Federal Court Cour fédérale

Date: 20240212

Docket: T-1773-22

Citation: 2024 FC 112

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 12, 2024

PRESENT: Madam Justice St-Louis

BETWEEN:

CITY OF LAVAL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Background

[1] City of Laval is seeking judicial review of a decision of Public Services and Procurement Canada [Public Services] of August 3, 2022 [the Decision], refusing to make payment in lieu of taxes with respect to a contribution for park purposes that the Government of Canada is refusing to pay in connection with the Laval Immigration Holding Centre [Holding Centre] project.

[2] This case refers specifically to four concepts: (1) federal Crown immunity under section 125 of the *Constitution Act 1867* (U.K.), 30 & 31 Vict, c 3 [*Constitution Act, 1867*]; (2) the federal Crown's interjurisdictional immunity; (3) the Payments in Lieu of Taxes [PILT] program provided for by the *Payments in Lieu of Taxes Act*, RSC 1985, c M-13 [PILT Act], and administered by Public Services; and (4) the contribution for park purposes arising from the *Act respecting land use planning and development*, CQLR c A-19.1 [Development Act], and, in this case, the bylaws adopted by City of Laval, namely the *Règlement de lotissement de la Ville de Laval* (L-9500) [Bylaw L-9500], and the *Règlement L-2000 concernant l'aménagement du territoire, le zonage, l'usage des bâtiments et des terrains et les plans d'implantation et d'intégration architecturale dans la Ville de Laval* [Bylaw L-2000].

[3] It should be noted that the Government of Canada owns some land in City of Laval, and planned to build the Holding Centre there around 2017. The payment of a contribution for park purposes for the Holding Centre project quickly became an issue in the discussions between the Government of Canada and City of Laval. However, as early as August 1, 2017, the Public Services representative invoked interjurisdictional immunity in connection with zoning, subdivision and municipal bylaw compliance issues, and told City of Laval that the municipal bylaws were inapplicable, as Her Majesty had exclusive jurisdiction to legislate on her properties (Exhibit AF-1 of Annie Filion's affidavit, Applicant's Amended Record at 80–81). In short, Public Services informed City of Laval that the Government of Canada was not required to pay the contribution for park purposes, invoking the aforementioned interjurisdictional immunity.

[4] Between January 2019 and spring 2020, meetings were held between Public Services and City of Laval representatives. City of Laval once again raised the contribution for park purposes,

informing the Public Services representatives that, where applicable, the issuance of a building or subdivision permit was subject to a park contribution corresponding to 10% of the value of the land involved in the project, and that this value was determined by City of Laval. Public Services then reiterated that the Government of Canada was not required to pay the contribution for park purposes (Maxime Larochelle's affidavit; Applicant's Amended Record at 173).

[5] On December 21, 2021, City of Laval submitted a PILT application to Public Services under paragraph 3(1)(a) of the PILT Act to recover the amount of the park contribution not paid by the Government of Canada, i.e. some $2.6 million [the Payment Application]. In paragraph 13 of its Amended Memorandum of Fact and Law, City of Laval states that it knows that it must demonstrate that the criteria of the PILT Act have been met, and that it firmly believes that the Government of Canada does not question the existence of constitutional immunity such that the contribution for park purposes cannot be claimed directly from it.

[6] On April 6, 2022, Public Services informed City of Laval that the Minister of Public Works and Government Services [Minister] did not have the authority under the PILT Act to make a payment on the application as presented. Public Services therefore offered City of Laval the opportunity to provide any additional details that might affect its analysis of the Payment Application before making a final decision.

[7] On June 3, 2022, City of Laval replied and pointed out to Public Services that the Minister not only had the authority, but also the obligation, to make a contribution for a park, since the latter met the definition of a real property tax under the PILT Act, citing *Halifax (Regional Municipality) v Canada (Public Works and Government Services)*, 2012 SCC 29 at para 2 [*Halifax*]. City of Laval then pointed out that park contributions are levied by City of

Laval; that they are imposed on real property and immovables of a given class; that owners are liable to them and that they are computed by applying a rate to the assessed value of taxable property. City of Laval then added that the spirit and letter of the PILT Act support the conclusion that the contribution for park purposes must give rise to this payment, citing *Montréal (City) v Montreal Port Authority*, 2010 SCC 14 at para 12 [*Montreal Port Authority*] and *Montréal (City) v Old Port of Montréal Corporation Inc*, 2021 FC 806 at paras 183, 186, aff'd 2023 FCA 126 [*Old Port of Montréal Corporation*].

[8] Public Services ultimately rendered its decision on August 3, 2022, and refused City of Laval's Payment Application. Public Services determined that City of Laval's application was not eligible for payment under the PILT Act, and provided the following five explanations:

- The contribution for park purposes is not a real property tax as provided for in paragraph 3(1)(a) of the PILT Act, nor does it fall within the definition of a frontage or area tax as provided for in paragraph 3(1)(b). The Minister therefore lacks the authority to make the payment requested by City of Laval.

- The contribution for park purposes is described in section 117.16 of the Development Act and is neither a tax, a compensation or a mode of tariffing. It appears to be a fee associated with obtaining any kind of permit and, above all, a prerequisite for this. The PILT program is not concerned with construction or subdivision. Consequently, the Minister has no authority under the PILT program to pay this type of contribution.

- The fact that the owner may have the choice of transferring part of the land or paying an amount of money seems to show that this type of contribution is contrary to the definition in the PILT Act.

- Case law, specifically paragraphs 29 and 30 of the Quebec Court of Appeal decision in *Québec (Ville de) c Société immobilière du Québec*, 2013 QCCA 305 [*Société immobilière du Québec*], supports the PILT program's position that the contribution for park purposes is not a tax.

- The Development Act defines the authority granted to municipalities regarding park fees. This park fee is in fact a one-time contribution, payable at the time of application for a subdivision or building permit.

[9] City of Laval is seeking judicial review of the Decision.

[10] In support of its application for judicial review, City of Laval argues that (1) Public Services' use of section 117.16 of the Development Act is illogical and untenable; (2) reliance on the Quebec Court of Appeal's decision in *Société immobilière du Québec* is illogical and untenable; (3) the reasons given by Public Services in the Decision are illogical and untenable since (a) the contribution for park purposes is a real property tax as defined in the PILT Act; (b) the characteristics noted by the decision maker (application in a construction or subdivision context, application in a permit context and one-time contribution) to distinguish the contribution for park purposes from PILTs have no basis in the PILT Act; and (c) according to City of Laval bylaws, it is not the owner who chooses to pay by transferring land or by paying a sum of money, but the City of Laval's Executive Committee, making the Decision erroneous.

[11] City of Laval adds that it is unreasonable for the Minister to conclude that contributions for park purposes do not give rise to PILTs. It maintains that the contributions qualify as a real property tax within the meaning of the PILT Act because (1) they are a levy that City of Laval imposes on the immovable property of citizens in order to meet some of its public expenses; (2) they are levied by City of Laval; (3) they are imposed on immovables or real property of a given class; (4) owners are liable to them; and (5) they are computed by applying a rate (10%) to the assessed value of taxable property.

[12] The Attorney General of Canada [AGC] first confirms that the Government of Canada's refusal to pay the contribution for park purposes is based on the interjurisdictional immunity of the federal Crown and not on the tax immunity of section 125 of the *Constitution Act, 1867*. The AGC points out that the parties are currently engaged in litigation before the Quebec Superior Court in this regard. The AGC responds that the Decision is reasonable, since it was reasonable for Public Services to conclude that the contribution for park purposes is not a tax; and that in any event, if the contribution for park purposes is a tax, it is not a real property tax. The AGC adds that it was reasonable for Public Services to conclude that the Minister does not have the requisite authority to make the requested payment.

[13] For the reasons detailed below, I dismiss the application for judicial review. In short, City of Laval has not demonstrated that it was unreasonable for Public Services to rely on the clear text of section 117.16 of the Development Act and on the decision of the Quebec Court of Appeal in *Société immobilière du Québec* to conclude that the Minister does not have the authority to issue a PILT.

[14] Indeed, for the purposes of this decision, I note first that the PILT Act concerns real property taxes. I also note that City of Laval has confirmed that a real property tax is a tax. However, the Development Act specifically states that the contribution for park purposes is not a tax, and the Quebec Court of Appeal in *Société immobilière du Québec* confirmed this. Moreover, Public Services did not invoke the constitutional immunity from taxation (s 125 of the *Constitution Act, 1867*) precisely on this ground.

[15] Thus, if the contribution for park purposes is not a tax, and since it is accepted that real property tax is a tax, it is not unreasonable to conclude, as the decision maker did, that the contribution for park purposes is not a real property tax within the meaning of the PILT Act.

[16] I note that in its Decision, Public Services erroneously stated that the owner could choose to pay the contribution for park purposes by transferring land or paying an amount of money. However, this error is not fatal and does not justify the Court's intervention.

II. Analysis

A. *Standard of review*

[17] I agree with the parties that the Decision must be reviewed against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25 [*Vavilov*]). A reviewing court "must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion" (*Vavilov* at para 84). Moreover, "a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the

decision maker" (*Vavilov* at para 85). The reasonableness standard therefore requires that a reviewing court defer to such a decision (*Vavilov* at para 85). Thus, the reviewing court must take into account the facts and law that constrain a decision maker, but refrain from reweighing and reassessing the evidence considered by the decision maker (*Vavilov* at para 125).

[18] In this case, the Court must determine whether City of Laval has demonstrated, as its burden requires, that the decision to refuse to pay it a PILT is unreasonable.

B. *Discussion*

[19] Under section 125 of the *Constitution Act, 1867*, property owned by the federal Crown enjoys constitutional immunity from taxation, and is not subject to the legal taxation regimes of cities and municipalities. As mentioned above, section 125 of the *Constitution Act, 1867*, provides that "[n]o Lands or Property belonging to Canada or any Province shall be liable to Taxation".

[20] However, recognizing the importance of the services offered by municipal authorities to federal properties, and "in the interest of fairness, Parliament has established a regime of discretionary payments in lieu of taxes . . . to provinces and municipalities" (*Halifax* at para 2). The Minister "has discretion to make these payments and as to their amount" (*Halifax* at para 2) through the PILT Act.

[21] Accordingly, under subsection 3(1) of the PILT Act, 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 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. Paragraph 3(1)(a) of the PILT Act provides for payments in lieu of a real property tax for a taxation year, while paragraph 3(1)(b) provides for payments in lieu of a frontage or area tax.

[22] The PILT program derives from, and is directly linked to, the tax immunity provided by section 125 of the *Constitution Act, 1867*. Case law unequivocally confirms this link. Indeed, in paragraphs 12 and following of *Montreal Port Authority*, the Supreme Court of Canada describes the immunity of government property from taxation under section 125 of the *Constitution Act, 1867*, and then goes on to speak of the system created by the federal government to compensate Canadian municipalities, resulting from the desire that its administrators and agents act as good residents of the municipalities where federal property is located. In paragraph 15 of the same decision, the Supreme Court specifically notes that, to ensure that its agents act as good residents of the municipalities where federal property is located, "the federal government gradually established a system of payments to be made in lieu of the taxes Canadian municipalities generally collect from their ratepayers" [emphasis added].

[23] Citing *Montreal Port Authority* at paragraphs 13 and 14 as well as the decision of this Court in *Chelsea (Municipality) v Canada (Attorney General)*, 2023 FC 103 at paragraph 7, my colleague Judge Guy Régimbald points out in his decision *Attorney General of Canada v Aéroports de Montréal*, 2023 FC 1562 at paragraph 10, that:

> [10] To recognize and contribute to services provided by municipalities, Parliament introduced a system in 1951 to make fair and equitable payments "in lieu of taxes" to taxing authorities, while maintaining the Crown's immunity from taxation. This was a way to compensate municipalities for their services, through voluntary payments in lieu of taxes . . .

[24] He adds in paragraph 12 of the same decision that:

> [12] Under the PILT Act, PSPC pays a taxing authority a PILT for a given taxation year for each federal property in the area covered by the taxing authority. This is therefore an alternative way to collect amounts that are equivalent to municipal taxes.

[25] The same is expressed in paragraphs 2 and 23 of *Old Port of Montréal Corporation*. In paragraph 23, Mr. Justice Peter G. Pamel reiterates Mr. Justice Lebel's comments in *Montreal Port Authority* at paragraph 20, emphasizing that:

> [23] . . .
>
> > [20] . . . Thus, the PILT Act is designed to reconcile different objectives — tax fairness for municipalities and the preservation of constitutional immunity from taxation — that can be attained only by retaining a structured administrative discretion where the setting of the amounts of payments in lieu is concerned. . .
>
> [Emphasis in original.]

[26] It is clear, then, that the PILT program (1) arises from the impact of the federal Crown's tax immunity under section 125 of the *Constitution Act, 1867*; and (2) is intended to replace municipal taxes, in this case, a real property tax (*impôt foncier* in the French version) in the PILT Act.

[27] In connection with the first point, the AGC confirmed at the hearing of this application that its refusal to pay the contribution for park purposes was not based on the tax immunity provided for in section 125 of the *Constitution Act, 1867*, but on interjurisdictional immunity. According to the parties' submissions, the question of whether interjurisdictional immunity can be validly invoked is the subject of a dispute between them before the Quebec Superior Court.

[28] However, if the Crown did not invoke the immunity that led to the adoption of the PILT program because the contribution for park purposes is not a tax, it seems reasonable to conclude

that the program does not apply and that City of Laval cannot be paid. That being said, the decision maker did not address this particular issue, so I will say no more on the subject.

[29] In connection with the second point, at issue is whether it was reasonable for the decision maker to conclude that the contribution for park purposes resulting from the Development Act, a law enacted by the Quebec legislature, is not a real property tax as defined in the PILT Act, a term to which the aforementioned case law also regularly refers as a "municipal tax". At the hearing of this application for judicial review, and as mentioned above, City of Laval confirmed that a real property tax is indeed a tax.

[30] Quebec's Development Act provides that the council of a municipality may adopt a subdivision bylaw for its whole territory or a given portion of territory. Section 117.1 of the Development Act provides that the subdivision bylaw may, "for the purpose of promoting the establishment, maintenance and improvement of parks and playgrounds and the preservation of natural areas, prescribe . . . any prerequisite condition".

[31] City of Laval has adopted Bylaw L-2000 and Bylaw L-9500, under which it may levy a [TRANSLATION] "park contribution" from the owner at the time of subdivision. This contribution represents 10% of the value of the lot.

[32] Section 117.16, which is at the heart of this debate, stipulates in particular that "[a]mounts paid pursuant to a provision enacted under section 117.1 do not constitute a tax, a compensation or a mode of tariffing".

[33] In *Société immobilière du Québec*, the Quebec Court of Appeal specifically examined whether the immunity from constitutional taxation provided for in section 125 of the

Constitution Act, 1867, applies to contributions for park purposes. The Quebec Court of Appeal concluded that the immunity does not apply, stating, at paragraph 29 of the decision, that [TRANSLATION] "[t]he contribution for park purposes imposed by the Bylaw is not a 'federal–provincial or provincial–federal' tax. It is a contribution provided for in a provincial regulation for the benefit of a municipality". The Quebec Court of Appeal therefore concluded that the Crown's tax immunity cannot be invoked to refuse to pay what is not a tax.

[34] As mentioned above, the AGC has confirmed that the Government of Canada cannot invoke constitutional tax immunity to refuse to pay the park contribution, since the latter is not a tax.

[35] City of Laval points out that section 117.16 of the Development Act was adopted as part of the 1993 reform that made contributions for park purposes an important tax measure for municipalities. City of Laval notes that prior to the 1993 reform, the Quebec Court of Appeal had twice concluded that certain entities (e.g., urban communities or school boards) benefiting from tax exemptions under Quebec laws did not have to pay them (*Québec (Communauté urbaine) c St-Augustin de Desmaures (Corporation municipale de la paroisse)*, [1977] CA 396, JE 77-85 (leave to appeal to SCC refused); *Saint-Léonard (Ville) c Commission scolaire Jérôme Le Royer*, 1992 RL 535 (QC CA), 1992 CanLII 3965).

[36] City of Laval adds that section 117.16 of the Development Act providing that park contributions are not a tax was in fact a way for the Quebec legislator to ensure that persons exempted from taxes under its own laws were nonetheless obliged to pay park contributions.

[37] City of Laval submits that section 117.6 of the Development Act should, however, be ignored and that the contribution for park purposes be considered a tax, since (1) relying on a provincial statute to determine what is a tax is illogical and untenable in the context of a debate on the federal government's constitutional immunity; and (2) the Quebec Court of Appeal's decision in *Société immobilière du Québec* does not have the scope given to it by the Minister, who cited this decision out of context and gave it a scope and meaning that it does not have. City of Laval therefore maintains that the Minister's use of the decision is illogical and untenable in light of the relevant factual and legal constraints.

[38] However, City of Laval has not satisfied me that it is unreasonable for Public Services to rely on the clear wording of the Quebec legislator, which states that the contribution for park purposes is not a tax.

[39] Section 2(1) of the PILT Act defines real property tax as follows:

real property tax means a tax of general application to real property or immovables or any class of them that is	**impôt foncier** Impôt général :
(a) levied by a taxing authority on owners of real property or immovables . . ., and	**a)** levé par une autorité taxatrice sur les immeubles ou biens réels ou les immeubles ou biens réels d'une catégorie donnée et auquel sont assujettis les propriétaires . . .;
(b) computed by applying a rate to all or part of the assessed value of taxable property; (impôt foncier)	**b)** calculé par application d'un taux à tout ou partie de la valeur fiscale des propriétés imposables. (real tax property)

[40] However, in accordance with the express wishes of the Quebec legislator, the contribution for park purposes is not a tax and does not form part of the real property tax applicable to taxable properties located on Quebec territory. This eliminates the possibility of the federal Crown invoking its constitutional tax immunity to avoid payment. The AGC has unequivocally confirmed that the Government of Canada is not invoking this constitutional tax immunity to refuse to pay the park contribution in this case, precisely because the park contribution is not a tax.

[41] As mentioned above, City of Laval recognizes that real property tax is a tax.

[42] Thus, as the AGC points out, City of Laval is inviting the Court to ignore Quebec law and rule that the contribution for park purposes is a tax. This proposition is contrary to the clear and unequivocal text of section 117.16 of the Development Act, which, as the AGC notes, is one of the enabling provisions of City of Laval's powers with regard to contributions for park purposes and does not allow it to adopt bylaws to demand such contributions as taxes. Furthermore, and as pointed out by the AGC, adopting City of Laval's position would have the result of conferring tax status only on park contributions affecting federal properties.

[43] City of Laval has not detailed the legal basis that would allow Public Services to simply ignore Quebec law in the circumstances of this case. Nor has it submitted any authority on which Public Services or the Court could rely in this regard. I therefore decline City of Laval's invitation to allow Public Services to ignore Quebec law.

[44] On the contrary, I conclude that Public Services could reasonably rely on the clear text of the Quebec law and the decision of the Quebec Court of Appeal interpreting that text. Thus,

since it is reasonable to conclude that the contribution for park purposes is not a tax, and since the real property tax is a tax, it is consequently reasonable to conclude that the contribution for park purposes is not a real property tax. It is also reasonable to conclude that the Minister does not have the authority to pay PILTs in this case.

[45] Since I conclude that it is reasonable for Public Services to rely on the text of the Development Act and the decision of the Court of Appeal according to which the contribution for park purposes is not a tax, it is not necessary to examine the other arguments raised by City of Laval in its attempt to convince the Court that the said contribution meets the definition of a real property tax within the meaning of the PILT Act and that it is a tax.

[46] City of Laval correctly points out that the Decision erroneously states that an owner may choose to pay the contribution for park purposes by transferring land or by paying an amount of money, whereas this choice falls within the discretion of City of Laval's Executive Committee, which chose an amount of money. This error on the part of the decision maker is not fatal, and is insufficient to justify the Court's intervention.

III. Conclusion

[47] City of Laval has not demonstrated that the Decision is unreasonable. On the contrary, I conclude that the Decision is based on an internally coherent and rational chain of analysis, and is justified in relation to the facts and law that constrain the decision maker. I therefore dismiss the application for judicial review.

[48] The parties agreed to set the amount of costs at a lump sum of $5,000.00.

JUDGMENT in T-1773-22

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. Costs of $5,000.00 are awarded to the Attorney General of Canada.

"Martine St-Louis"
Judge

Certified true translation
Janna Balkwill

FEDERAL COURT

SOLICITORS OF RECORD

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