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THE SUPREME COURT OF CANADA RULES PARTIALLY IN FAVOUR OF A DEVELOPER THAT LOST LAND TO A QUÉBEC MUNICIPALITY; A DISPUTE BETWEEN A LABOUR UNION AND OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER IS SENT BACK TO ADJUDICATION IN BC; ALBERTA AWARDS US$1.06 BILLION TO DOW CHEMICAL CANADA IN ITS SUIT AGAINST NOVA CHEMICALS

LORRAINE (VILLE) V. 2646-8926 QUÉBEC INC.

► DECISION DATE: JULY 6, 2018

The obligation to act within a reasonable time to challenge the validity of a municipal bylaw for disguised expropriation was at the heart of the debate in *Lorraine (Ville de) v. 2646-8926 Québec Inc.* Considering that disguised expropriation, insofar as it is carried out through a zoning bylaw, constitutes an abuse of power in the exercise of the regulatory power entrusted to the organization in this matter, the Supreme Court of Canada ruled that an application for the nullity of a bylaw in such a context must be brought within a reasonable time.

This obligation applies equally to an application for unenforceability and an application for a declaration of invalidity, which are both remedies that fall within the discretion of the Superior Court to remedy the abusive nature of the bylaw in question. In addition, the Supreme Court ruled that an owner who believes he is the victim of a disguised expropriation can still claim compensation for the loss in value of his property, even if the court rejects the challenge.

BACKGROUND OF THE CASE

In 1989, the numbered company 2646-8926 Québec Inc. ("Company") bought a wooded property in the city of Lorraine (the "City"). The majority shareholder planned to build a residential subdivision. In 1991, the City adopted a zoning bylaw and included more than half of the property in a conservation zone. The Company became aware of the new regulation 10 years later. The Company then asked the City to amend its bylaw because of the consequences of the bylaw on its right of property, but the City's response was negative. The Company then accused the City of disguised expropriation and went to court in 2007.

The Company asked for the bylaw to be overturned and for the City to pay an indemnity for expropriation. At trial, the judge said the two issues (overturning the bylaw and the indemnity for expropriation) should be decided separately. He rejected the request to overturn the bylaw, because it was made too late. The Court of Appeal disagreed with this and ruled in favour of the property owner. It said the trial judge should have thought about whether the bylaw constituted an abuse of power and intervened, even though the owner did not act within a reasonable time frame. The Court of Appeal sent the matter back to the lower court for a decision on the matter of compensation. The City appealed.

MATTER SIGNIFICANCE AND GUIDANCE

In this case, the 16-year period from the date on which the applicant was presumed to have had knowledge of the regulation, i.e. the date on which it came into force, was not considered to be a reasonable period. That said, the Supreme Court provided important guidance that more clearly defines the scope of the concept of disguised expropriation in Québec law.

On the one hand, the Supreme Court of Canada proposed a simpler definition than what it had proposed in the common law decision *Canadian Pacific Railway v. Vancouver (City of)*, 2006 SCC 227. There, the Supreme Court decided that in order to constitute a disguised expropriation it was necessary for the public body to have acquired a beneficial interest in the property that is the subject of the disguised expropriation. In the Lorraine matter, it defines disguised expropriation under Québec law more simply: as a municipal government restricting the enjoyment of the right of ownership of property to such an extent that its owner is de facto expropriated.

On the other hand, the Supreme Court confirmed that compensation for expropriation may be claimed, even when an action for annulment or for declaration of inoperability is no longer possible.

Nikolas Blanchette, Martin Sheehan and Nicolas-Karl Perrault of **Fasken Martineau DuMoulin LLP** acted for the intervener, the Québec Association of Construction and Housing Professionals Inc.

Pierre Paquin, Michel Beausoleil and Émilie Duquette of **Tandem Avocats-Conseils Inc.** represented the appellants, Ville de Lorraine and Municipalité régionale de comté de Thérèse-De Blainville.

Régis Nivoix and Mélanie Dubreuil of **Doyon Izzi Nivoix, S.E.N.C.** acted for the respondent, 2646-8926 Québec Inc.

Marc-André LeChasseur and Frédérique St-Jean of **Bélanger Sauvé** represented the intervener Communauté métropolitaine de Montréal.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES, LOCAL 170 V. BRITISH COLUMBIA

► DECISION DATE: JULY 3, 2018

On July 3, 2018, the Supreme Court of British Columbia released its review of *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 170 v. British Columbia (Information and Privacy Commissioner)*, 2018 BCSC 1080. The Court held that the decision of the Office of the Information and Privacy Commissioner ("OIPC") on Order F17-16, 2017 BCIPC 17 was unreasonable and remitted the matter back to the OIPC to assign another adjudicator to consider the issue again in a manner consistent with the Court's reasons.

BACKGROUND OF DISPUTE

In late 2010, the Financial Institutions Commission ("FICOM") received an access to information request submitted by the Independent Contractors and Business Association ("ICBA"). FICOM released some, but not all, of the information requested by the ICBA, on the basis that disclosure of this information could harm the interests of a third party.

The dispute over the release of this information lasted more than six years, with a group of BC unions and union pension plans objecting to any release of their information. They argued that the disclosure of these records would cause them financial harm and