Court File No. 366/96

ONTARIO COURT OF JUSTICE
(DIVISIONAL COURT)

B E T W E E N:

HUNEAULT WASTE MANAGEMENT LTD.

Appellant

- and -

THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON

Respondent

FACTUM OF THE APPELLANT

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PART I - THE APPEAL

1. This is an appeal, with leave of this Court, from the decision of the Ontario Municipal Board dated April 11, 1996, varied June 13, 1996, which affirmed, with amendments, By-Law 234/92 of the Regional Municipality of Ottawa-Carleton ("the RMOC").

2. The Appellants. Huneault Waste Management Ltd. ("Huneault") is a private-sector company that owns and operates a landfill (the "Huneault Landfill") in the RMOC. Laidlaw Waste Systems Ltd. and Laidlaw Waste Systems (Ottawa) Ltd. ("Laidlaw") are private-sector companies that own and operate a landfill in the

RMOC (the "Laidlaw Landfill"). The Township of Osgoode ("Osgoode") is a rural municipality that owns and operates a landfill in the RMOC (the "Osgoode Landfill").

Transcript, II, 23; VI, 97; 99-101; IX, 119

3. The Respondent. The Regional Municipality of Ottawa-Carleton is comprised of 11 municipalities. The RMOC owns and operates a public landfill on Trail Road in the Town of Nepean (the "Trail Road Landfill").

Transcript, II, 8, 12-13

PART II - FACTS

4. RMOC's modern waste management planning originates in the McLaren Report (1974). McLaren recommended amendments to the Regional Municipality of Ottawa-Carleton Act ("*RMOC Act*") to make the RMOC responsible for regional solid waste disposal. McLaren also recommended that the RMOC "acquire existing desirable landfill sites," and that the RMOC pay for the new sites by increased tipping fees charged to landfill users.

Exhibit 2, Tab I, 41-2; Appeal Book, 199-200

5. The RMOC acquired the Trail Road Landfill pursuant to this recommendation in 1980, but did not acquire the Huneault, Laidlaw or Osgoode Landfills which were then in existence.

Transcript, II, 9-10

6. In 1990 Price Waterhouse recommended that the RMOC should try "to require a royalty of tonne of waste going to private landfill, as a contribution towards satisfying future waste management needs."

Exhibit 2, Tab N, 3; Appeal Book, 246

7. RMOC lobbied the provincial government for this power. By Section 54.1 of *The RMOC Amendment Act, 1992* ("*Bill 123*"), assented to June 25, 1992, the RMOC was granted a four month window to enact a By-Law "imposing conditions including the payment of compensation" on the appellants.

Transcript, II, 73
Exhibit 2, Tab Q; Exhibit 2, Tab V, 30; Appeal Book, 308, 357
Bill 123; Factum "Schedule B"

8. On September 25, 1992, one month before closure of the four month window, the RMOC's Environmental Services and Executive Committees produced a Report (the "Denham Report") setting out the RMOC's ten year plan for solid waste management. The Denham Report includes these elements:

1993-2002	($,000)
New Landfill	27,350
Solid Waste Planning	5,300
Environmental Assessment	3,370

Future Initiatives	139,160

The Denham Report stated that Bill 123

> ...has as its philosophical basis the principle that the use of landfill capacity carries with it an obligation to save for the replacement of that capacity. From that principle it follows that all landfill operators in Ottawa-Carleton should contribute, through compensation, to the replacement of the depleted capacity. (p. 2).

The Denham Report recommended that Council approve a By-Law to this effect, attached to the Report.

Exhibit 2, Tab S; Appeal Book, 315-325

9. The RMOC produced a second document, *Tipping Fee Model for Implementation of Compensation Plan* ["Tipping Fee Report"]. The Tipping Fee Report assumes the RMOC would levy the greatest possible tax that the market could bear on the appellants, and it tracks the amount of revenue that the tax would generate for the RMOC. These assumptions were incorporated into the Denham Report, and adopted by the RMOC in By-Law 234/92.

Exhibit 2, Tab R; Appeal Book, 309-314

Transcript, II, 112-14; XIII, 152-3

10. The Tipping Fee Report calculated that the RMOC could, in ten years, by taxing landfill operators to the market limit, raise sufficient revenue to fund 62.5% of

a new landfill (capital and administrative costs) and 38% of "future initiatives" (capital costs of various projects).

Exhibit 2, Tab R; Appeal Book, 309-314

11. The Ontario Municipal Board reviewed these calculations, and found as a fact:

> ... the only relatively comprehensive concept of future waste disposal costs were ... prepared without any overall planning context and borrowed heavily from outside (e.g. United States) experiences ... particulars on the composition and costing of the future initiatives have proved to be sketchy ... there was no technical support offered in justification ... The appellants therefore responded to the vacuum in support for the data base ...Yet with regard to an ability to critique the data underpinnings of the Future Initiatives portion which constitutes an estimated 84% of total capital cost, very little in the way of determinative quality information has been forthcoming" (p. 15)

Ontario Municipal Board Decision; Appeal Book, 30

12. The OMB also found as a fact:

> ... the compensation fee schedule will not be sufficient to fund the expected total *capital* cost of the scheme; (p. 25, emphasis added).

Ontario Municipal Board Decision; Appeal Book, 40

13. The Denham Report's "recommended course of action" is uncertain how the tax funds raised would be spent.

> the RMOC may elect to use the [tax] funds for either public facilities or to participate in any one of a broad range of *potential* projects with the private sector; (emphasis added).

Exhibit 2, Tab S, p. 10; Appeal Book, 324

14. On Oct 15, 1992, ten days before closure of the four month window, Regional Council adopted the Denham Report recommendations, and enacted By-Law 234/92.

Transcript, II, 141

15. By-Law 234/92 requires the operators of the Huneault, Laidlaw, Osgoode and Trail Road landfills to pay to the RMOC increasing amounts for each tonne of waste received at their landfills. The amounts rise sharply to $20/tonne + CPI. In Huneault's case the imposition of the $20 tax would increase Huneault's tipping fees by 62.5 percent.

By-Law 234/92; Factum "Schedule B"

Transcript IX, 136

16. By-Law 234/92 permits the RMOC to obtain tax payments from the appellants on the basis of estimated tonnages, in advance of actual landfilling. Interest must be paid by the appellants if their payments based on estimated tonnages fall short of the amounts required after adjusting for actual tonnages landfilled. Overpayments caused by excessive estimates are not returned to the appellants, but become a credit for future years, without interest.

By-Law 234/92; Factum "Schedule B"

17. Pursuant to s. 54.1(5) of the *RMOC Amendment Act*, Huneault, Laidlaw and Osgoode appealed By-Law 234/92 to the Ontario Municipal Board, *inter alia*, on the ground that the By-Law was unconstitutional as beyond the powers of the Ontario Legislature.

18. The Ontario Municipal Board ruled that (a) "the volumetric fees in contention are indirect" (p. 20); (b) the By-Law was within the jurisdiction of the Province of Ontario (p. 26); (c) "the preparation and processing of the By-law may have been rushed" (p. 32).

Ontario Municipal Board Decision; Appeal Book, 35, 41, 47

PART III - ISSUE AND LAW

19. This Court is asked to decide whether By-law 234/92 is within the legislative powers granted to the Legislature of Ontario by sections 92(2), (9), (13) and (16) of the *Constitution Act, 1867.*

Administrative Costs of a Regulatory Scheme

20. The *Constitution Act, 1867*, s. 91(3) empowers the Parliament of Canada to raise money "by any Mode or System of Taxation", but by s. 92(2) limits provincial legislative authority to "Direct Taxation within the Province ..." The Supreme Court of Canada has recognized a limited exception to the direct taxation restriction. Pursuant to sec. 92(9) of the *Constitution Act, 1867* Provincial Legislatures may

impose indirect licensing taxes “to defray the costs of regulation” if the fees charged can “be supported as ancillary or adhesive to a valid provincial regulatory scheme”.

> *Allard Contractors v. Coquitlam,* [1993] 4 S.C.R. 371, 402, 404-5.
>
> *Constitution Act, 1867,* secs. 92(2), (9), (13), (16)

21. The exception in *Allard* is narrow. While the Court will not “undertake a rigorous analysis of a municipality’s accounts” (p.411), indirect taxation by a Province or its political subdivisions is valid only if limited to “meet the expenses of ... administration” (p.401) and “to defray the costs of operation” (p.401). In *Allar*d, Mr. Justice Iacobucci, for a unanimous nine-person Court, undertook an exhaustive analysis of the prior Privy Council and Supreme Court precedents, and concluded:

> In the above cases, decided either by this Court or the Privy Council, one can discern a consistent treatment of the scope of s. 92(9) of the Constitution Act, 1867. Although somewhat broad language was used by Lord Atkin in Shannon, supra, it appears generally true that s. 92(9), in combination with ss. 92(13) and (16), comprehends a power of regulation through licences. It is a power which is not confined to the requirement of direct taxation in s. 92(2). However, in so far as it comprehends indirect taxation, these cases -- either explicitly or upon their facts -- have limited the power of indirect taxation such that it can only be used to defray the costs of regulation. (p.402)
>
> *Allard Contractors v. Coquitlam,* [1993] 4 S.C.R. 371, 401, 402, 411

22. The *Allard* ruling that provincial indirect taxation pursuant to sections 92 (9), (13) and (16) must be limited to the administrative costs of a regulatory scheme

accords with treatment of this issue by the constitutional commentators. Professor La Forest (as he then was) in a close reading of the precedents concluded:

> From this it appears that section 92(9) will support indirect taxation for administering a regulatory licensing scheme, but not for other purposes.
>
> . . . . . .
>
> The limitation on the licensing power by the Supreme Court of Canada appears sound; to permit the provinces to raise indirect taxes by simply framing their legislation in the form of a licence threatens to open the whole field of indirect taxation to the provinces unless one formulates a test for genuine and nongenuine licences. The test of limiting fees to the costs of administering a scheme appears reasonable ...
>
> La Forest, *The Allocation of Taxing Power under the Canadian Constitution*, 2nd ed. Toronto: Canadian Tax Foundation, 1981, pp. 158, 160

And Professor Hogg wrote**:**

> La Forest's careful study of the cases leads him to the conclusion that s. 92(9) authorizes indirect licence fees only if they are directed to defraying expense of an otherwise valid regulatory scheme. It may be objected that the provinces have this power anyway, as an incident to the regulatory scheme, and so this interpretation leaves s. 92(9) with no independent force of its own. But it does seem to be the better view because of "the overriding implication of sections 91 and 92 that the power to levy indirect taxation should be reserved to Parliament".
>
> . . . . .
>
> La Forest's view was accepted in *Allard Contractors v. Coquitlam*.
>
> Hogg, *Constitutional Law of Canada,*3rd ed, 1995, looseleaf pp. 30-4, fn. 23

J. Harvey Perry explained the constitutional limits of provincial taxation pursuant to s.92(9) as follows:

> The courts have been alert to the possible use of fees under a licensing scheme as a means of imposing an indirect tax. They appear to have limited the power to the raising of revenue only sufficient to cover the expense of administering the scheme, although a small incidental surplus has been permitted.
>
> Perry, *Taxation in Canada,* 5th ed. Toronto: Canadian Tax Foundation, 1990, p.155

23. The reason why sections 92(9), (13) and (16) of the *Constitution Act, 1867* do not allow Provinces to tax indirectly beyond the administrative costs of regulation is that such a power would "have the serious consequence of rendering s. 92(2) meaningless." Judicial acceptance of provincial indirect taxation schemes would upset the delicate balance of power specified by the Constitution, which reserves the power of indirect taxation *exclusively* to Parliament by s. 91(3).

Allard Contractors v. *Coquitlam,* [1993] 4 S.C.R. 371,

405

24. Where the provinces have achieved greater powers of indirect taxation, this has been done by express constitutional amendment following extensive Federal/Provincial consultation and negotiation, and as part of delicate, mutual concessions and tradeoffs that maintained balance in the Federal system, as was done in 1982.

Constitution Act, 1982, s. 50

25. In an exhaustive jurisprudential analysis in *Allard*, Iacobucci J. concluded that the cases "have limited the power of indirect taxation such that it can only be used

to defray the costs of regulation" (p.402) and that municipalities levying indirect taxes must make "reasonable attempts to match the fee revenues with the administrative costs of the regulatory scheme" (p.411). The Supreme Court considered Allard's complaint that Coquitlam levied indirect taxes in order to raise revenue in excess of regulatory costs. The Supreme Court concluded that there was "no evidence" to support Allard's complaint.

> *Allard Contractors* v*. Coquitlam,* [1993] 4 S.C.R. 371, 402, 411-12

26. Subsequent to *Allard*, the Ontario Court (General Division) voided Township of Moore By-Law 59/92 on the ground, *inter alia,* that "the fees imposed by the By-Law are intended to be directed to more than defraying the cost of the inspection provided for under the By-Law." The Court was satisfied that Moore By-Law 59/92 would raise "a surplus of something approximating $190,000 ... above that needed to cover inspection".

> *Laidlaw Environmental Service v. Moore (Township)* (1993), 19 M.P.L.R. (2d) 30, 56

27. The instant case concerns a provincially authorized indirect taxation By-Law which the RMOC justified in the Denham Report. This Report sets out the Region's solid waste programmes over a ten year time frame at a *capital cost of $169,880,000.* These capital costs are for a new landfill ($27,350,000), an associated environmental assessment ($3,370,000), and so called "future initiatives" which include diverse facilities and equipment ($139,160,000) which the OMB found as a fact were "sketchy" and based on "no technical support" (para 11, *supra*). The

Report would require the three appellants and Trail Road landfill to "pay for 62.5% of the new landfill and 38% of the future initiative costs," a total of $72,080,000

Exhibit 2, Tab S, 3-5, Annex "A"; Appeal Book, 317-9, 325

28. The Denham Report set the *administrative costs* of these programmes at $5,300,000 for Solid Waste Planning. By By-law 76 of 1993 "Being a By-law to authorize Solid Waste Planning", the RMOC "authorize[d] Solid Waste Planning at an estimated cost of $5,781,400..."

Exhibit 2, Tab S, p. 4; Appeal Book, 318

RMOC By-Law 76 of 1993; Factum "Schedule B"

29. RMOC By-Law 234/92 purports to impose a $20/tonne indirect tax on waste going to landfill. The RMOC's planning horizon for its waste management plan is ten years (*supra.,* paras. 10 & 27). The RMOC's actual tonnages of waste going to landfill in 1993 was approximately 630,000 tonnes. If By-Law 234/92 had only a ten year life as planned (there is no sunset provision), it would raise approximately $126,000,000 in indirect taxes for the RMOC.

Transcript, II, 112-3, 148

30. The approximately $126,000,000 the RMOC will raise by By-Law 234/92 is demonstrably intended to raise revenue exceeding the $5,300,000 administrative costs of regulation. By-Law 234/92 is without precedent to the extent that in object

and purpose, pith and substance it intends to raise revenues beyond the "administrative costs of the regulatory scheme."

> *Allard Contractors* v. *Coquitlam,* [1993] 4 S.C.R. 371, 411, 412
>
> La Forest, *The Allocation of Taxing Power under the Canadian Constitution*, 2nd ed. Toronto: Canadian Tax Foundation, 1981, p. 160

31. In the instant case the architect of the RMOC's scheme concedes that RMOC made no attempt to "match the fee revenues with the administrative costs of the regulatory scheme." RMOC's intent was to raise as much money as it perceived the market would bear without regard to administrative or any other costs.

> Transcript, II, 112-13; XIII, 152-3

Absence of Regulatory Scheme

32. *Allard Contractors* contains two further conditions that provincially authorized indirect taxation must satisfy in order to be valid: (i) there must be present a valid provincial regulatory scheme; (ii) the indirect taxes imposed must be "ancillary or adhesive" to that scheme.

> *Allard Contractors* v. *Coquitlam,* [1993] 4 S.C.R. 371, 405

33. The concept of "valid regulatory scheme" has recently become a term of art in constitutional law.

(**A**) In the indirect tax cases the concept refers to "a complete and detailed code of regulation" (*LaFarge*, *per* Bull J.A.); "a complete code which regulated" (*LaFarge*, *per* Branca, J.A.); and "a complete and comprehensive code" *(Laidlaw* v*. Moore*). In order to determine whether the presence of such a detailed regulatory code can support a challenged statute, the Supreme Court in *Allard* called for "an analysis of the statutory context of the impugned provision" to determine if it can be "legitimately related" to the regulatory code.

> *Allard Contractors* v*. Coquitlam,* [1993] 4 S.C.R. 371, 406
>
> *Re LaFarge Concrete and District of Coquitlam* (1972), 32 D.L.R. (3d) 458, 465, 466
>
> *Laidlaw Environmental Services* v. *Moore (Township)* (1993), 19 M.P.L.R. (2d) 30, 60

(**B**) In the Trade and Commerce cases the concept of "valid regulatory scheme" refers to a "well orchestrated scheme of economic regulation" and "complex scheme of economic regulation" (*General Motors*, p. 674, 676). In order to assess whether the presence of a valid regulatory scheme will support a challenged statute, the Supreme Court requires analysis of the context in which the impugned provision intrudes on the exclusive powers of the other level of government, and whether the impugned provision is "sufficiently integrated with the scheme that it can be upheld by virtue of that relationship."

General Motors v. City National Leasing, [1989] 1 S.C.R. 641, 674, 676, 683

A. G. Canada v. C.N. Transport Ltd, [1983] 2 S.C.R. 206

(**C**) Ideally, provincial legislative bodies should assist the court to identify when they are acting pursuant to the "regulatory scheme" exception which allows a Provincial Legislature to invade the exclusive powers allocated by the Constitution to the Federal Government. The legislation should signal the presence of a regulatory scheme, and the purpose of it.

Allard Contractors v. *Coquitlam,* [1993] 4 S.C.R. 371, 411

(**D**) Every constitutional case which relied on the concept of regulatory scheme to support the validity of a challenged statute involved a scheme which was statutory (the cases are collected *supra* in paras. 31(A) and (B)). The Supreme Court required that a valid regulatory scheme be statutory.

General Motors v. *City National Leasing*, [1989] 1 S.C.R. 641, 668

(**E**) Every constitutional case which relied on the concept of regulatory scheme to support the validity of a challenged statute involved three factual elements *at the minimum:* delineation of required or prohibited conduct; creation of an investigatory procedure; and establishment of remedial or punitive mechanisms (the cases are collected *supra* in paras. 31(A) and (B)).

(**F**) Where one or more of these factual elements are missing, the Court will decline to find the presence of a regulatory scheme which can support a challenged statute.

> *MacDonald* v. *Vapor Canada*, [1977] 2 S.C.R. 134, 165 ("One looks in vain for any regulatory scheme in s. 7, let alone s. 7(e). Its enforcement is left to the chance of private redress without public monitoring by the continuing oversight of a regulatory agency ... such a detached provision cannot survive alone unconnected to a general regulatory scheme...")

35. Sections 53, 54 and 54.1 of the *RMOC Act* are the only sections that relate to waste management. Section 53 (1) is definitional; s. 53 (2) requires the RMOC to provide facilities for receiving, dumping and disposing of waste, prohibits anyone from providing dumps without the RMOC's consent, and permits the RMOC to grant its consent on conditions including payment of compensation; secs. 53 (2.1-2.2), (3.1)(a), (13) - (15) are procedural; s. 53 (3) permits the RMOC to provide standards for waste-hauling vehicles; secs. 53 (3.2) - (11) allow RMOC to designate and takeover dumps vested in area municipalities, and dispose of them when no longer required; s. 53 (12) concerns designating garbage truck routes and times; s. 54 empowers the RMOC to research, manufacture and distribute products recycled from industrial waste; s. 54.1 empowers the RMOC to "impose conditions including the payment of compensation" on the appellants, and associated procedural provisions.

36. The *RMOC Act* provides a statutory framework whereby the RMOC may regulate certain aspects of the waste haulage industry (ie. s. 53(3) “vehicle standards”, s. 53(12) “truck routes”). The *RMOC Act* also allows the RMOC to take over public municipal landfills (ie. secs. 53(3.2 - 11)). The *RMOC Act* does not entitle the RMOC to regulate privately owned landfills by “a complete and detailed code of regulation.”

RMOC Act; Factum “Schedule B”

37. Although s. 54.1 of the *RMOC Act* empowers the RMOC to “impose conditions including the payment of compensation” on appellants, the only “condition” the RMOC has imposed is payment of tax.

RMOC Act; Factum “Schedule B”

38. Assuming, what is denied, that imposition of conditions pursuant to s. 54.1 entitles the RMOC to regulate, the RMOC has not regulated the appellants in either the plain meaning of that term, or in the sense required by the constitutional cases analyzed in para. 33. By-Law 234/92 is not regulatory in that it does not control any conduct of the appellants; it fails to provide any investigatory procedure; and it fails to provide for remedial or punitive consequences for failure to observe requirements or prohibitions. Furthermore, there is no other RMOC By-Law that purports to regulate privately owned landfills in a complete and detailed manner.

39. By-Law 234/92 is a revenue raising by-law, pure and simple. Section 1 of By-Law 234/92 contains definitions; secs. 2-9 and 11 require the four regional landfill operators quarterly to estimate tonnages of waste to be received, and to pay tax on that tonnage; s. 10 permits verification of tonnages received; secs. 12-13 concern coming into force. There is no "regulatory scheme" whatsoever in By-Law 234/92 in either the plain meaning of that term, or in the sense required by the constitutional cases.

By-Law 234/92; Factum "Schedule B"

40. In order to be valid, *Allard* requires provincially authorized indirect taxation to be "ancillary or adhesive" to a regulatory scheme. Assuming, what is denied, that By-Law 234/92 constitutes a "scheme", the purpose of the scheme is to raise revenue. The By-Law's revenue raising feature is not "ancillary or adhesive" to a scheme of regulation as required by the constitutional cases cited in para 33; it is the *only* feature of the By-Law.

Laidlaw Environmental Services v. *Moore (Township)*
(1993), 19 M.P.L.R. (2d) 30, 61

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Interprovincial Taxation

41. Beyond maintaining the balance of power in Canada's Federal system, constitutional law provides a second rationale why provinces are limited to direct taxation.

> provincial taxing powers (like other provincial legislative powers) are confined to the territory of the province. The leading feature of an indirect tax is, as we have noticed, that it is likely to be passed on by the initial taxpayer through the incorporation of the tax into the price of goods or services provided by the initial taxpayer. What this means is that a tax that is initially levied on a taxpayer within the province could ultimately be borne by a consumer outside the province. If that occurred, the province would be taxing a person to whom it provided no governmental benefits and to whom it was not accountable.
>
> Hogg, *Constitutional Law of Canada,* 3rd ed., 1992, p. 741
>
> La Forest, *The Allocation of Taxing Power under the Canadian Constitution*, 2nd ed. Toronto: Canadian Tax Foundation, 1981, p.161
>
> *C.I.G.O.L.* v. *Saskatchewan*, [1978] 2 S.C.R. 545, 584 (Dickson J. refers to the "prohibition of the imposition by a Province of any tax upon citizens beyond its borders.")

42. Sec. 53(2) of the *RMOC Act* requires that "The Regional Corporation shall provide facilities for the receiving, dumping and disposing of waste..." Section 53 (3.1)(b) stipulates:

> For the purposes of subsection (2), ... (b) the Regional Corporation may contract with a local or regional municipality in Ontario *or Quebec*, or a local board thereof; (emphasis added).
>
> *RMOC Act*; Factum "Schedule B"

43. The *RMOC Act*'s waste management provisions contemplate interprovincial movement of waste. By-Law 234/92 intends that waste originating in Quebec will be subject to an Ontario authorized tax when it is landfilled in the RMOC. Tax collected by a landfill operator in RMOC will be paid by a Quebec hauler. The general tendency of the tax will be to follow the hauler back across the Ontario - Quebec border and be passed on by the hauler to the originators of waste in Quebec. RMOC's charges will migrate into the waste stream of Quebec, and attach to the price of homes and other construction in Quebec because the cost of construction includes the cost of disposing of the construction waste stream. Ontario's *RMOC Act* will have authorized indirect taxation by Ontario authorities of citizens and residents of Quebec, a situation the constitutional limitation of s. 92(2) of the *Constitution Act, 1867* means to prevent.

C.I.G.O.L. v. *Saskatchewan*, [1978] 2 S.C.R. 545

PART IV - ORDER REQUESTED

44. Appellant respectfully asks this Honourable Court for an order:

(a) quashing decision nos. M920120, M920121 and M920122 of the Ontario Municipal Board dated April 11, 1996 and varied June 13, 1996;

(b) declaring RMOC By-law 234/92 as amended unconstitutional and of no force or effect;

(c) repealing By-Law 234/92 as amended;

(d) granting Appellant its costs throughout;

(e) for such further relief as this Honourable Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

This 22nd day of July, 1996.

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Joseph Eliot Magnet

Counsel for the Appellant

SCHEDULE “A”

LIST OF AUTHORITIES REFERRED TO

1. *Allard Contractors* v*. Coquitlam* [1993] 4 S.C.R. 371

2. La Forest, *The Allocation of Taxing Power Under the Canadian Constitution*, 2nd ed. Toronto: Canadian Tax Foundation, 1981

3. Hogg, *Constitutional Law of Canada,* 3rd ed., 1992; looseleaf ed. supplemented to 1995

4. Perry, *Taxation in Canada,* 5th ed. Toronto: Canadian Tax Foundation, 1990

5. *Laidlaw Environmental Service* v*. Moore (Township)* (1993) 19 M.P.L.R. (2d) 30

6. *Re LaFarge Concrete and District of Coquitlam* (1972) 32 D.L.R. (3d) 458

7. *General Motors* v*. City National Leasing* [1989] 1 S.C.R. 641

8. *A. G. Canada* v*. C.N. Transport Ltd* [1983] 2 S.C.R. 206

9. *MacDonald* v. *Vapor Canada* [1977] 2 S.C.R. 134

10. *C.I.G.O.L.* v*. Saskatchewan*, [1978] 2 S.C.R. 545

SCHEDULE “B”

TEXT OF RELEVANT PROVISIONS OF STATUTES AND BY-LAWS

INDEX

1. *Regional Municipality of Ottawa-Carleton Act*, R.S.O. 1990, c. R.14, as amended

2. *Regional Municipality of Ottawa-Carleton Amendment Act, 1992*, R.S.O. 1992, C.12

3. Regional Municipality of Ottawa-Carleton By-Law 234 of 1992

4. Regional Municipality of Ottawa-Carleton By-Law 76 of 1993

5. *Constitution Act, 1867*, ss. 92(2), (9), (13), (16), 92A

6. *Constitution Act, 1982*, s. 50