

SUPREME COURT OF CANADA



Case in Brief: *Lorraine (Ville) v. 2646-8926 Québec inc.*

2018 SCC 35 | Judgment of July 6, 2018 | On appeal from the Court of Appeal of Quebec

A property owner who thinks s/he is the victim of “disguised expropriation” needs to act in a reasonable time to challenge a municipal by-law, the Supreme Court has ruled. An owner can still ask to be compensated for the loss in property value even if the court rejects the challenge.

In 1989, the numbered company 2646-8926 Québec inc. bought a wooded property in the town of Lorraine. Mr. Pichette, the majority shareholder, planned to build a housing subdivision there eventually. But in 1991 the town passed a zoning regulation and included over half of the property in a conservation area. Mr. Pichette did not find out about this until about ten years later when he visited the land for the first time. He tried to get the town to change its mind about what it had done to the property, but it didn't. Mr. Pichette accused the town of “disguised expropriation.” Disguised expropriation is when a government illegally takes away some of the rights of owning a property (but not the property itself) without fair compensation. In this case, Mr. Pichette said passing a zoning by-law that unfairly limited use of the property without fair compensation was disguised expropriation.

A property owner who thinks the government has taken away his or her property illegally can ask the courts for help. For example, a court can cancel a by-law or declare that it can't be applied to the property. The court's power in these cases is discretionary, meaning it can refuse to intervene, for example, if the property owner waited too long to do anything. Mr. Pichette's company turned to the courts for help in 2007. The company asked for the by-law to be overturned and for the town to pay damages.

The trial judge said the two issues (overturning the by-law and the damages) should be decided separately. He focused on the by-law, keeping the issue of damages aside to decide later. He rejected the request to overturn the by-law because it was made too late. The Court of Appeal disagreed with this. It said the trial judge should have thought about whether the by-law was an abuse of power, which courts could intervene to correct even though there was a delay. (An abuse of power is when a state actor does something that it was not supposed to, with or without bad intent.) The Court of Appeal ruled for the property owner, but sent the matter back to the lower court to decide on compensation. The town appealed.

Chief Justice Richard Wagner, writing for a unanimous Supreme Court, ruled for the town. The question before the Court was whether the trial judge could refuse to declare the by-law unenforceable against the owner of the land. Specifically, it was whether the trial judge could refuse to do so when the owner claimed the by-law was illegal, but waited too long to take legal action. Chief Justice Wagner said the trial judge's decision to deny the claim because of the delay was reasonable. The trial judge was allowed to use his discretion this way in this situation. Sixteen years had passed from the time the by-law came into effect to the time the company challenged it in court. At least four years had passed from the time Mr. Pichette learned about it. Both delays were unreasonable. Also, the Civil Code of Quebec said the owner no longer had a right to make the claim because it had waited more than ten years to act. However, Chief Justice Wagner noted that an owner who didn't challenge a by-law in a reasonable time could still ask for compensation to cover the loss in property value caused by the by-law. He didn't decide on compensation in this case, because that issue was separate from the issue of whether the by-law could be enforced, as the trial judge had said.

This case dealt with zoning regulations that a property owner said amounted to disguised expropriation. The decision confirmed that an owner trying to have a zoning by-law declared void or unenforceable has to act in a reasonable time to defend the rights claimed, or the request will be denied.

For more information (case no. 37381):

- [Reasons for judgment](#)
- [Case information](#)
- [Webcast of hearing](#)

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Breakdown of the decision:

- Unanimous: [Wagner](#) C.J. ([Abella](#), [Moldaver](#), [Karakatsanis](#), [Gascon](#), [Côté](#), [Brown](#), [Rowe](#) and [Martin](#) JJ. in agreement)

Lower court rulings (in French only):

- Court of Appeal of Quebec ([appeal judgment](#))
- Superior Court of Quebec ([trial judgment](#))

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