Federal Court  Cour fédérale

Date: 20231127

Docket: T-1450-23

Citation: 2023 FC 1582

[ENGLISH TRANSLATION]

Ottawa, Ontario, November 27, 2023

PRESENT: Associate Chief Justice Gagné

BETWEEN:

DENIS VACHON (ESTATE OF), FRANÇOIS GENDRON, KURT LUCAS, MONIQUE LACROIX, JOSEPH VALLÉE, YOLANDE BOULET, COOP DE VIE COMMUNAUTAIRE LA CHAINE, JOSÉE MORIN, SYLVAIN CÔTÉ, LES INVESTISSEMENTS RAYPI INC

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

I. Overview

[1] Ten years ago, the whole world looked on in horror as tragedy struck Lac-Mégantic, brutally shaking the community to its core. Since then, there have been calls to reroute the railway that gave rise to this tragic event so that it no longer passes through downtown.

[2] The applicants are ten property owners whose lands were subject to Notices of Confirmation of Intention to Expropriate [**Expropriation Notices**] issued by the Minister of Public Works and Government Services [**Minister**] in anticipation of the construction of a rail bypass rerouting trains away from downtown Lac-Mégantic.

[3] They have filed an application for judicial review to cancel the Expropriation Notices published in Quebec's land register with regard to their lots and are asking the Court to issue an interlocutory injunction to stay the Expropriation Notices, grant them access to the expropriated parcels of land and deny access to representatives of the Crown.

II. Facts

A. *Feasibility studies and environmental impact assessments*

[4] On July 6, 2013, a train carrying crude oil derailed in downtown Lac-Mégantic. Forty-seven people lost their lives in the resulting explosion and fire, and the downtown was essentially destroyed. As one would imagine, the environmental damage was considerable.

[5] Since then, the town's officials have called for the construction of a bypass.

[6] In 2015, together with the provincial and federal governments, the town contracted the firm AECOM to carry out a feasibility study to explore the possibility of rerouting the railway away from downtown.

[7] At the end of Phases 1A and 1B of this study (carried between 2015 and 2020), which looked at various rail line options (including the status quo and a number of different bypass corridors), the experts recommended the bypass identified as [TRANSLATION] "Variant 2 of Corridor 1". The chosen corridor was based on in-depth multi-criteria analyses considering such factors as technical characteristics (including rail safety), proximity to buildings, the environment and project costs.

[8] The project was submitted twice to Quebec's Bureau d'audience publique sur l'environnement [**BAPE**] for public hearings, and two reports were prepared (dated July 27, 2017, and October 24, 2019). In its second report, the BAPE backed Variant 2 of Corridor 1, the option recommended by AECOM and government officials, and stated that although there was no social consensus, the vast majority of participants at the public hearing were in favour of a bypass.

[9] In parallel to this, as part of its environmental assessment of the project under the *Environment Quality Act*, CQLR c Q-2, the town submitted its own environmental impact assessment to Quebec's Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques, now known as the Ministère de l'environnement, de la lutte contre les changements climatiques, de la faune et des parcs [**Quebec Ministry of the Environment or MEQ**]. This assessment concerned Variant 2 of Corridor 1 and proposed numerous measures to mitigate potential impacts with regard to all aspects of the project, including soil and water quality, vegetation and wetlands, lands and buildings, health effects, farming activities, air quality and noise. The Quebec Ministry of the Environment considered the town's impact assessment to be satisfactory.

[10] This impact assessment was updated in April 2020 to account for a change made by AECOM in June 2018 to the rail right-of-way's boundaries, enlarging the total surface area from 86.1 hectares to 111.2 hectares (an increase of 29%).

[11] After the BAPE's second report, fifteen provincial government ministries and directorates, including the Ministère de la Sécurité publique [public safety], the Ministère des Transports, the Ministère des Forêts, de la Faune et des Parcs [forests, wildlife and parks], the Ministère de la Santé et des Services sociaux [health and social services] and several directorates of the Quebec Ministry of the Environment, analyzed the impact assessment and other documents submitted by the town to determine the project's environmental acceptability.

[12] On September 2, 2020, the Quebec Ministry of the Environment announced to the Department of Transport of Canada [**Transport Canada**] that, having completed its environmental analysis, in consultation with the ministries and agencies concerned, and taking into account the recommendations made by the BAPE in 2017 and 2019, it found the rail bypass project to be environmentally acceptable.

[13] However, the MEQ recommended that Transport Canada implement 138 mitigation, compensation and follow-up measures for carrying out the project, in keeping with the public's expectations and best practices in environmental protection. Among these measures, Measure 43 provided that financial compensation would have to be paid to offset losses of wetlands and hydric environments, as provided by provincial regulations. On September 4, 2020, Transport Canada committed to implementing the 138 mitigation measures recommended by the MEQ.

[14] In September, AECOM completed its feasibility study by submitting its final design development report, which used data from land surveys and geotechnical investigations following the preliminary design.

[15] The feasibility study and the provincial environmental assessment process having been completed, Transport Canada and the Canadian Pacific Railway Company [**CP**] (the railway's new owner) signed a contribution agreement in May 2021 to commence the design phase of the bypass project, under CP's direction.

[16] In fall 2021, CP filed an application to construct a railway line with the Canadian Transportation Agency [**CTA**], pursuant to section 98 of the *Canada Transportation Act*, SC 1996, c 10.

[17] In turn, Transport Canada consulted the departments of Health Canada, Environment and Climate Change Canada and Natural Resources Canada, as well as the Geological Survey of Canada, for their respective expert opinions regarding mitigation measures.

[18] Over the course of 2022, Transport Canada held two public consultations on the project. The first dealt with the project's execution in general, and the second, with the hydrology-related issues it raised. For the second consultation, Transport Canada updated the list of mitigation measures. They now numbered 210, of which 9 were aimed at minimizing the project's hydrological impacts of the project and 5 were added after consultations with First Nations.

[19] The administrative process before the CTA is still in progress, as the CTA is still waiting for information it requested from various stakeholders, including the reports from Transport Canada's two consultations in 2022 and an update to the assessment of the project's environmental effects.

B. *Crown's right to expropriate*

[20] The federal Crown's authority to expropriate is set out in subsection 4(1) of the *Expropriation Act*, RSC 1985, c E-21 [**EA**], which provides as follows:

4 (1) Any interest in land or immovable real right, including any of the interests or rights mentioned in sections 7 and 7.1, that, in the opinion of the Minister, is required by the Crown for a public work or other public purpose may be expropriated by the Crown in accordance with the provisions of this Part.	4 (1) La Couronne peut exproprier, en conformité avec les dispositions de la présente partie, tout droit réel immobilier ou intérêt foncier, y compris l'un des droits ou intérêts mentionnés aux articles 7 et 7.1, dont elle a besoin, de l'avis du ministre, pour un ouvrage public ou à une autre fin d'intérêt public.

[21] Since the 1996 repeal of the *Railway Act*, RS 1985, c R-3, the EA also allows railway companies to ask Transport Canada to have the Crown expropriate the interests in land or immovable real rights they require for the purposes of their railways and have unsuccessfully attempted to purchase (section 4.1 of the EA). Section 4.1 is of particular interest in this case, since the applicants argue, among other things, that the notices they received should have been issued under this provision.

[22] The process to be followed for each of these measures is entirely provided for in the EA, but unlike an expropriation by the Crown on its own initiative, an expropriation initiated by a railway company requires the approval of the Governor in Council and a certain number of financial guarantees from the railway company.

[23] In both cases, the Minister asks the Attorney General of Canada [**AGC**] to register a notice of intention to expropriate against the property sought, in the land register (section 5 of the EA). Once the notice has been registered, the Minister has a copy of it published in a publication in general circulation and sends a copy to each of the persons whose names are set out in the report of the AGC. The notice includes, among other things, a statement regarding the right to object to the expropriation within 30 days (sections 8 and 9 of the EA).

[24] If there are any objections, the Minister orders a public hearing and asks the AGC to appoint a hearing officer to receive and consider the opponents' representations and report on the nature and grounds of the objections (section 10 of the EA).

[25] After receiving and considering the hearing officer's report, the Minister may either confirm the intention to expropriate or abandon it (section 11 of the EA). The Minister confirms the intention to expropriate by asking the AGC to register an expropriation notice against the property concerned, in the land registry (section 14 of the EA).

[26] Upon the registration of a notice of expropriation, the rights and interests in the property are vested in the Crown (section 15 of the EA), although physical possession may come at a later date, in one of the various scenarios contemplated in section 19 of the EA.

[27] Within 90 days after the notice of expropriation is registered, the Minister sends each person concerned an offer of compensation based on a written appraisal of the property, without prejudice to the right of that person, if the person accepts the offer, to claim additional compensation (section 16 of EA).

[28] Sections 25 to 36 of the EA concern the right to compensation, the parameters for negotiating a mutual agreement in this regard and, where applicable, the potential appointment of a negotiator or commencement of proceedings in this Court to determine the compensation and interest payable to the expropriated party.

C. *Expropriation process at issue*

[29] Since 70% of the total surface area required for the bypass right-of-way is located in an agricultural zone, it is subject to the protection regime provided under Quebec's *Act respecting the preservation of agricultural land and agricultural activities*, CQLR, c P-41.1, and any subdivision or transfer for non-agricultural purposes requires the authorization of Quebec's farmland protection board, the Commission de protection du territoire agricole du Québec [**CPTAQ**].

[30] In November 2020, CPTAQ authorized the use and disposal of these lands for non-agricultural purposes and concluded that the chosen corridor was the one that would have the least impact on agricultural land and the surrounding farms. The Union des producteurs agricoles de l'Estrie, an association of Eastern Townships farmers, appealed that decision to the Tribunal

administratif du Québec [administrative tribunal of Quebec], which dismissed the appeal in April 2023.

[31] On February 13, 2023, at the Minister's request, the AGC registered the Expropriation Notices regarding the parcels of lots belonging to the applicants. These notices were then published in the *Canada Gazette* and in local newspapers.

[32] After receiving some 1,500 notices of objection, the Minister ordered a public hearing, and the AGC appointed a hearing officer to conduct it. The public hearing took place on May 4, 5, 8 and 9, 2023, and the report was submitted to the Minister on May 25, 2023.

[33] After receiving and considering the report, the Minister confirmed the expropriations on May 30, 2023, and the Expropriation Notices were entered in the land register on June 14, 2023.

[34] Compensation offers were issued on July 21, 2023, pursuant to Order in Council PC 2023-0567 signed by the Governor in Council. The time for taking possession was reduced to 46 days (instead of 90), and the Crown took physical possession on August 1, 2023.

III. Issues

[35] By motion for interlocutory injunction, the applicants ask this Court to:

i) stay the Expropriation Notices registered with regard to their lots;

ii) stay Order in Council PC 2023-0567 (reducing the time before taking possession);

iii) allow the applicants access to the expropriated lots; and

iv) deny representatives of the Crown access to the expropriated lots.

[36] The respondent correctly points out that the Court should not grant the first two remedies sought because they are now moot (*Lac des Mille Lacs First Nation v Chapman*, 1998 CanLII 8004 (FC), at para 2). The Court cannot stay the property transfer, which was completed on June 14, 2023, nor can it stay the order in council reducing the time before taking physical possession of the expropriated lots, since even if the order in council did not exist, the taking of possession would still have happened—by mere operation of subparagraph 19(1)(c)(i) of the EA—90 days after the registration of the Expropriation Notices, on September 14, 2023.

[37] The analysis that follows will therefore deal with the orders sought by the applicants that are not already moot.

[38] The applicable test for obtaining an interlocutory injunction order is the one laid down by the Supreme Court of Canada in *RJR-MacDonald Inc v Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 SCR 311 at 334. The applicants must therefore meet the following three criteria, which are cumulative:

a) *Have the applicants demonstrated that there is a serious issue to be tried in their application for judicial review?*

b) *Have the applicants demonstrated that they will suffer irreparable harm if the application for an injunction is refused?*

c) *Have the applicants demonstrated that the balance of convenience favours granting the application for an injunction?*

IV. Analysis

[39] Before addressing the issue of whether the applicants meet the criteria for granting an interlocutory injunction, I must consider the application that they presented at the beginning of the hearing to file a supplementary affidavit from the mayor of the municipality of Frontenac and member of the council of mayors of the Regional County Municipality [**RCM**] of Le Granit. In that affidavit, the mayor confirms that on October 18, 2023, the RCM of Le Granit adopted a resolution regarding the bypass, confirming the contract awarded to an independent firm to study the impact that widening the railway right-of-way would have on wetlands. He also confirms that a similar resolution was adopted by the RCM of Beauce.

[40] Although the affidavit was served on the respondent the day before the hearing, it appears that counsel for the respondent only became aware of it at the beginning of the hearing.

[41] In any event, I find that the affidavit was filed too late, in terms of both the date it was signed (October 23, 2023) and the date of the resolution to which it refers (October 18, 2023). The widening of the railway right-of-way has been discussed since as early as June 2018. It was the subject of a second decision by the CPTAQ, dated November 22, 2022, on (Exhibit SPAC-6), which states that the RCM of Le Granit appeared as an intervener before the CPTAQ in support of the application, as evidenced by its resolution 2021-182 (see paragraph 19 of the decision).

[42] That said, and for the reasons given below, the fact that the RCM of Le Granit asked for an additional expert opinion at this stage does not, in my opinion, have any impact on the outcome of the applicants' motion. Therefore, I will not take this affidavit into account.

A. *Serious issue to be tried*

[43] At the first stage of this analysis, I must consider whether the litigation in which the applicants wish to obtain an interlocutory injunction raises a serious issue to be tried, that is, one that is neither frivolous nor vexatious. The Court must therefore conduct a preliminary and interim assessment of the merits of the case.

[44] In their Amended Notice of Application, the applicants rely on four main grounds to challenge the Expropriation Notices:

- They criticize the Crown for exercising its authority to expropriate under subsection 4(1) of the Act instead of following the process provided in section 4.1, which is initiated upon an application by a railway company.
- They argue that the project is not in the public interest and only benefits private interests.
- They allege that the Expropriation Notices are premature, as the CTA has still not approved the construction of the bypass.
- They raise serious environmental issues and the lack of social acceptability related to the project.

[45] I find that the first two grounds of the challenge are corollaries of each other. If the project serves the public interest, the Crown could exercise its authority to expropriate under

section 4 of the EA, while if it only serves CP's private interests, its authority could only be based on section 4.1 of the EA. These grounds will therefore be considered together.

(1) Basis for authority to expropriate and public interest at issue

[46] The applicants' position in this regard is somewhat contradictory. At paragraph 15 of their Amended Notice of Application, they state as follows:

> [TRANSLATION]
> 15. In fact, this bypass is solely for the benefit of CENTRE DU MAINE ET DU QUÉBEC INC. (hereafter the "C.M.Q. "), whose main shareholder is the CANADIAN PACIFIC RAILWAY COMPANY (Hereafter "C.P. "), the latter having never asked for such a bypass and stating, through its representatives on numerous occasions, that it had no need for such a bypass and, most significantly, that it would not contribute any funds towards its construction, as said project would, according to the most realistic estimates, cost more than one billion dollars;

[47] It seems to me that the applicants are contradicting themselves. If the project only serves CP's interests, CP would at minimum have to be interested in it, which is clearly not the case.

[48] The rail line exists, and it passes through downtown Lac-Mégantic. It is not a matter of building a whole new rail line or a new section of track for the benefit of a railway company—which falls under section 4.1 of the Act—but one of relocating the existing tracks for the better safety of the residents of Lac-Mégantic, without having to shut down this rail corridor.

[49] First, the project is in the interests of the town of Lac-Mégantic and its residents. It is seen as an essential component of the town's recovery and the reconstruction of its downtown, as well as being necessary to improve the residents' safety. The railway is also vital to the economy

of the town and that of the RCM of Le Granit; it is essential for seven businesses which are major local employers. This is why officials do not want to see it simply dismantled.

[50] Therefore, the purpose of the project is to maximize safety by reducing the slope and smoothing out the curves while maintaining a safe connection to Lac-Mégantic's industrial park.

[51] But the public interest extends beyond the town's limits. Transport Canada argues that rail transport is a critical link in Canada's trade network, and that the railway is part of a rail corridor connecting Montréal to Saint John, New Brunswick which is economically important for both Quebec and Canada.

[52] In addition to the fact that the evidence led by the respondent demonstrates *prima facie* the public interest at issue, section 23 of the EA sets out a presumption to the effect that the work to which a notice of intention to expropriate applies is required by the Crown for a public purpose. This presumption can only be rebutted if bad faith on the part of the responsible minister is proved (*R v Ladouceur*, 1976 CarswellNat 509, [1976] FCJ No 415, at para 11, citing *Calgary Power Ltd and Halmrast v Copithorne*, 1958 CanLII 73 (SCC), [1959] SCR 24. And yet the Minister's bad faith in this case has not been proved or even alleged.

[53] In *Squaw Point Ranching Co v Red Deer (City)*, 1989 CanLII 3380 (AB KB), the Court of Queen's Bench (as it then was) had to consider an application for judicial review of a decision by the city of Red Deer to expropriate a parcel of land belonging to the plaintiff to exchange it for another parcel owned by CP in downtown Red Deer. The city derived its authority to expropriate from Alberta's *Expropriation Act*, RSA 1980, c E-16.

[54] The plaintiff argued that the application to expropriate land for the new tracks should have been made by CP, relying on the *Railway Act*, RS 1985, c R-3 (repealed in 1996 and replaced by, among other provisions, section 4.1 of the EA) and the *Canada Transportation Act*, RSC 1996, c 10 (in its pre-1996 version, the *National Transportation Act*, RSC 1970, c N-17). The Court rejects this argument and instead views the town's project as a whole—the creation of an urban transportation corridor that requires relocating the tracks—and concludes that the expropriation serves a real public interest.

[55] The Minister may therefore expropriate the land and transfer it to CP, so long as the expropriation is in pursuit of the public interest (*Vincorp Financial Ltd v Oxford (County)*, 2014 ONSC 2580, at para 84 (aff'd 2014 ONCA 876, leave to appeal to SCC refused, 36294 (May 21, 2015)), which is presumed.

[56] Therefore, in my view, the applicants' first argument is frivolous.

(2) Premature nature of Expropriation Notices

[57] Subsection 98(1) et seq. of the *Canada Transportation Act*, SC 1996, c 10, provide that the construction of a railway is conditional on the CTA's approval. As stated above, the application to the CTA was submitted in fall 2021 and is still pending.

[58] The applicants submit that the Minister [TRANSLATION] "is putting the cart before the horse" in publishing its Expropriation Notices before the CTA has rendered its decision on CP's application and a potential appeal to the Federal Court of Appeal has been exhausted. However,

the applicants do not cite any authorities confirming that the approval procedure and the expropriation procedure cannot be conducted in parallel.

[59] On the contrary, in *Red Deer City*, the expropriation of land to build a new railway line took place concurrently with the CP's application to the CTA for construction approval, and the Court rejected the argument that the expropriation was premature and therefore invalid (at para 25).

[60] Given the scope of the project and the consultations required to implement it (intervention by the BAPE and the CPTAQ and consultations with experts, including professionals in civil engineering and infrastructure, railway engineering, forest engineering, hydraulic engineering, the environment, geology, biology and acoustics), it is hard to imagine how all this planning work could be carried out sequentially, as the applicants suggest.

[61] Although the CTA has not yet rendered its decision, it seems clear that it has multiple impact reports and numerous mitigation measures that have already been recommended by various federal and provincial stakeholders. In its requests for information issued on November 12, 2022, December 13, 2022, and February 9, 2023, the CTA refers to them and asks for additional information.

[62] Not only do I find that the premature nature of the Expropriation Notices is not a serious issue warranting an interlocutory injunction, but the fact that the CTA has still not approved the construction of the bypass has a direct impact on the second criterion for issuing an interlocutory

injunction, namely, the irreparable harm alleged by the applicants. We will come back to this later.

(3) Environmental issues and social acceptability

[63] Although it seems undeniable that the bypass project for downtown Lac-Mégantic raises significant environmental and social issues, these issues have been and continue to be scrutinized by a variety of specialized federal and provincial administrative decision makers mandated by lawmakers to assess them.

[64] It also seems undeniable that none of the options assessed, not even maintaining the status quo, is free of environmental impacts or has reached a social consensus. As evidence of this, there is the environmental disaster caused by the derailment of the train and the impact of this tragedy on the physical and mental health of the residents of Lac-Mégantic, on Lac-Mégantic's downtown and on adjacent waterways.

[65] However, and with the utmost respect for all the people impacted by the project, this is not the issue. The application for judicial review concerns the Minister's decision to proceed with registering the Expropriation Notices; that decision must be analyzed solely in light of the EA's requirements, and this Court's jurisdiction is limited to analyzing whether these requirements have been met. A number of administrative decision makers have considered the environmental and social issues. The CPTAQ's decisions fell within the jurisdiction of the Tribunal administratif du Québec and the Court of Québec; those of Quebec's Minister of the Environment and other provincial ministries, within the jurisdiction of the Superior Court of

Québec; and the eventual decision of the CTA, within the jurisdiction of the Federal Court of Appeal.

[66] After considering the grounds of objection and weighing the competing interests, the Minister concluded that the project is for public purposes. In this regard, nothing in the Minister's decision or in the applicants' representations leads to the conclusion that she acted in bad faith.

[67] In his work entitled *The Law of Expropriation and Compensation in Canada* (Carswell, 1992, 2nd ed at 51 and 52), Professor Eric C.E. Todd explains that at the stage of confirming the intention to expropriate (the decision challenged by the applicants), the expropriating authority carries out a purely administrative function, and that the only issues that such a decision can raise are whether the authority complied with the statutory obligation to hold a public hearing when objections are raised and whether the authority considered the hearing officer's report (which states the grounds of objection).

[68] However, the Minister did indeed comply with these statutory obligations, and the applicants make no claims to the contrary.

[69] In *Walters v Essex County Board of Education*, 1973 CanLII 20 (SCC), [1974] SCR 481, the Supreme Court of Canada confirmed that there are few grounds for challenging an expropriation for public purposes. Although the respondent school board's authority to expropriate derived from the expropriation legislation applicable at that time in Ontario, *The Expropriations Act*, 1968–69 (Ont), c 36, the principles laid down in that judgment also apply in

the case at hand. The expropriation procedure provided for in that statute is similar to the one in federal legislation, except that under Ontario law, the hearing officer is responsible for determining whether the taking of the property is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority. The hearing officer's report to the approving authority must therefore include (i) a summary of the evidence and arguments, (ii) the officer's findings of fact and (iii) the officer's opinion on the merits of the application for approval, with the officer's reasons for that opinion.

[70] The school board was planning to build a school and wanted to expropriate land that was part of a farm considered very productive. However, the hearing officer concluded that the expropriation was indefensible, that it was neither fair nor sound and that on the merits it should not be approved. Despite this, the school board confirmed its intention to expropriate. Here is what the Court wrote about the impact of the hearing officer's report on the approving authority's decision (at 486 and 487):

> The approving authority does not sit under s. 8 [the equivalent of section 11 of the Act, which obliges the Minister to consider the report and confirm her intention to expropriate or to abandon it], as an appeal tribunal nor as a tribunal of review of the inquiry officer's report. It has an independent power to approve or disapprove the proposed expropriation, or to approve it with modifications, subject only to a duty to "consider" the inquiry officer's report. It is not bound by either the findings of fact nor by any interpretation of law in that report. That is plain from s. 8 in its relation to the scheme of the Act as a whole.
>
> What, then, is involved in its duty to "consider" the report? Certainly, the Board must have the report before it, and the evidence shows that each member had a copy at least three days before the approval meeting. . . . In the present case, the Board was in session on the report in committee of the whole for about one hour and one-half, and had before it a critical set of opposing reasons which it ultimately accepted. . . . Unless the good faith, indeed the honesty, of the members of the Board is called in

> question, the fact that they are briefed or counselled in advance to a rejection of the report is not a ground for concluding that they did not "consider" it. I do not read the duty to "consider" as imposing upon an approving authority an obligation, if its decision is adverse to the opinion expressed in the report, to show by its written reasons that its adverse decision is reasonably founded and hence run the risk of review by the Courts if they should conclude that it is not.

[71] In a context where Parliament has imposed on hearing officers an obligation to report on the grounds of objection but take no position on them, the Minister's statutory obligation could not be greater than the one Ontario's legislation imposes on an approving authority.

[72] In the case at hand, the Minister considered the hearing officer's report and all the grounds of objection. The Expropriation Notices all contain a summary of the nature of and grounds for the objections made, as well as a more detailed statement of the representations made by the objecting parties before the hearing officer.

[73] Regarding social acceptability, the Minister notes that a [TRANSLATION] "project as complex as this one . . . cannot be undertaken without having an impact on some residents, or even on the environment". She points out that the project is essentially intended to help the community of Lac-Mégantic move on and thereby mitigate the traumatic effects of the 2013 accident. On the one hand, she has considered the referendum held by the municipality of Frontenac and the fact that the municipal council of Nantes has withdrawn its support for the project. On the other, she notes that the municipal council of Lac-Mégantic remains firmly committed to the project and that Transport Canada has received many letters from citizens in favour of the project.

[74] As for the environmental and railway safety issues, she finds that the chosen corridor is the product not only of numerous specialized studies conducted in the field, but also of multiple public consultations that specifically addressed these aspects. She notes that the chosen corridor is more advantageous in terms the environment, and safer.

[75] Lastly, the Minister has responded to the concerns regarding potential impacts on the quality and quantity of well water, taking into account the risk mitigation measures and explaining that the loss of wetlands and hydric environments as a result of carrying out the project will have to be set off through a payment to the Fonds de protection de l'environnement et du domaine hydrique de l'État [Fund for the Protection of the Environment and the Waters in the Domain of the State], which will fund wetlands restoration and conservation projects in the area.

[76] Although at first glance the environmental and social acceptability issues raise very serious questions, they do not fall within in the very narrow grounds of objection in an expropriation notice and, for this reason, are outside the jurisdiction of this Court.

[77] I therefore find that the applicants have not met the first criterion for issuing an interlocutory injunction.

B. *Irreparable harm*

[78] The applicants must demonstrate in a detailed and concrete way that they will suffer real, definite, unavoidable harm—not hypothetical and speculative harm—that cannot be repaired

later (*Western Oilfield Equipment Rentals Ltd v M-I LLC*, 2020 FCA 3, at paras 11–12); only harm suffered by the applicants will be taken into account (*Air Passengers Rights v Canada (Transportation Agency)*, 2020 FCA 92, at paras 29–30).

[79] In their memorandum, the applicants allege the following irreparable harm:

> 1. The violation of their right of ownership under article 947 of the *Civil Code of Québec*, c CCQ-1991 [**CCQ]**, and under section 6 of the *Charter of human rights and freedoms*, c C-12;
>
> 2. Environmental harm based on, according to them, the various expert reports expressing reservations regarding the bypass: risks of drinking water shortages and contamination, risk of land subsidence, and destruction of wetlands and hydric environments;
>
> 3. The project's exorbitant cost, aggravated by the presence of wetlands and the terrain;
>
> 4. A widening of the railway right-of-way (second AECOM report) increasing the expropriated surface area from 83 to 143 hectares, without explanation; and
>
> 5. The premature nature of the Expropriation Notices, in that Transport Canada has asked for additional studies and the CTA has still not approved construction.

[80] Only applicants Kurt Lucas and Sylvain Côté filed affidavits. They reiterate the five points above and add that continuing expropriation measures will mean that their [TRANSLATION] "lands will never be restored, which justifies the application for a stay of proceedings."

(1) Applicants' right of ownership

[81] Article 947 of the CCQ reads as follows:

Ownership is the right to use, enjoy and dispose of property fully and freely, subject to the limits and conditions for doing so determined by law. . . .	La propriété est le droit d'user, de jouir et de disposer librement et complétement d'un bien, sous réserve des limites et des conditions d'exercice fixées par la loi. . . .

[82] Section 6 of the *Charter of human rights and freedoms*, CQLR, c C-12, for its part, provides as follows:

Every person has a right to the peaceful enjoyment and free disposition of his property, except to the extent provided by law.	Toute personne a droit à la jouissance paisible et à la libre disposition de ses biens, sauf dans la mesure prévue par la loi.

[83] The applicants allege that the violation of their right of ownership guaranteed by the provisions cited above causes them irreparable harm. However, as appears from these provisions, this right is not without limits, and one of these limits is specifically provided for in the provincial and federal legislation on expropriation.

[84] The alleged harm is therefore, in essence, the usual effect of an expropriation. The application of the law cannot, in and of itself, constitute irreparable harm (*Fortius Foundation v Canada (National Revenue)*, 2022 FCA 176, at para 32). This harm can be quantified in monetary terms and cured. Sections 25 et seq. of the EA expressly provide for compensation and damages to remedy expropriation-related losses, including disbursements in conciliation processes or court challenges to the quantum of compensation offered. The law strives to make the expropriated parties whole, so to speak.

[85] Once again, the expropriation procedure has been completed and cannot be stayed. In their affidavits, Messrs. Lucas and Côté do not state the damage they would personally sustain from the expropriation of their parcels of land, between now and when the Court rules on their application for judicial review, if a stay is not granted. They do not discuss how not having access to these parcels of land would cause them irreparable harm.

[86] For those applicants who will see their land cut in half by the tracks (including witness Kurt Lucas), the compensations offered include the loss of value in the remainder and the construction of roads and paths for accessing the remaining portions of the properties.

[87] Lastly, and as we will see further on, construction work cannot begin before the CTA has given its approval. So long as this administrative process (and the judicial process, if there is an appeal to the Federal Court of Appeal) has not been completed, the applicants do not have to fear that their [TRANSLATION] “lands [can] never be restored”. Transport Canada’s evidence is to the effect that, pending all the required approvals, only staking and survey work are being done on the expropriated lands and that some preparatory work must be done by the town. Even once all the approvals have been given, CP will have to hold a tendering process, which will cause additional delays.

[88] The applicants have therefore not satisfied me that the effect of the expropriation itself on their right of ownership will cause them irreparable harm.

(2) Environmental harm

[89] This issue was analyzed in the previous section, but suffice it to say hire that the applicants do not allege how the environmental impacts of the project will cause them irreparable harm personally, as opposed to collectively. Moreover, their counsel acknowledged at the hearing that there was no personal harm.

[90] Therefore, this issue cannot justify issuing an interlocutory injunction in favour of the applicants.

(3) Project costs

[91] The bill for this project, as hefty as it may be, will have no direct impact on the applicants. An agreement between the federal government and the provincial government provides that the costs of the project will be funded by both levels of government, on a 60%/40% basis.

[92] The applicants have not shown how they would suffer personal irreparable harm if the order is not granted.

(4) Unexplained increase in railway right-of-way

[93] First, this decision is not unexplained. For example, it was the subject of an amendment to the town’s impact assessment in June 2018 and a complementary report by AECOM in

April 2020, and it was addressed and analyzed in the CPTAQ's second decision, in November 2022.

[94] And once again, the applicants have not explained how the expansion of the right-of-way, for which the transfer of ownership has already been completed, is likely to cause them irreparable harm without an order of the Court.

(5) Premature nature of Expropriation Notices

[95] This issue was also addressed in the previous section.

[96] However, and as stated above, the fact that the start of work is neither certain (the CTA could deny approval) nor imminent (several steps remain) confirms that the harm alleged by the applicants is purely hypothetical. This cannot justify making an order for an interlocutory injunction.

C. *Balance of convenience*

[97] In *RJR-MacDonald,* the Supreme Court of Canada stated that this criterion entails "a determination of which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits" (at 342). Since the applicants did not adduce any evidence of personal harm, they have not demonstrated that the balance of convenience tilts in their favour.

[98] Moreover, when a party seeks to stay a statute or a government measure while the case in which its validity is challenged is still in progress, it is presumed that the stay would harm the public interest. Here is what the Court wrote on this subject in *RJR-MacDonald* (at 346):

> In the case of a public authority, the onus of demonstrating irreparable harm to the public interest is less than that of a private applicant. This is partly a function of the nature of the public authority and partly a function of the action sought to be enjoined. The test will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility. Once these minimal requirements have been met, the court should in most cases assume that irreparable harm to the public interest would result from the restraint of that action.

[99] Therefore, the public interest also favours dismissing the motion.

D. *Style of cause*

[100] Under rule 303 of the *Federal Courts Rules*, SOR/98-106, the respondent in an application for judicial review is usually the Attorney General of Canada. The respondent therefore requests that the style of cause be amended to remove the Minister as respondent. This request is granted.

E. *Costs*

[101] At the end of the hearing, I asked the parties to discuss amongst themselves what amount they thought would be fair to award as costs to the winning party, and they agreed on an amount of $2,700.

V. Conclusion

[102] Since I am of the opinion that the applicants' motion does not meet any of the three criteria for issuing an interlocutory injunction, it is dismissed and costs in the amount of $2,700 are awarded to the respondent.

ORDER in T-1450-23

THIS COURT ORDERS as follows:

1. The application for an interlocutory injunction is dismissed.

2. The style of cause is amended so that the Attorney General of Canada is designated as the respondent.

3. Costs in the amount of $2,700 are awarded to the respondent.

"Jocelyne Gagné"
Associate Chief Justice

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1450-23
STYLE OF CAUSE:	DENIS VACHON (ESTATE OF), FRANÇOIS GENDRON, KURT LUCAS, MONIQUE LACROIX, JOSEPH VALLÉE, YOLANDE BOULET, COOP DE VIE COMMUNAUTAIRE LA CHAINE, JOSÉE MORIN, SYLVAIN CÔTÉ, LES INVESTISSEMENTS RAYPI INC v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	QUÉBEC, QUEBEC
DATE OF HEARING:	OCTOBER 24, 2023
ORDER AND REASONS:	GAGNÉ ACJ
DATED:	NOVEMBER 27, 2023

APPEARANCES:

Jean-Claude Boutin Daniel E. Larochelle Frédéric Paré	FOR THE APPLICANTS
Caroline Laverdière Andréane Joanette-Laflamme Béatrice Stella Gagné Meriem Barhoumi	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jean-C. Boutin, Lawyer Lac-Mégantic, Quebec Daniel E. Larochelle, L.L.B. Avocat Inc.	FOR THE APPLICANTS

Lac-Mégantic, Quebec

Cliche, Laflamme, Loubier Inc.
Saint-Joseph-de-Beauce, Quebec

Attorney General of Canada — FOR THE RESPONDENT
Montréal, Quebec