

46, 1933

In the Privy Council.

No. 98 of 1932.

**ON APPEAL FROM THE BOARD OF RAILWAY
COMMISSIONERS FOR CANADA.**

IN THE MATTER of Applications of the Canadian National Railways for Orders under Section 256 of the Railway Act for authority to construct a subway at St. Antoine Street in the City of Montreal as shewn on General Plan YIA 31.10.4 dated August 16th, 1930 and filed with the Board under File No. 9437.319.13, and a subway at D'Argenson Street in the City of Montreal between Point St. Charles and St. Henri as shewn on General Plan YIE 31.51.4 dated April 15th 1930, on file with the Board under file No. 9437.319.7.

BETWEEN :

THE CITY OF MONTREAL - - - - - *Appellant*

AND

THE CANADIAN NATIONAL RAILWAYS - - - - - *Respondent.*

RECORD OF PROCEEDINGS.

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In the Privy Council,

No. 98 of 1932.

ON APPEAL FROM THE BOARD OF RAILWAY
COMMISSIONERS FOR CANADA.

IN THE MATTER of Applications of the Canadian National Railways for Orders under Section 256 of the Railway Act for authority to construct a subway at St. Antoine Street in the City of Montreal as shewn on General Plan YIA 31.10.4 dated August 16th, 1930 and filed with the Board under File No. 9437.319.13, and a subway at D'Argenson Street in the City of Montreal between Point St. Charles and St. Henri as shewn on General Plan YIE 31.51.4 dated April 15th 1930, on file with the Board under file No. 9437.319.7.

BETWEEN :

THE CITY OF MONTREAL - - - - - *Appellant*

AND

THE CANADIAN NATIONAL RAILWAYS - - - - - *Respondent.*

RECORD OF PROCEEDINGS.

No. 1.

Letter, Assistant General Counsel for Respondent to Secretary Railway Commission.

CANADIAN NATIONAL RAILWAYS.

April 21, 1930.
345-20.2.

A. D. Cartwright, Esq.,
Secretary, B.R.C.,
Ottawa, Ont.

10 Dear Sir,

In accordance with Order of the Board No. 44433 dated the 13th day of March 1930, I am forwarding two linen prints and one paper print of plan No. YIA 31.10.2 showing proposed clearances in height and widths of roadways and sidewalks on St. Antoine Street, these being based upon the request of Mr. G. R. MacLeod, Assistant Chief Engineer of the City of Montreal.

*Before
the Board
of Railway
Commissioners for
Canada.*

St. Antoine
Street
Subway.

No. 1.
Letter,
Assistant
General
Counsel for
Respon-
dent to
Secretary
Railway
Commission,
21st April
1930.

*Before
the Board
of Railway
Commissioners for
Canada.*

*St. Antoine
Street
Subway.*

*No. 1.
Letter,
Assistant
General
Counsel for
Respon-
dent to
Secretary
Railway
Commission,
21st April
1930—con-
tinued.*

At present only ten tracks are shown, although the Order approves of twelve for the future.

There is no change in the width of the street.

Copies of the plan are being served upon the City of Montreal; Montreal Light, Heat & Power Consolidated; Montreal Tramways Company; Bell Telephone Company of Canada; Electrical Commission of the City of Montreal; Canadian Pacific Railway, Telegraph Department; Dominion Electric Protection Company.

The enclosed plans will fix the various dimensions required at each crossing and detail plans of each structure will then be submitted to the Board's Chief Engineer for his approval. 10

I would be grateful if the Board would approve the present plan and in the Order approving it will direct that the various parties above-mentioned move such of their utilities as are affected by the construction, as and when requested to do so by the Chief Engineer, Operating Department, Canadian National Railways, all questions of cost to be reserved for further consideration by the Board.

Yours truly,

(Sgd.) ALISTAIR FRASER,

Assistant General Counsel. 20

*No. 2.
Letter,
Assistant
City
Attorney to
Secretary
Railway
Commission,
23rd April
1930.*

No. 2.

Letter, Assistant City Attorney to Secretary Railway Commission.

City Hall,

Montreal,

April 23rd, 1930.

A. D. Cartwright, Esq.,

Secretary,

Railway Commission,

Ottawa, Ont.

Dear Sir,

Re B.R.C. FILE No. APPLICATION OF THE CANADIAN NATIONAL RAILWAY COMPANY TO APPROVE PLAN NO. YIA 31.10.2, SHOWING PROPOSED CLEARANCES IN HEIGHT AND WIDTHS OF ROADWAYS AND SIDEWALKS ON ST. ANTOINE STREET AND TO DIRECT VARIOUS PARTIES TO MOVE THEIR UTILITIES AS ARE AFFECTED, ETC. 30

I beg to acknowledge receipt this morning from Mr. Alistair Fraser, K.C., Ass't. General Counsel of the Canadian National Railway, of a letter dated April 21st instant, enclosing me copy of the above application to your board also dated April 21st, 1930.

I am sending same at once to the City Executive for instructions and as soon as I am in receipt of same will advise your Board and Mr. Fraser. 40

Yours truly,

W. H. BUTLER,

Ass't. City Attorney.

No. 3.

Letter, Assistant City Attorney to Secretary Railway Commission.

April 29th, 1930.

A. D. Cartwright, Esq.,
Secretary,
Railway Commission,
Ottawa, Ont.

*Before
the Board
of Railway
Commissioners for
Canada.*

St. Antoine
Street
Subway.

Dear Sir,

10 *Re B.R.C. FILE No. APPLICATION OF THE CANADIAN NATIONAL
RAILWAY CO. TO RAILWAY COMMISSION FOR APPROVAL OF PLAN
No. YIA 31.10.2, SHOWING PROPOSED CLEARANCES IN HEIGHT
AND WIDTHS OF ROADWAYS AND SIDEWALKS ON PROPOSED
ST. ANTOINE STREET SUBWAY.*

No. 3.
Letter,
Assistant
City
Attorney to
Secretary
Railway
Commission
29th April
1930.

On the 23rd of April instant I wrote you saying that I had received copy of the above application and plan from Mr. Fraser and advising you that as soon as I receive instructions from the Executive Committee I would advise your Board. I have not yet received an acknowledgment of my letter from your Board with the Board's file No. of this matter as is usual in such cases.

20 I would, therefore, ask you to advise me of the receipt of my said letter and give me the Board's file number.

Yours truly,

W. H. BUTLER,

Ass't. City Attorney.

No. 4.

Letter, Assistant City Attorney to Secretary Railway Commission.

April 30th, 1930.

A. D. Cartwright, Esq.,
Secretary,
30 Railway Commission,
Ottawa, Ont.

No. 4.
Letter,
Assistant
City
Attorney to
Secretary
Railway
Commission,
30th April
1930.

Dear Sir,

40 *Re B.R.C. FILE No. APPLICATION OF THE CANADIAN NATIONAL
RAILWAY COMPANY TO RAILWAY COMMISSION FOR APPROVAL OF
PLAN YIA 31.10.2, SHOWING PROPOSED CLEARANCES IN HEIGHT
AND WIDTHS OF ROADWAYS AND SIDEWALKS OF PROPOSED
ST. ANTOINE STREET SUBWAY.*

In connection with the above application I beg to say that I have been instructed by the Executive Committee of this City to advise your Board that the City is shortly to discuss with the President of the Canadian National Railway Company and the Federal Cabinet changes in the plans

Before
the Board
of Railway
Commissioners for
Canada.

St. Antoine
Street
Subway.

No. 4
—continued.

6

of the Montreal Terminals of the Canadian National Railway Company and to ask your Board to allow this matter, in consequence, to stand in abeyance.

I enclose you a copy of a letter of the Director of Departments of this city to the President of the Canadian National Railway Co.

I am sending a copy of this letter to Mr. Fraser, Attorney of the Canadian National Railway Co.

Yours truly,

W. H. BUTLER,

Ass't. City Attorney. 10

No. 5.
Order of
Board of
Railway
Commissioners for
Canada,
No. 45427,
9th Sept-
ember 1930.

No. 5.

Order of Board of Railway Commissioners for Canada, No. 45427.

Order No. 45427.

THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA.

Tuesday, the 9th day of Sep-
tember, A.D. 1930.

HON. H. A. McKEOWN, K.C.,
Chief Commissioner,
S. J. McLEAN,
Ass't. Chief Commissioner.

IN THE MATTER of the application of the Canadian National Railways, herein-
after called the "Applicants," under Sec-
tion 256 of the Railway Act for authority
to construct a subway on St. Antoine Street,
in the City of Montreal as shown on general
plan and profile No. YIA 31.10.4, dated
August 16th, 1930, on file with the Board
under file No. 9437.319.13. 20

UPON the report and recommendation of the Chief Engineer of the Board, and reading the submissions filed—

THE BOARD ORDERS

1. That the Applicants be, and they are hereby, authorized to construct a subway on St. Antoine Street, in the City of Montreal, Province of Quebec, as shown on the said general plan and profile on file with the Board under file No. 9437.319.13; detail plans of the proposed structure to be filed for the approval of an Engineer of the Board. 30

2. That the City of Montreal, the Montreal Light, Heat & Power Consolidated, the Montreal Tramways Company, the Bell Telephone Company of Canada, the Electrical Commission of the City of Montreal, the Canadian Pacific Railway, Telegraph Department, the Dominion Electric Protection Company, and the Montreal Tramways Commission be, and they are hereby, directed to move such of their utilities as may be

affected by the construction of the said subway, as and when required to do so by the Chief Engineer, Operating Department, of the Applicants.

3. That all questions of costs be reserved for further consideration of the Board.

H. A. McKEOWN,
Chief Commissioner,
Board of Railway Commissioners
for Canada.

*Before
the Board
of Railway
Commis-
sioners for
Canada.*

St. Antoine
Street
Subway.

No. 5
—continued.

No. 6.

10 **Extract from Minutes of Municipal Council of City of Montreal.**

EXTRAIT du procès-verbal de l'assemblée mensuelle ajournée du Conseil municipal de Montréal, tenue JEUDI, le 11 septembre, 1930.

Soumis et lu le rapport suivant du Comité Exécutif recommandant l'approbation des plans de la compagnie des chemins de fer nationaux pour la partie de son projet compris entre la rue Lagauchetière et le pont Victoria et donnant aux Avocats de la Cité les instructions nécessaires à ce sujet :—

LE COMITE EXECUTIF a l'honneur de faire rapport qu'il a pris en délibération les demandes suivantes de la Compagnie des Chemins de fer Nationaux du Canada à la Commission des chemins de fer en rapport avec l'établissement du nouveau terminus de ladite Compagnie à Montréal, ainsi que les rapports du Directeur des Travaux publics et du département en loi sur ces demandes :—

FILIÈRE	DEMANDE.
C.C.F. No.	
9437.319.3	Pour fermer et détourner la rue Ste-Monique suivant le plan WIA 91-1.1.
9437.319.13	Pour approbation du plan du subway (viaduc) à travers la rue St-Antoine, No. YIA 31.10.2.
30 9437.319.15	Pour approbation des plans du subway (viaduc) à travers la rue St-Jaques, No. YIB 31.12.3 et No. YIB 31.12.4.
9437.319.14	Pour approbation des plans du subway (viaduc) à travers la rue Notre-Dame, No. YIB 31.21.2 et No. YIB 31.21.3.
9437.319.12	Pour approbation des plans du subway (viaduc) à travers la rue St-Maurice, No. YIB 31.30.2 et No. YIB 31.30.3.
9437.319.8	Pour approbation des plans du subway (viaduc) à travers la rue St-Paul, No. YIB 31.40.2 et No. YIB 31.40.3.
9437.319.9	Pour approbation des plans du subway (viaduc) à travers la rue William, No. YIB 31.50.2 et No. YIB 31.50.3.
40 9437.319.11	Pour approbation des plans du subway (viaduc) à travers la rue Ottawa, No. YIB 31.60.2 et No. YIB 31.60.3.
9437.319.10	Pour approbation du plan du subway (viaduc) à travers la rue Bridge, No. YIB 31.80.3.

No. 6.
Extract
from
Minutes of
Municipal
Council of
City of
Montreal,
11th Sept-
ember 1930.

Before
the Board
of Railway
Commissioners for
Canada.

FILIERE.

C.C.F.No.

9437.319.6

9437.319.7

DEMANDE.

Pour approbation du plan du subway (viaduc) à travers la rue Wellington, No. YIE 31.10.4.

Pour approbation du plan du subway (viaduc) à travers la rue d'Argenson, No. 31.51.4 YIE.

St. Antoine
Street
Subway.

No. 6.

Extract
from

Minutes of
Municipal
Council of
City of

Montreal,
11th Sept-
ember 1930

—continued.

ATTENDU que la partie du projet de ladite Compagnie entre la rue des Seigneurs et Turcot ainsi que la ligne projetée de Longue-Pointe à Val Royal (Eastern Junction) ne sont pas comprises dans les demandes ci-dessus mentionnées, mais feront l'objet d'une convention ou décision ultérieure; 10

ATTENDU que la Compagnie consent à modifier ses demandes pour supprimer les colonnes qui, d'après ses plans, doivent supporter les voies dans le cas des subways (viaducs) aux rues St-Antoine, St-Jacques et Notre-Dame.

VOTRE COMITE RECOMMANDE qu'instructions soient données aux Avocats de la Cité d'informer la Commission des Chemins de fer que la Cité de Montréal (a) ne s'oppose pas aux demandes ci-dessus à condition que la Compagnie des Chemins de fer Nationaux du Canada modifie ses demandes de façon à faire disparaître les colonnes qui, d'après les plans de la Compagnie, doivent supporter les voies dans le cas des subways (viaducs) aux rues St-Antoine, St-Jacques et Notre-Dame; et (b) que la Cité consent au détournement de la rue Ste-Monique suivant les demandes et plans de la Compagnie pourvu que les rues nouvelles qui, d'après ces mêmes plans, lui seront substituées soient ouvertes et pavées, que des trottoirs y soient construits, le tout aux frais de la Compagnie, et à la satisfaction des ingénieurs de la Cité, et qu'ensuite la surface de ces rues soit cédée gratuitement à la Cité de façon à en faire des rues publiques, le tout sans préjudice des droits de la Cité de s'opposer aux voies élevées sur les autres parties du projet de la Compagnie et à la ligne projetée de Longue-Pointe à Val Royal (Eastern Junction). 20 30

Toute question quant à la répartition du coût doit être réservée pour décision ultérieure.

VOTRE COMITE doit informer le Conseil que le présent rapport a été préparé sous la direction des Avocats et des Ingénieurs de la Cité.

RESPECTUEUSEMENT SOUMIS,

LE COMITE EXECUTIF

(Signé) J.-ALLAN BRAY,

Président.

do. J.-ETIENNE GAUTHIER,

Greffier de la Cité.

40

Montréal, 11 septembre, 1930.

Proposé par l'échevin Bigger,
Appuyé par l'échevin Bray,

Que ledit rapport soit adopté.

Et, un débat s'engageant, Son Honneur le Maire reprend le fauteuil.

Et, un nouveau débat s'engageant, Son Honneur le Maire quitte le fauteuil et y est remplacé par monsieur l'échevin Charbonneau, maire suppléant.

Et, un nouveau débat s'engageant, Son Honneur le Maire reprend le fauteuil, et, ladite motion étant mise aux voix, elle est adoptée et il est

10 RESOLU :—En conséquence.

(Certifié)

J. E. GAUTHIER,
Greffier de la Cité.

*Before
the Board
of Railway
Commis-
sioners for
Canada.*

St. Antoine
Street
Subway.

No. 6.
Extract
from
Minutes of
Municipal
Council of
City of
Montreal,
11th Sept-
ember 1930
—continued.

No. 7.

**Letter, Assistant General Counsel for Respondent to Secretary
Railway Commission.**

September 12th, 1930.
345-20.17.

20 A. D. Cartwright, Esq.,
Secretary, B.R.C.,
Ottawa, Ont.

Dear Sir,

Re ST. ANTOINE STREET, MONTREAL.

With reference to my letter of the 21st of April last asking for approval of plan No. YIA 31.10.2. showing proposed clearances in height and widths of roadways and sidewalks on St. Antoine Street.

30 We have now agreed with the City of Montreal to file amended plans showing lateral clearances the full width of the street with no supporting columns. These new plans are being prepared and will be forwarded to the Board as quickly as possible. In the meantime I would, therefore, be grateful if no action is taken in connection with my letter of the 21st of April last until the new plans have been filed with the Board.

I am sending a copy of this letter to the City of Montreal; Montreal Light Heat & Power Consolidated; Montreal Tramways Company; Bell Telephone Company of Canada; Electrical Commission of the City of Montreal; Canadian Pacific Railway Telegraph Department, Dominion Electric Protection Company and the Montreal Tramways Commission.

Yours truly,

ALISTAIR FRASER.

No. 7.
Letter,
Assistant
General
Counsel for
Respondent to
Secretary
Railway
Commission,
12th Sept-
ember 1930.

No. 8.

Before
the Board
of Railway
Commissioners for
Canada.

Letter, Assistant City Attorney to Secretary Railway Commission.

September 13th, 1930.

St. Antoine
Street
Subway.

A. D. Cartwright, Esq.,
Secretary,
Railway Commission,
Ottawa, Ont.

Dear Sir,

No. 8.
Letter,
Assistant
City
Attorney to
Secretary
Railway
Commission,
13th Sept-
ember 1930.

Re B.R.C. FILE No. 9437.319.13.—APPLICATION OF THE CANADIAN
NATIONAL RAILWAY CO. FOR APPROVAL OF THE PLAN OF GRADE SEPARATION (VIADUCT) AT ST. ANTOINE STREET, NO. YIA 31. 10.2. 10

On behalf of the City I beg to say that the City has no objection to the above application on condition that the Canadian National Railway Company shall modify its application so as to do away with the columns which, according to the Company's plans are to support the floor or deck of the bridge in the case of the above grade separation.

The present answer is without prejudice to the rights of the City to object to the construction of elevated tracks on the other parts of the project of the Company and to the construction of the proposed line between Longue Pointe and Val Royal (Eastern Junction). All questions as to the apportionment of cost to be reserved for further consideration and decision later. 20

For the Board's information in this matter, I am enclosing copies (French and English version) of the resolution of the Council of the City of Montreal of the 11th September 1930, adopted in regard to the above application as well as other application of the Company.

I am sending a copy of this letter as well as copies of the resolution to Mr. A. Fraser, Ass't General Counsel of the Company.

Yours truly,

W. H. BUTLER, 30
Ass't City Attorney.

No. 9.

Letter, Assistant City Attorney to Secretary Railway Commission.

15th Sept. 1930.

A. D. Cartwright, Esq.,
Secretary,
Railway Commission,
Ottawa, Ont.

*Before
the Board
of Railway
Commissioners for
Canada.*

St. Antoine
Street
Subway.

Dear Sir,

10 *Re* B.R.C. FILE NO. 9437.319.13.—APPLICATION OF THE CANADIAN
NATIONAL RAILWAY CO. FOR APPROVAL OF PLAN OF GRADE
SEPARATION (VIADUCT) AT ST. ANTOINE STREET, NO. YIA 31.10.2.

No. 9.
Letter,
Assistant
City
Attorney to
Secretary
Railway
Commission,
15th Sept-
ember 1930.

I beg to acknowledge receipt on Saturday, the 13th instant, of copy of Mr. Fraser's letter to you in the above matter, dated September 12th, 1930, asking, in view of the agreement with the City of Montreal, to file amended plans showing clearances the full width of the street, with no supporting columns, that no action be taken by the Board in connection with his letter of the 21st of April last until the new plans of this grade separation have been filed with the Board.

20 I take it that Mr. Fraser will send the City copies of the new plans before approval so as to permit the City to ascertain if same are satisfactory.

I am sending a copy of this letter to Mr. Fraser, Ass't General Counsel of the Ry. Company.

Yours truly,

W. H. BUTLER,
Ass't City Attorney.

Before
the Board
of Railway
Commissioners for
Canada.

No. 10.

**Letter, Assistant General Counsel for Respondent to Secretary
Railway Commission.**

September 16th, 1930.
345.20.17.

St. Antoine
Street
Subway.

A. D. Cartwright, Esq.,
Secretary, B.R.C.,
Ottawa, Ont.

No. 10.
Letter,
Assistant
General
Counsel for
Respondent to
Secretary
Railway
Commission,
16th Sept-
ember 1930.

Dear Sir,

Re ST. ANTOINE STREET, MONTREAL.

10

Referring to my letter of the 12th instant, I now enclose two linen and one paper print of plan No. YIA 31.10.4. showing the changes referred to.

I would be grateful if this plan may be substituted for plan No. YIA 31.10.2. forwarded with my application of the 21st April last, and approved by the Board in the terms of that application.

I am sending a copy of this letter and of the plan to the City of Montreal; Montreal Light Heat & Power Consolidated; Montreal Tramways Company; Bell Telephone Company of Canada; Electrical Commission of the City of Montreal; Canadian Pacific Railway, Telegraph Department, Dominion Electric Protection Company; Hon. J. F. St. Cyr, Chairman, Montreal Tramways Commission.

Yours truly,

ALISTAIR FRASER.

No. 11.
Letter,
Assistant
City
Attorney to
Secretary
Railway
Commission,
17th Sept-
ember 1930.

No. 11.

Letter, Assistant City Attorney to Secretary Railway Commission.

Montreal,
September 17th, 1930.

A. D. Cartwright, Esq.,
Secretary,
Railway Commission,
Ottawa, Ont.

30

Dear Sir,

Re B.R.C. FILE NO. 9437.319.13.—APPLICATION OF THE CANADIAN NATIONAL RAILWAY CO. FOR APPROVAL OF PLAN OF GRADE SEPARATION (VIADUCT) AT ST. ANTOINE STREET, NO. YIA 31.10.4. DATED THE 16TH OF AUGUST 1930.

I beg to acknowledge receipt this morning of copy of Mr. Fraser's letter to you of September 16th instant, transmitting you copy of plan No. YIA 31.10.4. showing changes in the subway at the above street and asking that it be substituted for plan No. YIA 31.10.2.

40

I am sending the duplicate prints of the plan sent me by Mr. Fraser to the Executive Committee and the Engineering Department for their immediate attention, and as soon as I am advised will write your Board.

I am sending a copy of this letter to Mr. Fraser.

Yours truly,

W. H. BUTLER,
Ass't City Attorney.

*Before
the Board
of Railway
Commissioners for
Canada.*

St. Antoine
Street
Subway.

No. 11
—continued.

No. 12.

Letter, Assistant City Attorney to Secretary Railway Commission.

10

Montreal,
September 22nd, 1930.

A. D. Cartwright, Esq.,
Secretary,
Railway Commission,
Ottawa, Ont.

No. 12.
Letter,
Assistant
City
Attorney to
Secretary
Railway
Commission,
22nd Sept-
ember 1930.

Dear Sir,

Re B.R.C. FILE No. 9437.319.13.—APPLICATION OF THE CANADIAN NATIONAL RY. CO. FOR APPROVAL OF PLAN OF GRADE SEPARATION (VIADUCT) AT ST. ANTOINE STREET, No. YIA 31.10.4, dated AUGUST 16TH, 1930.

20

Answering Mr. A. Fraser's letter to you of September 16th instant submitting to the Board plan No. YIA 31.10.4 of the Grade Separation at the above street and that it be substituted for plan No. YIA 31.10.2, I beg to say on behalf of the City of Montreal, that the City has no objection to the application of the Company in accordance with Plan No. YIA 31.10.4.

The present answer is without prejudice to the rights of the City to object to the construction of elevated tracks on the other parts of the project of the Company and to the construction of the proposed line between Longue Pointe and Val Royal (Eastern Junction). All questions as to the apportionment of costs to be reserved for further consideration and decision later.

I am sending a copy of this letter to Mr. Fraser, Ass't General Counsel of the Company.

Yours truly,

W. H. BUTLER,
Ass't City Attorney.

No. 13.

Before
the Board
of Railway
Commissioners for
Canada.

Letter, Assistant City Attorney to Secretary Railway Commission.

October 4th, 1930.

St. Antoine
Street
Subway.

Mr. A. D. Cartwright, Secretary,
Railway Commission,
Ottawa, Ont.

Dear Sir,

No. 13.
Letter,
Assistant
City
Attorney to
Secretary
Railway
Commission,
4th October
1930.

Re B.R.C. FILE No. 9437.319.13.—ORDER No. 45427 OF THE RAILWAY
COMMISSION AUTHORIZING THE CONSTRUCTION OF A SUBWAY ON
ST. ANTOINE STREET, MONTREAL, AS PER PLAN No. YIA 31.10.4, 10
DATED AUGUST 16TH, 1930.

I beg to acknowledge receipt of your letter of the 2nd instant enclosing
copy of Order No. 45427 issued by the Board in the above matter on the
9th of September, 1930, and copy of the above plan duly certified by the
Engineer of the Railway Commission, for which accept my thanks.

Yours truly,

W. H. BUTLER,
Ass't City Attorney.

No. 14.

No. 14.
Certificate
of Secretary
of Board of
Railway
Commissioners for
Canada,
21st Octo-
ber 1932.

Certificate of Secretary of Board of Railway Commissioners for Canada. 20

THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA.

I, ALEXANDER DOBBS CARTWRIGHT, of the City of Ottawa, in the
County of Carleton, and Province of Ontario, Secretary of the Board of
Railway Commissioners for Canada, pursuant to the provisions of Section 68
of the Railway Act, 1919, DO HEREBY CERTIFY that the documents
hereto attached are true and correct copies of the original documents
which are on file with the Board of Railway Commissioners for Canada.

IN WITNESS WHEREOF I have hereunto set my hand and affixed
the official seal of the Board of Railway Commissioners for Canada at
Ottawa this twenty-first day of October, A.D. 1932. 30

A. D. CARTWRIGHT,
Secretary,
Board of Railway Commissioners for Canada.

(L.S.)

No. 15.

Letter, Assistant General Counsel for Respondent to Secretary Railway Commission.

CANADIAN NATIONAL RAILWAYS.

April 24, 1930.
345-20.4.

A. D. Cartwright, Esq.,
Secretary, B.R.C.,
Ottawa, Ont.

*Before
the Board
of Railway
Commis-
sioners for
Canada.*

d'Argenson
Street
Subway.

No. 15.
Letter,
Assistant
General
Counsel for
Respondent to
Secretary
Railway
Commission,
24th April
1930.

10 Dear Sir,

Pursuant to Order of the Board No. 44425 dated March 10th, 1930, I am forwarding two linen and one paper print of plan YIE 31.51.4, showing proposed reconstruction of subway at d'Argenson Street.

Copies of the plan are being served upon the City of Montreal; the Montreal Light, Heat & Power Consolidated; the Montreal Tramways Company; Montreal Tramways Commission; the Bell Telephone Company of Canada and the Electrical Commission of the City of Montreal.

This plan shows, in yellow, a new subway to be constructed over Verdun Avenue to provide for two tracks leading from our main lines at
20 Atwater Avenue, along the St. Pierre River outlet, to the proposed joint interchange yard on the River St. Lawrence. Application for this latter subway will be made later on, when construction of this line is undertaken.

I would be grateful if the Board would approve the present plan and in the Order approving it will direct that the various parties above mentioned move such of their utilities as are affected by the construction, as, and when, requested to do so by the Chief Engineer, Operating Department, Canadian National Railways, all questions of cost to be reserved for further consideration by the Board.

Yours truly,

(Sgd.) ALISTAIR FRASER.

30



*Before
the Board
of Railway
Commissioners for
Canada.*

*d'Argenson
Street
Subway.*

*No. 16.
Letter,
Assistant
City
Attorney to
Secretary
Railway
Commission,
25th April
1930.*

No. 16.

Letter, Assistant City Attorney to Secretary Railway Commission.

April 25th, 1930.

A. D. Cartwright, Esq.,
Secretary,
Railway Commission,
Ottawa, Ont.

Dear Sir,

Re B.R.C. FILE NO.

APPLICATION OF THE CANADIAN
NATIONAL RAILWAY COMPANY TO APPROVE PLAN NO. YIE-31.51.4 10
SHOWING PROPOSED RECONSTRUCTION OF SUBWAY AT D'ARGENSON
STREET, MONTREAL.

I beg to acknowledge receipt on the 25th instant from Mr. Alistair Fraser, K.C., Ass't. General Counsel of the Canadian National Railway, of a letter dated April 24th instant enclosing me copy of the above application to your Board, also dated April 24th, 1930, and two copies of plan.

I am sending same at once to the City Executive for instructions and as soon as I am in receipt of same will advise your Board and Mr. Fraser.

Yours truly,

W. H. BUTLER,
Ass't. City Attorney.

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*No. 17.
Letter,
Assistant
City
Attorney to
Secretary
Railway
Commission,
30th April
1930.*

No. 17.

Letter, Assistant City Attorney to Secretary Railway Commission.

April 30th, 1930.

A. D. Cartwright, Esq.,
Secretary,
Railway Commission,
Ottawa, Ont.

Dear Sir,

Re B.R.C. FILE NO. 9437.319.7 APPLICATION OF THE CANADIAN
NATIONAL RAILWAY COMPANY TO APPROVE PLAN YIE 31.51.4,
SHOWING PROPOSED RECONSTRUCTION OF SUBWAY AT D'ARGENSON
STREET.

In connection with the above application I beg to say that I have been instructed by the Executive Committee of this City to advise your Board that the City is, shortly, to discuss with the President of the Canadian

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National Railway Company and the Federal Cabinet changes in the plans of the Montreal Terminals of the Canadian National Railway Company and to ask your Board to allow this matter, in consequence, to stand in abeyance.

I enclose you a copy of a letter of the Director of Departments of this City to the President of the Canadian National Railway Co.

I am sending a copy of this letter to Mr. Fraser, Attorney of the Canadian National Ry. Co.

Yours truly,

W. H. BUTLER,
Ass't. City Attorney.

10

*Before
the Board
of Railway
Commissioners for
Canada.*

d'Argenson
Street
Subway.

No. 17
—continued.

No. 18.

No. 18.

**Extract from Minutes of Municipal Council of City of Montreal
11th September 1930.**

(Same as No. 6 at p. 7.)

No. 19.

Letter, Assistant City Attorney to Secretary Railway Commission.

September 13th, 1930.

20 A. D. Cartwright, Esq.,
Secretary,
Railway Commission,
Ottawa, Ont.

No. 19.
Letter,
Assistant
City
Attorney to
Secretary
Railway
Commission,
13th Sept-
ember 1930.

Dear Sir,

Re B.R.C. FILE NO. 9437.319.7.—APPLICATION OF THE CANADIAN NATIONAL RAILWAY CO. FOR APPROVAL OF PLAN OF GRADE SEPARATION (VIADUCT) AT D'ARGENSON STREET, NO. Y1E 31.51.4.

On behalf of the City of Montreal I beg to say that the City has no objection to the above application.

30 The present answer is without prejudice to the rights of the City to object to the construction of elevated tracks on the other parts of the project of the Company and to the construction of the proposed line between Longue-Pointe and Val Royal (Eastern Junction). All questions as to the apportionment of cost to be reserved for further consideration and decision later.

*Before
the Board
of Railway
Commissioners for
Canada.*

d'Argenson
Street
Subway.

No. 19
—continued.

For the Board's information in this matter, I am enclosing copies, French and English version, of the resolution of the Council of the City of Montreal of the 11th of September, 1930, adopted in regard to the above application as well as other applications of the Company.

I am sending a copy of this letter as well as copies of the resolution to Mr. A. Fraser, Assistant General Counsel of the Company.

Yours truly,

W. H. BUTLER,

Ass't. City Attorney.

No. 20.
Order of
Board of
Railway
Commissioners for
Canada,
No. 45410,
16th Sept-
ember 1930.

No. 20.

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Order of Board of Railway Commissioners for Canada No. 45410.

R.1

Order No. 45410.

THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA.

Tuesday, the 16th day of
September, A.D. 1930.
S. J. McLEAN,
Asst. Chief Commissioner.
Hon. T. C. MORRIS,
Commissioner.

IN THE MATTER of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 256 of the Railway Act, for authority to construct a subway at d'Argenson Street, in the City of Montreal, between Point St. Charles and St. Henri, as shown on 20
general plan No. YIE 31.51.4, dated
April 15th, 1930, on file with the Board
under file No. 9437.319.7.

Upon the report and recommendation of the Chief Engineer of the Board, and reading the submissions filed :—

THE BOARD ORDERS

1. That the Applicants be, and they are hereby, authorized to construct a subway at d'Argenson Street, in the City of Montreal, on the line of the said railway between Point St. Charles and St. Henri, as shown on the said general plan on file with the Board under file No. 9437.319.7; detail plans 30
of the proposed structure to be filed for the approval of an Engineer of the Board.

2. That the City of Montreal, the Montreal Light, Heat & Power Consolidated, the Montreal Tramways Company, the Montreal Tramways Commission, the Bell Telephone Company of Canada, and the Electrical Commission of the City of Montreal be, and they are hereby, directed to

move such of their utilities as may be affected by the construction of the said subway, as and when requested to do so by the Chief Engineer, Operating Department, of the Applicant.

3. That all questions of cost be reserved for further consideration by the Board.

S. J. McLEAN,
Assistant Chief Commissioner.
A.D.C.

*Before
the Board
of Railway
Commissioners for
Canada.*

*d'Argenson
Street
Subway.*

*No. 20
—continued.*

No. 21.

10 **Certificate of Secretary of Board of Railway Commissioners for Canada.
21st October 1932.**

(Same as No. 14 at p. 14.)

No. 21.

No. 22.

Order in Council granting special leave to appeal to His Majesty in Council.

AT THE COURT AT BUCKINGHAM PALACE.

The 10th day of November, 1932.

Present :

THE KING'S MOST EXCELLENT MAJESTY

20 MASTER OF THE HORSE
LORD COLEBROOKE

SIR BOLTON EYRES-MONSELL
MR. CHANCELLOR OF THE
DUCHY OF LANCASTER.

*In the
Privy
Council.*

*No. 22.
Order in
Council
granting
special leave
to appeal to
His Majesty
in Council,
10th Nov-
ember 1932.*

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 3rd day of November 1932, in the words following, viz. :—

30 “ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the City of Montreal in the matter of an Appeal from the Board of Railway Commissioners for Canada in the matter of applications of the Canadian National Railways for Orders under Section 256 of the Railway Act for authority to construct a subway on St. Antoine Street in the City of Montreal as shown on General Plan YIA 31.10.4 dated the 16th August 1930 and filed with the Board under File No. 9437 .319.13 and a subway at D'Argenson Street in the

*In the
Privy
Council.*

No. 22.
Order in
Council
granting
special leave
to appeal to
His Majesty
in Council,
10th Nov-
ember 1932
continued.

City of Montreal between Point St. Charles and St. Henri as shown on General Plan No. YIE 31.51.4 dated the 15th April 1930 on file with the Board under File No. 9437 .319.7 between the Petitioners Appellants and the Canadian National Railways Respondents setting forth amongst other matters that the Petitioners desire to obtain special leave to appeal from two Orders of the Board of Railway Commissioners for Canada numbered respectively 45410 and 45427 and dated respectively the 9th and the 16th September 1930 which authorised the Respondents to construct subways at D'Argenson Street and at St. Antoine Street in the City of Montreal 10 on the line of the Respondents' Railway and directed the Petitioners and certain Public Utility Companies to move such of their utilities as might be affected by the construction of the subways and reserved all questions of costs for further consideration: that certain of the Public Utility Companies mentioned in the two Orders appealed in six several Appeals from the Orders to the Supreme Court of Canada which with two further Appeals from similar Orders were argued together and dealt with by one Judgment of the Supreme Court dismissing the Appeals dated the 1st March 1932: that the Petitioners did not appeal from the Orders or either of them to the 20 Supreme Court: that Your Majesty by Order in Council made the 21st July 1932 was pleased to order (1) that leave be granted to the Public Utility Companies to enter and prosecute their Appeals against the Judgment of the Supreme Court dated the 1st March 1932 upon depositing in the Registry of the Privy Council the sum of £1,000 as security for costs and (2) that the Appeals be consolidated and heard together upon one Printed Case on each side: that such consolidated Appeal has been numbered as Privy Council Appeal No. 61 of 1932: that the Petitioners desire to raise on Appeal the 30 same questions as the Public Utilities Companies are raising in six of the consolidated eight Appeals involving important questions of law concerning the jurisdiction of the Board of Railway Commissioners for Canada and the statutory rights of all Municipal Corporations and Public Utility Companies having rights and interests in streets and places liable to be affected by railway construction throughout the Dominion of Canada: and setting forth the main questions which are in issue between the parties: And humbly praying Your Majesty in Council to grant to the Petitioners special leave to appeal from the Orders of the Board of Railway Commissioners dated respectively the 9th and 16th September 1930 or for such 40 further or other Order as to Your Majesty in Council may appear fit:

“THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion (1) that leave ought to be

granted to the Petitioners to enter and prosecute their Appeal against the Orders of the Board of Railway Commissioners for Canada dated respectively the 9th and 16th days of September 1930 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs; (2) that subject to any directions herein of the Registrar of the Privy Council the Petitioners ought to lodge their Printed Case within two months from the date of Your Majesty's Order in Council herein and that the Appeal ought to be heard with the consolidated Privy Council Appeal No. 61 of 1932; (3) that the Secretary or proper officer of the said Board of Railway Commissioners ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioners of the usual fees for the same; and (4) that the costs of this application ought to be paid by the Petitioners in any event."

*In the
Privy
Council.*

No. 22.
Order in
Council
granting
special leave
to appeal to
His Majesty
in Council,
10th Nov-
ember 1932
—continued.

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HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed
20 obeyed and carried into execution.

Whereof all persons whom it may concern are to take notice and govern themselves accordingly.

M. P. A. HANKEY.

In the Privy Council.

No. 98 of 1932.

*On Appeal from the Board of
Railway Commissioners for Canada.*

IN THE MATTER of Applications of the Canadian National Railways for Orders under Section 256 of the Railway Act for authority to construct a subway at St. Antoine Street in the City of Montreal as shewn on General Plan YIA 31.10.4 dated August 16th, 1930 and filed with the Board under File No. 9437.319.13, and a subway at D'Argenson Street in the City of Montreal between Point St. Charles and St. Henri as shewn on General Plan YIE 31.51.4 dated April 15th 1930, on file with the Board under file No. 9437.319.7.

BETWEEN :

THE CITY OF MONTREAL - *Appellant*

AND

THE CANADIAN NATIONAL RAILWAYS
Respondent.

RECORD OF PROCEEDINGS.

LAWRENCE JONES & CO.,
Lloyd's Building,
Leadenhall Street, E.C.3.
For the Appellant.

BLAKE & REDDEN,
17, Victoria Street,
London, S.W.1.
For the Respondent.

EYRE AND SPOTTISWOODE LIMITED, EAST HARDING STREET, E.C.4.