

**ENGLISH TRANSLATION FOR REFERENCE PURPOSES ONLY**

**SUBMISSION ON ENFORCEMENT MATTERS UNDER ARTICLES 14  
AND 15 OF THE *NORTH AMERICAN AGREEMENT ON  
ENVIRONMENTAL COOPERATION***

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*SUBMITTED BY:*

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SUBMITTED TO:

**The Commission for Environmental Cooperation**

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### **I. Executive summary**

The purpose of this submission is to inform the Commission of various failures by Québec (to whom the commitments under the Agreement apply under Article 41 of the Agreement and under Québec law) to comply with various environmental laws when Crown Corporations, in particular Hydro-Québec (which holds a monopoly on transmitting electricity in Québec) apply for permits for hydroelectric projects. We will show herein how this Corporation, which is owned by the Québec government, is exempt from enforcement of the *Environment Quality Act* when carrying out a project to build an electricity transmission line. Moreover, said Corporation benefits from immunity from all prosecution, judicial review, or injunctions. The Committee and the citizens behind this submission will show that this exemption and immunity, combined with a legislative and regulatory framework that gives the government complete discretion over the level of environmental protection and of citizen input, constitutes a serious and obvious failure by Québec to fulfill its commitments under the Agreement.

### **II. Background**

The Committee is a civic citizen association made up of residents and vacationers from Saint-Adolphe-d'Howard, a municipality in the Laurentians region of Canada's province of Québec, (hereafter called the "**Municipality**"). The Municipality has 3658 residents and an average of 6500 vacation residents.

In or around February 2013, the Crown Corporation Hydro-Québec,<sup>1</sup> owned by the Québec government, announced its intention to build a 120 kV double circuit transmission line from the Grand-Brûlé substation to the Saint-Sauveur substation.<sup>2</sup> This project involved clear-cutting a considerable number of trees in a forest ecosystem and recreational/tourism area, in particular within the Municipality's territory.

Under the law currently in place, Hydro-Québec must obtain various authorizations from the government and other organizations, in particular from the Régie de l'énergie<sup>3</sup> and the Ministère

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<sup>1</sup> *Hydro-Québec Act*, <http://www.legisquebec.gouv.qc.ca/en/ShowDoc/cs/H-5>

<sup>2</sup> See Annex 1: Project announcement and press release

<sup>3</sup> *Act Respecting the Régie de l'énergie*, <http://www.legisquebec.gouv.qc.ca/en/ShowDoc/cs/R-6.01>

de l'Environnement, for 120 kV double circuit transmission lines,<sup>4</sup> along with certain authorizations from the ministère des Ressources naturelles and others. The Municipality appeared before the Régie de l'énergie<sup>5</sup> to contest the route chosen by Hydro-Québec according to various studies and criteria. It should be noted that for Hydro-Québec, the criteria of profitability prevails under the principle, established in the 1960s, according to which Quebecers must pay the lowest possible cost for their electricity. Moreover, the Régie de l'énergie has no jurisdiction or mandate to examine environmental impact issues. Environmental monitoring and protection falls under the purview of the ministry of sustainable development, the environment, and the fight against climate change (*Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques*, hereafter, the "MDDELCC").

Following a decision on the selected route, the MDDELCC must review each project and issue, where necessary, an authorization certificate (hereafter, "AC").<sup>6</sup> This review consists of an examination conducted by a regional-level civil servant.<sup>7</sup> In compliance with this procedure, Hydro-Québec filed an AC request on 7 March 2017.

In August 2017, the Municipality filed a document with the MDDELCC proposing various measures to mitigate the impacts of Hydro-Québec's project on the sensitive landscapes and ecosystems of Saint-Adolphe. In particular, the Municipality proposed that the high-voltage line be run underground over a distance of 10 kilometers. The MDDELCC granted Hydro-Québec an AC on 25 August 2017. Neither the Municipality, the Committee, nor any other citizen-led organization was consulted prior to the AC's issuance.

The Municipality learned of the AC's issuance on 28 August 2017<sup>8</sup> in a letter from the MDDELCC [sic] rejecting the Municipality's proposals. Later, on or around 13 November 2017, when it learned that Hydro-Québec planned to bury an 18-kilometer section of a project that crossed the Canada-US border, the Municipality filed an application for judicial review and an injunction to stop the project.<sup>9</sup>

On 15 January 2018, Justice Christine Baudouin<sup>10</sup> rejected the injunction in the application, basing her decision on criteria that generally apply to any request for judicial review of environmental matters in Québec: it is now required to demonstrate, with supporting evidence,

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<sup>4</sup> Under the *Environment Quality Act* and its regulations, public hearings must be held with the government's office of public hearings on the environment (*Bureau d'audiences publiques sur l'environnement*—BAPE) for any transmission line of 350 kV or more.

<sup>5</sup> Decision by the Régie de l'énergie, File D-2016-130 (R-3960-2016) dated 31 August 2016 [http://publicsde.regie-energie.qc.ca/projets/354/DocPrj/R-3960-2016-A-0032-Dec-Dec-2016\\_08\\_31.pdf](http://publicsde.regie-energie.qc.ca/projets/354/DocPrj/R-3960-2016-A-0032-Dec-Dec-2016_08_31.pdf)

<sup>6</sup> Authorization certificates are provided for under the *Environment Quality Act*, LRQ c. Q-2 <http://www.legisquebec.gouv.qc.ca/en/ShowDoc/cs/Q-2>.

<sup>7</sup> See *Act Respecting The Ministère Du Développement Durable, De L'environnement Et Des Parcs* [www.legisquebec.gouv.qc.ca/en/ShowDoc/cs/M-30.001](http://www.legisquebec.gouv.qc.ca/en/ShowDoc/cs/M-30.001).

<sup>8</sup> See letter from MDDELCC [sic] to the Municipality dated 28 August 2017 in Annex 2.

<sup>9</sup> See claim 500-17-101387-176 in Annex 3.

<sup>10</sup> See decision in Annex 4.

that the MDDELCC has violated a law in issuing an AC. It was also necessary to prove irreparable harm. The Municipality thus abandoned its application.<sup>11</sup>

Subsequent to the Municipality's discontinuance, Hydro-Québec began deforesting to prepare for the erection of pylons and transmission lines over forests, fields, lakeshores, wetlands, panoramic views, and recreational trails. The Citizens consider that neither the MDDELCC nor the Québec courts truly used its powers or fulfilled its obligations under the *Environment Quality Act*, hence this submission filed with the Commission.

### **III. Applicability to Québec of the commitments under the Agreement**

Article 41 of the Agreement states that Annex 41 applies to the Parties mentioned in that Annex. Paragraph 1 of Annex 41 states that:

On the date of signature of this Agreement, or of the exchange of written notifications under Article 47, Canada shall set out in a declaration a list of any provinces for which Canada is to be bound in respect of matters within their jurisdiction. The declaration shall be effective on delivery to the other Parties, and shall carry no implication as to the internal distribution of powers within Canada. Canada shall notify the other Parties six months in advance of any modification to its declaration.

Québec passed the *Act respecting the implementation of international trade agreements*, LRQ c M-35.2, sections 2 and 8 of which make the Agreement applicable in Québec and even allow the Commission to implement a panel determination under Article 36 with the same effects as a Superior Court judgement.

It goes without saying that Québec, as a province of Canada, and through its own legislation cited above, is bound by the commitments of the Agreement and that any failures to meet these commitments are subject to the remedies and investigations set out in the Agreement.

As part of the constitutional distribution of powers, environmental matters concerning forests, wildlife, and plants located within a province's territory fall within the exclusive jurisdiction of the provinces, in this case, Québec.

For these reasons, the Commission can and must consider failures to meet commitments stated in the Agreement made by a province of Canada set out in the list. Québec is included on this list through its own legislation passed by its own legislature and enacted by its executive. We will now describe the failures observed by the citizen members of the Committee that have taken place in Québec.

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<sup>11</sup> See Notice of Discontinuance, Annex 5.

#### **IV. Failure to meet the general commitment to assess environmental impacts and provide for high levels of environmental protection**

It is submitted that the citizens have suffered harm through the clear-cutting of a significant number of trees to clear a path for the pylons, through the construction of temporary forest roads to access the sites, and through the erection of metal pylons and high-voltage lines that will soon be electrified and emit electromagnetic radiation.

Québec has passed a number of laws that state commendable principles of environmental protection. Under the *Environment Quality Act*, any work that may be carried out in a wetland, where a contaminant could be released into the soil or the water, must first receive an Authorization Certificate. The Act gives the Minister almost complete discretion regarding the criteria to consider when issuing such a certificate.<sup>12</sup> Moreover, municipal and supramunicipal environmental management tools such as interim supervisory regulations put in place by RCMs cannot be applied to Hydro-Québec projects.<sup>13</sup>

Under the *EQA*, some projects can be subject to hearings before Québec's public hearings board on environmental matters (*Bureau d'audiences publiques sur l'environnement*—BAPE). However, hearings are imposed on only a very limited number of activities. The government may also, upon recommendation from the Minister, submit projects to hearings.<sup>14</sup>

This means that even if Québec nominally has provisions that appear to protect the environment, the Committee members note that they are opaque, arbitrary, and ineffective when it comes to Hydro-Québec's proposed high-voltage line. In just five months, a regional director assessed and green-lighted this project that involves cutting hundreds of square kilometres of trees, the erection of metal structures and high-voltage wires over pristine environments. She ruled that the project posed no risk to any ecosystem or plant or wildlife species, nor any risk of exposing the public to electrical and magnetic fields.

Hence, when a project does not fall within the criteria set out in the *EQA* and is therefore not subject to review by the BAPE or to the requirement to carry out an impact study with public consultations, the decision as to its admissibility falls to a regional official. This official, in assessing the project, is under no obligation to consult with the people or municipalities affected by the environmental impacts of said project.

Moreover, Québec has also passed a *Sustainable Development Act*.<sup>15</sup> This act reads as follows:

1. The object of this Act is to establish a new management framework within the Administration to ensure that powers and responsibilities are exercised in the pursuit of sustainable development.

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<sup>12</sup> *EQA*, sections 22 et 23. See note 6 above.

<sup>13</sup> See legal opinion, Annex 6.

<sup>14</sup> *Id* sections 31.1 and 31.1.1.

<sup>15</sup> LRQ c. D-8.1.1 <http://legisquebec.gouv.qc.ca/fr/ShowDoc/cs/D-8.1.1>.

The measures introduced by this Act are intended, more specifically, to bring about the necessary change within society with respect to non-viable development methods by further integrating the pursuit of sustainable development into the policies, programs and actions of the Administration, at all levels and in all areas of intervention. They are designed to ensure that government actions in the area of sustainable development are coherent and to enhance the accountability of the Administration in that area, in particular through the controls exercised by the Sustainable Development Commissioner under the Auditor General Act (chapter V - 5.01).

5. The implementation of sustainable development within the Administration is to be based on the sustainable development strategy adopted by the Government and is to be carried out in a manner consistent with the principles stated in the strategy and those established by this division.

2006, c. 3, s. 5.

6. In order to better integrate the pursuit of sustainable development into its areas of intervention, the Administration is to take the following set of principles into account when framing its actions:

(a) "Health and quality of life": People, human health and improved quality of life are at the centre of sustainable development concerns. People are entitled to a healthy and productive life in harmony with nature;

(b) "Social equity and solidarity": Development must be undertaken in a spirit of intra- and inter-generational equity and social ethics and solidarity;

(c) "Environmental protection": To achieve sustainable development, environmental protection must constitute an integral part of the development process;

(d) "Economic efficiency": The economy of Québec and its regions must be effective, geared toward innovation and economic prosperity that is conducive to social progress and respectful of the environment;

(e) "Participation and commitment": The participation and commitment of citizens and citizens' groups are needed to define a concerted vision of development and to ensure its environmental, social and economic sustainability;

(f) "Access to knowledge": Measures favourable to education, access to information and research must be encouraged in order to stimulate innovation, raise awareness and ensure effective participation of the public in the implementation of sustainable development;

(g) "Subsidiarity": Powers and responsibilities must be delegated to the appropriate level of authority. Decision-making centres should be adequately distributed and as close as possible to the citizens and communities concerned;

(h) "Inter-governmental partnership and cooperation": Governments must collaborate to ensure that development is sustainable from an environmental, social and economic standpoint. The external impact of actions in a given territory must be taken into consideration;

(i) "Prevention": In the presence of a known risk, preventive, mitigating and corrective actions must be taken, with priority given to actions at the source;

(j) "Precaution": When there are threats of serious or irreversible damage, lack of full scientific certainty must not be used as a reason for postponing the adoption of effective measures to prevent environmental degradation;

(k) "Protection of cultural heritage": The cultural heritage, made up of property, sites, landscapes, traditions and knowledge, reflects the identity of a society. It passes on the values of a society from generation to generation, and the preservation of this heritage fosters the sustainability of

development. Cultural heritage components must be identified, protected and enhanced, taking their intrinsic rarity and fragility into account;

(l) "*Biodiversity preservation*": Biological diversity offers incalculable advantages and must be preserved for the benefit of present and future generations. The protection of species, ecosystems and the natural processes that maintain life is essential if quality of human life is to be maintained;

(m) "*Respect for ecosystem support capacity*": Human activities must be respectful of the support capacity of ecosystems and ensure the perennality of ecosystems;

(n) "*Responsible production and consumption*": Production and consumption patterns must be changed in order to make production and consumption more viable and more socially and environmentally responsible, in particular through an ecoefficient approach that avoids waste and optimizes the use of resources;

(o) "*Polluter pays*": Those who generate pollution or whose actions otherwise degrade the environment must bear their share of the cost of measures to prevent, reduce, control and mitigate environmental damage;

(p) "*Internalization of costs*": The value of goods and services must reflect all the costs they generate for society during their whole life cycle, from their design to their final consumption and their disposal.

8. The Minister of Sustainable Development, Environment and Parks, in collaboration with the other ministers concerned, is to ensure that the strategy is developed in a way that reflects the range of concerns of citizens and communities and all living conditions in Québec, so that the differences between the rural and urban areas and the situation of Native communities are taken into account.

In collaboration with the other ministers concerned, the Minister may take any measure to consult the public and bring the public to take part in the development of any project or any review of the strategy, in order to promote discussion and enrich the content of the strategy, make it known and promote its implementation.

In addition, the strategy and any review of the strategy must be submitted to public consultation in the form of parliamentary committee hearings.

(Our emphases)

Under this legislative provision, the Administration, and in particular the MDDELCC, must take these objectives of sustainable development, consultation, and public participation in projects into consideration.

The commendable principles enshrined in this Act are merely pious aspiration that cannot be practically applied by citizens or local administrations. Indeed, as noted above, the regulations of the *Environment Quality Act* grant the government the exclusive right to determine which projects are subject to environmental impact assessments.<sup>16</sup>

The regulation adopted under the *Environment Quality Act* sets out that an environmental impact assessment is required only for proposed lines with a voltage of 315 kV or more, over a distance

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<sup>16</sup> *EQA* sections 22, 31.1, and 31.1.1 Regulation respecting the environmental impact assessment and review of certain projects RRQ c.Q-2, r.23.1, sec.2 The regulation can be found at <http://www.legisquebec.gouv.qc.ca/en/ShowDoc/cr/Q-2,%20r.%2023.1>.

of 2 kilometers or more. The government publishes no information stating that lines under 315 kV have less impact on the environment.

The Committee notes that when the government must rule on the environmental admissibility of a proposal from a commercial company it controls – in this case Hydro-Québec – none of the fine principles enshrined in the law can be accessed by citizens. People are thus forced to accept the government's sole and exclusive interpretation of what constitutes a danger to the environment, as well as the level to which they may participate in projects affecting their heritage and lives. It also appears that the government has conferred upon its agent, Hydro-Québec, the absolute power to decide what level of environmental protection it must demonstrate.

Though the Municipality proposed mitigation measures to lessen the impact of the high-voltage line's construction in good faith, in particular the burial of a short 10-kilometer section of a 42.5-kilometer line, the government dismissed and ignored this proposal.

While the Municipality presented its proposal to bury the line over 10 kilometers in order to protect the environment, its recreation and tourism capital, and the landscape heritage for the citizens of today and those of the future, neither Hydro-Québec nor the government took it into consideration.<sup>17</sup> Yet for another electricity export project, Hydro-Québec did agree to bury lines that cross the border with the US.<sup>18</sup>

The government's absolute discretion, granted by the Québec legislature, allowing it to unilaterally and without consultation determine which projects undergo environmental impact assessments makes the Parties' commitment under article 2.1.5 of the Agreement to carry out environment impact assessments illusory. The government alone determines which projects under go impact assessments.

When the company carrying out the project is owned by the government, as in this case with Hydro-Québec,<sup>19</sup> there is a true conflict of interest. On one hand the MDDELCC has a mandate to monitor the environment. On the other hand, the government to which this ministry belongs benefits from Hydro-Québec projects, in particular through profits from electricity sales, including exports to the US.

The Committee therefore hereby submits to the Commission that Québec has failed to meet its commitment under article 3 of the Agreement, namely to ensure that its laws and regulations provide for high levels of environmental protection. Québec must improve its own laws and regulations as a result.

Legislative and legal instruments grant near-absolute power to the Québec government, which is both judge of and party to the environmental regulations applicable to Hydro-Québec's

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<sup>17</sup> See letter dated 28 August 2017, cited above, in Annex 2.

<sup>18</sup> See Radio-Canada article dated 20 November 2017 in Annex 7.

<sup>19</sup> The Québec government holds nearly all of Hydro-Québec's capital and appoints the company's board of directors and executives. See Act cited above in note 1.



megaprojects. Québec has eroded the right of the Committee – citizens and residents of the Municipality – to protect their environment, recreation and tourism economy, and heritage. It has failed to include in the authorization certificate issued to Hydro-Québec the mitigation measures required to protect a sensitive (and hitherto relatively untouched) environment, its ecosystems, and many streams and lakes. The certificate includes no obligation of means: only the general commitment to protect the environment follows. In case of failure(s) to meet this commitment, the penalties imposed on Hydro-Québec by the ministry of the environment are administrative in nature and prioritize the continuation of activities.

The ministry of the environment is encouraging Hydro-Québec to put in place measures that will allow it to comply with its authorization certificate and not move toward suspending the certificate, **notwithstanding the fact that environmentally harmful processes were clearly identified by the ministry in July and August 2018 concerning the Hydro-Québec worksite for the line in Saint-Adolphe-d'Howard.**<sup>20</sup>

The Québec government has contributed to ruining the once majestic panorama of the Laurentian mountains and to exposing citizens to electromagnetic radiation. Neither the certificates nor any government communication addresses these issues, the government having granted Hydro-Québec the exclusive power to determine which level of environmental protection it wishes to apply.

The Committee submits that Québec has failed to meet its general commitment under article 2.1.5 of the Agreement to assess environmental impacts, in particular by arbitrarily establishing 315 kV as the threshold for requiring impact assessments. Moreover, the Committee submits that Québec has failed to meet its commitment to ensure its citizens enjoy high levels of environmental protection, since other North American jurisdictions have higher levels of transparency and public participation.

In its court case, the Committee also raised the issue that the processes of logging and building electricity transmission infrastructure could harm the summer habitat of the monarch butterfly (*Danaus Plexippus*).<sup>21</sup> Hydro-Québec and the MDDELCC replied that this species, which is protected everywhere else in North America, is not protected in Québec.<sup>22</sup>

The Committee adds that Québec has failed in its commitment to improve its environmental laws and regulations by continuing to exclude the monarch butterfly from its list of threatened species, while neighbouring Ontario, which has identical habitat and conditions, does protect it. Indeed, many Québec municipalities protect the monarch on their territories.

## **V. Failure to provide private access to judicial remedies**

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<sup>20</sup> A citizen of Saint-Adolphe filed a complaint against Hydro-Québec on 6 July 2018. The municipality of Saint-Adolphe intervened with Hydro-Québec and the ministry to demand the installation of sediment barriers and other retention measures.

<sup>21</sup> See request above, Annex 3 paragraphs 52 to 58.

<sup>22</sup> See judgment above, Annex 4 paragraphs 45 to 49

The Committee submits that it suffered harm in that it was denied access to both administrative and judicial remedies and that the decision to build the high-voltage line on these majestic landscapes precluded the possibility of citizen involvement or of legal recourse to monitor compliance with the environmental rights stated in various Québec laws.

Québec broke its commitments under Articles 6.2, 6.3.3, and 6.3.4 of the Agreement by denying any private party the right to sue Hydro-Québec.

It should be recalled that the right to appeal to the courts is enshrined in the Canadian Constitution and the fundamental laws of Canada and of Québec. In Québec, the legislative provision that codifies this right is article 529 of the Code of Civil Procedure.<sup>23</sup>

Indeed, section 17 of the *Hydro-Québec Act*<sup>24</sup> grants this government-owned corporation absolute immunity (known under Canadian and Québec law as a “privative clause”) from injunctions or application for judicial review.

This section reads as follows:

17. The members of the board of directors cannot be sued by reason of official acts done in good faith in the exercise of their functions.

No application for judicial review under the Code of Civil Procedure (chapter C-25.01) may be exercised and no injunction may be granted against the Company or the members of its board of directors acting in their official capacity.

In the background section, the Committee described how the Municipality submitted an application for judicial review against the MDDELCC and Hydro-Québec to review the decision granting an AC to the latter and issue an injunction against the project. At the preliminary stage of presenting this injunction, Justice Baudouin noted that, indeed, Hydro-Québec could not be subject to any injunction or application for judicial review.<sup>25</sup> It is important to note that the injunction application was not addressed solely to Hydro-Québec but also to the company providing the logging and excavation services, which was not a subsidiary or branch of the Crown Corporation. The judge deemed that the Crown Corporation’s immunity extended to all aspects of the project.

This decision followed several other earlier decisions<sup>26</sup> to the effect that when it builds a transmission or any other line, Hydro-Québec is indeed protected from any citizen challenge.

The Committee submits that this immunity breaches Québec’s commitments under the Agreement. The Agreement’s provisions are as follows:

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<sup>23</sup> Code of Civil Procedure, LRQ c. C-25.1 see <http://www.legisquebec.gouv.qc.ca/en/ShowDoc/cs/c-25.1>.

<sup>24</sup> See note 1 above, section 17 paragraph 2.

<sup>25</sup> See note 10 above, Annex 4 decision paragraph 64.

<sup>26</sup> *Arbour v. Québec* 2016 QCCS 5119 and *Hydro-Québec v. Bossé* 2014 QCCA 323

#### Article 6: Private Access to Remedies

1. Each Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and regulations and shall give such requests due consideration in accordance with law.

2. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial or judicial proceedings for the enforcement of the Party's environmental laws and regulations.

3. Private access to remedies shall include rights, in accordance with the Party's law, such as:

(a) to sue another person under that Party's jurisdiction for damages;

(b) to seek sanctions or remedies such as monetary penalties, emergency closures or orders to mitigate the consequences of violations of its environmental laws and regulations;

(c) to request the competent authorities to take appropriate action to enforce that Party's environmental laws and regulations in order to protect the environment or to avoid environmental harm; or

(d) to seek injunctions where a person suffers, or may suffer, loss, damage or injury as a result of conduct by another person under that Party's jurisdiction contrary to that Party's environmental laws and regulations or from tortious conduct.

(our emphases)

The Agreement is formal, unequivocal, and unambiguous. The Parties (and as we have already shown, Québec is equivalent to a party) must ensure that interested persons have the right to recourse, either to governmental administrative authorities or to take legal action before the courts.

Moreover, it is specified that private parties must have the right to seek injunctions if they suffer loss or damage. The citizens who make up the Committee and live within the Municipality's territory have the rights that the environmental laws cited above declare to protect. As we have shown previously, they attempted to agree on measures with Hydro-Québec, which the latter ignored. By way of the Municipality, they tried to make their environmental concerns heard through an administrative investigation by the Régie de l'énergie, which has no jurisdiction in environmental matters.

The Citizens were not able to seek a hearing before the BAPE, access to which is regulated by the government, which also owns Hydro-Québec. The government arbitrarily restricts this process to projects of 315 kV or more, even though the project in question concerns a 120 kV double circuit transmission requiring similar infrastructure and generating the same impacts as a 315 kV line.

The Municipality and the citizens proposed means of mitigating or limiting the environmental impact to the MDDELCC, which the government categorically ignored and dismissed. The AC was issued based solely on Hydro-Québec's application, with no opportunity for participation or comment by those parties primarily affected.

Finally, they were excluded and prevented from exercising legal recourse, since Québec law grants Hydro-Québec absolute immunity from injunction or application for judicial review. The courts strictly applied this immunity, removing all access to recourse from any Québec citizen wishing to make their rights and environmental concerns heard.

We respectfully submit that by maintaining this absolute immunity, Québec breached and failed to meet its commitments under the Agreement.

## **VI. Requirements under article 14 of NAAEC**

In order to clarify how this submission on enforcement matters meets the criteria of article 15 [sic] of NAAEC, the Committee submits the following:

- This submission on enforcement matters aims to ensure that Québec and other Canadian provinces comply with the Agreement by maintaining and keeping their commitments under articles 3 and 6, namely, to ensure high levels of environmental protection and to improve environmental laws and regulations, all of which are objectives of the Agreement. A review of this submission will promote the objectives of the Agreement by, among other things, creating awareness of the exclusionary measures that make projects to construct electricity transmission lines immune from all citizen recourse and participation. Additionally, by reviewing Québec's legislative framework, the Commission for Environmental Cooperation will have an opportunity to ensure that it meets international criteria for transparency, accessibility, and citizen participation – values shared by most Quebecers.
- The situation has been brought to the attention of the relevant Québec authorities by means cited previously, namely:
  - Correspondence and written submissions in August 2017.
  - Notice of the legal claim and arguments before the Superior Court in December 2018 and January 2018.
  - As previously shown, the Québec government's response was to ignore written and verbal submissions made by the Municipality (as well as by members of the Committee who reside there) and to vigorously contest the legal proceedings.
- The construction of electricity transmission lines will continue and increase in Québec, since they form part of Québec's strategic economic plan. It is therefore in the interest of future generations that the substantive and procedural guarantees stated in the Agreement be affirmed.
- The Committee hereby states that this submission is aimed at promoting the enforcement of the law and the Agreement and not at harassing Hydro-Québec or the

electricity generation or transmission industry. As stated previously, its participation and even its legal actions have promoted the public interest so that the MDDELCC would consider burying a portion of the high-voltage line in order to reduce or mitigate the environmental impact. The Committee gains nothing by harassing Hydro-Québec because all Québec citizens depend on it for their needs and are proud of its technical prowess. However, having no domestic forum for addressing its grievances, it has no choice but to turn to this supranational body.

- The Committee is made up entirely of Québec citizens.
- The harm suffered by the members of the Committee has been set forth in this submission. To clarify, we repeat that this consists of:
  - Loss of their landscape through logging and the construction of pylons, where the *EQA* defines the environment as the air, soil, water, and trees, and the Laurentians region has had a landscape protection charter ratified by 150 organizations since 2004.
  - Failure to enforce the criteria set out in the *Sustainable Development Act* in approving a project, with no reasoning or explanation from the authorities.
  - Repeated and significant sediment flows into streams and lakes adjacent to major logging and access road construction sites for future pylons 49 to 57. The lack of mitigation measures in a steep and sensitive area to prevent sediment releases affecting Trois-Frères and Massie lakes (brown and cloudy water). The necessary mitigation measures were not required in the environmental authorization certificate, though they were part of the recommendations made by the Municipality and the citizens (Lac Trois-Frères sector, April 2017).
  - Subsequent to the observation (by HQ, the Municipality, and an environment ministry inspector) of sediments in the brook adjacent to the site of pylon 56, Hydro-Québec installed mitigation measures. HQ stated, however, that it took no responsibility for the release. Mitigation measures were thus taken at the site of pylon 56. However, following subsequent sedimentation episodes and an inspection by the environment ministry, it was observed that further mitigation measures were necessary over the entire worksite.
  - Noise, dust, and obstructions during the logging and construction periods.
  - Anticipated loss of property values in the vacation-home sector due to the presence of pylons; possible harms to health of future generations from electrical and magnetic fields.
- We have established the issues for which the Committee feels the Commission should examine this situation, namely:

- Regarding article 6 of the Agreement, the complete denial of access to remedies with respect to the execution of hydroelectric projects due to Hydro-Québec's absolute immunity.
  - Regarding article 3 of the Agreement, examination of whether Québec's continued failure to list the monarch butterfly (*Danaus plexippus*) breaches its commitments.
  - Finally, to establish whether Québec's legislative and regulatory framework surrounding environmental impact assessments complies with articles 2 and 3 of the Agreement.
- As shown, the Municipality attempted multiple means of addressing both the administration and the courts, which were met with categorical denials by these bodies. It is therefore submitted that private remedies have been pursued and exhausted.
  - The submitted information is verifiable and true.

Presented respectfully on December 7, 2018.

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**SEMPERLEX AVOCATS** *s.e.n.c.r.l.*

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## **LIST OF ANNEXES**

- ANNEX 1:** Project announcement and press release from 2012–2013
- ANNEX 2:** Letter dated 28 August 2017
- ANNEX 3:** Judicial claim from 17 December 2017 (*amended version*)
- ANNEX 4:** Decision of 15 January 2018
- ANNEX 5:** Notice of Discontinuance dated 21–24 April 2018
- ANNEX 6:** Legal Notice dated 19 April 2013
- ANNEX 7:** Radio-Canada article dated 20 November 2017