

01 06 35

WATT, Deborah

Applicant

v.

MRC DES COLLINES DE L'OUTAOUAIS

Respondent

THE APPLICATION FOR REVIEW

Deborah Watt applied to the MRC des Collines de L'Outaouais (MRC) on March 13, 2001 requesting access to a series of documents pertaining to the current real estate roll in the municipality of Chelsea, including a series of documents which she identified as related to the *Regulation respecting the median proportion of the real estate assessment roll* :

I wish to consult information regarding the real estate assessment roll which is currently in effect in Chelsea.

Arising from the requirements of the *Regulation respecting the median proportion of the real estate assessment roll* :

- 1 The basic list of sales and associated assessments.
- 2 Sales of vacant land subtracted under Subdivision 2.
- 3 Adjustments made to the price of sales under Subdivision 3.
- 4 Sales which were excluded as non-representative or otherwise under Subdivision 4.
- 5 Sales which were deleted under Subdivision 5.
- 6 Details of the calculation required under paragraph 15, Subdivision 5.

In addition to these items, I wish to consult all correspondence, memoranda, reports or other documents relating to the real estate roll in Chelsea for the current period.

The MRC responded in a letter of March 20, 2001, advising Ms Watt that in the light of sections 78 and 79 of the *Act respecting municipal taxation*¹, it declined to release the documents used to establish the median proportion of the assessment roll of Chelsea because the median proportion was not a basis for an entry on the roll of her own property :

« Sections. 78 et 79 of the *Act Respecting Municipal Taxation* defines the documents that can be examined and determines the persons eligible to have access

Section 78 clarifies the meaning that the Act confers to the documents. This refers to " The documents gathered or prepared by the assessor for the preparation or updating of the roll...".

Section 79 establishes which documents can be made available and the person that is entitled to have access: "... no person has a right of access to the documents contemplated in the second paragraph of section 78, except the graphic register ... However, any person may examine such a document respecting the immovable of which he is the owner or the occupant or respecting the place of business of which he is the occupant if that document has been used as the basis for an entry on the roll concerning that immovable or place of business and has been prepared by the assessor ..."

In the light of the above stipulations, I must advise you that the median proportion is not the basis for an entry on the roll of your property. We therefore must decline your request to release the documents that were used to establish the median proportion of the assessment roll of Chelsea.

Deborah Watt's request for a review of this decision by the Commission d'accès à l'information du Québec (the Commission) was received on April 10, 2001. A hearing took place in Hull on August 23, 2001.

THE POSITION OF THE APPLICANT

¹ R.S.Q., c. F-2.1.

Ms Watt explained that, to her mind, there was a serious discrepancy in the property evaluations in Chelsea. The problem resided in the difference between assessed and market values for old and new houses in the municipality. Old houses were assessed farther from the market value with the result that homeowners of newer houses were paying for those in the older houses, according to her. She wished to have access to the information used to compile the report filed with the Minister of Municipal Affairs under sections 24 to 28 of the *Regulation respecting the median proportion of the real estate assessment roll*². This would assist her, she stated, in analysing how the triennial assessment role is created.

THE POSITION OF THE RESPONDENT

The MRC took the position that the *Law respecting Access* and the *Act respecting municipal taxation*³ did not allow the MRC to release the information requested. This information does not relate to her own property but to the property of third parties and is also used for calculation of the assessment roll. Because it does not relate directly to Ms. Watts' own property, the MRC does not believe it should be released.

THE PROOF AND ARGUMENTS OF THE PARTIES

At the hearing, the applicant filed a table she had created, exhibit D-1. This table is entitled, « Comparison of market value assessments for houses built after 1970 and before 1970 in Chelsea. Ten representative examples. Age of house from real estate listings. Sales data from land registry office. Assessment date from MRC des Collines de L'Outaouais assessment roll ».

² R.S.Q., c. F-2.1, s. 263, par. 5 ; 1993, c. 43, s. 13.

In order to understand the variations between market and assessed value illustrated in this table, she wished to obtain the background information used to establish, as an end result, the municipal assessment roll which is a public document.

She called as a witness Mr. André Beaudoin, Director of Assessment for the MRC. He testified that Mr. Marc Lepine signs the assessment rolls prepared by a Montreal firm, Leroux Beaudry. He testified that the report establishing the median proportion is a joint responsibility according to the *Regulation regarding median proportion* and is prepared jointly by the MRC staff and the outside firm of evaluators.

Ms Watt advanced three arguments to justify release of the background information used to comply with sections 24 to 28 of the Regulation and which, she pleaded, amounted to a separate report.

Her first argument she qualified as one of reasonableness in the light of section 79 of the *Act respecting municipal taxation*. She pointed out what she qualifies as the internal contradiction between s. 78 which gives access and s. 79 which denies it. The existing roll is a public document and is used to prepare the new roll. She referred to the 1992 case of *Sirard c. Communauté urbaine de Montréal*⁴ where she stated that the Commission ruled that the public body must give access to information on comparable sales of the property of third parties in the area of the property owned by the applicant in that case.

³ R.S.Q., c. F-2.1.

⁴ Unpublished decision of Paul-André Comeau of November 26, 1992 (file no. 92 03 42).

Secondly, Ms Watts argued that the report she requested is one used for quality control and is used for after the fact measurement of the roll. If there is found to be a wide discrepancy, she affirmed that the prices are adjusted. She does not think that the information she requested falls under the definition of a document as referred to in s. 78. Access is thus not prohibited by s. 79.

Thirdly, she advances the proposition that complete refusal of access is not justified and that the documents should be reviewed by the Commission to see whether or not they served in the confection of the roll. If they did not do so, they should be accessible. Finally, she stated that nothing in s. 79 of the *Act respecting municipal taxation* precluded the Commission d'accès from ordering copies of the requested material to be made for her.

On cross-examination by counsel for the MRC, Mr. Beaudoin gave additional information about the preparation of the assessment roll and the median proportion. Some six months of work are necessary for the preparation of the median proportion. It is prepared before the assessment roll is deposited. The exercise includes inspection of properties sold and research and statistical calculations in order to correct the figures used to take into account various phenomena which would otherwise distort the compilation such as sales of immovables where the sale price also includes movables, sales between family members, and sales at the extreme end of the price scale. This information, used to adjust the assessment roll, is the same information as is sent to the Minister as required by regulation. The

municipality does not take the position that the assessed value of properties is identical to the market value.

The median proportion is used to check the quality of the roll. It is prepared every year and used to adjust values for administrative purposes only. While the municipality of Chelsea does part of the preparatory work , the exact calculations are made by the firm of evaluators.

All the information in the report on the median proportion is the same information which is used to prepare the assessment roll and to keep it up to date. Commenting, in numerical order, on each of the six items requested in Ms Watts' letter, Mr. Beaudoin stated the following :

1. These are documents used to prepare the report to the Ministry
2. There were no vacant lots subtracted in 1997
3. This would refer to the calculations where the value of movables are subtracted from the final price of the immovable
4. This includes, for example, the value of sales between family members which must be excluded
5. This refers to the process of statistical adjustment of sales which are extremely high or low
6. This would refer to the calculations contained in the document sent to the Ministry.

As for the request for correspondence, etc, he stated that there was no correspondence or documents except for the notice of the MRC to the Ministry and the confirmation of the Ministry that it had received the report.

Replying to further questions from Ms. Watt, Mr. Beaudoin testified that the information requested under item 1 of her letter was public information while

the information referred to under items 2 and 3 is used in the preparation of both the assessment roll and the median proportion. He further stated that the calculations made and requested under items 4, 5 and 6 of her letter were made according to standard evaluation rules and methods. To omit them from the final calculations could result in inaccurate conclusions, he stated. In conclusion, he testified that the documents which she requested were all used in the estimate of the assessment roll.

Counsel for the MRC pleaded that the broad principle of access to public documents set forth in section 9 of the *Law respecting Access* is nevertheless accompanied by a general restriction as to preliminary notes and sketches etc. Sections 78 and 79 of *the Act respecting municipal taxation* set up a particular access regime for matters concerning municipal property assessment. Analyses and preliminary calculations are excluded from the reach of the access principle under these legislative provisions, he argued. He referred to the jurisprudence which he had deposited as Exhibit O-1. As for properties used for comparison purposes to that of the applicant, he concedes the applicant's right to information as to their assessed value. However, he adds that it is a right of consultation only.

THE RELEVANT FACTS AND LAW

The question to be decided here is whether detailed information on all immovables included in the calculation of the median proportion as set out in the *Regulation respecting the median proportion of the real estate assessment roll* is accessible for consultation by the public. The articles of law to be considered are :

Law concerning Access

9. Every person has a right of access, on request, to the documents held by a public body.

The right does not extend to personal notes written on a document or to sketches, outlines, drafts, preliminary notes or other documents of the same nature.⁵

Act respecting municipal taxation

a. 78 The roll is the property of the local municipality for which it is made.

The documents gathered or prepared by the assessor for the preparation or updating of the roll, whether or not they were used for such purpose, are the property of the owner of the roll.

The municipal body responsible for assessment is the custodian of such documents, for the benefit of their owner, and shall decide where they must be kept. "document".

For the purposes of this chapter, the word "document" includes a track, a tape, a disk, a cassette or other data carrier and the data it contains. The ownership or the custody of such a document entails for the body or the municipality the right to obtain, without cost, from the assessor and any other person who has entered data therein, all the information necessary to have access to the data and to be able to transcribe it on a conventional document; that right does not, however, include the right to obtain the software without cost.

79. Notwithstanding section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no person has a right of access to the documents contemplated in the second paragraph of section 78, except the graphic register the preparation and updating of which are provided for by the regulation under paragraph 1 of section 263 and by the Manuel d'évaluation foncière du Québec to which the regulation refers.

Examination of documents.

However, any person may examine such a document respecting the immovable of which he is the owner or the occupant or respecting the place of business of which he is the occupant, if that document has been used as the basis for an entry on the roll concerning that immovable or place of business and has been prepared by the assessor. The same applies to a person having filed an application for review or to an applicant with respect to the immovable or place of business in respect of which the application for review or a proceeding brought before the Tribunal has been made.

⁵ L.R.Q. c. A-2.1.

Minister.

In addition to the local municipality and the municipal body responsible for assessment, the Minister may examine such a document prepared by the assessor and obtain a copy thereof without cost.

The evaluator for the MRC testified that the information requested by the applicant in her letter of March 13, 2001 was also information collected and used to calculate the real estate assessment roll. According to this testimony, it appears that the same data is used both to arrive at the assessment roll of the municipality and the median proportion. The possibility that one document may be created posterior to another, as the applicant suggested, does not alter the uncontradicted testimony that the factual information requested about the municipality's real estate values and transactions is also used to compile the assessment roll.

This information shelters behind the effects of sections 78 and 79 of the *Act respecting municipal taxation*. For it is not a different document than that contemplated in s. 78 which is requested by the applicant, but the information which is used to compile the median proportion. This would appear to be the same information which is collected and used to compile the assessment roll. As such, it would fall squarely within the exception of s. 79.

The applicant has referred to the 1992 decision of the Commission in the matter of *Sirard c. Communauté urbaine de Montréal*⁶. This decision, based on the primacy of the *Law respecting access*, concluded that s. 10 of the

⁶ Supra note 4.

Law was not superseded by s. 79 of the *Law respecting municipal taxation*. Thus the Montreal Urban Community was compelled to furnish a copy of the list of sales for the neighbourhood unit (unité de voisinage) in which the owner's property was situated. However, this finding was reversed in the subsequent decision of the Quebec Court in *Communauté urbaine de l'Outaouais c. Gestion Xelor Anstalt Itée*⁷, where it was held that s. 10 of the *Law respecting Access* was without effect on s. 79 of the *Act respecting municipal taxation*.

In the 1996 decision of the Commission in the case of *Régie du Batiment du Québec c. Ville de Beauport*⁸ it was held that data which is compiled by the evaluator in order to update the assessment roll is shielded from access as a « document » under s. 79 of the *Law concerning municipal taxation*.

The applicant requests information pertaining to the entire municipality. This is clearly not accessible. According to a well- established precedent :

Tel que cette Commission a eu l'occasion de le reconnaître à quelques reprises déjà, l'article 79 de la *Loi sur la fiscalité municipale* déroge expressément à la *Loi sur l'accès aux documents des organismes publics et sur la protection des renseignements personnels* et altère sa prépondérance conformément à l'article 168 de cette loi.

Le premier alinéa de l'article 79 de la *Loi sur la fiscalité municipale* reconnaît donc un caractère confidentiel aux renseignements rassemblés et préparés par l'évaluateur en vue de la confection du rôle qu'ils aient servi ou non à cette fin.

Toutefois, le législateur a prévu, à l'alinéa 2 de cet article, une exception à la confidentialité de ces documents. En effet, il reconnaît à certaines personnes

⁷ J.E. 97-1001 (C.Q.).

⁸ [1997] C.A.I. 44.

dont le propriétaire, un droit d'accès à ces documents tout en limitant la portée de ce droit aux documents ayant servi de base à une inscription au rôle concernant cet immeuble et préparés par l'évaluateur⁹.

However, should she request it, she does have a right of access to documents used to establish the assessed value of her own property. This information can be consulted at the premises of the respondent. This more limited right of access than what the applicant wishes to obtain here was established in the Quebec Court decision of *Communauté urbaine de l'Outaouais c. Gestion Xelor Anstalt Itée*¹⁰.

CONCLUSION

CONSEQUENTLY, having examined the proof and the applicable law, **the Commission :**

REJECTS the application for review.

Montreal, September 6, 2001

JENNIFER STODDART
Commissioner

⁹ *Sirard c. Municipalité du comté de Matawinie*, [1994] C.A.I. 121.

¹⁰ *Supra* note 7.

M^e Roger Paradis,
Counsel for the respondent