

Federal Court



Cour fédérale

Date: 20130429

Docket: T-1972-12

Citation: 2013 FC 439

Ottawa, Ontario, April 29, 2013

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

VILLE DE GATINEAU

Applicant

and

**THE NATIONAL CAPITAL
COMMISSION**

Respondent

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 18.1 of the *Federal Courts Rules*, RSC 1985, c F-7, of a decision by the National Capital Commission to close a section of Gamelin Street, in Gatineau, Quebec. The Ville de Gatineau (the Applicant or the City is governed by the *Cities and Towns Act*, RSQ, c. C-19 and the *Municipal Powers Act*, RSQ, c C-47.1. As for the National Capital Commission (the respondent or the NCC), it is a Crown corporation of the

Government of Canada incorporated and governed by the *National Capital Act*, RSC, 1985, c N-4 (NCA).

[2] The Ville initially filed a motion for an interim and interlocutory injunction on October 26, 2012. Following case management conferences held with counsel for the parties and directions issued by this Court on October 30, 2012, October 31, 2012, November 16, 2012, and November 26, 2012, as well as an order dated November 27, 2012, the parties agreed to maintain the status quo and proceed directly to judicial review on April 3 and 4, 2013, to consider the matter on the merits.

Factual background

[3] In the case at bar, the factual background is of utmost importance.

[4] The starting point can be identified as 1972, when the Government of Quebec and the NCC entered into a general agreement on the improvement of the roads in the Quebec portion of the National Capital Region (Applicant's Record, Vol. II, Exhibit 9.1.1 of the affidavit of Robert Weemaes, pp 437-42). That agreement, amended in 1978, provided for the financial contribution of the NCC to the construction work and westerly extension, through the Gatineau Park, St. Raymond Boulevard to Pink Road as well as of McConnell-Laramée Boulevard (now Des Allumettières Boulevard) to Route 148. The land required for work had to be conveyed from the NCC to the Government of Quebec. In the years following this agreement, the NCC and the former Ville de Hull agreed to exchange a number of other properties in the pursuit of their respective objectives.

[5] The Ville owns a property made up of Lot 31, Range No. IV, Township of Hull, today forming part of Lot 1 814 190, of the Cadastre of Quebec, Hull Registration Division. The section of Gamelin Street that is the subject of the proceedings in the present case is located between the Gatineau Parkway and Des Fées Street, stretches approximately 600 meters and is included in said property (Applicant's Record, Vol. I, Exhibit P-1 of the affidavit of Robert Weemaes, pp 51-54; Respondents' Record, Vol. I, Exhibit B of the affidavit of Lucie Bureau, p. 26). Gamelin Street once ran through the Gatineau Park from West to East. It now connects between the Gatineau Parkway and the Lac des Fées Parkway, and continues to the East to St. Joseph Boulevard. It is located to the North of Des Allumettières Boulevard (Respondents' Record, Vol. I, Exhibit B of the affidavit of Lucie Bureau, p. 26).

[6] A resolution by the former Ville de Hull dated December 4, 1973, provided for the closure of Gamelin Street and its conveyance to the NCC once the extension of St. Raymond Boulevard and McConnell-Laramée Boulevard (now Des Allumettières Boulevard) was completed (Respondents' Record, Vol. I, Exhibits C and D of the affidavit of Lucie Bureau, pp 28 and 30-32). A number of other resolutions by the former Ville de Hull provided as follows:

[TRANSLATION]

- a. Resolution 76-484 of November 4, 1976: the Ville approves the closure of Gamelin Street, between Chemin de la Montagne and Centre Street (now Des Fées Street) and the transfer of the site of this portion of Gamelin Street to the NCC (Respondents' Record, Vol. I, Exhibit D of the affidavit of Lucie Bureau, p 31);
- b. Resolution 78-11 of January 1978: the Ville approves the acquisition and transfer of certain land between the Ville and the NCC, as well as the NCC's project to develop a portion of Gamelin Street for the purposes of the Gatineau Park (Respondents' Record, Vol. I, Exhibit E of the affidavit of Lucie Bureau, pp 34-36);

- c. Settlement notice 79-256: the Ville orders the closure of a portion of Gamelin Street for an exchange of emphyteutic contracts with the NCC (Respondents' Record, Vol. I, Exhibit F of the affidavit of Lucie Bureau, p. 38);
- d. Resolution 79-318: the Ville approves the addition of the portion of Gamelin Street between the west side of Centre Street (now Des Fées Street) and Chemin de la Montagne for an exchange by contract of emphyteusis with the NCC; the Ville authorizes the clerk of the Ville to take the necessary steps to close this section of the street (Respondents' Record, Vol. I, Exhibit G of the affidavit of Lucie Bureau, p. 40);
- e. By-law Number 1540 of August 21, 1979: the Ville closes Gamelin Street and transfers it to the private sector so that it can be transferred by emphyteusis to the NCC (Respondents' Record, Vol. III, Exhibit MMM of the supplementary affidavit of Jean-François Trépanier, p 626);
- f. Resolution 79-407 of August 21, 1979: the Ville approves By-law 1540 concerning the closure of streets transferred to the NCC by contract of emphyteusis (Respondents' Record, Vol. I, Exhibit I of the affidavit of Lucie Bureau, p 45).

[7] The former Ville de Hull and the NCC then signed two (2) contracts of emphyteusis on September 21, 1983, for a duration of ninety-nine (99) years starting on April 1, 1979, and ending on March 31, 2078. The first contract (contract of emphyteusis) includes the properties transferred by the Ville to the NCC, and includes the section of Gamelin Street at issue in clause 1.2.21 (Applicant's Record, Vol. I, Exhibit P-2 of the affidavit of Robert Weemaes, pp 56-101), whereas the second contract includes the properties transferred by the NCC to the Ville (Respondents' Record, Vol. I, Exhibit J of the affidavit of Lucie Bureau, pp 47-75; the land exchanges are represented on a map, Respondents' Record, Vol. III, Exhibit III of the affidavit of Lucie Bureau, p 579).

[8] Clause 1.4 of the contract of emphyteusis provides that the [TRANSLATION] “LESSEE”, that is, the NCC, [TRANSLATION] “has all rights of ownership of the real property and improvements thereon, without prejudice to the rights of the “LESSOR”, that is the Ville (Applicant’s Record, Vol. I, Exhibit P-2 of the affidavit of Robert Weemaes, p. 59). Clause 4.4 of the contract of emphyteusis stipulates the improvements to the section of Gamelin Street at issue:

[TRANSLATION]

4.4 On the above-mentioned land in clause 1.2.21, the LESSEE covenants and undertakes to make improvements that will allow said parcel of land to be integrated as part of the Gatineau Park. Accordingly, the LESSEE shall landscape the property in a manner consistent with neighbouring land.

(Applicant’s Record, Vol. I, Exhibit P-2 of the affidavit of Robert Weemaes, p 61).

[9] Clause 4.5 of the contract of emphyteusis required that the NCC make and complete the improvements within a reasonable time, but prior to March 31, 1999. It reads as follows:

[TRANSLATION]

4.5 The LESSEE shall make and complete the said improvements within a reasonable time, but prior to the thirty-first day of March in the year one thousand nine hundred and ninety nine (1999.03.31), in accordance with any statutes or ordinances, any zoning regulations or order in effect under a government organization or government authority with jurisdiction.

(Applicant’s Record, Vol. I, Exhibit P-2 of the affidavit of Robert Weemaes, p 61).

[10] In the late 1980s, the four (4) traffic lanes of St. Raymond Boulevard to Pink Road were completed, allowing the Ville to extend development to the West. Hence, in 1989, the NCC closed to vehicular circulation a first section of Gamelin Street located between the former Chemin de la Montagne and the Gatineau Parkway (section to the west of the section at issue in the case at bar,

depicted in green in the Respondents' Record, Vol. I, Exhibit B of the affidavit of Lucie Bureau, p. 26).

[11] In 1996, the Ville requested from the NCC the right to use the first closed section as an emergency lane for vehicles from its fire station in the Plateau's residential sector (Respondents' Record, Vol. I, affidavit of Lucie Bureau, p. 5, para. 29). The NCC accepted and an agreement to that effect was signed on February 18, 1997 (Respondents' Record, Vol. I, Exhibit M of the affidavit of Lucie Bureau, pp 81-106). It was agreed that the new McConnell-Laramée Boulevard (now Des Allumettières Boulevard) had to be considered as an acceptable alternate route upon renewal of the agreement (Respondents' Record, Vol. I, Exhibit M of the affidavit of Lucie Bureau, p. 81, clause 2).

[12] In May 2005, the NCC adopted the Gatineau Park Master Plan (Master Plan) providing for the completion of McConnell-Laramée Boulevard (now Des Allumettières Boulevard) and the rationalization of the existing road system in the Park (Applicant's Record, Vol. I, Exhibit P-3 of the affidavit of Robert Weemaes, pp 102-222). The objective set out in the Master Plan for Gamelin Street was to complete the initiative that led to the closure of the first section, located between the former Chemin de la Montagne and the Gatineau Parkway (Applicant's Record, Vol. I, Exhibit P-3 of the affidavit of Robert Weemaes, p. 168). Clause 6.2.6 of the Master Plan on the section of Gamelin Street reads as follows:

[TRANSLATION]

6.2.6 ROAD SYSTEM

...

POLICIES

...

2. Rationalize the existing road system in the Park, including:

...

- the section of Gamelin Street, between the Gatineau and Lacs-Fées Parkways, while keeping the lane open for public safety. This section could be closed after the opening of McConnell-Laramée Boulevard and the conduct of [a] specific study, in collaboration with Ville de Gatineau, on the impact of the closing on regional traffic. This would complete the initiative that led to the closing of the first section of the street, between the former Chemin de la Montagne and the Gatineau Parkway;

...

[13] The Des Allumettières Boulevard (formerly McConnell-Laramée) was finally opened on December 3, 2007. It includes four (4) lanes and runs through the Gatineau Park from east to west to the south of Gamelin Street.

[14] In April 2008, the NCC agreed to extend the agreement on the Gamelin Street emergency lane but reiterated its intention to close the second section of Gamelin Street, located to the west of Des Fées Street (Respondents' Record, Vol. I, Exhibit U of the affidavit of Lucie Bureau, pp 145-46).

[15] By letter dated November 16, 2009 (Respondents' Record, Vol. I, Exhibit X of the affidavit of Marie Lemay, pp 171-72), the Ville's Service de sécurité incendie [fire department] indicated that [TRANSLATION] "the closing of the Gamelin Boulevard emergency lane did not compromise the objectives of the fire safety coverage plan submitted by the Ville de Gatineau to the Ministère de la

Sécurité publique” (Respondents’ Record, Vol. I, Exhibit X of the affidavit of Marie Lemay, p 172). The Ville made a request to keep the Gamelin emergency lane open, which was denied by the NCC (Respondents’ Record, Vol. I, Exhibits U.1 and U.2 of the affidavit of Lucie Bureau, pp 148-49 and 151). The west section of Gamelin Street, which is not at issue in this judicial review, has therefore been closed to vehicles from the Service des incendies of the Ville since fall 2010.

[16] On August 30, 2011, the Ville adopted Resolution CM-2011-751 authorizing the closure of the section of Gamelin Street between the Gatineau Parkway and Des Fées Street, that is, the section at issue. The resolution also mandated the Ville’s Municipal Council to inform the Park users and motorists of the pending closure of the section and to submit a request to the NCC to keep and relocate a multi-use trail (pedestrians/cyclists) to continue to have access to the Plateau neighbourhood (Applicant’s Record, Vol. I, Exhibit P-5 of the affidavit of Robert Weemaes, pp. 230-32). The Ville provided the NCC with the resolution on August 31, 2011. The NCC then requested that the Ville advise it of its road closure schedule (Respondents’ Record, Vol. II, Exhibit MM of the affidavit of Jean-François Trépanier, p 246).

[17] The Ville continued to ensure the management, maintenance and repair of Gamelin Street notwithstanding the resolution, and as it always had in spite of the contract of emphyteusis of 1983 (Applicant’s Record, Vol. III, Examination of Lucie Bureau, p 783; Vol. II, Supplementary affidavit of Robert Weemaes, p 431, paragraph 5).

[18] In the winter of 2011-2012, the development plans of the section at issue of Gamelin Street were discussed publicly during consultation sessions by the NCC in which the Ville participated (Applicant's Record, Vol. III, Examination of Marie Lemay, pp 808-09).

[19] In February 2012, the Chief Executive Officer of the Agence de la santé et des services sociaux de l'Outaouais, Dr. Guy Morissette, expressed his concern to the NCC about access to emergency care for part of the population of the Ville de Gatineau in the event of closure of Gamelin Street (Respondents' Record, Vol. I, Exhibit BB of the affidavit of Marie Lemay, pp 210-12). The Regional Director of the Ministère des transports, Jacques Henry, also expressed concern with the impact the closure of Gamelin Street would have on vehicular traffic (Respondents' Record, Vol. I, Exhibit CC of the affidavit of Marie Lemay, p 214). The NCC and the Ville therefore agreed to conduct two (2) studies: one on ambulance services, which would be coordinated by the NCC and conducted by the Agence de la santé et des services sociaux de l'Outaouais (the Agence), and another on vehicular traffic, which would be led by the Ville, and which would be done by the firm Genivar (Respondents' Record, Vol. I, Exhibits GG and HH of the affidavit of Marie Lemay, pp 222-26; Applicant's Record, Vol. II, Exhibit P-11.5 of the affidavit of Robert Weemaes, pp 384-85). The timeline for the study on vehicular traffic was communicated to the NCC and included a preliminary report dated September 17, 2012, with the final report due on October 15, 2012 (Applicant's Record, Vol. II, Exhibit P-20 of the affidavit of Robert Weemaes, pp 426-29).

[20] In April 2012, the NCC commenced the federal land use approval process as required by section 12 of the *NCA* and prepared the plans and specifications for the work (Respondents' Record, Vol. III, Affidavit of Edith Lavallée, pp 370-71, paras 10-18).

[21] In July 2012, the Agence submitted a report entitled [TRANSLATION] "Gamelin Section Closure Project–Hull Sector: Impacts on the Health and Social Services network" to Marie Lemay, Chief Executive Officer of the NCC (Applicant's Record, Vol. I, Exhibit P-6 of the affidavit of Robert Weemaes, pp 234-53). The report found that the closure of the section at issue of Gamelin Street would have minimal impact on all sectors other than the Gatineau Park, where the evacuation of the client population would be more difficult (Applicant's Record, Vol. I, Exhibit P-6 of the affidavit of Robert Weemaes, p 244).

[22] On September 17, 2012, the Ville provided the NCC with the preliminary report on vehicular traffic, done by the firm Genivar (Respondents' Record, Vol. II, Exhibit PP of the affidavit of Jean-François Trépanier, pp 251-324). At the time, the Ville indicated that the final report would be ready the week of October 15, 2012, and requested that the NCC provide feedback no later than September 28, 2012, which the NCC did (Respondents' Record, Vol. II, Exhibits PP and UU of the affidavit of Jean-François Trépanier, pp 252 and 346-48).

[23] From September 14 to 19, 2012, an in-camera session by electronic voting was held during which ten (10) members of the Board of Directors approved the federal land use approval for the demolition and renaturalization of Gamelin Street between the Gatineau Parkway and Des Fées Street (Applicant's Record, Vol. III, Exhibits P-17 and P-18 of the affidavit of Robert Weemaes, pp

586-87 and 589-620). A submission for said approval was made on September 14, 2012, and the approval of the Board of Directors of the NCC was granted on September 19, 2012.

[24] On October 2, 2012, a meeting was held between representatives of the Ville, the NCC and the Ministère du Transport (Applicant's Record, Vol. II, Exhibit P-6.1, pp 421-22). At that meeting, it was allegedly agreed that it would be necessary to add to the final report on vehicular traffic that the mitigation measures had to be completed no later than the time of closure of Gamelin Street. The final version of Genivar's report was sent to the parties on October 15, 2012 (Applicant's Record, Vol. II, Exhibit P-6.2 of the affidavit of Renée Roberge, p 424; Vol. II, Exhibit A of the affidavit of André Leduc, p 408).

[25] The traffic impact study identified certain problems during peak hours in the event of the closure of the section at issue of Gamelin Street and mitigation measures (Applicant's Record, Vol. II, Exhibit A of the affidavit of André Leduc, p 408, section 2.5 of the impact study).

[26] Also on October 15, 2012, a notice posted on the NCC's Web site indicated that the NCC had set the date for the closure of the section of Gamelin Street at October 29, 2012. Following that notice, lighted closure signs had also been set up on the premises (Applicant's Record, Vol. II, Exhibit P-8 of the affidavit of Robert Weemaes, p 340).

[27] On October 15, 2012, the Ville sent the NCC a letter of intent requiring and instructing it not to proceed with the closure of the section of Gamelin Street (Applicant's Record, Vol. II, Exhibit P-9 of the affidavit of Robert Weemaes, pp 343-46). On October 26, 2012, the NCC sent a letter to the

Ville stating that it had no intention of complying with its requirements, but that the closure of the section of Gamelin Street could be delayed by a year for the sole purpose of allowing the Ville to put in place mitigation measures. The NCC indicated that it was prepared to consider any reasonable proposal in that regard (Applicant's Record, Vol. II, Exhibit P-9.1 of the affidavit of Robert Weemaes, p 348). According to the Ville, the NCC's proposal to delay the closure by a year to allow it to complete the mitigation measures was an impossible delay, involving major work at the intersection of Saint-Raymond and Cité-des-Jeunes Boulevards. According to the Ville, said work would involve a number of stakeholders over whom the Ville has no control (Applicant's Record, Vol. II, Exhibit P-9.1.1 of the affidavit of Robert Weemaes, pp 437-46).

[28] On October 26, 2012, the Chief Executive Officer of the NCC, Jean-François Trépanier, sent a letter to the Ville indicating that the section at issue of Gamelin Street would be closed to vehicular traffic as planned on October 29, 2012, but that the NCC would continue to allow traffic for ambulance services on said section. The NCC also indicated that it would delay the work until the following spring (Applicant's Record, Vol. II, Exhibit P-9.2 of the affidavit of Robert Weemaes, p. 350).

[29] On that same day (October 26, 2012), the Ville adopted Resolution CM-2012-930 repealing the resolution of August 2011 (CM-2011-751) and declaring Gamelin Street opened to vehicular traffic (Applicant's Record, Vol. II, Exhibit P-10 of the affidavit of Robert Weemaes, pp 352-53). At the special session of October 26, 2012, the Ville also filed a Notice of presentation for the purposes of passing a by-law ensuring continued access to Gamelin Street (AP-2012-929, Applicant's Record, Vol. II, Exhibit P-11 of the affidavit of Robert Weemaes, pp 355-56). The Ville

sent the NCC a copy of Resolution CM-2012-930 (Applicant's Record, Vol. II, Exhibit P-11.1 of the affidavit of Robert Weemaes, pp 358-61). On that same day, the Ville filed a motion for an interim and interlocutory injunction before the Court to prevent the execution of the work that was expected to start on October 29, 2012.

[30] Four (4) days later, on October 30, 2012, the Ville adopted By-law Number 723-2012 which kept the section of Gamelin Street opened as a public street (Applicant's Record, Vol. II, Exhibit P-11.4 of the affidavit of Robert Weemaes, pp 381-82).

[31] Finally, during an in-camera session by teleconference on December 19, 2012, nine (9) members of the Board of Directors of the NCC adopted the conditions contained in the letter of approval signed by Jean-François Trépanier on September 20, 2012. The members of the Board of Directors also retroactively confirmed that they agreed to hold the special meeting from September 14 to 19, 2012, in camera and to vote by electronic mail (Respondents' Record, Vol. III, Exhibit LLL of the affidavit of Jean-François Trépanier, pp 620-23). The draft minutes of the meeting were approved by the Board of Directors on January 23, 2013 (Applicant's Supplementary Record, Supplementary Affidavit of Robert Weemaes, Exhibit P-22, pp 4-7).

Impugned decision

[32] At an in-camera session by electronic voting on September 19, 2012, the NCC decided to approve the federal land use approval for the demolition and renaturalization of Gamelin Street between the Gatineau Parkway and Des Fées Street (Applicant's Record, Vol. III, Exhibits P-17 and P-18 of the affidavit of Robert Weemaes, pp 586-87 and 592-620).

[33] Prior to that date, the proposed project was summarized through a submission for decision dated September 14, 2012, which was sent to the members of the Board of Directors of the NCC prior to their voting (Respondents' Record, Vol. II, Exhibit NN of the affidavit of Jean-François Trépanier, p 248). A more detailed federal land use approval for the demolition and renaturalization of Gamelin Street, dated September 19, 2012, and signed by Jean-François Trépanier on September 20, 2012 (Respondents' Record, Vol. II, Exhibit RR of the affidavit of Jean-François Trépanier, pp 329-40), was incorporated into the decision of the NCC at a meeting held on December 19, 2012 (Respondents' Record, Vol. III, Exhibit LLL of the affidavit of Jean-François Trépanier, pp 620-23; Applicant's Supplementary Record, Exhibit P-22 of the affidavit of Robert Weemaes, pp 4-7).

Issues

[34] This case raises two (2) issues:

- a. Was the NCC's decision to proceed with the closure, demolition and renaturalization of the section at issue of Gamelin Street reasonable?
- b. Did the NCC breach a duty of procedural fairness vis-à-vis the Ville?

Statutory provisions

[35] The relevant statutory provisions in this case are attached to these Reasons for Judgment and Judgment.

Standard of review

[36] The first issue involves the NCC's decision to proceed with the closure, demolition and renaturalization of the section at issue of Gamelin Street. That decision must be taken in accordance

with the requirements of the *NCA* with respect to the approval of proposals, as stipulated in sections 11 and 12 of the *NCA*.

[37] Although the Ville believes it is a jurisdictional issue, and that following *Bonin v. Canada (Attorney General)*, 2010 FC 1308, [2012] 3 FCR 744 [*Bonin*], the correctness standard must apply, the Court is rather of the opinion that it is a decision which warrants deference and which must be reviewed on a standard of reasonableness. In fact, as stated by the Supreme Court of Canada in *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, at para 39, [2011] 3 SCR 654 [*Alberta Teachers*], “[t]rue questions of jurisdiction are narrow and will be exceptional. When considering a decision of a [federal board] interpreting or applying its home statute, it should be presumed that the appropriate standard of review is reasonableness.” It is important to note that *Bonin, above*, was decided before *Alberta Teachers* of the Supreme Court of Canada. Also, the issue in *Bonin, above*, was different from that in the present case: in *Bonin*, the Court had to interpret the *NCA* to decide whether the Executive Director of the NCC had the legal authority to approve a demolition proposal, without the NCC itself having approved such a proposal.

[38] The preparation of the National Capital Region’s development plans and the interpretation of sections 11 and 12 of the *NCA* with respect to the approval of proposals are part of the NCC’s expertise. It is not a question of pure law but rather of assessing whether the factors set out in the *NCA* were adequately considered. The Court is therefore of the view that the reasonableness standard must apply to the decision of the NCC to proceed with the closure of the section at issue of Gamelin Street. The decision to approve the federal land use approval, the issue of whether the

relevant elements were considered by the members of the Board of Directors of the NCC and that of whether the NCC's decision was consistent with the requirements of the *NCA*, are aspects of the NCC's decision that must be reviewed on a standard of reasonableness. The Court will therefore limit its analysis "to the justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, at para 47, [2008] 1 SCR 190 [*Dunsmuir*]).

[39] The parties argue that the issue as to whether the NCC had a duty of procedural fairness vis-à-vis the Ville by taking the decision to close Gamelin Street must be reviewed on a correctness standard (citing *Dunsmuir, above*, at para. 128). The Court agrees, as, in matters of procedural fairness, it does not owe the federal agency deference (*McBride v. Canada (Minister of National Defence)*, 2012 FCA 181, at para. 32, 431 NR 383): either the NCC had a duty of procedural fairness vis-à-vis the Ville, or it did not. Furthermore, if that duty existed, the NCC either met it, or breached it.

Parties' submissions

[40] The Ville objects to the closure of the section at issue of Gamelin Street and is of the view that the contract of emphyteusis does not allow the NCC to proceed with its closure. It also submits that the decision of the NCC to proceed with the closure is invalid because it is contrary to By-law Number 723-2012 declaring the opening of the section at issue of Gamelin Street, adopted by the Ville on October 30, 2012, which would contravene certain clauses of the contract of emphyteusis. Furthermore, the Ville submits that the NCC's decision was not taken in accordance with the

requirements of the *NCA* with respect to the approval of proposals. Finally, the Ville alleges that the NCC breached its duty to coordinate with the Ville the closure of the section of Gamelin Street, as well as its duty of procedural fairness by refusing to hear the Ville when the time came to proceed with the decision to close the section of Gamelin Street and by proceeding with the decision in camera by electronic voting, thereby failing to comply with its *By-law No. 1*.

[41] As for the NCC, it is of the view that the contract of emphyteusis not only allowed, but also obliged it to close the section at issue of Gamelin Street. The NCC also submits that the decision-making in that respect was consistent with the requirements of the *NCA*, and that given the contractual context of the parties' relationship, it had no duty of procedural fairness vis-à-vis the Ville. Furthermore, it argues that it has collaborated with the Ville since the start of their contractual relationship.

Legal framework

[42] The Court notes that at the heart of the issue in this judicial review is whether the NCC's decision to proceed with the closure, demolition and renaturalization of the section at issue of Gamelin Street was reasonable. However, before reviewing that decision, it is necessary that the Court consider the legal framework that serves as a backdrop in the present case, namely, the contract of emphyteusis signed by the parties in 1983 and certain provisions of the *Civil Code of Québec*.

[43] At the outset, it is important to note that emphyteusis is the most important dismemberment of the right to ownership in Quebec civil law. Emphyteusis is described as follows in article 1195 of the *Civil Code of Québec*:

1195. Emphyteusis is the right which, for a certain time, grants a person the full benefit and enjoyment of an immovable owned by another provided he does not endanger its existence and undertakes to make constructions, works or plantations thereon that durably increase its value.

Emphyteusis is established by contract or by will.

(Emphasis added.)

[44] Emphyteusis requires four (4) components: (i) the existence of an immovable; (ii) the obligation to make constructions, works or plantations thereon; (iii) a term of not less than ten (10) nor more than one hundred (100) years; and (iv) the transfer of all rights of ownership (articles 1195, 1197 and 1200 CCQ). In the case at bar, the validity of the contract of emphyteusis is not in dispute. In fact, the four (4) components necessary to its formation are present. The immovable in question is the land on which the section at issue of Gamelin Street is located, and that section is explicitly provided for in clause 1.2.21 of the contract of emphyteusis. The NCC has an obligation to make improvements under clause 4.4. Emphyteusis was granted for a term of ninety-nine (99) years, as provided for in clause 2.1. Finally, it is also provided for in clause 1.4 of the contract of emphyteusis that the NCC has all rights of ownership of the real property and improvements thereon, without prejudice to the rights of the Ville.

[45] Based on the definition of emphyteusis, an emphyteutic lessee therefore has an obligation to make constructions, works or plantations in or on the immovable (art. 1195 CCQ). Such is the particular nature of the emphyteusis. The emphyteutic contract must establish the terms and

conditions of the constructions or works to be made in or on the immovable. This work must increase its value and be permanent in nature: maintenance and repairs will not suffice. In addition, a mere permission to build would also be insufficient - it must be an obligation. This obligation is essentially the price to be paid for acquiring the land (Pierre-Claude Lafond, *Précis de droit des biens*, 2nd ed, Montréal: Thémis, 2007 § 2182-85 (Lafond); art 1195 CCQ). For example, the work may include [TRANSLATION] “major landscape design work” or [TRANSLATION] “major soil preparation work” (Lafond, § 2183).

[46] In this case, clause 4.4 of the emphyteutic contract provides, regarding the section of Gamelin Street, that the NCC [TRANSLATION] “undertakes and commits to make improvements thereto, which would make it possible to integrate said parcel of land as part of the Gatineau Park. Consequently, the NCC must landscape thereon in order to harmonize it with neighbouring lots.” (Applicant’s Record, Vol I, Exhibit P-2 of the affidavit of Robert Weemaes, p 61).

[47] As the emphyteutic lessee, the NCC has rights that are attached to the quality of owner. These rights are temporary, however, and cannot compromise the existence of the immovable. Similarly, the rights of the emphyteutic lessee, the NCC, are subject to the restrictions found in the constituting act, namely, the 1983 emphyteutic contract. Article 1200 of the *Civil Code of Québec* allows the inclusion of clauses in the constituting act that limit the exercise of the rights of the parties:

1200. The emphyteutic lessee has all the rights in the immovable that are attached to the quality of owner, subject to the restrictions contained in this chapter and in the act constituting emphyteusis.

The constituting act may limit the exercise of the rights of the parties, particularly by granting rights or guarantees to the owner for protecting the

value of the immovable, ensuring its conservation, yield or use or by otherwise preserving the rights of the owner or of the emphyteutic lessee or regulating the performance of the obligations established in the constituting act.

[Emphasis added.]

[48] As previously noted, clause 1.4 of the emphyteutic contract stipulates that the NCC [TRANSLATION] “has to the immovables and the improvements made thereon all the rights of an owner without prejudice to the rights [of the Ville]” (Applicant’s Record, Vol I, Exhibit P-2 of the affidavit of Robert Weemaes, p 59). Other restrictions are also stated at clauses 4.5 and 9.5 of the emphyteutic contract providing for the compliance of the improvements made by the NCC with any regulations in the by-laws in force of a public body or government authority having jurisdiction.

[49] Finally, the emphyteutic lessee must return the immovable upon termination of the emphyteusis with the constructions, works or plantations made in or on it (art 1210 CCQ).

Analysis

Reasonableness of the NCC’s decision

[50] In support of this challenge, the Ville questions the submission dated September 14, 2012, regarding the federal land use approval for the demolition and renaturalization of Gamelin Street between Gatineau Parkway and Des Fées Street as well as the decision dated September 19, 2012, approving said submission dated September 14, 2012.

[51] The NCC’s decision in dispute must be considered in light of the *NCA*. Subsection 12(2) of the *NCA* requires that the NCC consider certain factors at the time of approval of proposals:

Approval of proposals

Approbation des projets

12. (2) In determining whether to approve a proposal submitted under subsection (1), the Commission shall consider the following:

(a) in the case of a proposal to erect, alter or extend a building or other work, the site, location, design and plans thereof and the use to be made of the building or other work as erected, altered or extended;

(b) in the case of a proposal to demolish a building or other work, the site, location, design and use made of the building or other work and the plans for the demolition; and

(c) in the case of a proposal to change the use of public lands, the site, location, existing use and proposed use of the lands.

12. (2) Dans l'examen des projets, la Commission tient compte des éléments suivants :

a) l'emplacement, la situation, la conception, les plans et l'utilisation envisagée, en cas de construction, de modification ou d'agrandissement d'un bâtiment ou autre ouvrage;

b) en cas de démolition, les modalités de celle-ci, ainsi que l'emplacement, la situation, la conception et l'utilisation du bâtiment et autre ouvrage;

c) l'emplacement, la situation et l'utilisation actuelle et envisagée, en cas de changement d'affectation de terrains publics.

[52] The proposal planned in this case involves the elements mentioned in the three (3) paragraphs reproduced above, namely, 12(2)(a), (b) and (c). The NCC had to take them into account in deciding whether to approve the proposal to naturalize and defragment the section of Gamelin Street. The NCC therefore had to consider the terms and conditions of the defragmentation of the section of the street as well as the site, location, design and current and future uses of the section of Gamelin Street.

[53] In fact, the submission dated September 14, 2012, was approved by the members of the Board of Directors by electronic vote on September 19, 2012, and it became the NCC's decision.

The submission, which the members consulted before voting, indicates that Gamelin Street is concerned and refers to the construction of Saint-Raymond and Des Allumettières Boulevards as well as to the 1983 agreement the aim of which was to naturalize part of Gamelin Street in order to integrate it into the Gatineau Park. The submission dated September 14, 2012, states the objectives of the proposal including improving the connectivity of habitats, reducing anthropogenic pressure on the natural environment, defragmenting the park in order to create a 170-hectare habitat for small animals, reducing the use of road salt and maintaining recreational access to the corridor. The submission also explains that the proposal consists in naturalizing the corridor, closing Gamelin Street to vehicle traffic, building a recreational path, removing asphalt and gravel shoulders and installing interpretive panels and signage for users of the path. The submission also refers to the Plan for Canada's Capital (1999) and to the Gatineau Park Master Plan (2005).

[54] The Court is thus satisfied that the elements stated in paragraph 12(2) of the *NCA* were considered by the Board of Directors at the time of the September 19, 2012 vote for the approval the federal land use approval for the demolition and renaturalization of Gamelin Street between Gatineau Parkway and Des Fées Street. In the Court's view and as described above, the submission dated September 14, 2012, is satisfactory because it makes it possible to understand the decision of the members of the NCC's Board of Directors and for this Court to assess its merits (*Lake v Canada (Minister of Justice)*, 2008 SCC 23 at para 46, [2008] 1 SCR 761; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, para 16-18, [2011] 3 SCR 708 (*Newfoundland Nurses*)).

[55] Moreover, the document dated September 19, 2012, – signed by Jean-François Trépanier on September 20, 2012, – entitled [TRANSLATION] “Federal land use approval for the demolition and renaturalization of Gamelin Street between Gatineau Parkway and Des Fées Street, Gatineau, Quebec” also describes the proposal’s objectives and the details of its implementation in addition to providing an analysis indicating the facts taken into consideration by the NCC in its review of the proposal. Among these facts are mentioned the proposal’s compliance with the 1999 Plan for the National Capital and the 2005 Gatineau Park Master Plan as well as the fact that a public consultation on the Green Transportation Plan for Gatineau Park was held in January 2012 and that discussions took place with the Ville for operations and maintenance. At the time of the vote held on December 19, 2012, the members of the Board of Directors confirmed the terms and conditions contained in the document signed by Jean-François Trépanier on September 20, 2012 (Resolution #3) in addition to confirming the way in which the vote was held on September 19, 2012 (Resolution #2).

[56] Yet, the issue at the heart of the Ville’s arguments is whether the decision dated December 19, 2012, described as retroactive by the Ville, amends the decision dated September 19, 2012. In this regard, the Court is of the view that the decision dated December 19, 2012, does not in any way change the decision dated September 19, 2012. At most, the document dated September 19, 2012, – signed by Jean-François Trépanier on September 20, 2012, – should be considered an “attachment” to the submission dated September 14, 2012, not a correction document that is imperative and essential as the Ville claims. The Court is satisfied that this document does not change the decision made by the members of the Board of Directors and does not constitute a review of the decision dated September 19, 2012, because it contains no information leading to believe that the members

made a decision without knowledge of the facts. Because of this, the decision dated December 19, 2012, cannot be described as an exercise in unlawful delegation of powers as the Ville claims.

[57] Regarding *Bonin, above*, relied on by the Ville, it is of no assistance to it. In fact, the main issue in *Bonin* was whether the executive director could make a decision without the Commission itself or, as the case may be, its executive committee having reviewed and approved such a proposal. However, in this case, it is clear that the decisions dated September 19, 2012, and December 19, 2012, were made by the Board of Directors.

[58] Counsel for the Ville also ably stated before the Court that Resolution number 3 in the minutes dated December 19, 2012, which confirms [TRANSLATION] “the terms and conditions contained in the letter of approval signed by Jean-François Trépanier, Chief Executive Officer, on September 20, 2012” is invalid and unlawful because it violates subsection 12.2(2) of the *NCA* as it adopts the conditions of execution without any additional analysis by the Board of Directors.

Terms and conditions of approval

12.2 (2) Any approval given under section 12, 12.1 or this section may be subject to such terms and conditions as are considered desirable by the Commission or the Governor in Council, as the case may be.

Approbation sous conditions

12.2 (2) Toute approbation donnée au titre des articles 12, 12.1 ou du présent article peut être assujettie aux conditions que la Commission ou le gouverneur en conseil, selon le cas, estime utiles.

[59] Indeed, although the document at issue was signed by Mr. Trépanier, it is clear that the document was adopted by the NCC itself at the time of the vote on December 19, 2012, in

accordance with subsection 12.2(2) of the *NCA*. Therefore, there was no unlawful delegation in violation of this provision as claimed by the Ville.

[60] The Ville also submits that the decision dated September 19, 2012, is unreasonable and should be made invalid because the studies on traffic and ambulance services were not before the NCC's Board of Directors when it made its decision. The studies in question were conducted jointly by the NCC and the Ville, the NCC taking on the study dealing with ambulance services together with the Agence de la santé et des services sociaux de l'Outaouais (the Agence), while the Ville took on the traffic study together with the firm Genivar.

[61] The Court notes that the study on ambulance services led by the Agence confirms that the closure of the section of Gamelin Street that is part of this dispute will not have a significant impact on the response time of ambulance vehicles for residential areas of the city (Applicant's Record, Vol I, pp 222, 234, 236). As for the report of the firm Genivar on traffic – the results of which were known in September 2012 – it describes a more or less significant impact. In fact, the report indicates that certain traffic conditions will remain unchanged, while there will be an improvement in traffic conditions with respect to certain travel. The report also indicates an increase in time needed for other travel (ranging from thirty (30) seconds to two (2) minutes), and mitigation measures are proposed as a result. The Genivar report also confirms that the time of intervention of emergency services will remain in compliance with the requirements of the *Fire Safety Act*, RSQ, c S-3.4 and the directions of the Ministère de la Sécurité publique (Respondents' Record, Vol II, pp 288-89, 293, 300-01, 322; Applicant's Record, Vol I, p 245).

[62] However, the evidence does not show that the object of the two (2) studies was to assess the possibility of closing the section of Gamelin Street or its being disputed. On the contrary, it seems rather that their objective was to identify more specifically the effects of the closure and the mitigation measures that the Ville had to put in place in order to ensure the smooth operation of its road system (Marie Lemay's affidavit, Respondents' Record, Vol I, p 159; Gatineau Park Master Plan (2005); Applicant's Record, Vol I, p 168).

[63] In light of the foregoing, the Court is of the view that the Ville's argument regarding the studies is without merit. The Ville did not satisfy this Court that the two (2) studies at issue – on ambulance services and traffic – should have been presented to the Board of Directors. Furthermore, even if it did consider that the studies should have been presented to the Board of Directors, the Court is of the view that in this case their content would not in any case have impacted the Board of Directors' decision dated September 19, 2012 (*Newfoundland Nurses, above*).

[64] In addition, it is at the very least difficult for this Court, taking into account the historical background of this case, to find that the NCC acted [TRANSLATION] "behind closed doors" as alleged by the Ville at the hearing, when the emphyteutic contract was signed in 1983 and expressly provided that the planned improvements, particularly those to Gamelin Street, had to be done before March 31, 1999. The NCC agreed to postpone the obligations it undertook in that contract in order to accommodate the Ville and allow it to put in place mitigation measures, including regarding its road system, based on its development. The NCC did not, however, abandon the terms of the emphyteutic contract and the obligations that stem from it.

[65] More specifically, where Gamelin Street is concerned, the parties have agreed to wait for the construction of eight (8) new traffic lanes before closing it in order to, among other things, improve the east-west road links. Four (4) new lanes were added to Saint-Raymond Boulevard in 1989. The construction of the Des Allumettières Boulevard added four (4) more lanes for a total of eight (8) lanes. Once the conditions agreed upon by the parties were in place at the end of the work on Des Allumettières Boulevard in 2007, the Ville, on its own initiative, reiterated by resolution in 2011 that the section of Gamelin Street should be closed, thus echoing its by-law adopted in 1979 and the emphyteutic contract of 1983. Resolution CM-2011-751, dated August 30, 2011, reads as follows:

[TRANSLATION]

WHEREAS, on September 21, 1983, a series of agreements was concluded between the National Capital Commission and the Ville de Hull, allowing for the building by both parties of traffic lanes, parks, green spaces and certain community infrastructure;

WHEREAS these agreements provided, among other things, that the section of Gamelin Street concerned, namely, between Gatineau Parkway and Des Fées Street, will eventually be closed to vehicle traffic and integrated as part of the Gatineau Park with landscaping that will harmonize it with neighbouring land;

...

WHEREAS Saint-Raymond Boulevard was built as planned, and Des Allumettières Boulevard was built and completed with four lanes;

WHEREAS the constantly increasing number of cars that use this section has an impact on the residents' quality of life, particularly, with respect to noise, safety and pollution;

...

WHEREAS the residents of Des Fées Street sector requested many times, and more recently in a petition, to effectively close the section of Gamelin Street between Gatineau Parkway and Des Fées Street while keeping a bicycle connection with the Plateau area.

IT IS PROPOSED . . .

AND RESOLVED THAT . . . the Council:

- orders and authorizes the closure of a section of Gamelin Street between Gatineau Parkway and Des Fées Street;
- mandates the Council to inform users of the Park and motorists using this section of the upcoming closure;
- mandates the Council to submit a request to the National Capital Commission to maintain and develop, in place of the existing street, a multi-functional path (pedestrian/bicycle) in order to preserve the link with the Plateau area.

(Applicant's Record, Vol 1, Exhibit P-5 of the affidavit of Robert Weemaes, p 231).

[Emphasis added.]

[66] In October 2012, the Ville backtracked and passed By-law 723-2012 declaring the section of Gamelin Street at issue to be open. According to the Ville, the NCC's decision is limited by the emphyteutic contract and its newly adopted by-law. Pulling back on clauses 4.5 and 9.5 of the emphyteutic contract, the Ville insists that the NCC could not decide to close the section of Gamelin Street at issue in the presence of this municipal by-law. Clause 4.5 of the contract states the following:

[TRANSLATION]

4.5 The LESSEE shall make and complete said improvements within a reasonable time, but before the thirty-first day of March in the year one thousand nine hundred and ninety-nine (1999.03.31), in accordance with any act or order, any zoning by-law or order in force under the authority of a public body or government authority having jurisdiction.

(Applicant's Record, Vol I, Exhibit P-2 of the affidavit of Robert Weemaes, p 61).

[Emphasis added.]

In addition, clause 9.5 of the emphyteutic contract provides that the NCC

[TRANSLATION]

shall ensure that the use and occupation of the improvements comply at all times with all acts or orders, by-laws, zoning or any other order in force from time to time under the authority of a public body or government authority having jurisdiction, with respect to the condition, maintenance, use or occupation of the improvements.

(Applicant's Record, Vol I, Exhibit P-2 of the affidavit of Robert Weemaes, p 65).

[Emphasis added.]

[67] Yet, neither the emphyteutic contract in its entirety nor clauses 4.5 and 9.5 in particular to which the Ville is referring allow this Court to agree with the Ville's argument. The Court notes that clauses 4.5 and 9.5 indicate that the NCC must ensure that the improvements it makes to the immovable that is subject to the emphyteusis, in this case, the section of Gamelin Street, comply with the Ville's municipal by-laws. The Ville's argument implies that it will have the right to make a unilateral change to the emphyteutic contract by passing a by-law for that purpose. This argument must fail.

[68] Having benefitted from the postponements granted by the NCC, the Ville cannot at this stage attempt to evade its contractual obligations to the NCC or to hinder the NCC's obligations stemming from the emphyteutic contract. Under article 1434 of the *Civil Code of Québec*, a party is bound by a contractual obligation that it freely entered into, and this principle also applies to public administration under article 1376 of the *Civil Code of Québec*.

[69] In addition, the Ville's argument is contradicted by the evidence. In fact, a representative of the Ville freely admitted that the parties were bound by legal obligations that they had entered into

by signing the emphyteutic contract. He indicated in an e-mail dated October 24, 2012, that, despite the Ville's wish to keep the section of Gamelin Street open to vehicle traffic, negotiations will have to take place with the NCC [TRANSLATION] "to modify the emphyteutic lease" [Emphasis added.] (Respondents' Record, Vol II, p 356).

[70] Finally, the Court notes that, regarding the other section of Gamelin Street, which was closed in 2010, the Ville saw the need to ask the NCC's permission to continue using it as an emergency route and to sign an agreement to that effect. When the NCC decided to terminate the renewal of the agreement in 2010, the Ville advised its emergency services that the section could no longer be used with no other formality (Respondents' Record, Vol I, p 151). The Ville did not allege at the hearing before this Court that the NCC's rights to the section at issue are different from the other section of Gamelin Street, which was closed in 2010, and nothing allows this Court to find differently.

[71] The Court also reiterates that the Ville has changed the status of the streets affected by the emphyteutic contract including the section of Gamelin Street at issue by passing By-law No. 1540 on August 21, 1979. That by-law closes the streets used for vehicle traffic and transfers them to the Ville's private domain, granting them the status of private roads and ensuring that they could be forfeited by the Ville to the NCC within an overall agreement involving exchanges of property between the parties.

[72] Incongruously, Resolution CM-2012-930 dated October 26, 2012, and By-law 723-2012 dated October 30, 2012, of the Ville refer to the section of Gamelin Street at issue as being a public

road, while By-law No. 1540 dated August 21, 1979, had previously clearly and unequivocally transferred that section of the street to the private domain, removing it from the Ville's jurisdiction (*Municipal Powers Act*, RSQ, c C-47.1, s 66). To date, the other streets targeted by the 1983 emphyteusis have been redeveloped as park space by the NCC, and By-law 1540 dated August 21, 1979 is still in effect. In short, By-law 723-2012 and Resolution CM-2012-930 contradict By-law 1540 without repealing or amending it.

[73] The evidence on the record shows that, during all of this time, namely, since 1979, the NCC has kept its intention to follow up on the emphyteutic contract and to close Gamelin Street. Taking into account the historical facts, the NCC certainly cannot be faulted for lacking a conciliatory attitude and lacking coordination regarding the Ville's concerns (Applicant's Record, Vol I, p 103; Respondents' Record, Vol II, Exhibit MM of the affidavit of Jean-François Trépanier, p 246 and Exhibit PP of the affidavit of Jean-François Trépanier, p 252). The evidence, when read in its entirety, shows that the NCC did not act in a vacuum and that it held consultations with the public and stakeholders (Examination of Marie Lemay, Applicant's Record, Vol III, pp 807-08).

Procedural fairness

[74] With respect to the issue of procedural fairness, the Ville has made great issue of the procedure surrounding the September 19, 2012 vote of the NCC's Board of Directors approving the federal land use approval for the naturalization and defragmentation of Gamelin Street as well as of the meeting of December 19, 2012, retroactively approving the way in which the meeting of September 19, 2012 was held.

[75] More specifically, the Ville claims that the NCC proceeded by electronic vote behind closed doors, which would be contrary to *By-law #1* of the NCC. *By-law #1* provides in section 4.3.2 that meetings must be public except in some cases, namely, if the meeting may deal with information protected from disclosure under an Act or with business information. Neither of these limitations applies in this case.

[76] It is important to note, however, that section 4.10 of *By-law #1* makes it possible to suspend the application of any by-law relating to the call for or organization of a meeting. The Ville claims that the NCC could not rely on section 4.10 retroactively as it has done in its decision of December 19, 2012. However, it remains that, in the particular circumstances of this case, no substantial wrong or miscarriage of justice has occurred from a defect in form (*Federal Courts Act, above*, at subs. 18.1(5)). Regarding all of the foregoing, the Ville has not satisfied the Court that the NCC had breached a duty of procedural fairness and the Court's intervention is not warranted.

Conclusion

[77] For all of these reasons, the Court finds that the NCC's decision to close to vehicle traffic the section of Gamelin Street at issue and to incorporate it into the Gatineau Park is reasonable in that it falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir and Newfoundland Nurses, above*). The intervention of the Court is unwarranted.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed. With costs.

“Richard Boivin”

Judge

Annex

National Capital Act, RSC 1985, c N-4:

OBJECTS, PURPOSES AND POWERS	MISSION ET POUVOIRS
Objects and purposes of Commission	Mission de la Commission
10. (1) The objects and purposes of the Commission are to	10. (1) La Commission a pour mission :
<i>(a)</i> prepare plans for and assist in the development, conservation and improvement of the National Capital Region in order that the nature and character of the seat of the Government of Canada may be in accordance with its national significance; and	<i>a)</i> d'établir des plans d'aménagement, de conservation et d'embellissement de la région de la capitale nationale et de concourir à la réalisation de ces trois buts, afin de doter le siège du gouvernement du Canada d'un cachet et d'un caractère dignes de son importance nationale;
<i>(b)</i> organize, sponsor or promote such public activities and events in the National Capital Region as will enrich the cultural and social fabric of Canada, taking into account the federal character of Canada, the equality of status of the official languages of Canada and the heritage of the people of Canada.	<i>b)</i> d'organiser, de parrainer ou de promouvoir, dans la région de la capitale nationale, des activités et des manifestations publiques enrichissantes pour le Canada sur les plans culturel et social, en tenant compte du caractère fédéral du pays, de l'égalité du statut des langues officielles du Canada ainsi que du patrimoine des Canadiens.
Powers	Pouvoirs
(2) The Commission may, for the purposes of this Act,	(2) Pour l'application de la présente loi, la Commission peut :
<i>(a)</i> acquire, hold, administer or develop property;	<i>a)</i> acquérir, détenir, gérer ou mettre en valeur des biens;
<i>(b)</i> sell, grant, convey, lease or otherwise dispose of or make available to any person any property, subject to such conditions and limitations as it considers necessary or desirable;	<i>b)</i> prendre, à l'égard de biens, toute mesure compatible avec les conditions et restrictions qu'elle juge utiles, et notamment les vendre, les concéder, les transférer, les louer ou encore les mettre à la disposition de qui que ce soit;
<i>(c)</i> construct, maintain and operate parks,	<i>c)</i> construire, entretenir et exploiter des

squares, highways, parkways, bridges, buildings and any other works;

parcs, places, voies publiques, promenades, ponts, bâtiments et tous autres ouvrages;

(d) maintain and improve any property of the Commission, or any other property under the control and management of a department, at the request of the authority or Minister in charge thereof;

d) entretenir et améliorer ses propres biens ou, à la demande du titulaire ou autre responsable d'un ministère, d'autres biens placés sous l'autorité de ce ministère et gérés par lui;

(e) cooperate or engage in joint projects with, or make grants to, local municipalities or other authorities for the improvement, development or maintenance of property;

e) collaborer ou participer à des projets conjoints avec les municipalités locales ou d'autres autorités, ou leur accorder des subventions, en vue de l'embellissement, de l'aménagement ou de l'entretien des propriétés;

(f) construct, maintain and operate, or grant concessions for the operation of, places of entertainment, amusement, recreation, refreshment, or other places of public interest or accommodation on any property of the Commission;

f) aménager, entretenir et exploiter – ou accorder des concessions pour exploiter – sur toute propriété de la Commission, des lieux d'intérêt ou d'usage public, notamment des lieux de divertissement, de loisir et de rafraîchissement;

(g) administer, preserve and maintain any historic place or historic museum;

g) administrer, préserver et entretenir tout lieu ou musée historique;

(h) conduct investigations and researches in connection with the planning of the National Capital Region;

h) mener des enquêtes et recherches sur la planification de la région de la capitale nationale;

(h.1) subject to any other Act of Parliament, coordinate the policies and programs of the Government of Canada respecting the organization, sponsorship or promotion by departments of public activities and events related to the National Capital Region; and

h.1) sous réserve de toute autre loi fédérale, coordonner les orientations et les programmes du gouvernement du Canada en ce qui concerne l'organisation, le parrainage ou la promotion, par les ministères, d'activités et de manifestations publiques liées à la région de la capitale nationale;

(i) generally, do and authorize such things as are incidental or conducive to the attainment of the objects and purposes of the Commission and the exercise of its powers.

i) d'une façon générale, accomplir et autoriser les actions pouvant contribuer, directement ou indirectement, à la réalisation de sa mission.

DEVELOPMENT

AMÉNAGEMENT

Coordination of development

Coordination de l'aménagement

11. The Commission shall, in accordance with general plans prepared under this Act, coordinate the development of public lands in the National Capital Region.

11. La Commission coordonne, conformément aux plans généraux établis en application de la présente loi, l'aménagement des terrains publics dans la région de la capitale nationale.

Development proposals

Présentation des projets

12. (1) Where

12. (1) Doivent être soumis à la Commission, pour approbation préalable, les projets visant :

(a) any department proposes to erect, alter, extend or demolish a building or other work on any lands in the National Capital Region,

a) des travaux, par un ministère, de construction, de modification, d'agrandissement ou de démolition d'un bâtiment ou autre ouvrage sur des terrains de la région de la capitale nationale;

(b) any person proposes to erect, alter, extend or demolish a building or other work on public lands in the National Capital Region, or

b) des travaux, par une personne, de construction, de modification, d'agrandissement ou de démolition d'un bâtiment ou autre ouvrage sur des terrains publics de la région de la capitale nationale;

(c) any department or person proposes to change the use of public lands in the National Capital Region,

c) le changement, par un ministère ou une personne, de l'affectation de terrains publics dans la région de la capitale nationale.

the department or person shall, prior to the commencement of the project, submit a proposal therefor to the Commission for approval.

Approval of proposals

Approbation des projets

(2) In determining whether to approve a proposal submitted under subsection (1), the Commission shall consider the following:

(2) Dans l'examen des projets, la Commission tient compte des éléments suivants :

(a) in the case of a proposal to erect, alter or extend a building or other work, the site,

a) l'emplacement, la situation, la conception, les plans et l'utilisation

location, design and plans thereof and the use to be made of the building or other work as erected, altered or extended;

(b) in the case of a proposal to demolish a building or other work, the site, location, design and use made of the building or other work and the plans for the demolition; and

(c) in the case of a proposal to change the use of public lands, the site, location, existing use and proposed use of the lands.

Prohibition

(3) No department or person shall commence any project in relation to which a proposal is required to be submitted to the Commission under subsection (1) unless a proposal has been so submitted and has been approved by the Commission.

Interior alterations

(4) This section does not apply to any alteration of the interior of a building or other work unless the alteration is made to accommodate a change in the use of the building or work.

Proposals for sale of public lands

12.1 (1) Proposals by any department for the sale of public lands in the National Capital Region shall be submitted to the Commission for approval prior to the sale.

Prohibition

(2) No public lands in the National Capital Region shall be sold without the approval of the Commission.

Governor in Council may approve

envisagée, en cas de construction, de modification ou d'agrandissement d'un bâtiment ou autre ouvrage;

b) en cas de démolition, les modalités de celle-ci, ainsi que l'emplacement, la situation, la conception et l'utilisation du bâtiment et autre ouvrage;

c) l'emplacement, la situation et l'utilisation actuelle et envisagée, en cas de changement d'affectation de terrains publics.

Interdiction

(3) Il est interdit de procéder à la réalisation des projets visés au paragraphe (1) sans avoir préalablement obtenu l'approbation de la Commission.

Modifications intérieures

(4) Dans le cas d'un bâtiment ou autre ouvrage, le présent article ne s'applique aux modifications intérieures que si elles sont liées à un changement d'affectation.

Projet de vente

12.1 (1) Tout projet de vente, par un ministère, de terrains publics dans la région de la capitale nationale doit être soumis à la Commission, pour approbation préalable.

Interdiction

(2) Il est interdit de vendre un terrain public de la région de la capitale nationale sans l'approbation de la Commission.

Pouvoir d'approbation du gouverneur en conseil

12.2 (1) Where the Commission does not give its approval to a proposal made under section 12 or 12.1, the Governor in Council may give such approval and any such approval given by the Governor in Council shall, for the purposes of that section, be deemed to have been given by the Commission.

12.2 (1) Le gouverneur en conseil peut donner son approbation à tout projet refusé par la Commission dans le cadre des articles 12 et 12.1. Le cas échéant, l'approbation est réputée avoir été donnée par la Commission.

Terms and conditions of approval

Approbation sous conditions

(2) Any approval given under section 12, 12.1 or this section may be subject to such terms and conditions as are considered desirable by the Commission or the Governor in Council, as the case may be.

(2) Toute approbation donnée au titre des articles 12, 12.1 ou du présent article peut être assujettie aux conditions que la Commission ou le gouverneur en conseil, selon le cas, estime utiles.

...

[...]

PROPERTY

BIENS

Restrictions on transactions

Restrictions sur les transactions

15. (1) Except with the approval of the Governor in Council, the Commission shall not

15. (1) La Commission ne peut, sans l'accord du gouverneur en conseil :

(a) acquire any real property for a consideration in excess of a value of twenty-five thousand dollars; or

a) acquérir aucun bien immeuble pour une valeur supérieure à vingt-cinq mille dollars;

(b) enter into a lease enduring for a period in excess of five years or grant an easement enduring for a period in excess of forty-nine years.

b) signer un bail d'une durée supérieure à cinq ans ou accorder une servitude pour une période de plus de quarante-neuf ans.

Idem

Idem

(2) The Commission shall not dispose of real property for a consideration in excess of ten thousand dollars, except in accordance with subsection 99(2) of the *Financial Administration Act*.

(2) La Commission ne peut aliéner un bien immeuble pour une valeur supérieure à dix mille dollars qu'en conformité avec le paragraphe 99(2) de la *Loi sur la gestion des finances publiques*.

Contract regulations

(3) Notwithstanding subsection 41(2) of the *Financial Administration Act*, the Governor in Council may make regulations under subsection 41(1) of that Act that apply in respect of the Commission.

Règlements sur les contrats

(3) Par dérogation au paragraphe 41(2) de la *Loi sur la gestion des finances publiques*, le gouverneur en conseil peut prendre des règlements au titre du paragraphe 41(1) de cette loi relativement à la Commission.

By-Law #1, Board of Directors, National Capital Commission:4 – Meetings of the Board of Directors

4.1. Pursuant to the *Interpretation Act*, the quorum for any meeting of the Board of Directors shall be fifty percent of the number of members in office at the relevant time plus one.

4.2. At all meetings of the Board of Directors, all decisions shall be made by a majority of the votes cast on the decision, with the Chairperson having the ability to vote but having no casting vote in the event of a tie.

4.3. Meetings of the Board of Directors:

4.3.1. shall be held in the National Capital Region unless otherwise specified by applicable legislation or by decision of the Board consistent with such legislation; and

4.3.2. shall be open to the public except when considering information that may be protected from disclosure under applicable legislation or may be of commercial nature.

...

4 – Réunions du conseil d'administration

4.1. En vertu de la Loi d'interprétation, le quorum de toute réunion du conseil d'administration doit correspondre à la moitié du nombre de commissaires en fonction au moment donné, plus un.

4.2. À chaque réunion du conseil d'administration, toutes les décisions doivent être prises à la majorité des voix exprimées au sujet de la décision, en sachant que le président a la capacité de voter mais qu'il n'a pas de voix prépondérante en cas d'égalité.

4.3. Les réunions du conseil d'administration :

4.3.1. devront avoir lieu dans la région de la capitale nationale, sauf disposition contraire en vertu d'une loi applicable ou sur décision du conseil compatible avec une telle loi ; et

4.3.2. devront être publiques sauf si le conseil traite de renseignements possiblement protégés contre la divulgation en vertu d'une loi applicable ou pouvant être de nature commerciale.

4.7. Special meetings of the Board of Directors:

4.7.1. shall be convened and held within fifteen (15) business days of a written request of either the Chairperson or five Board members to consider urgent and important matters that cannot wait until the next regular meeting of the Board of Directors, provided that the agenda and all meeting documents will be distributed by the Commission Secretary in the most expedient means at least three (3) business days before the meeting; and

4.7.2. shall be limited to the consideration of the urgent and important matters for which they have been convened.

...

4.10. At any meeting or special meeting of the Board, the members of the Board may by simple majority vote elect to suspend any of the rules related to the calling or conduct of such meeting, including abridging the notice period for the calling of such meeting, or to the sending of all or any agenda, materials, documents and presentations related to such meeting.

[...]

4.7. Les réunions spéciales du conseil d'administration :

4.7.1. devront être convoquées et avoir lieu dans un délai de quinze (15) jours ouvrables après réception de la demande écrite du président ou de cinq commissaires invoquant la nécessité de traiter des sujets urgents ou importants avant la prochaine réunion régulière du conseil d'administration, sous réserve que l'ordre du jour et tous les documents de la réunion soient diffusés par le secrétaire de la Commission le plus rapidement possible, soit au moins trois (3) jours avant la réunion;

4.7.2. devront se limiter à l'examen des questions urgentes et importantes pour lesquelles elles ont été convoquées.

[...]

4.10. À toute réunion ou réunion spéciale du conseil, les commissaires peuvent, par vote à la majorité simple, choisir de suspendre l'application de tout règlement relatif à la convocation ou l'organisation d'une telle réunion ; tout comme ils peuvent abréger le délai de préavis pour la convocation d'une telle réunion ou pour l'envoi de la totalité ou d'une partie de l'ordre du jour, du matériel, des documents et des présentations liés à une telle réunion.

*Municipal Powers Act, RSQ, c C-47.1:***TITLE I****SCOPE AND INTERPRETATION**

...

2. Under this Act, municipalities are granted powers enabling them to respond to various changing municipal needs in the interest of their citizens. The provisions of the Act are not to be interpreted in a literal or restrictive manner.

...

TITLE II**POWERS OF A LOCAL MUNICIPALITY****CHAPTER I****GENERAL PROVISIONS**

4. In addition to the areas of jurisdiction conferred on it by other Acts, a local municipality has jurisdiction in the following fields:

...

(7) safety; and

(8) transportation.

A local municipality may adopt non-regulatory measures in the fields listed in the first paragraph and as regards childcare. However, a local municipality may not delegate a power in those fields except to the extent provided by law.

...

CHAPTER VIII**TITRE I****CHAMP D'APPLICATION ET INTERPRÉTATION**

[...]

2. Les dispositions de la présente loi accordent aux municipalités des pouvoirs leur permettant de répondre aux besoins municipaux, divers et évolutifs, dans l'intérêt de leur population. Elles ne doivent pas s'interpréter de façon littérale ou restrictive.

[...]

TITRE II**LES COMPÉTENCES D'UNE MUNICIPALITÉ LOCALE****CHAPITRE I****GÉNÉRALITÉS**

4. En outre des compétences qui lui sont conférées par d'autres lois, toute municipalité locale a compétence dans les domaines suivants :

[...]

7 la sécurité ;

8 le transport.

Elle peut adopter toute mesure non réglementaire dans les domaines prévus au premier alinéa ainsi qu'en matière de services de garde à l'enfance. Néanmoins, une municipalité locale ne peut déléguer un pouvoir dans ces domaines que dans la mesure prévue par la loi.

[...]

SAFETY

62. A local municipality may adopt by-laws in matters of safety.

The municipality may remove an obstacle in the public domain at the expense of a person who fails to comply with a municipal by-law to that effect.

...

CHAPTER IX TRANSPORTATION

DIVISION I ROADS

66. A local municipality has jurisdiction over public roads that are not under the authority of the Government of Québec or the Government of Canada or one of their departments or bodies.

A local municipality may however enter into an agreement with the department or body managing the public roads over which it does not have jurisdiction to see to the maintenance and repair of those in its territory. The municipality is authorized for that purpose to enter into an agreement with any person on the sharing of the cost of the work or the work itself.

In this Act, a public road includes any highway, road, street, lane, square, bridge, footpath or bicycle path, sidewalk or other road that is not in the private domain, and all the works or installations, including a ditch, needed for its improvement, operation or management.

CHAPITRE VIII SÉCURITÉ

62. Une municipalité locale peut adopter des règlements en matière de sécurité.

La municipalité peut procéder à l'enlèvement d'un obstacle sur le domaine public aux frais de toute personne qui ne se conforme pas à un règlement de la municipalité à cet effet.

[...]

CHAPITRE IX TRANSPORT

SECTION I VOIRIE

66. La municipalité locale a compétence en matière de voirie sur les voies publiques dont la gestion ne relève pas du gouvernement du Québec ou de celui du Canada ni de l'un de leurs ministères ou organismes.

Elle peut toutefois conclure une entente avec le ministère ou l'organisme gestionnaire des voies publiques sur lesquelles elle n'a pas compétence afin de voir à l'entretien et à la réfection de telles voies publiques sur son territoire. Elle est autorisée à cette fin à conclure avec toute personne une entente portant sur le partage du coût ou de l'exécution des travaux visés.

Dans la présente loi, une voie publique inclut toute route, chemin, rue, ruelle, place, pont, voie piétonnière ou cyclable, trottoir ou autre voie qui n'est pas du domaine privé ainsi que tout ouvrage ou installation, y compris un fossé, utile à leur aménagement, fonctionnement ou gestion.

Roads Act, RSQ, c V-9:

CHAPTER I
PRELIMINARY PROVISIONS

...

2. The Government shall determine, by an order published in the *Gazette officielle du Québec*, the roads which shall be under the management of the Minister.

Any other road which is not under the responsibility of the Government or a government department or agency shall be managed in accordance with Chapter I and Division I of Chapter IX of Title II of the *Municipal Powers Act* (chapter C-47.1).

The Government may, by an order published in the *Gazette officielle du Québec*, recognize certain bridges as strategic; the management of such bridges is under the responsibility of the Minister.

CHAPITRE I
DISPOSITIONS PRÉLIMINAIRES

[...]

2. Le gouvernement détermine, par décret publié à la *Gazette officielle du Québec*, les routes dont le ministre est responsable de la gestion.

Toute autre route qui ne relève pas du gouvernement, d'un de ses ministères ou d'un de ses organismes est gérée conformément au chapitre I et à la section I du chapitre IX du titre II de la *Loi sur les compétences municipales* (chapitre C-47.1).

Le gouvernement peut, par décret publié à la *Gazette officielle du Québec*, reconnaître à certains ponts un caractère stratégique; la gestion de ces ponts relève alors du ministre.

Civil Code of Québec, RSQ, c C-1991:

**TITLE FOUR
DISMEMBERMENTS OF THE RIGHT
OF OWNERSHIP**

GENERAL PROVISION

Art. 1119. Usufruct, use, servitude and emphyteusis are dismemberments of the right of ownership and are real rights.

...

**CHAPTER IV
EMPHYTEUSIS**

**DIVISION I
NATURE OF EMPHYTEUSIS**

Art. 1195. Emphyteusis is the right which, for a certain time, grants a person the full benefit and enjoyment of an immovable owned by another provided he does not endanger its existence and undertakes to make constructions, works or plantations thereon that durably increase its value.

Emphyteusis is established by contract or by will.

...

Art. 1197. The term of the emphyteusis shall be stipulated in the constituting act and be not less than 10 nor more than 100 years. If it is longer, it is reduced to 100 years.

...

**DIVISION II
RIGHTS AND OBLIGATIONS OF THE
EMPHYTEUTIC LESSEE AND OF**

**TITRE QUATRIÈME
DES DÉMEMBREMENTS DU DROIT
DE PROPRIÉTÉ**

DISPOSITION GÉNÉRALE

Art. 1119. L'usufruit, l'usage, la servitude et l'emphytéose sont des démembrements du droit de propriété et constituent des droits réels.

[...]

**CHAPITRE QUATRIÈME
DE L'EMPHYTÉOSE**

**SECTION I
DE LA NATURE DE
L'EMPHYTÉOSE**

Art. 1195. L'emphytéose est le droit qui permet à une personne, pendant un certain temps, d'utiliser pleinement un immeuble appartenant à autrui et d'en tirer tous ses avantages, à la condition de ne pas en compromettre l'existence et à charge d'y faire des constructions, ouvrages ou plantations qui augmentent sa valeur d'une façon durable.

L'emphytéose s'établit par contrat ou par testament.

[...]

Art. 1197. L'emphytéose doit avoir une durée, stipulée dans l'acte constitutif, d'au moins 10 ans et d'au plus 100 ans. Si elle excède 100 ans, elle est réduite à cette durée.

[...]

THE OWNER

Art. 1200. The emphyteutic lessee has all the rights in the immovable that are attached to the quality of owner, subject to the restrictions contained in this chapter and in the act constituting emphyteusis.

The constituting act may limit the exercise of the rights of the parties, particularly by granting rights or guarantees to the owner for protecting the value of the immovable, ensuring its conservation, yield or use or by otherwise preserving the rights of the owner or of the emphyteutic lessee or regulating the performance of the obligations established in the constituting act.

...

Art. 1203. The emphyteutic lessee is bound to make repairs, even major repairs, concerning the immovable or the constructions, works or plantations made in the performance of his obligation.

Art. 1204. An emphyteutic lessee who commits waste or fails to prevent the deterioration of the immovable or in any manner endangers the rights of the owner may be declared forfeited of his right.

The court, according to the gravity of the circumstances, may resiliate the emphyteusis with compensation payable immediately or by instalments to the owner, or without compensation, or it may require the emphyteutic lessee to furnish other security or impose any other obligations or conditions on him.

The creditors of the emphyteutic lessee may intervene in the proceedings to preserve their rights; they may offer to repair the waste and give security for the future.

SECTION II DES DROITS ET OBLIGATIONS DE L'EMPHYTÉOTE ET DU PROPRIÉTAIRE

Art. 1200. L'emphytéote a, à l'égard de l'immeuble, tous les droits attachés à la qualité de propriétaire, sous réserve des limitations du présent chapitre et de l'acte constitutif d'emphytéose.

L'acte constitutif peut limiter l'exercice des droits des parties, notamment pour accorder au propriétaire des droits ou des garanties qui protègent la valeur de l'immeuble, assurent sa conservation, son rendement ou son utilité ou pour autrement préserver les droits du propriétaire ou de l'emphytéote, ou régler l'exécution des obligations prévues dans l'acte constitutif.

[...]

Art. 1203. L'emphytéote est tenu aux réparations, même majeures, qui se rapportent à l'immeuble ou aux constructions, ouvrages ou plantations qu'il a faits en exécution de son obligation.

Art. 1204. Si l'emphytéote commet des dégradations sur l'immeuble ou le laisse dépérir ou, de toute autre façon, met en danger les droits du propriétaire, il peut être déchu de son droit.

Le tribunal peut, suivant la gravité des circonstances, résilier l'emphytéose, avec indemnité payable immédiatement ou par versements au propriétaire, ou sans indemnité, ou encore obliger l'emphytéote à fournir d'autres sûretés ou lui imposer toutes autres obligations ou conditions.

...

Art. 1206. The owner has the same obligations towards the emphyteutic lessee as a vendor.

...

DIVISION III

TERMINATION OF EMPHYTEUSIS

Art. 1208. Emphyteusis is terminated

(1) by the expiry of the term stipulated in the constituting act;

(2) by the total loss or expropriation of the immovable;

(3) by the rescission of the constituting act;

(4) by the union of the qualities of owner and emphyteutic lessee in the same person;

(5) by non-user for 10 years;

(6) by abandonment.

Art. 1209. Upon termination of the emphyteusis, the owner resumes the immovable free of all the rights and charges granted by the emphyteutic lessee, unless the termination of the emphyteusis results from rescission by agreement or from the union of the qualities of owner and emphyteutic lessee in the same person.

Art. 1210. Upon termination of the emphyteusis, the emphyteutic lessee shall return the immovable in a good state of repair with the constructions, works or plantations stipulated in the constituting act, unless they have perished by superior force. Any additions made to the immovable by

Les créanciers de l'emphytéote peuvent intervenir à la demande pour la conservation de leurs droits; ils peuvent offrir la réparation des dégradations et des garanties pour l'avenir.

[...]

Art. 1206. Le propriétaire est tenu, à l'égard de l'emphytéote, aux mêmes obligations que le vendeur.

[...]

SECTION III

DE LA FIN DE L'EMPHYTÉOSE

Art. 1208. L'emphytéose prend fin:

1 Par l'arrivée du terme fixé dans l'acte constitutif;

2 Par la perte ou l'expropriation totale de l'immeuble;

3 Par la résiliation de l'acte constitutif;

4 Par la réunion des qualités de propriétaire et d'emphytéote dans une même personne;

5 Par le non-usage pendant 10 ans;

6 Par l'abandon.

Art. 1209. À la fin de l'emphytéose, le propriétaire reprend l'immeuble libre de tous droits et charges consentis par l'emphytéote, sauf si la fin de l'emphytéose résulte d'une résiliation amiable ou de la réunion des qualités de propriétaire et d'emphytéote dans une même personne.

the emphyteutic lessee which he is under no obligation to make are treated as disbursements made by a possessor in good faith.

...

Art. 1210. À la fin de l'emphytéose, l'emphytéote doit remettre l'immeuble en bon état avec les constructions, ouvrages ou plantations prévus à l'acte constitutif, à moins qu'ils n'aient péri par force majeure.

Ce qu'il a ajouté à l'immeuble sans y être tenu est traité comme les impenses faites par un possesseur de bonne foi.

[...]

Federal Court

SOLICITORS OF RECORD:

Docket: T-1972-12

STYLE OF CAUSE: Ville de Gatineau v
National Capital Commission
and Attorney General of Canada

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: April 3 and April 4, 2013

REASONS FOR JUDGMENT BY: BOIVIN J.

DATED: April 29, 2013

APPEARANCES:

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