

Date: 20070705

Docket: T-795-04

Citation: 2007 FC 701

Ottawa, Ontario, the 5th day of July 2007

Present: The Honourable Mr. Justice Martineau

BETWEEN:

CITY OF MONTRÉAL

Applicant

and

MONTRÉAL PORT AUTHORITY

Respondent

and

ATTORNEY GENERAL OF CANADA

Intervener

REASONS FOR ORDER AND ORDER

[1] The administrative decision whose lawfulness is challenged by the applicant was made in March 2004 by a manager of the respondent, Sylvie Vachon (the Tribunal). Except where otherwise indicated in these reasons, the amounts of the adjustments made by the Tribunal to the applicant's application for payment in lieu of real property tax for the year 2004 are those found

in a letter to the applicant, dated March 19, 2004, with which a cheque issued by the respondent in the amount of \$1,326,497.53 was enclosed (the impugned decision).

[2] The application for payment was submitted to the respondent in accordance with Part I of the *Crown Corporation Payments Regulations*, SOR/81-1030, as amended (the CCPR). The adjustments found in the impugned decision were made by the Tribunal on behalf of the respondent under the supposed authority of the CCPR. The Tribunal assessed the amount of the payment in lieu of real property tax (PLRT) to be paid by the respondent for the 2004 taxation year at \$1,326,497.53. This amount includes \$1,196,305.49 for the sector corresponding to the former city of Montréal (Montréal sector) and \$130,192.04 for the sector corresponding to the former city of Montréal-Est (Montréal-Est sector).

[3] In its notice of application filed in Court on April 21, 2004, the applicant submits that the respondent arbitrarily and unlawfully subtracted the following amounts from the payment involving the Montréal sector:

- (a) the amount of \$737,889.67 to be paid at the real property tax rate usually applicable to non-residential properties (the effective real property tax rate issue);
- (b) the amount of \$1,247,355.98 representing the additional amount to be paid at the effective rate applicable to the piers and silos that were excluded from the calculation (the exclusion of piers and silos issue).

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

1. Municipal tax rules in the province of Quebec

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

[6] Under section 485 of the CTA, a municipal council may, subject to the *Act respecting municipal taxation*, R.S.Q. c. F-21 (the AMT), impose and levy annually on all taxable immovables in the territory of the municipality a tax based on their value as shown on the assessment roll.

[7] For these purposes, under the AMT, all immovables situated in the territory of a local municipality are entered on the property assessment roll, except for those described in sections 63 to 68 of the AMT, which are not entered on the roll (section 31 of the AMT). In practice, the tax base, that is, the basis for real property taxation, is established by registering immovables on the roll. Any challenge regarding an entry on the property assessment roll may be brought before the Administrative Tribunal of Québec (ATQ) if the person applying for review has not entered into an agreement with the assessor on an alteration to the roll (sections 138.4 and 138.5 of the AMT).

[8] That being said, wherever the law provides that only part of the value of an immovable is taxable or that it is exempt from property taxes, the roll must state the taxable value of the immovable or the fact that it is exempt, as the case may be. Where applicable, the entry must be accompanied with a reference to its legislative source (section 55 of the AMT). More specifically, the AMT provides that immovables included in a unit of assessment entered on the roll

in the name of the Crown or of a Crown corporation are exempt from all municipal or school property taxes (section 204, paragraphs 1 and 1.1 of the AMT). The provincial exemption is consistent with section 125 of the *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, reproduced in R.S.C. 1985, App. II, No. 5, which provides that no property or lands belonging to Canada or any province shall be liable to taxation.

[9] When a non-taxable immovable included in a unit of assessment entered on the roll in the name of the Crown or of a Crown corporation is occupied by a person other than the Crown or a Crown corporation, the property taxes to which that immovable would be subject without that exemption are levied on the lessee or, if there is no lessee, on the occupant, and are payable by the lessee or the occupant. However, the rule does not apply where, according to federal law, a payment in lieu of real property tax (PLRT) is paid in respect of the immovable (section 208 of the AMT). (In this case, the AMT uses the term “subsidy”, which until 2001 was used in federal legislation).

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

[11] There is nothing that would lead me to conclude that the assessment value of the silos and piers appearing in the property assessment roll is erroneous. In fact, at paragraph 33 of the respondent's memorandum dated April 5, 2005, it is stated that [TRANSLATION] "in this case, the 'property value' of the immovables in question is not contested".

[12] Having said this, I do not believe that an application for review of an entry on the property assessment roll is the only way to contest the assessed value of an immovable or of real property in the case of property belonging to the federal Crown. In my opinion, where a dispute arises, the respondent may always refer the issue of the "property value" to the advisory panel under section 11.1 of the PLTA to obtain its advice (section 12.1 of the CCPR). Whether the respondent decides to follow or to ignore the advice of the advisory panel, nothing prevents the applicant from filing an application for judicial review to have the legality of the decision made by the respondent reviewed, which is exactly what the applicant did in the case at bar.

2. Federal Payments in Lieu of Taxes (PILT) Program

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

[14] Although it is true that the Crown and its agents are exempted from paying any form of property tax on their properties, they are nonetheless on equal footing with other property owners insofar as access to vital municipal services are concerned. Accordingly, in 1939, the Rowell-Sirois Royal Commission on Dominion-Provincial Relations recommended that the federal government voluntarily pay real property taxes on Crown property.

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

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

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

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

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

[19] Incidentally, I note that the applicant and the respondent do not agree on the application of these two definitions, particularly with regard to the scope of the exemption in paragraph 2(3)(b) of the PLTA, which excludes from the definition of “federal property” any structure, work, machinery or equipment that is included in Schedule II to the PLTA. I will come back to this contentious issue later on when discussing the exclusion of the piers and silos.

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

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

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

the PLTA make PLBOTs to taxing authorities (paragraph 11(1)(b) of the PLTA and section 15 of the CCPR).

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

[23] Needless to say, the Canadian government is the biggest land owner in the country. In practice, managers from the Department of Public Works and Government Services Canada (PWGSC) administer the PILT Program for federal properties managed by federal departments (department properties). In 2004, PWGSC paid approximately \$426 million to some 1,300 taxing authorities, which obviously excludes payments made by Crown corporations not under the Minister's responsibility.

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

3. Time and manner of payments in lieu of taxes

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

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

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

[28] I note that paragraphs 10(b) and (c) of the PLTA provide that the Minister may make regulations respecting the making of an interim payment in respect of a payment under the PLTA and respecting the recovery of any overpayments made to a taxing authority, including recovery by way of set-off against other payments under the PLTA. These last two aspects are effectively governed by sections 3 and 4 of the *Interim Payments and Recovery of Overpayments Regulations*, SOR/81-226, as amended (IPROR), which are not invoked by the respondent in this case. In the case of corporations included in schedules III and IV to the PLTA, it is the Governor in Council and not the Minister who has the authority under paragraphs 9(1)(f) and (g) of the PLTA to make regulations respecting the payments to be made by these corporations. This aspect is effectively governed by section 12 of the CCPR.

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

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

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

[31] More specifically, section 6 of the CCPR specifies that the PLRT made by a corporation is made without any condition, in an amount that is not less than the amount referred to in section 7 of the CCPR. Under subsection 7(1) of the CCPR, the amount of the PLRT shall not be less than the product of the following two factors:

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

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

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

features thereof, as the basis for computing the amount of any real property tax that would be applicable to that property if it were taxable property”.

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

[34] The “assessment authority” to which section 2 of the CCPR refers means an authority that has power by or under an Act of Parliament or the legislature of a province to establish the assessed dimension or assessed value of real property or immovables (subsection 2(1) of the PLTA). In Quebec, the competent authority under provincial legislation is the assessor appointed under the AMT. In the case at bar, there is no immediate litigation between the parties concerning the property value of the properties in question, including value indicated by the applicant regarding the piers and silos.

[35] This being said, the present dispute between the parties is based first and foremost on the Tribunal’s decision to apply to all of the respondent’s properties which were subject to a PLRT an effective real property tax rate different from the one applicable to non-residential immovables under the applicant’s by-laws. It must also be determined whether the piers and silos were legally

excluded from the calculation of the amount of the PLRT to be paid under sections 6 and 7 of the CCPR.

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

[37] Before going any further, let us review. Upon application by a taxing authority, a corporation must first of all determine if this application actually does concern property subject to a payment and then refer to the property value and to the applicable effective rate. The product of these two amounts is the amount of the payment which must be made by the corporation within 50 days following receipt of the application (sections 2, 5, 6, 7 and 12 of the CCPR). Finally,

adjustments to the effective rate and the possible deductions from the amount of the payment specified in subsection 7(2) and section 9 of the CCPR are inapplicable in this case.

5. Properties involved in this case

[38] The respondent is a corporation incorporated by letters patent issued by the Minister of Transport under the *Canada Marine Act*, S.C. 1998, c. 10, as amended (the CMA). It is an agent of Her Majesty in right of Canada only for the purposes of engaging in the port activities referred to in paragraph 28(2)(a) of the CMA.

[39] The respondent manages numerous immovables and real property belonging to Her Majesty (sections 7, 12, 44 and 45 of the CMA). It must be presumed that the properties belonging to Her Majesty are occupied and operated by the respondent exclusively on behalf of Canada (*City of Halifax v. Halifax Harbour Commissioners*, [1935] S.C.R. 215 ; *Re the City of Toronto and the Canadian Broadcasting Corporation*, [1938] O.W.N. 507 (Ont. C.A.)).

[40] The immovables or real property of the respondent are located in the following two sectors:

- (1) Montréal sector: these properties are located along the Saint Lawrence River and the Lachine Canal in a vast area bounded by the Bonaventure Expressway, Mill Street, Pierre-Dupuis Avenue and the Bickerdike Terminal, stretching into the eastern part of Montréal (sections 24 to 93 and 111);
- (2) Montréal-Est sector: these properties are also located along the Saint Lawrence River and are mainly occupied by refineries (sections 94 to 110 of the Port of Montréal).

The immovables or real property that are the subject of the present dispute are located in the Montréal sector and are not rented by the respondent.

[41] All these immovables are entered on the property assessment roll as required by provincial law (sections 31, 55 and 204 of the AMT). As one would expect, the Tribunal uses the value entered on the roll as the basis for calculating the real property tax which would otherwise be applicable to the properties in question if they were taxable by law. It should be noted that the lessees of the Port of Montréal pay real property tax directly to the applicant for the land belonging to Her Majesty which they directly occupy (section 208 of the AMT), while the PLRT made by the respondent strictly concerns the immovables which are not rented. However, in the case of occupants with a lease of one year or less, a PLRT is made by the respondent.

[42] In the case at bar, on March 19, 2004, the respondent sent the applicant a cheque for \$1,326,497.53 representing, in the respondent's opinion, 100% of the amounts due to the applicant for a PLRT for the 2004 taxation year. The applicant contests this. In effect, the applicant alleges that the respondent used an incorrect effective rate and arbitrarily excluded the piers and silos from the payment.

6. Tax by-laws of the applicant

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

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

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

[46] When it tabled its 2003 budget, the applicant decided to harmonize the tax structure of the new city of Montréal, opting for a variable property tax rate system. Among other things, this change in rates allowed the new city of Montréal to do away with an outdated and inequitable method of taxation and simplify the management of tax income (see the budget adopted by Montréal city council on December 18, 2002, 2003 budget, at pages 31-32 and at pages 77 *et seq.*).

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

[48] First of all, the applicant abolished the business tax. In 2002, this tax on occupants of non-residential immovables was levied by only 10 of the 28 former municipalities. Its repeal in 2003 entailed an increase in the real property tax applicable to non-residential immovables located in a sector corresponding to one of the 10 municipalities in question. In the other 18, there was no noticeable tax impact.

[49] Such was the case with non-residential immovables in the Montréal-Est sector, where the business tax had been abolished many years ago. In 2002, in the former city of Montréal-Est, the general real property tax rate was 1.4878 per \$100 of assessment, while the tax on non-residential immovables was 2.7875 per \$100 of assessment. Therefore, the combined tax rate for non-residential immovables was 4.2753 per \$100 of assessment in 2002 (2003 budget, table 5 at page 89).

[50] Secondly, the introduction of a variable property tax rate system means that, in 2003, the revenues from the various real property taxes, such as the tax on non-residential immovables and the surtax on serviced vacant lots, could no longer be distinguished from each other. Therefore, in 2003, the new real property tax for non-residential immovables in the Montréal sector was at a rate of 4.1722 per \$100 of assessment. In comparison, in the Montréal-Est sector, this tax was at a rate of 4.2353 per \$100 of assessment in 2003 (2003 budget, table 35 at page 89).

[51] Thirdly, to ensure an orderly transition, the applicant offered tax subsidy programs to compensate for some of the shifts in the tax burden brought about by these changes to the taxation system. To this end, by-laws granting subsidies or tax credits based on the general

property tax that came into force before January 1, 2003, and under which an amount of subsidy was paid after December 31, 2002, must be read as granting a subsidy based on the basic rate of the variable-rate general property tax (section 2 of By-law 02-253 of the applicant, entitled *By-law concerning certain subsidy by-laws*).

[52] Fourthly, according to the applicant's budget estimates, in 2003, the change in the tax system allowed approximately \$8.1 million in additional revenue to be entered into the books for PILTs from the federal government (2003 budget, pages 34 and 88). In fact, according to the evidence on the record, the new real property tax rate set by the applicant in 2003 represents an approximately \$7.5 million increase for the federal Crown in terms of payments made by the Minister in respect of the department's federal properties. In the case of the respondent, the change in the tax system represents an annual increase varying between \$750,000 and \$1,000,000 (excluding the silos and piers).

[53] To this very day, the variable-rate property tax system is still in force, and the applicant has used it in every fiscal year since 2003, including 2004, the year which is the subject of this review. As a result, every year, the application has adopted a tax by-law requiring that a variable-rate general property tax be levied on and collected for every taxable immovable that is entered on the property assessment roll and located in one of the sectors described in section 149 of the Charter.

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

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

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

7. Decision rendered by the Tribunal in 2004

[56] In January 2004, Diane Loiseau, a revenue analyst working for the applicant, sent the respondent a PILT application under the PLTA and the CCPR for the 2004 taxation year in respect of the respondent's immovables or real property entered on the property assessment roll (the 2004 application). The 2004 application added up to a total of \$3,177,045.08 (excluding the Montréal-Est sector).

[57] The 2004 application is in compliance with By-law 03-201.

[58] In the case at bar, under section 3, item 13 of By-law 03-201, the general property tax rates applied in 2004 on the assessed value of the immovables located in the Montréal sector were as follows:

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

[59] Under section 3, item 14 of By-law 03-201, the general property tax rates applied in 2004 to the assessed value of the immovables located in the Montréal-Est sector were as follows:

- (a) non-residential immovables: 4.3944%
- (b) immovables containing six or more dwelling units: 1.5343%
- (c) serviced vacant lots: 2.9376%
- (d) residual: 1.4688%.

[60] Therefore, the rate indicated the applicant in its 2004 application was made up of:

- (1) the rate of 4.0547% (Montréal sector), or of the rate of 4.3944% (Montréal-Est sector);
- (2) the rate of 0.04% for the special water tax (section 4, item 1 of By-law 03-201).

[61] Sylvie Vachon, Vice-President, Administration and Human Resources, Montréal Port Authority (the Tribunal), responded to this application for payment in a letter dated March 19, 2004. In this letter, a cheque in the amount of \$1,326,497.53 was enclosed, on the following basis:

- (1) \$1,196,305.49 for the Montréal sector; and

- (2) \$130,192.04 for the Montréal-Est sector. This figure also included certain adjustments to PLRTs from previous years, the legality of which is not contested in the present application for judicial review.

[62] In the case of the Montréal sector, the rate used by the Tribunal for the year 2004 was 2.4115 per \$100 of assessment, while the rate used in the Montréal-Est sector was 4.4344 per \$100 of assessment. In both sectors, the Tribunal added a rate of 0.04 per \$100 of assessment to each rate, to account for the special water tax.

[63] Accordingly, the Tribunal subtracted \$1,985,245.66 from the \$3,177,045.08 (excluding the Montréal-Est sector) claimed by the respondent as a PLRT, for the following reasons:

- (1) According to the Tribunal, the tax rate of 2.4115% per \$100 excludes the tax equivalent of the former business occupancy tax. Accordingly, the Tribunal subtracted \$737,889.67 from the payment;
- (2) In addition, the Tribunal was of the opinion that the respondent did not have to make any payment in respect of the piers and silos entered on the applicant's assessment roll. For this reason, the Tribunal subtracted \$1,247,355.98 from the amount claimed by the applicant as a PLRT.

[64] According to the evidence on the record, the Tribunal based its position on a memorandum dated March 17, 2004, written by the director of the respondent's Real Property Department, Benoit Rheault. In this memorandum, he states that, compared with 2002, the impact of including the equivalent of the business tax, which was approximately \$776,039 in 2003,

would be nearly \$746,113 in 2004, for a cumulative total of \$1,522,152. On the basis of the information in the applicant's 2003 budget, the director of the Real Property Department used a ratio of real property tax/business tax equivalent to 58.49%/41.51%. The special water tax (0.04%) was not considered in the calculation of the proportion of the real property tax (58.49%). Rather, it was added to the weighted rate used ($4.0547 \text{ per } \$100 \text{ of assessment} \times 58.49\% = 2.3715 \text{ per } \$100 \text{ of assessment}$) for a total of 2.4115 per \$100 of assessment in the Montréal sector. With regard to the portion of the taxes attributed to the piers and silos, the director of the Real Property Department noted that, had it not been for the respondent's decision to withdraw the piers and silos from the assessment roll and to cease making, retroactively to 1999, any PLRTs on these infrastructures, the portion of the property taxes attributed to these items alone would have been \$687,364 in 2003 and \$687,878 in 2004, excluding the impact of the business tax or its equivalent.

8. The present application and related litigation

[65] Although this application for judicial review strictly concerns the Tribunal's decision for the 2004 taxation year, it is important to note that the dispute over the calculation of the effective real property tax rate also includes the 2003 and 2005 to 2007 fiscal years. In the case of the exclusion of the silos and piers, the fiscal years concerned are 1999 to 2003 and 2005 to 2007. Accordingly, the overall financial stakes for these two public bodies are considerable.

[66] On October 8, 2003, the applicant first applied to the advisory panel, submitting all the unresolved disputes it then had with the respondent. In addition to the issue of the effective real property tax rate and the exclusion of silos and piers, the respondent also refused to pay the

applicant any compensation for ending the freeze on PLRTs for the year 1993 (\$2,581,977.12 in capital). The advisory panel has yet to render a decision.

[67] On February 20, 2004, the applicant applied to the Court of Quebec, claiming \$3,795,144.66 from the respondent for the 1993 and 1999 to 2003 fiscal years. The applicant's action was dismissed on June 9, 2004, by Mr. Justice Jacques Désormeau, who allowed the respondent's declinatory exception to the effect that the Court of Quebec did not have jurisdiction. However, he referred the matter to the Superior Court (*Ville de Montréal c. Administration portuaire de Montréal*, Court of Quebec, No. 500-22-094380-048, June 9, 2004). On January 21, 2005, the Quebec Court of Appeal upheld the dismissal of the action, but on the ground that neither the Court of Quebec nor the Superior Court had jurisdiction in this matter. In its judgment, the Court of Appeal stated that the applicant should instead apply to the Federal Court to have any decision made by the respondent under the supposed authority of the PLTA and CCPR set aside (*Ville de Montréal c. Administration portuaire de Montréal*, 2005 QCCA 31, [2005] Q.J. No. 263 (Que. C.A.) (QL), leave to appeal to S.C.C. refused [2005] S.C.C.A. No.126). Meanwhile, on October 22, 2004, Prothonotary Richard Morneau of this Court dismissed the respondent's motion to strike the present application for judicial review on the grounds that it is not covered in subsections 18.1(3) and (4) of the FCA and that the applicant must first apply to the advisory panel provided for in section 11.1 of the PLTA (*City of Montréal v. Montréal Port Authority*, 2004 FC 1476). This decision was not appealed.

[68] The applicant did not file an application for judicial review in this Court against the decisions of the Tribunal regarding the 1993 and 1999 to 2003 fiscal years. However, in addition

to the year 2004, applications for judicial review were also filed in this Court for the 2005 (Docket No. T-682-05), 2006 (Docket No. T-722-06), and 2007 (Docket No. T-558-07) fiscal years.

[69] The parties agreed in writing that the Federal Court order a stay of proceedings in dockets T-682-05 and T-722-06 while the final decision in this case is pending. In fact, in Docket T-682-05, the parties filed an agreement dated December 14, 2005, in which the following is stated:

[TRANSLATION] “The undersigned lawyers, on behalf of the parties, agree to be bound, for the purposes of the settlement of the application for judicial review, by the final decision to be rendered in Docket T-795-04”. At that time, there was not yet any application concerning the 2007 fiscal year (Docket T-558-07).

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

9. **Issues and positions of the parties**

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

- (a) by determining that the property tax rate that would be applicable to the respondent's property, if it were taxable property, corresponds to the rate applicable to the "residual" category, rather than the rate applicable to the "non-residential immovables" category, these rates being set by the applicant's by-laws (the effective real property tax rate issue);
- (b) by determining that the piers and silos are included in Schedule II of the PLTA (the exclusion of piers and silos issue).

[72] For the purposes of the hearing, this application was joined with the application made by the applicant in T-631-05, in which the legality of a decision rendered in March 2005 by a manager of the Canadian Broadcasting Corporation is also the subject of an application for judicial review before this Court.

[73] On one hand, I am satisfied that the Court has exclusive jurisdiction to review the impugned decision rendered in March 2004 by the Tribunal (see *City of Montréal v. Canadian Broadcasting Corporation*, 2006 FC 113 and the case law cited in this decision). On the other hand, considering the special circumstances of this matter, this is not a case where exhausting all available remedies beforehand will lead to the dismissal of an application for judicial review (*City of Montréal*

v. Montréal Port Authority, 2006 FC 114). In fact, the advisory panel had not yet been appointed by the Governor in Council when the present application was filed. This is a case in which the advice given by the advisory panel is not binding on the parties and does not settle the issues of law and jurisdiction raised here. The advisory panel obviously does not have any expertise in giving legal opinions about the application of the law. As regards the issue of whether the piers and silos are excluded from the application of the CCPR, this is not a dispute concerning the “property value”, the “property dimension” or the “effective rate” within the meaning of the definitions used in the PLTA or the CCPR.

[74] The oral and written submissions made by counsel for the parties in both files tend to overlap or complement each other. Therefore, as far as the effective real property tax rate is concerned, it seems to me to be easier to group the various submissions together and apply them *mutatis mutandis* to the particular situation in each of these two files.

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

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

[76] The applicant submits that by not using the real property tax rate usually levied on owners of non-residential immovables, the Tribunal acted arbitrarily and capriciously, and that its

decision is based on an error in law and is contrary to the law and the obligations imposed on the respondent by the PLTA and the CCPR.

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

[78] In contrast, the respondent argues that it has the discretion to choose a different real property tax rate. Accordingly, the respondent submits that the expression “that a corporation would consider applicable” in section 2 of the CCPR must be interpreted to give it such discretion in determining the applicable effective rate.

[79] The respondent submits that in determining the applicable real property tax rate, it is not in any way supplanting the taxing authority; rather, it is exercising the authority specifically granted to it under the PLTA and the CCPR to determine the amount of the PLRT payable to the applicant. Since only those corporations included in Schedule IV to the PLTA are legally required to make a payment in lieu of the business occupancy tax (PLBOT), the respondent

submits that it did not act arbitrarily or in a capricious manner by not using the real property equivalent of the former business tax, especially considering that it has a constitutional immunity (*Re Exported Natural Gas Tax, supra*).

[80] The respondent also submits that if one accepts the applicant's argument that a Crown corporation does not have any discretion as to the determination of the effective rate, this in a way creates a right to payment, which is directly contrary to sections 3 and 15 of the PLTA, as well as section 6 of the CCPR. To sum up, if the respondent cannot deduct the real property equivalent of the former business occupancy tax from the amount of the PLRT,, this would strike down the CCPR or render them inapplicable, since only the corporations included in Schedule IV to the PLTA are legally obliged to make a PLBOT.

[81] By paying the total amount claimed by the applicant, the respondent further submits that the objectives of its mission would be compromised, since it would be required to increase its rates, fees and tariffs.

(b) The exclusion of piers and silos issue

[82] Secondly, the applicant and the respondent did not agree on the tax base.

[83] The applicant submits that a distinction must be made between the immovables and real property included in Schedule II to the PLTA which are managed by the Minister and those which are not managed by him. Only those belonging to the first category are included in paragraph (a) of the definition of "federal property" in the PLTA, which provides that immovables

or real property owned by Her Majesty in right of Canada that are under the administration of a minister of the Crown are federal property (section 3 of the PLTA).

[84] In the case at bar, the applicant submits that the federal immovables and real property whose administration was entrusted to the respondent by the Minister of Transport by virtue of letters patent no longer meet these criteria. Accordingly, they are not excluded under subsection 2(3) of the PLTA, and the respondent cannot exclude the piers and silos from the calculation of the PLRT. The applicant submits that this real property, which is entered on the property assessment roll, is “corporation property” as defined in section 2 of the CCPR, which includes property owned by Her Majesty and managed by a port authority included in Schedule III to the PLTA. Accordingly, the piers and silos must be taken into account in the calculation of the PLRT specified in sections 6 and 7 of the CCPR.

[85] On the contrary, the respondent submits that section 6 of the CCPR reconciles the notions of “federal property” and “corporation property”. The definition of “corporation property” in section 2 of the CCPR incorporates, for the purpose of the payments made by a corporation under section 6 of the CCPR, the notion of “federal property” and therefore the exclusions listed in Schedule III to the PLTA.

[86] In the alternative, the applicant points out that the word “silo” is not mentioned in Schedule II and that the term “reservoir” only refers to liquids. On the contrary, the respondent submits that a silo is a “reservoir”, as provided in paragraph 10 of Schedule II to the PLTA. In

addition, the respondent argues that if the word “reservoir” was intended to be associated with liquids only, Parliament would not have then included the term “storage tanks”.

(c) Intervention by the Attorney General of Canada

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

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

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

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

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

[91] As regards the exclusion of piers and silos issue, the AGC submits that all property located in the port of Montréal is property owned by Her Majesty and managed by the respondent. This property includes any structure, work, machinery, or equipment included in Schedule II to the PLTA. The AGC did not take a position on whether the piers and silos in question here are in fact included in Schedule II to the PLTA. Moreover, the issue of the piers and silos was not mentioned in the order of the Court dated December 5, 2005, which specified the issues with which the intervention by the AGC would deal. However, if the piers and silos do fall within the exclusion in question, the AGC submits that neither the Minister nor a corporation included in Schedule III or IV to the PLTA must make a PLRT with regard to these properties.

10. Standard of judicial review

[92] Under sections 2 and 18 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, as amended, (the FCA), this Court has exclusive jurisdiction to review the impugned decision (see *City of Montréal v. Montréal Port Authority*, 2006 FC 114 and the case law cited in that decision). Parliament has already specified in paragraph 18.1(4)(c) of the FCA that if the Federal Court is satisfied that a tribunal “erred in law in making a decision or an order, whether or not the error appears on the face of the record”, it may review that decision or order. At first glance, this seems to suggest that the standard of review that applies to errors of law is correctness. However, when an error of fact is alleged to have been made by a federal board, commission or other tribunal, paragraph 18.1(4)(d) of the FCA requires a demonstration that it “based its decision or order on an erroneous finding of fact

that it made in a perverse or capricious manner or without regard for the material before it”. This seems to suggest that where errors of fact are concerned, the standard of review is patent unreasonableness.

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

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

First factor

[95] Under section 3 of the PLTA, the Minister may make a PLRT out of the Consolidated Revenue Fund in respect of federal properties not administered by a corporation included in schedules III and IV to the PLTA, whereas the corporations included in schedules III and IV of

the PLTA themselves process the applications for payment sent to them by the taxing authorities.

In both cases, the Minister or the corporation has jurisdiction *ratione materiae*.

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

Second factor

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

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

[99] I note that under section 11.1 of the PLTA and section 12.1 of the CCPR, the Minister or the corporation may request non-binding advice in case of a disagreement with the taxing authority about, *inter alia*, the property value or effective rate. The members of the advisory panel are appointed by the Governor in Council and have a specialized jurisdiction. They serve during good behaviour for a set term and must have relevant training or experience. The appointment of

such an advisory panel seems to suggest that, from an institutional standpoint, the Minister and Crown corporations have relatively little or less expertise than the members of the advisory panel do, especially where questions of property values or effective rates are concerned.

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

Third factor

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

Fourth factor

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

[103] The dispute between the applicant and the respondent concerns above all the determination of the effective real property tax rate which is to be used as the basis for calculating the amount of the PLRT payable by the respondent to the applicant. The Tribunal claims the discretion to replace the real property tax rate which is usually payable by other

owners of non-residential immovables with a different rate unique to the respondent. This is essentially a jurisdictional issue.

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

[105] The issue of whether the Tribunal may, when calculating the PLRT, exclude certain immovables and real property which in its opinion are included in Schedule II to the PLTA is also a matter of jurisdiction and thus a question of mixed law and fact.

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

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

11. The effective real property tax rate issue

[108] First of all, the jurisdiction granted to the Tribunal under the CCPR to determine the effective rate must be characterized. The respondent is not in the same situation as an ordinary

taxpayer who receives a municipal tax bill. As a physical or legal person, the taxpayer must pay the specified amount upon receipt of the tax bill. This amount is a debt owed to the municipality, and if the taxpayer does not pay it, the municipality may institute legal proceedings to recover it. This is not possible in the case at bar, because in principle the PLTA does not confer any right to a payment.

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

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

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

[111] The respondent submits that by using the expression “that a corporation would consider applicable”, the Governor in Council intended to give Crown corporations sweeping discretion in this area. Therefore, the respondent could ignore the real property tax rate applicable to other

owners of taxable non-residential immovables and choose a real property tax rate which excludes the tax equivalent of the former business occupancy tax abolished by the applicant in 2003.

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

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

[114] The immovables and real property of the respondent are not taxable. If they were taxable, they would then fall within the category of non-residential immovables. For the years 2003, 2004

and 2005, the general real property tax rate applicable to non-residential immovables located in the Montréal sector was 4.172%, 4.0547%, and 3.8812% respectively.

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

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

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

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

[TRANSLATION]

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

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

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

[120] I reject any argument to the effect that the payment of the tax equivalent, in the form of a PLRT, of a variable-rate real property tax based on the category of immovables applicable in this

case would be contrary to the purpose of the PLTA and the provisions of the CCPR. The various constitutional arguments made by the respondent do not apply in this case.

[121] In the case at bar, the Tribunal used a real property tax rate (excluding the rate of the special water tax) of 2.3715 per \$100 of assessment. The rate used is slightly higher than the former real property rate applicable in 2002 to non-residential immovables in the former city of Montréal. The general real property tax rate of 1.9702% added to the tax rate of 0.3348% on non-residential immovables gives a combined total of 2.3050 per \$100 of assessment. The discrepancy is explained by the increase in the real property tax rate on non-residential immovables in 2003 (adjusted in a proportion of real property tax/business tax equivalent to 58.49%/41.51%).

[122] Not only does the impugned decision appear to me to be contrary to law and erroneous in law, but I am also of the opinion that the Tribunal acted arbitrarily or capriciously, such that no matter what standard of review applies in this case, the final result is the same.

[123] By reducing the effective rate of the real property tax by more than 40%, according to the evidence on the record, the decision of the Tribunal allowed the respondent to save, at the applicant's expense, approximately \$737,889.67 for the year 2004 alone. This is contrary to section 6 of the CCPR and to the purpose of the PLTA, which provides for fair and equitable payments to municipalities.

[124] Therefore, the Court is warranted in intervening and setting aside this last part of the impugned decision rendered by the Tribunal in March 2004.

12. The exclusion of piers and silos issue

[125] The applicant alleges that the respondent must include piers and silos in the calculation of the PLRT because they are not excluded from the definition of “corporation property” in section 2 of the CCPR. The respondent, meanwhile, is of the opinion that it does not have to include these immovables. According to the respondent, they are structures and works included in Schedule II to the PLTA and are excluded from the definition of “federal property” (subsection 2(3) of the PLTA). In the alternative, even if the piers and silos are excluded from the definition of “federal property” by the effect of paragraphs 3 and 10 of Schedule II to the PLTA, the applicant submits that these silos are not “reservoirs”. Of course, the respondent contests this.

(a) “Federal property” and “corporation property”

[126] Section 2 of the PLTA defines “federal property”. Meanwhile, section 6 of the CCPR specifies that “[t]he payment made by a corporation in lieu of a real property tax or frontage or area tax in respect of any corporation property that would be federal property if it were under the management, charge and direction of a minister of the Crown is made without any condition, in an amount that is not less than the amount referred to in sections 7 to 11” [emphasis added]. It is obvious that the words “if it were under the management, charge and direction of a minister of the Crown” are very similar to the words used in paragraph (a) of the definition of “federal property” in section 2 of the PLTA: “. . . that are under the administration of a minister of the Crown”.

[127] The definition of “corporation property” in section 2 of the CCPR is used to define the respective scopes of application of parts I and II of the CCPR. In the case of Part I, paragraph (a) of the definition of “corporation property” refers by necessary implication to the definition of “federal property” in section 2 of the PLTA. The same applies to subparagraph (a.1)(i), which applies in the case at bar because it designates “any real property or immovable that is owned by Her Majesty in right of Canada and that is managed by a port authority included in Schedule III to the Act”. It is also interesting to note that subparagraph (a.1)(ii) specifies that any other real property or immovable on which a port authority engages in port activities referred to in paragraph 28(2)(a) of the *Canada Marine Act* and in respect of which the port authority is exempt from real property tax is also subject to a payment under section 6 of the CCPR (PLRT or PLFAT), because this is “corporation property”. Finally, in the case of a payment in lieu of a business occupancy tax (PLBOT), the definition of “corporation property” used in Part II of the CCPR had to be amended to designate “any real property or immovable occupied or used by a corporation included in Schedule IV to the Act in respect of which occupancy or use the corporation is exempt from business occupancy tax”.

[128] Under paragraph 2(3)(b) of the PLTA, the works included in Schedule II to the PLTA are excluded from the definition of “federal property.” More specifically, paragraphs 3 and 10 of Schedule II to the PLTA specify that the following works are not “federal property”:

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

10. Reservoirs, storage tanks, fish-rearing ponds, fishways

[Emphasis added]

[129] I agree with the AGC's proposal to the effect that a regulation is subordinate legislation. The interpretation suggested by the applicant would mean that the regulation has a broader scope than the Act, which would be contrary to the purpose of the PLTA, namely, to provide for fair and equitable payments. In my opinion, the definition of "corporation property" in section 2 of the CCPR is subordinate to the definition of "federal property" in section 2 of the PLTA, which excludes the works mentioned in Schedule II to the PLTA. We must turn to the applicable principles of statutory interpretation (see especially Pierre-André Côté, *The Interpretation of Legislation in Canada*, 3d ed., Montréal, Les Éditions Thémis, 2000 at page 282) and provisions of the federal *Interpretation Act* (see the *Interpretation Act*, R.S.C. 1985, c. I-21, sections 12, 15 and 16), which support such a conclusion.

(b) *Interpretation of the term "reservoirs"*

[130] In the alternative, the applicant notes that the word "silo" is not mentioned in Schedule II. The respondent, however, submits that a silo is a "reservoir" as provided in paragraph 10 of Schedule II and that if the word "reservoir" were to be connected with liquids only, Parliament would not have followed it with the term "storage tanks".

[131] On numerous occasions, the Supreme Court has adopted the approach advocated by Elmer Driedger, according to which "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (as cited in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at paragraph 21).

[132] Upon reading Schedule II to the PLTA, it becomes clear that Parliament intended to separate the structures, work, machinery and equipment included therein into different categories. This Schedule contains 13 paragraphs. Although some paragraphs mention only one item (paragraphs 4, 5, 6, and 7), others mention several items, sharing common characteristics.

[133] Paragraph 10 is at issue in this case, namely, reservoirs, storage tanks, fish-rearing ponds, and fishways. All of the terms in this paragraph are connected with liquids. I also note that, before the PLTA was amended in 2000, paragraph 10 also included the words “outdoor swimming pools”. Accordingly, I am of the opinion that the word “reservoir” must be interpreted in its plain meaning.

[134] On this point, the parties submitted definitions from a number of dictionaries. In *Le grand dictionnaire terminologique*, the word “réservoir” is defined first as a [TRANSLATION] “large vessel in which raw, semi-finished or completely processed materials are stored, usually in liquid form” and secondly as a [TRANSLATION] “place, receptacle for holding a relatively large quantity of liquid; Flexible or rigid receptacle containing fuel, lubricant or other liquids; Watertight enclosure for holding or storing a fluid (liquid or gaseous products)” [emphasis added]. (*Le grand dictionnaire terminologique*, under the entry “réservoir”, on line: *Grand dictionnaire terminologique* < <http://www.olf.gouv.qc.ca/ressources/gdt.html> >).

[135] Likewise, the *Grand Larousse universel* gives the following definitions:

[TRANSLATION]

1. Place created or set up for accumulating and storing certain things.
 2. Receptacle for liquid or gaseous products . . .
 3. Place where materials are stored up . . .
- [Emphasis added]

[136] The word “silo”, however, is not associated with liquids. For example, *Le grand Robert de la langue française*, 2d ed., gives the following definitions:

[TRANSLATION]

1. Underground area dug out and then used as a reservoir (above or below ground) where agricultural products are stored. **Dock, elevator, trench, granary, store.** *Wheat silos, grain silos* (cement, metal), *silage silo* (stack silo, pit silo, vertical silo . . .), *for pulps, roots and tubers* (permanent, temporary). *Store wheat, grain in a silo.*
Ensile
2. Techn. Underground missile launch site.
3. [...] Tech. Multi-story garage. *Parking-silo.*
4. Perj. (Metaphorically from 1.). Apartment silo, office silo . . . : multi-story, densely occupied modern building. Rabbit hutch.

[137] The French expression “reservoirs d’emmagasinage” also seems to indicate that these are reservoirs for liquids. Accordingly, the French version of the PLTA must be reconciled with the English version. In the English version, the words “storage tanks” are used, which refer to the notion of liquids. For example, under the definition of the word “storage”, the *Oxford English Dictionary* defines “storage tank” as follows: “storage tank, a tank for storage (e.g. of petrol)” (*Oxford English Dictionary*, s.v. “storage”, on line: Oxford English Dictionary <<http://dictionary.oed.com>>).

[138] Likewise, the relevant excerpts from the definition of “tank” are as follows:

1. a. In India, A pool or lake, or an artificial reservoir or cistern, used for purposes of irrigation, and as a storage-place for drinking-water.
- (b) In Australia, an artificial reservoir designed to hold water for livestock; U.S. dial., an artificial pond or lake.

- b. A natural pool or pond; a ‘stank’. dial. and U.S. . . .
- 2. a. An artificial receptacle, usually rectangular or cylindrical and often of plate-iron, used for storing water, oil, or other liquids in large quantities. Also spec. a water receptacle (with transparent sides) in which to keep fish; an aquarium.
- b. The fuel container of a motor vehicle.
- 3. Short for tank-engine, -steamer, etc.

[139] Accordingly, I agree with the applicant that the term “reservoir” refers exclusively to the storage of liquids, not dry goods. Even if seeds, grains or flour are no longer stored in the silos, this does not change their nature and primary function. If Parliament had intended to include silos in Schedule II, it would have simply used the word “silo” or even “grain elevator”. Accordingly, I am of the opinion that the immovables identified as “silos” on the property assessment roll are not excluded under subsection 2(3) of the PLTA and are subject to a PILT, be they Crown property or corporation property described in schedules III and IV of the PLTA.

(c) *Financial impact*

[140] According to the table entitled [TRANSLATION] “Calculation of lost revenue – 2004 Fiscal Year (excluding Montréal-Est)” submitted to the Court on February 7, 2007, the amounts to be paid as PLRTs in 2004 for silos and piers, if both of them are included, are \$1,124,399.38 and \$122,956.60 respectively at the real property tax rate for non-residential immovables (that is, 4.094 per \$100 of assessment) applied to the value appearing on the property assessment roll. However, the respondent cannot arbitrarily ignore the “rate of real property tax . . . applicable to its . . . property if that property were taxable property”, on one hand, or “the value . . . 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”, on the other.

[141] Therefore, I conclude that, for the year 2004, the amount of the PLRT to be paid to the applicant for the silos is \$1,124,399.38. The piers, however, must be excluded from the calculation made under section 6 of the CCPR.

13. Conclusion and remedies

[142] For the reasons given above, the application for judicial review is allowed in part.

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

[144] Therefore, it would be inappropriate to specify in the accompanying order the exact amounts of the PLRTs which the applicant could reasonably expect to receive from the respondent for 2004. It is enough to simply quash the impugned decision and refer the matter

back to the respondent so that the exact amounts may be calculated by the Tribunal in compliance with the Act and the applicable regulations.

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

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

ORDER

THE COURT DECLARES AND ORDERS that:

1. This application for judicial review is allowed in part.
2. For every taxation year after 2002, the effective rate applicable to the respondent's properties is the general real property tax rate applicable to non-residential immovables in the sector or sectors where the respondent's properties are located, to which is added, where appropriate, the special water tax rate applicable to immovables in that class.
3. For every taxation year after 2002, the respondent must not exclude from the calculation of the effective rate, or deduct from the payment in lieu of real property tax, the tax equivalent of the former business tax repealed by the applicant in 2002.
4. The impugned decision rendered by the Tribunal in March 2002 is invalid and unlawful, and the respondent could not make adjustments in the amounts of \$737,889.67 (properties other than the silos) and \$1,124,399.38 (silos) for the year 2004.
5. The decision of the Tribunal rendered in March 2004 is set aside, and the matter is referred back to the respondent so that the Tribunal may render a new decision and so that the respondent may make a payment in lieu of real property tax (PLRT) pursuant to the Act and the applicable regulations within 50 days after the expiry of the time limit specified in paragraph 8 or after the date on which the applicant advises the respondent that no additional submissions will be made or evidence adduced under paragraph 7, whichever deadline or event comes first, as the case may be.
6. The new decision of the Tribunal and the amount of any PLRT made by the respondent shall be in accordance with the following declarations:

- (a) the silos must be included in the calculation of the PLRT;
 - (b) the wharves do not have to be included in the calculation of the PLRT;
 - (c) The applicable effective rate for the year 2004 is 4.0947% per \$100 of assessment applied to the value of the respondent's immovables entered on the property assessment roll.
 - (d) The only rate substitutions or payment deductions authorized are those expressly set out in sections 7 and 9 of the *Crown Corporation Payments Regulations* (CCPR).
7. Before rendering a new decision, the Tribunal must allow the applicant to adduce any additional evidence and make any additional submissions concerning the exact amount of the payment to be made under section 6 of the CCPR, including the legal authority for and appropriateness of granting any supplements for delayed payments, where applicable.
8. The additional evidence or submissions mentioned in paragraph 7 may be filed with the Tribunal within 30 days after the date of this order.
9. There will be no order as to costs.

“Luc Martineau”

Judge

ANNEX

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

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

(c) any band within the meaning of the *Cree-Naskapi (of Quebec) Act*, chapter 18 of the Statutes of Canada, 1984, that levies and collects a tax on interests in Category IA land or Category IA-N land as defined in that Act,

(d) the Council within the meaning of the *Sechelt Indian Band Self-Government Act*, chapter 27 of the Statutes of Canada, 1986, if it levies and collects a real property tax or a frontage or area tax in respect of Sechelt lands, as defined in that Act,

(e) a first nation named in Schedule II to the *Yukon First Nations Self-Government Act*, if it levies and collects a real property tax or a frontage or area tax in respect of settlement land, as defined in that Act, or in respect of lands in which an interest is transferred or recognized under section 21 of that Act,

(f) the Nisga'a Nation or a Nisga'a Village, as defined in the Nisga'a Final Agreement given effect by the *Nisga'a Final Agreement Act*, if it levies and collects a real property tax or a frontage or area tax in respect of Nisga'a Lands, as defined in that Agreement,

c) bande — au sens de la *Loi sur les Cris et les Naskapis du Québec*, chapitre 18 des Statuts du Canada de 1984 — qui lève et perçoit un impôt sur les droits sur les terres de catégorie IA ou IA-N, au sens de cette loi;

d) le conseil — au sens de la *Loi sur l'autonomie gouvernementale de la bande indienne sechelte*, chapitre 27 des Statuts du Canada de 1986 —, s'il lève et perçoit un impôt foncier ou un impôt sur la façade ou sur la superficie sur les terres secheltes, au sens de la même loi;

e) la première nation dont le nom figure à l'annexe II de la *Loi sur l'autonomie gouvernementale des premières nations du Yukon*, qui lève et perçoit un impôt foncier ou un impôt sur la façade ou sur la superficie d'une terre désignée, au sens de cette loi, ou d'une terre dont le droit de propriété lui est transféré ou lui est reconnu en vertu de l'article 21 de cette loi;

f) la Nation nisga'a ou un village nisga'a, au sens de l'Accord définitif nisga'a mis en vigueur par la *Loi sur l'Accord définitif nisga'a*, qui lève et perçoit un impôt foncier ou un impôt sur la façade ou sur la superficie relativement aux Terres-Nisga'a, au sens de l'accord;

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

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

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

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

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

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

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

a) levé par une autorité taxatrice sur les immeubles ou biens réels ou les immeubles ou biens réels d'une catégorie donnée et

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

"federal property"
«propriété fédérale »
"federal property" means,
subject to subsection (3),

«propriété fédérale »
"federal property"
« propriété fédérale » Sous
réserve du paragraphe (3) :

(a) real property and
immovables owned by Her
Majesty in right of Canada that
are under the administration of
a minister of the Crown,

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

(b) real property and
immovables owned by Her
Majesty in right of Canada that
are, by virtue of a lease to a
corporation included in
Schedule III or IV, under the
management, charge and
direction of that corporation,

b) immeuble ou bien réel
appartenant à Sa Majesté du
chef du Canada et relevant, en
vertu d'un bail, d'une personne
morale mentionnée aux annexes
III ou IV;

(c) immovables held under
emphyteusis by Her Majesty in
right of Canada that are under
the administration of a minister
of the Crown,

c) immeuble dont Sa Majesté
du chef du Canada est
emphytéote et dont la gestion
est confiée à un ministre
fédéral;

(d) a building owned by Her
Majesty in right of Canada that
is under the administration of a
minister of the Crown and that
is situated on tax exempt land
owned by a person other than
Her Majesty in right of Canada
or administered and controlled
by Her Majesty in right of a
province, and

d) bâtiment appartenant à Sa
Majesté du chef du Canada,
dont la gestion est confiée à un
ministre fédéral mais qui est
situé sur un terrain non
imposable qui n'appartient pas
à Sa Majesté du chef du Canada
ou qui est contrôlé et administré
par Sa Majesté du chef d'une
province;

(e) real property and
immovables occupied or used
by a minister of the Crown and
administered and controlled by
Her Majesty in right of a
province;

e) immeuble ou bien réel
occupé ou utilisé par un
ministre fédéral et administré et
contrôlé par Sa Majesté du chef
d'une province.

<p>"taxable property" «propriété imposable » "taxable property" means real property and immovables in respect of which a person may be required by a taxing authority to pay a real property tax or a frontage or area tax;</p>	<p>«propriété imposable » "taxable property" «propriété imposable » Immeuble ou bien réel pouvant être assujetti par une autorité taxatrice à un impôt foncier ou un impôt sur la façade ou sur la superficie.</p>
<p>"effective rate" «taux effectif » "effective rate" means the rate of real property tax or of frontage or area tax that, in the opinion of the Minister, would be applicable to any federal property if that property were taxable property;</p>	<p>«taux effectif » "effective rate" «taux effectif » Le taux de l'impôt foncier ou de l'impôt sur la façade ou sur la superficie qui, selon le ministre, serait applicable à une propriété fédérale si celle-ci était une propriété imposable.</p>
<p>"business occupancy tax" «taxe d'occupation commerciale » "business occupancy tax" means a tax levied on occupants in respect of their use or occupation of real property or immovables for the purpose of or in connection with a business;</p>	<p>«taxe d'occupation commerciale » "business occupancy tax" «taxe d'occupation commerciale » Impôt auquel sont assujettis les occupants d'un immeuble ou d'un bien réel du fait qu'ils l'occupent ou l'utilisent, directement ou indirectement, pour leurs activités commerciales ou professionnelles.</p>
<p>"property value" «valeur effective » "property value" means the value that, in the opinion of the Minister, would be attributable by an assessment authority to federal property, without regard to any mineral rights or any ornamental, decorative or non-functional features thereof, as the basis for computing the amount of any real property tax that would be applicable to that</p>	<p>«valeur effective » "property value" «valeur effective » Valeur que, selon le ministre, une autorité évaluatrice déterminerait, compte non tenu des droits miniers et des éléments décoratifs ou non fonctionnels, comme base du calcul de l'impôt foncier qui serait applicable à une propriété fédérale si celle-ci était une propriété imposable.</p>

property if it were taxable property;

"assessed value"
«valeur fiscale »
"assessed value" means the value established for any real property or immovable by an assessment authority for the purpose of computing a real property tax;

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

(3) For the purposes of the definition "federal property" in subsection (1), federal property does not include

(a) any structure or work, unless it is

(i) a building designed primarily for the shelter of people, living things, fixtures, personal property or movable property,

(ii) an outdoor swimming pool,

(iii) a golf course improvement,

(iv) a driveway for a single-family dwelling,

«valeur fiscale »
"assessed value"
«valeur fiscale » Valeur attribuée à un immeuble ou à un bien réel par une autorité évaluatrice pour le calcul de l'impôt foncier.

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

(3) Sont exclus de la définition de « propriété fédérale » au paragraphe (1) :

a) les constructions ou ouvrages, sauf :

(i) les bâtiments dont la destination première est d'abriter des êtres humains, des animaux, des plantes, des installations, des biens meubles ou des biens personnels,

(ii) les piscines extérieures,

(iii) les améliorations apportées aux terrains de golf,

(iv) les entrées des maisons individuelles,

- | | |
|---|--|
| (v) paving or other improvements associated with employee parking, or | (v) l'asphaltage des stationnements pour employés et les autres améliorations s'y rattachant, |
| (vi) an outdoor theatre; | (vi) les amphithéâtres de plein air; |
| (b) any structure, work, machinery or equipment that is included in Schedule II; | b) les constructions, les ouvrages, les machines ou le matériel mentionnés à l'annexe II; |
| (c) any real property or immovable developed and used as a park and situated within an area defined as "urban" by Statistics Canada, as of the most recent census of the population of Canada taken by Statistics Canada, other than national parks of Canada, national marine parks of Canada, national park reserves of Canada, national marine park reserves of Canada, national historic sites of Canada, national battlefields or heritage canals; | c) les immeubles et les biens réels aménagés en parc et utilisés comme tels dans une zone classée comme « urbaine » par Statistique Canada lors de son dernier recensement de la population canadienne, sauf les parcs nationaux du Canada, les parcs marins nationaux du Canada, les réserves à vocation de parc national du Canada ou de parc marin national du Canada, les lieux historiques nationaux, les champs de bataille nationaux et les canaux historiques; |
| (d) any Indian reserve, or any land referred to in any of paragraphs (c) to (e) of the definition "taxing authority" in subsection 2(1), except for the part | d) toute réserve indienne ou toute terre visée à l'un des alinéas c) à e) de la définition de « autorité taxatrice » au paragraphe 2(1), sauf la partie : |
| (i) that is occupied for residential purposes by an employee of Her Majesty in right of Canada who would not, but for that employment, live on that reserve or land, or | (i) où loge une personne n'y vivant que parce qu'elle est employée par Sa Majesté du chef du Canada, |

(ii) that is occupied by a minister of the Crown;

(ii) qui est occupée par un ministre fédéral;

(e) any real property or immovable for which an original Crown grant has not issued, except to the extent that it

e) les immeubles et les biens réels pour lesquels aucun titre de concession n'a été délivré par la Couronne, sauf s'ils sont, selon le cas :

(i) is designated for a specific use by or under an Act of Parliament, or

(i) destinés à un usage particulier sous le régime d'une loi fédérale,

(ii) is used by an Indian within the meaning of the Indian Act or an Inuk and is prescribed under paragraph 9(1)(e);

(ii) utilisés par des Indiens, au sens de la Loi sur les Indiens, ou des Inuit et identifiés conformément à l'alinéa 9(1)e);

(f) any real property for which an original Crown grant has not issued, except to the extent that it

f) les biens réels pour lesquels aucun titre de concession n'a été délivré par la Couronne, sauf s'ils sont, selon le cas :

(i) is reserved in the records of the Department of Indian Affairs and Northern Development at Whitehorse or Yellowknife for the use of a department or an agency of the Government of Canada, and is either situated within a municipality or, in the case of real property that is not situated within a municipality, used in accordance with the reservation, or

(i) affectés, dans les registres de Whitehorse ou de Yellowknife du ministère des Affaires indiennes et du Nord canadien, à l'usage d'un ministère ou organisme fédéral et situés dans une municipalité ou, hors des municipalités, utilisés conformément aux conditions de l'affectation,

(ii) is situated within a municipality and is reserved in the records of the Department of Indian Affairs and Northern Development at Whitehorse or Yellowknife for the use of an

(ii) situés dans une municipalité et affectés, dans les registres de Whitehorse ou de Yellowknife du ministère des Affaires indiennes et du Nord canadien, à l'usage des Indiens, au sens

Indian within the meaning of the Indian Act or an Inuk;

de la Loi sur les Indiens, ou des Inuit;

(g) any real property or immovable developed or used as a public highway that, in the opinion of the Minister, does not provide, as its primary function, immediate access to real property or immovables owned by Her Majesty in right of Canada; or

g) les immeubles et les biens réels aménagés ou utilisés comme voies publiques et n'ayant pas, selon le ministre, pour fonction première de permettre l'accès direct à un immeuble ou à un bien réel appartenant à Sa Majesté du chef du Canada;

(h) unless otherwise prescribed, any real property or immovable leased to or occupied by a person or body, whether incorporated or not, that is not a department.

h) les immeubles et les biens réels pris à bail ou occupés par une personne ou par un organisme autre qu'un ministère, constitué ou non en personne morale, sauf exception prévue par règlement du gouverneur en conseil.

(4) In determining the effective rate in respect of an experimental farm station, agricultural research station or other similar facility on federal property, the Minister shall take into account the rates of tax applicable to farms operated by agricultural enterprises.

(4) Afin de déterminer le taux effectif applicable à une station agronomique, un centre de recherches en agriculture ou des installations semblables situés sur une propriété fédérale, le ministre tient compte des taux d'imposition s'appliquant aux fermes exploitées par des entreprises agricoles.

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

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

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

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

authority applying for it	a) et b), et sur réception d'une demande à cet effet établie en la forme qu'il a fixée ou approuvée, verser sur le Trésor un paiement à l'autorité taxatrice :
(a) in lieu of a real property tax for a taxation year, and	
(b) in lieu of a frontage or area tax	
in respect of federal property situated within the area in which the taxing authority has the power to levy and collect the real property tax or the frontage or area tax.	a) en remplacement de l'impôt foncier pour une année d'imposition donnée;
	b) en remplacement de l'impôt sur la façade ou sur la superficie.
(1.1) If the Minister is of the opinion that a payment under subsection (1) or part of one has been unreasonably delayed, the Minister may supplement the payment.	(1.1) S'il est d'avis que le versement de tout ou partie du paiement visé au paragraphe (1) a été indûment retardé, le ministre peut augmenter le montant de celui-ci.
...	[...]
4. (1) Subject to subsections (2) and (3) and 5(1) and (2), a payment referred to in paragraph 3(1)(a) shall not exceed the product of	4. (1) Sous réserve des paragraphes (2), (3) et 5(1) et (2), le paiement visé à l'alinéa 3(1)a ne peut dépasser le produit des deux facteurs suivants :
(a) the effective rate in the taxation year applicable to the federal property in respect of which the payment may be made, and	a) le taux effectif applicable à la propriété fédérale en cause pour l'année d'imposition;
(b) the property value in the taxation year of that federal property.	b) la valeur effective de celle-ci pour l'année d'imposition.
...	[...]
9. (1) The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and,	9. (1) Le gouverneur en conseil peut, par règlement, prendre toutes mesures utiles à l'application de la présente loi

without restricting the generality of the foregoing, may make regulations

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

(g) respecting any payment that may be made in lieu of a business occupancy tax by every corporation included in Schedule IV;

10. The Minister may make regulations

(a) establishing a form of application for a payment under this Act;

(b) respecting the making of an interim payment in respect of a payment under this Act; and

(c) respecting the recovery of any overpayments made to a taxing authority, including recovery by way of set-off against other payments under this Act to the taxing authority.

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

et, notamment :

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

g) régir les paiements à verser par les personnes morales mentionnées à l'annexe IV en remplacement de la taxe d'occupation commerciale;

10. Le ministre peut, par règlement :

a) établir la formule de demande à employer pour les paiements visés par la présente loi;

b) régir tout versement provisoire relatif à un paiement visé par la présente loi;

c) régir le recouvrement des trop-payés à une autorité taxatrice, y compris par déduction sur les paiements à verser à celle-ci en vertu de la présente loi.

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

(a) every corporation included in Schedule III or IV shall, if it is exempt from real property tax, comply with any regulations made under paragraph 9(1)(f) respecting any payment that it may make in lieu of a real property tax or a frontage or area tax; and

a) les personnes morales mentionnées aux annexes III ou IV qui sont exemptées de l'impôt foncier sont tenues, pour tout paiement qu'elles versent en remplacement de l'impôt foncier ou de l'impôt sur la façade ou sur la superficie, de se conformer aux règlements pris en vertu de l'alinéa 9(1)f);

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

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

...

[...]

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.

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

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

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

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

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

(4) The Chairperson may establish divisions of the advisory panel, and all or any of the powers, duties and functions of the panel may be exercised or performed by all or any of those divisions.

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

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

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

...

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

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

(3) Le président assure la direction du comité.

(4) Le président peut constituer au sein du comité des formations pouvant exercer tout ou partie des attributions du comité.

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

[...]

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

SCHEDULE II
(Section 2)

1. Canal structures — walls and locks

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

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

4. Drydocks

4.1 (1) Fortifications including, without limiting the generality of the foregoing, improvements such as ramparts, retaining walls, stockades and outerworks composed of Redan, Salient, Bastion, Demi-Bastion, Tenaille, Curtain and similar elements

(2) For the purpose of this item, the following are components of fortifications: escarp walls, courtyard walls, postern tunnels, sallyports, underground tunnels, underground magazines, earth ramparts, gun emplacements, parapets, banquettes, fraises, terre-plein, drawbridges, entrance gates, guérite, machicolation, musketry galleries, ditches, moats, counterscarp galleries,

ANNEXE II
(article 2)

1. Murs et écluses des canaux

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

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

4. Cales sèches

4.1 (1) Fortifications, notamment les améliorations telles que les suivantes : rempart, mur de soutènement, palissade et travaux externes, constitués de redan, saillant, bastion, demi-bastion, tenaille, courtine et éléments semblables

(2) Pour l'application du présent article, les composantes des fortifications sont les suivantes : mur d'escarpe, mur sur cour, poterne, sallyport, tunnel souterrain, magasin souterrain, rempart en terre, plateforme de canon, parapet, banquette, fraise, terre-plein, pont-levis, porte d'entrée, guérite, mâchicoulis, galerie des mousquets, fossé, douve, galerie de la contrescarpe,

caponniers, mine galleries, glacis, ravelin, reverse fire galleries, entrance cuttings, stockades, embrasures, barbettes, casemates, demi-casemates and lunettes	caponnière, contre-mine, glacis, ravelin, galerie de tir intérieur, entrée encastrée, palissade, embrasure, barbette, casemate, demi-casemate et lunette
5. Gasoline pumps	5. Pompes à essence
6. Gun butts	6. Buttes de tir
7. Monuments	7. Monuments
8. Penitentiary walls, fencing	8. Murs et clôtures de pénitenciers
9. Pole lines, transmission lines, light standards, unenclosed communications towers, unenclosed lighthouses and range lights	9. Lignes sur poteaux, lignes de transmission, réverbères électriques, tours de communication ouvertes, phares ou feux de balisage ouverts
10. Reservoirs, storage tanks, fish-rearing ponds, fishways	10. Réservoirs, réservoirs d'emmagasinage, viviers, passes à poissons
11. Roads, sidewalks, aircraft runways, paving, railway tracks	11. Chemins, trottoirs, pistes d'envol ou d'atterrissage, pavements, voies ferrées
12. Snow sheds, tunnels, bridges, dams	12. Abris contre la neige, tunnels, ponts, barrages
13. Water mains, sewer mains	13. Conduites d'eau, égouts collecteurs

Crown Corporation Payment 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;

(a.1) except in Part II,

a.1) sauf à la partie II,

(i) any real property or immovable that is owned by Her Majesty in right of Canada and that is managed by a port authority included in Schedule III to the Act, and

(i) l'immeuble ou le bien réel qui appartient à Sa Majesté du chef du Canada et dont une administration portuaire mentionnée à l'annexe III de la Loi a la gestion,

(ii) any real property or immovable, other than any real property or immovable owned by Her Majesty in right of Canada, that is held by a port authority included in Schedule III to the Act, on which the port authority engages in port activities referred to in paragraph 28(2)(a) of the Canada Marine Act and in respect of which the port authority is exempt from real property tax; and

(ii) l'immeuble ou le bien réel, autre qu'un immeuble ou un bien réel qui appartient à Sa Majesté du chef du Canada, qu'une administration portuaire mentionnée à l'annexe III de la Loi détient, sur lequel elle exerce des activités portuaires visées à l'alinéa 28(2)a) de la Loi maritime du Canada et à l'égard duquel elle est exemptée de l'impôt foncier;

(b) in Part II, any real property or immovable occupied or used by a corporation included in Schedule IV to the Act in respect of which occupancy or use the corporation is exempt from business occupancy tax; (propriété d'une société)

b) dans la partie II, l'immeuble ou le bien réel occupé ou utilisé par une société mentionnée à l'annexe IV de la Loi bénéficiant, à l'égard de celui-ci, d'une exemption de la taxe d'occupation commerciale. (corporation property)

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

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

"corporation property value" means the value that a corporation would consider to be attributable by an assessment authority to its corporation property, without regard to any mineral rights or any ornamental, decorative or non-functional features thereof, as the basis for computing the amount of any real property tax that would be applicable to that property if it were taxable property. (valeur effective de la propriété d'une société)

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

PART I

PARTIE I

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

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

General

Dispositions générales

5. In this Part, "corporation" means, in respect of any payment that may be made by it, every corporation included in Schedule III or IV to the Act.

5. Dans la présente partie, « société » s'entend, à l'égard de tout paiement qu'elle peut verser, de toute société mentionnée aux annexes III ou IV de la Loi.

6. The payment made by a corporation in lieu of a real

6. Le paiement effectué par une société en remplacement de

property tax or frontage or area tax in respect of any corporation property that would be federal property if it were under the management, charge and direction of a minister of the Crown is made without any condition, in an amount that is not less than the amount referred to in sections 7 to 11.

l'impôt foncier ou de l'impôt sur la façade ou sur la superficie à l'égard d'une propriété qui serait une propriété fédérale si un ministre fédéral en avait la gestion, la charge et la direction n'est assorti d'aucune condition et ne doit pas être inférieur aux sommes visées aux articles 7 et 11.

Calculation of Payments

Calcul des paiements

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

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

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

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

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

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

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

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

(a) for taxpayers of different religious denominations, or

a) soit selon la religion du contribuable, ou

(b) for taxpayers of different

b) soit à la fois selon la religion

religious denominations and for different classes of taxable property,

du contribuable et selon la catégorie de propriétés imposables,

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

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

d'une part :

(c) that part of the corporation effective rate in the taxation year that is used in determining the amount of the real property tax that is levied for purposes other than school purposes,

c) la partie du taux effectif applicable à une société qui s'applique à la partie de l'impôt foncier qui n'est pas une taxe scolaire,

and

d'autre part, un taux de taxe scolaire déterminé de la façon suivante :

(d) if paragraph (a) applies, a rate for school purposes obtained by dividing

d) s'il s'agit du cas prévu à l'alinéa a), ce taux est le quotient résultant de la division du montant visé au sous-alinéa (i) par le montant visé au sous-alinéa (ii) :

(i) the portion of the real property tax levied for school purposes by the taxing authority in the taxation year,

(i) la partie de l'impôt foncier qui constitue la taxe scolaire,

by

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

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

(e) if paragraph (b) applies, a rate for school purposes for each class of taxable property determined by dividing

e) s'il s'agit du cas prévu à l'alinéa b), le taux de la taxe scolaire qui s'applique à chaque catégorie de propriétés imposables est le quotient résultant de la division du montant visé au sous-alinéa (i) par le montant visé au sous-alinéa (ii) :

(i) the portion of the real property tax levied for school purposes by the taxing authority in respect of property of such class in the taxation year,

(i) la partie de l'impôt foncier qui constitue la taxe scolaire pour la catégorie concernée,

by

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

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

Deductions

Déductions

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

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

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

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

(b) if there is in effect a special arrangement for an alternative

b) au titre d'un autre service pour lequel l'autorité taxatrice

means of compensating a taxing authority, or a body on behalf of which the authority collects a real property tax, for providing a service, the amount established by that arrangement;

ou l'organisme pour le compte duquel elle perçoit un impôt foncier sont dédommagés en vertu d'une entente spéciale en vigueur, la somme calculée conformément à celle-ci;

(c) if a taxing authority, or a body on behalf of which the authority collects a real property tax, is, in the opinion of the corporation, unable or unwilling to provide the corporation property with a service, and no special arrangement exists, an amount that, in the opinion of the corporation, does not exceed reasonable expenditures incurred or expected to be incurred by the corporation to provide the service; and

c) au titre d'un service — non visé par une entente spéciale — que, selon la société, l'autorité taxatrice ou l'organisme pour le compte duquel elle perçoit un impôt foncier ne veulent ou ne peuvent pas fournir à une propriété de la société, une somme qui, selon la société, ne dépasse pas les frais raisonnables qu'elle a engagés ou estime devoir engager pour fournir le service;

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

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

Time and manner of payments

Modalités de versement

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

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

(a) only to the taxing authority

a) uniquement à l'autorité

for the area in which the corporation property is situated; and

taxatrice du lieu où la propriété est située;

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

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

(2) Where a corporation is unable to make a final determination of the amount of a payment made in accordance with section 6 within the time referred to in paragraph (1)(b), the corporation shall make, within that time, an interim payment that corresponds to the estimated total payment to be made.

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

Advisory panel

Comité consultatif

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

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

An Act respecting municipal taxation, R.S.Q. c. F-2.1

CHAPTER V

CHAPITRE V

CONTENTS OF THE
PROPERTY ASSESSMENT
ROLL

CONTENU DU RÔLE
D'ÉVALUATION FONCIÈRE

DIVISION I

SECTION I

UNITS OF ASSESSMENT

UNITÉ D'ÉVALUATION

§ 1. — General rule

§ 1. — Règle générale

Immovables.

Immeubles.

31. Subject to Division IV, the immovables situated in the territory of a local municipality shall be entered on the property assessment roll.

31. Sous réserve de la section IV, les immeubles situés sur le territoire d'une municipalité locale sont portés au rôle d'évaluation foncière.

“roll”.

«rôle».

For the purposes of this chapter, the word “roll” means the property assessment roll.

Pour l'application du présent chapitre, le mot «rôle» signifie le rôle d'évaluation foncière.

DIVISION III

SECTION III

OTHER PARTICULARS

AUTRES MENTIONS

Taxable value.

Valeur imposable.

55. Whenever the law provides that only part of the value of an immovable is taxable or that it is exempt from property taxes, the roll must state the taxable value of the immovable or the fact that it is exempt, as the case may be.

55. Chaque fois que la loi dispose que seule une partie de la valeur d'un immeuble est imposable ou qu'il est exempt de taxe foncière, le rôle fait état de la valeur imposable de cet immeuble ou du fait de son exemption, selon le cas.

Reference to legislative source.

Renseignement inscrit.

All information entered pursuant to this section must be accompanied with a reference to its legislative source.

Chaque renseignement inscrit en vertu du présent article est accompagné d'une mention de sa source législative.

CHAPTER X

CHAPITRE X

ADMINISTRATIVE REVIEW
AND PROCEEDING

RÉVISION
ADMINISTRATIVE ET

BEFORE THE TRIBUNAL

RECOURS DEVANT LE
TRIBUNAL

DIVISION I

SECTION I

ADMINISTRATIVE REVIEW

RÉVISION
ADMINISTRATIVE

Agreement.

Modification au rôle.

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

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

Time limit.

Entente.

The agreement may be entered into

L'entente peut être conclue :

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

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

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

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

Date of effect.

Écrit.

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

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

Agreement null.

Nullité.

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

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

DIVISION II

SECTION II

PROCEEDINGS BEFORE THE TRIBUNAL

RECOURS DEVANT LE TRIBUNAL

Proceeding before Tribunal.

Recours au Tribunal.

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

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

Filing of complaint.

Délai.

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

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

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

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

- | | |
|--|---|
| 2) the person who, as a result of the alteration, was entered on the roll as lessee or occupant of the unit of assessment; | 2° la personne qui, par l'effet de la modification, a été inscrite au rôle à titre de locataire ou d'occupant de l'unité d'évaluation; |
| 3) the local municipality, the school board or the municipal body responsible for assessment concerned, if the alteration concerns a unit of assessment or a business establishment that is not entered on the roll in its name and if the proceeding is based on a question of law; | 3° la municipalité locale, la commission scolaire ou l'organisme municipal responsable de l'évaluation intéressé, si la modification concerne une unité d'évaluation ou un établissement d'entreprise qui n'est pas inscrit au rôle à son nom et si le recours est fondé sur une question de droit; |
| 4) the Minister, if the alteration concerns an entry used in calculating a sum payable by the Government under section 210, 254 or 257; | 4° le ministre, si la modification concerne une inscription utilisée dans le calcul d'une somme payable par le gouvernement en vertu de l'un des articles 210, 254 et 257; |
| 5) (subparagraph repealed). | 5° (paragraphe abrogé). |
| ... | [...] |

CHAPTER XVIII

CHAPITRE XVIII

FISCAL PROVISIONS

DISPOSITIONS FISCALES

DIVISION I

SECTION I

TAXABLE IMMOVABLES

IMMEUBLES IMPOSABLES

§ 2. — Exceptions

§ 2. — Exceptions

Immovables exempt from tax.

Immeubles exempts de taxes.

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

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

1) an immovable included in a unit of assessment entered on the roll in the name of the State or of the Société immobilière du Québec;

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

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

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

...

[...]

Taxable immovable.

Paiement de taxes foncières.

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

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

notwithstanding its being occupied as described in this paragraph.

visée au présent alinéa dont il fait l'objet.

...

[...]

DIVISION III

SECTION III

BUSINESS TAX

TAXE D'AFFAIRES

Business tax.

Taxe d'affaires.

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

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

Imposition.

Imposition.

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

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

...

[...]

Exemptions.

Taxes d'affaires.

236. No business tax may be imposed by reason of

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

1) an activity carried on by

1° d'une activité exercée par:

- | | |
|---|---|
| <p>(a) the State or the Crown in right of Canada, a mandatary of the Crown in right of Canada, the Société immobilière du Québec, the Corporation d'hébergement du Québec, the Régie des installations olympiques, the Agence métropolitaine de transport, the Société de la Place des Arts de Montréal or the École nationale de police du Québec;</p> | <p>a) l'État ou la Couronne du chef du Canada, un mandataire de la Couronne du chef du Canada, la Société immobilière du Québec, la Corporation d'hébergement du Québec, la Régie des installations olympiques, l'Agence métropolitaine de transport, la Société de la Place des Arts de Montréal ou l'École nationale de police du Québec;</p> |
| <p>(b) a local municipality, a community, a regional county municipality, a mandatary of any such body or a transit corporation whose budget is, by law, submitted to an elected municipal body;</p> | <p>b) une municipalité locale, une Communauté, une municipalité régionale de comté, un mandataire de l'une d'elles ou une société de transport dont le budget, selon la loi, est soumis à un collègue d'élus municipaux;</p> |
| <p>(c) a school board, a general and vocational college, a university establishment within the meaning of the University Investments Act (chapter I-17) or the Conservatoire de musique et d'art dramatique du Québec;</p> | <p>c) une commission scolaire, un collège d'enseignement général et professionnel, un établissement universitaire au sens de la Loi sur les investissements universitaires (chapitre I-17) ou le Conservatoire de musique et d'art dramatique du Québec;</p> |
| <p>(d) a private educational institution operated by a non-profit body under a permit issued under the Act respecting private education (chapter E-9.1), a private educational institution accredited for purposes of subsidies under that Act or an institution whose instructional program is the subject of an international agreement within the meaning of the Act respecting the</p> | <p>d) un établissement d'enseignement privé tenu par un organisme à but non lucratif conformément à un permis délivré en vertu de la Loi sur l'enseignement privé (chapitre E-9.1), un établissement d'enseignement privé agréé aux fins de subventions en vertu de cette loi ou un établissement dont le régime d'enseignement est l'objet d'une entente internationale au sens de la Loi</p> |

Ministère des Relations internationales (chapter M-25.1.1);

sur le ministère des Relations internationales (chapitre M-25.1.1);

(e) a public institution within the meaning of the Act respecting health services and social services (chapter S-4.2), a health and social services agency referred to in that Act or a public institution within the meaning of the Act respecting health services and social services for Cree Native persons (chapter S-5);

e) un établissement public au sens de la Loi sur les services de santé et les services sociaux (chapitre S-4.2), une agence de la santé et des services sociaux visée par cette loi ou un établissement public au sens de la Loi sur les services de santé et les services sociaux pour les autochtones cris (chapitre S-5);

(f) a private institution defined in paragraph 3 of section 99 or in section 551 of the first Act referred to in subparagraph e of this paragraph or defined in section 12 of the second Act referred to, under a permit issued to the institution under the Act that is applicable to the institution, and which is an activity inherent in the mission of a local community service centre, a residential and long-term care centre or a rehabilitation centre within the meaning of the first Act referred to or of a reception centre within the meaning of the second Act referred to;

f) un établissement privé visé au paragraphe 3° de l'article 99 ou à l'article 551 de la première loi mentionnée au sous-paragraphe e du présent paragraphe ou visé à l'article 12 de la seconde, conformément à un permis délivré à l'établissement en vertu de celle de ces lois qui lui est applicable, et qui constitue une activité propre à la mission d'un centre local de services communautaires, d'un centre d'hébergement et de soins de longue durée ou d'un centre de réadaptation au sens de la première de ces lois ou d'un centre d'accueil au sens de la seconde;

(g) a cooperative or non-profit organization under a childcare centre or day care centre permit or an accredited home childcare coordinating office pursuant to the Educational Childcare Act (chapter S-4.1.1);

g) une coopérative ou un organisme à but non lucratif conformément à un permis de centre de la petite enfance ou de garderie ou conformément à un agrément à titre de bureau coordonnateur de la garde en milieu familial qui lui a été

	délivré en vertu de la Loi sur les services de garde éducatifs à l'enfance (chapitre S-4.1.1);
(h) a person recognized as a person responsible for home childcare under the Act mentioned in subparagraph g, and which is an activity inherent in the mission of such a person;	h) une personne reconnue à titre de responsable d'un service de garde en milieu familial, en vertu de la loi mentionnée au sous-paragraphe g, et qui constitue une activité propre à la mission d'un tel responsable;
2) an activity carried on by a public body or any person mentioned in section 204 for the purpose of allowing the use of a public road or works forming part of it, or the use of works used for the protection of wildlife or of the forest and situated in an unorganized territory;	2° de l'activité d'un organisme public ou d'une autre personne mentionnée à l'article 204 exercée dans le but de fournir l'usage d'une voie publique ou d'un ouvrage qui en fait partie, ou l'usage d'un ouvrage utilisé pour la protection de la faune ou de la forêt et situé dans un territoire non organisé;
3) an activity carried on by an episcopal corporation, a fabrique, a religious institution or a Church constituted as a legal person, as part of the exercise of public worship;	3° de l'activité d'une corporation épiscopale, d'une fabrique, d'une institution religieuse ou d'une Église constituée en personne morale qui entre dans le cadre de l'exercice du culte public;
4) an activity carried on without pecuniary gain by a religious institution or a fabrique in the immediate pursuit of the religious or charitable objects for which it was established;	4° de l'activité exercée dans un but non lucratif dans la poursuite immédiate de ses objets constitutifs de nature religieuse ou charitable par une institution religieuse ou une fabrique;
5) an activity carried on by the recognized person in the immovable in respect of which the recognition under section 243.4 has been granted and is in force;	5° de l'activité exercée, dans l'immeuble visé par une reconnaissance en vigueur et prévue à l'article 243.4, par la personne reconnue;

6) (paragraph replaced) ;	6° (paragraphe remplacé) ;
7) (paragraph replaced) ;	7° (paragraphe remplacé) ;
8) (paragraph repealed) ;	8° (paragraphe abrogé) ;
9) the operation of a cemetery without pecuniary gain;	9° de l'exploitation dans un but non lucratif d'un cimetière;
10) an activity carried on for agricultural or horticultural exhibition purposes by an agricultural or horticultural society or by any person mentioned in section 204;	10° de l'activité exercée à des fins d'exposition agricole ou horticole par une société d'agriculture ou d'horticulture ou par une autre personne mentionnée à l'article 204;
11) an activity related to an agricultural operation registered in accordance with a regulation adopted pursuant to section 36.15 of the Act respecting the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation (chapter M-14);	11° de l'activité reliée à une exploitation agricole enregistrée conformément à un règlement adopté en vertu de l'article 36.15 de la Loi sur le ministère de l'Agriculture, des Pêcheries et de l'Alimentation (chapitre M-14);
12) an activity by reason of which a forest producer's certificate is issued pursuant to section 120 of the Forest Act (chapter F-4.1);	12° de l'activité en raison de laquelle est délivré un certificat de producteur forestier en application de l'article 120 de la Loi sur les forêts (chapitre F-4.1);
13) an activity consisting in furnishing to others a residential immovable other than an immovable for which the operator is required to hold a classification certificate issued under the Act respecting tourist accommodation establishments (chapter E-14.2), or in furnishing to the persons residing in the immovable or their guests such goods or	13° de l'activité consistant à fournir à autrui un immeuble résidentiel autre qu'un immeuble dont l'exploitant doit être titulaire d'une attestation de classification délivrée en vertu de la Loi sur les établissements d'hébergement touristique (chapitre E-14.2) ou consistant à fournir aux personnes qui résident dans l'immeuble ou à leurs visiteurs un bien ou un

related service as are reserved for them, to the extent that the activity is carried on in the immovable or dependencies thereof where the goods or related service are furnished;

service connexe qui leur est réservé, dans la mesure où l'activité est exercée dans l'immeuble ou dans ses dépendances où le bien ou le service connexe est fourni;

14) an activity carried on by the Société du Palais des congrès de Montréal in the immovable designated under that name.

14° d'une activité exercée par la Société du Palais des congrès de Montréal dans l'immeuble désigné sous ce nom.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-795-04

STYLE OF CAUSE: City of Montréal, applicant
and Montréal Port Authority, respondent
and Attorney General of Canada, intervener

PLACE OF HEARING: Montréal, Quebec

DATES OF HEARING: January 29 to 31 and February 1 and 2, 2007

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

DATED: July 5, 2007

APPEARANCES:

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Patrice Brunet	
Sylvie Gadoury	FOR THE RESPONDENT
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