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Bill 66 to Accelerate Certain Infrastructure Projects

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Bill 66, *An Act respecting the acceleration of certain infrastructure projects*, was introduced in the National Assembly on September 23, 2020. Bill 66 reproduces in essence the provisions governing infrastructure projects of Bill 61, *An Act to restart Québec's economy and to mitigate the consequences of the public health emergency declared on 13 March 2020 because of the COVID-19 pandemic*, which the government was unable to pass earlier this summer.

Bill 66 sets out measures to accelerate certain infrastructure projects aimed at restarting Québec's economy, including the construction of roads, seniors' homes, residential and long-term care centres and schools, and the implementation of public transit projects, including the *Réseau express métropolitain* (REM) and the extension of the blue line of the *Société de transport de Montréal's* metro system (Infrastructure Projects). It should be noted that, unlike Bill 61, which included a list of 202 projects that could be improved by government decree, Bill 66 now includes a comprehensive list of 181 Infrastructure Projects¹ that cannot be modified by decree. Acceleration measures will apply to an Infrastructure Project until completion. However, such measures must begin to apply within five years of assent given to the Act.

It should further be noted that Bill 66 does not reproduce the provisions temporarily suspending lessors' right to terminate commercial leases for non-payment of rent, which were included in Bill 61.

Some of the key measures in Bill 66 are set out below.

Expropriation Act

Bill 66 introduces simplified expropriation procedures for Infrastructure Projects. This streamlining of procedures is intended to shorten the completion delays of the Infrastructure Projects, but it will have a significant impact on the rights of expropriated parties.

Thus, expropriated owners will not be allowed to challenge the Minister's right to proceed with the expropriation. Bill 66 also eliminates the mechanism whereby the *Tribunal administratif du Québec* determines the provisional indemnity in the case of the expropriation of a business. The purpose of this indemnity is to allow the expropriated party to receive financial compensation during the expropriation proceedings. Under Bill 66, the provisional indemnity will be fixed at the Minister's discretion.

These provisions will also apply to expropriations resulting from the *Société de transport de Montréal's* project to extend the blue line of its metro system, which is already under way, provided that no final decision is rendered on the right to expropriate or on provisional indemnity by the time the Act is given assent. Thus, ongoing litigation relating to the right to expropriate and the determination of provisional indemnity may not be continued. However, in such cases, Bill 66 allows the expropriated parties to claim for the reimbursement of certain costs.

Environment Quality Act

Bill 66 also introduces measures to streamline certain processes set forth in the *Environment Quality Act* (EQA) to accelerate the completion of Infrastructure Projects that are subject to the issuance of an authorization, ministerial approval or the environmental impact assessment and review procedure under the EQA.

Thus, public bodies (as defined in Bill 66) carrying out any activities referred to in sections 22 or 30 of the EQA in connection with the completion of an Infrastructure Project need not obtain the authorization set forth in such sections, subject to compliance with certain conditions including, *inter alia*, delivering to the *Ministère de l'Environnement et de la Lutte contre les changements climatiques*² the project declaration, in such form and with containing such information as set out in Bill 66, no later than 10 days before the start of activities.³

However, the requirement to obtain ministerial authorization before carrying out or making changes to a project will, with certain adjustments, continue to apply to the following activities:

- any work, structures or other intervention carried out in wetlands and bodies of water, where the project does not provide for the restoration of the affected site within one year of completion of the work to ensure the site recovers its initial characteristics or presents characteristics similar thereto;
- any work, structures or other intervention carried out in the presence of a threatened or vulnerable species within the meaning of *An Act respecting threatened or vulnerable species*, where such authorization is required;
- any construction on land formerly used as a residual materials elimination site;
- any withdrawal of water, within the meaning of the EQA, including any related work and works.

Furthermore, Bill 66 contains several acceleration measures pertaining to the rehabilitation of Infrastructure Projects as well as Infrastructure Projects that are subject to the environmental impact assessment and review procedure, including the exemption of such Projects from this procedure.

An Act respecting land use planning and development

Bill 66 provides for adjustments to *An Act respecting land use planning and development* for the purpose of facilitating – by eliminating procedural requirements – such amendments to municipal planning bylaws as are required for the issuance of authorizations to complete Infrastructure Projects. Bill 66 also provides for a procedure whereby a non-compliant Infrastructure Project may be deemed to have received the required municipal authorizations and to be compliant with the regulations.

We will continue to monitor and update our clients on further developments relating to Bill 66 and its implications.

¹The list of infrastructure projects covered by Bill 66 can be found in Schedule I thereof.

²Note that Bill 66 provides that anyone delivering information or documents to the MELCC must also deliver the same to the Minister responsible for wildlife.

³This declaration must certify that avoidance or minimization measures, including those set out in Schedule II of Bill 66, will be implemented to avoid or limit any disturbance to the site or the release of contaminants into the environment.

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