Date: 20070705

Docket: T-1828-06

Citation: 2007 FC 702

Ottawa, Ontario, the 5th day of July, 2007

Present: The Honourable Mr. Justice Martineau

BETWEEN:

CITY OF MONTRÉAL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

and

MINISTER OF PUBLIC WORKS AND GOVERNMENT SERVICES CANADA

Tribunal in respect of which the application is brought

REASONS FOR ORDER AND ORDER

[1] The administrative decision whose legality is challenged by the applicant was made on September 19, 2006, by Miville Brassard, a manager of Public Works and Government Services Canada (PWGSC). The Tribunal determined that PWGSC was authorized to recover the amount of $177,404.38, to be deducted from the next payment in lieu of real property tax to be made to the

applicant under the *Payment in Lieu of Taxes Act*, R.S.C 1985, c. M-13 (the PLTA), for the year 2006.

[2] This case relates exclusively to the immovables and real property at Pierre Elliot Trudeau International Airport (Trudeau Airport) belonging to Her Majesty in right of Canada (Her Majesty) and leased to Aéroports de Montréal (ADM).

[3] More specifically, the Court must determine whether the Minister of Public Works and Government Services (the Minister) is authorized to make a payment in lieu of real property tax in respect of the immovables and real property of Trudeau Airport which are not subleased to or occupied by ADM or Her Majesty when all or part of the real property tax to be paid by a sub-lessee or an occupant under provincial legislation and the applicant's regulations is past due on the day following the end of a given taxation year.

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

[5] The *Act respecting municipal taxation*, R.S.Q., c. F-2.1 (the AMT), which applies to immovables located in the province of Quebec, provides that immovables in an assessment unit entered on the roll in the name of the Crown or a Crown corporation are exempt from any real property, municipal or school taxes (section 204 of the AMT). This 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.

[6] The contested decision was made under the supposed authority of section 4 of the *Interim Payments and Recovery of Overpayments Regulations*, SOR/81-226, as amended (the IPROR), which authorizes the Minister of Public Works and Government Services Canada (the Minister) to recover any overpayment made to a taxing authority under the PLTA or the IPROR. In this case, the amount of the overpayment calculated by the tribunal was $177,404.38.

[7] The purpose of the PLTA is to provide for the fair and equitable administration of payments in lieu of taxes (PILTs) to taxing authorities, including municipalities, on a voluntary basis (sections 2.1 and 15 of the PLTA). Needless to say, the Canadian government is the biggest land owner in the country. In fact, there are more than 26,500 federal facilities in Canada, including military bases, correctional institutions, office buildings, national parks and ports. Under the PILT Program, the Canadian government pays more than $460 million to some 1,300 municipalities in Canada each year. This amount does not include the PILTs made by corporations listed in schedules III and IV to the PLTA.

[8] The conditions for the making of a PILT 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), while those governing corporations included in schedules III and IV to the PLTA are found in the *Crown Corporation Payments Regulations*, SOR/81-1030, as amended (the CCPR). In the case at bar, PILTs may be made 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).

[9] Thus, under paragraph 3(1)(*a*) of the PLTA, the Minister may, for any federal property located in the area of the taxing authority, make a payment in lieu of a real property tax (PLRT) out of the Consolidated Revenue Fund for a given taxation year. The exact amount of the PLRT is calculated by PWGSC managers. On this point, subsection 4(1) of the PLTA states that the payment (subject to certain provisions) shall not exceed the product of the following two factors:

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

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

[10] The expressions "effective rate" and "property value" are defined in subsection 2(1) of the PLTA. In the case at bar, the parties do not dispute the effective rate and the property value which must apply to the properties in question if they are, in fact, subject to a PLRT.

[11] In general, under paragraph 2(3)(*h*) of the PLTA, the following are excluded from the definition of "federal property": "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" [emphasis added]. However, paragraph 3(1)(*m*) of the *Payments in Lieu of Taxes Regulations*,

SOR/81-29, as amended (the PLTR), provides that any real property or immovable owned by Her Majesty and leased to a designated airport authority within the meaning of the *Airport Transfer (Miscellaneous Matters) Act*, S.C. 1992, c. 5 (the ATA), (i) which is not sublet to or occupied by any person other than the designated airport authority or a receiver-manager in possession of the assets of the designated airport authority, or (ii) which is sublet to or occupied by Her Majesty will be considered to be a "federal property."

[12] In August 1992, the Governor in Council added the classes of immovables in paragraph 3(1)(*m*) of the PLTR to the list of immovables leased to or occupied by a person or body that is not a department that are to be included in the definition of "federal property" for the purposes of the applying section 3 of the PLTA (section 1 of the Schedule to the *Municipal Grants Regulations, 1980–Amendment*, SOR/92-505). By exception, paragraph 3(1)(*m*) of the PLTR authorizes the Minister to make PILTs in respect of immovables leased to ADM which are not sublet to an occupant other than Her Majesty. It was Transport Canada that had requested the addition of paragraph 3(1)(*m*) to the PLTR. This provision was to apply only to the lease between Transport Canada and ADM, but could be used in other cases if necessary. The following are the main reasons for the amendment to the regulation in question.

[13] In the province of Quebec, under section 208 of the AMT, when a non-taxable immovable is included in an assessment unit entered in the roll in the name of the Crown or a Crown corporation and is not occupied by either one, the real property taxes to which this immovable would be subject without this exemption are levied on the lessee or, if there is no lessee, on the

occupant and are directly payable by the lessee or occupant. However, this rule does not apply when a PILT is made in respect of the immovable (the AMT uses the term “subsidy”).

[14] As explained in the *Regulatory Impact Analysis Statement*, which was published along with the amendment to the PLTR made in 1992, the authorities of the province of Quebec had agreed beforehand to exempt ADM from provisions of the AMT and authorize the Minister to make PILTs to the municipalities concerned. Because ADM is not a Crown corporation, it would have otherwise been required to pay real property taxes to the municipalities, which would have considerably increased its tax burden and could have scuttled Transport Canada’s plan to transfer the administration of the Dorval and Mirabel airports to ADM.

[15] Consequently, paragraph 3(1)(*m*) of the PLTR must be read together with section 208 of the AMT and section 2 of the *Act respecting Aéroports de Montréal*, S.Q. 1991, c. 106, which specifically provides that for the purposes of the AMT and the *Education Act*, R.S.Q., c. I-13.3, ADM is neither lessee, nor occupant, nor owner of an immovable in respect of which Her Majesty makes PILTs to municipalities. (In the provincial act, reference is made to “subsidies”). However, be it before or after the transfer of Trudeau Airport, the applicant collected and continued to collect real property taxes from the occupants (other than Her Majesty and ADM) of immovables within the airport’s boundaries. For example, Air Canada pays real property taxes to the applicant for the properties within the boundaries of Trudeau Airport it leases, in accordance with the provisions of the AMT.

[16] Attention must now be drawn to section 3.1 of the PLTA, the legal scope of which is at the heart of this case. It provides as follows:

3.1 Real property and immovables referred to in paragraph 2(3)(*h*) are deemed to be federal property for a taxation year if	3.1 Les immeubles et biens réels visés à l'alinéa 2(3)*h*) sont réputés être des propriétés fédérales pour une année d'imposition donnée si les conditions suivantes sont remplies :
(*a*) as of the day following the last day of the taxation year, all or part of the real property tax or the frontage or area tax on the property for that taxation year remains unpaid; and	*a*) tout ou partie de l'impôt foncier ou de l'impôt sur la façade ou sur la superficie est en souffrance le jour suivant la fin de l'année d'imposition;
(*b*) the Minister is of the opinion that the taxing authority has made all reasonable efforts to collect the tax and there is no likelihood that the authority will ever be able to collect it.	*b*) le ministre est d'avis que l'autorité taxatrice a pris les mesures raisonnables pour percevoir l'impôt et qu'il est impossible qu'elle puisse le faire.

[17] If section 3.1 of the PLTA had not been enacted by Parliament in 2000 (several years after the transfer of the Dorval and Mirabel airports), the applicant would not be before this Court today seeking a determination as to whether the addition of this statutory provision allows the Minister to make a PLRT when at the end of a given taxation year (after 1999) a sub-lessee or an occupant of an immovable leased to ADM (other than Her Majesty) has not paid its real property taxes and the applicant is able to satisfy the Minister that it has made all reasonable efforts to collect the tax and there is no likelihood that it will ever be able to collect it.

[18] On April 21, 2005, Diane Loiseau, an employee of the applicant, forwarded to Miville Brassard, a PWGSC manager (the Tribunal), an application for payment under section 3.1 of the PLTA in respect of the occupants, who had not paid their real property taxes for the 2000 to 2004

fiscal years. Very detailed tables were enclosed with the applicant's application for payment. They identified all occupants in default within the territory of the city of Montréal, the real property tax accounts which were past due, the relevant years, the due dates for each of the tax accounts and all collection efforts undertaken by the applicant. On July 4, 2005, the applicant sent out an update of this application, prepared in a table format. Occupants of Trudeau Airport who had not paid their real property taxes were also identified in these tables.

[19] In a letter dated September 23, 2005 (the September 2005 decision), the Tribunal advised the applicant that PWGSC would make an electronic deposit of $246,410.08 under section 3.1 of the PLTA by September 22, 2005 (the September 2005 payment). The September 2005 payment included an amount of $207,329.15 for occupants who had failed to pay their real property taxes to the applicant for the years 2000 to 2004 (the principal amount). The occupants of the Trudeau Airport who had not paid their real property taxes were identified in the tables prepared by the Tribunal and appended to the September 2005 decision.

[20] In addition to the principal amount, an additional amount of $39,080.93 was to be allocated by the Minister to the applicant. In this regard, the Tribunal stated in the September 2005 decision that the PLTA gives the Minister the discretion to increase the amount of a payment where it has been delayed. However, the delayed payment supplement (DPS) was calculated under the provisions of the PLTR and not under the administrative regulations of the taxing authority, because under the PLTR, the DPS is a discretionary payment.

[21] When a payment is delayed, the Minister may increase the amount if he is of the opinion that all or part of the payment has been “unreasonably delayed” (subsection 3(1.1) of the PLTA). In this case, the increase cannot be greater than the product of the unpaid amount multiplied by the interest rate prescribed for the purpose of section 155.1 of the *Financial Administration Act*, R.S.C. 1985, c. F-11 (the FAA) and is calculated over the period that, in the opinion of the Minister, the payment has been delayed (subsection 3(1.2) of the PLTA).

[22] I will now deal with the impugned decision which apparently was made by the Tribunal further to a legal opinion from the Department of Justice, the exact content of which was not disclosed to the Court by the respondent.

[23] Nearly one year after the September 2005 payment, in a letter dated September 19, 2006, (the impugned decision), the Tribunal advised the applicant that the amount payable by the occupants of Trudeau Airport ($177,404.38) had been paid in error by PWGSC. Consequently, this amount would be deducted from the next payment, for the year 2006.

[24] First of all, the Tribunal states in the impugned decision that the Trudeau Airport area was leased to ADM and that, pursuant to paragraph 2(3)(*h*) of the PLTA, leased immovables are considered to be “federal properties” only where prescribed by regulation by the Governor in Council.

[25] The Tribunal then refers to paragraph 3(1)(*m*) of the PLTR. It concludes that all immovables within the area administered by ADM and which are sublet to occupants other than Her Majesty and

ADM are not considered to be "federal properties" for the purposes of the PLTA and accordingly are not subject to a PILT.

[26] Thus, according to the impugned decision, PWGSC may, under section 4 of the IPROR, recover the overpayment mistakenly made to the applicant, that is, $177,404.38, which would be deducted from the next payment, for 2006. No mention was made in the impugned decision of section 3.1 of the PLTA, which is the precise provision on which the Tribunal relied in rendering the September 2005 decision.

[27] Essentially, the applicant submits that the impugned decision contains an error in law and that the Tribunal ignored the application of section 3.1 of the PLTA. Rather, it is the September 2005 decision which is based on a proper interpretation of section 3.1 of the PLTA. This provision explicitly refers to the immovables and real property excluded under paragraph 2(3)(*h*) of the PLTA. This can only include the sub-lessees and occupants of Trudeau Airport, and not ADM and Her Majesty. However, the payment was made knowingly by the Minister in September 2005 following an in-depth analysis of the situation by the Tribunal. There is no material error, and section 4 of the IPROR does not apply. Therefore, according to the applicant, the Tribunal had no reason to revise the September 2005 decision and, moreover, did not respect the rules of procedural fairness in rendering the impugned decision.

[28] Meanwhile, the Attorney General of Canada, who is the designated respondent in this proceeding, submits that the impugned decision is valid. The Attorney General admits that if section 3.1 of the PLTA applies here (which is denied), the Minister cannot rely on section 4 of the

IPROR to reduce the payment to be made to the applicant for the 2006 taxation year by $177,404.38. However, the respondent notes that section 3.1 of the PLTA concerns leased immovables only, not sublet ones. The respondent relies on paragraph 2(3)(*h*) of the PLTA and also submits that the impugned decision is reasonable in the circumstances and that no principle of procedural fairness was breached.

[29] More specifically, the respondent submits that immovables sublet by an airport administration should not be considered to be “federal properties” and that the fact that an occupant is in default of paying its taxes does not change the definition of “federal property”. The respondent argues that section 3.1 of the PLTA must be interpreted in light of paragraph 2(3)(*h*) of the PLTA and paragraph 3(1)(*m*) of the PLTR. Accordingly, the Minister may make PLRTs under section 3.1 of the PLTA only if the properties in question are leased directly by Her Majesty. It is inconceivable that the Minister would agree to make PLRTs in respect of immovables over which he has no control. This is far too great a financial commitment, given the value of some of the immovables within the boundaries of Trudeau Airport. Accordingly, since the amount attributable to the occupants of Trudeau Airport who were in default of paying their real property taxes should not have been paid in September 2005 to the taxing authority, PWGSC could recover this amount in September 2006 under section 4 of the IPROR.

[30] Under sections 2 and 18 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, as amended, (the FCA), this Court has exclusive jurisdiction to review the impugned decision (see *City of Montréal v. Canadian Broadcasting Corporation*, 2006 FC 113 and the case law cited in that decision). Parliament has already specified in paragraph 18.1(4)(*c*) of the FCA that if the Federal Court is

satisfied that a federal board, commission or other 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 correctness standard applies to errors of law. However, where a federal board, commission or other tribunal is alleged to have made an error of fact, 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 the patent unreasonableness standard applies to errors of fact.

[31] In any event, the Supreme Court has developed a pragmatic and functional approach which applies in any case where 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 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 purpose of the legislation and the provision in particular; and the nature of the issue of 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 does not have to be used when deciding whether there has been a breach of a principle of natural justice or of 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).

[32] 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

[33] Under section 3 of the PLTA, the Minister may make PILTs out of the Consolidated Revenue Fund in respect of federal properties not managed by a corporation included in schedules III and IV to the PLTA, while the corporations included in schedules III and IV to the PLTA themselves are responsible for handling applications for payment sent to them by the taxing authorities. In either cases, the Minister or the corporation has absolute jurisdiction.

[34] On this point, neither the PLTA nor the CCPR has a 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. Thus, this first factor is neutral in the analysis of the degree of deference required.

Second factor

[35] As regards the expertise of the Tribunal in this case, this factor favours a low degree of deference.

[36] 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 of the term. The “decisions” which the Minister or the corporations included in schedules III and IV to the PLTA render are in fact rendered by managers whose personal knowledge and expertise in municipal taxation matters may vary considerably.

[37] I note that according to section 11.1 of the PLTA, the Minister may ask for non-binding advice in case of a disagreement with the taxing authority about, *inter alia*, the property value, the effective rate or whether or not a payment should be supplemented under susbsection 3(1.1) of the PLTA, which allows a payment under subsection 3(1) of the PLTA to be supplemented if it has been unreasonably delayed. The members of the advisory panel are appointed by the Governor in Council and have a specialized jurisdiction. They hold office 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 point of view, the Minister and Crown corporations have relatively little or less expertise than the members of the advisory panel do with respect to matters included in section 11.1 of the PLTA.

[38] In the case at bar, there is no dispute between the parties concerning the effective rate and the property value which applicable to the immovables and real property in issue in this case or concerning the calculation of the amount of the DPS awarded by the Minister under subsection 3(1.1) of the PLTA. That being said, the Tribunal in question and the advisory panel are not in a better position than this Court to answer the questions of law debated today by the parties.

Third factor

[39] As far as the purpose of the PLTA is concerned, this factor also favours a low degree of deference. Although the purpose of the PLTA is the fair 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. In this case, section 3.1 of the PLTA provides that the immovables and real property included in paragraph 2(3)(*h*) are deemed to be federal properties for a given taxation year if certain conditions are met. Accordingly, it cannot be said that the decision in question raises a "polycentric" issue which would require the weighing of opposing interests. In fact, the decision of September 23, 2005, was based on a detailed analysis made by the Tribunal of the past-due real property tax accounts and the collection measures undertaken by the applicant in each case.

Fourth factor

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

[41] The dispute between the applicant and the respondent concerns the legal scope of section 3.1 of the PLTA, which refers to the immovables and real property included in paragraph 2(3)(*h*) of the PLTA. As regards the issue of whether the amount payable by the occupants of Trudeau Airport was paid in error, this is an error in law, as opposed to an error in fact, such as the collection measures undertaken by the applicant to recover the real property tax owing by the defaulting occupants. The impugned decision refers to a legal opinion of the Department of Justice to the effect that, so it would seem, the sublet immovables within the area administered by ADM are not "federal immovables" and therefore not subject to a PILT. However, the Court will have to reach its own interpretation of the act and regulations in question to determine the exact scope of the provisions relied at issue. This favours the standard of correctness.

[42] Where the standard of correctness applies, the Court may undertake its own reasoning process to arrive at the result it judges correct. Following an analysis of the applicable federal statutes and regulations and a detailed study of the evidence on record and the reasons of the Tribunal, I conclude that the impugned decision contains an error in law that affects its validity. Consequently, the Minister acted contrary to law in subtracting $177,404.38 from the PLRT for the year 2006. I am of the opinion that this amount was lawfully paid to the applicant in September 2005 in compliance with sections 3 and 3.1 of the PLTA. The September 2005 decision of the Tribunal is valid and must be respected by the Minister. Therefore, the impugned decision is invalid and unlawful. Incidentally, even if the impugned decision were to be considered according to a less stringent standard of review than correctness, it would still be reviewable by the Court, since in my view the decision was unreasonable in this case.

[43] I will begin by noting that the PLTA does not, in principle, confer any right to a payment (section 15 of the PLTA). However, in practice, the fact that an application for payment was made in compliance with the PLTA or an applicable regulation creates a legitimate expectation on the part of the taxing authority that its application will be dealt with by the Minister (or by the corporation included in Schedule III or IV of the PLTA, as the case may be) in compliance with the PLTA. Accordingly, once the amount of the payment has been calculated in accordance with the PLTA, the taxing authority expects to receive an interim or a final payment within the time specified under the regulations. However, under section 4 of the IPROR, if the amount of a payment made to a taxing authority—be it under the PLTA or the IPROR—is greater than what should have been paid under section 3 of the PLTA, the overpayment and the interest prescribed for the purpose of section 155.1

of the FAA, where applicable, may be set off against other payments that may otherwise be paid in future to the taxing authority or recovered by Her Majesty.

[44] In this case, section 3 of the IPROR, which authorizes the Minister to make an interim payment where a final determination of the amount of the payment cannot be made within 50 days after receipt of the application. No provisional payment was made under section 3 of the IPROR. In the case at bar, the September 2005 payment for the defaulting occupants was a final payment that covered five previous years (2000 to 2004) and included a delayed payment supplement (DPS).

[45] The September 2005 payment was a final payment. The alleged error in the impugned decision is an error in law, rather than an error in fact. Section 4 of the IPROR seems to me to be inapplicable in this case. The Tribunal had no grounds to revise the September 2005 decision.

[46] There is no doubt that the immovables and real property leased to ADM are generally excluded from the definition of "federal property" by paragraph 2(3)(*h*) of the PLTA, which covers "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" [emphasis added]. However, the expression "leased to or occupied" [emphasis added] must be given an interpretation that is consistent with the plain meaning of the words chosen by Parliament and with the general purpose of the PLTA. In this case, both lessees and sub-lessees are included in the scope of paragraph 2(3)(*h*) of the PLTA, which is consistent with the terms "leased" and "occupied." However, section 3.1 of

the PLTA provides that real property and immovables referred to in paragraph 2(3)(*h*) are deemed to be federal property for a taxation year if certain conditions are met, as is the case here.

[47] The interpretation suggested by the applicant, and which I totally accept, is consistent with the wording and purpose of the PLTA. For the purposes of applying section 3 of the PLTA, the immovables described in paragraph 3(1)(*m*) of the PLTR which are classified by regulations made by the Governor in Council as “federal properties” (see subsection 3(1) of the PLTR) are automatically subject to payments within 50 days following the receipt of an application for payment unless the Minister is unable to determine the final amount of the payment (section 3 of the IPROR). Therefore, section 3.1 of the PLTA applies to immovables referred to in paragraph 2(3)(*h*) of the PLTA that were not classified as “federal properties” by regulations made by the Governor in Counsel. They may be deemed to be federal properties only for “a taxation year” and only if the payment conditions are respected. Therefore, the taxing authority must wait to the end of the taxation year in question before applying for payment. Accordingly, the real property tax account must still be past due on this last date. In addition, the taxing authority must establish that it made every reasonable effort to collect the taxes and that there is no likelihood of it ever being able to collect them. No such condition must be met in the case of an immovable referred to in paragraph 3(1)(*m*) of the PLTR, since such an immovable is already classified as “federal property”.

[48] If the Court were to accept the respondent’s argument, this would mean that payments may only be made in respect of a defaulting lessee or occupant in one of the airports directly administered by the Department of Transport. Such an interpretation is based on the notion of control. However, one must not lose sight of the purpose of the PLTA, which is to “provide for

the fair and equitable administration of payments in lieu of taxes" (section 2.1 of the PLTA). Needless to say, the applicant cannot obtain the judicial sale of an immovable or real property belonging to Her Majesty which is leased to or occupied by a third party which has defaulted on the payment of its real property tax bill. In such a situation, it is unfair that the taxing authority cannot receive a PILT. The fact that the Minister has signed a lease with the designated airport administration rather than with the defaulting sub-lessee or occupant seems to me to be an irrelevant external factor for the purposes of applying sections 3 and 3.1 of the PLTA. While the Minister does not have any direct control over a sub-lessee, he does have direct control over his lessee. It is therefore up to the Minister of Transport to make the necessary special contractual arrangements with the designated airport administration, where applicable, to recover any PILT made to the taxing authority under section 3.1 of the PLTA.

[49] In conclusion, 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 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 Minister, through the PWGSC manager, acts as a federal board, commission or other tribunal when it calculates the amount of a payment, makes a payment or revises the amount of a payment made under the PLTA. Whenever such a decision is contrary to law, the Court has jurisdiction to render a declaratory judgment to this effect. The Court may also order the Minister to comply with the law, declare the impugned decision to be invalid or unlawful and refer the matter back to the Tribunal for determination in accordance with such directions as it considers to be appropriate (subsections 18(1) and 18.1(3) of the FCA).

[50] In the case at bar, it is clear that the Tribunal disregarded the application of section 3.1 of the PLTA and that the impugned decision contains an error in law such that the Court is warranted in setting the decision aside. The applicant is entitled to a declaratory judgment to the effect that the immovables and real property of Trudeau Airport described in the April 2005 application for payment are deemed to be "federal properties" for taxation years 2000 to 2004.

[51] It is clear in this case that from the date on which the impugned decision was rendered, that is, September 19, 2006, the applicant was unduly deprived of the amount of $177,404.38, which it could reasonably expect to receive and which had actually been paid by PWGSC to the applicant on September 23, 2005. However, it would be inappropriate to specify in the accompanying order the exact amount of the payment to be made as a PLRT which the applicant could reasonably expect to receive today from PWGSC under sections 3 and 3.1 of the PLTA in respect of the occupants of Trudeau Airport who are in default for taxation years 2000 to 2004.

[52] It suffices to quash the impugned decision and return the matter to the respondent so that the exact amount may be calculated by the Tribunal in compliance with the Act and the applicable regulations. On this point, I note that the payment made by the Minister in lieu of real property tax (PLRT) must be made within 50 days following the receipt of the application for payment. 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 any delayed payment supplement, where applicable.

[53] An order giving effect to the Court’s conclusions and containing the appropriate declarations and remedies accompanies these reasons.

[54] 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.
2. The immovables and real property at the Trudeau Airport described in the April 2005 application for payment are deemed to be "federal properties" under section 3.1 of the *Payments in Lieu of Taxes Act* for taxation years 2000 to 2004.
3. The decision rendered by the Tribunal in September 2006 is invalid and unlawful. The Minister acted contrary to law by subtracting $177,404.38 from the payment in lieu of real property tax for the year 2006. This amount was legally paid to the applicant in September 2005 in compliance with sections 3 and 3.1 of the *Payments in Lieu of Taxes Act*. The September 2005 decision of the Tribunal is valid and must therefore be respected by the Minister.
4. The September 2006 decision of the Tribunal is set aside, and the file is returned to the Minister so that the Tribunal may make a new determination and so that a payment in lieu of real property tax be made by the Minister in respect of the occupants of the immovables belonging to Her Majesty leased to ADM and who are in default of paying their real property taxes for the years 2000 to 2004, in accordance with the applicable legislation and regulations within 50 days after the expiry of the time limit specified in paragraph 6 or after the date on which the Minister is advised by the applicant that no additional submissions will be made or evidence adduced under paragraph 5, whichever event comes first, as the case may be.

5. Before rendering a new decision, the Tribunal must allow the applicant to adduce additional evidence and make additional submissions concerning the exact amount of the payment to be made under sections 3 and 3.1 of the *Payments in Lieu of Taxes Act* for taxation years 2000 to 2004, including any delayed payment supplement, where applicable.

6. The additional evidence or submissions described in paragraph 5 may be adduced or made to the Tribunal within 30 days following the date of this order.

7. There will be no order as to costs.

"Luc Martineau"

Judge

Certified true translation
Michael Palles

ANNEX

Payment 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.
"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 *Indian Act* 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 *Loi sur les Indiens* — 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,	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) 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,	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) 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,	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) 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,

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.

"Minister"
«ministre »
"Minister" means the Minister of Public Works and Government Services;

«ministre »
"Minister"
«ministre » Le ministre des Travaux publics et des Services gouvernementaux.

"federal property"
«propriété fédérale »
"federal property" means, 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

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

Crown,

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

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.

"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;

«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.

"property value"
«valeur effective »
"property value" means the value that, in the opinion of the Minister, would be attributable by an assessment authority to federal property, without regard to any mineral rights or any ornamental, decorative or non-functional features thereof, as the basis for computing the amount of any real property tax that would be applicable to that property if it were taxable property;

«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.

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

(2) 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.

Property not included in the definition "federal property"

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

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

(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.

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 authority applying for it

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

(b) in lieu of a frontage or area tax

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

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

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

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

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

(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.

(1.2) The supplement shall not exceed the product obtained by multiplying

(1.2) L'augmentation ne peut dépasser le produit de la somme non versée par

the amount not paid by the rate of interest prescribed for the purpose of section 155.1 of the *Financial Administration Act*, calculated over the period that, in the opinion of the Minister, the payment has been delayed.

le taux d'intérêt fixé en vertu de l'article 155.1 de la *Loi sur la gestion des finances publiques*. Elle couvre la période pour laquelle, selon le ministre, il y a eu retard.

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

(2) La prise, au cours d'une année d'imposition, de règlements classant en vertu des alinéas 9(1)*d*) ou *e*) un immeuble ou un bien réel comme propriété fédérale permet, malgré toute autre disposition de la présente loi, le versement d'un paiement à son égard pour la totalité de l'année d'imposition.

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

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

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

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

3.1 Real property and immovables referred to in paragraph 2(3)(*h*) are deemed to be federal property for a taxation year if

3.1 Les immeubles et biens réels visés à l'alinéa 2(3)*h*) sont réputés être des propriétés fédérales pour une année d'imposition donnée si les conditions suivantes sont remplies :

(a) as of the day following the last day of the taxation year, all or part of the real property tax or the frontage or area tax on the property for that taxation year remains unpaid; and

a) tout ou partie de l'impôt foncier ou de l'impôt sur la façade ou sur la superficie est en souffrance le jour suivant la fin de l'année d'imposition;

(b) the Minister is of the opinion that the taxing authority has made all reasonable efforts to collect the tax and there is no likelihood that the authority will ever be able to collect it.

b) le ministre est d'avis que l'autorité taxatrice a pris les mesures raisonnables pour percevoir l'impôt et qu'il est impossible qu'elle puisse le faire.

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.
…	[…]
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).	(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) The Chairperson shall supervise and direct the operation and functioning of the advisory panel.	(3) Le président assure la direction du comité.
(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.	(4) Le président peut constituer au sein du comité des formations pouvant exercer tout ou partie des attributions du comité.
(5) Each member of the advisory panel is entitled to be paid, unless the	(5) Sauf s'ils font partie de l'administration publique fédérale, les

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.

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

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

Payments in Lieu of Taxes Regulations, SOR/81-29

Real property and immovables leased to or occupied by non-departmental bodies

Immeuble ou bien réel pris à bail ou occupé par des organismes autres que les ministères

3. (1) The following classes of real property and immovables owned by Her Majesty in right of Canada and leased to or occupied by a person or a body, whether incorporated or not, that is not a department, are to be included in the definition "federal property" in subsection 2(1) of the Act, for the purposes of the Act:

3. (1) Tout immeuble ou bien réel qui appartient à Sa Majesté du chef du Canada et qui est pris à bail ou occupé par une personne ou par un organisme autre qu'un ministère, constitué en personne morale ou non, est à classer, pour l'application de la Loi, comme propriété fédérale au sens du paragraphe 2(1) de la Loi, s'il appartient à l'une des catégories suivantes :

(m) any real property or immovable owned by Her Majesty and leased to a designated airport authority within the meaning of the Airport Transfer (Miscellaneous Matters) Act,

m) tout immeuble ou bien réel appartenant à Sa Majesté et pris à bail par une administration aéroportuaire désignée, au sens de la Loi relative aux cessions d'aéroports, qui, selon le cas :

(i) which is not sublet to or occupied by any person other than the designated airport authority or a receiver-manager in possession of the assets of the designated airport authority, or

(i) n'est pas sous-loué à une personne autre que l'administration aéroportuaire désignée ou un séquestre-gérant en possession des éléments d'actif de l'administration aéroportuaire désignée ni occupé par une telle personne,

(ii) which is sublet to or occupied by Her Majesty.	(ii) est sous-loué par Sa Majesté du chef du Canada ou occupé par elle.

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

3. When, in respect of an application made by a taxing authority under section 3 of the Act, a final determination of the amount of the payment cannot be made within 50 days after receipt of the application, or within 90 days in the case of an application made for the first time, the Minister may	3. S'il est impossible de déterminer de façon définitive le montant du paiement dans les cinquante jours suivant la réception de la demande présentée en vertu de l'article 3 de la Loi par l'autorité taxatrice ou, dans le cas de la demande présentée pour la première fois, dans les quatre-vingt-dix jours suivant sa réception, le ministre peut :
(a) estimate, on the basis of the information available to the Minister, the amount that may be paid to the taxing authority under section 3 of the Act; and	a) estimer, en se fondant sur les renseignements dont il dispose, la somme pouvant être versée à l'autorité taxatrice en vertu de cet article;
(b) make an interim payment to the taxing authority in an amount that does not exceed the amount referred to in paragraph (*a*).	b) faire, à l'égard du paiement, un versement provisoire ne dépassant pas la somme visée à l'alinéa *a*).
4. If any payment made to a taxing authority under the Act or these Regulations is greater than the amount that may be paid to the taxing authority under section 3 of the Act, the amount of the overpayment and interest on that amount prescribed for the purpose of section 155.1 of the *Financial Administration Act* may be	4. Si le montant d'un paiement versé à une autorité taxatrice au titre de la Loi ou du présent règlement est plus élevé que ce qui aurait dû être versé en vertu l'article 3 de la Loi, le trop-perçu et les intérêts fixés en vertu de l'article 155.1 de la *Loi sur la gestion des finances publiques* peuvent être, selon le cas :
(a) set off against other payments that may otherwise be paid to the taxing authority under section 3 of the Act or these Regulations; or (b) recovered as a debt due to Her Majesty in right of Canada by the taxing authority.	a) portés en diminution de tout autre paiement pouvant être versé à l'autorité taxatrice en vertu de cet article ou du présent règlement; b) recouvrés à titre de créance de Sa Majesté du chef du Canada.

Crown Corporation Payments Regulations, DORS/81-1030

Definitions

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

"corporation property" means

(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.1) except in Part 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

(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

(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)

Définitions

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

«propriété d'une société»

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) sauf à la partie II,

(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) 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) 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)

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

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	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 assujetti sans cette exemption sont imposées au locataire ou, à défaut, à l'occupant, et sont payables par lui. Toutefois, cette règle ne s'applique pas dans le cas d'un immeuble visé au paragraphe 1.1° de l'article 204 lorsque, suivant la législation du Parlement du Canada relative aux subventions aux municipalités pour tenir lieu des taxes foncières et selon les actes pris en vertu de cette législation, une telle subvention est

legislation, such a subsidy is paid in respect of the immovable notwithstanding its being occupied as described in this paragraph.

versée à l'égard de l'immeuble malgré l'occupation visée au présent alinéa dont il fait l'objet.

Act respecting Aéroports de Montréal, S.Q. 1991, c. 106

2. For the purposes of the *Act respecting municipal taxation* (R.S.Q., chapter F-2.1) and the *Education Act* (R.S.Q., chapter I-13.3), Aéroports de Montréal is neither lessee, nor occupant, nor owner of an immovable contemplated by this Act.

2. Aux fins de la *Loi sur la fiscalité municipale* (L.R.Q., chapitre F-2.1) et de la *Loi sur l’instruction publique* (L.R.Q., chapitre I-13.3), Aéroports de Montréal n’est ni locataire, ni occupant, ni propriétaire d’un immeuble visé par la présente loi.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET:	T-1828-06
STYLE OF CAUSE:	CITY OF MONTRÉAL, applicant and ATTORNEY GENERAL OF CANADA, respondent and MINISTER OF PUBLIC WORKS AND GOVERNMENT SERVICES CANADA, Tribunal in respect of which the application is brought
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	April 25, 2007
REASONS FOR ORDER AND ORDER BY:	The Honourable Mr. Justice Martineau
DATED:	July 5, 2007

APPEARANCES:

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Nathalie Benoît	FOR THE RESPONDENT

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