Federal Court of Appeal | Cour d'appel fédérale

Date: 20260112

Docket: A-115-25

Citation: 2026 FCA 3

CORAM: **DE MONTIGNY C.J.**
STRATAS J.A.
BIRINGER J.A.

BETWEEN:

CITY OF OTTAWA

Appellant

and

HIS MAJESTY THE KING IN RIGHT OF CANADA, AS REPRESENTED BY THE MINISTER OF PUBLIC SERVICES AND PROCUREMENT CANADA, CANADA POST CORPORATION and NATIONAL CAPITAL COMMISSION

Respondents

Heard at Toronto, Ontario, on January 12, 2026.

Judgment delivered from the Bench at Toronto, Ontario, on January 12, 2026.

REASONS FOR JUDGMENT OF THE COURT BY: BIRINGER J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on January 12, 2026).

BIRINGER J.A.

[1] The City of Ottawa appeals from a judgment of the Federal Court dismissing an application for judicial review of decisions of the respondents, the Minister of Public Services and Procurement Canada (the Minister), Canada Post Corporation (CPC) and the National

Capital Commission (NCC): 2025 FC 315 (Decision). The underlying decisions concerned payments in lieu of taxes (PILTs) to be made to the City of Ottawa in 2021 and 2022. Proceedings against the NCC have been held in abeyance pending the outcome of the proceedings against the Minister: Decision at para. 3.

[2] Property owned by the federal government, provincial government and Crown corporations enjoys constitutional immunity from taxation, including municipal taxation. PILTs are voluntary payments made by the federal government to municipalities for the provision of public services "in lieu of" municipal taxes: *Montréal (City) v. Montreal Port Authority*, 2010 SCC 14 at para. 14 [*Montreal Port Authority*]; *Halifax (Regional Municipality) v. Canada (Public Works and Government Services)*, 2012 SCC 29 at para. 10 [*Halifax*]. The Crown has decision-making power over PILTs in respect of departmental property and Crown corporations have that power in respect of the property they manage: *Montreal Port Authority* at para. 34.

[3] The first step in calculating a PILT is to multiply the "effective rate" of tax by the "property value": subsection 4(1) of the *Payments in Lieu of Taxes Act*, R.S.C. 1985, c. M-13 (the Act) and subsection 7(1) of the *Crown Corporation Payments Regulations*, S.O.R./81-1030 (the Regulations). The central issue in the underlying decisions was the effective rate used for calculating PILTs to be made to the City of Ottawa. The "effective rate" is defined in the Act as the rate that "in the opinion of the Minister" would apply if the property were "taxable property" in the hands of a private owner or occupant: Act, s. 2(1); see also Regulations, s. 2; *Montreal Port Authority* at paras. 32, 42; *Chelsea (Municipality) v. Canada (Attorney General)*, 2024 FCA 89 at para. 44 [*Chelsea*].

[4] The City of Ottawa sets its municipal tax rates, except for the Ontario Business Education Tax (BET) rate, which is set by Ontario under the *Education Act*, R.S.O. 1990, c. E.2, s. 257.7 and Ontario Regulation 400/98. Responding to the COVID-19 pandemic, Ontario reduced the BET rate levied on private properties to a single rate of 0.880% of the assessed value, starting in 2021 (Revised BET Rate). Ontario did not reduce the BET rate for properties owned by the federal or provincial governments or Crown corporations. At the time, BET rates applicable to government-owned property in Ottawa (Standard BET Rate) ranged from 0.980% to 1.250% of the assessed value: Ontario Regulation 46/21; Decision at paras. 10-11.

[5] In determining the PILTs to be paid to the City of Ottawa, the respondents concluded that the only BET rate applicable to "taxable property" was the Revised BET Rate: see Appeal Book, Tab 6, Exhibits N, EE, HH. They calculated and paid PILTs to the City of Ottawa on this basis. The City of Ottawa sought judicial review of these decisions, and the Federal Court dismissed the application.

[6] On appeal, this Court steps into the shoes of the Federal Court and examines the administrative decisions afresh. Where the Federal Court's reasons are compelling and complete, as here, the appellant faces a tactical burden to demonstrate why the reasoning was flawed: *Chelsea* at para. 21; *Sun v. Canada (Attorney General)*, 2024 FCA 152 at para. 4; *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at para. 10; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-46.

[7] The standard of review for the decisions before us is reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*]; *Chelsea* at para. 20. We agree with the result reached by the Federal Court, substantially for the reasons it gave. The underlying decisions are reasonable.

[8] The appellant submits that it was unreasonable for the respondents to apply the Revised BET Rate when Ontario did not intend the pandemic relief measures to apply to government properties. In the appellant's view, applying the Revised BET Rate violates the "fair and equitable" administration of PILTs mandated by section 2.1 of the Act and resulted in a budget shortfall for the City of Ottawa. The appellant submits that the decisions were fatally flawed because they indicated that the respondents lacked discretion in setting the effective rate when the relevant provisions of the Act and Regulations are discretionary. In oral argument, the appellant's position was that the respondents ought to have considered and applied the rate for "taxable property" in effect prior to Ontario's amendments, *i.e.*, the Standard BET Rate. They say that applying the Standard BET Rate would be consistent with the intention under the Act and the Regulations that the City of Ottawa be fairly compensated for the municipal services that it continued to provide. The appellant argued that the Federal Court erred in concluding that the Revised BET Rate was the only available effective rate and, therefore, finding the underlying decisions reasonable.

[9] We cannot agree. As the Federal Court observed, while the Minister and Crown corporations have discretion to select an effective rate, that discretion is constrained by the scheme and objects of the Act and the Regulations. The discretion is limited to selecting the tax

rate that, in their opinion, would apply if the property were "taxable property": Act, s. 2(1); see also Regulations, s. 2; Decision at para. 36, citing *Halifax* at para. 42 and *Trois-Rivières (City) v. Trois-Rivières Port Authority*, 2015 FC 106 at para. 63; see also *Chelsea* at para. 44. Here, the respondents concluded that the only such rate was the Revised BET Rate levied on private property. This conclusion was reasonable—it was justified in relation to the facts and the law that constrained the decision maker: *Vavilov* at para 85. After all, the Standard BET Rate did not apply to "taxable property" during the relevant periods, but to property exempt from taxation: Decision at paras. 38-40. Ontario's intention in enacting the amendments is of no moment to the interpretation of the Act and the Regulations.

[10] The appellant also submits that the decisions lacked justification, rendering them insufficient. We agree with the Federal Court that although the reasons are brief, considering the nature of the issue raised and prior exchanges between the parties, they adequately convey the basis for the decisions: Decision at para. 51.

[11] For these reasons, we will dismiss the appeal with costs in the agreed-upon amounts of $5,000 all-inclusive, payable to each of the Minister and CPC.

"Monica Biringer"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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