principle when assessing the value of a parcel of land. It guides appraisers in looking for comparables to analyze and allows them to make a decision on the value of the parcel of land.

[91] Furthermore, the Quebec Court of Appeal recently summarized the criteria for determining the H&BU in *Fernand Gilbert ltée c Procureure générale du Québec*, 2022 QCCA 209 at para 58, as follows:

> [TRANSLATION]
>
> The appraiser appraising [real property] must identify an H&BU that meets the following conditions: (1) it is physically possible; (2) it is permitted under laws and bylaws; (3) it is financially feasible; (4) it could be implemented in the near future; (5) it is based on probable rather than merely possible eventualities; (6) there is a demand for the property appraised at its best use; and (7) the best use must be the most profitable.

[92] In accordance with these criteria, the Commission found that the determination of the H&BU was intimately linked to the constraints inherent in the federal properties, and concluded that, in consideration of these constraints, the H&BU was as a park. It goes without saying that an H&BU as a park has a negative incidence on the value of an assessment unit, and the

Commission therefore accepted that it would be contrary to fundamental assessment principles in Quebec if land zoned as a park in municipal bylaws and that has been used for this purpose for decades, without that use realistically changing in the short or medium term, be assessed on the basis of speculative use, as if it could be used for residential or commercial development. Thus, the Commission concluded that departing from the H&BU in the property assessment process would in fact amount to ignoring the fundamental principle of the usefulness of property on which the concept of value is based.

[93] Finally, the Commission determined that it also had to consider the surface area of the properties, because this had an impact on their unit price. The Commission relied on the observations made by author Jean-Guy Desjardins in *Traité de l'évaluation foncière* (Jean-Guy Desjardins, *Traité de l'évaluation foncière*, Wilson & Lafleur ltée edition, 1992 at 140–41), which echoed the words of Mr. Justice Beetz in *Saint-Laurent (City of) v Canadair Ltd*., [1978] 2 SCR 79 at pages 83 and 92, which it is helpful to reproduce here:

> . . . According to *Canadair*'s expert witness, the potential value is greater than the real value. Among other things the unusually large area of the land, which makes it unlikely that a single purchaser will be found, must be taken into account and the potential value must be adjusted to arrive at the real value.
>
> . . .
>
> . . . In view of these circumstances it seems to me to be inaccurate, and I say this with deference, to maintain that *Canadair* is asking for what amounts to a reduction in the taxes on one or other of its blocks of land on the pretext that it owns other blocks of land in the vicinity. If the immense area of the land affects its real value, then it must be taken into consideration. The record contains only the uncontested opinion of *Canadair*'s expert witness on this point, since the City's expert witness did not discuss this aspect of the question at all.

> For these reasons it is my opinion that the Court of Appeal was justified in intervening and dismissing the municipal assessment.
>
> [Emphasis added]

[94] Based on its findings in respect of the H&BU and the area of the properties, the Commission then conducted additional analyses to obtain adjustment values to consider these two criteria. As for the H&BU, it compared the values of parks and surrounding residential parcels of land on the rolls of towns for which the Municipality's expert prepared the assessment roll. It then compared the data collected by this expert with the data collected by the Commission's expert, which compared transactions involving parcels of land for residential and conservation use in different physical surroundings, such as big cities, smaller cities and rural areas. The Commission also obtained additional expertise from Altus, which, applying a subdivision method to two distinct scenarios, one based on the hypothetical bulk sale of 40 hectares of land and the other based on the hypothetical sale of 1-hectare plots for building, established the discount that should apply to the area of the properties.

[95] On the basis of these analyses, the Commission established a rate which provided a 50% adjustment for use for parcels of land of less than 500 hectares; a 60% adjustment for use and area for parcels of land ranging from 500 to 1,000 hectares; and a 70% adjustment for use and surface area for parcels of land ranging from 1,000 to 1,150 hectares. It then applied these adjustments to the unit rates used by the Municipality's expert for the large and small parcels of land that could be aggregated under section 34 of the AMT. In the Commission's view, these values represented the values that, as of July 1, 2016, would be attributable by an assessment

authority to the properties if they were taxable properties since they took into account the location, area, and H&BU specific to the properties.

[96] As I mentioned earlier, the Commission gave the Municipality an opportunity to comment on the new factors in its method to compute the property value, an opportunity that the Municipality chose to decline. Furthermore, in the context of this application, the Municipality made no arguments that cast doubt on the reasonableness of the method developed by the Commission. Rather, it claims that this additional factor is unreasonable in itself because it was submitted after the parties had made their case before the Panel and because it required the use of expertise from the same firm whose report the Panel largely rejected. Thus, the Municipality asserts that the Commission's conduct rendered the Panel's opinion and the process that preceded it pointless, thereby bringing the parties back to square one.

[97] However, as I have already concluded, it was perfectly open to the Commission to continue its analyses after the Panel had given its opinion, and its duty was to consider it and then to reasonably justify any findings that deviated from it, nothing more. In my view, in stating that the Panel's opinion was pointless, the Municipality is mistaken in its assessment of the approach taken by the Commission that I have just outlined.

[98] Indeed, I am of the view that the method presented by the Commission's expert before the Panel was neither extravagant nor fundamentally contrary to the principles of property assessment. In accordance with the AMT's criteria, and in the absence of truly comparable local sales, the expert obtained comparable data that took into account the characteristics and

constraints of the properties under review, even if, in doing so, he failed to consider the impact of the local real estate market.

[99] Finally, the Municipality asserts that the Commission did not have to consider the costs it incurs for developing the federal properties and the difficulties it would have in protecting this natural heritage if the properties were not assessed at their fair value, arguing that while funding the protection of natural heritage is a worthy goal, it is unrelated to the PILT system. I agree with the Municipality on this point, and I also note that, at face value, other factors identified by the Commission in its analysis, such as the Park's positive impact on property values in the Municipality and its residents' quality of life, as well as the economic benefits generated directly by Park visitors and indirectly by its natural assets, have little to do with the PILT system. However, to the extent that these elements were primarily used to establish the factual context justifying the Commission's decision to retain an H&BU as a park, these factors actually had no individual impact on the calculation of the values of the parcels of land themselves. I therefore cannot agree with the Municipality's contention that the Commission made every effort to reduce the amounts payable to the Municipality for objectives other than those of the PILT system.

[100] On the basis of these reasons, it becomes clear that a Crown corporation's reasonable exercise of its discretion to determine the property value of its properties in the event of a disagreement with a taxing authority lies in the development of an assessment method that is a fair and equitable compromise that must be reflected in the property assessment principles chosen by the Crown corporation in the circumstances, but also in the weight it gives to each of

these principles. This compromise is made necessary by the difficulties caused by the application of the definition of “property value.” This definition requires that properties be considered as if they were not owned by a Crown corporation, which leads assessment authorities assessing such properties to give short thrift to constraints related to their federal status, although conversely, the property assessment principles that guide those same assessment authorities generally tend to make these constraints inseparable from the calculation of their value.

[101] In this context, reconciling these two conflicting legal principles is, in my view, essential to ensure the fairness and equity of the assessment method used. Since federal properties are often unique cases on local, and sometimes even national, territory, such an exercise can be a challenging task. As the Supreme Court has recognized, legitimate disagreements for which there is no one, right answer are therefore bound to arise (*Halifax* at para 41).

[102] One thing is certain, however, the PILT system cannot be interpreted as permitting disregard for the most basic recognized property assessment principles in establishing the property value of a federal property. Challenging the Panel’s opinion on this point, the Commission submits that the exercise of assessing a federal Crown property as if it were taxable does not mean ignoring how this property is used and stripping it of its attributes and the objective constraints that apply to it. I do not think that this proposition is unreasonable. I also agree with the Commission that an assessment authority would not assess a private owner’s parcel of land for the purposes of property taxation on the basis of a hypothetical, unlikely use that is not permitted by the existing legal regime, and that a private owner would clearly not agree to be taxed on such a value.

[103] In closing, it is important to remember that in respect of the small parcels of land that were not aggregated, the Commission accepted the Panel's recommendation to base its calculations on comparable residential sales. The Commission held that even if these parcels of land were part of the Park and were in their natural state, they were situated in partly developed, highly prized areas in which the Municipality permits residential construction and provides certain services. In the Commission's view, it was therefore justified to establish their value by considering the municipal zoning requirements, which, while recognizing that these parcels of land are part of a natural area in which construction must be kept to a minimum, allow development for residential purposes there. I believe this conclusion is consistent with the overall approach used by the Commission in computing the value of the large parcels of land.

VII. Conclusion

[104] In conclusion, I am of the view that the Commission's decision, which sought to combine all the criteria that an assessment authority should consider in determining the property value of federal properties if they were taxable, falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Vavilov* at para 86).

[105] The process leading up to the Commission's decision began when it received the Municipality's applications for PILTs because of significant increases in roll values, based on sales of residential land whose only common feature with the federal properties was their location in the Municipality. It continued before the Panel, following the parties' disagreement on the taking into account of the characteristics of the properties and the constraints inherent in them. The Commission then amended its approach on the basis of the Panel's recommendations

that it considered reasonable. In doing so, it continued to take into account the assessment criteria that the Panel had rejected but that it considered relevant under the property assessment principles that apply in Quebec and adjusted its method for computing the property value to determine the amounts of the PILTs to make to the Municipality accordingly.

[106] Overall, I am of the view that the Commission's exercise of its discretion in relation to the aggregation of the properties and the determination of their property value was, both in terms of process and outcome, transparent, intelligible and adequately justified (*Vavilov* at para 86). For all these reasons, the Municipality has not satisfied me that the Commission's decision was unreasonable.

[107] Therefore, I do not need to answer the third question raised by the Municipality. Furthermore, having previously concluded that the Commission did not breach procedural fairness, the fourth question raised by the Municipality should be answered in the negative.

[108] This application for judicial review is dismissed in its entirety, with costs.

JUDGMENT in T-1909-21

THIS COURT ORDERS that:

1. The application for judicial review is dismissed.

2. Costs are awarded in favour of the Attorney General of Canada.

"Peter G. Pamel"
Judge

APPENDIX

Constitution Act, 1867 (UK), 30 and 31 Vict, c 3, reprinted in RSC 1985, App II, No 5

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

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

Definitions	**Définitions**
2(1) In this Act,	2(1) Les définitions qui suivent s'appliquent à la présente loi.
…	[…]
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*)	**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. (*assessment authority*)
taxing authority means	**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;

…

real property tax means a tax of general application to real property or immovables or any class of them that is

(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; (*impôt foncier*)

…

federal property means, subject to subsection (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,

(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,

…

[…]

impôt foncier Impôt général :

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 d'une exemption, les locataires ou occupants autres que ceux bénéficiant d'une exemption;

b) calculé par application d'un taux à tout ou partie de la valeur fiscale des propriétés imposables. (*real property tax*)

[…]

propriété fédérale Sous réserve du paragraphe (3) :

a) immeuble ou bien réel appartenant à Sa Majesté du chef du Canada dont la gestion est confiée à un ministre fédéral;

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;

[…]

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; (*valeur effective*)

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. (*property value*)

…

[…]

Purpose

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

Objet

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

Authority to make payments

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

Paiements

3(1) Le ministre peut, pour toute propriété fédérale située sur le territoire où une autorité taxatrice est habilitée à lever et à percevoir l'un ou l'autre des impôts mentionnés aux alinéas a) et b), et sur réception d'une demande à cet effet établie en la forme qu'il a fixée ou approuvée, verser sur le Trésor un paiement à l'autorité taxatrice :

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

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

(b) in lieu of a frontage or area tax

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

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.

…

[…]

Regulations by Governor in Council

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

Règlements du gouverneur en conseil

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

…

[…]

(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;

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;

…

[…]

Regulations to be complied with in making grants

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

Observation des règlements

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

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

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

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

…

[…]

Appointment of members

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.

Comité consultatif

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.

Removal

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

Révocation

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

Mandate

(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).

Mandat

(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).

…	[…]
Schedule III	**Annexe III**
(Section 2)	**(article 2)**
…	[…]
National Capital Commission *Commission de la capitale nationale* …	Commission de la capitale nationale *National Capital Commission* […]

Crown Corporation Payments Regulations, SOR/81-1030

Interpretation	**Définitions**
2 In these Regulations,	2 Les définitions qui suivent s'appliquent au présent règlement.
…	[…]
corporation property means	**propriété d'une société**
(a) except in Part II, any real property or immovable owned by Her Majesty in right of Canada that is under the management, charge and direction of a corporation included in Schedule III or IV to the Act, or that has been entrusted to such corporation;	a) Sauf à la partie II, l'immeuble ou le bien réel qui appartient à Sa Majesté du chef du Canada et dont une société mentionnée aux annexes III ou IV de la Loi a la gestion, la charge et la direction, ou l'immeuble ou le bien réel confié à une telle société;
…	[…]
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	**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-

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*)

fonctionnels, comme base du calcul de l'impôt foncier applicable à sa propriété si celle-ci était une propriété imposable. (*corporation property value*)

…

[…]

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.

…

[…]

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"

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

were a reference to "corporation property".

…

société et des propriétés de la société.

[…]

National Capital Act, RSC 1985, c N-4

Objects and purposes of Commission

10(1) The objects and purposes of the Commission are to prepare plans for and assist in the development, conservation and improvement of the National Capital Region in order that the nature and character of the seat of the Government of Canada may be in accordance with its national significance.

Mission de la Commission

10(1) La Commission a pour mission d'établir des plans d'aménagement, de conservation et d'embellissement de la région de la capitale nationale et de concourir à la réalisation de ces trois buts, afin de doter le siège du gouvernement du Canada d'un cachet et d'un caractère dignes de son importance nationale.

…

[…]

Payments in lieu of taxes

16(1) The Commission may pay grants to a local municipality not exceeding the taxes that might be levied by the municipality in respect of any real property of the Commission if the Commission were not an agent of Her Majesty.

Paiements tenant lieu de taxes

16(1) La Commission peut verser aux municipalités locales des subventions n'excédant pas le montant des taxes qui pourraient être perçues par celles-ci sur ses biens immeubles si elle n'était pas mandataire de Sa Majesté.

Exception

(2) Subsection (1) does not apply to parks or squares, to highways or parkways, or to bridges or similar structures.

Exception

(2) Le paragraphe (1) ne s'applique pas aux parcs, places, voies publiques — promenades incluses — ni aux ponts ou ouvrages semblables.

Gatineau Park	**Parc de la Gatineau**
(3) The Commission may pay grants to the appropriate authorities in respect of real property of the Commission situated in Gatineau Park not exceeding in any tax year the amounts estimated by the Commission to be sufficient to compensate such authorities for the loss of tax revenue during that tax year in respect of municipal and school taxes by reason of the acquisition of the property by the Commission.	(3) La Commission peut verser aux autorités compétentes, pour ceux de ses biens immeubles situés dans le Parc de la Gatineau, des subventions n'excédant pas, dans une année fiscale donnée, les montants qu'elle estime suffisants pour indemniser ces autorités des pertes de revenu de taxes municipales et scolaires subies par elles pendant l'année en question du fait de l'acquisition de ces biens par la Commission.
…	[…]

Act respecting Municipal Taxation, CQLR c F-2.1

UNITS OF ASSESSMENT	UNITÉ D'ÉVALUATION
…	[…]
34. A unit of assessment consists of the greatest possible aggregate of immovables that meets the following requirements:	34. Constitue une unité d'évaluation le plus grand ensemble possible d'immeubles qui remplit les conditions suivantes :
(1) the parcel of land or the group of parcels of land is owned by the same owner, or the same group of owners in undivided ownership;	1° le terrain ou le groupe de terrains appartient à un même propriétaire ou à un même groupe de propriétaires par indivis;
(2) the parcels of land are contiguous or would be contiguous if they were not separated by a watercourse, a thoroughfare or a public utility network;	2° les terrains sont contigus ou le seraient s'ils n'étaient pas séparés par un cours d'eau, une voie de communication ou un réseau d'utilité publique;

(3) if the immovables are in use, they are used for a single primary purpose; and

3° si les immeubles sont utilisés, ils le sont à une même fin prédominante; et

(4) the immovables can normally and in the short term be transferred only as one whole and not in parts, taking into account the most probable use that may be made of them.

4° les immeubles ne peuvent normalement et à court terme être cédés que globalement et non par parties, compte tenu de l'utilisation la plus probable qui peut en être faite.

Where the parcel of land or group of parcels of land is not to be entered on the roll, the requirements prescribed in subparagraphs 1 and 2 of the first paragraph are met if the immovables other than the parcel of land or group of parcels of land are owned by the same owner or the same group of owners in undivided ownership and if the immovables are situated on parcels of land that are contiguous or that would be contiguous if they were not separated by a watercourse, a thoroughfare or a public utility network.

Dans le cas où le terrain ou le groupe de terrains ne doit pas être porté au rôle, les conditions prévues par les paragraphes 1° et 2° du premier alinéa sont remplies si les immeubles autres que le terrain ou le groupe de terrains appartiennent à un même propriétaire ou à un même groupe de propriétaires par indivis et si ces immeubles sont situés sur des terrains contigus ou qui seraient contigus s'ils n'étaient pas séparés par un cours d'eau, une voie de communication ou un réseau d'utilité publique.

VALUE OF THE IMMOVABLES ENTERED ON THE ROLL

VALEUR DES IMMEUBLE PORTÉS AU RÔLE

44. The most likely sale price of a unit of assessment that is not likely to be the subject of a sale by agreement is established by taking into account the price that the person in whose name the unit of assessment is entered on the roll would be justified in paying and demanding if that person were both purchaser

44. Le prix de vente le plus probable d'une unité d'évaluation qui n'est pas susceptible de faire l'objet d'une vente de gré à gré est établi en tenant compte du prix que la personne au nom de laquelle est inscrite l'unité d'évaluation serait justifiée de payer et d'exiger si elle était à la fois l'acheteur et le

and vendor, in the conditions set forth in section 43.

vendeur, dans les conditions prévues par l’article 43.

45. To establish the actual value of a unit of assessment, particular account must be taken of the incidence that the realization of the benefits or losses it may bring, considered objectively, may have on its most likely sale price.

45. Pour établir la valeur réelle d’une unité d’évaluation, il faut notamment tenir compte de l’incidence que peut avoir sur son prix de vente le plus probable la considération des avantages ou désavantages qu’elle peut apporter, en les considérant de façon objective.

…

[…]

46. For the purposes of establishing the actual value used as a basis for the value entered on the roll, the condition of the unit of assessment on 1 July of the second fiscal year preceding the first of the fiscal years for which the roll is made, the property market conditions on that date and the most likely use made of the unit on that date are taken into account.

46. Aux fins d’établir la valeur réelle qui sert de base à la valeur inscrite au rôle, on tient compte de l’état de l’unité d’évaluation et des conditions du marché immobilier tels qu’ils existent le 1er juillet du deuxième exercice financier qui précède le premier de ceux pour lesquels le rôle est fait, ainsi que de l’utilisation qui, à cette date, est la plus probable quant à l’unité.

However, where an event referred to in any of paragraphs 6 to 8, 12, 12.1, 18 or 19 of section 174 occurs after the date determined under the first paragraph, the condition of the unit of assessment taken into account is the condition existing immediately after the event, regardless of any change in the condition of the unit since the date determined under the first paragraph, arising from a cause other than an event

Toutefois, lorsque survient, après la date déterminée en application du premier alinéa, un événement visé à l’un des paragraphes 6° à 8°, 12°, 12.1°, 18° et 19° de l’article 174, l’état de l’unité d’évaluation dont on tient compte est celui qui existe immédiatement après l’événement, abstraction faite de tout changement dans l’état de l’unité, produit depuis la date déterminée en application du premier alinéa, par une

referred to in the abovementioned paragraphs. The most likely use taken into account in such a case is the use inferred from the condition of the unit.

autre cause qu'un événement visé à un tel paragraphe. L'utilisation la plus probable qui est prise en considération est alors celle qui découle de l'état de l'unité dont on tient compte.

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

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

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

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

For the purposes of determining market conditions on the date contemplated in the first paragraph, the information relating to transfers of ownership that have occurred before and after that date, may, in particular, be taken into account.

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

…

[…]

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1909-21
STYLE OF CAUSE:	MUNICIPALITY OF CHELSEA v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HEARD AT MONTRÉAL
DATE OF HEARING:	SEPTEMBER 26, 2022
JUDGMENT AND REASONS:	PAMEL J.
DATED:	JANUARY 23, 2023

APPEARANCES:

Paul Wayland Simon Frenette	FOR THE APPLICANT
Vincent Veilleux Isabelle Mathieu-Millaire	FOR THE RESPONDENT

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