CROSS CANADA LEGAL UPDATE
QUEBEC REVIEW

September 19, 2022

City of Montreal v. Locoshop Angus Limited Partnership, 2021 QCCA 1217 (became final in 2022 – leave to appeal to the Supreme Court of Canada dismissed)

- Is the equipment used to house servers “movable” or “immovable” under section 1 of the *Act respecting municipal taxation* (the "**AMT**")?
- Two separate cases before the Administrative Tribunal of Quebec (the “**Tribunal**”).
- Similar set of facts.
- Conflicting decisions.

City of Montreal v. Locoshop Angus Limited Partnership, 2021 QCCA 1217 (became final in 2022 – leave to appeal to the Supreme Court of Canada dismissed)

Facts:

- The unit of assessment is composed of a standard industrial building that can be used for multiple industrial purposes.
- Data centers are specialized in server hosting which requires 24 hour a day, 7 days a week, 365 days a year operation, without interruption.
- Specialized equipment, such as air conditioning systems, generators and electrical equipment, are necessary to ensure the uninterrupted and steady performance of the servers, even in case of power interruption or equipment malfunction. Such equipment is often not immobilized through physical attachments to the building.

***Ville de Montréal* c. *Cour du Québec*, 2018 QCCS 311 (« IMSO »)**

- Despite the lack of physical attachment to the land or building, this specialized equipment was considered to be immovable property and was entered on the roll.
- The Tribunal considered that this equipment was "intellectually immobilized" and was therefore assimilated to a building designed for a specialized purpose. It conclude this equipment was immovable and should be entered on the roll.

***City of Montréal* v. *Court of Quebec*, 2018 QCCS 312 (or the Locoshop Case)**

- Tribunal considers that the building is complete and functional without the data center-specific equipment, and that there is no “special purpose”.

City of Montreal v. Locoshop Angus Limited Partnership, 2021 QCCA 1217 (became final in 2022 – leave to appeal to the Supreme Court of Canada dismissed)

Court of Appeal final decision: (became final in 2022 – leave to appeal to the Supreme Court of Canada dismissed)

- Equipment used to house servers is "**permanently attached**" within the meaning of section 1 AMT and must be listed on the property assessment roll and related sections of the Civil Code of Quebec.
- Change in previous test established by the Courts to determine when a movable could be considered as an immovable under the AMT.
- Previously, a movable « permanently attached » to an building was not considered to be an immovable if its use was necessary to the business carried out in the building (as opposed to the building itself).

New test:

- **There is a refutable presumption that a movable qualifies as an immovable if it is "permanently attached" to the immovable.**
- A movable is "**permanently attached**" to an immovable if:
  1) It is attached to an immovable by any physical link (with the exception of electrical wirings or piping necessary to its operation); **OR**
  2) It is placed in such a way that it is immobilized; **AND**
  3) It is attached for a very long period of time (assimilated to perpetuity – permanence).

➢ A movable is considered "attached" when it is connected to the immovable by a physical link or if it cannot be removed from the immovable without being dismantled or without dismantling the immovable's components to which it is connected.

➢ If there is no physical link, the movable may be attached to the immovable by an intellectual link, if the immovable becomes incomplete in the absence of the movable;

City of Quebec v. Videotron ltée, 2022 QCCA 594

Similar debate to that of the Locoshop Angus case, but in connection to wireless telecommunications equipment.

Do wireless telecommunications stations and related equipment (the "**WTS**") constitute movables or immovable under the AMT and should they be entered on the assessment roll?

Facts:

- Videotron contested the qualification given to its wireless telecommunications system (WTS) in several files before the Tribunal, arguing they should be considered as movables under the AMT.
- The Tribunal gathered 15 cases and made a « test-case » to determine the qualification that should be given to Videotron's standard WTS.

Court of Appeal decision: (leave to appeal to the Supreme Court of Canada – pending)

- Section 67 AMT provides a firm basis in the law for concluding that Videotron's standard WTS must be listed on the assessment roll:

  > Constructions that are part of a telecommunication network are not entered on the roll, unless they are part of a **wireless** telecommunication network.

- Since those standard WTS were designed to be fixed on a roof, they should be considered as "permanently attached" (within the meaning of section 1 AMT) and included as immovable property.
- It does not seem to matter whether they ensure the utility of the immovable (the building) or if they are used to operate an enterprise or to carry on activities within the immovable.

Jardins de Vérone (« Vérone ») v. City of Québec (« City »), 2021 QCCS 5315 (leave to appeal to the Court of Appeal of Quebec granted)

Facts:

- Vérone is seeking to force assessor of the City of Québec ("City") to remove the mention "serviced vacant land" from the assessment roll for its unit of assessment.
- Vérone is claiming that the unit of assessment does not meet the conditions set by section 244.36 of the AMT for the “serviced vacant land” mention since it got its building permits and is in the process of building a 200+ unit property on the lot.

The Tribunal interpreted section 244.36 as providing for two situations where a property is considered to be a “serviced vacant land” (assuming it already serviced with municipal water and sewage systems):

(1) where no building is located on the lot; and

(2) where, according to the property assessment roll, the value of the building is less than 10% of the value of the lot.

According to the TAQ, since construction work is ongoing on the land and the value of the building cannot be entered on the roll until the building is substantially completed, the land no linger falls into either of the two situations provided at section 244.36 and can therefore no longer be considered as a serviced vacant lot.

Jardins de Vérone (« Vérone ») v. City of Québec, 2021 QCCS 5315 (leave to appeal to the Court of Appeal of Quebec granted)

After an appeal before the Court of Quebec, the Superior Court decided that the Tribunal's interpretation was wrong.

- **Leave to appeal of the Superior Court decision was granted on January 26, 2022.**

The Court of Appeal granted leave mainly on the basis that:

- the legal question raised is complex and of importance;
- that it results from conflicting interpretations of section 244.36 of the AMT by the various levels of court in this particular file and by existing case law, and the right interpretation needs to be determined.

La Grande Roue de Montréal Holdings Inc. (« Holdings ») v. City of Montréal (« Montréal »), 2022 QCTAQ 05273

Facts:

- The dispute revolves around the movable or immovable nature of the Montreal ferris wheel and of the console located inside its control cabin.
- Holdings argues that the ferris wheel (and console in the control cabin) is a movable because:
  - it is not a permanent construction or work;
  - it was designed specifically to be transported in pieces from one location to another;
  - the lease in place is of short duration (5 years with a non-automatic 5-year renewal option).
- Even if the wheel were to be considered as an immovable by attachment, the intellectual link necessary to speak of an attachment in perpetuity within the meaning of section 1 AMT does not exist;
  - No immovable becomes useless in the absence of the ferris wheel.

La Grande Roue de Montréal Holdings Inc. (« Holdings ») v. City of Montréal (« Montréal »), 2022 QCTAQ 05273

Tribunal decision:

- The ferris wheel and its console are immovable within the meaning of section 1 AMT and therefore must be entered on the property assessment roll.
- **Ferris wheel:** its format, its weather resistance conditions, its fifty (50)-years lifespan, the complexity and the long period of time required for its installation and eventual dismantling, its anchoring to the ground are all factors that make it a work of permanent nature and therefore an immovable within the meaning of sections 1 AMT and 900 of the Civil Code of Quebec.
- **Console:** Based on the teachings of the *Locoshop* and *Vidéotron* decisions, the TAQ concludes that there is an intellectual link between the console and the control cabin, as it is an essential element to make the cabin complete, functional and allow the operation of the ferris wheel.

Bridgestone/Firestone Canada inc. (« Bridgestone ») v. City of Joliette (« Joliette »), 2021 QCTAQ 11325

Facts:

- Bridgestone was late in filing its administrative request for review to contest the value of a unit of assessment located in the City of Joliette.
- Joliette is seeking to have the administrative appeal dismissed for late filing.
- Bridgestone argues “irresistible force” (force majeure) due to the pandemic.
- Section 134.1 of the AMT provides that:

  *"Where, by reason of circumstances of **irresistible force**, an application for review could not be filed within the time applicable under sections 130 to 134, the application may be filed within 60 days after those circumstances cease to exist".*

Decision of the Tribunal:

- Bridgestone was in a situation of absolute impossibility to act, per section 134.1 of the AMT.
- **The Tribunal’s jurisprudence is clear : the Covid-19 pandemic meets the four (4) criteria of un-foreseeability, irresistibility, non-attributability and impossibility of execution required to have “circumstances of irresistible force”.**
- The debate must rather focus around the question of whether, under the specific factual circumstances of this case, the pandemic prevented Bridgestone from performing its obligation to file its application in due time in an absolute manner.
- The TAQ is of the opinion that it did, in that:

Bridgestone/Firestone Canada inc. (« Bridgestone ») v. City of Joliette (« Joliette »), 2021 QCTAQ 11325

March 24, 2020, all activities deemed to be non-essential were suspended.

Bridgestone plant had to cease all of its activities.

On April 1, 2020, access to the Joliette region was restricted.

The TAQ notes that Bridgestone's operations were considerably disrupted due to the pandemic, constituting force majeure, as appears from the following facts put into evidence:

- The plant could no longer be physically accessed by its managers.
- The administrative burden generated by the obligation to close a plant of more than 1,000 employees;
- The fact that the administrative appeal file was at the plant, which was inaccessible;
- The general confusion among taxpayers regarding the obligation to respect deadlines in the context of the pandemic.

In these circumstances, Bridgestone’s managers filed the administrative request for review within the 60-day delay provided in section 134.1 in cases of force majeure.

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