Clerk's Stamp:

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COURT OF KING'S BENCH OF ALBERTA	
JUDICIAL CENTRE	Calgary
APPLICANTS	STEPHEN ROSS, LESLIE SKINGLE, BRIAN TALBOT, DAVID TAYLOR, RALPH YOUNG, DEVONIAN DEVELOPMENT CORPORATION, and THREE SISTERS MOUNTAIN VILLAGE PROPERTIES LTD.
RESPONDENT	TOWN OF CANMORE
DOCUMENT	**BOOK OF AUTHORITIES OF THE APPLICANTS FOR SPECIAL CHAMBERS APPLICATION** **APRIL 15, 2025**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Shores Jardine LLP Barristers and Solicitors 2250, 10104 – 103 Avenue Edmonton, Alberta T5J 0H8 Phone: 780-448-9275 Fax: 780-423-0163 **Attention: Gwendolyn Stewart-Palmer, K.C.** Counsel for the Applicants Stephen Ross, Leslie Skingle, Brian Talbot, David Taylor, Ralph Young, Devonian Development Corporation, and Three Sisters Mountain Village Properties Ltd. File No.: 2423-00001/GJSP
CONTACT INFORMATION OF ALL OTHER PARTIES:	Michael E. Swanberg Reynolds Mirth Richards & Farmer LLP Suite 1800| Stantec Tower 10220 103 Avenue NW Edmonton AB T5J 0K4 T: 780.425.9510 F: 780.429.3044 Counsel for Respondent Town of Canmore

Tab	Authority
1.	Municipal Government Act, RSA 2000, c.M-26 s. 1(1) s 284(1)(c). s 284(1)(r) s. 284.2(1) s. 289 s. 289(2) s. 293(1) s. 294 s. 295 s. 297(1) s. 297(2) s. 303 s. 353 - 370 s. 354 s. 381.2 s. 383. s. 390.3 s. 397 s. 398 s. 460
2.	*Matters Relating to Assessment and Taxation Regulation*, AR 203/2017 s. 5.
3.	*Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2 (CanLII), [2012] 1 SCR 5, at para 11 and para 24
4.	*Canadian Natural Resources Limited v Fishing Lake Metis Settlement*, 2024 ABCA 131 at para 65, para 68 and para 70.
5.	*Municipal Assessor Regulation*, AR 347/2009.
6.	*Qualifications of Assessor Regulation*, AR 233/2005, s. 3
7.	*Chief Administrative Officer Bylaw*, Bylaw 01-2012
8.	*Kneehill (County) v Harvest Agriculture Ltd,* 2019 ABCA 506 (CanLII), at para 39
9.	*Coffman v. Ponoka (County No. 3),* 1998 ABCA 269 (CanLII), at para 10
10.	Unofficial transcription of Council meeting august 20, 2024. #20 in Certified Record.

Tab	Authority
11.	*Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65 (CanLII), [2019] 4 SCR 653, at para 10, para 13, and para 120
12.	*Auer v. Auer,* 2024 SCC 36. at para 3, para 26, para 33, para 46, para 50, para 53, para 54, para 59 and para 63.
13.	*TransAlta Generation Partnership v. Alberta*, 2024 SCC 37 at para 17, para 22, para 53, para 54 and para 55
14.	*Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810
15.	*Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A,* 2024 SCC 43 (CanLII), at para 24
16.	Guide to Property Assessment and Taxation in Alberta
17.	*Rizzo & Rizzo Shoes Ltd. (Re),* 1998 CanLII 837 (SCC), [1998] 1 SCR 27, at para 21
18.	*United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City),* 2004 SCC 19
19.	*Interpretation Act*, RSA 2000, c I-8, s 10
20.	*Roncarelli v. Duplessis*, 1959 CanLII 50 (SCC), [1959] SCR 121, at page 140
21.	*Local Authorities Election Act*, RSA 2000, c L-21, s. 53.
22.	*Westcan Recyclers Ltd v Calgary (City),* 2025 ABCA 67 (CanLII), at para 55.
23.	*Canadian Natural Resources Limited v Elizabeth Métis Settlement*, 2020 ABQB 210 (CanLII), at para 64, para 65, para 96 and para 123
24.	*Telus Communications Inc. v. Opportunity (Municipal Dist. No. 17),* 1998 ABQB 884 (CanLII), at para 35 to para 37
25.	*TimberWest Forest Corp. v. Campbell River (City),* 2009 BCSC 1804 at para 98

Tab	Authority
26.	*Assessment Authority Act*, RSBC 1996, c.21
27.	*Assessment Act,* RSBC 1996, c. 20, s. 19
28.	*Prescribed Classes of Property Regulation*, BC Reg 438/81
29.	*Speculation and Vacancy Tax Act*, SBC 2018, c. 46
30.	*Vancouver Charter,* SBC 1953 c. 55 at ss. 615 to 622
31.	*Municipal Act, 2001*, SO 2001, c 25, ss. 338.1
32.	*City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A ss. 302.1 and following
33.	Ruth Sullivan, Sullivan on the Construction of Statutes, 6th Ed (Toronto: LexisNexis, 2014) at pages 771 and 778
34.	*Brosseau v. Alberta Securities Commission*, 1989 CanLII 121 (SCC), [1989] 1 SCR 301
35.	*Hayward* v. *Hayward*, 2011 NSCA 118 at para 22
36.	*Montreal (City) v Arcade Amusements Inc 1985 CanLII 97 (SCC), [1985] 1 SCR 368, at para 87.*
37.	*Hamilton Independent Variety & Confectionary Stores Inc v Hamilton (City) (1983), 1983 CanLII 3114 (ON CA), [1983] OJ No 3 (ONCA) at para 21*
38.	*Saint John (City) v. Crowe's Place Ltd.*, 2000 NBPC 3 (CanLII)
39.	*Cenam Construction Ltd. v. Valley*, 1992 CanLII 401 Cowichan Valley Regional District, [1992] B.C.J. No. 2580 (BC SC)
40.	Ian MacFee Rogers, *The Law of Canadian Municipal Corporations*, 2nd ed. (Toronto: Carswell, 1971) 2016 edition at para. 63.51

MUNICIPAL GOVERNMENT ACT

Chapter M-26

Table of Contents

(ii) the Minister, where the improvement district or special area is authorized or required to act;

(q) repealed 2020 cL-2.3 s24(2);

(r) "municipal purposes" means the purposes set out in section 3;

(s) "municipality" means

(i) a city, town, village, summer village, municipal district or specialized municipality,

(ii) repealed 1995 c24 s2,

(iii) a town under the *Parks Towns Act*, or

(iv) a municipality formed by special Act,

or, if the context requires, the geographical area within the boundaries of a municipality described in subclauses (i) to (iv);

(t) "natural person powers" means the capacity, rights, powers and privileges of a natural person;

(u) "owner" means

(i) in respect of unpatented land, the Crown,

(ii) in respect of other land, the person who is registered under the *Land Titles Act* as the owner of the fee simple estate in the land, and

(iii) in respect of any property other than land, the person in lawful possession of it;

(v) "parcel of land" means

(i) where there has been a subdivision, any lot or block shown on a plan of subdivision that has been registered in a land titles office;

(ii) where a building affixed to the land that would without special mention be transferred by a transfer of land has been erected on 2 or more lots or blocks shown on a plan of subdivision that has been registered in a land titles office, all those lots or blocks;

(iii) a quarter section of land according to the system of surveys under the *Surveys Act* or any other area of land described on a certificate of title;

(w) "pecuniary interest" means pecuniary interest within the meaning of Part 5, Division 6;

(x) "population" means population as determined by, and specified by order of, the Minister under section 604.1;

(y) "public utility" means a system or works used to provide one or more of the following for public consumption, benefit, convenience or use:

(i) water or steam;

(ii) sewage disposal;

(iii) public transportation operated by or on behalf of the municipality;

(iv) irrigation;

(v) drainage;

(vi) fuel;

(vii) electric power;

(viii) heat;

(ix) waste management;

(x) residential and commercial street lighting,

and includes the thing that is provided for public consumption, benefit, convenience or use;

(y.1) "regional services commission" means a regional services commission under Part 15.1;

(z) "road" means land

(i) shown as a road on a plan of survey that has been filed or registered in a land titles office, or

(ii) used as a public road,

and includes a bridge forming part of a public road and any structure incidental to a public road;

(3) Each municipality must prepare a written plan respecting its anticipated capital property additions over a period of at least the next 5 financial years.

(4) The 3 financial years referred to in subsection (2) and the 5 financial years referred to in subsection (3) do not include the financial year in which the financial plan or capital plan is prepared.

(5) Council may elect to include more than 3 financial years in a financial plan or more than 5 financial years in a capital plan.

(6) Council must annually review and update its financial plan and capital plan.

(7) The Minister may make regulations respecting financial plans and capital plans, including, without limitation, regulations

(a) respecting the form and contents of financial plans and capital plans;

(b) specifying the first financial year required to be reflected in a financial plan;

(c) specifying the first financial year required to be reflected in a capital plan.

2015 c8 s40

Part 9
Assessment of Property

Interpretation provisions for Parts 9 to 12

284(1) In this Part and Parts 10, 11 and 12,

(a) "assessed person" means a person who is named on an assessment roll in accordance with section 304;

(b) "assessed property" means property in respect of which an assessment has been prepared;

(c) "assessment" means a value of property determined in accordance with this Part and the regulations;

(d) "assessor" means

(i) the provincial assessor, or

(ii) a municipal assessor,

and includes any person to whom those duties and responsibilities are delegated by the person referred to in subclause (i) or (ii);

(e) "council" includes

(i) a collecting board that is authorized under section 177 of the *Education Act* to impose and collect taxes in a school division as defined in that Act, and

(ii) the Minister, in respect of an improvement district or special area;

(f) "Crown" means the Crown in right of Alberta, and includes a Provincial agency as defined in the *Financial Administration Act* and an agent of the Crown in right of Alberta;

(f.01) "designated industrial property" means

(i) facilities regulated by the Alberta Energy Regulator, the Alberta Utilities Commission or the Canadian Energy Regulator,

(ii) linear property,

(iii) property designated as a major plant by the regulations,

(iv) land and improvements in respect of a parcel of land where that parcel of land contains property described in subclause (i) or (iii), and

(v) land and improvements in respect of land in which a leasehold interest is held where the land is not registered in a land titles office and contains property described in subclause (i) or (iii);

(f.1) "designated manufactured home" means a manufactured home, mobile home, modular home or travel trailer;

(g) repealed 2016 c24 s21;

(g.1) "extended area network" has the meaning given to it in the regulations;

(h) "farm building" has the meaning given to it in the regulations;

(i) "farming operations" has the meaning given to it in the regulations;

(j) "improvement" means

(i) a structure,

(ii) any thing attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure,

(iii) a designated manufactured home,

(iii.1) linear property, and

(iv) machinery and equipment;

(k) "linear property" means

(i) electric power systems, which has the meaning given to that term in the regulations,

(ii) street lighting systems, which has the meaning given to that term in the regulations,

(iii) telecommunication systems, which has the meaning given to that term in the regulations,

(iv) pipelines, which has the meaning given to that term in the regulations,

(v) railway property, which has the meaning given to that term in the regulations, and

(vi) wells, which has the meaning given to that term in the regulations;

(l) "machinery and equipment" has the meaning given to it in the regulations;

(m) "manufactured home" means any structure, whether ordinarily equipped with wheels or not, that is manufactured to meet or exceed the Canadian Standards Association standard CSA Z240 and that is used as a residence or for any other purpose;

(n) "manufactured home community" means a parcel of land that

(i) is designated in the land use bylaw of a municipality as a manufactured home community, and

(ii) includes at least 3 designated manufactured home sites that are rented or available for rent;

(n.1) "mobile home" means a structure that is designed to be towed or carried from place to place and that is used as a residence or for any other purpose, but that does not meet Canadian Standards Association standard CSA Z240;

(n.2) "modular home" means a home that is constructed from a number of pre-assembled units that are intended for delivery to and assembly at a residential site;

(n.3) "municipal assessment roll" means the assessment roll prepared by a municipality under section 302(1);

(n.4) "municipal assessor" means a designated officer appointed under section 284.2 to carry out the functions, duties and powers of a municipal assessor under this Act;

(o) "municipality" includes

(i) a school division, as defined in the *Education Act*, in which a collecting board is authorized under section 177 of that Act to impose and collect taxes or, where the school division is authorized or required to act, the collecting board, and

(ii) an improvement district and a special area or, where the improvement district or special area is authorized or required to act, the Minister;

(o.1) "operational" has the meaning given to it in the regulations;

(p) "operator" has the meaning given to it in the regulations;

(q) "owner", in respect of a designated manufactured home, means the owner of the designated manufactured home and not the person in lawful possession of it;

(r) "property" means

(i) a parcel of land,

(ii) an improvement, or

(iii) a parcel of land and the improvements to it;

(r.1) "provincial assessment roll" means the assessment roll prepared by the provincial assessor under section 302(2);

(r.2) "provincial assessor" means the provincial assessor designated under section 284.1;

(s), (t) repealed 2016 c24 s21;

(u) "structure" means a building or other thing erected or placed in, on, over or under land, whether or not it is so affixed to the land as to become transferred without special mention by a transfer or sale of the land;

(u.1) "SuperNet" has the meaning given to it in the regulations;

(v), (w) repealed 2016 c24 s21;

(w.1) "travel trailer" means a trailer intended to provide accommodation for vacation use and licensed and equipped to travel on a road;

(x) "year" means a 12-month period beginning on January 1 and ending on the next December 31.

(2) In this Part and Parts 10, 11 and 12, a reference to a parcel of land that is held under a lease, licence or permit from the Crown in right of Alberta or Canada includes a part of the parcel.

(2.1) For the purposes of subsection (1)(f.01)(i), a facility regulated by the Alberta Energy Regulator, the Alberta Utilities Commission or the Canadian Energy Regulator includes all components of the facility, including any machinery and equipment, buildings and structures servicing or related to the facility and land on which the facility is located.

(3) For the purposes of this Part and Parts 10, 11 and 12, any document, including an assessment notice and a tax notice, that is required to be sent to a person is deemed to be sent on the day the document is mailed or otherwise delivered to that person.

(4) In this Part and Parts 11 and 12, "complaint deadline" means 60 days after the notice of assessment date set under section 308.1 or 324(2)(a.1).

RSA 2000 cM-26 s284;2007 cA-37.2 s82(17);2007 c42 s3;
2009 c29 s2;2012 cE-0.3 s279;2015 c8 s41;2016 c24 ss21,140;
2017 c13 s1(20);2021 c22 s2;2022 c16 s9(62)

Provincial assessor

284.1(1) The Minister must designate a person having the qualifications set out in the regulations as the provincial assessor to carry out the functions, duties and powers of the provincial assessor under this Act.

(2) Subject to the regulations, the provincial assessor may delegate to any person any power or duty conferred or imposed on the provincial assessor by this Act.

(3) The provincial assessor is not liable for loss or damage caused by anything said or done or omitted to be done in good faith in the performance or intended performance of the provincial assessor's functions, duties or powers under this Act or any other enactment.

2016 c24 s22

Municipal assessor

284.2(1) A municipality must appoint a person having the qualifications set out in the regulations to the position of designated officer to carry out the functions, duties and powers of a municipal assessor under this Act.

(2) Subject to the regulations, a municipal assessor may delegate to any person any power or duty conferred or imposed on the municipal assessor by this Act.

(3) A municipal assessor is not liable for loss or damage caused by anything said or done or omitted to be done in good faith in the performance or intended performance of the municipal assessor's functions, duties or powers under this Act or any other enactment.

2016 c24 s22

Division 1
Preparation of Assessments

Preparing annual assessments

285 Each municipality must prepare annually an assessment for each property in the municipality, except designated industrial property and the property listed in section 298.

RSA 2000 cM-26 s285;2002 c19 s2;2016 c24 s135

286 Repealed 1994 cM-26.1 s286.

287 Repealed 1994 cM-26.1 s287.

288 Repealed 1994 cM-26.1 s288.

Assessments for property other than designated industrial property

289(1) Assessments for all property in a municipality, other than designated industrial property, must be prepared by the municipal assessor.

(2) Each assessment must reflect

(a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and

(b) the valuation and other standards set out in the regulations for that property.

(2.1) If the provincial assessor and a municipal assessor assess the same property, the municipality in which the property is situated must rescind the municipal assessment and notify the assessed person.

(3), **(4)** Repealed 2016 c24 s23.

RSA 2000 cM-26 s289;2009 c29 s3;2016 c24 s23

Land to be assessed as a parcel

290(1) If a parcel of land is located in more than one municipality, the assessor must prepare an assessment for the part of the parcel that is located in the municipality in which the assessor has the authority to act, as if that part of the parcel is a separate parcel of land.

(2) Any area of land forming part of a right of way for a railway, irrigation works as defined in the *Irrigation Districts Act* or drainage works as defined in the *Drainage Districts Act* but used for purposes other than the operation of the railway, irrigation works or drainage works must be assessed as if it is a parcel of land.

(3) Any area of land that is owned by the Crown in right of Alberta or Canada and is the subject of a grazing lease or grazing permit granted by either Crown must be assessed as if it is a parcel of land.

(4) Repealed 1995 c24 s37.

1994 cM-26.1 s290;1995 c24 s37;1999 cI-11.7 s214

Assessment of condominium unit

290.1(1) Each unit and the share in the common property that is assigned to the unit must be assessed

(a) in the case of a bare land condominium, as if it is a parcel of land, or

(b) in any other case, as if it is a parcel of land and the improvements to it.

(2) In this section, "unit" and "share in the common property" have the meanings given to them in the *Condominium Property Act*.

1995 c24 s38

Assessment of strata space

290.2 Each strata space as defined in section 86 of the *Land Titles Act* must be assessed as if it is a parcel of land and the improvements to it.

1995 c24 s38

Rules for assessing improvements

291(1) Unless subsection (2) applies, an assessment must be prepared for an improvement whether or not it is complete or capable of being used for its intended purpose.

(2) No assessment is to be prepared

(a) for new linear property that is not operational on or before October 31,

(b) for new improvements, other than designated industrial property improvements, that are intended to be used for or in connection with a manufacturing or processing operation and that are not operational on or before December 31,

(c) for new designated industrial property improvements, other than linear property, that are intended to be used for or in connection with a manufacturing or processing operation and that are not operational on or before October 31,

(d) for new improvements, other than designated industrial property improvements, that are intended to be used for the storage of materials manufactured or processed by the improvements referred to in clause (b), if the improvements referred to in clause (b) are not operational on or before December 31, or

(e) for new designated industrial property improvements, other than linear property, that are intended to be used for the storage of materials manufactured or processed by the improvements referred to in clause (c), if the improvements referred to in clause (c) are not operational on or before October 31.

(2.1) Notwithstanding subsection (2), an assessment must be prepared for new improvements, whether complete or not, on a property or a portion of a property where the improvements do not contain machinery and equipment intended to be used in connection with the manufacturing and processing operation even if another portion of the property contains a manufacturing or processing operation.

(3) to **(5)** Repealed 2016 c24 s24.

RSA 2000 cM-26 s291;2008 c24 s2;2016 c24 s24;
2019 c22 s10(8)

Assessments for designated industrial property

292(1) Assessments for designated industrial property must be prepared by the provincial assessor.

(2) Each assessment must reflect

(a) the valuation standard set out in the regulations for designated industrial property, and

(b) the specifications and characteristics of the designated industrial property as specified in the regulations.

(2.1) The specifications and characteristics of the designated industrial property referred to in subsection (2)(b) must reflect

(a) the records of the Alberta Energy Regulator, the Alberta Utilities Commission or the Canadian Energy Regulator, as the case may be, on October 31 of the year prior to the year in which the tax is imposed under Part 10 in respect of the designated industrial property, and

(b) any other source of information that the provincial assessor considers relevant, as at October 31 of the year prior to the year in which the tax is imposed under Part 10 in respect of the designated industrial property.

(2.2) Information received by the provincial assessor from the Alberta Energy Regulator, the Alberta Utilities Commission or the Canadian Energy Regulator is deemed to be correct for the purposes of preparing assessments.

(3) to **(5)** Repealed 2016 c24 s25.

RSA 2000 cM-26 s292;2007 cA-37.2 s82(17);
2008 c37 s2;2012 cR-17.3 s95;2016 c24 s25;
2022 c16 s9(62)

Duties of assessors

293(1) In preparing an assessment, an assessor must, in a fair and equitable manner,

(a) apply the valuation and other standards set out in the regulations, and

(b) follow the procedures set out in the regulations.

(2) If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.

(3) The municipal assessor must, in accordance with the regulations, provide the Minister or the provincial assessor with information that the Minister or the provincial assessor requires about property in the municipality.

RSA 2000 cM-26 s293;2002 c19 s3;2009 c29 s4; 2016 c24 s26

Right to enter on and inspect property

294(1) After giving reasonable notice to the owner or occupier of any property, an assessor may at any reasonable time, for the purpose of carrying out the duties and responsibilities of the assessor under Parts 9 to 12 and the regulations,

(a) enter on and inspect the property,

(b) request anything to be produced, and

(c) make copies of anything necessary to the inspection.

(2) When carrying out duties under subsection (1), an assessor must produce identification on request.

(3) An assessor must, in accordance with the regulations, inform the owner or occupier of any property of the purpose for which information is being collected under this section and section 295.

RSA 2000 cM-26 s294;2002 c19 s4;2017 c13 s1(21)

Duty to provide information

295(1) A person must provide, on request by an assessor, any information necessary for the assessor to carry out the duties and responsibilities of an assessor under Parts 9 to 12 and the regulations.

(2) The Alberta Safety Codes Authority or an agency accredited under the *Safety Codes Act* must release, on request by an assessor, information or documents respecting a permit issued under the *Safety Codes Act*.

(3) An assessor may request information or documents under subsection (2) only in respect of a property within the municipality for which the assessor is preparing an assessment.

(4) No person may make a complaint in the year following the assessment year under section 460 or, in the case of designated industrial property, under section 492(1) about an assessment if the

person has failed to provide any information requested under subsection (1) within 60 days from the date of the request.

(5) Information collected under this section must be reported to the Minister on the Minister's request.

(6) Despite section 294(1) and subsection (1) of this section, where an assessment of property is the subject of a complaint under Part 11 or 12 by the person assessed in respect of that property,

(a) the assessed person is not obligated to provide information or produce anything to an assessor in respect of that assessment, and

(b) the assessor has no authority under section 294(1)(c) to make copies of anything the assessed person refuses to provide or produce relating to that assessment

until after the complaint has been heard and decided by the assessment review board or the Land and Property Rights Tribunal, as the case may be.

RSA 2000 cM-26 s295;2002 c19 s5;2016 c24 s27;
2017 c13 s2(6);2020 cL-2.3 24(41)

Assessor not bound by information received

295.1 An assessor is not bound by the information received under section 294 or 295 if the assessor has reasonable grounds to believe that the information is inaccurate.

2019 c22 s10(9)

Court authorized inspection and enforcement

296(1) The provincial assessor or a municipality may apply to the Court of King's Bench for an order under subsection (2) if any person

(a) refuses to allow or interferes with an entry or inspection by an assessor, or

(b) refuses to produce anything requested by an assessor to assist the assessor in preparing an assessment or determining if property is to be assessed.

(2) The Court may make an order

(a) restraining a person from preventing or interfering with an assessor's entry or inspection, or

(b) requiring a person to produce anything requested by an assessor under section 294 or 295.

(3) A copy of the application and each affidavit in support must be served at least 3 days before the day named in the application for the hearing.

RSA 2000 cM-26 s296;2009 c53 s119;2016 c24 s28;AR 217/2022

Assigning assessment classes to property

297(1) When preparing an assessment of property, the assessor must assign one or more of the following assessment classes to the property:

(a) class 1 - residential;

(b) class 2 - non-residential;

(c) class 3 - farm land;

(d) class 4 - machinery and equipment.

(2) A council may by bylaw divide class 1 into sub-classes on any basis it considers appropriate, and if the council does so, the assessor may assign one or more sub-classes to property in class 1.

(2.1) A council may by bylaw divide class 2 into the sub-classes prescribed by subsection (3.1), and if the council does so, the assessor must assign one or more of the prescribed sub-classes to a property in class 2.

(3) If more than one assessment class or sub-class is assigned to a property, the assessor must provide a breakdown of the assessment, showing each assessment class or sub-class assigned and the portion of the assessment attributable to each assessment class or sub-class.

(3.1) For the purposes of subsection (2.1), the following sub-classes are prescribed for property in class 2:

(a) vacant non-residential property;

(b) small business property;

(c) other non-residential property.

(3.2) The sub-classes referred to in subsection (3.1)(a), (b) and (c) may be applied to both the Urban and Rural Service Areas for Lac La Biche County and the Regional Municipality of Wood Buffalo as if the service areas were separate entities.

(3.3) For the purposes of subsection (3.1)(b), property in a municipality is small business property of a business if

(a) the property

(i) is owned or leased by the business, and

(ii) is not designated industrial property,

(b) the business is operating under a business licence or a municipal bylaw that identifies the business, and

(c) the business has, on December 31 of the relevant assessment year or on an alternative date specified in a municipal bylaw, a number of full-time employees across Canada that

(i) is less than 50, or

(ii) is less than any number less than 50 that is specified in a municipal bylaw,

whichever is lower.

(3.4) Despite subsection (3.3)(a)(i), a property that is leased by a business is not a small business property of a business if the business has subleased the property to someone else.

(3.5) A municipality may by bylaw prescribe procedures to allow for the effective administration of the small business property sub-class tax rate, including, without limitations, a method for determining and counting full-time employees and the frequency of that count.

(4) In this section,

(a) "farm land" means land used for farming operations as defined in the regulations;

(a.1) "machinery and equipment" does not include

(i) any thing that falls within the definition of linear property as set out in section 284(1)(k), or

(ii) any component of a manufacturing or processing facility that is used for the cogeneration of power;

(b) "non-residential", in respect of property, means linear property, components of manufacturing or processing facilities that are used for the cogeneration of power or other property on which industry, commerce or another use takes place or is permitted to take place under a land use bylaw passed by a council, but does not include farm land or land

that is used or intended to be used for permanent living accommodation;

(c) "residential", in respect of property, means property that is not classed by the assessor as farm land, machinery and equipment or non-residential.

RSA 2000 cM-26 s297;2002 c19 s6; 2016 c24 s29; 2017 c13 s2(7);2022 c16 s9(63)

Non-assessable property

298(1) No assessment is to be prepared for the following property:

(a) a facility, works or system for

(i) the collection, treatment, conveyance or disposal of sanitary sewage, or

(ii) storm sewer drainage,

that is owned by the Crown in right of Alberta or Canada, a municipality or a regional services commission;

(b) a facility, works or system for the storage, conveyance, treatment, distribution or supply of water that is owned by the Crown in right of Alberta or Canada, a municipality or a regional services commission;

(b.1) a water supply and distribution system, including metering facilities, that is owned or operated by an individual or a corporation and used primarily to provide a domestic water supply service;

(c) irrigation works as defined in the *Irrigation Districts Act* and the land on which they are located when they are held by an irrigation district, but not including any residence or the land attributable to the residence;

(d) canals, dams, dikes, weirs, breakwaters, ditches, basins, reservoirs, cribs and embankments;

(e) flood-gates, drains, tunnels, bridges, culverts, headworks, flumes, penstocks and aqueducts

(i) located at a dam,

(ii) used in the operation of a dam, and

(iii) used for water conservation or flood control, but not for the generation of electric power;

(f) land on which any property listed in clause (d) or (e) is located

(i) if the land is a dam site, and

(ii) whether or not the property located on the land is used for water conservation, flood control or the generation of electric power;

(g) a water conveyance system operated in connection with a manufacturing or processing plant, including any facilities designed and used to treat water to meet municipal standards, but not including any improvement designed and used for

(i) the further treatment of the water supply to meet specific water standards for a manufacturing or processing operation,

(ii) water reuse,

(iii) fire protection, or

(iv) the production or transmission of a natural resource;

(h) a sewage conveyance system operated in connection with a manufacturing or processing plant, including any facilities designed and used to treat and dispose of domestic sewage, but not including any improvement designed and used for the treatment of other effluent from the manufacturing or processing plant;

(i) roads, but not including a road right of way that is held under a lease, licence or permit from the Crown in right of Alberta or Canada or from a municipality and that is used for a purpose other than as a road;

(i.1) weigh scales, inspection stations and other improvements necessary to maintain the roads referred to in clause (i) and to keep those roads and users safe, but not including a street lighting system owned by a corporation, a municipality or a corporation controlled by a municipality;

(j) property held by the Crown in right of Alberta or Canada in a municipal district, improvement district, special area or specialized municipality that

(i) is not used or actively occupied by the Crown, or

(ii) is not occupied under an interest or right granted by the Crown,

unless the property is located in a hamlet or in an urban service area as defined in an order creating a specialized municipality;

(k) any provincial park or recreation area, including any campground, day use area or administration and maintenance facility held by the Crown in right of Alberta or operated under a facility operation contract or service contract with the Crown in right of Alberta, but not including the following:

(i) a residence and the land attributable to it;

(ii) property that is the subject of a disposition under the *Provincial Parks Act* or the *Public Lands Act*;

(iii) a downhill ski hill, golf course, food concession, store or restaurant, and the land attributable to it, operated under a facility operation contract or a service contract with the Crown in right of Alberta;

(k.1) any national park held by the Crown in right of Canada, but not including a parcel of land, an improvement, or a parcel of land and the improvements to it held under a lease, licence or permit from the Crown in right of Canada;

(l) property held by the Crown in right of Alberta or Canada and forming part of an undertaking in respect of the conservation, reclamation, rehabilitation or reforestation of land, but not including any residence or the land attributable to the residence;

(m) property used for or in connection with a forestry tower that is not accessible by road;

(n) any interest under a timber disposition under the *Forests Act* and the timber harvest or cut authorized by the disposition;

(o) any interest under a permit or authorization for the grazing of stock under the *Forests Act* or the *Forest Reserves Act*;

(p) wheel loaders, wheel trucks and haulers, crawler type shovels, hoes and dozers;

(q) linear property used exclusively for farming operations;

(r) linear property forming part of a rural gas distribution system and gas conveyance pipelines situated in a rural municipality where that linear property is owned by a municipality or a rural gas co-operative association organized under the *Rural Utilities Act*, but not including gas conveyance pipelines owned by rural gas co-operative associations,

(i) from the regulating and metering station to an industrial customer consuming more than 10 000 gigajoules of gas during any period that starts on November 1 in one year and ends on October 31 in the next year and that precedes the year in which the assessment for those pipelines is to be used for the purpose of imposing a tax under Part 10, or

(ii) that serve or deliver gas to

(A) a city, town, village, summer village or hamlet, or

(B) an urban service area as defined in an order creating a specialized municipality

that has a population of more than 500 people;

(r.1) linear property forming part of a rural gas distribution system where that gas distribution system is subject to a franchise area approval under the *Gas Distribution Act*;

(s) cairns and monuments;

(t) property in Indian reserves;

(u) property in Metis settlements;

(v) minerals;

(w) growing crops;

(x) the following improvements owned or leased by a regional airports authority created under section 5(2) of the *Regional Airports Authorities Act*:

(i) runways;

(ii) paving;

(iii) roads and sidewalks;

(iv) reservoirs;

(v) water and sewer lines;

(vi) fencing;

(vii) conveyor belts, cranes, weigh scales, loading bridges and machinery and equipment;

(viii) pole lines, transmission lines, light standards and unenclosed communications towers;

(y) farm buildings;

(z) machinery and equipment, except to the extent prescribed in the regulations;

(aa) designated manufactured homes held in storage and forming part of the inventory of a manufacturer of or dealer in designated manufactured homes;

(bb) travel trailers that are

(i) not connected to any utility services provided by a public utility, and

(ii) not attached or connected to any structure;

(cc) linear property in the extended area network that is used for SuperNet purposes.

(2) In subsection (1)(r)(i), "industrial customer" means a customer that operates a factory, plant, works or industrial process related to manufacturing and processing.

(3) Despite subsection (1)(cc), where linear property referred to in that provision is used for business, the linear property is, subject to the regulations, assessable to the extent the linear property is used for business.

RSA 2000 cM-26 s298;2005 c14 s4;2015 c8 s42;2022 c16 s9(64)

Access to municipal assessment record

299(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive information prescribed by the regulations that is in the municipal assessor's possession at the time of the request, showing how the municipal assessor prepared the assessment of that person's property.

(2) Subject to subsection (3) and the regulations, the municipality must comply with a request under subsection (1).

(3) Where a complaint is filed under section 461 by the person assessed in respect of property, a municipality is not obligated to respond to a request by that person for information under this section in respect of an assessment of that property until the complaint has been heard and decided by an assessment review board.

(4) Subsection (3) does not apply if the request for information is in respect of an amended assessment and the amended assessment notice was issued during the complaint period.

RSA 2000 cM-26 s299;2009 c29 s5;2016 c24 s30;2017 c13 s2(8)

Access to provincial assessment record

299.1(1) An assessed person may ask the provincial assessor, in the manner required by the provincial assessor, to let the assessed person see or receive information prescribed by the regulations in the provincial assessor's possession at the time of the request, showing how the provincial assessor prepared the assessment of that person's designated industrial property.

(2) Subject to subsection (3) and the regulations, the provincial assessor must comply with a request under subsection (1).

(3) Where a complaint described in section 492(1) is filed under section 491(1) by the person assessed in respect of designated industrial property, the provincial assessor is not obligated to respond to a request by that person for information under this section in respect of an assessment of that designated industrial property until the complaint has been heard and decided by the Land and Property Rights Tribunal.

(4) Subsection (3) does not apply if the request for information is in respect of an amended assessment and the amended assessment notice was issued during the complaint period.

2016 c24 s30;2017 c13 s2(8);2020 cL-2.3 s24(41)

Municipal access to provincial assessment record

299.2(1) A municipality may ask the provincial assessor, in the manner required by the provincial assessor, to let the municipality see or receive information in the provincial assessor's possession at the time of the request, showing how the provincial assessor prepared the assessment of designated industrial property in the municipality.

(2) Subject to subsection (3) and the regulations, the provincial assessor must comply with a request under subsection (1).

(3) Where a complaint described in section 492(1) is filed under section 491(1) by a municipality in respect of designated industrial

property, the provincial assessor is not obligated to respond to a request by that municipality for information under this section in respect of an assessment of that designated industrial property until the complaint has been heard and decided by the Land and Property Rights Tribunal.

(4) Subsection (3) does not apply if the request for information is in respect of an amended assessment and the amended assessment notice was issued during the complaint period.

(5) Information obtained by a municipality under this section must be used only for assessment purposes and must not be disclosed except at the hearing of a complaint before the Land and Property Rights Tribunal.

2016 c24 s30;2017 c13 s2(8);2020 cL-2.3 s24(41)

Access to summary of municipal assessment

300(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive a summary of the most recent assessment of any assessed property in the municipality of which the assessed person is not the owner.

(2) For the purposes of subsection (1), a summary of the most recent assessment must include the following information that is in the municipal assessor's possession or under the municipal assessor's control at the time of the request:

(a) a description of the parcel of land and any improvements, to identify the type and use of the property;

(b) the size and measurements of the parcel of land;

(c) the age and size or measurement of any improvements;

(d) the key attributes of any improvements to the parcel of land;

(e) the assessed value and any adjustments to the assessed value of the parcel of land;

(f) any other information prescribed or otherwise described in the regulations.

(3) The municipality must, in accordance with the regulations, comply with a request under subsection (1) if it is satisfied that necessary confidentiality will not be breached.

RSA 2000 cM-26 s300;2009 c29 s6;2016 c24 s31

Access to summary of provincial assessment

300.1(1) An assessed person may ask the provincial assessor, in the manner required by the provincial assessor, to let the assessed person see or receive a summary of the most recent assessment of any assessed designated industrial property of which the assessed person is not the owner or operator.

(2) For the purposes of subsection (1), a summary of the most recent assessment must include the following information that is in the provincial assessor's possession or under the provincial assessor's control at the time of the request:

(a) a description of the designated industrial property;

(b) the assessed value associated with the designated industrial property;

(c) any other information prescribed or otherwise described in the regulations.

(3) The provincial assessor must, in accordance with the regulations, comply with a request under subsection (1) if the provincial assessor is satisfied that necessary confidentiality will not be breached.

2016 c24 s31

Right to release assessment information

301(1) A municipality may provide information in its possession about assessments if it is satisfied that necessary confidentiality will not be breached.

(2) The provincial assessor may provide information that is in the provincial assessor's possession about assessments if the provincial assessor is satisfied that necessary confidentiality will not be breached.

RSA 2000 cM-26 s301;2016 c24 s32

Relationship to Freedom of Information and Protection of Privacy Act

301.1 Sections 299 to 301 prevail despite the *Freedom of Information and Protection of Privacy Act*.

1994 cM-26.1 s738

Division 2
Assessment Roll

Preparation of roll

302(1) Each municipality must prepare annually, not later than February 28, an assessment roll for assessed property in the municipality other than designated industrial property.

(2) The provincial assessor must prepare annually, not later than February 28, an assessment roll for assessed designated industrial property.

(3) The provincial assessor must provide to each municipality a copy of that portion of the provincial assessment roll that relates to the designated industrial property situated in the municipality.

RSA 2000 cM-26 s302;2005 c14 s5;2016 c24 s33

Contents of roll

303 The assessment roll prepared by a municipality must show, for each assessed property, the following:

(a) a description sufficient to identify the location of the property;

(b) the name and mailing address of the assessed person;

(c) whether the property is a parcel of land, an improvement or a parcel of land and the improvements to it;

(d) if the property is an improvement, a description showing the type of improvement;

(e) the assessment;

(f) the assessment class or classes;

(f.1) repealed 2017 c13 s1(22);

(g) whether the property is assessable for public school purposes or separate school purposes, if notice has been given to the municipality under section 147 or 148 of the *Education Act*;

(g.1) repealed 2016 c24 s34;

(h) if the property is fully or partially exempt from taxation under Part 10, a notation of that fact;

(h.1) if a deferral of the collection of tax under section 364.1 or 364.2 is in effect for the property, a notation of that fact;

(i) any other information considered appropriate by the municipality or required by the Minister, as the case may be.

RSA 2000 cM-26 s303;2002 c19 s7;2005 c14 s6;
2012 cE-0.3 s279;2016 c24 s34;2017 c13 s1(22);
2019 c6 s3

Contents of provincial assessment roll

303.1 The provincial assessment roll must show, for each assessed designated industrial property, the following:

(a) a description of the type of designated industrial property;

(b) a description sufficient to identify the location of the designated industrial property;

(c) the name and mailing address of the assessed person;

(d) the assessment;

(e) the assessment class or classes;

(f) repealed 2017 c13 s2(9);

(g) whether the designated industrial property is assessable for public school purposes or separate school purposes, if notice has been given to the municipality under section 147 or 148 of the *Education Act*;

(h) if the designated industrial property is exempt from taxation under Part 10, a notation of that fact;

(h.1) if a deferral of the collection of tax under section 364.2 is in effect for the property, a notation of that fact;

(i) any other information considered appropriate by the provincial assessor.

2012 cE-0.3 s279;2016 c24 s35;2017 c13 s2(9);2019 c6 s4

Recording assessed persons

304(1) The name of the person described in column 2 must be recorded on the assessment roll as the assessed person in respect of the assessed property described in column 1.

	Column 1 Assessed property		**Column 2 Assessed person**
(a)	a parcel of land, unless otherwise dealt with in this subsection;	(a)	the owner of the parcel of land;
(b)	a parcel of land and the improvements to it, unless otherwise dealt with in this subsection;	(b)	the owner of the parcel of land;

	Column 1 Assessed property		Column 2 Assessed person
(c)	a parcel of land, an improvement or a parcel of land and the improvements to it held under a lease, licence or permit from the Crown in right of Alberta or Canada or a municipality;	(c)	the holder of the lease, licence or permit or, in the case of a parcel of land or a parcel of land and the improvements to it, the person who occupies the land with the consent of that holder or, if the land that was the subject of a lease, licence or permit has been sold under an agreement for sale, the purchaser under that agreement;
(d)	a parcel of land forming part of the station grounds of, or of a right of way for, a railway other than railway property, or a right of way for, irrigation works as defined in the *Irrigation Districts Act* or drainage works as defined in the *Drainage Districts Act*, that is held under a lease, licence or permit from the person who operates the railway, or from the irrigation district or the board of trustees of the drainage district;	(d)	the holder of the lease, licence or permit or the person who occupies the land with the consent of that holder;
(d.1)	railway property;	(d.1)	the owner of the railway property;
(e)	a parcel of land and the improvements to it held under a lease, licence or permit from a regional airports authority, where the land and improvements are used in connection with the operation of an airport;	(e)	the holder of the lease, licence or permit or the person who occupies the land with the consent of that holder;

	Column 1 Assessed property		Column 2 Assessed person
(f)	a parcel of land, or a part of a parcel of land, and the improvements to it held under a lease, licence or permit from the owner of the land where the land and the improvements are used for (i) drilling, treating, separating, refining or processing of natural gas, oil, coal, salt, brine or any combination, product or by-product of any of them, (ii) pipeline pumping or compressing, or (iii) working, excavating, transporting or storing any minerals in or under the land referred to in the lease, licence or permit or under land in the vicinity of that land.	(f)	the holder of the lease, licence or permit;
(g)	machinery and equipment used in the excavation or transportation of coal or oil sands as defined in the *Oil Sands Conservation Act*;	(g)	the owner of the machinery and equipment;
(h)	improvements to a parcel of land listed in section 298 for which no assessment is to be prepared;	(h)	the person who owns or has exclusive use of the improvements;
(i)	linear property;	(i)	the operator of the linear property;

	Column 1 Assessed property		Column 2 Assessed person
(j)	a designated manufactured home on a site in a manufactured home community and any other improvements located on the site and owned or occupied by the person occupying the designated manufactured home;	(j)	the owner of (i) the designated manufactured home, or (ii) the manufactured home community if the municipality passes a bylaw to that effect;
(k)	a designated manufactured home located on a parcel of land that is not owned by the owner of the designated manufactured home together with any other improvements located on the site that are owned or occupied by the person occupying the designated manufactured home;	(k)	the owner of the designated manufactured home if the municipality passes a bylaw to that effect;
(l)	a parcel of land, or a part of a parcel of land, and the improvements to it held under a lease, licence or permit from the owner of the land where the land and improvements are used in connection with an electric generation system as defined in the regulations.	(l)	the holder of the lease, licence or permit.

(2) When land is occupied under the authority of a right of entry order as defined in the *Surface Rights Act* or an order made under any other Act, it is, for the purposes of subsection (1), considered to be occupied under a lease or licence from the owner of the land.

(3) A person who purchases property or in any other manner becomes liable to be shown on the assessment roll as an assessed person

(a) must provide to the provincial assessor, in the case of designated industrial property, or

(b) must provide to the municipality, in the case of property other than designated industrial property,

written notice of a mailing address to which notices under this Part and Part 10 may be sent.

(4) Despite subsection (1)(c), no individual who occupies housing accommodation under a lease, licence or permit from a management body under the *Alberta Housing Act* is to be recorded as an assessed person if the sole purpose of the lease, licence or permit is to provide housing accommodation for that individual.

(5) Repealed 2016 c24 s36.

(6) A bylaw passed under subsection (1)(j)(ii)

(a) must be advertised,

(b) has no effect until the beginning of the year commencing at least 12 months after the bylaw is passed,

(c) must indicate the criteria used to designate the assessed person, and

(d) may apply to one or more manufactured home communities.

(7) When a bylaw is passed under subsection (1)(j)(ii), the owner of the designated manufactured home is the assessed person for the purpose of making a complaint under section 460(1) relating to the designated manufactured home.

RSA 2000 cM-26 s304;2005 c14 s7;2008 c37 s3;
2016 c24 s36;2017 c13 s1(23);2024 c11 s2(23)

Correction of roll

305(1) If it is discovered that there is an error, omission or misdescription in any of the information shown on the assessment roll,

(a) the assessor may correct the assessment roll for the current year only, and

(b) on correcting the roll, an amended assessment notice must be prepared and sent to the assessed person.

(1.1) Where an assessor corrects the assessment roll in respect of an assessment about which a complaint has been made, the assessor must send to the assessment review board or the Land and Property

Rights Tribunal, as the case may be, no later than the time required by the regulations,

(a) a copy of the amended assessment notice, and

(b) a statement containing the following information:

(i) the reason for which the assessment roll was corrected;

(ii) what correction was made;

(iii) how the correction affected the amount of the assessment.

(1.2) Where the assessor sends a copy of an amended assessment notice under subsection (1.1) before the date of the hearing in respect of the complaint,

(a) the complaint is cancelled,

(b) the complainant's complaint fees must be returned, and

(c) the complainant has a new right of complaint in respect of the amended assessment notice.

(2) If it is discovered that no assessment has been prepared for a property and the property is not listed in section 298, an assessment for the current year only must be prepared and an assessment notice must be prepared and sent to the assessed person.

(3) If exempt property becomes taxable or taxable property becomes exempt under section 364.1, 364.2 or 368, the assessment roll must be corrected for the current year only and an amended assessment notice must be prepared and sent to the assessed person.

(3.1) If the collection of tax on property is deferred under section 364.1 or 364.2 or a deferral under one of those sections is cancelled, the assessment roll must be corrected and an amended assessment notice must be prepared and sent to the assessed person.

(4) The date of every entry made on the assessment roll under this section or section 477 or 517 must be shown on the roll.

(5), **(6)** Repealed 2016 c24 s37.

RSA 2000 cM-26 s305;2002 c19 s8;2009 c29 s7;2015 c8 s43;
2016 c24 s37;2017 c13 s1(24);2019 c6 s5;2020 cL-2.3 s24(41)

Report to Minister

305.1 If an assessment roll is corrected under section 305 or changed under section 477 or 517, the municipality must, in the

form and within the time prescribed by the regulations, report the correction or change, as the case may be, to the Minister.

2002 c19 s9

Severability of roll

306 The fact that any information shown on the assessment roll contains an error, omission or misdescription does not invalidate any other information on the roll or the roll itself.

1994 cM-26.1 s306

Inspection of roll

307 Any person may inspect the municipal assessment roll during regular business hours on payment of the fee set by the council.

RSA 2000 cM-26 s307;2016 c24 s38

Division 3
Assessment Notices

Assessment notices

308(1) Each municipality must annually

(a) prepare assessment notices for all assessed property, other than designated industrial property, shown on the assessment roll referred to in section 302(1), and

(b) send the assessment notices to the assessed persons in accordance with the regulations.

(2) The provincial assessor must annually

(a) prepare assessment notices for all assessed designated industrial property shown on the provincial assessment roll,

(b) send the assessment notices to the assessed persons in accordance with the regulations, and

(c) send the municipality copies of the assessment notices.

(3) Repealed 2016 c24 s39.

(4) The assessment notice and the tax notice relating to the same property may be sent together or may be combined on one notice.

(5) Repealed 2016 c24 s39.

RSA 2000 cM-26 s308;2005 c14 s8;2016 c24 s39

Notice of assessment date

308.1(1) An assessor must annually set a notice of assessment date, which must be no earlier than January 1 and no later than July 1.

(2) An assessor must set additional notice of assessment dates for amended and supplementary assessment notices, but none of those notice of assessment dates may be later than the date that tax notices are required to be sent under Part 10.

2017 c13 s1(25)

Contents of assessment notice

309(1) An assessment notice or an amended assessment notice must show the following:

(a) the same information that is required to be shown on the assessment roll;

(b) the notice of assessment date;

(c) a statement that the assessed person may file a complaint not later than the complaint deadline;

(d) information respecting filing a complaint in accordance with the regulations.

(2) An assessment notice may be in respect of a number of assessed properties if the same person is the assessed person for all of them.

RSA 2000 cM-26 s309;2009 c29 s8; 2016 c24 s40;2017 c13 s2(10)

Sending assessment notices

310(1) Subject to subsections (1.1) and (3), assessment notices must be sent no later than July 1 of each year.

(1.1) An amended assessment notice must be sent no later than the date the tax notices are required to be sent under Part 10.

(2) If the mailing address of an assessed person is unknown,

(a) a copy of the assessment notice must be sent to the mailing address of the assessed property, and

(b) if the mailing address of the property is also unknown, the assessment notice must be retained by the municipality or the provincial assessor, as the case may be, and is deemed to have been sent to the assessed person.

(3) An assessment notice must be sent at least 7 days prior to the notice of assessment date.

(4) A designated officer must certify the date on which the assessment notice is sent.

(5) The certification of the date referred to in subsection (4) is evidence that the assessment notice has been sent.

RSA 2000 cM-26 s310;2009 c29 s9;
2016 c24 s41;2017 c13 s1(26)

Publication of notice

311(1) Each municipality must publish in one issue of a newspaper having general circulation in the municipality, or in any other manner considered appropriate by the municipality, a notice that the assessment notices have been sent.

(2) All assessed persons are deemed as a result of the publication referred to in subsection (1) to have received their assessment notices.

(3) The provincial assessor must publish in The Alberta Gazette a notice that the assessment notices in respect of designated industrial property have been sent.

(4) All assessed persons are deemed as a result of the publication referred to in subsection (3) to have received their assessment notices in respect of designated industrial property.

RSA 2000 cM-26 s311;2005 c14 s9;2016 c24 s42

Correction of notice

312 If it is discovered that there is an error, omission or misdescription in any of the information shown on an assessment notice, an amended assessment notice may be prepared and sent to the assessed person.

1994 cM-26.1 s312

Division 4
Preparation of Supplementary Assessments

Bylaw

313(1) If a municipality wishes to require the preparation of supplementary assessments for improvements, the council must pass a supplementary assessment bylaw authorizing the assessments to be prepared for the purpose of imposing a tax under Part 10 in the same year.

(2) A bylaw under subsection (1) must refer

(a) to all improvements, or

(b) to all designated manufactured homes in the municipality.

(3) A supplementary assessment bylaw or any amendment to it applies to the year in which it is passed, only if it is passed before May 1 of that year.

(4) A supplementary assessment bylaw must not authorize assessments to be prepared by the municipal assessor for designated industrial property.

RSA 2000 cM-26 s313;2016 c24 s135;2018 c11 s13

Supplementary assessment

314(1) The municipal assessor must prepare supplementary assessments for machinery and equipment used in manufacturing and processing if those improvements are operational in the year in which they are to be taxed under Part 10.

(2) The municipal assessor must prepare supplementary assessments for other improvements if

(a) they are completed in the year in which they are to be taxed under Part 10,

(b) they are occupied during all or any part of the year in which they are to be taxed under Part 10, or

(c) they are moved into the municipality during the year in which they are to be taxed under Part 10 and they will not be taxed in that year by another municipality.

(2.1) The municipal assessor may prepare a supplementary assessment for a designated manufactured home that is moved into the municipality during the year in which it is to be taxed under Part 10 despite that the designated manufactured home will be taxed in that year by another municipality.

(3) A supplementary assessment must reflect

(a) the value of an improvement that has not been previously assessed, or

(b) the increase in the value of an improvement since it was last assessed.

(4) Supplementary assessments must be prepared in the same manner as assessments are prepared under Division 1, but must be prorated to reflect only the number of months during which the improvement is complete, occupied, located in the municipality or in operation, including the whole of the first month in which the improvement was completed, was occupied, was moved into the municipality or began to operate.

RSA 2000 cM-26 s314;2016 c24 s43

Supplementary assessment re designated industrial property

314.1(1) Subject to the regulations, the provincial assessor must prepare supplementary assessments for new designated industrial property that becomes operational after October 31 of the year prior to the year in which the designated industrial property is to be taxed under Part 10.

(2) Supplementary assessments must reflect the valuation standard set out in the regulations for designated industrial property.

(3) Subject to the regulations, supplementary assessments for designated industrial property must be prorated to reflect only the number of months, including the whole of the first month, during which the property is operational.

(4) Despite subsections (1) to (3),

(a) a supplementary assessment must be prepared only for designated industrial property that has not been previously assessed, and only when it becomes operational;

(b) a supplementary assessment must not be prepared in respect of designated industrial property that ceases to operate during the tax year.

2016 c24 s44

Supplementary assessment roll

315(1) Before the end of the year in which supplementary assessments are prepared, the municipality must prepare a supplementary assessment roll.

(2) Before the end of the year in which supplementary assessments are prepared, the provincial assessor must prepare a supplementary assessment roll for designated industrial property.

(3) A supplementary assessment roll must show, for each assessed improvement or designated industrial property, the following:

(a) the same information that is required to be shown on the assessment roll;

(b) in the case of an improvement, the date that the improvement

(i) was completed, occupied or moved into the municipality, or

(ii) became operational.

(4) Sections 304, 305, 306 and 307 apply in respect of a supplementary assessment roll.

(5) The provincial assessor must provide a copy of the supplementary assessment roll for designated industrial property to the municipality.

RSA 2000 cM-26 s315;2016 c24 s45

Supplementary assessment notices

316(1) Before the end of the year in which supplementary assessments are prepared other than for designated industrial property, the municipality must

(a) prepare a supplementary assessment notice for every assessed improvement shown on the supplementary assessment roll referred to in section 315(1), and

(b) send the supplementary assessment notices to the assessed persons.

(2) Before the end of the year in which supplementary assessments for designated industrial property are prepared, the provincial assessor must

(a) prepare supplementary assessment notices for all assessed designated industrial property shown on the supplementary assessment roll referred to in section 315(2),

(b) send the supplementary assessment notices to the assessed persons in accordance with the regulations, and

(c) send the municipality copies of the supplementary assessment notices.

RSA 2000 cM-26 s316;2009 c29 s10;2016 c24 s45

Contents of supplementary assessment notice

316.1(1) A supplementary assessment notice must show, for each assessed improvement, the following:

(a) the same information that is required to be shown on the supplementary assessment roll;

(b) the notice of assessment date;

(c) a statement that the assessed person may file a complaint not later than the complaint deadline;

(d) information respecting filing a complaint in accordance with the regulations.

(2) Sections 308(2), 309(2), 310(1.1) and (3) and 312 apply in respect of supplementary assessment notices.

2016 c24 s45;2017 c13 s2(11)

Division 5
Equalized Assessments

Definition

317 In this Division, "equalized assessment" means an assessment that is prepared by the Minister in accordance with this Division for an entire municipality and reflects

(a) assessments of property in the municipality that is taxable under Part 10,

(b) repealed 2016 c24 s46,

(c) assessments of property in the municipality in respect of which a grant may be paid by the Crown in right of Canada under the *Payments in Lieu of Taxes Act* (Canada),

(d) assessments of property in the municipality made taxable or exempt as a result of a council passing a bylaw under Part 10, except any property made taxable under section 363(3), and

(e) assessments of property in the municipality that is the subject of a tax agreement under section 333.1, 360 or 364.1,

from the year preceding the year in which the equalized assessment is effective.

RSA 2000 cM-26 s317;2015 c8 s44;2016 c24 s46; 2024 c19 s12

Supplementary assessments

317.1 Despite section 317, supplementary assessments prepared under a supplementary assessment bylaw under section 313 must not be included in the equalized assessment for a municipality.

1995 c24 s44

Preparation of equalized assessments

318 The Minister must prepare annually, in accordance with the regulations, an equalized assessment for each municipality.

1994 cM-26.1 s318

Duty to provide information

319(1) Each municipality must provide to the Minister annually, not later than the date required by regulations made under section 322(1) or guidelines made under section 322(2), a return containing

the information requested by the Minister in the form required by the Minister.

(2) If a municipality does not provide the information requested by the Minister, the Minister must prepare the equalized assessment using whatever information is available about the municipality.

RSA 2000 cM-26 s319;2015 c8 s45

Sending equalized assessments to municipalities

320 The Minister must send to each municipality annually, not later than November 1, a report of all the equalized assessments prepared.

1994 cM-26.1 s320

Appeal of equalized assessment

321 A municipality may make a complaint regarding the amount of an equalized assessment to the Land and Property Rights Tribunal not later than 30 days from the date the Minister sends the municipality the report described in section 320.

RSA 2000 cM-26 s321;2002 c19 s12;2009 c29 s11;2015 c8 s46; 2020 cL-2.3 s24(41)

Division 6
General Powers of the Minister Relating to Assessments and Equalized Assessments

Regulations

322(1) The Minister may make regulations

(a) respecting qualifications to be met by persons authorized to carry out the duties and responsibilities of an assessor under this Act;

(b) defining “electric power systems”, “facilities”, “farming operations”, “farm building”, “machinery and equipment”, “operator”, “pipelines”, “railway property”, “street lighting systems”, “telecommunication systems” and “wells”;

(b.01) respecting when property is to be considered operational for the purposes of one or more provisions of this Part;

(b.1) defining “extended area network” and “SuperNet”;

(c) respecting the extent to which farm buildings and machinery and equipment may be assessed under section 298;

(c.1) respecting the assessment of linear property referred to in section 298(3), including, without limitation, respecting

information to be provided, and by whom it is to be provided, for preparing the assessment;

(d) establishing valuation standards for property;

(d.1) respecting the delegation of the powers, duties and functions of the provincial assessor under section 284.1 or of a municipal assessor under section 284.2;

(d.2) designating major plants and other property as designated industrial property;

(d.3) respecting designated industrial property, including, without limitation, regulations respecting the specifications and characteristics of designated industrial property;

(e) respecting processes and procedures for preparing assessments;

(e.1) respecting the manner in which an assessor must inform an owner or occupier of any property of the purpose for which information is being collected under sections 294 and 295;

(e.11) respecting the providing of information by the provincial assessor to a municipality under section 299.2, including, without limitation, regulations

(i) requiring the provincial assessor and the municipality to enter into a confidentiality agreement with respect to that information, and

(ii) respecting the terms and conditions of a confidentiality agreement;

(e.2) respecting assessment rolls and assessment notices including, without limitation, regulations

(i) respecting the information to be shown on an assessment roll and on an assessment notice;

(ii) providing for the method of determining the assessed person for the purposes of section 304(1);

(iii) respecting the sending of assessment notices;

(f) respecting the allowance of depreciation on machinery and equipment;

(g) prescribing standards to be met by assessors in the preparation of assessments;

(g.01) prescribing sub-classes for the purposes of section 297(2.1);

(g.1) prescribing or otherwise describing information for the purposes of sections 299(1), 299.1(1), 300(2)(f) and 300.1(2)(c);

(g.2) respecting procedures and time-lines to be followed by a municipality in dealing with a request for information under section 299 or a request for a summary of an assessment under section 300;

(g.3) respecting the imposition of penalties or other sanctions against a municipality for failing to comply with a request for information under section 299 or a request for a summary of an assessment under section 300;

(g.4) respecting the dates by which returns referred to in section 319(1) must be provided to the Minister;

(h) respecting equalized assessments;

(h.1) respecting the audit of any matters relating to assessments;

(h.2) respecting the providing of information to an assessor under section 295(1);

(h.3) respecting procedures and time-lines to be followed by a provincial assessor in dealing with a request for information under section 299.1 or 299.2 or a request for a summary of an assessment under section 300.1;

(h.4) respecting supplementary assessments;

(h.5) defining any term or expression that is used but not defined in this Part;

(i) respecting any other matter considered necessary to carry out the intent of this Act.

(2) Where the Minister considers it advisable to do so, the Minister may by order establish guidelines respecting any matter for which the Minister may make a regulation under subsection (1).

(3) A guideline established under subsection (2) is a regulation for the purposes of this Act, but is exempted from the application of the *Regulations Act*.

(4) The Minister must

(a) publish in The Alberta Gazette a notice of any guideline established under subsection (2) and information about where copies of the guideline may be obtained or are available to the public;

(b) ensure that any guideline established under subsection (2) is published in a form and manner that the Minister considers appropriate.

(5) Subsection (4) applies only to guidelines established under subsection (2) on or after July 1, 2007.

(6) In designating by regulation a major plant as designated industrial property, the Minister may include as a major plant any parcel of land, improvements or other property.

(7) The inclusion of property pursuant to subsection (6) is not invalid even if the property is used for residential or agricultural purposes, or is vacant.

(8) If an application is made to a court in respect of the validity of a regulation designating a major plant as designated industrial property,

(a) the application shall be limited to whether a specific parcel of land, improvement or other property for which the applicant is the assessed person is or is not all or a part of a major plant;

(b) evidence of the inclusion of property pursuant to subsection (6) or of property not designated as a major plant pursuant to subsection (6) is not admissible to demonstrate the invalidity of the regulation or any part of it.

RSA 2000 cM-26 s322;2002 c19 s14;2005 c14 s10;
2007 c16 s2;2009 c29 s12;2015 c8 s47;
2016 c24 s47;2017 c13 ss1(27), 2(12)

Validation of Minister's Guidelines

322.1(1) In this section,

(a) "Minister's Guidelines" means

(i) the following guidelines referred to in the *Matters Relating to Assessment and Taxation Regulation* (AR 220/2004):

(A) Alberta Assessment Quality Minister's Guidelines;

(B) Alberta Farm Land Assessment Minister's Guidelines;

(C) Alberta Linear Property Assessment Minister's Guidelines;

(D) Alberta Machinery and Equipment Assessment Minister's Guidelines;

(E) Alberta Railway Assessment Minister's Guidelines,

(ii) any previous versions of the guidelines named in subclause (i) that are referred to in the previous regulations, and

(iii) the 2005 Construction Cost Reporting Guide established by the Minister and any previous versions of the Construction Cost Reporting Guide established by the Minister,

and includes any manuals, guides and handbooks referred to or incorporated into any of the guidelines or guides referred to in subclauses (i) to (iii);

(b) "previous regulations" means

(i) the *Matters Relating to Assessment and Taxation Regulation* (AR 289/99), and

(ii) the *Standards of Assessment Regulation* (AR 365/94).

(2) The Minister's Guidelines are declared valid as of the dates on which they were established, and no assessment prepared pursuant to the Minister's Guidelines shall be challenged on the basis of the validity of the Minister's Guidelines

(a) in any existing or future proceeding under this or any other Act, or

(b) in any existing or future action, matter or proceeding before a court.

(3) The Minister's Guidelines are deemed to be guidelines established under section 322(2).

2007 c16 s3

Minister's power to prepare assessments

323 If it appears to the Minister that in any year a council will be unable to carry out its obligation under section 285, the Minister may cause any or all of the assessments in the municipality to be prepared and the council is responsible for the costs.

1994 cM-26.1 s323

Minister's power to quash assessments

324(1) If, after an inspection under section 571 or an audit under the regulations is completed, the Minister is of the opinion that an assessment

(a) has not been prepared in accordance with the rules and procedures set out in this Part and the regulations,

(b) is not fair and equitable, taking into consideration assessments of similar property, or

(c) does not meet the standards required by the regulations,

the Minister may quash the assessment and direct that a new assessment be prepared.

(2) On quashing an assessment, the Minister must provide directions as to the manner and times in which

(a) the new assessment is to be prepared,

(a.1) a new notice of assessment date is to be established,

(b) the new assessment is to be placed on the assessment roll, and

(c) amended assessment notices are to be sent to the assessed persons.

(3) The Minister must specify the effective date of a new assessment prepared under this section.

RSA 2000 cM-26 s324;2002 c19 s15;2017 c13 s1(28)

Minister's power to alter an equalized assessment

325 Despite anything in this Act, the Minister may adjust an equalized assessment at any time.

Continuous bylaws — assessment

325.1 Bylaws enacted under section 297 or 313 remain in force after the year in which they are enacted and apply in respect of subsequent years until they are repealed.

2019 c22 s10(10)

Part 10
Taxation

Division 1
General Provisions

Definitions

326(1) In this Part,

(a) "requisition" means

(i) repealed 1995 c24 s45,

(ii) any part of the amount required to be paid into the Alberta School Foundation Fund under section 167 of the *Education Act* that is raised by imposing a rate referred to in section 167 of the *Education Act*,

(iii) any part of the requisition of school boards under Part 6, Division 3 of the *Education Act*,

(iv) repealed 2008 cE-6.6 s55,

(v) the amount required to be paid to a management body under section 7 of the *Alberta Housing Act*, or

(vi) the amount required to recover the costs incurred for matters related to

(A) the assessment of designated industrial property, and

(B) any other matters related to the provincial assessor's operations;

(b) "student dormitory" means a housing unit

(i) that is used in connection with a purpose referred to in section 362(1)(c), (d) or (e) or with a college incorporated under a private Act of the Legislature, and

(ii) the residents of which are students of a facility used in connection with a purpose referred to in section 362(1)(c), (d) or (e) or with a college incorporated under a private Act of the Legislature,

but does not include a single family residence and the land attributable to that residence;

(c) "tax arrears" means taxes that remain unpaid after December 31 of the year in which they are imposed.

(2) For purposes of Divisions 3 and 4, "business" does not include a constituency office of a Member of the Legislative Assembly or any other office used by one or more Members of the Legislative Assembly to carry out their duties and functions as Members.

RSA 2000 cM-26 s326;2008 cE-6.6 s55;2012 cE-0.3 s279; 2015 c8 s48;2016 c24 s48

Tax roll

327(1) Each municipality must prepare a tax roll annually.

(2) The tax roll may consist of one roll for all taxes imposed under this Part or a separate roll for each tax imposed under this Part.

(3) The tax roll for property tax may be a continuation of the assessment roll prepared under Part 9 or may be separate from the assessment roll.

(4) The fact that any information shown on the tax roll contains an error, omission or misdescription does not invalidate any other information on the roll or the roll itself.

1994 cM-26.1 s327

Duty to provide information

328 Taxpayers must provide, on request by the municipality, any information necessary for the municipality to prepare its tax roll.

1994 cM-26.1 s328

Contents of tax roll

329 The tax roll must show, for each taxable property or business, the following:

(a) a description sufficient to identify the location of the property or business;

(b) the name and mailing address of the taxpayer;

(c) the assessment;

(d) the name, tax rate and amount of each tax imposed in respect of the property or business;

(e) the total amount of all taxes imposed in respect of the property or business;

(f) the amount of tax arrears, if any;

(g) if any property in the municipality is the subject of an agreement between the taxpayer and the municipality under section 347(1) relating to tax arrears, a notation of that fact;

(g.1) if any property in the municipality is the subject of a bylaw or agreement under section 364.1 to defer the collection of tax, a notation of the amount deferred and the taxation year or years to which the amount relates;

(g.2) if any property in the municipality is the subject of a deferral granted under section 364.2, a notation of the amount deferred and the taxation year or years to which the amount relates;

(h) any other information considered appropriate by the municipality.

RSA 2000 cM-26 s329;2016 c24 s49;2019 c6 s6

Correction of roll

330(1) If it is discovered that there is an error, omission or misdescription in any of the information shown on the tax roll, the municipality may correct the tax roll for the current year only and on correcting the roll, it must prepare and send an amended tax notice to the taxpayer.

(2) If it is discovered that no tax has been imposed on a taxable property or business, the municipality may impose the tax for the current year only and prepare and send a tax notice to the taxpayer.

(3) If exempt property becomes taxable or taxable property becomes exempt under section 368, the municipality must correct the tax roll and on correcting the roll, it must send an amended tax notice to the taxpayer.

(4) The date of every entry made on the tax roll under this section must be shown on the roll.

1994 cM-26.1 s330

Person liable to pay taxes

331(1) Subject to subsection (3) and the regulations, the person liable to pay a property tax imposed under this Part is the person who

(a) at the time the assessment is prepared under Part 9, is the assessed person, or

(b) subsequently becomes the assessed person.

(2) The person liable to pay any other tax imposed under this Part is the person who

(a) at the time the tax is imposed, is liable in accordance with this Part or a regulation made under this Part to pay the tax, or

(b) subsequently becomes liable in accordance with this Part or a regulation made under this Part to pay it.

(3) If a tax on linear property or on machinery and equipment remains unpaid after the due date shown on the tax notice, the owner of the linear property or the machinery and equipment becomes liable, jointly and severally with the person who is the assessed person in respect of the linear property or machinery and equipment, to pay the tax debt.

RSA 2000 cM-26 s331;2005 c14 s11;2021 c22 s3

Taxes imposed on January 1

332 Taxes imposed under this Part, other than a supplementary property tax and a supplementary business tax, are deemed to have been imposed on January 1.

1994 cM-26.1 s332

Tax notices

333(1) Each municipality must annually

(a) prepare tax notices for all taxable property and businesses shown on the tax roll of the municipality, and

(b) send the tax notices to the taxpayers.

(2) A tax notice may include a number of taxable properties and taxable businesses if the same person is the taxpayer for all of them.

(3) A tax notice may consist of one notice for all taxes imposed under this Part, a separate notice for each tax or several notices showing one or more taxes.

(4) The assessment notice and the tax notice relating to the same property may be sent together or may be combined on one notice.

1994 cM-26.1 s333

Tax agreements

333.1(1) The council of a municipality may make a tax agreement with an assessed person who occupies or manages

(a) the municipality's property, including property under the direction, control and management of

(i) the municipality, or

(ii) a non-profit organization that holds the property on behalf of the municipality,

or

(b) property for the purpose of operating a professional sports franchise.

(2) A tax agreement may provide that, instead of paying the taxes imposed under this Part and any other fees or charges payable to the municipality, the assessed person may make an annual payment to the municipality calculated under the agreement.

(3) A tax agreement under this section must provide that the municipality accepts payment of the amount calculated under the agreement in place of the taxes and other fees or charges specified in the agreement.

1998 c24 s24

Contents of tax notice

334(1) A tax notice must show the following:

(a) the same information that is required to be shown on the tax roll;

(b) the date the tax notice is sent to the taxpayer;

(c) the amount of the requisitions, any one or more of which may be shown separately or as part of a combined total;

(d) except when the tax is a property tax, the date by which a complaint must be made, which date must not be less than 30 days after the tax notice is sent to the taxpayer;

(e) the name and address of the designated officer with whom a complaint must be filed;

(f) the dates on which penalties may be imposed if the taxes are not paid;

(f.1) information on how to request a receipt for taxes paid;

(g) any other information considered appropriate by the municipality.

(2) A tax notice may show

(a) one tax rate that combines all of the tax rates set by the property tax bylaw, or

(b) each of the tax rates set by the property tax bylaw.

(3) Despite subsection (2), a tax notice must show, separately from all other tax rates shown on the notice, the tax rates set by the

property tax bylaw to raise the revenue to pay the requisitions referred to in section 326(1)(a)(ii) or (vi).

RSA 2000 cM-26 s334;2016 c24 s50;2017 c13 s1(29)

Sending tax notices

335(1) The tax notices must be sent before the end of the year in which the taxes are imposed.

(2) If the mailing address of a taxpayer is unknown

(a) a copy of the tax notice must be sent to the mailing address of the taxable property or business, and

(b) if the mailing address of the taxable property or business is also unknown, the tax notice must be retained by the municipality and is deemed to have been sent to the taxpayer.

1994 cM-26.1 s335

Certification of date of sending tax notice

336(1) A designated officer must certify the date the tax notices are sent under section 335.

(2) The certification of the date referred to in subsection (1) is evidence that the tax notices have been sent and that the taxes have been imposed.

1994 cM-26.1 s336

Deemed receipt of tax notice

337 A tax notice is deemed to have been received 7 days after it is sent.

1994 cM-26.1 s337

Correction of tax notice

338 If it is discovered that there is an error, omission or misdescription in any of the information shown on a tax notice, the municipality may prepare and send an amended tax notice to the taxpayer.

1994 cM-26.1 s338

Incentives

339 A council may by bylaw provide incentives for payment of taxes by the dates set out in the bylaw.

1994 cM-26.1 s339

Instalments

340(1) A council may by bylaw permit taxes to be paid by instalments, at the option of the taxpayer.

(2) A person who wishes to pay taxes by instalments must make an agreement with the council authorizing that method of payment.

(3) When an agreement under subsection (2) is made, the tax notice, or a separate notice enclosed with the tax notice, must state

(a) the amount and due dates of the instalments to be paid in the remainder of the year, and

(b) what happens if an instalment is not paid.

1994 cM-26.1 s340

Deemed receipt of tax payment

341 A tax payment that is sent by mail to a municipality is deemed to have been received by the municipality on the date of the postmark stamped on the envelope.

1994 cM-26.1 s341

Receipt for payment of taxes

342 When taxes are paid to a municipality and the person who paid the tax requests a receipt, the municipality must provide a receipt.

RSA 2000 cM-26 s342;2017 c13 s1(30);2021 c22 s4

Application of tax payment

343(1) A tax payment must be applied first to tax arrears.

(2) If a person does not indicate to which taxable property or business a tax payment is to be applied, a designated officer must decide to which taxable property or business owned by the taxpayer the payment is to be applied.

1994 cM-26.1 s343

Penalty for non-payment in current year

344(1) A council may by bylaw impose penalties in the year in which a tax is imposed if the tax remains unpaid after the date shown on the tax notice.

(2) A penalty under this section is imposed at the rate set out in the bylaw.

(3) The penalty must not be imposed sooner than 30 days after the tax notice is sent out.

1994 cM-26.1 s344

Penalty for non-payment in other years

345(1) A council may by bylaw impose penalties in any year following the year in which a tax is imposed if the tax remains unpaid after December 31 of the year in which it is imposed.

(2) A penalty under this section is imposed at the rate set out in the bylaw.

(3) The penalty must not be imposed sooner than January 1 of the year following the year in which the tax was imposed or any later date specified in the bylaw.

1994 cM-26.1 s345

Penalties

346 A penalty imposed under section 344 or 345 is part of the tax in respect of which it is imposed.

1994 cM-26.1 s346

Cancellation, reduction, refund or deferral of taxes

347(1) If a council considers it equitable to do so, it may, generally or with respect to a particular taxable property or business or a class of taxable property or business, do one or more of the following, with or without conditions:

(a) cancel or reduce tax arrears;

(b) cancel or refund all or part of a tax;

(c) defer the collection of a tax.

(2) A council may phase in a tax increase or decrease resulting from the preparation of any new assessment.

1994 cM-26.1 s347

Tax becomes debt to municipality

348 Taxes due to a municipality

(a) are an amount owing to the municipality,

(b) are recoverable as a debt due to the municipality,

(c) take priority over the claims of every person except the Crown, and

(d) are a special lien

(i) on land and any improvements to the land, if the tax is a property tax, a community revitalization levy, a special tax, a clean energy improvement tax, a local improvement tax or a community aggregate payment levy, or

(ii) on goods, if the tax is a business tax, a community revitalization levy, a well drilling equipment tax, a community aggregate payment levy or a property tax

imposed in respect of a designated manufactured home in a manufactured home community.

RSA 2000 cM-26 s348;2005 c14 s12;2018 c6 s5

Special priority lien for tax debt on linear property or machinery and equipment

348.1(1) In this section,

(a) "assessable", in respect of property or improvements, means property or improvements that have been or are subject to being assessed under Part 9;

(b) "debtor" means a person who owes a debt to a municipality for tax on linear property or on machinery and equipment.

(2) Notwithstanding section 348(c) and (d), taxes due to a municipality on linear property or on machinery and equipment

(a) take priority over the claims of every person except the Crown, and

(b) are a special lien on all the debtor's assessable property located within the municipality, including any assessable improvements to that property.

(3) A lien referred to in subsection (2)(b)

(a) arises when the debtor fails to satisfy the debt when due, and

(b) expires on full satisfaction of the debt.

(4) This section applies to a debt for taxes referred to in subsection (2) regardless of whether the debt became due before or after the coming into force of this section.

2021 c22 s5

Fire insurance proceeds

349(1) Taxes that have been imposed in respect of improvements are a first charge on any money payable under a fire insurance policy for loss or damage to those improvements.

(2) Taxes that have been imposed in respect of a business are a first charge on any money payable under a fire insurance policy for loss or damage to any personal property

(a) that is located on the premises occupied for the purposes of the business, and

(b) that is used in connection with the business and belongs to the taxpayer.

1994 cM-26.1 s349

Tax certificates

350 On request, a designated officer must issue a tax certificate showing

(a) the amount of taxes imposed in the year in respect of the property or business specified on the certificate and the amount of taxes owing,

(b) the total amount of tax arrears, if any, and

(c) the total amount of tax, if any, in respect of which collection is deferred under this Part.

RSA 2000 cM-26 s350;2016 c24 s51

Non-taxable property

351(1) The following are exempt from taxation under this Part:

(a) property listed in section 298;

(b) any property or business in respect of which an exemption from assessment or taxation, or both, was granted before January 1, 1995

(i) by a private Act, or

(ii) by an order of the Lieutenant Governor in Council based on an order of the Local Authorities Board.

(2) A council may by bylaw cancel an exemption referred to in subsection (1)(b), with respect to any property or business.

(3) A council proposing to pass a bylaw under subsection (2) must notify the person or group that will be affected of the proposed bylaw.

(4) A bylaw under subsection (2) has no effect until the expiration of one year after it is passed.

(5) A copy of a bylaw under subsection (2) must be sent to the Minister and if the bylaw amends a private Act the Minister must send a copy to the clerk of the Legislative Assembly.

1994 cM-26.1 s351

Limitation on time for starting proceedings

352(1) An action, suit or other proceedings for the return by a municipality of any money paid to the municipality, whether under

protest or otherwise, as a result of a claim by the municipality, whether valid or invalid, for payment of taxes or tax arrears must be started within 6 months after the payment of the money to the municipality.

(2) If no action, suit or other proceeding is started within the period referred to in subsection (1), the payment made to the municipality is deemed to have been a voluntary payment.

1994 cM-26.1 s352

Division 2
Property Tax

Property tax bylaw

353(1) Each council must pass a property tax bylaw annually.

(2) The property tax bylaw authorizes the council to impose a tax in respect of property in the municipality to raise revenue to be used toward the payment of

(a) the expenditures and transfers set out in the budget of the municipality, and

(b) the requisitions.

(3) The tax must not be imposed in respect of property

(a) that is exempt under section 351, 361, 362 or 364, or

(b) that is exempt under section 363, unless the bylaw passed under that section makes the property taxable.

RSA 2000 cM-26 s353;2024 c19 s12

Tax rates

354(1) The property tax bylaw must set and show separately all of the tax rates that must be imposed under this Division to raise the revenue required under section 353(2).

(2) A tax rate must be set for each assessment class or sub-class referred to in section 297.

(3) The tax rate may be different for each assessment class or sub-class referred to in section 297.

(3.1) Despite subsection (3),

(a) the tax rate set for the class referred to in section 297(1)(d) to raise the revenue required under section 353(2)(a) must be equal to the tax rate set for property referred to in section 297(3.1)(c) to raise revenue for that purpose, and

(b) the tax rate set for property referred to in section 297(3.1)(b)

(i) must not be less than 75% of the tax rate for property referred to in section 297(3.1)(c), and

(ii) must not be greater than the tax rate for property referred to in section 297(3.1)(c).

(4) The tax rates set by the property tax bylaw must not be amended after the municipality sends the tax notices to the taxpayers unless subsection (5) applies.

(5) If after sending out the tax notices the municipality discovers an error or omission that relates to the tax rates set by the property tax bylaw, the municipality may

(a) amend the property tax bylaw to the extent necessary to correct the error or omission, and

(b) send out amended tax notices, if required as a result of the corrections to the property tax bylaw.

(6) A municipality must, within 30 days after passing a property tax bylaw amendment under subsection (5), provide the Minister with a copy of the amended bylaw.

RSA 2000 cM-26 s354;2016 c24 s52;2019 c22 s10(11);2022 c16 s9(65)

Calculating tax rates

355 A tax rate is calculated by dividing the amount of revenue required by the total assessment of all property on which that tax rate is to be imposed.

1994 cM-26.1 s355;1995 c24 s47

Calculating amount of tax

356 The amount of tax to be imposed under this Division in respect of a property is calculated by multiplying the assessment for the property by the tax rate to be imposed on that property.

1994 cM-26.1 s356

Special provision of property tax bylaw

357(1) Despite anything in this Division, the property tax bylaw may specify a minimum amount payable as property tax.

(1.1) Despite section 353, a council may pass a bylaw separate from the property tax bylaw that provides for compulsory tax instalment payments for designated manufactured homes.

(2) If the property tax bylaw specifies a minimum amount payable as property tax, the tax notice must indicate the tax rates set by the

property tax bylaw that raise the revenue required to pay the requisition referred to in section 326(1)(a)(ii).

RSA 2000 cM-26 s357;2016 c24 s53

Tax rate for residential property

357.1 The tax rate to be imposed by a municipality on residential property or on any sub-class of residential property must be greater than zero.

2016 c24 s54

358 Repealed 2016 c24 s55.

Maximum tax ratio

358.1(1) In this section,

(a) "non-conforming municipality" means a municipality that has a tax ratio greater than 5:1 as calculated using the property tax rates set out in its most recently enacted property tax bylaw as at May 31, 2016;

(b) "non-residential" means non-residential as defined in section 297(4);

(c) "tax ratio", in respect of a municipality, means the ratio of the highest non-residential tax rate set out in the municipality's property tax bylaw for a year to the lowest residential tax rate set out in the municipality's property tax bylaw for the same year.

(2) No municipality other than a non-conforming municipality shall in any year have a tax ratio greater than 5:1.

(3) A non-conforming municipality shall not in any year have a tax ratio that is greater than the tax ratio as calculated using the property tax rates set out in its most recently enacted property tax bylaw as at May 31, 2016.

(3.1) If in any year after 2016 a non-conforming municipality has a tax ratio that is greater than 5:1, the non-conforming municipality shall reduce its tax ratio for subsequent years in accordance with the regulations.

(4) If in any year after 2016 a non-conforming municipality has a tax ratio that is less than the tax ratio it had in the previous year but greater than 5:1, the non-conforming municipality shall not in any subsequent year have a tax ratio that is greater than that new tax ratio.

(5) If in any year after 2016 a non-conforming municipality has a tax ratio that is equal to or less than 5:1, the non-conforming municipality shall not in any subsequent year have a tax ratio greater than 5:1.

(6) Where an order to annex land to a municipality contains provisions respecting the tax rate or rates that apply to the annexed land, the tax rate or rates shall not be considered for the purposes of determining the municipality's tax ratio.

(7) For the purposes of this section,

(a) the tax set out in a municipality's property tax bylaw to raise revenue to be used toward the payment of

(i) the expenditures and transfers set out in the budget of the municipality, and

(ii) the requisitions,

shall be considered to be separate tax rates, and

(b) the tax rate for the requisitions shall not be considered for the purposes of determining the municipality's tax ratio.

(8) The Lieutenant Governor in Council may, for the purposes of subsection (3.1), make regulations establishing one or more ranges of tax ratios that must be reduced to 5:1 within a specified period.

2016 c24 s56;2017 c13 s1(31)

Requisitions

359(1) When a requisition applies to only part of a municipality, the revenue needed to pay it must be raised by imposing a tax under this Division in respect of property in that part of the municipality.

(2) In calculating the tax rate required to raise sufficient revenue to pay the requisitions, a municipality may include an allowance for non-collection of taxes at a rate not exceeding the actual rate of taxes uncollected from the previous year's tax levy as determined at the end of that year.

(3) If in any year the property tax imposed to pay the requisitions results in too much or too little revenue being raised for that purpose, the council must accordingly reduce or increase the amount of revenue to be raised for that purpose in the next year.

1994 cM-26.1 s359;1995 c24 s49

Alberta School Foundation Fund requisitions

359.1(1) In this section, "Alberta School Foundation Fund requisition" means a requisition referred to in section 326(1)(a)(ii).

(2) In 1995 and subsequent years, when an Alberta School Foundation Fund requisition applies only to

(a) one of the assessment classes referred to in section 297,

(b) a combination of the assessment classes referred to in section 297, or

(c) designated industrial property,

the revenue needed to pay it must be raised by imposing a tax under this Division only in respect of property to which that one assessment class has been assigned, property to which any assessment class in that combination has been assigned or designated industrial property, as the case may be.

(3) Despite subsection (2), if a council has passed bylaws under sections 364(1.1) and 371, the council may apply an appropriate amount received under the business tax to the payment of the Alberta School Foundation Fund requisition on the non-residential assessment class referred to in section 297 to offset the increase in the tax rate applicable to that class that would otherwise result.

(4) The tax rate required to raise the revenue needed to pay the Alberta School Foundation Fund requisition

(a) must be the same within the assessment class to which the requisition applies if it applies to only one class,

(b) must be the same for all assessment classes that are to be combined if the requisition applies to a combination of assessment classes, and

(c) must be the same for all designated industrial property.

(5), **(6)** Repealed by Revision.

(7) In calculating the tax rate required to raise sufficient revenue to pay an Alberta School Foundation Fund requisition, a municipality

(a) must not include the allowances referred to in section 359(2),

(b) may impose a separate tax to raise the revenue to pay for the allowances referred to in section 359(2), and

(c) may include the amounts referred to in section 359(3).

(8) Section 354 does not apply to tax rates required to raise revenue needed to pay an Alberta School Foundation Fund requisition.

RSA 2000 cM-26 s359.1;2016 c24 s135;2017 c13 s1(32)

School board requisitions

359.2(1) In this section, "school board requisition" means a requisition referred to in section 326(1)(a)(iii).

(2) In 1995 and subsequent years, when a school board requisition applies only to

(a) one of the assessment classes referred to in section 297,

(b) a combination of the assessment classes referred to in section 297, or

(c) designated industrial property,

the revenue needed to pay it must be raised by imposing a tax under this Division only in respect of property to which that one assessment class has been assigned, property to which any assessment class in that combination has been assigned or designated industrial property, as the case may be.

(3) Despite subsection (2), if a council has passed bylaws under sections 364(1.1) and 371, the council may apply an appropriate amount received under the business tax to the payment of the school board requisition on the non-residential assessment class referred to in section 297 to offset the increase in the tax rate applicable to that class that would otherwise result.

(4) The tax rate required to raise the revenue needed to pay the school board requisitions

(a) must be the same within the assessment class to which the requisition applies if it applies to only one class,

(b) must be the same for all assessment classes that are to be combined if the requisition applies to a combination of assessment classes, and

(c) must be the same for all designated industrial property.

(5), **(6)** Repealed by Revision.

(7) In calculating the tax rate required to raise sufficient revenue to pay a school board requisition, a municipality

(a) may include the allowances referred to in section 359(2), and

(b) may include the amounts referred to in section 359(3).

(8) Section 354 does not apply to tax rates required to raise revenue needed to pay school board requisitions.

RSA 2000 cM-26 s359.2;2016 c24 s135;2017 c13 s1(33)

Designated industrial property assessment requisitions

359.3(1) In this section, "designated industrial property requisition" means a requisition referred to in section 326(1)(a)(vi).

(2) The Minister must set the property tax rate for the designated industrial property requisition.

(3) The property tax rate for the designated industrial property requisition must be the same for all designated industrial property.

2016 c24 s57

Cancellation, reduction, refund or deferral of taxes

359.4 If the Minister considers it equitable to do so, the Minister may, generally or with respect to a particular municipality, cancel or reduce the amount of a requisition payable under section 326(1)(a)(vi).

2016 c24 s57

Tax agreement

360(1) In this section, "electric distribution system", "electricity" and "transmission system" have the meanings given to them in the *Electric Utilities Act*.

(1.1) A council may make a tax agreement with an operator of a public utility or of linear property who occupies the municipality's property, including property under the direction, control and management of the municipality.

(2) Instead of paying the tax imposed under this Division and any other fees or charges payable to the municipality, the tax agreement may provide for an annual payment to the municipality by the operator calculated as provided in the agreement.

(3) A tax agreement must provide that the municipality accepts payment of the amount calculated under the agreement in place of the tax and other fees or charges specified in the agreement.

(4) If a tax agreement with the operator of a public utility that supplies fuel provides for the calculation of the payment as a

percentage of the gross revenue of the public utility, that gross revenue is the gross revenue of the public utility for the year.

(4.01) No tax agreement with an operator referred to in subsection (4) may provide for the use, in calculating the whole or part of the payment, of a price per gigajoule of fuel that varies periodically according to the market price for fuel.

(4.1) If a tax agreement with the operator of a public utility that transports electricity by way of a transmission system, an electric distribution system or both provides for the calculation of the payment as a percentage of the gross revenue of the public utility, that gross revenue is the gross revenue received by the public utility under its distribution tariff for the year.

(4.2) No tax agreement with an operator referred to in subsection (4.1) may provide for the use, in calculating the whole or part of the payment, of a price per kilowatt hour of electricity that varies periodically according to the market price for electricity.

(5) An agreement under this section with an operator who is subject to regulation by the Alberta Utilities Commission is of no effect unless it is approved by the Alberta Utilities Commission.

(6) An agreement made under this section before the coming into force of this subsection, and that continues in effect after the coming into force of this subsection, with an operator referred to in subsection (4) or (4.1) who was not, before the coming into force of this subsection, subject to regulation by the Alberta Utilities Commission must be submitted to the Alberta Utilities Commission for approval by the Alberta Utilities Commission.

RSA 2000 cM-26 s360;2007 cA-37.2 s82(17);2024 c8 s5

Exemptions based on use of property

361 The following are exempt from taxation under this Division:

(a) repealed 1996 c30 s27;

(b) residences and farm buildings to the extent prescribed in the regulations;

(c) environmental reserves, conservation reserves, municipal reserves, school reserves, municipal and school reserves and other undeveloped property reserved for public utilities.

RSA 2000 cM-26 s361;2017 c13 s1(34)

Exemptions for Government, churches and other bodies

362(1) The following are exempt from taxation under this Division:

(a) any interest held by the Crown in right of Alberta or Canada in property other than property that is held by a Provincial corporation as defined in the *Financial Administration Act*;

(b) property held by a municipality, except the following:

(i) property from which the municipality earns revenue and which is not operated as a public benefit;

(ii) property that is operated as a public benefit but that has annual revenue that exceeds the annual operating costs;

(iii) an electric power system;

(iv) a telecommunications system;

(v) a natural gas or propane system located in a hamlet, village, summer village, town or city or in a school division that is authorized under the *Education Act* to impose taxes and has a population in excess of 500 people;

(c) property, other than a student dormitory, used in connection with school purposes and held by

(i) the board of trustees of a school division,

(i.1) the Francophone regional authority of a Francophone education region established under the *Education Act*,

(i.2) the operator of a charter school established under the *Education Act*, or

(ii) the person responsible for the operation of a private school registered under the *Education Act*;

(d) property, other than a student dormitory, used in connection with educational purposes and held by any of the following:

(i) the board of governors of a university, polytechnic institution or comprehensive community college under the *Post-secondary Learning Act*;

(ii) the governing body of an educational institution affiliated with a university under the *Post-secondary Learning Act*;

(iii) a students association or graduate students association of a university under the *Post-secondary Learning Act*;

(iv) a students association of a polytechnic institution or comprehensive community college under the *Post-secondary Learning Act*;

(v) the board of governors of the Banff Centre under the *Post-secondary Learning Act*;

(e) property, other than a student dormitory, used in connection with hospital purposes and held by a hospital board that receives financial assistance from the Crown;

(f) property held by a regional services commission;

(g) repealed by RSA 2000;

(g.1) property used in connection with provincial health agency or regional health authority purposes and held by a provincial health agency or regional health authority under the *Provincial Health Agencies Act* that receives financial assistance from the Crown under any Act;

(h) property

(i) used in connection with the purposes of a continuing care home in respect of which a type A continuing care home licence has been issued under the *Continuing Care Act*, and

(ii) held by the owner or under a lease from the owner of a continuing care home referred to in subclause (i);

(i) repealed 1998 c24 s29;

(j) property used in connection with library purposes and held by a library board established under the *Libraries Act*;

(k) property held by a religious body and used chiefly for divine service, public worship or religious education and any parcel of land that is held by the religious body and used only as a parking area in connection with those purposes;

(l) property consisting of any of the following:

(i) a parcel of land, to a maximum of 10 hectares, that is used as a cemetery as defined in the *Cemeteries Act*;

(ii) any additional land that has been conveyed by the owner of the cemetery to individuals to be used as burial sites;

(iii) any improvement on land described in subclause (i) or (ii) that is used for burial purposes;

(m) property held by

(i) a foundation constituted under the *Senior Citizens Housing Act*, RSA 1980 cS-13, before July 1, 1994, or

(ii) a management body established under the *Alberta Housing Act*,

and used to provide senior citizens with lodge accommodation as defined in the *Alberta Housing Act*;

(n) property that is

(i) owned by a municipality and held by a non-profit organization in an official capacity on behalf of the municipality,

(ii) held by a non-profit organization and used solely for community games, sports, athletics or recreation for the benefit of the general public,

(iii) used for a charitable or benevolent purpose that is for the benefit of the general public, and owned by

(A) the Crown in right of Alberta or Canada, a municipality or any other body that is exempt from taxation under this Division and held by a non-profit organization, or

(B) by a non-profit organization,

(iv) held by a non-profit organization and used to provide senior citizens with lodge accommodation as defined in the *Alberta Housing Act*, or

(v) held by and used in connection with a society as defined in the *Agricultural Societies Act* or with a community association as defined in the regulations,

and that meets the qualifications and conditions in the regulations and any other property that is described and that meets the qualifications and conditions in the regulations;

(o) property

(i) owned by a municipality and used solely for the operation of an airport by the municipality, or

(ii) held under a lease, licence or permit from a municipality and used solely for the operation of an airport by the lessee, licensee or permittee;

(p) a municipal seed cleaning plant constructed under an agreement authorized by section 7 of the *Agricultural Service Board Act*, to the extent of 2/3 of the assessment prepared under Part 9 for the plant, but not including the land attributable to the plant.

(2) Except for properties described in subsection (1)(n)(i), (ii) or (iv), a council may by bylaw make any property that is exempt from taxation under subsection (1)(n) subject to taxation under this Division to any extent the council considers appropriate.

(3) A council proposing to pass a bylaw under subsection (2) must notify, in writing, any person or group that will be affected of the proposed bylaw.

(4) A bylaw under subsection (2) has no effect until one year after it is passed.

RSA 2000 cM-26 s362;2003 cP-19.5 s142;2012 cE-0.3 s279; 2017 c13 s1(35);2018 c19 s71;2022 cC-26.7 s74.1;2024 c10 s31

Electric energy generation systems exemptions

362.1 Despite sections 359.1(4) and 359.2(4), the Minister may by order exempt, in respect of a taxation year, to any extent the Minister considers appropriate, one or more electric power systems used or intended for use in the generation or gathering of electricity from taxation for the purpose of raising the revenue needed to pay the requisitions referred to in section 326(1)(a)(ii) and (iii).

2017 c13 s1(36)

Exempt property that can be made taxable

363(1) The following are exempt from taxation under this Division:

(a) property held by and used in connection with Ducks Unlimited (Canada) under a lease, licence or permit from the Crown in right of Alberta or Canada;

(b) property held by and used in connection with

(i) the Canadian Hostelling Association -- Northern Alberta District,

(ii) the Southern Alberta Hostelling Association,

(iii) Hostelling International -- Canada -- Northern Alberta, or

(iv) Hostelling International -- Canada -- Southern Alberta,

unless the property is operated for profit or gain;

(c) property held by and used in connection with a branch or local unit of the Royal Canadian Legion, the Army, Navy and Air Force Veterans in Canada or other organization of former members of any allied forces;

(d) student dormitories;

(e) affordable housing accommodation as defined in the *Alberta Housing Act* that is not exempt under section 361 of this Act.

(2) A council may by bylaw make any property listed in subsection (1)(a), (b) or (c) subject to taxation under this Division to any extent the council considers appropriate.

(3) A council may by bylaw make any property referred to in subsection (1)(d) or (e) subject to taxation to any extent the council considers appropriate other than for the purpose of raising revenue needed to pay the requisitions referred to in section 326(1)(a).

(4) A council proposing to pass a bylaw under subsection (2) must notify, in writing, the person or group that will be affected of the proposed bylaw.

(5) A bylaw under subsection (2) has no effect until the expiration of one year after it is passed.

RSA 2000 cM-26 s363;2017 c13 s1(37);2024 c11 s2(25)

Exemptions granted by bylaw

364(1) A council may by bylaw exempt from taxation under this Division property held by a non-profit organization.

(1.1) A council may by bylaw exempt from taxation under this Division machinery and equipment used for manufacturing or processing.

(2) Property is exempt under this section to any extent the council considers appropriate.

1994 cM-26.1 s364;1995 c24 s53

Brownfield tax incentives

364.1(1) In this section, "brownfield property" means property, other than designated industrial property, that

(a) is a commercial or industrial property when a bylaw under subsection (2) is made or an agreement under subsection

(11) is entered into in respect of the property, or was a commercial or industrial property at any earlier time, and

(b) in the opinion of the council making the bylaw,

(i) is, or possibly is, contaminated,

(ii) is vacant, derelict or under-utilized, and

(iii) is suitable for development or redevelopment for the general benefit of the municipality when a bylaw under subsection (2) is made or an agreement under subsection (11) is entered into in respect of the property.

(2) A council may by bylaw, for the purpose of encouraging development or redevelopment for the general benefit of the municipality, provide for

(a) full or partial exemptions from taxation under this Division for brownfield properties, or

(b) deferrals of the collection of tax under this Division on brownfield properties.

(3) A bylaw under subsection (2)

(a) must identify the brownfield properties in respect of which an application may be made for a full or partial exemption or for a deferral,

(b) may set criteria to be met for a brownfield property to qualify for an exemption or deferral,

(c) must specify the taxation year or years for which the identified brownfield properties may qualify for an exemption or deferral, and

(d) must specify any conditions the breach of which cancels an exemption or deferral and the taxation year or years to which the condition applies.

(4) Before giving second reading to a bylaw proposed to be made under subsection (2), a council must hold a public hearing with respect to the proposed bylaw in accordance with section 216.4 after giving notice of it in accordance with section 606.

(5) An owner of brownfield property identified in a bylaw under subsection (2) may apply in the form and manner required by the municipality for an exemption or deferral in respect of the property.

(6) If after reviewing the application a designated officer of the municipality determines that the brownfield property meets the requirements of the bylaw for a full or partial exemption or for a deferral of the collection of tax under this Division, the designated officer may issue a certificate granting the exemption or deferral.

(7) The certificate must set out

(a) the taxation years to which the exemption or deferral applies, which must not include any tax year earlier than the tax year in which the certificate is issued,

(b) in the case of a partial exemption, the extent of the exemption, and

(c) all criteria, conditions and taxation years specified in the bylaw in accordance with subsection (3).

(8) If at any time after an exemption or deferral is granted under a bylaw under this section a designated officer of the municipality determines that the property did not meet or has ceased to meet a criterion referred to in subsection (3)(b) or that a condition referred to in subsection (3)(d) has been breached, the designated officer must cancel the exemption or deferral for the taxation year or years in which the criterion was not met or to which the condition applies.

(9) Where a designated officer refuses to grant an exemption or deferral, a written notice of the refusal must be sent to the applicant stating the reasons for the refusal and the date by which any complaint must be made, which date must be 60 days after the written notice of refusal is sent.

(10) An exemption or deferral granted under a bylaw under this section remains valid, subject to subsection (8) and the criteria and conditions on which it was granted, regardless of whether the bylaw is subsequently amended or repealed or otherwise ceases to have effect.

(11) Despite subsections (2) to (10), a council may enter into an agreement with the owner of a brownfield property

(a) exempting, either fully or partially, the brownfield property from taxation under this Division, or

(b) deferring the collection of tax under this Division on the brownfield property.

(12) The agreement must specify

(a) the taxation years to which the exemption or deferral applies, which must not include any tax year earlier than the one in which the agreement is entered into,

(b) the conditions on which the exemption or deferral is granted, and

(c) the consequences, rights and remedies arising in the event of any breach.

(13) Before voting on a resolution to enter into an agreement referred to in subsection (11), a council must hold a public hearing with respect to the proposed agreement in accordance with section 216.4 after giving notice of it in accordance with section 606.

2016 c24 s58;2022 c16 s9(83)

Tax incentives for non-residential property

364.2(1) In this section,

(a) "deferral" means a deferral under this section;

(b) "exemption" means an exemption under this section.

(c) repealed 2019 c21 s2.

(1.1) A council may, by bylaw, for the purpose of encouraging residential development and the provision of housing in an assessment class specified in section 297(1)(a) for the general benefit of the municipality, provide for

(a) full or partial exemptions from taxation under this Division for property in that assessment class, or

(b) deferrals of the collection of tax under this Division on property referred to in clause (a).

(2) A council may, by bylaw, for the purpose of encouraging the development or revitalization of properties in an assessment class specified in section 297(1)(b) or (d) for the general benefit of the municipality, provide for

(a) full or partial exemptions from taxation under this Division for property in one or both of those assessment classes, or

(b) deferrals of the collection of tax under this Division on property referred to in clause (a).

(3) A bylaw under subsection (1.1) or (2)

(a) must set criteria to be met for property to qualify for an exemption or deferral,

(b) must establish a process for the submission and consideration of applications for an exemption or deferral,

(c) must not provide for an exemption or deferral to have effect in respect of a property for more than 15 consecutive taxation years, but may, if the council considers it appropriate, provide for subsequent exemptions or deferrals of 15 consecutive taxation years or less to be applied for and granted in respect of the property, and

(d) if the bylaw provides for any person other than the council, including a designated officer, to refuse to grant an exemption or deferral or to cancel an exemption or deferral, must establish a process for applications to the council for the review of those decisions and must specify the period of time within which the application must be made.

(4) If after reviewing an application the municipality determines that the property meets the requirements for a full or partial exemption or for a deferral, the municipality may grant the exemption or deferral.

(5) An exemption or deferral must be granted in a written form that specifies

(a) the taxation years to which the exemption or deferral applies, which must not include any taxation year earlier than the taxation year in which the exemption or deferral is granted,

(b) in the case of a partial exemption, the extent of the exemption, and

(c) any condition the breach of which will result in cancellation under subsection (6) and the taxation year or years to which the condition applies.

(6) If at any time after an exemption or deferral is granted under a bylaw under this section the municipality determines that the property did not meet or has ceased to meet a criterion referred to in subsection (3)(a) or that a condition referred to in subsection (5)(c) has been breached, the municipality may cancel the exemption or deferral for the taxation year or years in which the criterion was not met or to which the condition applies.

(7) Where a municipality refuses to grant or cancels an exemption or deferral, the municipality must send a written notice to the

applicant stating the reasons for the refusal or cancellation and, if a review of the decision is available under subsection (3)(d), the date by which any application for that review must be made.

(8) Where a municipality grants or cancels an exemption or deferral in respect of designated industrial property, the municipality must notify the provincial assessor and provide any other information requested by the provincial assessor respecting the exemption, deferral or cancellation.

(9) Subject to subsection (6), any order referred to in section 127(1.1) and the criteria and conditions on which an exemption or deferral was granted, the exemption or deferral remains valid regardless of whether the bylaw under which it was granted is subsequently amended or repealed or otherwise ceases to have effect.

2019 c6 s7;2019 c21 s2;2024 c11 s2(26)

Judicial review of decision under section 364.2

364.3(1) Where a decision made under a bylaw under section 364.2 in respect of an exemption or deferral is the subject of an application for judicial review, the application must be filed with the Court of King's Bench and served not more than 60 days after the date of the decision.

(2) No councillor, designated officer or other person who makes a decision under a bylaw under section 364.2 is liable for costs by reason of or in respect of a judicial review of the decision.

2019 c6 s7;AR 217/2022

Licensed premises

365(1) Property that is licensed under the *Gaming, Liquor and Cannabis Act* is not exempt from taxation under this Division, despite sections 351(1)(b) and 361 to 364.1 and any other Act.

(2) Despite subsection (1), property listed in section 362(1)(n) in respect of which a licence that is specified in the regulations has been issued is exempt from taxation under this Division.

RSA 2000 cM-26 s365;2016 c24 s59;2017 c21 s28

Grants in place of taxes

366(1) Each year a municipality may apply to the Crown for a grant if there is property in the municipality that the Crown has an interest in.

(2) The Crown may pay to the municipality a grant not exceeding the amount that would be recoverable by the municipality if the property that the Crown has an interest in were not exempt from taxation under this Division.

(3) When calculating a grant under this section, the following must not be considered as Crown property unless subsection (4) applies:

(a) property listed in section 298;

(b) museums and historical sites;

(c) public works reserves;

(d) property used in connection with academic, trade, forestry or agricultural schools, colleges or universities, including student dormitories;

(e) property used in connection with hospitals and institutions for mentally disabled persons;

(f) property owned by an agent of the Crown in respect of which another enactment provides for payment of a grant in place of a property tax;

(g) property in respect of which the Crown is not the assessed person.

(4) If any of the property listed in subsection (3) is a single family residence, the property must be considered as Crown property when calculating a grant under this section.

(5) The Crown may pay a grant under this section in respect of property referred to in subsection (3)(g) if in the Crown's opinion it is appropriate to do so.

1994 cM-26.1 s366;1996 c30 s31

Property that is partly exempt and partly taxable

367 A property may contain one or more parts that are exempt from taxation under this Division, but the taxes that are imposed against the taxable part of the property under this Division are recoverable against the entire property.

1994 cM-26.1 s367

Changes in taxable status of property

368(1) An exempt property or part of an exempt property becomes taxable if

(a) the use of the property changes to one that does not qualify for the exemption, or

(b) the occupant of the property changes to one who does not qualify for the exemption.

(2) A taxable property or part of a taxable property becomes exempt if

(a) the use of the property changes to one that qualifies for the exemption, or

(b) the occupant of the property changes to one who qualifies for the exemption.

(3) If the taxable status of property changes, a tax imposed in respect of it must be prorated so that the tax is payable only for the part of the year in which the property, or part of it, is not exempt.

(4) When a designated manufactured home is moved out of a municipality,

(a) it becomes exempt from taxation by that municipality when it is moved, and

(b) it becomes taxable by another municipality when it is located in that other municipality.

1994 cM-26.1 s368;1996 c30 s32;1998 c24 s31

Supplementary property tax bylaw

369(1) If in any year a council passes a bylaw authorizing supplementary assessments to be prepared in respect of property, the council must, in the same year, pass a bylaw authorizing it to impose a supplementary tax in respect of that property.

(2) A council that passes a bylaw referred to in subsection (1) must use the tax rates set by its property tax bylaw as the supplementary tax rates to be imposed.

(2.01) A council may pass a bylaw authorizing it to impose a supplementary tax for designated industrial property only if it passes a bylaw authorizing it to impose a supplementary tax in respect of all other property in the municipality.

(2.1) Despite subsection (2), the tax rates required to raise the revenue to pay requisitions referred to in section 175 of the *Education Act* must not be applied as supplementary tax rates.

(3) The municipality must prepare a supplementary property tax roll, which may be a continuation of the supplementary property assessment roll prepared under Part 9 or may be separate from that roll.

(4) A supplementary property tax roll must show

(a) the same information that is required to be shown on the property tax roll, and

(b) the date for determining the tax that may be imposed under the supplementary property tax bylaw.

(5) Sections 327(4), 328, 330 and 331 apply in respect of a supplementary property tax roll.

(6) The municipality must

(a) prepare supplementary property tax notices for all taxable property shown on the supplementary property tax roll of the municipality, and

(b) send the supplementary property tax notices to the persons liable to pay the taxes.

(7) Sections 333(4), 334, 335, 336, 337 and 338 apply in respect of supplementary property tax notices.

RSA 2000 cM-26 s369;2012 cE-0.3 s279;2016 c24 s60

Continuous tax bylaws — tax

369.1 Bylaws enacted under section 369(1), 371 or 379 remain in force after the year in which they are enacted and apply in respect of subsequent years until they are repealed.

2019 c22 s10(12)

Regulations

370 The Minister may make regulations

(a) prescribing the extent to which residences and farm buildings are exempt from taxation under this Division;

(b) respecting the calculation of a tax rate to be imposed on linear property;

(b.1) respecting the setting of tax rates referred to in section 354(3.1);

(c) describing other property that is exempt from taxation pursuant to section 362(1)(n), and respecting the qualifications and conditions required for the purposes of section 362(1)(n);

(c.1) respecting tax rolls and tax notices including, without limitation, regulations

(i) respecting the information to be shown on a tax roll and a tax notice;

(ii) providing for the method of determining the person liable to pay a property or other tax imposed under this Part;

(iii) respecting the sending of tax notices;

(c.2) respecting designated industrial property assessment requisitions and designated industrial property requisition tax bylaws, including, without limitation, regulations respecting the application of any provision of this Act, with or without modification, to a designated industrial property assessment requisition or a designated industrial property requisition tax bylaw, or both;

(c.3) respecting tax exemptions and deferrals under section 364.1;

(d) specifying licences for the purposes of section 365(2);

(e) defining a community association for the purposes of this Act;

(f) respecting the circumstances in which property is to be considered to be used in connection with a purpose, activity or other thing for the purposes of one or more provisions of this Part;

(g) respecting the circumstances in which property is to be considered to be held by a person or entity for the purposes of one or more provisions of this Part.

RSA 2000 cM-26 s370;2005 c14 s13;
2016 c24 s61;2017 c13 s1(38)

Division 3
Business Tax

Business tax bylaw

371(1) Each council may pass a business tax bylaw.

(2) A business tax bylaw or any amendment to it applies to the year in which it is passed, only if it is passed before May 1 of that year.

1994 cM-26.1 s371

Taxable business

372(1) The business tax bylaw authorizes the council to impose a tax in respect of all businesses operating in the municipality except businesses that are exempt in accordance with that bylaw.

(2) The tax must not be imposed in respect of a business that is exempt under section 351, 375 or 376.

1994 cM-26.1 s372

Person liable to pay business tax

373(1) A tax imposed under this Division must be paid by the person who operates the business.

(2) A person who purchases a business or in any other manner becomes liable to be shown on the tax roll as a taxpayer must give the municipality written notice of a mailing address to which notices under this Division may be sent.

1994 cM-26.1 s373

Contents of business tax bylaw

374(1) The business tax bylaw must

(a) require assessments of businesses operating in the municipality to be prepared and recorded on a business assessment roll;

(b) specify one or more of the following methods of assessment as the method or methods to be used to prepare the assessments:

(i) assessment based on a percentage of the gross annual rental value of the premises;

(i.1) assessment based on a percentage of the net annual rental value of the premises;

(ii) assessment based on storage capacity of the premises occupied for the purposes of the business;

(iii) assessment based on floor space, being the area of all of the floors in a building and the area outside the building that are occupied for the purposes of that business;

(iv) assessment based on a percentage of the assessment prepared under Part 9 for the premises occupied for the purposes of the business;

(c) specify the basis on which a business tax may be imposed by prescribing the following:

(i) for the assessment method referred to in clause (b)(i), the percentage of the gross annual rental value;

(i.1) for the assessment method referred to in clause (b)(i.1), the percentage of the net annual rental value;

(ii) for the assessment method referred to in clause (b)(ii), the dollar rate per unit of storage capacity;

(iii) for the assessment method referred to in clause (b)(iii), the dollar rate per unit of floor space;

(iv) for the assessment method referred to in clause (b)(iv), the percentage of the assessment;

(d) establish a procedure for prorating and rebating business taxes.

(2) A business tax bylaw may

(a) establish classes of business for the purpose of grouping businesses,

(b) specify classes of business that are exempt from taxation under this Division,

(c) require that taxes imposed under this Division be paid by instalments, or

(d) include any other information considered appropriate by the municipality.

(3) A business tax bylaw may provide that when a lessee who is liable to pay the tax imposed under this Division in respect of any leased premises sublets the whole or part of the premises, the municipality may require the lessee or the sub-lessee to pay the tax in respect of the whole or part of the premises.

1994 cM-26.1 s374;1999 c11 s19

Assessment not required

374.1 Despite section 374(1)(a), a municipality is not required to prepare an assessment for any business in a class of business that is exempt from taxation under the business tax bylaw.

1998 c24 s33

Exempt businesses

375 The following are exempt from taxation under this Division:

(a) a business operated by the Crown;

(b) an airport operated by a regional airports authority created under section 5(2) of the *Regional Airports Authorities Act*;

(c) property

(i) owned by a municipality and used solely for the operation of an airport by the municipality, or

(ii) held under a lease, licence or permit from a municipality and used solely for the operation of an airport by the lessee, licensee or permittee;

(d) a business operated by a non-profit organization on property that is exempt from taxation under section 362(1)(n).

1994 cM-26.1 s375;1995 c24 s57;1998 c24 s34

Exemption when tax is payable under Division 2

376(1) When machinery and equipment or linear property is located on premises occupied for the purposes of a business and a property tax has been imposed in respect of the machinery and equipment or linear property under Division 2 of this Part in any year, the premises on which that property is located are exempt from taxation under this Division in that year.

(2) If in any year the activities that result from the operation of the machinery and equipment or linear property are not the chief business carried on at the premises, the premises on which that property is located are not exempt from taxation under this Division in that year.

1994 cM-26.1 s376

Business tax rate bylaw

377(1) Each council that has passed a business tax bylaw must pass a business tax rate bylaw annually.

(2) The business tax rate bylaw must set a business tax rate.

(3) If the business tax bylaw establishes classes of business, the business tax rate bylaw must set a business tax rate for each class.

(4) The business tax rate may be different for each class of business established by the business tax bylaw.

(5) The tax rates set by the business tax rate bylaw must not be amended after the municipality sends the tax notices to the taxpayers.

1994 cM-26.1 s377

Calculating amount of tax

378 The amount of tax to be imposed under this Division in respect of a business is calculated by multiplying the assessment for the business by the tax rate to be imposed on that business.

1994 cM-26.1 s378

Supplementary business tax bylaw

379(1) If in any year a council passes a bylaw authorizing supplementary assessments to be prepared in respect of businesses, the council must, in the same year, pass a bylaw authorizing it to impose a supplementary tax in respect of those businesses.

(2) A council that passes a bylaw referred to in subsection (1) must use the tax rates set by its business tax rate bylaw as the supplementary tax rates to be imposed.

(3) The supplementary business tax must be imposed

(a) on each person who operates a business for a temporary period and whose name is not entered on the business tax roll,

(b) on each person who moves into new premises or opens new premises or branches of an existing business, although the person's name is entered on the business tax roll,

(c) on each person who begins operating a business and whose name is not entered on the business tax roll, and

(d) on each person who increases the storage capacity or floor space of the premises occupied for the purposes of a business after the business tax roll has been prepared.

(4) The municipality must prepare a supplementary business tax roll, which may be a continuation of the supplementary business assessment roll or may be separate from that roll.

(5) A supplementary business tax roll must show

(a) the same information that is required to be shown on the business tax roll, and

(b) the date for determining the tax that may be imposed under the supplementary business tax bylaw.

(6) Sections 327(4), 328, 330 and 331 apply in respect of a supplementary business tax roll.

(7) The municipality must

(a) prepare supplementary business tax notices for all taxable businesses shown on the supplementary business tax roll of the municipality, and

(b) send the supplementary business tax notices to the persons liable to pay the taxes.

(8) Sections 333(4), 334, 335, 336, 337 and 338 apply in respect of supplementary business tax notices.

1994 cM-26.1 s379

Grants in place of taxes

380(1) Each year a municipality may apply to the Crown for a grant if there is a business in the municipality operated by the Crown.

(2) The Crown may pay to the municipality a grant not exceeding the amount that would be recoverable by the municipality if the business operated by the Crown were not exempt from taxation under this Division.

1994 cM-26.1 s380

Division 4
Business Improvement Area Tax

Regulations

381 The Minister may make regulations respecting a business improvement area tax.

RSA 2000 cM-26 s381;2015 c8 s50

Division 4.1
Community Revitalization Levy

Definitions

381.1 In this Division,

(a) "incremental assessed value" means the increase in the assessed value of property located in a community revitalization levy area after the date the community revitalization levy bylaw is approved by the Minister under section 381.2(3);

(b) "levy" means a community revitalization levy imposed under section 381.2(2).

2005 c14 s14;2022 c16 s9(66)

Community revitalization levy bylaw

381.2(1) Each council may pass a community revitalization levy bylaw.

(2) A community revitalization levy bylaw authorizes the council to impose a levy in respect of the incremental assessed value of property in a community revitalization levy area to raise revenue to be used toward the payment of infrastructure and other costs associated with the redevelopment of property in the community revitalization levy area.

(3) A community revitalization levy bylaw, or any amendment to it, has no effect unless it is approved by the Minister.

(4) The Minister may approve a community revitalization levy bylaw in whole or in part or with variations and subject to conditions.

2005 c14 s14;2022 c16 s9(67)

Person liable to pay levy

381.3 A levy imposed under this Division must be paid by the assessed persons of the property in the community revitalization levy area.

2005 c14 s14

Incremental assessed value not subject to equalized assessment or requisition

381.4(1) Subject to subsection (2), the incremental assessed value of property in a community revitalization levy area shall not be included for the purpose of calculating

(a) an equalized assessment under Part 9, or

(b) the amount of a requisition under Part 10.

(2) Subsection (1) applies in respect of property in a community revitalization levy area

(a) for a period of 20 years, or

(b) for such other period as determined by the Lieutenant Governor in Council under section 381.5(1)(e.1), which period may not exceed 40 years,

from the year in which the community revitalization levy bylaw is made.

2005 c14 s14;2018 c20 s12

Regulations

381.5(1) The Lieutenant Governor in Council may make regulations

(a) establishing any area in Alberta as a community revitalization levy area;

(b) respecting a levy including, without limitation, regulations respecting the minimum and maximum levy that may be imposed and the application of the levy;

(c) respecting the assessment of property, including identifying or otherwise describing the assessed person in respect of the property, in a community revitalization levy area;

(d) respecting assessment rolls, assessment notices, tax rolls and tax notices in respect of property in a community revitalization levy area;

(e) respecting the application of any provision of this Act, with or without modification, to a community revitalization levy bylaw or a community revitalization levy, or both;

(e.1) determining the period for which section 381.4(1) applies to a community revitalization levy area;

(f) respecting any other matter necessary or advisable to carry out the intent and purpose of this Division.

(2) A regulation under subsection (1) may be specific to a municipality or general in its application.

2005 c14 s14;2018 c20 s12

Division 5
Special Tax

Special tax bylaw

382(1) Each council may pass a special tax bylaw to raise revenue to pay for a specific service or purpose by imposing one or more of the following special taxes:

(a) a waterworks tax;

(b) a sewer tax;

(c) a boulevard tax;

(d) a dust treatment tax;

(e) a paving tax;

(f) a tax to cover the cost of repair and maintenance of roads, boulevards, sewer facilities and water facilities;

(g) repealed 2008 cE-6.6 s55;

(h) a tax to enable the municipality to provide incentives to health professionals to reside and practice their professions in the municipality;

(i) a fire protection area tax;

(j) a drainage ditch tax;

(k) a tax to provide a supply of water for the residents of a hamlet;

(l) a recreational services tax.

(2) A special tax bylaw must be passed annually.

RSA 2000 cM-26 s382;2008 cE-6.6 s55

Taxable property

383(1) The special tax bylaw authorizes the council to impose the tax in respect of property in any area of the municipality that will benefit from the specific service or purpose stated in the bylaw.

(2) The tax must not be imposed in respect of property that is exempt under section 351.

1994 cM-26.1 s383

Contents of special tax bylaw

384 The special tax bylaw must

(a) state the specific service or purpose for which the bylaw is passed,

(b) describe the area of the municipality that will benefit from the service or purpose and in which the special tax is to be imposed,

(c) state the estimated cost of the service or purpose, and

(d) state whether the tax rate is to be based on

(i) the assessment prepared in accordance with Part 9,

(ii) each parcel of land,

(iii) each unit of frontage, or

(iv) each unit of area,

and set the tax rate to be imposed in each case.

1994 cM-26.1 s384

Condition

385 A special tax bylaw must not be passed unless the estimated cost of the specific service or purpose for which the tax is imposed is included in the budget of the municipality as an estimated expenditure.

1994 cM-26.1 s385

Use of revenue

386(1) The revenue raised by a special tax bylaw must be applied to the specific service or purpose stated in the bylaw.

(2) If there is any excess revenue, the municipality must advertise the use to which it proposes to put the excess revenue.

1994 cM-26.1 s386

Person liable to pay special tax

387 The person liable to pay the tax imposed in accordance with a special tax bylaw is the owner of the property in respect of which the tax is imposed.

1994 cM-26.1 s387;1999 c11 s20

Division 6
Well Drilling Equipment Tax

Well drilling equipment tax bylaw

388(1) Each council may pass a well drilling equipment tax bylaw.

(2) The well drilling equipment tax bylaw authorizes the council to impose a tax in respect of equipment used to drill a well for which a licence is required under the *Oil and Gas Conservation Act*.

1994 cM-26.1 s388

Person liable to pay the tax

389 A tax imposed under this Division must be paid by the person who holds the licence required under the *Oil and Gas Conservation Act* in respect of the well being drilled.

1994 cM-26.1 s389

Calculation of the tax

390(1) The Minister may make regulations prescribing the well drilling equipment tax rate.

(2) A tax imposed under this Division must be calculated in accordance with the tax rate prescribed under subsection (1).

1994 cM-26.1 s390

Division 6.1
Clean Energy Improvement Tax

Interpretation

390.1(1) In this Division, "clean energy improvement" means, subject to the regulations, a renovation, adaptation or installation on eligible private property that

(a) will increase energy efficiency or the use of renewable energy on that property, and

(b) will be paid for in whole or in part by a tax imposed under this Division,

but does not include improvements referred to in section 284(1)(j)(iii), (iii.1) or (iv).

(2) For the purposes of this Division, the amount required to recover the costs of a clean energy improvement may include

(a) the capital cost of undertaking the clean energy improvement,

(b) the cost of professional services needed for the clean energy improvement,

(c) a proportionate share of the costs associated with the administration of a clean energy improvement program,

(d) the cost of financing the clean energy improvement, and

(e) other expenses incidental to the undertaking of the clean energy improvement and to the raising of revenue to pay for it.

2018 c6 s6;2021 c22 s6

Eligibility of properties for clean energy improvements

390.2 Subject to section 390.3(4)(a), property is eligible for a clean energy improvement if the property is

(a) located in a municipality that has passed a clean energy improvement tax bylaw,

(b) one of the following types of private property:

(i) residential;

(ii) non-residential;

(iii) farm land,

and

(c) not designated industrial property.

2018 c6 s6

Clean energy improvement tax bylaw

390.3(1) Each council may pass a clean energy improvement tax bylaw

(a) to establish a clean energy improvement program,

(b) notwithstanding section 251, to authorize the municipality to make a borrowing for the purpose of financing clean energy improvements, and

(c) to enable clean energy improvements to be made to eligible properties.

(2) Before a clean energy improvement is made to any property, a council must pass a clean energy improvement tax bylaw.

(3) A clean energy improvement tax bylaw authorizes the council to impose a clean energy improvement tax in respect of each clean energy improvement made to a property to raise revenue to pay the amount required to recover the costs of those clean energy improvements.

(4) A clean energy improvement tax bylaw must, subject to the regulations,

(a) set out

(i) the types of private property that are eligible for a clean energy improvement, and

(ii) eligible clean energy improvements,

(b) set out

(i) the amount of money to be borrowed for the purpose of financing clean energy improvements,

(ii) the maximum rate of interest, the term and the terms of repayment of the borrowing, and

(iii) the source or sources of money to be used to pay the principal and interest owing under the borrowing,

(c) indicate that, where a municipality has entered into a clean energy improvement agreement with the owner of a property, a clean energy improvement tax will be charged based on the clean energy improvement agreement,

(d) identify the period over which the cost of each eligible clean energy improvement will be spread, which period may vary from improvement to improvement, but the period shall not exceed the probable lifetime of the improvement,

(e) indicate the process by which the owner of a property can apply to the municipality for a clean energy improvement,

(f) include any other information the council considers necessary or advisable, and

(g) include any requirements imposed by the regulations.

(5) Before giving second reading to a proposed clean energy improvement tax bylaw, the council must hold a public hearing with respect to the proposed bylaw in accordance with section 216.4 after giving notice of it in accordance with section 606.

2018 c6 s6;2022 c16 s9(83)

Clean energy improvement agreement

390.4(1) A municipality and the owner of a property shall enter into a clean energy improvement agreement before a clean energy improvement is made to that property.

(2) A clean energy improvement agreement must, subject to the regulations,

(a) describe the proposed clean energy improvement,

(b) identify the property in respect of which the clean energy improvement tax will be imposed,

(c) indicate that the owner of the property will be liable to pay the clean energy improvement tax,

(d) include the amount required to recover the costs of the clean energy improvement and the method of calculation used to determine that amount,

(e) state the period over which the amount required to recover the costs of the clean energy improvement will be paid,

(f) state the portion of the amount required to recover the costs of the clean energy improvement to be paid

(i) by the municipality,

(ii) from revenue raised by the clean energy improvement tax, and

(iii) from other sources of revenue,

(g) describe how the clean energy improvement tax will be revised in the event of a subdivision of the property or a consolidation of the property with any other property, and

(h) include any other information the municipality considers necessary or advisable.

2018 c6 s6

Person liable to pay clean energy improvement tax

390.5(1) The person liable to pay a tax imposed in accordance with a clean energy improvement tax bylaw is the owner of the property in respect of which the tax is imposed.

(2) Repealed 2023 c9 s19(6).

2018 c6 s6;2023 c9 s19(6)

Paying off a clean energy improvement tax

390.6 The owner of a property in respect of which a clean energy improvement tax is imposed may pay the tax at any time.

2018 c6 s6

Refinancing of debt by council

390.7 If, after a clean energy improvement agreement has been made, the council refinances the debt created to pay for the clean energy improvement that is the subject of that agreement at an interest rate other than the rate estimated when the clean energy improvement agreement was made, the council, with respect to future years, may revise the amount required to recover the costs of the clean energy improvement included in that agreement to reflect the change in the interest rate.

2018 c6 s6

Petitions

390.8(1) Notwithstanding section 232(2), electors of a municipality may petition the municipality to

(a) pass a clean energy improvement tax bylaw, or

(b) amend or repeal a clean energy improvement tax bylaw.

(2) For greater certainty, the amendment or repeal of a clean energy improvement tax bylaw does not affect clean energy improvement agreements entered into prior to the passage of that bylaw or the imposition of a clean energy improvement tax in relation to a property where a clean energy improvement has been made.

2018 c6 s6

Regulations

390.9 The Minister may make regulations respecting clean energy improvements, including, without limitation, regulations

(a) respecting eligibility requirements for clean energy improvements;

(b) respecting clean energy improvement agreements;

(c) respecting clean energy improvement tax bylaws;

(d) respecting types of renovations, adaptations or installations for which clean energy improvement agreements may be made and types of renovations, adaptations or installations for which clean energy improvement agreements may not be made;

(e) respecting the disclosure of clean energy improvement agreements to prospective purchasers of property;

(f) respecting limits on the number of improvements to a single property or a type of eligible property for which a tax may be imposed under this Division;

(g) respecting limits on the capital costs of undertaking clean energy improvements on a single property or a type of eligible property under this Division;

(h) respecting clean energy improvement programs, including the administration of clean energy improvement programs.

2018 c6 s6

Division 7
Local Improvement Tax

Definition

391 In this Division, "local improvement" means a project

(a) that the council considers to be of greater benefit to an area of the municipality than to the whole municipality, and

(b) that is to be paid for in whole or in part by a tax imposed under this Division.

1994 cM-26.1 s391

Petitioning rules

392(1) Sections 222 to 226 apply to petitions under this Division, except as they are modified by this section.

(2) A petition is not a sufficient petition unless

(a) it is signed by 2/3 of the owners who would be liable to pay the local improvement tax, and

(b) the owners who sign the petition represent at least 1/2 of the value of the assessments prepared under Part 9 for the parcels of land in respect of which the tax will be imposed.

(3) If a parcel of land is owned by more than one owner, the owners are considered as one owner for the purpose of subsection (2).

(4) If a municipality, school division or provincial health agency or regional health authority under the *Provincial Health Agencies Act* is entitled to sign a petition under this Division, it may give notice to the council prior to or at the time the petition is presented to the council that its name and the assessment prepared for its land under Part 9 are not to be counted in determining the sufficiency of a petition under subsection (2), and the council must comply with the notice.

(5) If a corporation, church, organization, estate or other entity is entitled to sign a petition under this Division, the petition may be signed on its behalf by a person who

(a) is at least 18 years old, and

(b) produces on request a certificate authorizing the person to sign the petition.

RSA 2000 cM-26 s392;2012 cE-0.3 s279;2024 c10 s31

Proposal of local improvement

393(1) A council may on its own initiative propose a local improvement.

(2) A group of owners in a municipality may petition the council for a local improvement.

1994 cM-26.1 s393

Local improvement plan

394 If a local improvement is proposed, the municipality must prepare a local improvement plan.

1994 cM-26.1 s394

Contents of plan

395(1) A local improvement plan must

(a) describe the proposed local improvement and its location,

(b) identify

(i) the parcels of land in respect of which the local improvement tax will be imposed, and

(ii) the person who will be liable to pay the local improvement tax,

(c) state whether the tax rate is to be based on

(i) the assessment prepared in accordance with Part 9,

(ii) each parcel of land,

(iii) each unit of frontage, or

(iv) each unit of area,

(d) include the estimated cost of the local improvement,

(e) state the period over which the cost of the local improvement will be spread,

(f) state the portion of the estimated cost of the local improvement proposed to be paid

(i) by the municipality,

(ii) from revenue raised by the local improvement tax, and

(iii) from other sources of revenue,

and

(g) include any other information the proponents of the local improvement consider necessary.

(2) The estimated cost of a local improvement may include

(a) the actual cost of buying land necessary for the local improvement,

(b) the capital cost of undertaking the local improvement,

(c) the cost of professional services needed for the local improvement,

(d) the cost of repaying any existing debt on a facility that is to be replaced or rehabilitated, and

(e) other expenses incidental to the undertaking of the local improvement and to the raising of revenue to pay for it.

1994 cM-26.1 s395

Procedure after plan is prepared

396(1) When a local improvement plan has been prepared, the municipality must send a notice to the persons who will be liable to pay the local improvement tax.

(2) A notice under subsection (1) must include a summary of the information included in the local improvement plan.

(3) Subject to subsection (3.1), if a petition objecting to the local improvement is filed with the chief administrative officer within 30 days from the notices' being sent under subsection (1) and the chief administrative officer declares the petition to be sufficient, the council must not proceed with the local improvement.

(3.1) The council may, after the expiry of one year after the petition is declared to be sufficient, re-notify in accordance with subsections (1) and (2) the persons who would be liable to pay the local improvement tax.

(4) If a sufficient petition objecting to the local improvement is not filed with the chief administrative officer within 30 days from sending the notices under subsection (1), the council may undertake the local improvement and impose the local improvement tax at any time in the 3 years following the sending of the notices.

(5) When a council is authorized under subsection (4) to undertake a local improvement and

(a) the project has not been started, or

(b) the project has been started but is not complete,

the council may impose the local improvement tax for one year, after which the tax must not be imposed until the local improvement has been completed or is operational.

1994 cM-26.1 s396;1995 c24 s58

Local improvement tax bylaw

397(1) A council must pass a local improvement tax bylaw in respect of each local improvement.

(2) A local improvement tax bylaw authorizes the council to impose a local improvement tax in respect of all land in a particular area of the municipality to raise revenue to pay for the local improvement that benefits that area of the municipality.

(2.1) Despite subsection (2), where the local improvement that is the subject of a local improvement tax bylaw of a council of a municipality is a road to benefit Crown land within an area of the municipality, the local improvement tax bylaw does not authorize the council to impose a local improvement tax to raise revenue to pay for the local improvement unless, before it receives second reading, the bylaw is approved by the Minister responsible for the administration of the Crown land.

(3) Despite section 351(1), no land is exempt from taxation under this section.

RSA 2000 cM-26 s397;2015 c8 s51

Contents of bylaw

398(1) A local improvement tax bylaw must

(a) include all of the information required to be included in the local improvement plan,

(b) provide for equal payments during each year in the period over which the cost of the local improvement will be spread,

(c) set a uniform tax rate to be imposed on

(i) the assessment prepared in accordance with Part 9,

(ii) each parcel of land,

(iii) each unit of frontage, or

(iv) each unit of area,

based on the cost of the local improvement less any financial assistance provided to the municipality by the Crown in right of Canada or Alberta, and

(d) include any other information the council considers necessary.

(2) The local improvement tax bylaw may set the uniform tax rate based on estimated average costs throughout the municipality for a similar type of local improvement and that rate applies whether the actual cost of the local improvement is greater or less than the uniform tax rate.

1994 cM-26.1 s398

Start-up of a local improvement

399 The undertaking of a local improvement may be started, the local improvement tax bylaw may be passed and debentures may be issued before or after the actual cost of the local improvement has been determined.

1994 cM-26.1 s399

Person liable to pay local improvement tax

400 The person liable to pay the tax imposed in accordance with a local improvement tax bylaw is the owner of the parcel of land in respect of which the tax is imposed.

1994 cM-26.1 s400

Paying off a local improvement tax

401(1) The owner of a parcel of land in respect of which a local improvement tax is imposed may pay the tax at any time.

(2) If the local improvement tax rate is subsequently reduced under section 402 or 403, the council must refund to the owner the appropriate portion of the tax paid.

1994 cM-26.1 s401

Variation of local improvement tax bylaw

402(1) If, after a local improvement tax has been imposed, there is

(a) a subdivision affecting a parcel of land, or

(b) a consolidation of 2 or more parcels of land,

in respect of which a local improvement tax is payable, the council, with respect to future years, must revise the local improvement tax bylaw so that each of the new parcels of land bears an appropriate share of the local improvement tax.

(2) If, after a local improvement tax has been imposed,

(a) there is a change in a plan of subdivision affecting an area that had not previously been subject to a local improvement tax, and

(b) the council is of the opinion that as a result of the change the new parcels of land receive a benefit from the local improvement,

the council, with respect to future years, must revise the local improvement tax bylaw so that each benefitting parcel of land bears an appropriate share of the local improvement tax.

1994 cM-26.1 s402

Variation of local improvement tax rate

403(1) If, after a local improvement tax rate has been set, the council

(a) receives financial assistance from the Crown in right of Canada or Alberta or from other sources that is greater than the amount estimated when the local improvement tax rate was set, or

(b) refinances the debt created to pay for the local improvement at an interest rate lower than the rate estimated when the local improvement tax rate was set,

the council, with respect to future years, may revise the rate so that each benefitting parcel of land bears an appropriate share of the actual cost of the local improvement.

(2) If, after a local improvement tax rate has been set, an alteration is necessary following a complaint under Part 11 or an appeal under Part 12 that is sufficient to reduce or increase the revenue raised by the local improvement tax bylaw in any year by more than 5%, the council, with respect to future years, may revise the rate so that the local improvement tax bylaw will raise the revenue originally anticipated for those years.

(3) If, after a local improvement tax rate has been set, it is discovered that the actual cost of the local improvement is higher than the estimated cost on which the local improvement tax rate is based, the council may revise, once only over the life of the local improvement, the rate with respect to future years so that the local improvement tax bylaw will raise sufficient revenue to pay the actual cost of the local improvement.

1994 cM-26.1 s403;1999 c11 s21

Unusual parcels

404 If some parcels of land in respect of which a local improvement tax is to be imposed appear to call for a smaller or larger proportionate share of the tax because they are corner lots or are differently sized or shaped from other parcels, those parcels may be assigned the number of units of measurement the council considers appropriate to ensure that they will bear a fair portion of the local improvement tax.

1994 cM-26.1 s404

Municipality's share of the cost

405(1) A council may by bylaw require the municipality to pay the cost of any part of a local improvement that the council considers to be of benefit to the whole municipality.

(2) A bylaw under subsection (1) must be advertised if the cost to be paid by the municipality exceeds 50% of the cost of the local improvement less any financial assistance provided to the municipality by the Crown in right of Canada or Alberta.

(3) If financial assistance is provided to the municipality by the Crown in right of Canada or Alberta for a local improvement, the council must apply the assistance to the cost of the local improvement.

1994 cM-26.1 s405

Land required for local improvement

406(1) If a parcel of land is required before a local improvement can be proceeded with, the council may agree with the owner of the parcel that in consideration of

(a) the dedication or gift to the municipality of the parcel of land required, or

(b) a release of or reduction in the owner's claim for compensation for the parcel of land,

the remainder of the owner's land is exempt from all or part of the local improvement tax that would otherwise be imposed.

(2) The tax roll referred to in section 327 must be prepared in accordance with an agreement under this section, despite anything to the contrary in this Act.

1994 cM-26.1 s406

Exemption from local improvement tax

407(1) If a sanitary or storm sewer or a water main is constructed along a road or constructed in addition to or as a replacement of an existing facility

(a) along which it would not have been constructed except to reach some other area of the municipality, or

(b) in order to provide capacity for future development and the existing sanitary and storm sewers and water mains are sufficient for the existing development in the area,

the council may exempt from taxation under the local improvement tax bylaw, to the extent the council considers fair, the parcels of land abutting the road or place.

(2) If a local improvement tax is imposed for a local improvement that replaces a similar type of local improvement,

(a) the balance owing on the existing local improvement tax must be added to the cost of the new local improvement, or

(b) the council must exempt the parcels of land in respect of which the existing local improvement tax is imposed from the tax that would be imposed for the new local improvement.

1994 cM-26.1 s407

Sewers

408(1) A municipality may construct a local improvement for sewer if

(a) the council approves the construction,

(b) the construction is recommended by the Minister of Health or the medical health officer, and

(c) the council considers it to be in the public interest to do so.

(2) The owners of the parcels of land that benefit from a local improvement for sewer have no right to petition against its construction.

RSA 2000 cM-26 s408;2013 c10 s37

Private connection to a local improvement

409(1) If a local improvement for sewer or water has been constructed, the municipality may construct private connections from the local improvement to the street line if the council approves the construction.

(2) The cost of constructing a private connection must be imposed against the parcel of land that benefits from it and the owner of the parcel has no right to petition against its construction.

1994 cM-26.1 s409

Division 7.1
Community Aggregate Payment Levy

Community aggregate payment levy bylaw

409.1(1) Each council may pass a community aggregate payment levy bylaw.

(2) A community aggregate payment levy bylaw authorizes the council to impose a levy in respect of all sand and gravel businesses operating in the municipality to raise revenue to be used toward the payment of infrastructure and other costs in the municipality.

2005 c14 s15

Person liable to pay levy

409.2 A levy imposed under this Division must be paid by the persons who operate sand and gravel operations in the municipality.

2005 c14 s15

Regulations

409.3(1) The Minister may make regulations

(a) respecting a levy referred to in section 409.1(2), including, without limitation, regulations respecting the maximum levy that may be imposed and the application of the levy;

(b) respecting the application of any provision of this Act, with or without modification, to a community aggregate payment levy bylaw or a community aggregate payment levy, or both;

(c) respecting any other matter necessary or advisable to carry out the intent and purpose of this Division.

(2) A regulation under subsection (1) may be specific to a municipality or general in its application.

2005 c14 s15

Division 8
Recovery of Taxes Related to Land

Definitions

410 In this Division,

(a) "encumbrance" means an encumbrance as defined in the *Land Titles Act*;

(b) "encumbrancee" means the owner of an encumbrance;

(b.1) "parcel of land" means a parcel of land and the improvements on it;

(c) "Registrar" means the Registrar, as defined in the *Land Titles Act*, of the appropriate Land Titles Office;

(c.1) "remedial costs" means all expenses incurred by the Government of Alberta to perform work under an environmental protection order or an enforcement order issued under the *Environmental Protection and Enhancement Act*;

(d) "reserve bid" means the minimum price at which a municipality is willing to sell a parcel of land at a public auction;

(e) "tax" means a property tax, a community revitalization levy, a special tax, a clean energy improvement tax, a local improvement tax or a community aggregate payment levy;

(f) "tax recovery notification" means a notice, in writing, that part or all of the taxes imposed in respect of a parcel of land by a municipality are in arrears.

RSA 2000 cM-26 s410;2005 c14 s16;2018 c6 s7

Quorum

458(1) Where a panel of a local assessment review board consists of 3 members, a quorum is 2 members.

(2) Where a panel of a composite assessment review board consists of 3 members, a quorum is 2 members, one of whom must be the provincial member.

2016 c24 s62

Decision

459 A decision of a panel of an assessment review board is the decision of the assessment review board.

2016 c24 s62

Complaints

460(1) A person wishing to make a complaint about any assessment or tax must do so in accordance with this section.

(2) A complaint must be in the form prescribed in the regulations and must be accompanied with the fee set by the council under section 481(1), if any.

(3) A complaint may be made only by an assessed person or a taxpayer.

(4) A complaint may relate to any assessed property or business.

(5) A complaint may be about any of the following matters, as shown on an assessment or tax notice:

(a) the description of a property or business;

(b) the name and mailing address of an assessed person or taxpayer;

(c) an assessment;

(d) an assessment class;

(e) an assessment sub-class;

(f) the type of property;

(g) the type of improvement;

(h) school support;

(i) whether the property is assessable;

(j) whether the property or business is exempt from taxation under Part 10;

(k) any extent to which the property is exempt from taxation under a bylaw under section 364.1;

(l) whether the collection of tax on the property is deferred under a bylaw under section 364.1.

(6) A complaint may be made about a designated officer's refusal to grant an exemption or deferral under a bylaw under section 364.1.

(7) Despite subsection (5)(j),

(a) there is no right to make a complaint about an exemption or deferral given by agreement under section 364.1(11) unless the agreement expressly provides for that right, and

(b) there is no right to make a complaint about a decision made under a bylaw under section 364.2 in respect of an exemption or deferral.

(8) There is no right to make a complaint about any tax rate.

(9) A complaint under subsection (5) must

(a) indicate what information shown on an assessment notice or tax notice is incorrect,

(b) explain in what respect that information is incorrect,

(c) indicate what the correct information is, and

(d) identify the requested assessed value, if the complaint relates to an assessment.

(9.1) A complaint about a tax imposed in accordance with a clean energy improvement tax bylaw must be made within one year after the tax is first imposed.

(10) A complaint about a local improvement tax must be made within one year after it is first imposed.

(11) Despite subsection (10), where a local improvement tax rate has been revised under section 403(3), a complaint may be made about the revised local improvement tax whether or not a complaint was made about the tax within the year after it was first imposed.

(12) A complaint under subsection (11) must be made within one year after the local improvement tax rate is revised.

(13) A complaint must include the mailing address of the complainant except where, in the case of a complaint under subsection (5), the correct mailing address of the complainant is shown on the assessment notice or tax notice.

(14) An assessment review board has no jurisdiction to deal with a complaint about designated industrial property or an amount prepared by the Minister under Part 9 as the equalized assessment for a municipality.

(15) An assessment review board has no jurisdiction to deal with a complaint about any matter relating to an exemption or deferral under section 364.2, including a refusal to grant an exemption or deferral or a cancellation of an exemption or deferral under that section.

2016 c24 s62;2019 c6 s8;2023 c9 s19(11)

Jurisdiction of assessment review boards

460.1(1) A local assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on

(a) an assessment notice for

(i) residential property with 3 or fewer dwelling units, or

(ii) farm land,

or

(b) a tax notice other than a property tax notice, business tax notice or improvement tax notice.

(2) Subject to section 460(14) and (15), a composite assessment review board has jurisdiction to hear complaints about

(a) any matter referred to in section 460(5) that is shown on

(i) an assessment notice for property other than property described in subsection (1)(a), or

(ii) a business tax notice or an improvement tax notice,

or

(b) a designated officer's decision to refuse to grant an exemption or deferral under section 364.1.

(Consolidated up to 93/2024)

ALBERTA REGULATION 203/2017

Municipal Government Act

MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION, 2018

Table of Contents

Definitions

1 In this Regulation,

(a) "Act" means the *Municipal Government Act*;

(b) "agricultural use value" means the value of a parcel of land based exclusively on its use for farming operations;

(c) "assessment level" means, for the property assessment class, the overall ratio of assessments to indicators of market value;

(d) "assessment ratio" means the ratio of the assessment to an indicator of market value for a property;

(e) "assessment year" means the year prior to the taxation year;

(f) "coefficient of dispersion" means the average percentage deviation of the assessment ratios from the median assessment ratio for a group of properties;

(g) "mass appraisal" means the process of preparing assessments for a group of properties using standard methods and common data and allowing for statistical testing;

(h) "median assessment ratio" means the middle assessment ratio when the assessment ratios for a group of properties are arranged in order of magnitude;

(i) "Minister's Guidelines" means the Minister's Guidelines established by the Minister, including the following:

(i) Alberta Assessment Quality Minister's Guidelines;

(ii) Alberta Farm Land Assessment Minister's Guidelines;

(iii) Alberta Linear Property Assessment Minister's Guidelines;

(iv) Alberta Machinery and Equipment Assessment Minister's Guidelines;

(v) Alberta Railway Property Assessment Minister's Guidelines;

(vi) any of the above guidelines that are referred to in

(A) the *Matters Relating to Assessment and Taxation Regulation* (AR 289/99), and

(B) the *Standards of Assessment Regulation* (AR 365/94);

(vii) the 2005 Construction Cost Reporting Guide established by the Minister and all previous and subsequent versions of that Construction Cost Reporting Guide established by the Minister;

(j) "overall ratio" means the weighted ratio for a group of properties, calculated using the median assessment ratios for subgroups of properties within that group;

(k) "regulated property" means

(i) land in respect of which the valuation standard is agricultural use value,

(ii) designated industrial property, or

(iii) machinery and equipment.

Interpretation provisions for Parts 9 to 12 of the Act

2(1) For the purposes of Parts 9 to 12 of the Act and this Regulation,

(a) "electric distribution system" means

(i) a system, works, plant, equipment or service for the delivery, distribution or furnishing, directly to consumers, of electric energy for which rates are regulated by the Alberta Utilities Commission, or

(ii) a system, works, plant, equipment or service for the delivery, distribution or furnishing, directly to consumers, of electric energy by a rural electrification association under the *Rural Utilities Act* or by a municipality,

but does not include land, buildings or an electric generation system or an electric transmission system;

(b) "electric generation system" means a system used or intended to be used for the generation and gathering of electric energy from any source, including all machinery, installations, materials, devices, fittings, apparatus,

appliances and equipment that form part of the system, but subject to an order under section 3 does not include

(i) a system owned or operated by a person generating or proposing to generate electricity solely for the person's own use,

(ii) a micro-generation generating unit as defined in the *Micro-generation Regulation* (AR 27/2008), or

(iii) land or buildings;

(c) "electric power system" means an electric distribution system, an electric generation system or an electric transmission system;

(d) "electric transmission system" means a system or arrangement of lines of wire or other conductors and transformation equipment situated wholly in Alberta whereby electric energy, however produced, for which rates are regulated by the Alberta Utilities Commission is transmitted in bulk, and includes

(i) transmission circuits composed of the conductors that form the minimum set required to transmit electric energy,

(ii) insulating and supporting structures,

(iii) substations, and

(iv) operational and control devices,

but does not include land, buildings, an electric generation system or an electric distribution system;

(e) "farm building" means any improvement other than a residence, to the extent it is used for farming operations;

(f) "farming operations" means the raising, production and sale of agricultural products and includes

(i) horticulture, aviculture, apiculture and aquaculture,

(ii) the raising, production and sale of

(A) horses, cattle, bison, sheep, swine, goats or other livestock,

(B) fur-bearing animals raised in captivity,

(C) domestic cervids within the meaning of the *Domestic Cervid Industry Regulation* (AR 188/2014), or

(D) domestic camelids,

(iii) the planting, growing and sale of sod, and

(iv) an operation on a parcel of land for which a woodland management plan has been approved by the Woodlot Association of Alberta or a forester registered under the *Regulated Forest Management Profession Act* for the production of timber primarily marketed as whole logs, seed cones or Christmas trees,

but does not include any operation or activity on land that has been stripped for the purposes of, or in a manner that leaves the land more suitable for, future development;

(g) "machinery and equipment" means materials, devices, fittings, installations, appliances, apparatus and tanks, other than tanks used exclusively for storage, including supporting foundations, footings and any other thing prescribed by the Minister that forms an integral part of an operational unit intended for or used in

(i) manufacturing,

(ii) processing,

(iii) the production or transmission by pipeline of natural resources or products or by-products of that production, but not including pipeline as defined in clause (i),

(iv) the excavation or transportation of coal or oil sands as defined in the *Oil Sands Conservation Act*,

(v) a telecommunications system, or

(vi) an electric power system, other than a micro-generation generating unit that is the subject of an order under section 3,

whether or not the materials, devices, fittings, installations, appliances, apparatus, tanks, foundations, footings or other things are affixed to land in such a manner that they would be transferred without special mention by a transfer or sale of the land;

(h) "operator", in respect of designated industrial property, means

(i) the licensee, as defined in the *Pipeline Act*,

(ii) the licensee, as defined in the *Oil and Gas Conservation Act*, or

(iii) the person who has applied in writing to and been approved by the Minister as the operator,

or, where none of subclauses (i), (ii) or (iii) applies, the owner;

(i) "pipeline" means any continuous string of pipe, including loops, bypasses, cleanouts, distribution meters, distribution regulators, remote telemetry units, valves, fittings and improvements for the protection of pipelines used or intended for use in gathering, conveying, transporting, distributing or disposal of any substance or combination of substances, but does not include

(i) a pipe used or intended for use to convey water, other than in connection with

(A) a facility, scheme or other matter authorized under the *Oil and Gas Conservation Act* or the *Oil Sands Conservation Act*, or

(B) a coal processing plant or other matter authorized under the *Coal Conservation Act*,

(ii) a regulating or metering station or the inlet valve or outlet valve in any processing, refining, manufacturing, marketing, transmission line pumping, heating, treating, separating or storage facility or any installation, material, device, fitting, apparatus, appliance, machinery or equipment between those valves,

(iii) a pipe, installation, material, device, fitting, apparatus, appliance, machinery or equipment between valves referred to in subclause (ii), or

(iv) land or buildings;

(j) "railway property" means

(i) the continuous strip of land owned or occupied by a person as a right-of-way for trains leading from place to place in Alberta, but does not include

(A) land outside the right-of-way, or

(B) land used by the person for purposes other than the operation of trains,

(ii) grading, ballasts or improvements located within or outside a right-of-way for trains and used in the operation of trains, and

(iii) the improvements that form part of a telecommunications system used or intended for use in the operation of trains,

but does not include any part of an amusement railway, heritage railway or urban rail transit system as defined in the *Railway (Alberta) Act*;

(k) "street lighting systems" includes structures, installations, fittings and equipment used to supply light, but does not include land or buildings;

(l) "telecommunications systems" includes

(i) a system used or intended to be used for the transmission, emission, reception, switching, compilation or transformation by cable distribution undertakings and telecommunication carriers that are subject to the regulatory authority of the Canadian Radio-television and Telecommunications Commission or any successor of the Commission, and

(ii) the items listed in the Minister's guidelines under section 322(2) of the Act as components of a system referred to in subclause (i),

but does not include a private system to which the public is not intended to have access, a radio communications system intended for direct reception by the public or any land or buildings;

(m) "well" includes

(i) any pipe in a well that is used or intended for use in

(A) obtaining gas or oil, or both, or any other mineral,

(B) injecting or disposing of water, steam, salt water, glycol, gas or any other substance to an underground formation,

(C) supplying water for injection to an underground formation, or

(D) monitoring or observing performance of a pool, aquifer or an oil sands deposit,

(ii) well head installations or other improvements, with the exception of machinery and equipment, located at a well site used or intended for use for any of the purposes described in subclause (i) or for the protection of the well head installations,

(iii) the land that forms the site of a well used for any of the purposes described in subclause (i) if it is by way of a lease, licence or permit,

(iv) a building at a well site that contains machinery and equipment related to the well.

(2) Subsection (1)(a) to (d) do not apply in respect of section 360 of the Act.

(2.1) For the purposes of subsection (1)(f)(i), horticulture does not include the planting and growing of cannabis other than industrial hemp within the meaning of the *Industrial Hemp Regulations* (Canada) (SOR/2018-145).

(3) Property is to be considered operational

(a) in the case of linear property referred to in section 291(2)(a) of the Act

(i) that is an electric power system,

(A) on the date specified in the energization certificate issued by the Alberta Electric System Operator operating as the Independent System Operator under the *Electric Utilities Act*,

(B) if there is no energization certificate, on the date, as determined by the assessor based on written information from the Alberta Electric System Operator operating as the Independent

System Operator under the *Electric Utilities Act*, on which the system commences operating, or

(C) if there is no energization certificate and the written information referred to in paragraph (B) is unavailable, on the date, as determined by the assessor based on written information from the operator of the system, on which the system commences operating,

(ii) that is a pipeline,

(A) on the date on which the pipeline is placed in service, as confirmed in writing by the Alberta Energy Regulator,

(B) if confirmation of the date referred to in paragraph (A) is unavailable from the Alberta Energy Regulator, on the date on which, according to written information from the Canadian Energy Regulator, leave to open the pipeline is granted under the *Canadian Energy Regulator Act* (Canada), or

(C) if confirmation of the date referred to in paragraph (A) is unavailable from the Alberta Energy Regulator and the written information referred to in paragraph (B) is unavailable, on the date, as determined by the assessor based on written information from the operator of the pipeline, on which the pipeline commences operating,

(iii) that is a telecommunications system, on the date, as determined by the assessor based on written information from the operator of the system, on which the system commences operating,

or

(iv) that is a well,

(A) on the finished drilling date for the well, according to the records of the Alberta Energy Regulator as confirmed in writing by the Regulator, or

(B) if confirmation of the finished drilling date referred to in paragraph (A) is unavailable from the Alberta Energy Regulator, on the finished

drilling date for the well, as determined by the assessor based on written information from the operator of the well,

(b) in the case of machinery and equipment that

(i) is a new improvement referred to in section 291(2)(b) or (d) of the Act, or

(ii) is referred to in section 314 of the Act,

on the date, as determined by the assessor based on written information from the operator, on which the machinery or equipment commences operating,

(c) in the case of a new designated Canadian Energy Regulator, leave to open the pipeline is granted under the *Canadian Energy Regulator Act* (Canada)industrial property improvement referred to in section 291(2)(c) or (e) of the Act that is designated as a major plant in the Alberta Machinery and Equipment Assessment Minister's Guidelines, on the date, as determined by the assessor based on written information from the operator, on which the major plant commences operating, or

(d) in the case of new designated industrial property referred to in section 314.1 of the Act, other than linear property referred to in clause (a), on the date, as determined by the assessor based on written information from the operator, on which the designated industrial property commences operating.

AR 203/2017 s2;146/2019;256/2022

Deeming order

3 The Minister may, by order, direct that a system referred to in section 2(1)(b)(i) or a micro-generation generating unit referred to in section 2(1)(b)(ii) that is specified in the order is an electric power system for the purposes of the Act.

Application

4 This Regulation applies in respect of every municipality.

AR 203/2017 s4;256/2022

Part 1
Standards of Assessment

Mass appraisal

5 An assessment of property based on market value

(a) must be prepared using mass appraisal,

(b) must be an estimate of the value of the fee simple estate in the property, and

(c) must reflect typical market conditions for properties similar to that property.

Valuation date

6 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

Valuation standard for a parcel of land

7(1) The valuation standard for a parcel of land is

(a) market value, or

(b) if the parcel is used for farming operations, agricultural use value.

(2) In preparing an assessment for a parcel of land based on agricultural use value, the assessor must follow the procedures set out in the Alberta Farm Land Assessment Minister's Guidelines.

(3) Despite subsection (1)(b), the valuation standard for the following property is market value:

(a) a parcel of land containing less than one acre;

(b) a parcel of land containing at least one acre but not more than 3 acres that is used but not necessarily occupied for residential purposes or can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;

(c) an area of 3 acres located within a larger parcel of land where any part of the larger parcel is used but not necessarily occupied for residential purposes;

(d) an area of 3 acres that

(i) is located within a parcel of land, and

(ii) can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;

(e) any area that

(i) is located within a parcel of land,

(ii) is used for commercial or industrial purposes, and

(iii) cannot be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;

(f) an area of 3 acres or more that

(i) is located within a parcel of land,

(ii) is used for commercial or industrial purposes, and

(iii) can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel.

(4) An area referred to in subsection (3)(c), (d), (e) or (f) must be assessed as if it is a parcel of land.

(5) The valuation standard for strata space, as defined in section 86 of the *Land Titles Act*, is market value.

Valuation standard for improvements

8(1) The valuation standard for improvements is

(a) the valuation standard set out in section 10, 11, 12 or 13, for the improvements to which those sections apply, or

(b) for other improvements, market value.

(2), **(3)** Repealed AR 93/2024 s2.

(3) In preparing an assessment for a farm building, the assessor must determine its value based on its use for farming operations.

AR 203/2017 s8;93/2024

Valuation standard for a parcel and improvements

9(1) When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value unless subsection (2) applies.

(2) If the parcel of land is used for farming operations,

(a) the valuation standard in section 7(1)(b) applies to the land unless 7(3) applies, and

(b) the valuation standard in subsection (1) applies to the improvements.

(3) Repealed AR 93/2024 s3.

(4) If the improvement is railway property, linear property or machinery and equipment, the valuation standard is as set out in section 10, 11, 12 or 13, as the case may be.

AR 203/2017 s9;93/2024

Valuation standard for railway property

10(1) The valuation standard for railway property is that calculated in accordance with the procedures set out in the Alberta Railway Property Assessment Minister's Guidelines.

(2) In preparing an assessment for railway property, the assessor must follow the procedures referred to in subsection (1).

Valuation standard for linear property other than railway property

11(1) The valuation standard for linear property other than railway property is that calculated in accordance with the procedures set out in the Alberta Linear Property Assessment Minister's Guidelines.

(2) In preparing an assessment for linear property, the assessor must follow the applicable procedures referred to in subsection (1).

(3) For the purposes of section 298(1)(z) of the Act, an assessment must be prepared for machinery and equipment that is part of linear property as described in section 284(1)(k) of the Act, and the assessment must reflect 100% of its value.

Valuation standard for machinery and equipment

12(1) The valuation standard for machinery and equipment is that calculated in accordance with the applicable procedures set out in the Alberta Machinery and Equipment Assessment Minister's Guidelines.

(2) In preparing an assessment for machinery and equipment, the assessor must follow the applicable procedures referred to in subsection (1).

(3) For the purposes of section 298(1)(z) of the Act, an assessment must be prepared for machinery and equipment that is not part of

linear property as described in section 284(1)(k) of the Act, and the assessment must reflect 77% of its value.

Valuation standard for designated industrial property — land and buildings

13(1) The valuation standard for land and buildings that are part of any designated industrial property referred to in section 284(1)(f.01)(iv) or (v) of the Act is that calculated in accordance with the applicable procedures set out in the Alberta Machinery and Equipment Assessment Minister's Guidelines.

(2) In preparing an assessment for facilities, land, improvements and other property referred to in subsection (1), the assessor must follow the applicable procedures referred to in subsection (1).

Quality standards

14(1) In this section, "property" does not include regulated property.

(2) In preparing an assessment for property, the assessor must have regard to the quality standards required by subsection (3) and must follow the procedures set out in the Alberta Assessment Quality Minister's Guidelines.

(3) For any stratum of the property type described in the following table, the quality standards set out in the table must be met in the preparation of assessments:

Property Type	Median Assessment Ratio	Coefficient of Dispersion
Property containing 1, 2 or 3 dwelling units	0.950 - 1.050	0 - 15.0
All other property	0.950 - 1.050	0 - 20.0

(4) The assessor must, in accordance with the procedures set out in the Alberta Assessment Quality Minister's Guidelines, declare annually that the requirements for assessments have been met.

When permitted use differs from actual use

15 When a property is used for farming operations or residential purposes and an action is taken under Part 17 of the Act that has the effect of permitting or prescribing for that property some other use, the assessor must determine its value

(a) in accordance with its residential use, for that part of the property that is occupied by the owner or the purchaser, or the spouse or adult interdependent partner or dependant of the owner or purchaser, and is used exclusively for residential purposes, or

(b) based on agricultural use value, if the property is used for farming operations, unless section 7(3) applies.

Part 2
Recording and Reporting Property Information

Duty to record information

16 The assessor must, in accordance with the procedures set out in the Alberta Assessment Quality Minister's Guidelines, maintain as a record information about each property that is required for the preparation of the assessment roll in respect of those properties.

Duty to provide information to the Minister

17(1) The assessor must provide the information required by the Minister under section 293(3) of the Act in accordance with the procedures set out in the Alberta Assessment Quality Minister's Guidelines.

(2) The assessor must prepare and provide the return referred to in section 319 of the Act to the Minister in accordance with the procedures set out in the Alberta Assessment Quality Minister's Guidelines.

Corrections or changes

18 For the purposes of section 305.1 of the Act, corrections or changes to an assessment roll must be reported by the assessor in accordance with the procedures set out in the Alberta Assessment Quality Minister's Guidelines.

Part 3
Equalized Assessment

Information provided by municipality under section 319(1) of Act

19(1) On receiving information from a municipality pursuant to section 319(1) of the Act, the Minister must assess the information and determine if the information is acceptable.

(2) The information provided pursuant to section 319(1) of the Act must include information to determine assessment levels.

(3) If the Minister determines that the information is acceptable, the Minister may use and rely on the information when preparing the equalized assessment for the municipality.

(4) If the Minister determines that the information is not acceptable, the Minister must prepare the equalized assessment using whatever information the Minister considers appropriate.

Preparation of equalized assessment

20(1) In preparing the equalized assessment for a municipality,

(a) the assessments for regulated property that have been valued in accordance with this Regulation require no adjustment, and

(b) the assessments for property other than regulated property must be adjusted to reflect an assessment level of 1.000 using the assessment levels determined by the Minister.

(2) The total equalized assessment for residential property is calculated in accordance with the following formula:

$$\text{Assessments for residential property} \times \frac{1}{\text{assessment level for residential property}}$$

(3) The total equalized assessment for non-residential property other than regulated property is calculated in accordance with the following formula:

$$\text{Assessments for non-residential property} \times \frac{1}{\text{assessment level for non-residential property}}$$

AR 203/2017 s20;185/2018

Limit on increases in equalized assessments

21 Pursuant to section 325 of the Act, the Minister may, by order, limit the amount by which equalized assessments for any class of property listed in section 297 of the Act may increase from one year to the next.

Part 4
Assessment Audits

Assessment audits

22(1) The Minister may, from time to time,

(a) require annual or detailed audits of assessments, or both, to be performed, and

(b) appoint one or more auditors for the purpose of carrying out those audits.

(2) An auditor

(a) may require the attendance of any officer of a municipality or any other person whose presence the auditor considers necessary during the course of an audit, and

(b) has the same powers, privileges and immunities as a commissioner under the *Public Inquiries Act*.

(3) When required to do so by an auditor, the chief administrative officer of a municipality must produce for examination and inspection all books and records of the municipality.

(4) When required to do so by an auditor, an assessor must, in accordance with the procedures set out in the Alberta Assessment Quality Minister's Guidelines, provide the auditor with any assessment-related information in the assessor's custody and control.

(5) Audits under this section must be carried out in accordance with the procedures set out in the Alberta Assessment Quality Minister's Guidelines.

Part 5
Property Tax Exemption for Residences

Definitions

23 In this Part,

(a) "farm unit" means any number of parcels of land or parts of parcels, or both, that are

(i) owned by a farm unit operator,

(ii) held by that farm unit operator under a lease, licence or permit from the Crown or a municipality, or

(iii) occupied by that farm unit operator with the consent of a person holding the parcels under a lease, licence or permit from the Crown or a municipality

on December 31 of the year preceding the year in which the exemption in section 24(a) or (b) applies;

(b) "farm unit operator" means

(i) the person who is registered under the *Land Titles Act* as the owner of the fee simple estate in a farm unit, or the spouse or adult interdependent partner of that person,

(ii) a person who holds a farm unit under a lease, licence or permit from the Crown or a municipality, or a person who occupies the farm unit with the consent of that holder, and

(iii) a person who is purchasing a farm unit from the person referred to in subclause (i).

AR 203/2017 s23;93/2024

Exemptions from property tax

24 The following are exempt from taxation under Division 2 of Part 10 of the Act:

(a) one residence in a farm unit, if the residence is

(i) situated in a county, municipal district, improvement district or special area, and

(ii) situated on a parcel of not less than one acre,

to the extent of the assessment, based on agricultural use value, for the land in the farm unit, to a maximum of $61 540;

(b) each additional residence in the farm unit, if the residence is

(i) situated in a county, municipal district, improvement district or special area, and

(ii) used chiefly in connection with farming operations,

to the extent of the assessment, based on agricultural use value, for the land in the farm unit that remains after the exemption is made under clause (a), to a maximum of $30 770 for each additional residence.

Exemptions — Strathcona County

25 The following are exempt from taxation under Division 2 of Part 10 of the Act:

(a) one residence in a farm unit, if the residence is

(i) situated in the rural service area of the specialized municipality of Strathcona County, and

(ii) situated on a parcel of not less than one acre,

to the extent of the assessment, based on agricultural use value, for the land in the farm unit, to a maximum of $61 540;

(b) each additional residence in the farm unit, if the residence is

(i) situated in the rural service area of the specialized municipality of Strathcona County, and

(ii) used chiefly in connection with farming operations,

to the extent of the assessment, based on agricultural use value, for the land in the farm unit that remains after the exemption is made under clause (a), to a maximum of $30 770 for each additional residence.

Exemptions — Wood Buffalo

26 The following are exempt from taxation under Division 2 of Part 10 of the Act:

(a) one residence in a farm unit, if the residence is

(i) situated in the rural service area of the specialized municipality of the Regional Municipality of Wood Buffalo, and

(ii) situated on a parcel of not less than one acre,

to the extent of the assessment, based on agricultural use value, for the land in the farm unit, to a maximum of $61 540;

(b) each additional residence in the farm unit, if the residence is

(i) situated in the rural service area of the specialized municipality of the Regional Municipality of Wood Buffalo, and

(ii) used chiefly in connection with farming operations,

to the extent of the assessment, based on agricultural use value, for the land in the farm unit that remains after the exemption is made under clause (a), to a maximum of $30 770 for each additional residence.

Exemptions — Mackenzie County

27 The following are exempt from taxation under Division 2 of Part 10 of the Act:

(a) one residence in a farm unit, if the residence is

(i) situated in the specialized municipality of Mackenzie County, and

(ii) situated on a parcel of not less than one acre of land,

to the extent of the assessment, based on agricultural use value, for the land in the farm unit, to a maximum of $61 540;

(b) each additional residence in the farm unit, if the residence is

(i) situated in the specialized municipality of Mackenzie County, and

(ii) used chiefly in connection with farming operations,

to the extent of the assessment, based on agricultural use value, for the land in the farm unit that remains after the exemption is made under clause (a), to a maximum of $30 770 for each additional residence.

Exemptions — Jasper

28 The following are exempt from taxation under Division 2 of Part 10 of the Act:

(a) one residence in a farm unit, if the residence is

(i) situated outside of the town of the specialized municipality of the Municipality of Jasper, and

(ii) situated on a parcel of not less than one acre,

to the extent of the assessment, based on agricultural use value, for the land in the farm unit, to a maximum of $61 540;

(b) each additional residence in the farm unit, if the residence is

(i) situated outside of the town of the specialized municipality of the Municipality of Jasper, and

(ii) used chiefly in connection with farming operations,

to the extent of the assessment, based on agricultural use value, for the land in the farm unit that remains after the exemption is made under clause (a), to a maximum of $30 770 for each additional residence.

Exemptions — Lac La Biche County

29 The following are exempt from taxation under Division 2 of Part 10 of the Act:

(a) one residence in a farm unit, if the residence is

(i) situated in the rural service area of the specialized municipality of Lac La Biche County, and

(ii) situated on a parcel of not less than one acre,

to the extent of the assessment, based on agricultural use value, for the land in the farm unit, to a maximum of $61 540;

(b) each additional residence in the farm unit, if the residence is

(i) situated in the rural service area of the specialized municipality of Lac La Biche County, and

(ii) used chiefly in connection with farming operations,

to the extent of the assessment, based on agricultural use value, for the land in the farm unit that remains after the exemption is made under clause (a), to a maximum of $30 770 for each additional residence.

30 Repealed AR 93/2024 s6.

Part 6
Assessments and Assessment Information

Definitions

31 In this Part,

(a) "coefficient" means a number that represents the quantified relationship of each variable to the assessed value of a property when derived through a mass appraisal process;

(b) "factor" means a property characteristic that contributes to a value of a property;

(c) "valuation model" means the representation of the relationship between property characteristics and their value in the real estate marketplace using a mass appraisal process;

(d) "variable" means a quantitative or qualitative representation of a property characteristic used in a valuation model.

Assessment record

32 For the purposes of sections 299 and 299.1 of the Act, the assessment of a person's property is limited to the assessment for the current taxation year.

Prescribed assessment information

33(1) The following information is prescribed as the information that a municipality, on receiving a request under section 299(1) of the Act, must let an assessed person see or receive in respect of an assessment of that person's property, if the information is in the municipal assessor's possession at the time of the request:

(a) all documents, records and other information in respect of that property;

(b) descriptors and codes for variables used in the valuation model that was applied to the property;

(c) where there is a range of descriptors or codes for a variable, the range and what descriptor and code was applied to the property;

(d) any adjustments that were made outside the value of the variables used in the valuation model that affected the assessment of the property.

(2) The following information is prescribed as the information that the provincial assessor, on receiving a request under section 299.1(1) of the Act, must let an assessed person see or receive in respect of an assessment of that person's designated industrial property, if the information is in the provincial assessor's possession at the time of the request:

(a) all documents, records and other information in respect of that designated industrial property;

(b) descriptors and codes for variables used in the valuation model that was applied to the designated industrial property;

(c) where there is a range of descriptors or codes for a variable, the range and what descriptor and code was applied to the designated industrial property;

(d) any adjustments that were made outside the value of the variables used in the valuation model that affected the assessment of the designated industrial property.

(3) Information prescribed in subsection (1) or (2) does not include coefficients.

Form and time for providing prescribed assessment information

34(1) Subject to subsection (4), a municipality or the provincial assessor must provide the information prescribed in section 33(1) or (2) to the assessed person in one of the following manners:

(a) in hard-copy form with the assessment notice for the property;

(b) in hard-copy form without the assessment notice for the property;

(c) through an internet website that is readily accessible to the assessed person.

(2) The municipality or the provincial assessor must provide the summary of the assessment to the assessed person within 15 days

of receiving the request under section 299 or 299.1 of the Act, as the case may be.

(3) Provision of the prescribed information in a manner set out in subsection (1)(a) or (c) is deemed to have met the requirements of subsection (2).

(4) If a municipality or the provincial assessor does not provide the prescribed information in a manner set out in subsection (1), the municipality or provincial assessor must make reasonable arrangements to let the assessed person see the information at the municipality's or provincial assessor's office within 15 days of the request.

Access to summary of assessment

35(1) Subject to subsection (4), on request of an assessed person under section 300 of the Act the municipality must, and on request of an assessed person under section 300.1 of the Act the provincial assessor must, provide the assessed person with a summary of the assessment in one of the following manners:

(a) in hard-copy form with the assessment notice for the property;

(b) in hard-copy form without the assessment notice for the property;

(c) through an internet website that is readily accessible to the assessed person.

(2) The municipality or the provincial assessor must provide the prescribed information to the assessed person within 15 days of receiving the request under section 300 or 300.1 of the Act, as the case may be

(3) Provision of a summary of the assessment for an assessed property in a manner set out in subsection (1)(a) or (c) is deemed to have met the requirements of subsection (2).

(4) If a municipality or the provincial assessor does not provide a summary of the assessment for an assessed property in a manner set out in subsection (1), the municipality or provincial assessor must make reasonable arrangements to let the assessed person see the summary at the municipality's or provincial assessor's office within 15 days of the request.

(5) The 15-day period referred to in subsection (2) applies only in respect of a summary of the assessment for the first 5 assessed properties requested by an assessed person in any given year.

Compliance review

36(1) In this section, "compliance review" means a review by the Minister to determine if a municipality has complied with an information request under section 299 or 300 of the Act and this Part.

(2) An assessed person may make a request to the Minister, in the form and manner required by the Minister, for a compliance review if the assessed person believes that a municipality has failed to comply with that person's request under section 299 or 300 of the Act.

(3) A request for a compliance review must be made within 45 days of the assessed person's request under section 299 or 300 of the Act.

(4) If, after a compliance review, the Minister determines that a municipality has failed to comply with a request under section 299 or 300 of the Act, the Minister may impose a penalty for non-compliance against the municipality in accordance with the Schedule.

Contents of assessment notice

37 In addition to the information described in section 309 of the Act, the following information must be contained on or attached to an assessment notice or an amended assessment notice:

(a) a statement specifying where copies of the complaint form and the assessment complaints agent authorization form set out in Schedules 1 and 4, respectively, of the *Matters Relating to Assessment Complaints Regulation, 2018* (AR 201/2017) may be found;

(b) a statement

(i) indicating that an assessed person is entitled to see or receive sufficient information about the person's property in accordance with section 299 or 299.1 of the Act or both, or a summary of an assessment in accordance with section 300 or 300.1 of the Act or both, and

(ii) specifying the procedures and timelines to be followed by an assessed person to request the information or summary.

AR 203/2017 s37;146/2019

Supplementary assessments

38 No supplementary assessment is to be prepared under section 314.1 of the Act unless the municipality has passed a supplementary assessment bylaw under section 313 of the Act.

Part 7
Transitional Provisions and Coming into Force

Transitional provisions

39(1) In this section,

(a) "assessment" includes a reassessment;

(b) "former regulation" means the *Matters Relating to Assessment and Taxation Regulation* (AR 220/2004).

(2) Part 5.1 of the former regulation applies to information respecting assessments prepared in respect of the 2010 to 2018 taxation years and Part 6 of this Regulation applies to information respecting assessments prepared in respect of the 2019 and subsequent taxation years.

(3) Repealed AR 93/2024 s6.

(4) The former regulation applies, and this Regulation does not apply, to assessments of designated industrial property prepared by the provincial assessor in respect of the 2018 taxation year.

(5) Except to the extent that subsection (2) or (4) provides otherwise and subject to subsection (6), on and after January 1, 2018, the former regulation does not apply in respect of any municipality except the City of Lloydminster.

(6) This Regulation applies, and the former regulation does not apply, to the City of Lloydminster in respect of the 2023 and subsequent taxation years.

AR 203/2017 s39;256/2022;93/2024

Coming into force

40 This Regulation comes into force on January 1, 2018.

Schedule

Penalty for Non-Compliance

Action	Penalties*

Non-compliance with section 299 (the assessed person's property).	Up to $100 per day after the 15-day period for providing the information, to a maximum of $2500.
Non-compliance with section 300 (properties other than the assessed person's property):	
(a) for similar classes of property having comparable characteristics to the assessed person's property (relevant information);	Up to $100 per day after the 15-day period for providing the information, to a maximum of $2500.
(b) for dissimilar classes of property or property having non-comparable characteristics to the assessed person's property (non-relevant information).	$0.

* Penalties are not applicable for multiple requests for information on the same property by the same assessed person during the same taxation year.

Catalyst Paper Corporation *Appellant*

v.

Corporation of the District of North Cowichan *Respondent*

Indexed as: Catalyst Paper Corp. *v.* North Cowichan (District)

2012 SCC 2

File No.: 33744.

2011: October 18; 2012: January 20.

Present: McLachlin C.J. and LeBel, Deschamps, Fish, Abella, Rothstein and Cromwell JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Municipal law — Bylaws — Validity — Standard of review applicable to municipal taxation bylaw — What standard of reasonableness requires in context of judicial review of taxation bylaw — Community Charter, S.B.C. 2003, c. 26, s. 197.

One of C's four mills is located in the District of North Cowichan on Vancouver Island. C seeks to have a municipal taxation bylaw set aside on the basis that it is unreasonable having regard to objective factors such as consumption of municipal services. The District argued that reasonableness must take into account not only matters directly related to the treatment of a particular taxpayer, but a broad array of social, economic and demographic factors relating to the community as a whole. The chambers judge upheld the bylaw. The Court of Appeal dismissed the appeal.

Held: The appeal should be dismissed.

The applicable standard of review is reasonableness. The power of the courts to set aside municipal bylaws is a narrow one, and cannot be exercised simply because a bylaw imposes a greater share of the tax burden on some ratepayers than on others. The critical question is what factors the court should consider in determining what lies within the range of possible reasonable outcomes. Courts reviewing bylaws for reasonableness

Catalyst Paper Corporation *Appelante*

c.

Corporation of the District of North Cowichan *Intimée*

Répertorié : Catalyst Paper Corp. *c.* North Cowichan (District)

2012 CSC 2

N^{o} du greffe : 33744.

2011 : 18 octobre; 2012 : 20 janvier.

Présents : La juge en chef McLachlin et les juges LeBel, Deschamps, Fish, Abella, Rothstein et Cromwell.

EN APPEL DE LA COUR D'APPEL DE LA COLOMBIE-BRITANNIQUE

Droit municipal — Règlements — Validité — Norme de contrôle applicable à un règlement municipal en matière de taxation — Exigence de la norme de la décision raisonnable dans le contexte du contrôle judiciaire d'un tel règlement — Community Charter, S.B.C. 2003, ch. 26, art. 197.

L'une des quatre papeteries de C se trouve dans le district de North Cowichan, sur l'île de Vancouver. C demande l'annulation d'un règlement municipal en matière de taxation au motif qu'il est déraisonnable eu égard à des facteurs objectifs telle la consommation de services municipaux. Le district avance que selon la norme de la décision raisonnable il faut tenir compte non seulement de questions se rapportant directement au traitement réservé à un contribuable en particulier, mais également de toute une gamme de facteurs sociaux, économiques et démographiques qui touchent la collectivité dans son ensemble. Le juge de première instance a confirmé la validité du règlement. La Cour d'appel a rejeté l'appel.

Arrêt : Le pourvoi est rejeté.

La norme de contrôle à appliquer est celle de la décision raisonnable. Le pouvoir d'un tribunal d'annuler un règlement municipal est limité et il ne peut être exercé pour la seule raison que le règlement impose un plus grand fardeau fiscal à certains contribuables par rapport à d'autres. La question cruciale est de savoir quels facteurs le tribunal doit prendre en compte pour déterminer en quoi consiste l'éventail d'issues

must approach the task against the backdrop of the wide variety of factors that elected municipal councillors may legitimately consider in enacting bylaws, including broad social, economic and political issues. Only if the bylaw is one no reasonable body informed by these factors could have taken will the bylaw be set aside.

The fact that wide deference is owed to municipal councils does not mean that they have *carte blanche*. Reasonableness limits municipal councils in the sense that the substance of their bylaws must conform to the rationale of the statutory regime set up by the legislature. The range of reasonable outcomes is circumscribed by the purview of the legislative scheme that empowers a municipality to pass a bylaw. Municipal councils must also adhere to appropriate processes and cannot act for improper purposes.

The bylaw falls within a reasonable range of outcomes. The bylaw does not constitute a decision that no reasonable elected municipal council could have made. The District Council considered and weighed all relevant factors. The process of passing the bylaw was properly followed. The reasons for the bylaw were clear and the District's policy had been laid out in a five-year plan. The District's approach complies with the *Community Charter*, which permits municipalities to apply different tax rates to different classes of property. The *Community Charter* does not support C's contention that property value taxes ought to be limited by the level of service consumed. Although the bylaw favours residential property owners, it is not unreasonably partial to them.

Cases Cited

Applied: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; **referred to:** *Thorne's Hardware Ltd. v. The Queen*, [1983] 1 S.C.R. 106; *Bell v. The Queen*, [1979] 2 S.C.R. 212; *O'Flanagan v. Rossland (City)*, 2009 BCCA 182, 270 B.C.A.C. 40; *Westcoast Energy Inc. v. Peace River (Regional District)* (1998), 54 B.C.L.R. (3d) 45; *Canadian National Railway Co. v. Fraser-Fort George (Regional District)* (1996), 26 B.C.L.R. (3d) 81; *Hlushak v. Fort McMurray (City)* (1982), 37 A.R. 149; *Ritholz v. Manitoba Optometric Society* (1959), 21 D.L.R. (2d) 542; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339; *Pacific National Investments Ltd. v. Victoria (City)*, 2000 SCC 64, [2000] 2 S.C.R. 919; *Kruse v. Johnson*, [1898] 2 Q.B. 91; *Associated Provincial*

possibles raisonnables. Le tribunal appelé à réviser le caractère raisonnable d'un règlement municipal doit le faire au regard de la grande variété de facteurs dont les conseillers municipaux élus peuvent légitimement tenir compte lorsqu'ils adoptent des règlements, y compris des facteurs généraux d'ordre social, économique et politique. Le règlement ne sera annulé que s'il s'agit d'un règlement qui n'aurait pu être adopté par un organisme raisonnable tenant compte de ces facteurs.

Le fait qu'il faille faire preuve d'une grande retenue envers les conseils municipaux ne signifie pas qu'ils ont carte blanche. La norme de la décision raisonnable restreint les conseils municipaux en ce sens que la teneur de leurs règlements doit être conforme à la raison d'être du régime mis sur pied par la législature. L'éventail des issues raisonnables est circonscrit par la portée du schème législatif qui confère à la municipalité le pouvoir de prendre des règlements. Les conseils municipaux doivent également adopter des processus convenables et ils ne peuvent agir à des fins illégitimes.

Le règlement s'inscrit dans un éventail d'issues raisonnables. Il ne constitue pas une décision qu'aucun conseil municipal élu raisonnable n'aurait pu prendre. Le conseil du district a examiné et soupesé tous les facteurs pertinents. Le processus d'adoption du règlement a été correctement suivi. Les motifs qui sous-tendaient le règlement étaient clairs et le district avait exposé sa politique dans un plan quinquennal. L'approche du district respecte la *Community Charter*, qui autorise les municipalités à imposer un taux d'impôt foncier propre à chaque catégorie d'immeubles. La *Community Charter* ne permet pas à C d'affirmer que les taxes foncières à payer devraient être proportionnelles au niveau de consommation des services. Le règlement favorise certes les propriétaires d'immeubles résidentiels, mais il n'est pas déraisonnablement partial envers eux.

Jurisprudence

Arrêt appliqué : *Dunsmuir c. Nouveau-Brunswick*, 2008 CSC 9, [2008] 1 R.C.S. 190; **arrêts mentionnés :** *Thorne's Hardware Ltd. c. La Reine*, [1983] 1 R.C.S. 106; *Bell c. La Reine*, [1979] 2 R.C.S. 212; *O'Flanagan c. Rossland (City)*, 2009 BCCA 182, 270 B.C.A.C. 40; *Westcoast Energy Inc. c. Peace River (Regional District)* (1998), 54 B.C.L.R. (3d) 45; *Canadian National Railway Co. c. Fraser-Fort George (Regional District)* (1996), 26 B.C.L.R. (3d) 81; *Hlushak c. Fort McMurray (City)* (1982), 37 A.R. 149; *Ritholz c. Manitoba Optometric Society* (1959), 21 D.L.R. (2d) 542; *Canada (Citoyenneté et Immigration) c. Khosa*, 2009 CSC 12, [2009] 1 R.C.S. 339; *Pacific National Investments Ltd. c. Victoria (Ville)*, 2000 CSC 64, [2000] 2 R.C.S. 919; *Kruse c. Johnson*, [1898] 2

principles guide that review. Catalyst argues that courts can set aside municipal bylaws on the ground that they are unreasonable, having regard to objective factors such as consumption of municipal services. The District of North Cowichan, on the other hand, argues that the judicial power to overturn a municipal tax bylaw is very narrow; in its view, courts cannot overturn a bylaw simply because it places a disproportionate burden on a taxpayer.

réviser les règlements municipaux en matière de taxation et quels principes il convient d'appliquer à cet égard. Catalyst soutient que les tribunaux peuvent annuler des règlements municipaux au motif qu'ils sont déraisonnables eu égard à des facteurs objectifs tels la consommation de services municipaux. Pour sa part, le district de North Cowichan fait valoir que le pouvoir d'un tribunal d'annuler un tel règlement est très limité; selon lui, le tribunal ne peut exercer ce pouvoir pour la seule raison que le règlement impose un fardeau disproportionné à un contribuable.

[8] The British Columbia Supreme Court (2009 BCSC 1420, 98 B.C.L.R. (4th) 355) and the Court of Appeal (2010 BCCA 199, 286 B.C.A.C. 149) upheld the impugned bylaw. Catalyst now appeals to this Court.

[8] La Cour suprême de la Colombie-Britannique (2009 BCSC 1420, 98 B.C.L.R. (4th) 355) et la Cour d'appel (2010 BCCA 199, 286 B.C.A.C. 149) ont toutes les deux confirmé la validité du règlement contesté. C'est pourquoi Catalyst se pourvoit devant notre Cour.

[9] I conclude that the power of the courts to set aside municipal bylaws is a narrow one, and cannot be exercised simply because a bylaw imposes a greater share of the tax burden on some ratepayers than on others.

[9] Je conclus que le pouvoir d'un tribunal d'annuler un règlement municipal est limité et qu'il ne peut être exercé pour la seule raison que le règlement impose un plus grand fardeau fiscal à certains contribuables par rapport à d'autres.

Analysis

A. *Judicial Review of Municipal Bylaws*

[10] It is a fundamental principle of the rule of law that state power must be exercised in accordance with the law. The corollary of this constitutionally protected principle is that superior courts may be called upon to review whether particular exercises of state power fall outside the law. We call this function "judicial review".

[11] Municipalities do not have direct powers under the Constitution. They possess only those powers that provincial legislatures delegate to them. This means that they must act within the legislative constraints the province has imposed on them. If they do not, their decisions or bylaws may be set aside on judicial review.

Analyse

A. *Contrôle judiciaire des règlements municipaux*

[10] La primauté du droit pose comme principe fondamental que le pouvoir de l'État doit être exercé en conformité avec la loi. Ce principe protégé par la Constitution a pour corollaire que les cours supérieures peuvent être appelées à examiner si un exercice particulier du pouvoir de l'État est conforme à la loi ou non. C'est ce que nous appelons le « contrôle judiciaire ».

[11] Les municipalités ne jouissent d'aucun pouvoir leur étant directement accordé par la Constitution. Elles n'ont que les pouvoirs que leur délèguent les législatures provinciales. Cela signifie qu'elles doivent s'en tenir aux contraintes législatives que la province leur impose, à défaut de quoi leurs décisions et leurs règlements peuvent être annulés à l'issue d'une procédure de contrôle judiciaire.

[12] A municipality's decisions and bylaws, like all administrative acts, may be reviewed in two ways. First, the requirements of procedural fairness and legislative scheme governing a municipality may require that the municipality comply with certain procedural requirements, such as notice or voting requirements. If a municipality fails to abide by these procedures, a decision or bylaw may be invalid. But in addition to meeting these bare legal requirements, municipal acts may be set aside because they fall outside the scope of what the empowering legislative scheme contemplated. This substantive review is premised on the fundamental assumption derived from the rule of law that a legislature does not intend the power it delegates to be exercised unreasonably, or in some cases, incorrectly.

[13] A court conducting substantive review of the exercise of delegated powers must first determine the appropriate standard of review. This depends on a number of factors, including the presence of a privative clause in the enabling statute, the nature of the body to which the power is delegated, and whether the question falls within the body's area of expertise. Two standards are available: reasonableness and correctness. See, generally, *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 55. If the applicable standard of review is correctness, the reviewing court requires, as the label suggests, that the administrative body be correct. If the applicable standard of review is reasonableness, the reviewing court requires that the decision be reasonable, having regard to the processes followed and whether the outcome falls within a reasonable range of alternatives in light of the legislative scheme and contextual factors relevant to the exercise of the power (*Dunsmuir*, at para. 47).

[14] Against this general background, I come to the issue before us — the substantive judicial

[12] Les décisions et les règlements d'une municipalité, à l'instar de tout acte administratif, peuvent être révisés de deux façons. D'abord, les exigences en matière d'équité procédurale et le régime législatif qui régit la municipalité peuvent l'obliger à respecter certaines exigences de nature procédurale, notamment en matière d'avis ou de vote, et sa décision ou son règlement peut être jugé invalide si elle néglige de suivre ces procédures. Mais en plus de pouvoir être annulés au motif que ces exigences légales minimales n'ont pas été respectées, il se peut que les actes d'une municipalité le soient parce qu'ils outrepassent ce que le régime législatif permettait de faire. Cette révision sur le fond est fondée sur la présomption fondamentale, découlant de la primauté du droit, selon laquelle le législateur ne peut avoir voulu que le pouvoir qu'il a délégué soit exercé de façon déraisonnable, ou, dans certains cas, incorrecte.

[13] Un tribunal procédant à la révision sur le fond de l'exercice de pouvoirs délégués doit d'abord déterminer la norme de contrôle qu'il convient d'appliquer. Cela dépend d'un certain nombre de facteurs, notamment l'existence ou non d'une clause privative (aussi appelée disposition d'inattaquabilité) dans la loi habilitante, la nature du délégataire, et la question de savoir si la décision relève du domaine d'expertise de ce dernier. Il existe deux normes de contrôle : celle de la décision raisonnable et celle de la décision correcte. Voir, de façon générale, *Dunsmuir c. Nouveau-Brunswick*, 2008 CSC 9, [2008] 1 R.C.S. 190, au par. 55. Dans le cas où la norme qu'il convient d'appliquer est celle de la décision correcte, le tribunal de révision exige que l'entité administrative ait agi correctement, comme l'indique l'appellation de la norme. Dans le cas où la norme applicable est plutôt celle de la décision raisonnable, il exige que la décision soit raisonnable en considérant les processus suivis et si le résultat s'inscrit dans un éventail raisonnable d'issues possibles, compte tenu du régime législatif et des facteurs contextuels pertinents quant à l'exercice du pouvoir (*Dunsmuir*, par. 47).

[14] C'est sur cette toile de fond que j'aborde la question que nous sommes appelés à trancher :

review of municipal taxation bylaws. In *Thorne's Hardware Ltd. v. The Queen*, [1983] 1 S.C.R. 106, at p. 115, the Court, referring to delegated legislation, drew a distinction between policy and legality, with the former being unreviewable by the courts:

> The Governor in Council quite obviously believed that he had reasonable grounds for passing Order in Council P.C. 1977-2115 extending the boundaries of Saint John Harbour and we cannot enquire into the validity of those beliefs in order to determine the validity of the Order in Council.

(See also pp. 111-13.) However, this attempt to maintain a clear distinction between policy and legality has not prevailed. In passing delegated legislation, a municipality must make policy choices that fall reasonably within the scope of the authority the legislature has granted it. Indeed, the parties now agree that the tax bylaw at issue is not exempt from substantive review in this sense.

[15] Unlike Parliament and provincial legislatures which possess inherent legislative power, regulatory bodies can exercise only those legislative powers that were delegated to them by the legislature. Their discretion is not unfettered. The rule of law insists on judicial review to ensure that delegated legislation complies with the rationale and purview of the statutory scheme under which it is adopted. The delegating legislator is presumed to intend that the authority be exercised in a reasonable manner. Numerous cases have accepted that courts can review the substance of bylaws to ensure the lawful exercise of the power conferred on municipal councils and other regulatory bodies (*Bell v. The Queen*, [1979] 2 S.C.R. 212; *O'Flanagan v. Rossland (City)*, 2009 BCCA 182, 270 B.C.A.C. 40; *Westcoast Energy Inc. v. Peace River (Regional District)* (1998), 54 B.C.L.R. (3d) 45 (C.A.); *Canadian National Railway Co. v. Fraser-Fort George (Regional District)* (1996), 26 B.C.L.R. (3d) 81 (C.A.); *Hlushak v. Fort McMurray (City)* (1982), 37 A.R. 149 (C.A.); *Ritholz v.*

la révision judiciaire sur le fond des règlements municipaux en matière de taxation. Dans *Thorne's Hardware Ltd. c. La Reine*, [1983] 1 R.C.S. 106, p. 115, la Cour, faisant référence à la législation déléguée, a établi une distinction entre la politique et la légalité, la première ne pouvant être révisée par les tribunaux :

> Le gouverneur en conseil a manifestement cru avoir des motifs raisonnables de prendre le décret C.P. 1977-2115 qui étendait les limites du port de Saint-Jean et nous ne pouvons nous enquérir de la validité de ces motifs afin de déterminer la validité du décret.

(Voir aussi p. 111-113.) Cependant, cette tentative de conserver une distinction claire entre la politique et la légalité n'a pas été maintenue. En exerçant son pouvoir législatif délégué, une municipalité doit faire des choix de politique qui relèvent raisonnablement de l'étendue de l'autorité que la législature lui a octroyée. De fait, les parties conviennent maintenant que le règlement en matière de taxation en cause dans la présente affaire n'est pas, en ce sens, soustrait à la révision sur le fond.

[15] Contrairement au Parlement et aux législatures provinciales, qui jouissent d'un pouvoir législatif inhérent, les organismes de réglementation ne peuvent exercer que les pouvoirs législatifs qui leur ont été délégués. Leur pouvoir discrétionnaire n'est pas sans limites. La primauté du droit exige que le contrôle judiciaire de la législation déléguée s'assure que celle-ci est bien conforme à la raison d'être et à la portée du régime législatif sous lequel elle a été adoptée. Il faut présumer que le législateur qui délègue un pouvoir s'attend à ce que celui-ci soit exercé de manière raisonnable. Il a été reconnu dans de nombreux cas que les tribunaux peuvent réviser le contenu des règlements municipaux afin d'assurer l'exercice légitime du pouvoir conféré aux conseils municipaux et à d'autres organismes de réglementation (*Bell c. La Reine*, [1979] 2 R.C.S. 212; *O'Flanagan c. Rossland (City)*, 2009 BCCA 182, 270 B.C.A.C. 40; *Westcoast Energy Inc. c. Peace River (Regional District)* (1998), 54 B.C.L.R. (3d) 45 (C.A.); *Canadian National Railway Co. c. Fraser-Fort George (Regional*

context of bylaws passed by democratically elected municipal councils.

[24] It is thus clear that courts reviewing bylaws for reasonableness must approach the task against the backdrop of the wide variety of factors that elected municipal councillors may legitimately consider in enacting bylaws. The applicable test is this: only if the bylaw is one no reasonable body informed by these factors could have taken will the bylaw be set aside. The fact that wide deference is owed to municipal councils does not mean that they have *carte blanche*.

[25] Reasonableness limits municipal councils in the sense that the substance of their bylaws must conform to the rationale of the statutory regime set up by the legislature. The range of reasonable outcomes is thus circumscribed by the purview of the legislative scheme that empowers a municipality to pass a bylaw.

[26] Here the relevant legislation is the *Community Charter*. Section 197 gives municipalities a broad and virtually unfettered legislative discretion to establish property tax rates in respect of each of the property classes in the municipality, unless limited by regulation. The intended breadth of the legislative discretion under the current legislative scheme is highlighted by the fact that the government of British Columbia ceased to impose regulatory limits on the ratios between tax rates in 1985. Section 199(b) of the *Community Charter* allows the Lieutenant Governor in Council to make regulations on the relationships between Class 1 and Class 4 tax rates, and no regulation of this sort has been reintroduced since the repeal of the 1984 regulation, which prescribed a 1 to 3.4 ratio between residential and major industry tax rates (B.C. Reg. 63/84, adopted pursuant to s. 14.1(3)(b) of the *Municipal Finance Authority Act*, R.S.B.C. 1979, c. 292, the predecessor of s. 199(b)

été analysées ci-dessus restent donc pertinentes et applicables. Bref, ces causes indiquent ce qui est raisonnable dans le contexte particulier de règlements adoptés par des conseils municipaux élus démocratiquement.

[24] Il est donc clair que les tribunaux appelés à réviser le caractère raisonnable de règlements municipaux doivent le faire au regard de la grande variété de facteurs dont les conseillers municipaux élus peuvent légitimement tenir compte lorsqu'ils adoptent des règlements. Le critère applicable est le suivant : le règlement ne sera annulé que s'il s'agit d'un règlement qui n'aurait pu être adopté par un organisme raisonnable tenant compte de ces facteurs. Le fait qu'il faille faire preuve d'une grande retenue envers les conseils municipaux ne signifie pas qu'ils ont carte blanche.

[25] La norme de la décision raisonnable restreint les conseils municipaux en ce sens que la teneur de leurs règlements doit être conforme à la raison d'être du régime mis sur pied par la législature. L'éventail des issues raisonnables est donc circonscrit par la portée du schème législatif qui confère à la municipalité le pouvoir de prendre des règlements.

[26] La loi applicable en l'espèce est la *Community Charter*. Son article 197 confère aux municipalités un pouvoir discrétionnaire large et quasi illimité de fixer les taux de l'impôt foncier à payer au titre de chacune des catégories d'immeubles se trouvant sur son territoire, sous réserve des limites prescrites par règlement. La portée de ce pouvoir que le régime législatif actuellement en vigueur confère aux municipalités ressort du fait que le gouvernement de la Colombie-Britannique a cessé, en 1985, d'imposer des limites réglementaires aux rapports permis entre les taux d'imposition. L'alinéa 199b) de la *Community Charter* donne au lieutenant-gouverneur en conseil le pouvoir de prendre des règlements sur le rapport entre le taux d'imposition des immeubles de catégorie 1 et celui des immeubles de catégorie 4, et aucun règlement de ce genre n'a été pris depuis l'abrogation du règlement de 1984, qui prévoyait un rapport de 1:3,4 entre le taux d'impôt foncier sur les immeubles

In the Court of Appeal of Alberta

Citation: Canadian Natural Resources Limited v Fishing Lake Metis Settlement, 2024 ABCA 131

Date: 20240422
Docket: 2203-0036AC
Registry: Edmonton

Between:

Canadian Natural Resources Limited, Husky Oil Operations Ltd., Crescent Point Energy Corp., Altagas Ltd., Altagas Holdings Inc., and Altagas Processing Partnership

Appellants

- and -

Fishing Lake Metis Settlement and The Metis Settlements General Council

Respondents

The Court:

The Honourable Justice Patricia Rowbotham
The Honourable Justice Dawn Pentelechuk
The Honourable Justice Kevin Feehan

Reasons for Judgment Reserved of The Honourable Justice Pentelechuk

Concurred in by The Honourable Justice Rowbotham and The Honourable Justice Feehan

Appeal from the Order by
The Honourable Justice M.S. Hayes-Richards
Dated the 18th day of January, 2022
Filed the 17th day of February, 2022
(2022 ABQB 53, Docket: 1903 17590)

Reasons for Judgment Reserved
The Honourable Justice Pentelechuk

I. Overview

[1] This appeal concerns the authority of the Metis Settlements General Council (General Council) to adopt assessment and taxation policies which treat the property of Settlement members and Settlement member-owned corporations differently from that of non-Settlement members and corporations. The four appellants – none of whom are Settlement members or corporations – own and operate businesses on the Fishing Lake Metis Settlement (Fishing Lake). The policies in issue were adopted without consulting or providing notice to the appellants. As a result of these policies, the appellants form the entirety of Fishing Lake's property tax base, and each experienced a significant increase in their property tax liability to Fishing Lake.

[2] The appellants sought judicial review, challenging the policies as *ultra vires* the General Council (outside its granted power or authority), on the grounds that the differential tax treatment must be expressly authorized, and in any event, was neither expressly nor implicitly authorized by the *Metis Settlements Act*, RSA 2000, c M-14 [*MSA*]. The General Council admitted that the policies have a discriminatory effect and that the discriminatory tax treatment is not expressly permitted under the *MSA*, but argued express authorization is not necessary. Rather, the discriminatory tax treatment was implicitly authorized and therefore lawful.

[3] The chambers judge agreed with the General Council, finding that "express authorization for discrimination is not necessary, but that 'implicit delegation by necessary inference', implied authorization, authorization 'in effect' or 'necessarily or fairly implied by the expressed power in the statute' will be sufficient to authorize differential treatment": ***Canadian Natural Resources Limited v Fishing Lake Metis Settlement***, 2022 ABQB 53 (Decision) at para 65. She applied a reasonableness standard of review, concluding the policies represented a reasonable exercise of the General Council's delegated authority under the *MSA* and were therefore lawful. She further found that the General Council owed no procedural fairness to the appellants when passing the policies. The appellants now appeal.

[4] In a broad sense, this appeal engages the concept of discrimination in an administrative law sense, which is permissible provided the discrimination is not beyond the General Council's powers or authority as defined by its enabling statute, the *MSA*. Whether the discrimination is permissible in turn depends first, on whether the common law rule requiring express statutory authority to discriminate in the area of tax still prevails, and if not, whether authorization is necessarily inferred by the *MSA*.

[29] Notwithstanding this disagreement as to whether ***Vavilov*** or ***Katz*** applies, the parties maintain that their preferred result follows regardless of which authority is adopted. This is perhaps because both ***Vavilov*** and ***Katz*** reduce to asking essentially the same question when it comes to administrative law discrimination: is the discrimination authorized by the enabling legislation, expressly or by necessary implication, thereby meeting the common law test? In ***Katz*** at paras 47-48 the Supreme Court applied the common law test for whether discrimination is authorized to determine the *vires* of the delegated legislation at issue. The same question dominates even if the issue of administrative law discrimination is considered within the confines of a "reasonableness" review under ***Vavilov***. The Supreme Court in ***Vavilov***, citing ***Katz***, recognized that the common law will impose constraints on what an administrative decision maker can lawfully decide: "For example, an administrative decision maker interpreting the scope of its regulation-making authority in order to exercise that authority cannot adopt an interpretation that is inconsistent with the applicable common law principles regarding the nature of statutory powers": at para 111. In short, discrimination not authorized by the applicable common law test will render the delegated legislation unreasonable and *ultra vires*.

[30] The focus is therefore on whether the chambers judge properly identified the common law test in the context of discriminatory tax treatment and her application of the test to the *MSA*. If the common law test is as argued by the appellants – that discriminatory tax treatment must be expressly provided for in the statute – the appeal must be allowed, the General Council conceding no express authorization is found in the *MSA*. If the common law test allows for administrative discrimination by necessary inference, the legislation must be carefully examined to determine that necessary inference.

IV. Does Discriminatory Tax Treatment Require Express Statutory Authorization?

[31] As noted, the General Council does not dispute that the unequal tax treatment as between Settlement members and non-Settlement members contained in the 2019 Policies constitutes "discrimination" in the administrative law sense. It contends, however, that the common law test for the *vires* of the Policies is whether the discriminatory tax treatment is expressly *or* implicitly authorized by the *MSA* and that the chambers judge was correct in finding implicit authorization to be sufficient.

[32] The general rule is that discrimination found in delegated legislation can be authorized by enabling legislation either expressly or implicitly: ***Allard Contractors Ltd v Coquitlam (District)***, [1993] 4 SCR 371 [***Allard Contractors***] at 413; ***R v Sharma*** [1993] 1 SCR 650 [***Sharma***] at 667-668; ***Shell*** at 282.

[33] The appellants accept this test as being applicable in most contexts but contend that the rule does not apply in matters of taxation; in such cases (of which the 2019 Policies are an obvious example), authorization must be *express*. They suggest this stricter rule is longstanding and unbroken, originating as far back as the late nineteenth century decision in ***Jonas v Gilbert*** (1881), 5 SCR 356 [***Jonas***]. As a corollary, the chambers judge is said to have erred by instead relying on

the test as set out in ***Shell*** and ***Sharma***: see Decision at paras 61-66. I disagree. As I explain, the modern test for authorizing administrative law discrimination is no different in the context of taxation.

[34] In ***Jonas***, the Supreme Court of Canada found a municipal bylaw *ultra vires* on the basis that it amounted to unauthorized discrimination by imposing different licensing rates between residents and non-residents to carry on business. Ritchie CJ noted that the "general power to tax by means of licenses involved the principle of equality and uniformity" and concluded that any "departure from uniformity and impartiality ... cannot be inferred". He reasoned that the power to tax "conferred no power to discriminate" and that "a power to discriminate must be expressly authorized". Ritchie CJ further suggested that the enabling statute "must be construed strictly", noting that "[t]he general rule that the powers of a municipal corporation are to be construed with strictness is peculiarly applicable to the case of taxes on occupations": at 365-367. In the case of differential treatment between residents and non-residents, no such express authorization existed in the enabling statute.

[35] However, as early as 1907 in ***City of Hamilton v Hamilton Distillery Co*** (1907), 38 SCR 239 [***City of Hamilton***], the Supreme Court softened its application of the strict rule when considering authorization of an indirect tax. The issue in ***City of Hamilton*** was whether a bylaw could validly permit the "City of Hamilton, in administering its water works, [to] charge one class of manufacturers a higher price for water supplied than another, … the only difference between them being the nature of their business": at 254. In concurring reasons, Davies J concluded that the discrimination was not authorized by the express language or by reasonable implication, stating at 249: "... <u>if the language used fell short of expressly conferring the powers claimed, but did confer them by a fair and reasonable implication I would not hesitate to adopt the construction sanctioned by the implication</u>" [Emphasis added].

[36] The rationales underlying the decision in ***Jonas*** have been overtaken in the ensuing years. This is largely due to the evolution of municipal powers which are no longer strictly construed but now interpreted broadly and purposively: ***United Taxi Drivers' Fellowship of Southern Alberta v Calgary (City)***, 2004 SCC 19 at para 6; ***St Paul (County) No 19 v Belland***, 2006 ABCA 55 [***St Paul***] at paras 10-16. Municipal corporations are no longer restricted to express grants of authority, and "[t]he old system of trying to list exhaustively each and every object and power that a municipality could pursue was abandoned": ***St Paul*** at para 14. It follows that municipalities may also exercise powers that are necessarily implied or incidental to their express powers. As noted in Ian Rogers, *The Law of Canadian Municipal Corporations*, loose-leaf (Toronto: Thomson Reuters, 2019) at §63.32:

> The proposition that local authorities are confined within the limits of their express powers does not mean that they are limited to the precise terms of the grant and that the power to do each particular act must be specifically delegated. <u>They may also exercise powers which are necessarily or fairly implied or incidental to their express</u>

> powers. Implied powers are not limited to those which are indisputably necessary to carry into execution those expressly granted but they are implied from the necessity that the latter may be more completely executed. They may arise by natural implication from a grant of an express power or by logical inference from the purposes and functions of the corporation with which they must be in consonance. [Emphasis added]

[37] I see no reason to distinguish the jurisprudential evolution of municipalities when considering the status of the General Council. Just like municipalities under the *Municipal Government Act*, RSA 2000, c M-26 [*MGA*], the *MSA* establishes the General Council as a corporation with the rights, powers, and privileges of a natural person, signalling that historic limitations have been largely set aside: *MSA*, ss 214-215.

[38] This evolution of municipal powers in turn colours how courts understand administrative discrimination itself, the Supreme Court of Canada stating in ***Sharma*** at 668:

> The rule against discriminatory by-laws is an outgrowth of the principle that, as statutory bodies, municipalities 'may exercise only those powers expressly conferred by statute, those powers necessarily or fairly implied by the expressed power in the statute, and those indispensable powers essential and not merely convenient to the effectuation of the purposes of the corporation' (Makuch, *Canadian Municipal and Planning Law* (1983), at p. 115).

I therefore reject the appellants' argument that the chambers judge erroneously relied on municipal law authority outside of the tax context to find implied authorization is permissible. In short, it is no longer the law that a power to discriminate in taxation must be expressly authorized.

[39] The transition away from this strict test in ***Jonas***, even in cases involving taxation, is evidenced in later Supreme Court decisions. In ***City of Montreal v Civic Parking Center Ltd et al***, [1981] 2 SCR 541, the question was whether the City's enabling statute authorized a bylaw that taxed parking grounds differently depending on their area, rather than taxing them all according to a fixed rate. The Supreme Court concluded that the enabling statute expressly permitted a specific form of tax discrimination, but in so doing, quoted (at 559-560) the text Rogers, *The Law of Canadian Municipal Corporations*, vol 1 (Toronto: Thomson Reuters):

> … The burden lies on those seeking to establish that the legislature intended to take away the rights of individuals to show that by express words or necessary implication such an intention appears. So a statute which invests local bodies with authority to restrict or take away the common law right of every subject to employ himself in a lawful manner in any lawful trade or calling is to be strictly scrutinized. The same rule applies where the municipality has a right to impose a tax on occupations. [Emphasis added]

[40] In ***Allard Contractors*** the Supreme Court upheld as *intra vires* municipal bylaws which permitted different soil removal fees depending on whether the use was commercial or non-commercial. Iacobucci J (for the Court) accepted that the bylaws were discriminatory with respect to commercial use but found *implicit* authorization for treating commercial and non-commercial users differently. That is, while acknowledging the differential treatment was not expressly authorized by the enabling legislation, the Supreme Court adopted the test from ***Sharma*** that "authorization can be either express or implied as a necessary incident of powers delegated": 415, [Emphasis added]. This less rigid test was applied notwithstanding that the fees in question were found to be a form of indirect taxation ancillary to a broader licensing scheme.

[41] In seeking to maintain a firm distinction between tax and non-tax matters for purposes of the test to authorize discrimination, the appellants emphasize the following statement from McLachlin J's dissenting opinion in ***Shell*** at 259:

> Discrimination in the granting of licences, taxes and municipal privileges is generally viewed as requiring express authorization by the empowering legislation because of the presumption that the legislature intends all citizens to be treated equally on such matters. [Emphasis added]

[42] ***Shell*** did not involve taxation but rather municipal resolutions not to do business with a particular company owing to its connection to South Africa during apartheid. Both McLachlin J in dissent and Sopinka J for the majority accepted that the question was whether such discrimination was "expressly or impliedly authorized" (282), the Court instead diverging on whether the power to treat Shell differently could be implied on the facts.

[43] McLachlin J found the discrimination was implicitly authorized by the municipality's enabling legislation. In so concluding, she drew a distinction between licences, taxes, and municipal privileges on the one hand, and business powers on the other, positing that "the power to discriminate in the exercise of municipal business powers is readily inferred from general language authorizing a city to do business" (260, Emphasis added). This is because the business power includes a presumption that "the municipality has the power to make distinctions between citizens and firms on a wide variety of grounds" (*ibid*), whereas a different presumption operates in relation to licences, taxes, and municipal privileges, namely that "the legislature intends all citizens to be treated equally" (259).

[44] McLachlin J's statement at 259 is not a legal statement that tax discrimination must be expressly authorized by the enabling legislation. Rather, it is an observation that the practical reality flowing from the presumption that citizens are to be treated equally in matters of taxation means that in the vast majority of cases, it will be difficult to rebut this presumption absent express authorization. If the legislature is presumed to treat all citizens equally and delegated legislation consists only of those powers delegated by the legislature, then there will have to be something truly distinct or compelling about the statutory context to infer a power in delegated legislation allowing for unequal treatment. This only means, however, that inferring the authority to

discriminate will be much more difficult in matters like taxation, and courts will be reluctant to do so. Unlike in the case of business powers, the authority to discriminate in matters of taxation will not be "readily inferred".

[45] McLachlin J's comments in ***Shell*** should therefore not be taken as mandating a different test for unauthorized discrimination in areas like taxation – though the *application* of the test will very much be coloured by the nature of the power at issue. In the case of the power to tax, the question – as properly identified by the chambers judge – is whether the relevant statutory scheme (the *MSA*) rebuts the presumption of equal tax treatment. The chambers judge found it did. Regardless of whether this is so, it remains open to courts as a matter of principle to find in exceptional cases that discriminatory tax treatment in delegated legislation can be implicitly authorized by its enabling legislation.

[46] A number of subsequent appellate decisions confirm this view. Most notable for present purposes is ***Canadian Pacific Ltd v Matsqui Indian Band***, [2000] 1 FC 325, 1999 CanLII 9362 (CA) [***Matsqui FCA***], the leading case on administrative discrimination in the context of Aboriginal taxation. In ***Matsqui FCA***, the Federal Court of Appeal considered the *vires* of taxing bylaws enacted by Aboriginal band councils pursuant to s 83 of the *Indian Act*, RSC 1985, c I-5 [*Indian Act*] which taxed the reserve property of non-members of the band while exempting its members. Though the bylaws were ultimately struck down on other grounds, a majority of the Court of Appeal (Marceau and Robertson JJA) held that they were not invalid on the basis of unauthorized discrimination. Robertson JA did so by finding that the differential tax treatment was authorized not expressly but by "necessary implication" as articulated in ***Arcade Amusements***: see paras 178-180, 186, 192, 197. Even the dissenting view of Desjardins JA on this point, who held that the discrimination was not authorized, nonetheless similarly applied the tests from ***Arcade Amusements*** and ***Sharma*** of "implicit delegation by necessary inference" and "necessary implication": see paras 64, 68-69, 77-78, 83.

[47] Moreover, this Court in ***TransAlta*** recently rejected the argument that ***Jonas*** requires discrimination to be expressly authorized by statute. At issue in ***TransAlta*** was the validity of delegated legislation dealing with – as with the 2019 Policies in the present case – assessment and taxation. Owners of coal-fired electrical power generation facilities challenged the *Alberta Linear Property Assessment Minister's Guidelines*, a Ministerial order issued under the *MGA* which sets valuation standards for assessing certain kinds of property, including electric power generation properties, for taxation purposes.

[48] The claimants argued in part that the *Guidelines* unlawfully discriminated against them by treating coal-fired facilities differently than other types of electric power generation properties, effectively creating an unauthorized class of property. In dismissing the argument, this Court concluded that while the *MGA* did "not expressly authorize" the Minister to draw such distinctions, they were "a necessary incident to the exercise of the Minister's delegated regulation-making power" (para 84) and "readily inferred from the enabling provisions of the *MGA*" (para 85). In so

doing, reliance was placed on ***Sharma***, ***Shell***, and the statement from ***Katz*** at para 47 that discrimination can be authorized "either expressly or by necessary implication" (para 84).

[49] Accordingly, the chambers judge did not err in allowing that administrative law discrimination can be implicitly authorized even in matters of taxation.

V. Does the *MSA* implicitly authorize discriminatory tax treatment?

[50] Given the absence of express authorization to discriminate, the question of implicit authorization became the primary focus at the oral hearing of this appeal.

Reasons of the Chambers Judge

[51] In finding that the *MSA* "rebuts the presumption of equal treatment" described by McLachlin J in ***Shell*** and therefore implicitly authorizes discrimination, the chambers judge focused on the "ameliorative" nature of the *MSA*, as described in ***Cunningham***: Decision at para 66. The chambers judge concluded at para 78 that the *entire* purpose of the *MSA* is to differentiate between classes of people:

> Similar to the analysis in ***Matsqui (FCA)***, I find that the authority to differentiate between classes of people has not only been delegated to the [General Council] via the *MSA* – it is the entire purpose of the *MSA*. With the history and context of the *MSA* in mind, it is clear the policies enacted under the *MSA* were never intended to be applied equally or with fair benefit to non-Settlement member owned businesses. To find that taxation policies have to treat Settlement members and Settlement member owned companies the same way as non-Settlement owned companies who do business on Settlement lands, would undermine the very goal of the *MSA* – to enhance the Métis identity, culture and self-government through the establishment of the Métis land base. I agree with the [General Council] that to so find would erode any meagre advantage that Settlement members and member owned companies derive from residing and operating on the Settlements. I find that as an ameliorative program, the *MSA* implicitly authorized the [General Council] to enact tax and assessment policies that differentiate between Settlement members/member owned corporations and non-Settlement member owned corporations [Emphasis added].

[52] The chambers judge erred in so concluding for three principal reasons: First, she concluded that the ameliorative nature of the *MSA*, in and of itself, was sufficient to rebut the presumption of equal tax treatment; second, she failed to address the common law rule and the jurisprudence as to when it is permissible to find "authority to discriminate by necessary implication"; and third, she relied on ***Matsqui (FCA)*** to conclude that taxation in the Indigenous context operates as a separate paradigm from "common law principles of formal equality and horizontal equity": Decision at

para 79. These errors led the chambers judge to interpret the purpose of the *MSA* too broadly, thereby skewing the analysis: ***Cunningham*** at para 61.

Cunningham and the Ameliorative Nature of the *MSA*

[53] Because the chambers judge drew heavily from ***Cunningham*** in her reasons**,** it is helpful to place this decision in context. ***Cunningham*** involved a challenge under the *Canadian Charter of Rights and Freedoms* [*Charter*] to express provisions of the *MSA* in ss 75 and 90 that excluded from Settlement membership (and therefore Settlement benefits) those registered as an "Indian" under the *Indian Act*. The Supreme Court of Canada held that the distinction made between Métis and status Indians and the exclusion of status Indians from membership in the new Métis land base advanced the purpose of the *MSA* and did not violate the right to equality under s 15 of the *Charter*. The Supreme Court at para 3 found that s 15(2) of the *Charter*, "which permits inequalities associated with ameliorative programs aimed at helping a disadvantaged group", provided a complete answer to the *Charter* claim as the *MSA* was an "ameliorative program" (paras 71, 88). The Court further explained in para 65 that the conduit to enhance Métis "identity, culture, and self-governance" or "self-government" is the establishment of a land base dedicated solely to the Métis:

> The wording of the *MSA*'s provisions supports the view that the object of the ameliorative program was to benefit Métis, as distinct from Indians, by setting up a land base that would strengthen an independent Métis identity, culture and desire for self-governance. The title of the statute, the "*Metis Settlements Act*", suggests that the focus is not on benefiting the Métis generally, but on establishing land-based settlements. The enactment sets out detailed provisions for the establishment of a Métis land base and governance of the land base by Métis members.

[54] The appellants argue that the chambers judge erred in her treatment of ***Cunningham*** by applying the concept of "amelioration" found in s 15(2) of the *Charter* to the present case where the *Charter* has not been raised. They suggest that the chambers judge confused discrimination under the *Charter* with discrimination in an administrative law sense, effectively finding that any discriminatory program found to be "ameliorative" under s 15(2) of the *Charter* must be authorized for administrative law purposes.

[55] The chambers judge relied on ***Cunningham*** to identify the purpose of the *MSA* as part of her consideration of implicit authorization: Decision at paras 52, 54, 77-78. This was entirely appropriate. Whether discrimination in delegated legislation is implicitly authorized by its enabling legislation can require a consideration of the purpose and history of the enabling legislation itself: ***Allard Contractors*** at 416.

[56] The chambers judge did not point to the *MSA* as being "ameliorative" out of any concern for s 15(2) of the *Charter*; she did so, rather, to convey that the *MSA* is premised on affording certain benefits or protections to the Métis as a historically marginalized group.

[57] Nevertheless, the chambers judge's characterization of the *MSA* as ameliorative legislation drove her analysis; she used the legislation's ameliorative quality as a proxy for concluding that the General Council had implicit authority to adopt the discriminatory 2019 Tax Policy.

[58] Clearly the *MSA* contemplates differential treatment between the Métis and "status Indians" when it comes to membership, as discussed in ***Cunningham***. But the question here is whether there is an implied authority to differentiate between classes of people *for purposes of taxation*. On this point, the chambers judge said only that equal tax treatment as between non-Settlement and Settlement member-owned companies "would undermine the very goal of the *MSA* – to enhance the Métis identity, culture and self-government through the establishment of the Métis land base": Decision at para 78. I have some difficulty discerning why this would be the case.

[59] Taxation is principally a matter of raising revenue to pay for expenditures and services, as acknowledged in the preamble of the 2019 Policies themselves. And how that revenue is raised, including the relative contribution between Métis Settlement members and corporations and non-Settlement members and corporations, would seem to say little about Métis identity or culture. The General Council did not seriously argue that discriminatory tax treatment is tethered to the goal of enhancing and preserving Métis identity or culture.

[60] The General Council instead stressed at the appeal hearing the importance of Métis self-governance, suggesting that self-government allows the General Council to tax as it sees fit. The chambers judge picked up on this theme, finding at para 80 of the Decision: "Given the purpose of the *MSA* as ameliorative legislation designed to benefit Metis Settlement members and the deference that should be owed to self-governing Indigenous bodies, I find that the [General Council] has authority to discriminate by necessary implication...".

[61] It is true that the power of taxation is an inherently governmental power which the *MSA* was enacted to facilitate: ***CNRL*** at para 1. However, self-government is not in itself a license to discriminate – at least insofar as Métis Settlements in Alberta, like municipal governments, derive their powers from enabling provincial legislation.

[62] The *MSA* is "an attempt to provide to Alberta's Métis settlements similar protections to those which various Indian bands have enjoyed since early times" (***Cunningham*** at para 66), a reality stressed by the chambers judge: see Decision at paras 52, 75. However, such protections revolve principally around granting the Métis a land base and the ability to sustain a distinct identity that such a grant affords: ***Cunningham*** at paras 7, 66. The protections do not speak to the manner in which revenue is raised.

Authority to Discriminate by Necessary Implication

[63] In focusing on the ameliorative nature of the *MSA*, the chambers judge made no reference to the common law rule on when enabling legislation might allow for implied authority to discriminate.

[64] It is helpful to review what is meant by implied authority to discriminate, a concept that is variously described as:

- "necessary implication" (***Forget v Quebec (Attorney General)***, [1988] 2 SCR 90 at 106-107, cited in ***Katz*** at para 47);
- "implicit delegation by necessary inference" (***Arcade Amusements*** at 413);
- "where the discrimination is a necessary incident to exercising the power delegated" (***Sharma*** at 668, cited in ***114957 Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town)***, 2001 SCC 40 [***Spraytech***] at para 28); or
- "implied as a necessary incident of powers delegated" (***Allard Contractors*** at 415).

Within this fluid language a common thread of "necessity" emerges. When a statute permits something, it impliedly permits all the necessary powers to perform that act. As explained by Locke J in ***Vic Restaurant Inc v City of Montreal***, [1959] SCR 58 at 84:

> … a long established principle of the law which is described in Maxwell on Statutes, 10th ed., p. 361, in the following terms:
>
> > Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution... [Emphasis added]

[65] As this Court stated in ***R v RJH***, 2000 ABCA 111 at para 27, adding provisions to a statute by necessary implication attracts a high threshold:

> Adding provisions to a statute by necessary implication cannot be done on a judicial whim. The test to be met before provisions may be added requires "so strong a probability of intention that an intention contrary to that which is imputed...[by the statute]... can not be supposed": ***(Re) Smoky River Coal Ltd. and United Steel Workers of America, Local 7621 et al.*** (1984), 8 D.L.R. (4th) 603 (Alta. Q.B.).

[66] In ***R v Greenbaum***, [1993] 1 SCR 674, for example, a bylaw distinguished between free-standing street vendors, and owners or occupants of the adjacent property. In finding that the distinction was not authorized the Court held that it was not "absolutely necessary to the exercise of the licensing power such that the power to draw such a distinction must be inferred from the enabling legislation": 695.

[67] Conversely in ***Spraytech***, the Supreme Court was asked to decide whether the Town of Hudson, Quebec, had authority to enact a by-law regulating and restricting pesticide use for purely aesthetic pursuits. The appellants argued that the by-law was discriminatory and therefore *ultra vires* because it affected their commercial activities. The Supreme Court concluded that "without drawing distinctions, By-Law 270 could not achieve its permissible goal of aiming to improve the

health of the Town's inhabitants by banning non-essential pesticide use. If all pesticide uses and users were treated alike, the protection of health and welfare would be sub-optimal": at para 29.

[68] In light of this guidance, it cannot be said that the ability to discriminate between Settlement members and non-Settlement members is absolutely necessary in order for the General Council (or by extension individual Métis Settlements) to exercise powers of taxation; the authority to adopt such policies cannot be implied or inferred from the *MSA*. Inferring the authority to discriminate is difficult in matters like taxation, and courts will be reluctant to do so. The characterization of the *MSA* as ameliorative is not sufficient to rebut the deeply rooted presumption of equality in matters of taxation.

[69] Further, the General Council concedes there was no evidence supporting its decision to move to a "budget based" taxation policy. Despite this lack of evidence, the chambers judge concluded a non-discriminatory tax policy "would undermine the very goal of the *MSA*" and "erode any meagre advantage that Settlement members and member owned companies derive from residing and operating on the Settlements": Decision at para 78.

[70] In conclusion, the ameliorative nature of the *MSA* does not confer unlimited power to the General Council. In the absence of express authority to discriminate in the enabling legislation (as is the case with Métis membership), a cautious approach must be engaged in determining whether the enabling legislation provides implied authority to discriminate. As this Court noted in ***Sedgewick v Edmonton Real Estate Board Co-Operative Listing Bureau Limited (Realtors Association of Edmonton)***, 2022 ABCA 264 at para 75: "If the Legislature wanted to create such a broad avenue bypass in such cases, it would have said so. As has been observed in American cases, the Legislature does not hide elephants in mouseholes", citing ***Whitman v American Trucking Associations, Inc***, 531 US 457 at 468 (2001).

Matsqui (FCA) is Distinguishable

[71] Upper Canada legislated the first Indigenous tax exemptions in 1850, 17 years before Canadian independence: Thomas Isaac, *Aboriginal Law*, 5th ed (Toronto, Ontario: Thomson Reuters, 2016) at 275. The issue of taxation is visceral to many First Nations and Indigenous peoples, as it is tied to their views on nationhood, colonization, independence, and self-governance. Many First Nations groups believe that governments have no authority to tax them on their reservations, as First Nations people chose to share their land with settlers – land upon which Canada was built and prospered. In effect, they have "paid their 'taxes' into eternity": John J. Borrows & Leonard I. Rotman, *Aboriginal Legal Issues*, 4th ed (Markham, Ontario: LexisNexis Canada, 2012) at 956.

[72] Currently, s 87 of the *Indian Act* governs the taxation of First Nations. It generally prohibits the property of "Indians" on a reserve from being taxed. The development of the jurisprudence has clarified that income is personal property and may therefore be captured as tax-exempt under s 87, so long as it is "situated on a reserve": ***Nowegijick v The Queen***, [1983] 1 SCR 29. Section 91(24)

of the *Constitution Act, 1867* provides the federal government with exclusive jurisdiction over "Indians, and Lands reserved for the Indians". Therefore, provincial tax legislation cannot target this tax exemption: ***Leighton v British Columbia*** (1989), 57 DLR (4th) 657 (BCCA).

[73] The underlying message of the cases is that Indigenous people *do not* have an inherent sovereign or constitutional tax exemption, rather, there exists an exemption defined by legislation. While this exemption may recognize important historical principles, the legislation still fundamentally defines the scope of taxation. This is captured by La Forest J's description of the purpose of s 87 in ***Mitchell v Peguis Indian Band***, [1990] 2 SCR 85 at 131:

> In summary, the historical record makes it clear that ss. 87 and 89 of the *Indian Act* … constitute part of a legislative "package" which bears the impress of an obligation to native peoples which the Crown has recognized at least since the signing of the Royal Proclamation of 1763. From that time on, the Crown has always acknowledged that it is honour-bound to shield Indians from any efforts by non-natives to dispossess Indians of the property which they hold *qua* Indians, i.e., their land base and the chattels on that land base.
>
> It is also important to underscore the corollary to the conclusion I have just drawn. The fact that the modern-day legislation, like its historical counterparts, is so careful to underline that exemptions from taxation and distraint apply only in respect of personal property situated on reserves demonstrates that the purpose of the legislation is not to remedy the economically disadvantaged position of Indians by ensuring that Indians may acquire, hold, and deal with property in the commercial mainstream on different terms than their fellow citizens. An examination of the decisions bearing on these sections confirms that Indians who acquire and deal in property outside lands reserved for their use, deal with it on the same basis as all other Canadians. [Underline added; italics in original]

[74] Canadian courts have consistently held that while the history of Indigenous sovereignty may add a constitutional element to the Indigenous tax exemption, *it is, at its core, a statutory rule.* This is made clear by the plethora of cases that use principles of statutory interpretation to define the boundaries of s 87 and only apply tax exemption within those boundaries. For example, in ***Union of New Brunswick Indians v New Brunswick***, [1998] 1 SCR 1161, a group of First Nations individuals argued that products purchased off-reserve for consumption on-reserve should be exempted from sales tax under s 87. In rejecting their claim, McLachlin J said at para 39 that the claim "flies in the face of the wording" of s 87. She stated at para 40 that "Parliament has explicitly limited and narrowed the scope of what is now s. 87" only to protect property on reserves, not "Indian" property generally.

[75] The General Council does not assert that any Métis right under s 35 of the *Constitution Act, 1982*[2] is engaged in this appeal; the exercise is solely one of statutory interpretation.

[76] I acknowledge that in ***Matsqui FCA*** a majority of the Federal Court of Appeal found delegated legislation taxing the property of non-Aboriginals while exempting that of Aboriginals to be implicitly authorized under the *Indian Act*. However, ***Matsqui FCA*** can be distinguished principally on the basis that s 87 of the *Indian Act*, which expressly exempts Aboriginal's property on reserve land from federal taxation, has no equivalent in the *MSA*. Métis do not qualify as "Indians" and Settlements do not qualify as "reserves" under the *Indian Act*.

[77] This is significant because the reasoning in ***Matsqui FCA*** relied heavily on s 87 of the *Indian Act* in finding an implied authority for individual Aboriginal band councils to discriminate by necessary implication: see in particular paras 192-195, per Robertson JA. While the *MSA* might have afforded the Métis "similar protections" to those Aboriginals falling within the *Indian Act*, it does not do so. No other federal legislation extends tax protection to the Métis.

[78] In conclusion, there is no blanket Indigenous tax exemption. While there are historical and constitutional elements to the issue of Indigenous taxation, courts have rigorously and consistently limited the exemption to the terms of s 87 of the *Indian Act*. Section 87 does not cover Métis people or Métis Settlements, and no equivalent tax-exempting provision exists in any federal or provincial legislation, including the *MSA*.

[79] For these reasons, I find that the chambers judge erred in finding that the *MSA* implicitly authorizes discriminatory tax treatment between Métis Settlement members and corporations and non-Settlement members and corporations. The impugned provisions of the 2019 Tax Policy which so discriminate are accordingly *ultra vires* the General Council.

[80] This conclusion applies with equal, if not more, force to the provision in the 2019 Tax Policy (s 8(9)) allowing a Settlement to approve different tax rates as between particular taxpayers, all of whom would be non-Settlement members or corporations. Discrimination is no more or less permissible depending on whether the differential treatment is made between or within classes: ***Sharma*** at 668.

[81] One final point on this issue. Our conclusion should not be taken as a comment on the propriety of the General Council adopting the 2019 Policies. I have found that the *MSA* does not implicitly authorize the kind of discriminatory tax treatment found in the 2019 Policies, which has

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[2] In ***Gauthier (Gisborn) v The Queen***, 2006 TCC 290, Métis in Ontario argued that the Métis had a historical right to self-governance "integral to the distinctive historic Métis community" and that this gave them an Aboriginal right exempting them from taxation under s 35 of the *Constitution Act, 1982*. The Tax Court struck the pleading on the grounds that the claim did not plead sufficient facts.

the effect of imposing the entire tax burden on the appellants. It remains open to the Legislature, however, to amend the *MSA* to explicitly authorize such treatment.

VI. Procedural Fairness

[82] Finally, the appellants argue the chambers judge erred in concluding that the General Council did not owe them a duty of procedural fairness. They allege the General Council had a duty to notify them of the proposed 2019 Policies and allow them to participate at a public meeting discussing the proposed Policies. The failure of the General Council to do so amounted to a breach of procedural fairness, and as a result, the impugned provisions – the same ones said to be discriminatory – should be set aside.

[83] The general rule is that legislating bodies do not need to give notice before acting: ***Authorson v Canada (Attorney General)***, 2003 SCC 39 at paras 37-39. However, I need not directly address this issue. Having set aside the impugned provisions of the 2019 Tax Policy as *ultra vires* the General Council, nothing is gained as a matter of remedy by considering the same provisions under the rubric of procedural fairness.

VII. Conclusion

[84] The appeal is allowed. The impugned provisions of the 2019 Tax Policy (ss 5(4), 7(a)-(b), 7(2), 7(5), and 8(9)) are set aside on the grounds that they constitute administrative discrimination not authorized by the *MSA*.

Appeal heard on May 2, 2023

Memorandum filed at Edmonton, Alberta
this 22nd day of April, 2024

I concur: _____
Rowbotham J.A.

_____
Pentelechuk J.A.

I concur: _____
Feehan J.A.

(Consolidated up to 108/2024)

ALBERTA REGULATION 347/2009

Professional and Occupational Associations Registration Act

MUNICIPAL ASSESSOR REGULATION

Table of Contents

Definitions

1 In this Regulation,

(a) "Accredited Municipal Assessor of Alberta" means a person whose name is entered in the register of Accredited Municipal Assessors of Alberta;

(b) "Act" means the *Professional and Occupational Associations Registration Act*;

(c) "Association" means the Alberta Assessors' Association;

(d) "Association Registrar" means the Association Registrar appointed under the bylaws;

(e) "bylaws" means the bylaws of the Association;

(f) "Candidate Member" means a person whose name is entered in the register of Candidate Members;

(g) "Discipline Committee" means the Discipline Committee established under section 16;

(h) "education credits" means education credits granted by the Practice Review Committee under section 8(2);

(i) "Executive Committee" means the Executive Committee of the Association established under the bylaws;

(j) "practice of assessment" means specialized consulting services in real property appraisal, assessment administration and tax policy and, without limitation, includes the following:

(i) preparing property and business assessment using legislative mass appraisal and single property appraisal standards, policies and procedures;

(ii) communicating or explaining assessments to property owners and the administration of public relations programs related to understanding the assessment process and the role of the property tax in funding government services;

(iii) the formulation, advocacy and development of assessment legislation, policy and standards;

(iv) providing expert testimony, evidence, argument and case management services in the administration of assessment tribunals and other courts of law in their review of assessments;

(v) providing services as a member of an assessment tribunal member;

(vi) the design, development and delivery of assessment training, education, workplace learning and professional development courses and seminars;

(vii) the management and administration of assessment service operations, and the internal and external auditing of those operations;

(viii) the analysis of assessment data elements, development of data standards and the collection of assessment data;

(ix) computer assisted system designs and implementation in mass appraisal systems and related geographic information systems or information management systems;

(x) the development of appraisal software and construction cost and valuation manuals;

(xi) the administration and implementation of discretionary property tax exemption programs;

(k) "Practice Review Committee" means the Practice Review Committee established under section 12;

(l) "President" means the President of the Association appointed under the bylaws;

(m) "reciprocal association" means an association that in the opinion of the Executive Committee is equivalent to the Association;

(n) "Registration Committee" means the Registration Committee established under section 2;

(o) "Regulated Member" means an Accredited Municipal Assessor of Alberta or a Candidate Member.

Registration Committee

2(1) The Registration Committee is established consisting of

(a) one Accredited Municipal Assessor of Alberta who is a member of the Executive Committee,

(b) at least 3 other Accredited Municipal Assessors of Alberta who are not members of the Executive Committee, one of whom must be appointed by the President as chair, and

(c) the Association Registrar.

(2) The members of the Registration Committee must be appointed by the President in accordance with the bylaws.

(3) The Association Registrar is a non-voting member of the Registration Committee.

(4) The Registration Committee must meet at the call of the chair.

(5) A quorum at a meeting of the Registration Committee is 3 voting members.

Registers

3(1) The Association Registrar must maintain, in accordance with this Regulation, and subject to the direction of the Executive Committee,

(a) a register of Accredited Municipal Assessors of Alberta, and

(b) a register of Candidate Members.

(2) The Association Registrar must enter in the appropriate register

(a) the name of an individual who has paid the fee prescribed by the bylaws and whose registration has been approved by the Registration Committee or the Executive Committee, and

(b) the mailing address of that individual.

Powers and duties of Registration Committee

4(1) The Registration Committee must consider applications from persons to become Regulated Members of the Association in accordance with this Regulation and the bylaws and may

(a) approve the registration,

(b) refuse to approve the registration, or

(c) defer approval until the applicant has fulfilled either or both of the following:

(i) passed examinations or completed course work as required by the Registration Committee;

(ii) completed any further type and term of experience required by the Registration Committee in order to satisfy the requirements of

(A) section 9, in the case of a person applying to become a Candidate Member, or

(B) section 10, in the case of a person applying to become an Accredited Municipal Assessor of Alberta.

(2) The Registration Committee must send a written notice of any decision made by it to the applicant.

(3) If the decision made by the Registration Committee is to refuse the registration of the applicant, the Registration Committee must send the applicant written reasons for the decision.

Review of application

5(1) An applicant whose application for registration is refused by the Registration Committee may, by notice in writing served on the Association Registrar within 30 days of receiving a notice of refusal and the reasons for it, appeal the refusal to the Executive Committee.

(2) The notice of appeal must set out the reasons why, in the applicant's opinion, the application for registration should be approved.

(3) An applicant who appeals a decision of the Registration Committee under this section

(a) must be notified in writing by the Association Registrar of the date, place and time that the Executive Committee will hear the appeal, and

(b) is entitled to appear with counsel or an agent and make representations to the Executive Committee when it hears the appeal.

(4) A member of the Registration Committee who is also a member of the Executive Committee may participate in the appeal but may not

(a) vote on a decision of the Executive Committee under this section, or

(b) be counted for the purposes of a quorum of the Executive Committee when it hears the appeal.

(5) On hearing an appeal under this section, the Executive Committee may make any decision the Registration Committee may make, and must give written notice of its decision to the applicant.

Proof of registration

6 On entering the name of a Regulated Member in the appropriate register, the Association Registrar must issue proof of registration to that person.

Payment of fees

7(1) A Regulated Member must pay the annual fee prescribed by the bylaws to the Association Registrar or to any person authorized by the Association Registrar to accept payment of the fee.

(2) A Regulated Member who applies for a renewal of registration after the annual renewal date prescribed by the Executive Committee must pay the late renewal fee prescribed by the bylaws to the Association Registrar or to any person authorized by the Association Registrar to accept payment of the fee.

(3) The Executive Committee may waive, in whole or in part, a late renewal fee imposed under subsection (2) on being satisfied that it is appropriate to do so in the circumstances.

Continuing education

8(1) In this section, "developmental activity" means an activity that enhances an Accredited Municipal Assessor of Alberta's knowledge of or proficiency in the practice of assessment.

(2) The Practice Review Committee may grant education credits to an Accredited Municipal Assessor of Alberta for the satisfactory completion of a developmental activity.

(3) For the purpose of granting education credits pursuant to subsection (2), the Executive Committee must establish a schedule setting out the number of credits assigned to each developmental activity.

Registration as Candidate Member

9(1) Subject to subsection (2), an applicant is entitled to be registered as a Candidate Member if the applicant

(a) is 18 years of age or older,

(b) is lawfully authorized to work in Canada,

(c) provides evidence of good character and reputation,

(d) is engaged in the practice of assessment,

(e) provides written confirmation of the applicant's sponsorship by an Accredited Municipal Assessor of Alberta,

(f) pays the application fee in accordance with the bylaws,

(g) has a high school diploma or a substantively equivalent diploma, and

(h) is working to meet the requirement set out in section 10(e)(i)(A).

(2) Unless otherwise authorized by the Registration Committee, a person may only be a Candidate Member for 8 years.

Registration as Accredited Municipal Assessor of Alberta

10 An applicant is entitled to be registered as an Accredited Municipal Assessor of Alberta if the applicant

(a) is lawfully authorized to work in Canada,

(b) provides evidence of good character and reputation,

(c) forwards a completed Application for Accreditation to the Registration Committee,

(d) has successfully completed the Alberta assessment legislation examinations as approved by the Registration Committee,

(e) meets one of the following requirements:

(i) the applicant produces documentation satisfactory to the Registration Committee showing that the applicant

(A) has obtained a diploma or degree from a post-secondary educational property valuation program approved by the Executive Committee,

(B) has knowledge, acceptable to the Registration Committee, of the specific legislative and regulatory requirements and responsibilities of assessors in Alberta,

(C) has been a Candidate Member for at least the 12-month period immediately preceding the application,

(D) has at least 48 months' experience in the practice of assessments acceptable to the Registration Committee, and

(E) has successfully completed any examinations and a Property Demonstration Report required by the Registration Committee;

(ii) the applicant is registered in good standing with a reciprocal association that is recognized by the Executive Committee as having substantively equivalent competence and practice requirements;

(iii) the applicant has satisfied the Registration Committee as having a combination of education, training, experience, examinations and other qualifications that demonstrate the competence required for registration as an Accredited Municipal Assessor of Alberta,

and

(f) pays the application fee in accordance with the bylaws.

Annual membership card

11(1) The Association Registrar must issue an annual membership card to an Accredited Municipal Assessor of Alberta

(a) who has been engaged in the practice of assessment for a period of not less than 6 months during the preceding 24-month period,

(b) who, in each professional development cycle, as determined by the Executive Committee, has obtained sufficient education credits in accordance with policy as established by the Association and approved by the Executive Committee,

(c) whose registration is not under suspension or cancelled, and

(d) who has paid the annual fee in accordance with the bylaws.

(2) Despite subsection (1)(b), if an Accredited Municipal Assessor of Alberta has not obtained sufficient education credits in accordance with that provision, the Registration Committee may nevertheless direct the Association Registrar to issue an annual membership card to the Accredited Municipal Assessor of Alberta subject to any conditions that the Registration Committee considers appropriate with respect to the completion of the requirements.

(3) The Association Registrar must issue an annual membership card to a Candidate Member

(a) who has been engaged in the practice of assessment for a period of not less than 6 months during the preceding 24-month period,

(b) whose registration is not under suspension or cancelled, and

(c) who has paid the annual fee in accordance with the bylaws.

(4) If the Registration Committee directs the Association Registrar not to issue an annual membership card to an Accredited Municipal Assessor of Alberta or to a Candidate Member,

(a) the Registration Committee must send the Accredited Municipal Assessor of Alberta or the Candidate Member, as the case may be, written reasons for the refusal, and

(b) the Accredited Municipal Assessor of Alberta or the Candidate Member, as the case may be, may appeal the refusal to the Executive Committee.

(5) Section 5 applies, with all necessary modifications, to an appeal under subsection (4).

(6) An annual membership card expires on the date prescribed in the bylaws.

Practice Review Committee

12(1) The Practice Review Committee is established consisting of

(a) one Accredited Municipal Assessor of Alberta who is a member of the Executive Committee, and

(b) at least 3 other Accredited Municipal Assessors of Alberta who are not members of the Executive Committee, one of whom must be appointed by the President as chair.

(2) The members of the Practice Review Committee must be appointed by the President in accordance with the bylaws.

(3) The Practice Review Committee must meet at the call of the chair.

(4) A quorum at a meeting of the Practice Review Committee is 3 voting members.

Powers and duties of Practice Review Committee

13 The Practice Review Committee

(a) may, on its own initiative, and must, at the request of the Executive Committee, inquire into, report to and advise the Executive Committee in respect of

(i) the evaluation and development of education standards and experience requirements that are conditions precedent to registration as an Accredited Municipal Assessor of Alberta,

(ii) the evaluation of desirable standards of competence for the practice of assessment generally,

(iii) the evaluation and development of continuing education programs for the upgrading and enrichment of Accredited Municipal Assessors of Alberta,

(iv) the identification of reciprocal associations, and the equivalency of their membership requirements,

(v) any other matters that the Executive Committee considers necessary or appropriate in connection with the exercise of its powers and the performance of its duties in relation to competence in the practice of assessment under this Regulation, and

(vi) the practice of assessment generally,

and

(b) may, with the approval of the Executive Committee, conduct a review of the practice of a Regulated Member.

Notice

14 The Practice Review Committee must give reasonable notice to a Regulated Member of its intention to conduct a review of the practice of the Regulated Member.

Reports and recommendations

15 After each inquiry or review under section 13, the Practice Review Committee

(a) must make a written report to the Executive Committee on the inquiry or review and, where appropriate, on its decision,

(b) may make recommendations to the Executive Committee regarding the matter inquired into or reviewed, together with reasons,

(c) may make recommendations to a Regulated Member as to that member's conduct in the practice of assessment, and

(d) must, if it is of the opinion that the conduct of a Regulated Member constitutes or may constitute

(i) unskilled practice of the profession, or

(ii) professional misconduct within the meaning of section 19 of the Act,

immediately refer the matter relating to that conduct to the chair of the Discipline Committee to be dealt with under Part 3 of the Act.

Discipline Committee

16(1) The Discipline Committee is established consisting of

(a) one Accredited Municipal Assessor of Alberta who is a member of the Executive Committee, and

(b) at least 3 other Accredited Municipal Assessors of Alberta who are not members of the Executive Committee, one of whom must be appointed by the President as chair.

(2) The members of the Discipline Committee must be appointed by the President in accordance with the bylaws.

(3) The Discipline Committee must meet at the call of the chair.

(4) A quorum at a meeting of the Discipline Committee is 3 voting members.

Written complaint

17 A person who wishes to submit a complaint must, in accordance with section 20 of the Act, make it in writing, sign it and submit it to the chair of the Discipline Committee.

Costs

18(1) The Discipline Committee, with respect to hearings before it, and the Executive Committee, with respect to reviews by it, may order the investigated person to pay the following costs:

(a) the fee payable to the counsel advising the Discipline Committee or Executive Committee at the hearing or review and the fee payable to the counsel acting in a prosecutory role at the hearing or review;

(b) the cost of recording the evidence and preparing transcripts;

(c) the expenses of the members constituting the Discipline Committee, including, without limitation, the daily allowances of those members;

(d) any other expenses incurred by the Association that are incidental to the hearing or review.

(2) If the Executive Committee determines under section 22(3)(a) of the Act that a complaint is frivolous or vexatious, it may order the complainant to pay the following costs:

(a) the fee payable to the counsel advising the Executive Committee at any hearing held by the Executive Committee;

(b) any other expenses incurred by the Association that are incidental to any hearing held by the Executive Committee.

Cancellation and suspension

19(1) The registration of a Regulated Member is cancelled or suspended when the decision to cancel or suspend the registration is made in accordance with the Act or this Regulation.

(2) The Association Registrar must enter a memorandum of the cancellation or suspension of the registration in the appropriate register indicating

(a) the date of the cancellation or suspension,

(b) the period of the suspension, and

(c) the nature of any finding under Part 3 of the Act.

(3) If the registration of a Regulated Member is cancelled, the person whose registration is cancelled must, on request, surrender to the Association Registrar all documents relating to the registration.

Non-payment of fees, etc.

20(1) The Executive Committee must direct the Association Registrar to suspend or cancel the registration of a Regulated Member who is in default of payment of annual fees, penalties, costs or any other fees, dues or levies payable under the Act, this Regulation or the bylaws after the expiration of 30 days following the service on that person of a written notice by the Executive Committee unless that person complies with the notice.

(2) The notice under subsection (1) must state that the Association Registrar must suspend or cancel the registration unless the fees, penalties, costs, dues or levies are paid as indicated in the notice.

Cancellation on request

21 The Association Registrar shall not cancel the registration of a Regulated Member at the request of the Regulated Member until the request is reported to and confirmed by the Registration Committee.

Notice of cancellation or suspension

22 The Executive Committee may publish, in any manner it considers appropriate, notice of the cancellation or suspension of the registration of a Regulated Member.

Use of title

23 An Accredited Municipal Assessor of Alberta may use the title "Accredited Municipal Assessor of Alberta" and the abbreviations "A.M.A.A." and "AMAA".

Code of conduct and ethics

24(1) A Regulated Member shall

(a) be dedicated to the profession,

(b) perform the practice of assessment with fairness, honesty and integrity,

(c) apply expertise and due diligence in performing the practice of the profession,

(d) work toward earning the respect and confidence of all of those served through the practice of assessment,

(e) maintain professional competence by keeping informed of and complying with developments in the acknowledged standards of the profession in which the member practices,

(f) disclose to all affected parties any potential conflict of interest that arises or is likely to arise during the performance of his or her duties,

(g) always act in accordance with the duties and responsibilities associated with being a member of the Association,

(h) at all times act in a manner that will enhance the image of the profession and the Association, and

(i) report to the Association conduct by any member that may be considered unethical.

(2) A Regulated Member shall not

(a) undertake assessments for which he or she is not qualified through either lack of education, experience or ability,

(b) advance his or her membership or candidacy as evidence of professional qualifications,

(c) claim professional qualifications that are misleading or not factual,

(d) put forward membership or any designation granted by the Association as authority to undertake the practice of assessment in areas in which he or she is not fully qualified,

(e) allow the interests of outside parties to take precedence over his or her professional duties,

(f) make any irresponsible public statements of value,

(g) disclose any information of a confidential nature to any person except where required by law, and

(h) contravene any law or standards of practice under which he or she is bound.

Transitional

25(1) In this section, "previous Regulation" means the *Municipal Assessor Regulation* (AR 84/94).

(2) The Association Registrar must enter in the register of Accredited Municipal Assessors of Alberta or the register of Candidate Members the name of a person who, on the coming into force of this Regulation, was registered as an accredited municipal assessor of Alberta, a candidate member, a non-resident accredited municipal assessor or a non-resident candidate member, as the case may be, under the previous Regulation.

Repeal

26 The *Municipal Assessor Regulation* (AR 84/94) is repealed.

Review

27 This Regulation must be reviewed on or before November 30, 2029.

AR 347/2009 s27;171/2014;108/2024

(Consolidated up to 96/2017)

ALBERTA REGULATION 233/2005

Municipal Government Act

QUALIFICATIONS OF ASSESSOR REGULATION

Table of Contents

Definitions

1 In this Regulation,

(a) "Act" means the *Municipal Government Act*;

(b) "Alberta Assessment Quality Minister's Guidelines" means the Alberta Assessment Quality Minister's Guidelines referred to in the *Matters Relating to Assessment and Taxation Regulation* (AR 220/2004).

AR 233/2005 s1;307/2006

Qualifications of assessor

2 No person is eligible to be an assessor within the meaning of section 284(1)(d) of the Act unless the person

(a) is registered as an accredited municipal assessor of Alberta (AMAA) under the *Municipal Assessor Regulation* (AR 84/94),

(b) holds the designation Certified Assessment Evaluator (CAE) issued by the International Association of Assessing Officers,

(c) holds the designation Accredited Appraiser Canadian Institute (AACI) issued by the Appraisal Institute of Canada, or

(d) has qualifications or experience or a combination of qualifications and experience that, in the opinion of the

Minister, is equivalent to one or more of the qualifications referred to in clauses (a) to (c).

Report by assessor

3 A person appointed as a designated officer to carry out the duties and responsibilities of an assessor under the Act on behalf of a municipality must declare to the Minister, annually in accordance with the Alberta Assessment Quality Minister's Guidelines, the person's name and qualifications to carry out those duties and responsibilities.

AR 233/2005 s3;307/2006

Restriction on delegation

3.1 A municipal assessor shall not delegate the assessor's duty to make a declaration under section 3.

AR 96/2017 s2

Repeal

4 The *Qualifications of Assessor Regulation* (AR 54/99) is repealed.

5 Repealed AR 96/2017 s3.

Coming into force

6 This Regulation comes into force on January 31, 2006.

BYLAW 01-2012

CHIEF ADMINISTRATIVE OFFICER BYLAW

A BYLAW OF THE TOWN OF CANMORE, IN THE PROVINCE OF ALBERTA, TO ESTABLISH THE POSITION OF CHIEF ADMINISTRATIVE OFFICER AND TO ASSIGN POWERS, DUTIES AND FUNCTIONS TO THIS POSITION.

WHEREAS the Municipal Government Act, RSA 2000, Chapter M-26 requires council to establish, by bylaw, a position of chief administrative officer;

NOW THEREFORE the Council of the Town of Canmore, in the Province of Alberta, duly assembled, enacts as follows:

1. TITLE

1.1. This bylaw shall be known as the "Chief Administrative Officer Bylaw."

2. INTERPRETATION

2.1. Definitions:

a) **Council** means the municipal council of the Town;

b) **Town** means the municipal corporation of the Town of Canmore;

2.2. Any reference to a named act is a reference to an Act of the Legislature of Alberta, as amended from time to time.

3. CHIEF ADMINISTRATIVE OFFICER

3.1. The position of chief administrative officer is established, and the individual appointed to that position will have the title "chief administrative officer."

3.2. Council will by resolution appoint an individual to the position of chief administrative officer.

3.3. Council will establish the terms and conditions of the chief administrative officer's employment.

3.4. The chief administrative officer will appoint an acting chief administrative officer to act during absences of the chief administrative officer.

4. ENACTMENT/TRANSITION

4.1. Bylaw 2007-36 is repealed.

4.2. This bylaw comes into force on the date it is passed.

FIRST READING: July 26, 2012

SECOND READING: July 26, 2012

THIRD READING: July 26, 2012

Approved on behalf of the Town of Canmore:

John Borrowman
Mayor

July 26, 2012
Date

Lisa deSoto
Chief Administrative Officer

July 26, 2012
Date

Kneehill (County) v. Harvest Agriculture Ltd.

Alberta Judgments

Alberta Court of Appeal

J.D.B. McDonald, B.K. O'Ferrall and K.P. Feehan JJ.A.

Heard: May 10, 2019.

Judgment: December 17, 2019.

Docket: 1801-0195-AC

Registry: Calgary

[2019] A.J. No. 1719 | 2019 ABCA 506 | 96 M.P.L.R. (5th) 9 | 2019 CarswellAlta 2717

Between Kneehill County, Appellant, and Harvest Agriculture Ltd., 1641405 Alberta Ltd. and Kneehill County Subdivision and Development Appeal Board, Respondents

(88 paras.)

Case Summary

Municipal law — Planning and development — Subdivision — Plans of subdivision — Approval — Conditions of approval — Judicial review — Standard of review — Grounds for overturning — Appeal by County from Subdivision and Development Appeal Board decision revoking stop order allowed — Area structure plan for residential subdivision provided that residents were to have access to recreational areas and right of way — Board's decision was neither correct nor reasonable — Nothing in Municipal Government Act prevented area structure plan incorporated into planning bylaw from imposing positive obligations on landowner or applicant for subdivision approval — Municipal Government Act, s. 645.

Municipal law — Municipal boards and tribunals — Judicial review — Grounds — Appeal by County from Subdivision and Development Appeal Board decision revoking stop order allowed — Area structure plan for residential subdivision provided that residents were to have access to recreational areas and right of way — Board's decision was neither correct nor reasonable — Nothing in Municipal Government Act prevented area structure plan incorporated into planning bylaw from imposing positive obligations on landowner or applicant for subdivision approval — Municipal Government Act, s. 645.

Appeal by a County from a Subdivision and Development Appeal Board decision revoking a stop order. An area structure plan for a residential subdivision provided that residents were to have access to equestrian-related recreational areas and an equestrian right of way. The area structure plan was passed by the County and adopted by bylaw. Conditions of approval for the subdivision required the "policies and plans" within the area structure plan to be followed. The respondents, who were subsequent owners of the land, prohibited residents from entering the

* an SDAB must comply with a statutory plan: s 687(3) (a.2).

35 In *St Paul-Butler v Leduc (Subdivision and Development Appeal Board*), 2019 ABCA 281, this Court recently considered whether a restrictive covenant establishing common fencing requirements entered into between the City of Leduc and the developer was "in accordance with" the subdivision approval for the purpose of s 645 of the *Act* such that a breach of the restrictive covenant could support the issuance of a stop order. The stop order in that case was issued against the purchaser of a lot, one St Paul-Butler, who was in breach of the terms of the restrictive covenant.

36 Citing its previous decision in *Focaccia*, this Court held that the condition precedent to a stop order under s 645 is wider than a mere "breach of condition"; it includes anything that "is not in accordance with" subdivision approval. This Court went on to uphold the issuance of the stop order in that case.

37 In this case, the SDAB opined that the ASP cannot impose positive obligations on the landowners to develop or use property in a particular fashion (see para 17 above). However, nothing in the *Act* prevents an area structure plan incorporated into a planning bylaw from imposing positive obligations on a landowner or applicant for subdivision approval. In light of the clear wording of the provisions of the *Act* cited above, its interpretation is neither correct nor reasonable.

38 Section 633(1) of the Act provides that a council may by bylaw adopt an area structure plan "[f]or the purpose of providing a framework for subsequent subdivision and development of an area of land" and section 633(2)(a)(ii) provides that area structure plans "must describe...the land uses proposed for the area, either generally or with respect to specific parts of the area." Section 655(1)(a) of the *Act* expressly authorizes a subdivision authority to impose "any conditions to ensure that this Part and the statutory plans and land use bylaws and the regulations under this Part, and any applicable ALSA regional plan, affecting the land proposed to be subdivided are complied with".

39 The respondents argue, and the SDAB appeared to accept, that the ASP stated goals but did not regulate. However this ignores the fact that the ASP was adopted by way of a bylaw stated in mandatory terms and which had never successfully been challenged--Bylaw 1586. The SDAB cannot make a ruling that in effect holds the ASP either to be invalid or removes the validly imposed conditions of the 2009 Subdivision Approval and the 2012 Subdivision Approval. "The SDAB must comply with the bylaw then in effect and has no power to declare the bylaw invalid": *Coffman v Ponoka (County No 3)*, 1998 ABCA 269 at para 10, (1998) 219 AR 127; *Mather v Gull Lake (Summer Village of)*, 2007 ABCA 123 at para 21, 404 AR 125; see also *Colledge v Calgary (Subdivision and Development Appeal Board)*, 2010 ABCA 34 at para 28, 474 AR 250. To the extent that the SDAB in the Decision ruled on the validity of the ASP, the Decision is not reasonable.

40 The SDAB in its Decision at para 85 described Condition 5 as "a broad statement that, in the opinion of the Board, gives the Developer direction to respect the spirit and the intent of the ASP

Coffman v. Ponoka (County No. 3)

Alberta Judgments

Alberta Court of Appeal

Edmonton, Alberta

Russell J.A.

Heard: August 11, 1998.

Judgment: filed August 14, 1998.

Docket: 9803-0312AC

[1998] A.J. No. 912 | 1998 ABCA 269 | 219 A.R. 127 | 81 A.C.W.S. (3d) 889

Between Mike Coffman, Frances Coffman, Orville Ellsworth, Myles Gillette, Donna Gillette, Dorothy Gillette, Karen Cross, Randy Cross, Judy Kemmis and Gordon Kemmis, applicants, and County of Ponoka No. 3, Subdivision and Development Appeal Board for the County of Ponoka No. 3, and County Line Farms Ltd., respondents

(5 pp.)

Case Summary

Statutes, Regulations and Rules Cited:

Municipal Government Act, ss. 536, 688(3), 692(6).

Land regulation — Land use control, zoning bylaws — Enactment and interpretation — Amendment of bylaw — Validity of zoning bylaw, delegation of power — Land use control, appeals to the courts — Leave to appeal, on question of law — Leave to appeal, practice — Grounds for refused to grant leave.

Application by Coffman for leave to appeal from a decision of the Subdivision and Development Appeal Board confirming the issuance of a permit by a Development Officer to operate a hog farm. Coffman claimed that the Board erred by applying the amended Bylaw which might have been invalid because it was passed without a public hearing. He also argued that the Board erred by applying the unamended Bylaw which might have been invalid because it purported to subdelegate land use planning responsibilities to the provincial government which had declined to accept that function. In the alternative, he argued that the Board improperly exercised discretionary authority under the unamended Bylaw.
HELD: Application dismissed.

An application for leave to appeal from a decision of a subdivision and appeal board might be granted on a question of law of sufficient importance, which had a reasonable chance of success. An application to declare a bylaw invalid must be made to the Court of Queen's Bench. The Board had no power to declare the amended Bylaw invalid. That issue was not pursued

Should Leave be Granted

Ground 1: Was the amendment to the Bylaw illegal?

10 The applicants contend that the amendment to the Bylaw materially affects the Bylaw in principle and in substance and that a public hearing was required to give it effect. They seek an order quashing the development on the ground that it was issued pursuant to an illegal bylaw. But section 536 of the Municipal Government Act provides that an application to declare a bylaw invalid must be made to the Court of Queen's Bench. And section 538 specifically contemplates such an application when it is alleged that a public hearing was required but not held. Moreover, section 687(3)(a) of the Municipal Government Act requires the SDAB to comply with the land use bylaw in effect. Hence SDAB argues that as a wholly statutory body, it had no power to declare the Bylaw invalid. The applicants concede it was for that reason that a decision was made not to pursue the issue before the SDAB. In my view, there can be no reasonable prospect of success in establishing an error on the part of the SDAB for failing to make a decision it was never asked to make, and possibly could not make. In the absence of a declaration of invalidity of the Bylaw, the SDAB was mandated to presume its validity. So too must this Court. Any application to attack the validity of the Bylaw at this stage must be brought before the Court of Queen's Bench. It is only then that consideration could be given to the effect of previous decisions made under an invalidated bylaw, should that occur.

Ground 2: Did the unamended Bylaw unlawfully subdelegate municipal powers?

11 Even if the SDAB did err in relying on the amended Bylaw, did it also err in relying on the unamended Bylaw? The applicants argue that the unamended Bylaw made an unlawful and meaningless delegation of responsibility for environmental assessment to a provincial government department which did not accept the delegated function. Thus it is argued the Bylaw misrepresented that an objective and authoritative assessment would be performed by the government. However, the respondent hog farm says that the Development Officer did not rely on that provision in the unamended Bylaw. Instead, he exercised his discretion not to request an environmental impact assessment. Since he knew that the provincial government would not perform the assessment, it is arguable that he did not exercise his discretion because he could not. But it is apparent that the Development Officer did choose to exercise his discretion regarding environmental concerns by requesting an Environmental Risk Assessment under s. 9.4 of the Bylaw. As a result, it is clear that he made a conscious decision not to rely on s. 10.4 of the unamended Bylaw. Therefore, its validity did not affect his decision. As a result, I see no reasonable prospect of success of persuading the Court to accept the interpretation that the Development Officer relied on an authorized subdelegation in the unamended Bylaw in making his decision, or that the Bylaw contemplated that an assessment of environmental concerns would only be performed by a provincial body.

Ground 3: Did the Development Officer or the SDAB fail to properly exercise a discretionary power under the unamended Bylaw?

Speaker	Transcription
Mayor Krausert	We will now move onto the next item of business, which is item G1 Division of Class 1 Property bylaw 2024–19 is Ms. Van Keimpema, welcome to Council.
Ms. Van Keimpema	Thank you very much. Mayor Krausert, members of Council. We are before you today asking you to adopt a bylaw for splitting our residential class properties into subclasses and this is permitted under Section 297 of the Municipal Government Act, and this would replace an existing bylaw that we have right now. I have taken it from two pages to a lot more pages sorry about that. So, how did we get here today? So to sort of remind you and bring you up today so on June 6 last year council directed that we begin to work to phase out tourist home designation as well as how do we incentivize long-term full-time occupancy of residence so to that end in September, you struck the livability task force in January of this year. The task force came back with recommendations in May and June. I came to the committee of the whole meetings to give you the implementation plans coming out of that and then here we are today with step one of those couple of actions we'll be taken care of by making some adjustments to the bylaw of council so approves it. So, what's the bylaw for? Tax rates reply to properties assessed values in order to figure out who pays how much of the property taxes that you set at budget time and it's based on their class and their subclass so residential property is a class and we're now asking you to take that class through this by law and breaking it up into four sub classes. So, there currently are four sub classes. We are changing out we're recommending that we remove the tourist home personal use subclass and we introduce the primary residence subclass. Sub classes and classes are included on the assessment notice so people will have that information, and it is something that you can appeal as part of the assessment appeal process. We want to make sure that people are aware of what class their property is in. So, of the implementation plans for phasing out the tourist home designation and incentivizing, full-time long-term occupancy of dwelling units, the proposed changes to division of class one property or two of the actions that came up at the committee of the whole implementation plans, the first is to remove the personal use and the second is to add in primary residential. We're actually recommending that council repeals the one that is currently in place and passing an amended one because the changes are so extensive to the bylaw. The whole thing would be almost redlined so I thought it would be easier.

	So removing the tourist home personal use subclass one of the changes is this and it doesn't remove the tourist home designation. It is a land use, it doesn't remove it, doesn't stop more tourist homes from being developed, this is strictly changes for tax purposes not for land use purposes. It will change it so that all tourist homes are taxed at the same rate, so currently out of the 7, in 2024, there was 718 tourist homes at the time of sending out tax notices, 75 of those had declared personal use what that would do by eliminating those 75 all 718 would be taxed at the same rate. If the owner does not rent out their tourist home on a short term basis they could choose to convert it to a residential property and then it would be charged a residential tax rate, whichever one is applicable and in order to do that they would need to do convert their property to residential so what we are recommending as part of today is to put a two year waiver of any fees to convert tourist home to a residential property as a way to maybe not penalize somebody who is getting with the program so to speak. So after removing the Tourist home personal use the next step to this bylaw is to add a primary residential sub class, so it sets up the mechanism by which council can implement the primary residence tax program so it isn't something we're not deciding on the revenue today we're not deciding on who is paying what today how much we want to collect under the program will be part of the budget discussions and decisions and then spring time will be when you decide which class of property is going to pay for that revenue. You could decide all classes of property are going to pay that revenue so those are sort of when the decisions are. Today's purpose is to put a tool in our toolbox so that we have that available and we could do that work. Annually properties are included in the sub class through a declaration process so it isn't automatic for everybody and I have slides which I'll get into that more detail. People will need to declare how they occupied their property so for example, by the end of this year people will need to make a declaration "How did you occupy your property this year" and then that information will be used to determine their taxes for 2025. It's much easier to have somebody prove what they actually did rather than what they intend to do so that will help us with any enforcement to make sure that people are in compliance. so, what qualifies as a primary residence. In the previous taxation year was it a residential property as first. It can't be a tourist home. The owner or a tenant has to occupy at least one dwelling unit on the property as their primary residence because there may be more than one dwelling unit on a property so we're not asking that all of the units be occupied as a primary residence if you want to create a secondary suite or an additional dwelling unit and that's what you want to use to have somebody live in it that's great, that that helps increase the housing stock that is available for people who want to make their lives here.

	What is a primary residence? Primary residence is where one ordinarily lives and you conduct your daily affairs from there. Then we get into the number of days. So, Vancouver in Toronto use a six month which what if it's a leap year and all that stuff so we decided we would go with days so we chose 183 days and then we talked about it administratively we had a working group too. We thought there could be people who are still doing it in short term increments so we brought in at least 60 days or continuous because then that would preclude someone who is habitually, renting it out short term from still qualifying if they were careful doing the numbers. Apartment buildings and employee housing and separately titled residential parking stalls and storage units would automatically be put into the residential primary residence subclass. The reason why apartment buildings are they have three more units but there's one title otherwise our assessor would have a lot of fun trying to divvy up the assessment between which units were occupied in the year for at least 183 days and which ones weren't so we thought that the risk of there being an apartment building that wasn't predominantly being rented out as primary residence was less than the cost it would be to try and figure that out. Employee housing those are units that are usually on commercial property and then there's the portion where the employee housing is taxed as residential and while they don't technically may not meet the 183 days because they may have staff turnover, it is still meeting the purpose of what we are trying to accomplish so that we felt that including it in automatically as a primary residence then that would be the way to go. If we're finding it problematic, we can always make changes to the bylaw going forward. Residential parking stalls and storage units. I hope there aren't people living there so but they are still in residential property so if we don't automatically put them in the primary residential then they would be charged if Council so decides to charge a higher rate to residential properties then you would be charging them the higher rate too and that didn't really seem correct because they wouldn't have an option to get into the primary residence. So, knowing we learned from Vancouver and Toronto, Ottawa has started their program as they were going through the different iteration's things came out of the woodwork that they hadn't considered and so we at one time I believe we thought we might go to the public and ask for public engagement on maybe some of these exemptions. We didn't go that route because we felt we got a really good bunch of information from Vancouver and Toronto's experiences as to what some exemptions could be and in the first year or as we learn if there's ones we didn't think about people can always come an appeal to Council and ask them to have a reduction in their taxes if it's something we didn't think about so keeping the purpose of our primary residence tax program in mind and to make sure that our primary residence through no fault of their own couldn't otherwise qualify for primary residence so that sort of the mindset we put in place while we were trying to determine

	what exemptions we would offer. So in the case if someone is hospitalized, the can't meet the 183 days they passed away or there's a written health or other order that preclude them from occupying the dwelling unit what if there's a catastrophic event that caused it to be flooded or fired or blown up or repairs that have a development permit that prevents them from living in their place and as long as they occupied as a primary residence before this event occurred then they could make that declaration that they qualify for one of those exemptions and for that year that they would be included so they're not an automatic occlusion because we wouldn't know that that's the situation they would still need to make a declaration and we're setting it up so that they can tell us which exemption they qualify under. In addition we thought about what are properties are under new construction or what if they've sold it to an arm's-length party and they can't meet the 183 days because maybe they didn't take possession until October they're meeting what we're trying to do is we're trying to get people who couldn't to either construct or sell their property to someone who is going live here as a primary residence so as long as that happens immediately after the sale or possession date then we're recommending that those properties be able to declare that and then they would be included in the primary residence class. So, what are some of the financial impacts? I'll start with the one that doesn't go into a lot of in depth and that is removing the tourist home personal use, that means that the same tax rate will apply to all tourist homes so as I said earlier, the 75 who had the personal use will now pay it at the tourist home rate. The bylaws part of the mechanism that can be used to collect revenue so like I said it isn't an automatic today it's just a tool that you can then set different tax rates for different classes and subclasses of property and you would do so in the spring. So while revenue decisions are really not part of what you need to decide today as they're not part of adopting the bylaw, we're aware that revenue information maybe something that you're curious about and want to have at this point when you're making a decision whether you want to put this tool in your toolbox to this end, we actually contracted Ben Brunnen, Verum Consulting, and he has prepared some incremental revenue estimates, and now I'm going to turn the podium over to him because he's way better at this than I am.
Mayor Krausert	Mr.Brunnen welcome to Council.
Ben Brunnen	Thank you for hosting me here today and thank you Katherine. So, Katherine and Terese had requested that I look into estimating the amount of properties or the value of the properties that would potentially be captured in the, in the primary resident tax program and so what I'll share with you today is the method and the estimates that I've concluded that would be eligible. So this information wasn't readily available through the existing assessment tax system so we had to look at different ways to estimate what we think the number of properties would be, sorry I'm just slipping through the slides, and

	so the starting point was to explore using utility accounts if there was a way that we could identify properties that would be under-utilized on an ongoing basis in the town. The utility accounts are useful that way because their measure of essentially utility on the property and so we were able to find about 81%-82% of the properties in the town did have unique utility accounts and there were about 18% that didn't and those are those are the condos and the apartments those are the units that had were basically common properties that just didn't have separate metres and so here what you'll see is from the assessment role there's a total of 8,580 properties with the assessed value of $9.7 billion and as we looked at a way to identify under-utilized or non-permanently occupied properties this is a distribution of the utility use per square foot per assessed property value excuse me not per square foot of the properties where we have the utility accounts and so what I've done here is if you'll see to the to the left-hand of the chart that's a normal distribution on the left which is which is a useful indicator so of any sample you would take a population or population you'd expect to see it kind of normally distributed with the peak of the representations kind of in the centre and then balanced around so that would suggest that those on the left are where you would expect to see kind of normal consumption rates per value of assessment, but then as you see the chart move towards the right hand side that's where you start to see what I call outliers and so there are a number of properties that have a lower amount of consumption per value of assessment and so that's the indication that those properties would likely have less full-time presence in the community cause they're consuming lower amounts of utilities and so coming up with an estimate of two times the median anything above that is sort of a measure of the central tendency so the median is like the average, but essentially the central number and the data and anything to the rate of that substantially that's on the other side of normal distribution, you could make the assumption that that's where those properties would be would be not occupied by permanent full-time residence so that was that's the method and the rationale that I started with to come up with an estimate of who would be captured by this tax and so here you see the property count on the utilities so there's a total of 6,100 properties and of those 1,600 of those are the to the right of that distribution that I shared with you so that gives an assess value of about 2 billion. Then when we look to the non-utility account without having the utility data, what I did was, I made the assumption that based off of the census you see about 25% -26% of the properties and in the town were not occupied by usual residence based on the census so assuming that percent to come up with an estimate of what we're seeing for the non-utilities gave us the number 626 properties and $460 million so that gives the total estimate of the properties and the assessed value of about $2202, almost $3 billion. I went and double checked these numbers as well looking at the mailing address of the of the resident and it actually correlated decently well if we were to sort out those residents who primary mailing address was outside of Canmore came up with an estimate of 2,100 properties and just under just under $3 billion for the utility accounts so it's comparable to the assessed value of the utility

	accounts that I came through with the distribution method and then for the non-utility accounts that number was actually quite higher, but if we count for tourist homes it's probably pretty consistent so that's kind of an in-depth discussion of how I came to a conclusion of what I thought that the number of properties and the value of the assessment would be that would be captured by this permanent residence program. So I think that's you know it always hard to conclude exactly what we're going to see from a tax revenue perspective I didn't account for the number of properties that would move towards acquiring tenants so that they would not be subject to the tax so there's the possibility we could see a number of these properties decrease as well these are just estimates but I think they're a reliable general estimate of the size of the assessment base that would be that would be captured by this program which then brings us to the slide here which gives you a range of what would the financial impact be if you were to charge incremental or the primary resident program on that assessment base. So, if there was a charge of .1% of the assessed value that was incremental on that base you'd see $3 million annual revenues and then up to .4% you would see $12 million annual revenues. So, this isn't primarily an indication of the rate on the assessed value and the corresponding revenues that would arise and then I'll go to one more slide. What this is indicating is a median assessed value for the residential condo and a median assessed value for a residential detach, but I'd have to check with the team so there you see what that what that means on an individual property basis, so in addition to the total revenues, you'll see the incremental taxes that would apply to each median property and then what the team has done is that they have identified Toronto and Ontario there for reference so Toronto and Ontario have a 1% assessed value in Vancouver has a 3% assessed value and those are substantially higher magnitude compared to the options that administration has presented to you. So, I will pause there and happy to answer any questions on any of the contents that I've shared.
Mayor Krausert	So yes, I would like to open it up to Council for questions for Mr. Brunnen. Yep, I just I was wondering while Mr. Brunnen's is up on this stuff if we just have questions on the material that is presented by Mr. Brunnen and then the presentation can conclude, and I wanted to just underline what you said that these are estimates. We'll ultimately know if this program's passed today how many non-primary residence households there are by those who are unable to register as a primary resident and so, but these are estimates to help us understand what scope we think we're dealing with. Right? Great, thank you very much. Are there any other questions from Council on Mr. Brunnen's portion of the presentation?
Councilor Graham	Thank you, your worship. I am sure we will get used to this new system which is so far fantastic. I love it. I wonder did vacant serviced residential property come into your calculation?

Ben Brunnen	It's excluded from the estimates that I have presented to you.
Councilor Graham	(unable to get) the number of those properties that serviced residential properties is fairly significant is that correct?
Mayor Krausert	Okay, I'm sorry, I am having trouble keeping up based on what(untangable). Councilor Graham, if you could repeat your question.
Councilor Graham	Sorry, how far back do I need to go?
Mayor Krausert	Just your last question.
Councilor Graham	The number of those properties that vacant serviced residential properties is fairly insignificant is that correct?
Ben Brunnen	That's my understanding. I don't have the numbers in front of me, but they weren't of material, real material segment of the residential base.
Councilor Graham	Thank you.
Therese Rogers	Just for clarification, I think you're talking about vacant service land just in case there is any confusing about vacant services residential property, we are talking about land.
Councilor Graham	I'm talking about land that has nothing on it right now that has services that go to it that could have a building on it at some point in time. I can think of a few lots but not a ton of them, but and why weren't those put into these calculations? Why didn't we leave those alone?
Ben Brunnen	Because the guidance that sort of, I applied was for existing habitable properties essentially so anything that can be lived in. So vacant land can't become a primary resident of vacant land and as a result it was excluded from the analysis.
Councilor Graham	Sure, eh severely underutilized but yes.
Therese Rogers	If I could just add that the vacant service land is already a separate sub class and so again at the time that Council sets the mill rate you could choose to set a different mill rate for a vacant service land then the rest of the residential classes.
Councilor Graham	Thank you.
Mayor Krausert	Any other questions Mr. Brunnen? Okay seeing none. Then Thank you very much and returning to Ms. Van Keimpema.
Katherine Van Keimpema	All right, almost there I promise. So, program reporting and funding criteria. So the revenue generated under the program will be placed in a separate

	reserve and then we're going to be able to come back to you and provide you with reporting so those are key performance indicators so we're going to include those in reserves policy so that we actually codify what the KPI's or key performance indicators are. We're going to report on those annually at year end. A report is going to be coming to you to the September 15 committee of the whole that will layout our proposed KPI's so that you can put that into consideration and then it would be formally adopted when we bring a reserve policy to you for amendment. The other thing we're working on to bring to the September 15 committee of the whole is criteria for spending money out of that separate reserve that would also be codified in the reserve policy so that its ongoing direction to future councils as to what the thought process was and what the parameters of the program work. Council can always make changes to that but at least it's not just this discussion and does somebody even remember that this discussion happened this way it's in a policy document. Parameters for setting the tax rate that will be done in the spring but before that we will be coming to you to probably as a committee as a whole. Here's what we're thinking and we will bring you a tax policy that would be amended that would codify those things and so if you decide you want to tax vacant service land higher, or you want to tax primary residence for the amount of the revenue you want to collect under the program that would all be laid out in the tax policy so those will be discussions coming to some meetings near you. And what about engagement so as for engagement are this does not require a formal public hearing and given the extensive work as I said before Vancouver, Toronto, Ottawa we felt that they have a similar program, especially Vancouver's had it in place for a number of years and then so we decided between that and the livability task force that we didn't need further public engagement, Council may have a different idea we would be welcome to hear that. Our communications department has actually developed a plan for being able to communicate to all of those affected as well as the general public. We're going to make sure that we're notifying directly those people were affected so that all tourist homeowners will be let know of any changes by removing the personal use. We're going to be making sure that anyone who can or might be qualified for a primary residence is given that information that plan is to get that out towards the end of October so that they have lots of time there'll be some reminders going out as well. Assessment notices will be sent as usual and that will have the class to which the property is included and we're planning to send some extra information out to say "Hey! Important! make a note this class and this is what the impact of this could mean for you", so I think we've done some really good planning as far as being able to inform.

	If someone gets their assessment notice and says oh wait a minute, I should be in the primary residence it doesn't say that I need to appeal my assessment they can do that. They just give us a call. If they qualify they send us support to say yes you do qualify. Great we'll make that correction and there would be no appeal fee. Once the assessment appeal deadline has passed though, they can't make any corrections to the assessments so their mechanism would be talked to us, we can fix it if they still, if we don't agree that their support was sufficient then they can file a formal appeal, pay the appeal fee and then the ARB can make that decision and that would be their mechanism. However, if they're still not happy then meaning they can't appeal your tax notice well then, the next mechanism will be coming to council to ask you to make a consideration to lower their taxes in the year for whatever reason would be. That's the process, we're working on it. The declaration process will be online on numerous meetings this week to keep that going so other than that, that really does conclude our presentation and we would welcome any questions you have, we have a plethora of people ready to go for questions. Thank you.
Mayor Krausert	Thank you very much Ms. Van Keimpema and once again to Mr. Brunnen and to all of those who were involved in preparing this report and I know that all of this planning is taking a ton of work and so that is certainly acknowledged. So, turning to Council to see if there are any questions and I will first go to Councilor Hilstad.
Councilor Hilstad	Thank you. With the apartment buildings and employee housing if this might be governed somewhere else but if we find out, someone is using either employee housing or an apartment building as short-term rental or something that doesn't fall in the primary program, what exactly does that look like? Is it bylaw enforcement just how do we enforce that if we do find people abusing their use.
Katherine Van Keimpema	So, by making them automatically in the class, there wouldn't be anything that enforcement could do other than take that information then we would say oh how big of a problem is this? How much are we losing? Are we encouraging something to happen that we didn't intend and then administration could bring the bylaw back to council and at that time, you could remove those as an automatic inclusion in the primary residence sub class.
Therese Rogers	I'll just add as part of our work in determining which what should be included where, we've spoken with our local rental providers and it's a very small portion of any of the apartment buildings that are rented not to permanent residence and so we really felt that that we're looking at less than 2% or 3%. Council will recall the approval that you've given to incentivize development of purpose built rental we've also included their requirement that at least

	95% of all units be rented to permanent residence and local residence and so we do really feel there may be a few but that wouldn't be worth the cost to try to administer that at least at this stage. Certainly, if we determine something different is happening, we can come back to you with changes to the bylaw to address that in a different way, but we felt it was a very low risk and not the place we needed to focus the most effort.
Councilor Hilstad	Thank you cause I'm just thinking in the past like a normal resident on Airbnb or something we do generally have fines and stuff in place so I am assuming that would just be our other mechanism cause if instead of I think having those in there the logic makes sense it's just if you get the one of where someone Airbnb or VRBO we do have other mechanisms that can deal with that.
Katherine Van Keimpema	Yes, Councilor Hilstad, the other action one of the other action is to bring back the business license registry bylaw and that's where short term rentals would be required to have a license and now we are proposing that they would have to include their license number in their advertising or so that if we do get somebody saying they're renting it out then we could check to see if they're compliance with that bylaw and then if they're not in compliance with that bylaw, then there's penalties and fines that come from that.
Councilor Hilstad	Thank you.
Mayor Krausert	Councilor Foubert
Councilor Foubert	Thank you, Mayor. Thank you, Ms. Van Keimpema and everyone for their Presentations. I'm curious to understand better how this will be enforced specifically say you have a property owner who does not occupy their property in Canmore full-time but register it on the system, what happens?
Katherine Van Keimpema	Yeah, so built into the process is an audit process so we haven't determined exactly how many but there will be people who are chosen from the declarations and we'll say okay now, send in your proof that that's how you occupied your property and if they provide the proof, great, carry on if they didn't, then we would be there's fine mechanism in the bylaw for false declaration and then that would be something that would be enforced in that manner. The other thing is if we received a complaint, my neighbor I know we declared primary residence cause I could see it online for the tax roll cause the assessment class shows up when you look up a tax roll then we would take those complaints and we would then contact the owner and we'd say send in your proof and do the same thing again.
Councilor Foubert	Okay, and is that in this bylaw?

Katherine Van Keimpema	So, in this bylaw says there's false declaration and if you make a false declaration and also we're going to audit you and we have three years past the date that you actually made the declaration or you should have made a declaration to actually go in and audit so we're not just doing it on a complaint basis we're actually doing a proactive enforcement and we anticipate that in the early days it would require a larger effort at enforcement to because at the beginning want to make sure people understand that we are checking and then you might be able to back off in the later years, but we're going to start out with quite a bit of proactive enforcement.
Councilor Foubert	So, this really kind of is on a deterrence basis i.e. not that we will know who is making potentially false declarations, but we have a robust auditing process that will catch some of them, and that should deter the rest.
Katherine Van Keimpema	Yes, and Council part of the key performance indicators that I'm proposing to bring for your consideration in September is auditing results. How many did we audit out of the total we received? How many did we find were false declarations? what were the amount of penalties? What were the amount of taxes that we were covered from those and that's also part of the performance indicators that will be reporting on.
Councilor Foubert	Okay, Thank you.
Katherine Van Keimpema	In a general sense that we are enforcing and this is what the outcome was. (went weird here, like they went offline or something because she was responding to someone) 2.24.06
Councilor McCallum	Thank you, your worship, and thank you Ms. Van Keimpema for your presentation and a really robust report. Thanks. I have a question about the exemptions. In your presentation you showed a series of potential exemptions one of them being hospitalization, long-term care, supportive care, owner passing away, etc., so my question is in particular those two if you have a homeowner that is permanently going into long-term care how much longer after now they are basically housed within a hospitalized setting would we look at permitting that empty home to maintain its status as residential as primary residence.
Katherine Van Keimpema	So the way the bylaw is written right now they would declare every year and if they're still in the hospital, they would get it every year so there's no time limit right now we can make that change if you want to make any changes to that or we could see if that situation arises and how often and if we want to make any changes and introduce a time limit right now there is not one.
Councilor McCallum	And then in terms of an owner passing away how long would we allow that home to lay in probate or within the estate prior to it being no longer considered primary residence.

Katherine Van Keimpema	Bear with me here because there has been many, many iterations of this and I just want to make sure that I am speaking the owner has died at some point in the previous two taxation years and that owner had occupied it as their primary residence prior to their passing so we give them two taxation years.
Councilor McCallum	Okay, perfect thank you very much. I don't understand how this thing works. (referring to microphone)
Mayor Krausert	Just one moment.
Katherine Van Keimpema	Sorry, I want to myself on my previous answer. same thing with if someone was residing in a long-term care, no that's right It's in 5a of the bylaw. So, it doesn't have the deadline or the two years whereas an owner dying or passing away, there is a two-year limit. That's the only one that has a limit in the number of consecutive years that you can have the exemption.
Mayor Krausert	Councilor Graham.
Councilor Graham	Thank you, your worship, Thank you Ms. Van Keimpema. In the KPI's that you were talking about will we also receive the number of non-permanent residence so we're going to see what effect we're having on the market.
Katherine Van Keimpema	Definitely. It is still in development. There's a whole great big list of key performance indicators, some of them are program specific and those would be the ones we would come to council and report to council on annually then there's KPI's that are process so more administrative feedback and that we wouldn't necessarily come back and do a formal reporting on but the auditing we would, the revenue collected, the number of declarations received things like that. Yeah.
Councilor Graham	Thank you.
Mayor Krausert	Councilor Mara
Councilor Mara	I may have confused myself, but I'm going to ask this question anyway the owner passes away and it's in probate if the family chooses if it's a long probate because I know someone who is going through a five year right now probate, if they rent it out as a primary residence to somebody then they would qualify correct?
Katherine Van Keimpema	Definitely
Councilor Mara	Just confirming that. Just if its empty, I'm just confirming.
Katherine Van Keimpema	There may be family members who don't want to rent it out immediately, so we thought a two-year period of time would be a reasonable period of time for them to get their feet back under them a little bit to figure out what they want

	to do and if they're still probating, then the executor could still rent it out to a tenant.
Mayor Krausert	Looking to see if there any other questions from Council? And I see none. Thank you so I'm now going to move the council give first reading to division of class 1 property by law 2024–19 speaking in support of this motion. We of course see this is as culmination of a longer process, one that I know some of us spoke to during election campaigns some that then has been through Council workshops leading to ultimately appointment of a livability task force, setting out this recommendation and now coming to us at this stage and then there's still some more work to do of course. You know with regards to the two major changes that will be felt in the community one is removal of the personal use of tourist homes. I recognize for those 75 that have personal use this will have a direct impact, and it will have a significant impact on those residence. However, it does recognize that these properties have commercial capabilities and therefore being taxed accordingly, those owners getting the value bump from the commercial capability and now having tax accordingly, however, recognizing that some may not be able to afford the higher tax level, I am comforted by the fact that recommended by the livability task force and included within the report today is that those properties can change their use without paying a fee in the next two years if we pass that waiver so that they can get the residential level tax rate, they just will no longer be zoned as a tourist home so I believe that there's balance there albeit there will be change for those for those affected. And as for the non-primary resident element this ensures as we spoken before all residences within Canmore contribute to being part of the solution of our housing crisis either by providing a primary residence or providing funding that will be used towards housing initiatives within Canmore and I think that given our housing crisis in our particular situation we're taking a very reasonable approach to that of course the amount of that will all be determined at budget time and are not subject to this decision or are not a part of this decision. So, I support this bylaw and look for my fellow colleagues to support as well, would anybody else like to speak to this motion?
Mayor Krausert	Councilor Graham.
Councilor Graham	Thank you, your worship. I to will be wholeheartedly support of this motion. This is one of the items that I did campaign on, and many others did or some others I want to thank administration and Consultants that were brought in as well as the livability task force that they had done to get us to this point. We have been very thoughtful. We have been very measured in our approach, and I look forward to the impacts that this does have on our community on our community. We do have funding short falls for a lot of our affordability projects, and as the mayor stated all of the everybody has to be part of that

	solution, I look forward to seeing the impacts and hopefully increasing vacancy rates that will have a direct impact on rents and affordability. Again, I just want to thank everybody that's been involved with this to date. I know we got a little bit more work to do to get it fully across the line but thank you all very, very much.
Mayor Krausert	Would anybody else like to speak to the motion? Councilor Hilstad.
Councilor Hilstad	I will also support this motion. I think it is well thought out. Hopefully, there is not too many curve balls that come out later but if there are, we can always change it so, but I just want to thank admin and the livability task force and consultants just on all the hard work that has been put into this. It is well thought out there's you know by waving fees for tourist home conversions I think that's um, gives an option then or tourist homes can continue on as they are and they have that ability to rent them out short term which would help cover any increase in taxes because well its Canmore and people like to stay here so yeah, I will happily support this motion.
Mayor Krausert	Thank you, Councilor. Councilor. Ma.
Councilor Ma	Thank you, your worship. I am very happy to support this initiative. A lot of great robust work has been done by so many people from livability task force and Ben Brunnen, Consultant with Miss Van Keimpema administration and this is a very thoughtful body of work that has been put forth. As noted before we need serious tools to help us move our housing crisis forward, and this gives us another tool on the toolbox especially in regards to the funding, and I feel that as we move forward much of this work, here will probably be inspiration template for municipalities that are struggling with the same issues that we are so thank you for a great work everyone. Happy to support.
Mayor Krausert	Councilor McCallum
Councilor McCallum	Thank you, your worship. I will be supporting this motion. This is a topic that our communities been talking about for a very long time and always pointing to west of us like look what they do there so I'm grateful that there are much larger and more complex communities that have put forward bylaws that we can copy their good work. That's always helpful. And understand and learn from the mistakes or any corrections that are required in program. I agree that every door in this community has responsibility to contribute to helping to solve our housing crisis and I'm grateful that I sit amongst a group of people that felt they had the political will to make the change in this way. We will see how this rules out over the coming years, but I'm happy to put my head in the air to support the step forward in finding new resources to help fund and support our affordable housing crisis or our housing crisis.
Mayor Krausert	Councilor Foubert.

Councilor Foubert	Thank you, Mayor Krausert and the rest of my colleagues for their comments. I think a lot of excellent work has gone into developing tax policy. I know what our intentions are as a council and what our objectives are and that we are exploring solutions to address a serious issue of affordability around housing in our community and that this exploration of this idea has been worthwhile however, this is the offramp for me and I will not be voting in support of the bylaw. I'll start with tourist homes. Originally I spoke strongly in favor of removing the personal declaration from tourist homes and returning the specific type of used to being strictly commercial in assessment and taxation, regardless of whether an owner chooses to live in it or not, that was because that change aligned with my values to have less paperwork, less declarations to process less processes and a more straightforward taxation situation for this specific type of resort, tourist home use, but with this change, and with the idea that we are going to incentivize tourist homeowners to convert into residential I have some apprehension because when I look at the current value of tourist homes on the market and I put myself in the situation and consider what I might do I would not be converting my tourist home into a residential unit I would be selling it on the market as a tourist home and then using the money that I made that to them a residential unit to live in and so I'm not necessarily convinced that the transition of tourist homes into residential homes through this particular change is going to be achieved and could result in more pressure on our residential real estate instead of more housing units. What we expect to happen and what will happen might be the same thing, including my assessment of the situation. I support removing the personal use declaration as a way of reducing red tape and paperwork which brings me to the permanent residential tax sub class. I am 100% in support of a vacancy tax. I believe a vacancy tax is exactly what we need as a community and I know that what we have explored and what we have put together in terms of a Tax policy is as close as we can get in Alberta to a vacancy tax for our community, but I also look at the system that's being proposed and for me I have intense apprehension that it will make it more difficult to be a resident in Canmore, and that it will as a result see people who can't afford increased tax rates being unintentionally in a situation where their taxes go up because they didn't realize they had to register and then they have to go through an appeal process. That is a lot more processes and I know that the intention is that the money from this tax policy that we would raise to fund housing would pay for all of the administration of this, but I'm not, I don't have all the information I feel that I need to keep moving forward with this at this time even though I 100% respect my colleagues and I am here with them, I've been with them along this on this pathway of exploring primary residence of sub class as a way to achieve our objectives, and you know be leaders in our community and address, what is our biggest challenge?

	I think there are other ways that we could also be working on funding housing, including the partners to affordability program that we approved earlier in this meeting I have some concerns as well that what will end up happening is that this tax policy will be vigorously challenged by some in our community and while that doesn't deter me at all, I feel there may be a political risk of innovating in this way in the Province of Alberta and so I have, I want to make sure that I reflected all of the things that I wrote down to make sure that I was well spoken today and respectful because I think that this work was absolutely necessary and I know that I am not going to convince anyone to vote against the motion with me and that's not my intention but I do have to vote with my conscience and at this time which I know in the past, I've asked about offramps and I feel that at this time this is my offramp and thank you so much for everyone for listening thank you.
Mayor Krausert	Thank you, Councilor. I certainly respect your opinion in this regard. I did want to add a couple of things. There's no doubt that this result in the change for everyone whether you're a non-primary resident or a primary resident and so for the primary resident who will have to go once a year to click a couple of buttons on a form it will take some getting used to and Ms. Van Keimpema spoke to a communication plan around that. Also spoke to the opportunity for those who noticed that their Assessment is different. They didn't catch the earlier communications there's yet another opportunity to make sure that it's right. After the learning curve. I think it will be pretty easy thing and there's benefits and you know somebody might ask "Well how do I benefit from this?". Well, you don't get the higher tax rate that goes with a non-primary that's an immediate impact but more so you are being part of a system that then allows the encouragement of either primary residence in homes are currently not occupied by a non-primary not occupied by primary resident and you support the system that provides more housing, especially non-market housing so that maybe our kids can afford to stay here, that new people as they arrive can stay here and that we can work to maintain the community that we love as opposed to going the pathway of so many destination mountain communities before us that lose their community so I think that this is a necessary change, one that people will adapt to and will ultimately see the greater good involved albeit after a learning curve. Would anybody else like to speak to this motion? Okay seeing none, I'll call the question all those in favor? Opposed? The motion is carried with Councilor Foubert opposed. I'll now move that Council give second reading to division of Class 1 Property bylaw 2024-19. Would anybody like to speak to the motion? Seeing none I will call the question all of those in favor? Opposed? The motion is carried with Councilor Faubert opposed.

	I'll now move to council give leave to third reading of division of class one property bylaw 2024–19. Would anybody like to speak to the motion? Seeing none, I'll call the question all those in favor? Carried unanimously. I'll now move that Council give third reading to division of class 1 property bylaw 2024-19. Would anybody like to speak to the motion? Seeing none, I will call the question all of those in favor? Opposed? The motion is carried with Councilor Faubert opposed.
Mayor Krausert	I am now going to; I think what we are going to do is go straight to H1 and then we are going to take our lunchbreak. Oh, sorry there is one more motion. That the Council wave fees to convert tourist home properties to residential until December 31, 2026. Speaking to the motion, I think that this is the right thing to do in order for those who currently have personal use of tourist homes to give them that option at lowest cost as possible with regards to making the change of use. Would anybody else like to speak to that motion? Seeing none, I will call the question all of those in favor? Opposed? Carried unanimously.

Minister of Citizenship and Immigration *Appellant*

v.

Alexander Vavilov *Respondent*

and

Attorney General of Ontario,
Attorney General of Quebec,
Attorney General of British Columbia,
Attorney General of Saskatchewan,
Canadian Council for Refugees,
Advocacy Centre for Tenants Ontario - Tenant Duty Counsel Program,
Ontario Securities Commission,
British Columbia Securities Commission,
Alberta Securities Commission,
Ecojustice Canada Society,
Workplace Safety and Insurance Appeals Tribunal (Ontario),
Workers' Compensation Appeals Tribunal (Northwest Territories and Nunavut),
Workers' Compensation Appeals Tribunal (Nova Scotia),
Appeals Commission for Alberta Workers' Compensation,
Workers' Compensation Appeals Tribunal (New Brunswick),
British Columbia International Commercial Arbitration Centre Foundation,
Council of Canadian Administrative Tribunals,
National Academy of Arbitrators,
Ontario Labour-Management Arbitrators' Association,
Conférence des arbitres du Québec,
Canadian Labour Congress,
National Association of Pharmacy Regulatory Authorities,
Queen's Prison Law Clinic,
Advocates for the Rule of Law,
Parkdale Community Legal Services,
Cambridge Comparative Administrative Law Forum,

Ministre de la Citoyenneté et de l'Immigration *Appelant*

c.

Alexander Vavilov *Intimé*

et

Procureur général de l'Ontario,
procureure générale du Québec,
procureur général de la Colombie-Britannique,
procureur général de la Saskatchewan,
Conseil canadien pour les réfugiés,
Centre ontarien de défense des droits des locataires - Programme d'avocats de service en droit du logement,
Commission des valeurs mobilières de l'Ontario,
British Columbia Securities Commission,
Alberta Securities Commission,
Ecojustice Canada Society,
Tribunal d'appel de la sécurité professionnelle et de l'assurance contre les accidents du travail (Ontario),
Workers' Compensation Appeals Tribunal (Territoires du Nord-Ouest et Nunavut),
Tribunal d'appel des décisions de la Commission des accidents du travail de la Nouvelle-Écosse,
Appeals Commission for Alberta Workers' Compensation,
Tribunal d'appel des accidents au travail (Nouveau-Brunswick),
British Columbia International Commercial Arbitration Centre Foundation,
Conseil des tribunaux administratifs canadiens,
National Academy of Arbitrators,
Ontario Labour-Management Arbitrators' Association,
Conférence des arbitres du Québec,
Congrès du travail du Canada,
Association nationale des organismes de réglementation de la pharmacie,
Queen's Prison Law Clinic,
Advocates for the Rule of Law,

Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic, Canadian Bar Association, Canadian Association of Refugee Lawyers, Community & Legal Aid Services Programme, Association québécoise des avocats et avocates en droit de l'immigration and First Nations Child & Family Caring Society of Canada *Interveners*

Parkdale Community Legal Services, Cambridge Comparative Administrative Law Forum, Clinique d'intérêt public et de politique d'internet du Canada Samuelson-Glushko, Association du Barreau canadien, Association canadienne des avocats et avocates en droit des réfugiés, Community & Legal Aid Services Programme, Association québécoise des avocats et avocates en droit de l'immigration et Société de soutien à l'enfance et à la famille des Premières Nations du Canada *Intervenants*

INDEXED AS: CANADA (MINISTER OF CITIZENSHIP AND IMMIGRATION) *v.* VAVILOV

2019 SCC 65

File No.: 37748.

2018: December 4, 5, 6; 2019: December 19.

Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ.

ON APPEAL FROM THE FEDERAL COURT OF APPEAL

Administrative law — Judicial review — Standard of review — Proper approach to judicial review of administrative decisions — Proper approach to reasonableness review.

Citizenship — Canadian citizens — Registrar of Citizenship cancelling certificate of Canadian citizenship issued to Canadian-born son of parents later revealed to be Russian spies — Decision of Registrar based on interpretation of statutory exception to general rule that person born in Canada is Canadian citizen — Exception stating that Canadian-born child is not citizen if either parent was representative or employee in Canada of foreign government at time of child's birth — Whether Registrar's decision to cancel certificate of citizenship was reasonable — Citizenship Act, R.S.C. 1985, c. C-29, s. 3(2)(a).

RÉPERTORIÉ : CANADA (MINISTRE DE LA CITOYENNETÉ ET DE L'IMMIGRATION) *c.* VAVILOV

2019 CSC 65

N° du greffe : 37748.

2018 : 4, 5, 6 décembre; 2019 : 19 décembre.

Présents : Le juge en chef Wagner et les juges Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe et Martin.

EN APPEL DE LA COUR D'APPEL FÉDÉRALE

Droit administratif — Contrôle judiciaire — Norme de contrôle — Démarche appropriée pour le contrôle judiciaire des décisions administratives — Démarche appropriée pour l'application de la norme de la décision raisonnable.

Citoyenneté — Citoyens canadiens — Annulation par la greffière de la citoyenneté du certificat de citoyenneté canadienne délivré au fils né au Canada de parents qui se sont plus tard révélés être des espions russes — Décision rendue par la greffière sur son interprétation de l'exception prévue par la loi à l'égard de la règle générale suivant laquelle les personnes nées au Canada ont la citoyenneté canadienne — Exception précisant qu'un enfant né au Canada n'est pas citoyen canadien si, au moment de sa naissance, son père ou sa mère était représentant ou au service au Canada d'un gouvernement étranger — La décision de la greffière d'annuler le certificat de citoyenneté était-elle raisonnable? — Loi sur la citoyenneté, L.R.C. 1985, c. C-29, art. 3(2)a).

[9] The uncertainty that has followed *Dunsmuir* has been highlighted by judicial and academic criticism, litigants who have come before this Court, and organizations that represent Canadians who interact with administrative decision makers. These are not light critiques or theoretical challenges. They go to the core of the coherence of our administrative law jurisprudence and to the practical implications of this lack of coherence. This Court, too, has taken note. In *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29, [2016] 1 S.C.R. 770, at para. 19, Abella J. expressed the need to "simplify the standard of review labyrinth we currently find ourselves in" and offered suggestions with a view to beginning a necessary conversation on the way forward. It is in this context that the Court decided to grant leave to hear this case and the companion cases jointly.

[10] This process has led us to conclude that a reconsideration of this Court's approach is necessary in order to bring greater coherence and predictability to this area of law. We have therefore adopted a revised framework for determining the standard of review where a court reviews the merits of an administrative decision. The analysis begins with a presumption that reasonableness is the applicable standard in all cases. Reviewing courts should derogate from this presumption only where required by a clear indication of legislative intent or by the rule of law.

[11] The second aspect is the need for better guidance from this Court on the proper application of the reasonableness standard. The Court has heard concerns that reasonableness review is sometimes perceived as advancing a two-tiered justice system in which those subject to administrative decisions are entitled only to an outcome somewhere between "good enough" and "not quite wrong". These concerns have been echoed by some members of the legal profession, civil society organizations and legal clinics. The Court has an obligation to take these perspectives seriously and to ensure that the framework it adopts accommodates all types of administrative

[9] L'incertitude qui a suivi l'arrêt *Dunsmuir* a été mise en évidence par des critiques judiciaires et doctrinales, des plaideurs qui ont comparu devant notre Cour et des organisations représentant des Canadiens et des Canadiennes qui interagissent avec des décideurs administratifs. Il ne s'agit pas de critiques sans importance ou de difficultés théoriques. Ces critiques touchent au cœur de la cohérence de notre jurisprudence en droit administratif et aux ramifications pratiques de ce manque de cohérence. Notre Cour en a pris note elle aussi. Dans l'arrêt *Wilson c. Énergie Atomique du Canada Ltée*, 2016 CSC 29, [2016] 1 R.C.S. 770, par. 19, la juge Abella a exprimé le besoin de « simplifier le labyrinthe actuel de la norme de contrôle applicable » et a donné des suggestions dans le but d'amorcer un dialogue nécessaire sur la voie à suivre. C'est dans ce contexte que la Cour a décidé d'accorder l'autorisation d'appel pour instruire ensemble la présente affaire et les affaires connexes.

[10] Ce cheminement nous amène à conclure qu'il est nécessaire de revoir l'approche de la Cour afin d'apporter une cohérence et une prévisibilité accrues à ce domaine du droit. Nous adoptons donc un cadre d'analyse révisé permettant de déterminer la norme de contrôle applicable lorsqu'une cour de justice se penche sur le fond d'une décision administrative. Ce cadre d'analyse repose sur la présomption voulant que la norme de la décision raisonnable soit la norme applicable dans tous les cas. Les cours de révision ne devraient déroger à cette présomption que lorsqu'une indication claire de l'intention du législateur ou la primauté du droit l'exige.

[11] Le deuxième aspect concerne la nécessité d'indications plus précises de la Cour sur l'application appropriée de la norme de contrôle de la décision raisonnable. La Cour a entendu les préoccupations exprimées au sujet de la norme de la décision raisonnable qui est parfois perçue comme favorisant un système de justice à deux vitesses où les personnes visées par des décisions administratives n'ont droit qu'à un résultat se situant entre une solution « assez bonne » et une solution « pas trop mauvaise ». Ces préoccupations ont été reprises par des membres de la profession juridique, des organisations de la société civile et des cliniques juridiques. La Cour se

decision making, in areas that range from immigration, prison administration and social security entitlements to labour relations, securities regulation and energy policy.

[12] These concerns regarding the application of the reasonableness standard speak to the need for this Court to more clearly articulate what that standard entails and how it should be applied in practice. Reasonableness review is methodologically distinct from correctness review. It is informed by the need to respect the legislature's choice to delegate decision-making authority to the administrative decision maker rather than to the reviewing court. In order to fulfill *Dunsmuir*'s promise to protect "the legality, the reasonableness and the fairness of the administrative process and its outcomes", reasonableness review must entail a sensitive and respectful, but robust, evaluation of administrative decisions: para. 28.

[13] Reasonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers. However, it is not a "rubber-stamping" process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review.

[14] On the one hand, courts must recognize the legitimacy and authority of administrative decision makers within their proper spheres and adopt an appropriate posture of respect. On the other hand, administrative decision makers must adopt a culture of justification and demonstrate that their exercise of delegated public power can be "justified to citizens in terms of rationality and fairness": the Rt.

doit de prendre ces points de vue au sérieux et de voir à ce que le cadre d'analyse qu'elle retient s'adapte à tous les types de décisions administratives, qui vont de l'immigration, de l'administration carcérale et des programmes de sécurité sociale aux relations de travail, à la réglementation des valeurs mobilières et à la politique énergétique.

[12] Ces préoccupations sur l'application de la norme de la décision raisonnable témoignent de la nécessité d'expliquer plus clairement ce que signifie cette norme et comment elle devrait être appliquée en pratique. Le contrôle selon la norme de la décision raisonnable est méthodologiquement distinct du contrôle selon la norme de la décision correcte. Il tient compte de la nécessité de respecter le choix du législateur de déléguer le pouvoir décisionnel à un décideur administratif plutôt qu'à une cour de révision. Afin de remplir la promesse formulée dans l'arrêt *Dunsmuir* d'assurer « la légalité, la rationalité et l'équité du processus administratif et de la décision rendue », le contrôle selon la norme de la décision raisonnable doit comporter une évaluation sensible et respectueuse, mais aussi rigoureuse, des décisions administratives : par. 28.

[13] Le contrôle selon la norme de la décision raisonnable est une approche visant à faire en sorte que les cours de justice interviennent dans les affaires administratives uniquement lorsque cela est vraiment nécessaire pour préserver la légitimité, la rationalité et l'équité du processus administratif. Il tire son origine du principe de la retenue judiciaire et témoigne d'un respect envers le rôle distinct des décideurs administratifs. Toutefois, il ne s'agit pas d'une « simple formalité » ni d'un moyen visant à soustraire les décideurs administratifs à leur obligation de rendre des comptes. Ce type de contrôle demeure rigoureux.

[14] D'une part, les cours de justice doivent reconnaître la légitimité et la compétence des décideurs administratifs dans leur propre domaine et adopter une attitude de respect. D'autre part, les décideurs administratifs doivent adhérer à une culture de la justification et démontrer que l'exercice du pouvoir public qui leur est délégué peut être [TRADUCTION] « justifié aux yeux des citoyens et citoyennes sur

[119] Administrative decision makers are not required to engage in a formalistic statutory interpretation exercise in every case. As discussed above, formal reasons for a decision will not always be necessary and may, where required, take different forms. And even where the interpretive exercise conducted by the administrative decision maker is set out in written reasons, it may look quite different from that of a court. The specialized expertise and experience of administrative decision makers may sometimes lead them to rely, in interpreting a provision, on considerations that a court would not have thought to employ but that actually enrich and elevate the interpretive exercise.

[120] But whatever form the interpretive exercise takes, the merits of an administrative decision maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision. In this sense, the usual principles of statutory interpretation apply equally when an administrative decision maker interprets a provision. Where, for example, the words used are "precise and unequivocal", their ordinary meaning will usually play a more significant role in the interpretive exercise: *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10. Where the meaning of a statutory provision is disputed in administrative proceedings, the decision maker must demonstrate in its reasons that it was alive to these essential elements.

[121] The administrative decision maker's task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue. It cannot adopt an interpretation it knows to be inferior — albeit plausible — merely because the interpretation in question appears to be available and is expedient. The decision maker's responsibility is to discern meaning and legislative intent, not to "reverse-engineer" a desired outcome.

[119] Les décideurs administratifs ne sont pas tenus dans tous les cas de procéder à une interprétation formaliste de la loi. Comme nous l'avons déjà expliqué, il n'est pas toujours nécessaire de motiver formellement une décision. Dans les cas où il faut en fournir, les motifs peuvent revêtir diverses formes. Et même lorsque l'interprétation à laquelle se livre le décideur administratif est exposée dans des motifs écrits, elle pourrait sembler bien différente de celle effectuée par la cour de justice. L'expertise spécialisée et l'expérience des décideurs administratifs peuvent parfois les amener à s'en remettre, pour interpréter une disposition, à des considérations qu'une cour de justice n'aurait pas songé à évoquer, mais qui enrichissent et rehaussent bel et bien l'interprétation.

[120] Or, quelle que soit la forme que prend l'opération d'interprétation d'une disposition législative, le fond de l'interprétation de celle-ci par le décideur administratif doit être conforme à son texte, à son contexte et à son objet. En ce sens, les principes habituels d'interprétation législative s'appliquent tout autant lorsqu'un décideur administratif interprète une disposition. Par exemple, lorsque le libellé d'une disposition est « précis et non équivoque », son sens ordinaire joue normalement un rôle plus important dans le processus d'interprétation : *Hypothèques Trustco Canada c. Canada*, 2005 CSC 54, [2005] 2 R.C.S. 601, par. 10. Lorsque le sens d'une disposition législative est contesté au cours d'une instance administrative, il incombe au décideur de démontrer dans ses motifs qu'il était conscient de ces éléments essentiels.

[121] La tâche du décideur administratif est d'interpréter la disposition contestée d'une manière qui cadre avec le texte, le contexte et l'objet, compte tenu de sa compréhension particulière du régime législatif en cause. Toutefois, le décideur administratif ne peut adopter une interprétation qu'il sait de moindre qualité — mais plausible — simplement parce que cette interprétation paraît possible et opportune. Il incombe au décideur de véritablement s'efforcer de discerner le sens de la disposition et l'intention du législateur, et non d'échafauder une interprétation à partir du résultat souhaité.

SUPREME COURT OF CANADA

CITATION: Auer *v.* Auer, 2024 SCC 36

APPEAL HEARD: April 25, 2024
JUDGMENT RENDERED: November 8, 2024
DOCKET: 40582

BETWEEN:

Roland Nikolaus Auer
Appellant

and

Aysel Igorevna Auer and
Attorney General of Canada
Respondents

- and -

Attorney General of Ontario,
Attorney General of Quebec,
Attorney General of British Columbia,
Attorney General of Saskatchewan,
Trial Lawyers Association of British Columbia,
HIV & AIDS Legal Clinic Ontario, Health Justice Program,
Canadian Council for Refugees, City of Calgary,
Chicken Farmers of Canada, Egg Farmers of Canada,
Turkey Farmers of Canada, Canadian Hatching Egg Producers,
National Association of Pharmacy Regulatory Authorities,
Association québécoise des avocats et avocates en droit de l'immigration,
Workers' Compensation Board of British Columbia,
Canadian Association of Refugee Lawyers,
Advocates for the Rule of Law and Ecojustice Canada Society
Interveners

CORAM: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

REASONS FOR JUDGMENT: (paras. 1 to 117)	Côté J. (Wagner C.J. and Karakatsanis, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ. concurring)

Roland Nikolaus Auer *Appellant*

v.

Aysel Igorevna Auer and
Attorney General of Canada *Respondents*

and

Attorney General of Ontario,
Attorney General of Quebec,
Attorney General of British Columbia,
Attorney General of Saskatchewan,
Trial Lawyers Association of British Columbia,
HIV & AIDS Legal Clinic Ontario, Health Justice Program,
Canadian Council for Refugees, City of Calgary,
Chicken Farmers of Canada, Egg Farmers of Canada,
Turkey Farmers of Canada, Canadian Hatching Egg Producers,
National Association of Pharmacy Regulatory Authorities,
Association québécoise des avocats et avocates en droit de l'immigration,
Workers' Compensation Board of British Columbia,
Canadian Association of Refugee Lawyers,
Advocates for the Rule of Law and
Ecojustice Canada Society *Interveners*

Indexed as: Auer *v.* Auer

2024 SCC 36

File No.: 40582.

2024: April 25; 2024: November 8.

Present: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA

Administrative law — Judicial review — Standard of review — Subordinate legislation — Vires — Federal child support guidelines challenged as ultra vires Governor in Council — Standard of review applicable to review of vires of subordinate legislation — Whether child support guidelines within scope of authority delegated to Governor in Council by enabling statute — Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), s. 26.1 — Federal Child Support Guidelines, SOR/97-175.

The father and the mother were married in 2004, had one child together, and divorced in 2008. Their child resides with the mother. The father paid child support to the mother, but brought an application for judicial review challenging the *vires* of the *Federal Child Support Guidelines* ("*Guidelines*"), which determine the amount of child support to be paid in case of divorce. The father argued that the Governor in Council ("GIC") exceeded its authority under s. 26.1(1) and (2) of the *Divorce Act* when enacting the *Guidelines* because they require a payer parent to pay a greater share of the child-related costs than the recipient parent.

The chambers judge held that following *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, reasonableness is the presumptive standard of review for assessing the *vires* of subordinate legislation, but

that reasonableness review should be informed by the principles outlined in *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64. The chambers judge concluded that the *Guidelines* are *intra vires* and dismissed the father's application for judicial review.

The Court of Appeal unanimously dismissed the father's appeal but was divided on the applicable standard of review. The majority held that *Vavilov* did not overtake *Katz Group* and that to be *ultra vires* for being inconsistent with the purpose of the enabling statute, true regulations such as those established by the GIC must be irrelevant, extraneous, or completely unrelated to that purpose. A concurring judge held that the reasonableness standard applies when reviewing the *vires* of the *Guidelines*, and that the criteria set out in *Katz Group* inform reasonableness review.

Held: The appeal should be dismissed.

Vavilov's robust reasonableness standard is the presumptive standard for reviewing the *vires* of subordinate legislation. In the instant case, the *Guidelines* fall reasonably within the GIC's scope of authority under the *Divorce Act*, having regard to the relevant constraints. Under s. 26.1(1), the GIC is granted extremely broad authority to establish guidelines respecting child support. Section 26.1(2) constrains this authority by requiring that the guidelines be based on the principle that spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute. The *Guidelines* respect this constraint.

In *Vavilov*, the Court set out a comprehensive framework for determining the standard of review that applies to any substantive review of an administrative decision and, in doing so, contemplated questions involving challenges to the *vires* of subordinate legislation. *Vavilov*'s framework established a presumption of reasonableness review, subject to limited exceptions where the legislature has indicated that it intends a different standard to apply or where the rule of law requires that the correctness standard be applied. This framework applies to determining the standard for reviewing the *vires* of subordinate legislation. Subordinate legislation derives its validity from the statute which creates the power, and not from the executive body by which it is made. Accordingly, the identity of the decision maker who enacted it does not determine the standard of review. Unless the legislature has indicated otherwise, or the rule of law requires otherwise, the *vires* of subordinate legislation are to be reviewed on the reasonableness standard regardless of the delegate who enacted it, their proximity to the legislative branch or the process by which the subordinate legislation was enacted. In the instant case, the legislature has not indicated that the GIC's decision to establish the *Guidelines* must be reviewed on a standard other than reasonableness, nor does the rule of law require that questions of *vires*, in themselves, be reviewed for correctness. Accordingly, the presumptive standard of reasonableness applies.

In conducting a reasonableness review, the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision. Many of the principles from the Court's decision

in *Katz Group* continue to inform reasonableness review of the *vires* of subordinate legislation and remain good law. Specifically: (1) subordinate legislation must be consistent both with specific provisions of the enabling statute and with its overriding purpose or object; (2) subordinate legislation benefits from a presumption of validity; (3) the challenged subordinate legislation and the enabling statute should be interpreted using a broad and purposive approach to statutory interpretation; and (4) a *vires* review does not involve assessing the policy merits of the subordinate legislation to determine whether it is necessary, wise, or effective in practice.

All of the above principles from *Katz Group*, including the principle that subordinate legislation benefits from a presumption of validity, have been repeatedly affirmed by the Court's jurisprudence. The presumption of validity has two aspects: (1) it places the burden on challengers to demonstrate the invalidity of subordinate legislation; and (2) it favours an interpretive approach that reconciles the subordinate legislation with its enabling statute so that, where possible, the subordinate legislation is construed in a manner which renders it *intra vires*. When the reasonableness standard applies, challengers must demonstrate that the subordinate legislation does not fall within a reasonable interpretation of the delegate's statutory authority to overcome the presumption of validity. For subordinate legislation to be found *ultra vires* on the basis that it is inconsistent with the purpose of the enabling statute, it no longer needs to be irrelevant, extraneous or completely unrelated to that statutory purpose — maintaining this threshold from *Katz Group* in the face of the significant sea change brought about by *Vavilov* would perpetuate uncertainty in the law, would be inconsistent with the

robust reasonableness review detailed in *Vavilov*, and would undermine *Vavilov*'s promise of simplicity, predictability and coherence. As such, there is a sound basis for a narrow departure from *Katz Group*.

Reasonableness review is possible in the absence of formal reasons. Most of the time, formal reasons are not provided for the enactment of subordinate legislation; however, *Vavilov* contemplated reasonableness review in the absence of formal reasons, including in the context of a *vires* review of subordinate legislation. The reasoning process can often be deduced from various sources. Furthermore, reasonableness review is not an examination of policy merits. A court's role is to review the legality or validity of the subordinate legislation, not to review whether it is necessary, wise, or effective in practice. Potential or actual consequences of the subordinate legislation are relevant only insofar as a reviewing court must determine whether the statutory delegate was reasonably authorized to enact subordinate legislation that would have such consequences. The reasonableness standard does not assess the reasonableness of the rules promulgated by the relevant authority nor is it an inquiry into its underlying political, economic, social, or partisan considerations; rather reviewing the *vires* of subordinate legislation is fundamentally an exercise of statutory interpretation to ensure that the delegate has acted within the scope of their lawful authority under the enabling statute. The governing statutory scheme, other applicable statutory or common law, and the principles of statutory interpretation are relevant constraints when reviewing the *vires* of subordinate legislation. The language chosen by the legislature in an enabling statute describes the limits and contours of a delegate's

authority. The legislature may use precise and narrow language to delineate the power in detail, thereby tightly constraining the delegate's authority, or may use broad, open-ended or highly qualitative language, thereby conferring broad authority on the delegate. Statutory delegates must respect the legislature's choice in this regard. The scope of a statutory delegate's authority may also be constrained by other statutory or common law. Unless the enabling statute provides otherwise, when enacting subordinate legislation, statutory delegates must adopt an interpretation of their authority that is consistent with other legislation and applicable common law principles.

In addition, statutory delegates are empowered to interpret the scope of their authority when enacting subordinate legislation, but their interpretation must be consistent with the text, context, and purpose of the enabling statute. The words of the enabling statute must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament, in accordance with the modern principle of statutory interpretation. In conducting a *vires* review, a court does not undertake a *de novo* analysis to determine the correct interpretation of the enabling statute and then ask whether, on that interpretation, the delegate had the authority to enact the subordinate legislation. Rather, the court ensures that the delegate's exercise of authority falls within a reasonable interpretation of the enabling statute, having regard to the relevant constraints.

Applying the reasonableness standard to review the *vires* of the *Guidelines*, the conclusion is that they are within the GIC's scope of authority and are therefore *intra vires*. The GIC's statutory grant of authority is extremely broad. The GIC was entitled to choose an approach to calculating child support that (1) does not take into account the recipient parent's income; (2) assumes that parents spend the same linear percentage of income on their children regardless of the parents' levels of income and the children's ages; (3) does not take into account government child benefits paid to recipient parents; (4) does not take into account direct spending on the child by the payer parent when that parent exercises less than 40 percent of annual parenting time; and (5) risks double counting certain special or extraordinary expenses. Each of these decisions fell squarely within the scope of the authority delegated to the GIC under the *Divorce Act*.

Cases Cited

Applied: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653; **explained:** *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810; **referred to:** *Green v. Law Society of Manitoba*, 2017 SCC 20, [2017] 1 S.C.R. 360; *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22, [2018] 1 S.C.R. 635; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31, [2018] 2 S.C.R. 230; *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5; *United Taxi Drivers' Fellowship of Southern*

Alberta v. Calgary (City), 2004 SCC 19, [2004] 1 S.C.R. 485; *Jafari v. Canada (Minister of Employment and Immigration)*, [1995] 2 F.C. 595; *Thorne's Hardware Ltd. v. The Queen*, [1983] 1 S.C.R. 106; *Terrigno v. Calgary (City)*, 2021 ABQB 41, 1 Admin. L.R. (7th) 134; *Canada (Attorney General) v. Power*, 2024 SCC 26; *R. v. Kirkpatrick*, 2022 SCC 33; *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11, [2021] 1 S.C.R. 175; *Reference re Impact Assessment Act*, 2023 SCC 23; *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17; *La Rose v. Canada*, 2023 FCA 241, 488 D.L.R. (4th) 340; *Portnov v. Canada (Attorney General)*, 2021 FCA 171, [2021] 4 F.C.R. 501; *Innovative Medicines Canada v. Canada (Attorney General)*, 2022 FCA 210, 8 Admin. L.R. (7th) 44; *Reference as to the Validity of the Regulations in relation to Chemicals*, [1943] S.C.R. 1; *British Columbia (Attorney General) v. Le*, 2023 BCCA 200, 482 D.L.R. (4th) 20; *Minister of Indian Affairs and Northern Development v. Ranville*, [1982] 2 S.C.R. 518; *Montréal (City) v. Montreal Port Authority*, 2010 SCC 14, [2010] 1 S.C.R. 427; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Canada (Transport, Infrastructure and Communities) v. Farwaha*, 2014 FCA 56, [2015] 2 F.C.R. 1006; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *Michel v. Graydon*, 2020 SCC 24, [2020] 2 S.C.R. 763; *Childs v. Childs* (1990), 107 N.B.R. (2d) 176; *Francis v. Baker*, [1999] 3 S.C.R. 250; *D.B.S. v. S.R.G.*, 2006 SCC 37, [2006] 2 S.C.R. 231; *Contino v. Leonelli-Contino*, 2005 SCC 63, [2005] 3 S.C.R. 217.

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APPEAL from a judgment of the Alberta Court of Appeal (Crighton, Pentelechuk and Feehan JJ.A.), 2022 ABCA 375, 52 Alta. L.R. (7th) 8, [2023] 3 W.W.R. 209, 81 R.F.L. (8th) 338, [2022] A.J. No. 1389 (Lexis), 2022 CarswellAlta 3388 (WL), affirming a decision of Rothwell J., 2021 ABQB 370, 32 Alta. L.R. (7th) 250, [2021] A.J. No. 651 (Lexis), 2021 CarswellAlta 1166 (WL). Appeal dismissed.

Laura Warner, *Ronald Robinson*, *Ryan Phillips* and *Paul Daly*, for the appellant.

Tina Huizinga, K.C., for the respondent Aysel Igorevna Auer.

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Judie Im and *Michele Valentini*, for the intervener the Attorney General of Ontario.

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Mannu Chowdhury, for the interveners the HIV & AIDS Legal Clinic Ontario and the Health Justice Program.

Jamie Liew and *Kamaljit Lehal*, for the intervener the Canadian Council for Refugees.

Henry Chan and *Andrea Cole*, for the intervener the City of Calgary.

Alyssa Holland, *David Wilson* and *Julie Mouris*, for the interveners the Chicken Farmers of Canada, the Egg Farmers of Canada, the Turkey Farmers of Canada and the Canadian Hatching Egg Producers.

William W. Shores, K.C., and *Annabritt N. Chisholm*, for the intervener the National Association of Pharmacy Regulatory Authorities.

Lawrence David and *Gjergji Hasa*, for the intervener Association québécoise des avocats et avocates en droit de l'immigration.

Johanna Goosen, for the intervener the Workers' Compensation Board of British Columbia.

Andrew J. Brouwer and *Erin V. Simpson*, for the intervener the Canadian Association of Refugee Lawyers.

Ewa Krajewska, *Peter Henein* and *Brandon Chung*, for the intervener the Advocates for the Rule of Law.

Lindsay Beck and *Joshua Ginsberg*, for the intervener the Ecojustice Canada Society.

The judgment of the Court was delivered by

CÔTÉ J. —

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I. Overview

[1] The *Federal Child Support Guidelines*, SOR/97-175 ("*Child Support Guidelines*"), established by the Governor in Council ("GIC") under the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), determine the amount of child support to be paid in case of divorce, except in the province of Quebec. The appellant, Roland Nikolaus Auer, challenges the *vires* of the *Child Support Guidelines*. This challenge requires our Court to determine whether the GIC acted within the scope of its delegated authority in establishing the *Child Support Guidelines*.

[2] To answer this question, our Court has to determine the standard of review that applies when reviewing the *vires* of subordinate legislation. Doing so requires the Court to resolve debates about the continued relevance of *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810, in light of our Court's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653.

[3] I conclude that the reasonableness standard as set out in *Vavilov* presumptively applies when reviewing the *vires* of subordinate legislation. I also conclude that some of the principles from *Katz Group* continue to inform such reasonableness review: (1) subordinate legislation must be consistent both with specific provisions of the enabling statute and with its overriding purpose or object; (2) subordinate legislation benefits from a presumption of validity; (3) the challenged subordinate legislation and the enabling statute should be interpreted using a broad and purposive approach to statutory interpretation; and (4) a *vires* review does not involve assessing the policy merits of the subordinate legislation to determine whether it is necessary, wise, or effective in practice.

[4] However, for subordinate legislation to be found *ultra vires* on the basis that it is inconsistent with the purpose of the enabling statute, it no longer needs to be "irrelevant", "extraneous" or "completely unrelated" to that statutory purpose. Continuing to maintain this threshold from *Katz Group* would be inconsistent with the

robust reasonableness review detailed in *Vavilov* and would undermine *Vavilov*'s promise of simplicity, predictability and coherence.

[5] The *Child Support Guidelines* are *intra vires* the GIC. They fall within a reasonable interpretation of the scope of the GIC's authority under s. 26.1 of the *Divorce Act*, having regard to the relevant constraints. Section 26.1(1) of the *Divorce Act* grants the GIC extremely broad authority to establish guidelines respecting child support. This authority is constrained by s. 26.1(2) of the *Divorce Act*, which requires that the guidelines be based on the principle that spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute. The *Child Support Guidelines* respect this constraint.

[6] Contrary to Mr. Auer's submissions, in selecting an approach to calculating child support, the GIC was authorized to: (1) not take into account the recipient parent's income; (2) assume that parents spend the same linear percentage of income on their children regardless of the parents' levels of income and the children's ages; (3) not take into account government child benefits paid to recipient parents; (4) not take into account direct spending on the child by the payer parent when that parent exercises less than 40 percent of annual parenting time; and (5) risk the double counting of certain special or extraordinary expenses. Each of these decisions falls squarely within the scope of the authority delegated to the GIC under the *Divorce Act*. Accordingly, I would dismiss Mr. Auer's appeal.

II. Facts

[7] Roland Auer and the respondent Aysel Igorevna Auer were married in 2004. They had one child together in 2005 and divorced in 2008. Their child resides with Ms. Auer. Mr. Auer has paid both child and spousal support to Ms. Auer. Mr. Auer also has children from other marriages to whom he owes, or has owed, support.

[8] Mr. Auer brought an application for judicial review challenging the *vires* of the *Child Support Guidelines*. He argued that the GIC exceeded its authority under s. 26.1(1) and (2) of the *Divorce Act* when enacting the *Child Support Guidelines* because they require a payer parent to pay a greater share of the child-related costs than the recipient parent. Ms. Auer did not participate in the application before the Court of Queen's Bench of Alberta, and the Attorney General of Canada was granted leave to intervene with broad rights, such that he is now a respondent in this matter.

[9] Mr. Auer and Ms. Auer have ongoing applications before the Court of King's Bench of Alberta concerning child and spousal support issues. Those applications have been heard and are subject to the outcome of this appeal.

III. Judicial History

A. *Court of Queen's Bench of Alberta, 2021 ABQB 370, 32 Alta. L.R. (7th) 250*

[10] The chambers judge dismissed Mr. Auer's application for judicial review. He held that, following *Vavilov*, the presumptive standard of review for assessing the

vires of subordinate legislation is reasonableness, but that reasonableness review should be informed by the principles outlined in *Katz Group*.

[11] The chambers judge held that s. 26.1(1) of the *Divorce Act*, which authorizes the GIC to establish guidelines respecting orders for child support, confers the GIC an "extremely broad grant of authority", and that the *Child Support Guidelines*' provisions were not irrelevant, extraneous or unrelated to the purpose of child support (para. 52; see also paras. 76 and 78).

[12] Mr. Auer argued that the *Child Support Guidelines* are *ultra vires* because they require the payer parent to pay a greater share of the child-related costs than the recipient parent. He relied heavily on s. 26.1(2) of the *Divorce Act*, which he said imposes a specific constraint on the GIC's regulation-making authority. Section 26.1(2) provides that the *Child Support Guidelines* "shall be based on the principle that spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute to the performance of that obligation". Mr. Auer argued that specific aspects of the *Child Support Guidelines* violate the constraint imposed in s. 26.1(2) of the *Divorce Act* by requiring the payer parent to bear a greater share of the child-related costs than the recipient parent. These aspects include the presumption that both parents earn the same income, a court's authority to award special or extraordinary expenses under s. 7 of the *Child Support Guidelines* and the decision not to include child tax benefits as part of the recipient parent's income.

[13] The chambers judge accepted that s. 26.1(2) "informs, and to a degree, constrains" the GIC's grant of authority, but held that this constraint must be weighed against the GIC's extremely broad grant of authority under s. 26.1(1) (para. 52). In his view, most of the issues Mr. Auer raised fell outside of a *vires* review because they sought to impugn the GIC's policy decisions and ignored the GIC's broad discretion under the *Divorce Act*. The chambers judge ultimately concluded that the *Child Support Guidelines* are *intra vires*.

B. *Court of Appeal of Alberta, 2022 ABCA 375, 52 Alta. L.R. (7th) 8*

[14] The Court of Appeal unanimously dismissed Mr. Auer's appeal. However, the court was divided on the standard of review applicable to a review of the *vires* of subordinate legislation.

[15] Writing for the majority, Pentelechuk J.A. held that *Vavilov* did not overtake *Katz Group*. In her view, to be *ultra vires* for being inconsistent with the purpose of the enabling statute, "true regulations" (para. 34), such as those established by the GIC, which create law through the exercise of a legislative function, must be "irrelevant", "extraneous" or "completely unrelated" to that purpose (*Katz Group*, at para. 28). However, the reasonableness standard applies when reviewing "bylaws, rules, and regulations made by administrative tribunals or municipal governments" (C.A. reasons, at para. 34; see also para. 20).

[16] Like the chambers judge, Pentelechuk J.A. concluded that the *Child Support Guidelines* are not "irrelevant", "extraneous" or "completely unrelated" to the *Divorce Act*'s purpose. She noted that "[w]hile the *Guidelines* may not be perfect, time has demonstrated that they have achieved the stated intent of predictability and ease of use" (para. 113). She found that the chambers judge's analysis was thorough and properly alive to the limitations of reviewing subordinate legislation and to the fact that Mr. Auer's arguments were inextricably woven with policy disputes. Thus, she dismissed Mr. Auer's appeal.

[17] Justice Feehan concurred in the result but held that the reasonableness standard under the *Vavilov* framework applies when reviewing the *vires* of the *Child Support Guidelines*. In his view, the criteria set out in *Katz Group* inform reasonableness review.

IV. Issues

[18] The issues on appeal are as follows:

1. What is the applicable standard of review when reviewing the *vires* of subordinate legislation?

2. Are the *Child Support Guidelines ultra vires* the GIC under the *Divorce Act*?

V. Standard of Review

A. *Vavilov Is the Starting Point for Determining the Appropriate Standard of Review*

[19] *Vavilov* represented a "recalibration of the governing approach to the choice of standard of review analysis and a clarification of the proper application of the reasonableness standard" (para. 143). It "set out a holistic revision of the framework for determining the applicable standard of review" when conducting a substantive review of an administrative decision (*ibid.*). Our Court explained that *Vavilov* is the starting point: "A court seeking to determine what standard is appropriate in a case before it should look to these reasons first in order to determine how this general framework applies to that case" (*ibid.*).

[20] That said, *Vavilov* was not itself a case about the *vires* of subordinate legislation. It involved the judicial review of a decision by the Canadian Registrar of Citizenship to cancel Mr. Vavilov's certificate of citizenship on the basis that he was not a Canadian citizen under s. 3(1)(a) of the *Citizenship Act*, R.S.C. 1985, c. C-29, because he fell within the ambit of an exception set out at s. 3(2)(a). Thus, in *Vavilov*, our Court did not explicitly settle the standard of review that applies when reviewing the *vires* of subordinate legislation (J. M. Keyes, "Judicial Review of Delegated Legislation — The Road Beyond *Vavilov*" (2022), 35 *C.J.A.L.P.* 69, at p. 100). However, as I explain below, *Vavilov* provides the appropriate framework for

determining the standard of review in this context. Under that framework, I conclude that the reasonableness standard applies to the *vires* challenge in this case.

B. *The Vavilov Framework Applies When Reviewing the Vires of Subordinate Legislation*

[21] In *Vavilov*, our Court set out a comprehensive framework for determining the standard of review that applies to any substantive review of an administrative decision (para. 17). In doing so, this Court brought "greater coherence and predictability to this area of law" and eliminated the need for courts to engage in a contextual inquiry to determine the appropriate standard of review (paras. 10 and 17). Our Court recognized that "the sheer variety of decisions and decision makers" posed a challenge to developing a coherent and unified approach to judicial review (para. 88). We ensured that the revised framework "accommodates all types of administrative decision making, in areas that range from immigration, prison administration and social security entitlements to labour relations, securities regulation and energy policy" (para. 11). These include decisions of "specialized tribunals exercising adjudicative functions, independent regulatory bodies, ministers, front-line decision makers, and more . . . vary[ing] in complexity and importance, ranging from the routine to the life-altering . . . includ[ing] matters of 'high policy' on the one hand and 'pure law' on the other" (para. 88).

[22] In setting out *Vavilov*'s comprehensive framework, our Court expressly contemplated questions of *vires*. Specifically, this Court ceased to recognize

jurisdictional questions — also referred to as "true questions of jurisdiction or *vires*" — as a distinct category of questions attracting correctness review (paras. 65-67 and 200). In doing so, we expressly referred to cases involving challenges to the *vires* of subordinate legislation, including *Green v. Law Society of Manitoba*, 2017 SCC 20, [2017] 1 S.C.R. 360, and *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22, [2018] 1 S.C.R. 635 (*Vavilov*, at para. 66). This Court explained that "it is often difficult to distinguish between exercises of delegated power that raise truly jurisdictional questions from those entailing an unremarkable application of an enabling statute", especially where, as in *Green* and *West Fraser Mills*, "the legislature has delegated broad authority to an administrative decision maker that allows the latter to make regulations in pursuit of the objects of its enabling statute" (*Vavilov*, at para. 66, citing *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31, [2018] 2 S.C.R. 230, at para. 111, per Brown J., concurring).

[23] *Vavilov*'s framework applies to determining the standard for reviewing the *vires* of subordinate legislation. *Vavilov* set out a comprehensive framework for determining the applicable standard of review and, in doing so, contemplated questions of *vires*.

C. *Reasonableness Is the Presumptive Standard for Reviewing the Vires of Subordinate Legislation*

[24] *Vavilov*'s framework established a presumption of reasonableness review. It set out limited exceptions where the legislature has indicated that it intends a different standard to apply or where the rule of law requires that the correctness standard be applied (para. 17). The questions for which the rule of law requires that the correctness standard be applied include: (1) constitutional questions that require a final and determinate answer from the courts; (2) general questions of law of central importance to the legal system as a whole; and (3) questions related to the jurisdictional boundaries between two or more administrative bodies (para. 53).

[25] No exception to the presumption of reasonableness review applies in this case. The legislature has not indicated that the GIC's decision to establish the *Child Support Guidelines* must be reviewed on a standard other than reasonableness, nor does the rule of law require that the correctness standard be applied to a *vires* review of the *Child Support Guidelines*.

[26] In *Vavilov*, our Court explained that the rule of law does not require that questions of *vires*, in themselves, be reviewed for correctness (paras. 67-69 and 109; see also J. M. Keyes, *Executive Legislation* (3rd ed. 2021), at pp. 171-72). A robust reasonableness review is sufficient to ensure that statutory delegates act within the scope of their lawful authority (*Vavilov*, at paras. 67-69 and 109). Further, when explaining that reasonableness review can be conducted even in the absence of reasons, our Court cited *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012]

1 S.C.R. 5, and *Green*, both of which involved a review of the *vires* of subordinate legislation (*Vavilov*, at para. 137).

[27] All of this indicates that *Vavilov*'s robust reasonableness standard is the default standard when reviewing the *vires* of subordinate legislation (Keyes (2021), at p. 171; see also Keyes (2022); P. Daly, *A Culture of Justification: Vavilov and the Future of Administrative Law* (2023), at pp. 146-47; M. P. Mancini, "One Rule to Rule Them All: Subordinate Legislation and the Law of Judicial Review" (2024), 55 *Ottawa L. Rev.* 245). However, in exceptional cases, a *vires* review may engage a question that the rule of law requires be reviewed for correctness. In such cases, the presumption of reasonableness review may be rebutted. For example, a challenge to the validity of subordinate legislation on the basis that it fails to respect the division of powers between Parliament and provincial legislatures would require that the correctness standard be applied.

[28] Reviewing the *vires* of the *Child Support Guidelines* does not engage a question that the rule of law requires be reviewed for correctness. Accordingly, the presumptive standard of reasonableness applies in this case.

D. *What Is the Role of Katz Group?*

(1) Many of the Principles From *Katz Group* Continue To Apply

[29] In *Katz Group*, our Court upheld the validity of Ontario regulations adopted by the Lieutenant Governor in Council that aimed to control the price of prescription drugs. Justice Abella, writing for our Court, did not discuss the applicable standard of review. However, she outlined the following principles for assessing the *vires* of subordinate legislation:

- "A successful challenge to the *vires* of regulations requires that they be shown to be inconsistent with the objective of the enabling statute or the scope of the statutory mandate" (para. 24);

- "Regulations benefit from a presumption of validity . . . . This presumption has two aspects: it places the burden on challengers to demonstrate the invalidity of regulations . . . and it favours an interpretive approach that reconciles the regulation with its enabling statute so that, where possible, the regulation is construed in a manner which renders it *intra vires*" (para. 25 (emphasis deleted));

- "Both the challenged regulation and the enabling statute should be interpreted using a 'broad and purposive approach . . . consistent with the Court's approach to statutory interpretation generally'" (para. 26, quoting *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, [2004] 1 S.C.R. 485, at para. 8);

- "This inquiry does not involve assessing the policy merits of the regulations to determine whether they are 'necessary, wise, or effective in practice'" (para. 27, quoting *Jafari v. Canada (Minister of Employment and Immigration)*, [1995] 2 F.C. 595 (C.A.), at p. 604). "It is not an inquiry into the underlying 'political, economic, social or partisan considerations'" or an assessment of whether the regulations "will actually succeed at achieving the statutory objectives" (para. 28, quoting *Thorne's Hardware Ltd. v. The Queen*, [1983] 1 S.C.R. 106, at pp. 112-13);

- The regulations "must be 'irrelevant', 'extraneous' or 'completely unrelated' to the statutory purpose to be found *ultra vires* on the basis of inconsistency with statutory purpose" (para. 28).

[30] For convenience, I will refer to the final principle as the "irrelevant", "extraneous" or "completely unrelated" threshold.

[31] In setting out *Vavilov*'s comprehensive framework for determining the applicable standard of review, our Court did not entirely discard prior jurisprudence. Rather, the Court explicitly stated that "past precedents will often continue to provide helpful guidance" (para. 143). This remains true even when considering cases involving "true questions of jurisdiction or *vires*", though they "will necessarily have less precedential force" because *Vavilov* ceased to recognize such questions as a

distinct category attracting correctness review (paras. 65 and 143). As Paul Daly explains, "past jurisprudence has not been 'ousted'" by *Vavilov* ((2023), at pp. 148-49, citing *Terrigno v. Calgary (City)*, 2021 ABQB 41, 1 Admin. L.R. (7th) 134, at para. 62). Since *Katz Group* involved a true question of jurisdiction or *vires*, the Court must carefully examine the role of that case going forward.

[32] In my view, all of the above-mentioned principles in *Katz Group*, except for the "irrelevant", "extraneous" or "completely unrelated" threshold, remain good law and continue to inform the review of the *vires* of subordinate legislation. As I will explain, the significant sea change brought about by *Vavilov* in favour of a presumption of reasonableness as a basis for review erodes the rationale for the "irrelevant", "extraneous" or "completely unrelated" threshold, and maintaining this threshold would perpetuate uncertainty in the law. Accordingly, there is sound basis for a narrow departure from *Katz Group* (see *Canada (Attorney General) v. Power*, 2024 SCC 26, at paras. 98 and 209; *R. v. Kirkpatrick*, 2022 SCC 33, at para. 202, per Côté, Brown and Rowe JJ., concurring). Otherwise, *Katz Group* continues to "provide valuable guidance on the application of the reasonableness standard" (Daly (2023), at p. 148). To the extent that the principles in *Katz Group* do not conflict with *Vavilov*, they "are to form part of the application of the reasonableness standard" (p. 149).

[33] For greater clarity, the principle that subordinate legislation "must be consistent both with specific provisions of the enabling statute and with its overriding purpose or object" continues to apply when conducting a *vires* review (*References re*

Greenhouse Gas Pollution Pricing Act, 2021 SCC 11, [2021] 1 S.C.R. 175, at para. 87; see also *Vavilov*, at paras. 108 and 110; *Reference re Impact Assessment Act*, 2023 SCC 23, at para. 283, per Karakatsanis and Jamal JJ., dissenting in part, but not on this point). The principle that subordinate legislation benefits from a presumption of validity also continues to apply (*Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17, at para. 54). Further, the challenged subordinate legislation and the enabling statute should continue to be interpreted using a broad and purposive approach (*Green*, at para. 28; *West Fraser Mills*, at para. 12). Finally, a *vires* review does not involve assessing the policy merits of the subordinate legislation to determine whether it is "necessary, wise, or effective in practice". Courts are to review only the legality or validity of subordinate legislation (*West Fraser Mills*, at para. 59, per Côté J., dissenting, but not on this point; *La Rose v. Canada*, 2023 FCA 241, 488 D.L.R. (4th) 340, at para. 26; see also Mancini, at p. 276).

[34] These well-established principles are consistent with *Vavilov*, and they should continue to be applied in accordance with the foundational common law principle of *stare decisis*.

[35] As explained, *Vavilov* recognized the continued relevance and application of prior jurisprudence insofar as that jurisprudence is consistent with *Vavilov*'s framework for determining the appropriate standard of review and its principles governing robust reasonableness review. Nothing in *Vavilov* contradicts the principles that: (1) subordinate legislation "must be consistent both with specific provisions of the

enabling statute and with its overriding purpose or object", (2) the challenged subordinate legislation and the enabling statute are to be interpreted using a broad and purposive approach to statutory interpretation and (3) a review of the *vires* of subordinate legislation does not involve assessing policy merits.

[36] The principle that subordinate legislation benefits from a presumption of validity has been criticized by some for being inconsistent with *Vavilov* (see *Portnov v. Canada (Attorney General)*, 2021 FCA 171, [2021] 4 F.C.R. 501, at paras. 20-22; *Innovative Medicines Canada v. Canada (Attorney General)*, 2022 FCA 210, 8 Admin. L.R. (7th) 44, at para. 30). However, this criticism is mistaken.

[37] In *Katz Group*, our Court explained that this presumption has two aspects: (1) "it places the burden on challengers to demonstrate the invalidity of [subordinate legislation]"; and (2) "it favours an interpretive approach that reconciles the [subordinate legislation] with its enabling statute so that, *where possible*, the [subordinate legislation] is construed in a manner which renders it *intra vires*" (para. 25 (emphasis in original)).

[38] The first aspect — that the burden is on challengers to demonstrate the invalidity of subordinate legislation — is uncontroversial. Indeed, in *Vavilov*, our Court explained that where an administrative decision is reviewed for reasonableness, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (para. 100).

[39] The second aspect — that, *where possible*, subordinate legislation should be construed in a manner that renders it *intra vires* — is also consistent with *Vavilov*. This aspect does not heighten the burden that challengers would otherwise face pursuant to *Vavilov*. The burden on challengers depends on the applicable standard of review. If the reasonableness standard applies, to overcome the presumption of validity, challengers must demonstrate that the subordinate legislation does not fall within a *reasonable* interpretation of the delegate's statutory authority. If the correctness standard applies, challengers can overcome the presumption of validity by demonstrating that the subordinate legislation does not fall within the *correct* interpretation of the delegate's statutory authority.

[40] All of these principles from *Katz Group*, including the principle that subordinate legislation benefits from a presumption of validity, have been repeatedly affirmed by our Court (see *Vavilov*, at paras. 108 and 110; *References re Greenhouse Gas Pollution Pricing Act*, at para. 87; *Reference re Impact Assessment Act*, at para. 283; *Canadian Council for Refugees*, at para. 54; *Green*, at para. 28; *West Fraser Mills*, at paras. 12 and 59). In these circumstances, it would be inconsistent with the common law tradition and the principle of *stare decisis* to discard *Katz Group* and the continued application of these principles.

(2) The "Irrelevant", "Extraneous" or "Completely Unrelated" Threshold Is No Longer Relevant

[41] Writing for a majority of the Court of Appeal, Pentelechuk J.A. held that the *vires* of the *Child Support Guidelines* was to be reviewed on the basis of the "irrelevant", "extraneous" or "completely unrelated" threshold, instead of on the reasonableness standard in accordance with *Vavilov*. I disagree. As I explain in this section, the conceptual basis for the "irrelevant", "extraneous" or "completely unrelated" threshold does not hold in a legal landscape now organized by the principles set out in *Vavilov*, which centre around reasonableness review. This threshold from *Katz Group* is now out of step with these principles; maintaining it would perpetuate uncertainty in the law. Accordingly, the "irrelevant", "extraneous" or "completely unrelated" threshold does not provide a standalone rule for a *vires* review.

[42] Justice Pentelechuk distinguished between "true regulations", which create law through the exercise of a legislative function, such as those passed by the GIC, and "bylaws, rules, and regulations made by administrative tribunals or municipal governments" (paras. 20 and 34). She held that the *vires* of "true regulations" are not to be reviewed on the reasonableness standard; rather, the appropriate test is whether they are "irrelevant", "extraneous" or "completely unrelated" to the purpose of their enabling statute, as outlined in *Katz Group*. By contrast, the *vires* of bylaws, rules and regulations made by administrative tribunals or municipal governments are to be reviewed for reasonableness (para. 82). In making this distinction, Pentelechuk J.A. relied on the fact that "true regulations" are subject to a "consultation process culminating in parliamentary review" while "bylaws, rules, and regulations made by administrative tribunals or municipal governments" are not (para. 34).

[43] According to Pentelechuk J.A., the appropriate standard for reviewing the *vires* of subordinate legislation depends on the identity of the decision maker who enacted it. I disagree. The identity of the decision maker does not determine the standard of review. "Regulations 'derive their validity from the statute which creates the power, and not from the executive body by which they are made'" (*Canadian Council for Refugees*, at para. 51, citing *Reference as to the Validity of the Regulations in relation to Chemicals*, [1943] S.C.R. 1, at p. 13). In *Vavilov*, our Court noted the "sheer variety of [administrative] decisions and decision makers" and yet confirmed that reasonableness is a single standard that takes account of this diversity (para. 88).

[44] To summarize, unless the legislature has indicated otherwise or if a matter invokes an issue pertaining to the rule of law which would require a review on the basis of correctness, the *vires* of subordinate legislation are to be reviewed on the reasonableness standard regardless of the delegate who enacted it, their proximity to the legislative branch or the process by which the subordinate legislation was enacted. Introducing these distinctions into the standard of review framework would be "contrary to the *Vavilovian* purposes of simplification and clarity" (P. Daly, *Resisting which Siren's Call? Auer v Auer, 2022 ABCA 375 and TransAlta Generation Partnership v Alberta (Minister of Municipal Affairs), 2022 ABCA 381*, November 24 2022 (online); Daly (2023), at p. 147).

[45] In concurring reasons, Feehan J.A. held that while the *vires* of subordinate legislation are to be reviewed for reasonableness pursuant to *Vavilov*, the "irrelevant",

"extraneous" or "completely unrelated" threshold informs that analysis. He explained that the presumption that subordinate legislation is valid may "be overcome if the regulation is 'irrelevant', 'extraneous' or 'completely unrelated' to the objectives of governing statutes" (para. 123(b)). The chambers judge was of a similar view (see paras. 17 and 78). I reject this approach. The "irrelevant", "extraneous" or "completely unrelated" threshold should not inform reasonableness review under the *Vavilov* framework. This is because that threshold is inconsistent with robust reasonableness review under that framework and because maintaining it would undermine *Vavilov*'s promise of simplicity, predictability and coherence.

[46] Reasonableness review ensures that courts intervene in administrative matters where it is truly necessary to do so to safeguard the legality, rationality and fairness of the administrative process (*Vavilov*, at para. 13). While reasonableness review "finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers", "[i]t remains a robust form of review" (*ibid.*). By contrast, the "irrelevant", "extraneous" or "completely unrelated" threshold connotes a very high degree of deference, one that is inconsistent with the degree of scrutiny required under a reasonableness review (see *British Columbia (Attorney General) v. Le*, 2023 BCCA 200, 482 D.L.R. (4th) 20, at para. 94).

[47] This inconsistency is of particular importance when considering "the concern that an administrative decision maker might interpret the scope of its own authority beyond what the legislature intended" (*Vavilov*, at para. 109; see also

para. 68). In *Vavilov*, our Court explained that robust reasonableness review is "capable of allaying [this] concern" and allows "courts to fulfill their constitutional duty to ensure that administrative bodies have acted within the scope of their lawful authority" (paras. 67 and 109). By contrast, the very high degree of deference that the "irrelevant", "extraneous" or "completely unrelated" threshold accords statutory delegates in interpreting their authority under their enabling statute does not adequately address this concern. This is demonstrated by Abella J.'s comment that it would take an "egregious case" to strike down subordinate legislation on the basis that it is "irrelevant", "extraneous" or "completely unrelated" to the purpose of its enabling statute (*Katz Group*, at para. 28, citing *Thorne's Hardware*, at p. 111).

[48] Further, *Vavilov* sought to bring simplicity, predictability and coherence to the analysis for determining the appropriate standard of review. Our Court noted that reasonableness is a single standard that applies in different contexts (para. 89). *Vavilov*'s objective of providing simplicity, predictability and coherence would be undermined if different tests, such as the "irrelevant", "extraneous" or "completely unrelated" threshold, applied as part of the reasonableness standard. Even if different tests were sufficiently robust, the mere fact of applying them would create undue complexity and fragmentation (Keyes (2022), at pp. 75-76; see also *Innovative Medicines Canada*, at para. 35).

[49] Ultimately, we should depart from the "irrelevant", "extraneous" or "completely unrelated" threshold established in *Katz Group* because its rationale was

eroded by *Vavilov* and because continuing to maintain it would "create or perpetuate uncertainty in the law" (*Vavilov*, at para. 20; *Minister of Indian Affairs and Northern Development v. Ranville*, [1982] 2 S.C.R. 518, at p. 528).

E. *How To Conduct a Reasonableness Review of the Vires of Subordinate Legislation Under the Vavilov Framework*

[50] In conducting a reasonableness review, "the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99). Subordinate legislation benefits from a presumption of validity (*Katz Group*, at para. 25). The burden is on the party challenging the subordinate legislation to show that it is not reasonably within the scope of the delegate's authority (*Vavilov*, at paras. 100 and 109).

[51] *Vavilov* recognized two types of fundamental flaws that would make an administrative decision unreasonable: (1) there is a failure of rationality internal to the reasoning process; or (2) the decision is untenable in light of the factual and legal constraints that bear on it (para. 101). In what follows, I will explain how the principles outlined in *Vavilov* for conducting reasonableness review apply to a review of the *vires* of subordinate legislation.

(1) Reasonableness Review Is Possible in the Absence of Formal Reasons

[52] Most of the time formal reasons are not provided for the enactment of subordinate legislation (*Vavilov*, at para. 137). However, *Vavilov* contemplated reasonableness review in the absence of formal reasons, including in the context of a *vires* review of subordinate legislation (*ibid.*, referring to *Catalyst Paper* and *Green*). "[E]ven in such circumstances, the reasoning process that underlies the decision will not usually be opaque" (*Vavilov*, at para. 137). The reasoning process can often be deduced from various sources.

[53] In *Catalyst Paper*, our Court reviewed the validity of municipal taxation bylaws. Chief Justice McLachlin noted that "[t]he reasons for a municipal bylaw are traditionally deduced from the debate, deliberations and the statements of policy that give rise to the bylaw" (para. 29). Courts can also look to regulatory impact analysis statements if they are available. As Mancini explains:

> . . . something akin to a form of justification — whether a record of submissions, an accompanying statement of purpose, or specific recitals — may sometimes accompany regulatory action. Specifically — especially in the modern era — the problem of having neither a record nor reasons is less likely to arise. As [John Mark] Keyes noted, the sources for the "reasoning process" of executive legislation "have become increasingly rich as the processes for making it have become more transparent in the latter part of the 20th century and into the 21st." At the federal level, statutory instruments, like regulations, "are accompanied by Regulatory Impact Analysis Statements outlining the reasons for regulations and their anticipated impact." Courts can use Regulatory Impact Analysis Statements to assess the reasonableness of executive legislation by providing insight into the interlocking purposes of the enabling statute and regulatory instrument.
>
> (pp. 278-79, citing J. M. Keyes, "Judicial Review of Delegated Legislation: The Long and Winding Road to Vavilov", in University of

Ottawa Faculty of Law, Working Paper No. 2020-14 (June 18, 2020), at p. 11, and J. M. Keyes, *Executive Legislation* (2nd ed. 2010), at ch. 4.)

[54] Even where such sources are not available, "it is possible for the record and the context to reveal that a decision was made on the basis of an improper motive or for another impermissible reason, as, for example, in *Roncarelli* [*v. Duplessis*, [1959] S.C.R. 121]" (*Vavilov*, at para. 137). However, importantly, as I explain below, the issue of whether the regulations is a reasonable decision depends on whether the regulations are justifiably (or reasonably) within the scope of the authority delegated by the enabling legislation.

(2) Reasonableness Review Is Not an Examination of Policy Merits

[55] Justice Pentelechuk was of the view that applying *Vavilov*'s reasonableness standard when reviewing the *vires* of subordinate legislation would violate the principle of separation of powers because the court would be examining the policy merits of the subordinate legislation (paras. 58-59 and 63; see also S. Blake, *Clarity on the standard of review of regulations*, December 20, 2022 (online)).

[56] With respect, this concern is misplaced. As Paul Salembier explains, "[t]he reasonableness standard does not assess the reasonableness of the rules promulgated by the regulation-making authority; rather, it addresses the reasonableness of the regulation-making authority's interpretation of its statutory regulation-making power" (*Regulatory Law and Practice* (3rd ed. 2021), at p. 159). A court's role is to review the

legality or validity of the subordinate legislation, not to review whether it is "necessary, wise, or effective in practice" (*Katz Group*, at para. 27, citing *Jafari*, at p. 604; see also Keyes (2021), at pp. 186-88). "It is not an inquiry into the underlying 'political, economic, social or partisan considerations'" (*Katz Group*, at para. 28, citing *Thorne's Hardware*, at pp. 112-13).

[57] A court must be mindful of its proper role when reviewing the *vires* of subordinate legislation, especially when it relies on the record, other sources or the context to ascertain the delegate's reasoning process. Mancini explains:

> Importantly courts must organize these various sources properly to preserve the focus on the limiting statutory language. Again, the reasonableness review should not focus on the content of the inputs into the process or the policy merits of those inputs. Rather, courts must key these sources to the analysis of whether the subordinate instrument is consistent with the enabling statute's text, context, and purpose. For example, Regulatory Impact Analysis Statements can inform a court as to the link between an enabling statute's purpose and a regulatory aim, much like Hansard evidence. These analyses can help show how the effects of a regulation which, at first blush appear unreasonable, are enabled by the primary legislation. [p. 279]

[58] The potential or actual consequences of the subordinate legislation are relevant only insofar as a reviewing court must determine whether the statutory delegate was reasonably authorized to enact subordinate legislation that would have such consequences. Whether those consequences are in themselves necessary, desirable or wise is not the appropriate inquiry.

(3) The Relevant Constraints

[59] In *Vavilov*, our Court explained that "[e]lements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers" (para. 105). Reviewing the *vires* of subordinate legislation is fundamentally an exercise of statutory interpretation to ensure that the delegate has acted within the scope of their lawful authority under the enabling statute (para. 108; Mancini, at pp. 274-75; see, e.g., *West Fraser Mills*, at para. 23).

[60] Accordingly, the governing statutory scheme, other applicable statutory or common law and the principles of statutory interpretation are particularly relevant constraints when reviewing the *vires* of subordinate legislation (Keyes (2021), at p. 175).

(a) *Governing Statutory Scheme*

[61] "Because administrative decision makers receive their powers by statute, the governing statutory scheme is likely to be the most salient aspect of the legal context relevant to a particular decision" (*Vavilov*, at paras. 108-9; Mancini, at p. 275).

[62] The language chosen by the legislature in an enabling statute describes the limits and contours of a delegate's authority (*Vavilov*, at para. 110). The legislature may use precise and narrow language to delineate the power in detail, thereby tightly constraining the delegate's authority. Alternatively, the legislature may use broad, open-ended or highly qualitative language, thereby conferring broad authority on the delegate (*ibid.*; see also Keyes (2021), at pp. 195-96). Statutory delegates must respect

the legislature's choice in this regard. They "must ultimately comply 'with the rationale and purview'" of their enabling statutory scheme in accordance with its text, context and purpose (*Vavilov*, at para. 108, citing *Catalyst Paper*, at paras. 15 and 25-28, and *Green*, at para. 44).

(b) *Other Statutory or Common Law*

[63] The scope of a statutory delegate's authority may also be constrained by other statutory or common law. Unless the enabling statute provides otherwise, when enacting subordinate legislation, statutory delegates must adopt an interpretation of their authority that is consistent with other legislation and applicable common law principles (*Vavilov*, at para. 111, referring to *Katz Group*, at paras. 45-48; *Montréal (City) v. Montreal Port Authority*, 2010 SCC 14, [2010] 1 S.C.R. 427, at para. 40; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 74; *Canada (Transport, Infrastructure and Communities) v. Farwaha*, 2014 FCA 56, [2015] 2 F.C.R. 1006, at paras. 93-98; Keyes (2021), at pp. 205-6).

(c) *Principles of Statutory Interpretation*

[64] Statutory delegates are empowered to interpret the scope of their authority when enacting subordinate legislation. Their interpretation must, however, be consistent with the text, context and purpose of the enabling statute (*Vavilov*, at paras. 120-21; Keyes (2021), at p. 193). They must interpret the scope of their authority in accordance with the modern principle of statutory interpretation. The words of the

enabling statute must be read "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21, citing E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87).

[65] In conducting a *vires* review, a court does not undertake a *de novo* analysis to determine the correct interpretation of the enabling statute and then ask whether, on that interpretation, the delegate had the authority to enact the subordinate legislation. Rather, the court ensures that the delegate's exercise of authority falls within a reasonable interpretation of the enabling statute, having regard to the relevant constraints.

[66] In what follows, I apply the reasonableness standard to review the *vires* of the *Child Support Guidelines*.

VI. Analysis

A. *Overview of the Child Support Guidelines*

[67] In Canada, child support has been legislated since 1855. Early statutory schemes vested judges with discretion to determine child support amounts based on need. Judges were thus required to decide upon a reasonable amount of child support for the care of the child (*Michel v. Graydon*, 2020 SCC 24, [2020] 2 S.C.R. 763, at para. 46). This discretionary approach was heavily criticized for being "uncertain,

inconsistent, and often resulting in unfair awards" (para. 48; J. D. Payne and M. A. Payne, *Child Support Guidelines in Canada, 2020* (2020), at p. 1). This was in part because "judges, counsel, or parties underestimat[ed] the cost of raising a child" and because courts would insist on proof of the child's expenses (*Michel*, at para. 48). This placed the burden of proof on the recipient parent, and where such evidence was not adduced, there was concern that the award would be "subjective and somewhat arbitrary" (*ibid.*, citing *Childs v. Childs* (1990), 107 N.B.R. (2d) 176 (C.A.), at para. 6).

[68] As Martin J. explained in her concurring reasons in *Michel*, the objective of the *Child Support Guidelines* "was to remedy this situation by maintaining the principles core to child support while providing much-needed certainty, consistency, predictability, and efficiency" (para. 49, citing *Francis v. Baker*, [1999] 3 S.C.R. 250, at paras. 39-40). The federal, provincial and territorial governments formed a Family Law Committee ("Committee") to undertake major research studies on child support in Canada (Payne and Payne, at p. 1). The Committee "recommended the application of a child support formula under the *Divorce Act*, 'guided by the principle that both parents have a responsibility to meet the financial needs of the children according to their income'" (*Michel*, at para. 49, citing Federal/Provincial/Territorial Family Law Committee, *Report and Recommendations on Child Support* (1995), at p. i). In 1996, following the Committee's recommendation, Parliament introduced Bill C-41, *An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act, the Garnishment, Attachment and Pension Diversion Act and the Canada Shipping Act*, 2nd Sess., 35th Parl., 1996-97 (as passed by the House of Commons on

November 18, 1996). Bill C-41 amended the *Divorce Act* to expressly authorize the GIC to establish guidelines respecting orders for child support (*Divorce Act*, s. 26.1(1)).

[69] On May 1, 1997, the GIC established the *Child Support Guidelines*, which introduced a "radical change" to child support rights and obligations under the *Divorce Act* (Payne and Payne, at p. 1). Our Court has described the purpose of the *Child Support Guidelines* as being to "establish fair levels of support for children from both parents upon marriage breakdown, in a predictable and consistent manner" (*Francis*, at para. 39; see also *Child Support Guidelines*, s. 1). While the *Child Support Guidelines* depart from the discretionary model that preceded them, they continue to reflect the following core principles: (1) child support is the right of the child; (2) the right to support survives the breakdown of the child's parents' marriage; (3) child support should, as much as possible, provide children with the same standard of living they enjoyed when their parents were together; and (4) the specific amounts of child support owed will vary based upon the income of the payer parent (*D.B.S. v. S.R.G.*, 2006 SCC 37, [2006] 2 S.C.R. 231, at para. 38).

[70] Section 3 of the *Child Support Guidelines* "creates a presumptive rule whereby, unless otherwise provided by the *Divorce Act* or under the Guidelines, the amount of a child support order for children under the age of majority is (a) the amount set out in the applicable table . . . and (b) the amount, if any, determined under section 7 of the Guidelines for special or extraordinary expenses" (Payne and Payne, at p. 12). The table amount "is a function of the income of the paying parent and the number of

children the award is to cover" (*Francis*, at para. 1). The table "focus[es] on a system of 'average' justice and move[s] away from creating individual justice on a case-by-case basis" (N. Fera, "New Child-Support Guidelines — A Brief Overview" (1997), 25 R.F.L. (4th) 356, at p. 356). The use of the table is "intended to bring about an objective and predictable determination of child support, and bring an end to the subjective, ad hoc [pre-*Child Support Guidelines*] case decisions" (F. Hudani, ed., *Wilson on Children and the Law* (loose-leaf), at § 4.10). Judges may deviate from the table amount in cases involving children over the age of majority (*Child Support Guidelines*, s. 3(2)), payer parents with an income over $150,000 (s. 4), special or extraordinary expenses (s. 7), shared parenting time (s. 9(b)) or undue hardship (s. 10).

[71] A proper construction of a provision of the *Child Support Guidelines* "requires that the objectives of predictability, consistency and efficiency on the one hand, be balanced with those of fairness, flexibility and recognition of the actual 'condition[s], means, needs and other circumstances of the children' on the other" (*Contino v. Leonelli-Contino*, 2005 SCC 63, [2005] 3 S.C.R. 217, at para. 33, citing *Francis*, at para. 40).

B. *Mr. Auer's Challenge*

[72] Mr. Auer bears the burden of proving that the *Child Support Guidelines* are *ultra vires* (*Katz Group*, at para. 25). He submits that the *Child Support Guidelines* are *ultra vires* because they violate two constraints on the GIC's authority. First, the amounts transferred can only be in respect of "direct child costs" and cannot more

broadly redistribute income between parents (A.F., at para. 57). Mr. Auer submits that this constraint applies because support awards under the *Child Support Guidelines* compensate only for "direct child costs"; "indirect [child] costs" are left to the law of spousal support (para. 56). Second, under s. 26.1(2) of the *Divorce Act*, child-related costs are to be shared according to the parents' relative abilities to contribute (para. 58).

[73] According to Mr. Auer, the *Child Support Guidelines* violate these two constraints by requiring the payer parent to bear more than their fair share of direct child-related costs. This is because the *Child Support Guidelines* (1) do not take into account the recipient parent's income; (2) incorrectly assume that parents spend the same linear percentage of income on their children regardless of the parents' levels of income and the children's ages; (3) do not take into account government child benefits paid to the recipient parent; (4) do not take into account direct spending on the child by the payer parent when that parent exercises less than 40 percent of annual parenting time; and (5) double count the payer parent's obligations with respect to special or extraordinary expenses.

[74] Below, I will review each of Mr. Auer's submissions, having regard to the GIC's authority under the *Divorce Act*. I conclude that the *Child Support Guidelines* are *intra vires* the GIC.

C. *The Child Support Guidelines Are Within the GIC's Scope of Authority*

(1) The GIC's Statutory Grant of Authority Is Extremely Broad

[75] Section 26.1(1) of the *Divorce Act* grants the GIC extremely broad authority to establish guidelines respecting orders for child support:

> **26.1 (1)** The Governor in Council may establish guidelines respecting orders for child support, including, but without limiting the generality of the foregoing, guidelines
>
> **(a)** respecting the way in which the amount of an order for child support is to be determined;
>
> **(b)** respecting the circumstances in which discretion may be exercised in the making of an order for child support;
>
> **(c)** authorizing a court to require that the amount payable under an order for child support be paid in periodic payments, in a lump sum or in a lump sum and periodic payments;
>
> **(d)** authorizing a court to require that the amount payable under an order for child support be paid or secured, or paid and secured, in the manner specified in the order;
>
> **(e)** respecting the circumstances that give rise to the making of a variation order in respect of a child support order;
>
> **(f)** respecting the determination of income for the purposes of the application of the guidelines;
>
> **(g)** authorizing a court to impute income for the purposes of the application of the guidelines; and
>
> **(h)** respecting the production of information relevant to an order for child support and providing for sanctions and other consequences when that information is not provided.

[76] The use of the language "without limiting the generality of the foregoing" confirms that this plenary power is not limited by anything that follows in s. 26.1(1) (see *Vavilov*, at para. 110; *West Fraser Mills*, at para. 10).

[77] However, this power is not unrestricted. Section 26.1(2) provides as follows:

> **(2)** The guidelines shall be based on the principle that spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute to the performance of that obligation.

[78] Mr. Auer interprets "the principle that spouses have a joint financial obligation to maintain the children of the marriage" to mean that both parents must contribute equally to child-related costs. I acknowledge that the principle under s. 26.1(2) is mandatory; this is made clear by Parliament's use of the word "shall" (R. Sullivan, *The Construction of Statutes* (7th ed. 2022), at § 4.05). However, a plain reading of s. 26.1(2) does not support Mr. Auer's interpretation.

[79] Section 26.1(2) does not require that each parent make an equal financial contribution to maintaining their children. Rather, it states that each parent has a "joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute to the performance of that obligation". While a "joint financial obligation" means that the parents have a *shared* financial obligation to support their children, it does not necessarily mean that this obligation must be *equal* (see C.A. reasons, at para. 112). The constraint under s. 26.1(2) is expressed in broad terms. For example, it does not prescribe a particular method of estimating child-related costs or state the percentage of child-related costs that each parent must cover. Given

this, while s. 26.1(2) constrains the GIC's extremely broad grant of authority under s. 26.1(1), it does not restrict it as narrowly as Mr. Auer submits.

(2) The GIC Was Authorized Not To Take Into Account the Recipient Parent's Income in Calculating the Table Amounts

[80] Mr. Auer submits that the presumptive table amounts in the *Child Support Guidelines* violate the requirement in s. 26.1(2) that support awards be based on the parents' "relative abilities to contribute" by ignoring the recipient parent's income. In his view, the table amounts cannot be based on the parents' "relative abilities to contribute" if they are based solely on the payer parent's income.

[81] The formula on which the table amounts are based assumes that the payer parent and recipient parent have the same income (chambers judge's reasons, at para. 86). It only considers the payer parent's income and seeks to determine the amount that must be transferred from the payer parent to the recipient parent in order to make both households equally well off (Department of Justice Canada, Child Support Team, *Formula for the Table of Amounts Contained in the Federal Child Support Guidelines: A Technical Report* (1997) ("DOJ Report"), at p. 2). As our Court explained in *D.B.S.*, the *Child Support Guidelines* move away from pure need-based criteria towards an approach based on the payer parent's income (para. 47). This approach shapes each parent's free-standing obligation to support their children commensurate with their income, "with the result that the total amount of child support

is determined — and not merely divided — according to the income of the payor parent" (para. 48).

[82] Adopting a formula for calculating the table amounts that does not expressly consider the recipient parent's income falls within a reasonable interpretation of the authority granted to the GIC. It is reasonable to interpret this authority as being conferred as part of the broad grant under s. 26.1(1), which includes the authority to establish guidelines "respecting the way in which the amount of an order for child support is to be determined" and "respecting the determination of income for the purposes of the application of the guidelines".

[83] The formula selected by the GIC for calculating the table amounts was recommended by the Committee after extensive research and consultation. In its report, the Committee justified the decision regarding the recipient parent's income in calculating the table amounts as follows:

> Although the formula appears to be based solely on the non-custodial parent's income, this does not imply that the custodial parent does not contribute to the financial needs of the child. On the contrary — because the child lives with the custodial parent and shares the same living standard as this parent, the custodial parent will continue to pay for the remaining expenses in proportion to his/her income. [p. i]

[84] The Committee considered different options for the formula and how the awards should change with the recipient parent's income:

> With some other formulas the award rises; with others it falls; while with still others it does not change at all. Thus, there is considerable disagreement over how awards should change with the custodial parent's income. The Revised Fixed Percentage formula [which was recommended by the Committee] retains the principle common to all fixed percentage systems: the award does not vary with the income of the custodial parent. [p. ii]

[85] The Committee explained that its recommended approach "is essentially child-centred: the child benefits from the standard of living of the non-custodial parent before the separation/divorce and should retain this benefit after the separation/divorce" (p. ii).

[86] During the debates on Bill C-41, the then Minister of Justice, Allan Rock, reiterated the Committee's justifications. He explained that it is fair to assume that the recipient parent is supporting their child in a manner that is proportionate to their income, because the child lives with the recipient parent and their standards of living are inseparable (House of Commons Standing Committee on Justice and Legal Affairs, *Evidence*, No. 54, 2nd Sess., 35th Parl., October 21, 1996, at 17:10 to 17:15; Standing Senate Committee on Social Affairs, Science and Technology, *Proceedings of the Standing Senate Committee on Social Affairs, Science and Technology*, No. 17, 2nd Sess., 35th Parl., December 11 and 12, 1996).

[87] As these justifications make clear, the formula for calculating the table amounts takes into account the ways in which the recipient parent contributes to the financial needs of the child, as required by s. 26.1(2). It does so by assuming that, because the child resides with the recipient parent, that parent will support the child in

a manner that is proportionate to their income. This assumption is consistent with the objectives of the *Child Support Guidelines*, which include establishing a fair standard of support for children that ensures that they continue to benefit from the financial means of both parents after separation (s. 1).

[88] The parties do not dispute that recipient parents contribute to child-related costs by virtue of living with the children. While some recipient parents may contribute a larger proportion of their income towards child-related costs than others, it was open to the GIC, in establishing a nationwide regime for child support, to assume that recipient parents contribute to child-related costs in proportion to their income. In reviewing the *vires* of the *Child Support Guidelines*, our Court must not assess the policy merits of that assumption to determine whether it is "necessary, wise, or effective in practice" (*Katz Group*, at para. 27, citing *Jafari*, at p. 604).

[89] For these reasons, I conclude that an interpretation of the GIC's broad authority to establish guidelines "respecting the way in which the amount of an order for child support is to be determined" and "respecting the determination of income for the purposes of the application of the guidelines" as including the authority to adopt a formula for calculating the table amounts based solely on the payer parent's income, is reasonable.

(3) The GIC Was Authorized To Assume That Parents Spend the Same Linear Percentage of Their Income on Their Children

[90] Mr. Auer submits that the *Child Support Guidelines* unreasonably assume that parents spend the same linear percentage of income on their children regardless of the parents' income levels and the children's ages. In his view, as income rises, the overall amount spent on children increases but the percentage of income spent on children decreases (A.F., at para. 138). He submits that this assumption results in payer parents paying a disproportionate share of child-related costs.

[91] The table amounts assume that parents spend the same linear percentage of income on their children. The table establishes a fixed monetary amount of support for payer parents whose annual income does not exceed $150,000. Where the payer parent's annual income exceeds that amount, the amount payable is increased by a designated percentage of the payer parent's income over $150,000 (Payne and Payne, at p. 382). However, s. 4(b)(ii) of the *Child Support Guidelines* authorizes a court to depart from the table amount in respect of the payer parent's income above $150,000 if it considers the table amount to be "inappropriate" having regard to the "condition, means, needs and other circumstances of the children who are entitled to support and the financial ability of each spouse to contribute to the support of the children".

[92] Mr. Auer submits that courts are unlikely to depart from a linear application of the table amounts despite having the discretion to do so (A.F., at para. 139). He asks our Court to consider this reality in assessing the validity of the *Child Support Guidelines*.

[93] Under s. 26.1(1)(b) of the *Divorce Act*, the GIC is authorized to establish guidelines "respecting the circumstances in which discretion may be exercised in the making of an order for child support". Thus, it was plainly open to the GIC to give courts the discretion to depart from the table amounts for annual payer parent incomes exceeding $150,000 if they consider those amounts to be "inappropriate". Courts have the discretion to decide whether to depart from a linear application of the table amounts. How this discretion is exercised has no bearing on the legality or validity of the *Child Support Guidelines*.

[94] Mr. Auer argues that the *Child Support Guidelines* fail to reflect the fact that parents spend different percentages of their income on children at different ages. The *Child Support Guidelines* do not consider the ages of the children, except when they are over the age of majority. However, the GIC's authority under s. 26.1(1) of the *Divorce Act*, which includes the authority to establish guidelines "respecting the way in which the amount of an order for child support is to be determined", can reasonably be interpreted as authorizing guidelines which do not take children's specific ages into account when calculating child support awards. Mr. Auer has not met the burden of proving that the *Child Support Guidelines* are invalid on this basis (*Katz Group*, at para. 25).

(4) The GIC Was Authorized Not To Take Into Account Government Child Benefits Paid to the Recipient Parent in Calculating Child Support Awards

[95] The formula used to calculate the table amounts does not include the federal Canada Child Benefit and the GST/HST rebate for children paid to the recipient parent (DOJ Report, at p. 5; Payne and Payne, at p. 121). Mr. Auer argues that these benefits increase the recipient parent's standard of living and decrease the income needs created by the child (A.F., at para. 97). He submits that failing to consider them in calculating the table amounts causes the payer parent to overcontribute, contrary to the principle under s. 26.1(2) of the *Divorce Act*.

[96] The *Child Support Guidelines* represent a move away from a purely needs-based approach towards one that seeks to maximize the amount available to be spent on children while ensuring that payer parents can adequately support themselves (*D.B.S.*, at para. 54; DOJ Report, at p. 1). Government benefits improve children's welfare by increasing the ability of recipient parents to spend more on them than would otherwise be possible. These benefits "are deemed to be the government's contribution to children and [are] not available as income to the receiving parent" (DOJ Report, at p. 5).

[97] Section 26.1(1)(f) of the *Divorce Act* authorizes the GIC to establish guidelines "respecting the determination of income for the purposes of the application of the guidelines". The GIC elected not to include government benefits paid to the recipient parent when determining income for the purposes of calculating the table amounts. That decision falls reasonably within the scope of the GIC's broad authority.

Again, it is not for our Court to assess the policy merits of that decision (*Katz Group*, at paras. 27-28).

(5) The GIC Was Authorized Not To Take Into Account the Payer Parent's Direct Spending When That Parent Exercises Less Than 40 Percent of Annual Parenting Time

[98] The table amounts do not take into account the payer parent's direct spending on the child; they "do not assume that the payor parent pays for the housing, food, or any other expense for the child" (*Contino*, at para. 52). However, s. 9 of the *Child Support Guidelines* provides that if each spouse exercises at least 40 percent of parenting time with a child over the course of a year, the amount of the child support order must be determined by taking into account: (a) the amounts set out in the applicable tables for each of the spouses; (b) the increased costs of shared parenting time arrangements; and (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.

[99] Once it is established that a payer parent exercises 40 percent or more of annual parenting time, a court may consider the payer parent's direct spending on the child under s. 9(b). Section 9(b) "recognizes that the *total cost* of raising children in shared custody situations may be greater than in situations where there is sole custody" (*Contino*, at para. 52 (emphasis in original)). It requires courts "to examine the budgets and actual child care expenses of each parent. These expenses will be apportioned between the parents in accordance with their respective incomes" (para. 53).

[100] Mr. Auer submits that it is unreasonable for the table amounts to assume that payer parents do not spend directly on their children in addition to making support payments. In his view, failing to recognize that payer parents may spend directly on their children when they exercise between 0 and 39 percent of annual parenting time violates the principle under s. 26.1(2) of the *Divorce Act* that spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities. He submits that the *Child Support Guidelines* are *ultra vires* on this basis.

[101] The GIC is authorized under s. 26.1(1) of the *Divorce Act* to establish guidelines "respecting the way in which the amount of an order for child support is to be determined" and "respecting the circumstances in which discretion may be exercised in the making of an order for child support". In my view, this authority permits the GIC to allow courts to consider payer parents' direct spending on their children only when the payer parent exercises at least 40 percent of annual parenting time. Section 26.1(2) states only that parents have a "joint financial obligation" to maintain their children in accordance with their relative abilities to contribute. It does not require that each parent make an equal financial contribution to child-related costs. Thus, the principle in s. 26.1(2) is not violated even if setting the threshold for considering payer parents' direct spending on their children at 40 percent of annual parenting time results in some payer parents paying more than half of the child-related costs.

[102] I do not mean to suggest that payer parents overcontribute. However, it is important to keep in mind, as counsel for Ms. Auer explained during the hearing, that recipient parents bear many financial responsibilities that are an inherent part of providing primary care for a child (transcript, at pp. 45-47). Because the child lives primarily with the recipient parent, the payer parent may not always share in these responsibilities.

[103] Furthermore, s. 10(1) of the *Child Support Guidelines* provides that a court may, on either spouse's application, award an amount of child support that is different from the amount determined under ss. 3 to 5, 8 or 9 if the court finds that the spouse making the request would otherwise suffer undue hardship. Section 10(2) sets out circumstances that may cause a spouse to suffer undue hardship. One such circumstance is that "the spouse has unusually high expenses in relation to exercising parenting time with a child". Courts therefore retain the discretion to ensure that payer parents contribute to child-related costs in accordance with their ability to do so without suffering undue hardship, including as a result of having unusually high expenses in relation to exercising parenting time.

[104] Interpreting the enabling statute as authorizing the making of guidelines which set the threshold percentage for when a court may consider the increased costs of shared parenting time arrangements is reasonable, as it falls squarely within the GIC's broad grant of authority and Mr. Auer has not demonstrated that it violates the principle in s. 26.1(2). As mentioned, whether the GIC's decision was "necessary, wise,

or effective in practice" is irrelevant in the context of a *vires* review (*Katz Group*, at para. 27, citing *Jafari*, at p. 604).

(6) The GIC Was Authorized To Establish a Separate Category of Special or Extraordinary Expenses

[105] Section 3(1) of the *Child Support Guidelines* sets out the presumptive rule regarding child support awards: unless otherwise provided, the amount of a child support order for children under the age of majority is (a) the amount set in the applicable table and (b) the amount, if any, determined under s. 7 (special or extraordinary expenses).

[106] Mr. Auer submits that adding s. 7 expenses to the table amounts in accordance with the presumptive rule results in the "double counting" of child expenses for which the payer parent is responsible because "[a]ll conceivable average costs are reflected in the table amount" (A.F., at paras. 121 and 128). He adds that the scale chosen by the GIC to calculate the table amounts "produced high child cost estimates and, therefore, the highest child support awards" (para. 123). Thus, Mr. Auer submits that the *Child Support Guidelines* result in the payer parent overcontributing to child-related costs, contrary to s. 26.1(2) of the *Divorce Act*.

[107] I reject Mr. Auer's submission.

[108] Mr. Auer's submission is rooted in a purely needs-based approach to child support. The underlying theory of a purely needs-based regime is that "both parents should provide enough support to their children to meet their needs, and that they should share this obligation proportionate to their incomes" (*D.B.S.*, at para. 45). A purely needs-based approach begins by calculating the child-related costs. It then apportions those costs between the parents. If the amount of child support were to be determined solely on the basis of the child's needs, it would be problematic for the presumptive rule to result in the "double counting" of certain special or extraordinary expenses.

[109] However, the *Child Support Guidelines* have eschewed a purely needs-based approach to child support (*D.B.S.*, at para. 54). The *Child Support Guidelines* seek to ensure that the child benefits as much as possible from the income of both parents, in accordance with their relative abilities to contribute. Support awards recognize that the child benefitted from the standard of living of the payer parent pre-separation and should continue to retain this benefit post-separation (Committee, at p. ii; R. Finnie, C. Giliberti and D. Stripinis, *An Overview of the Research Program to Develop a Canadian Child Support Formula* (1995), at p. 28). As the DOJ Report explains at p. 1:

> The concept of "cost of raising children" is an illusory theoretical construct. Spending on children is not fixed; it changes as the income of either parent changes. Families with higher incomes spend more on their children than do families of lower income. In the post separation arrangement, the Federal Child Support Guidelines aim to approximate, as

> closely as possible, the spending on the children that occurred in the pre-separation family.

[110] In short, the *Child Support Guidelines* begin with the payer parent's income and determine the amount of support that that parent must pay to ensure that the child continues to benefit from their income post-separation. The *Child Support Guidelines* do not determine the child's costs up front and then ask the payer parent to cover a portion of them. It is assumed that "any financial contribution from the [payer] parent will typically be used to improve the child's circumstances" (Payne and Payne, at p. 7).

[111] The parent applying for s. 7 expenses must demonstrate that the expenses are necessary in relation to the child's best interests and are reasonable in relation to the means of the spouses and the child as well as the family's spending pattern prior to the separation. Where the recipient parent has applied for s. 7 expenses, the payer parent may challenge the necessity or reasonableness of those expenses. A payer parent could argue that the alleged s. 7 expenses are already covered by the table amount. However, it is ultimately up to the court to determine whether the applying parent has established that the s. 7 expenses they seek are necessary and reasonable.

[112] The GIC's broad authority under s. 26.1(1) of the *Divorce Act* to establish guidelines "respecting the way in which the amount of an order for child support is to be determined" clearly entitled the GIC to adopt guidelines that do not focus purely on the child's needs but instead seek to ensure that the child continues to benefit from the payer parent's income in accordance with that parent's ability to contribute. Further,

the GIC's authority to establish guidelines "respecting the circumstances in which discretion may be exercised in the making of an order for child support" entitled the GIC to grant courts the discretion to determine whether to include certain special or extraordinary expenses in a child support award.

[113] Thus, contrary to Mr. Auer's assertion, it is not problematic if there is some overlap between the expenses contemplated in the table amounts and "special or extraordinary" expenses under s. 7. The child continues to benefit from the payer parent's income in accordance with that parent's ability to contribute. Mr. Auer has not demonstrated that the potential for "double counting" s. 7 expenses arises from an unreasonable interpretation of the authority granted to the GIC in light of the relevant constraints, and has not met the burden of proving that the *Child Support Guidelines* are *ultra vires*.

VII. Conclusion

[114] The reasonableness standard under the *Vavilov* framework presumptively applies when reviewing the *vires* of subordinate legislation. *Katz Group* continues to provide helpful guidance. However, for subordinate legislation to be *ultra vires* on the basis that it is inconsistent with the purpose of the enabling statute, it no longer needs to be "irrelevant", "extraneous" or "completely unrelated" to that statutory purpose. Continuing to maintain this threshold from *Katz Group* would be inconsistent with robust reasonableness review and would undermine *Vavilov*'s promise of simplicity, predictability and coherence.

[115] The *Child Support Guidelines* fall reasonably within the GIC's scope of authority under s. 26.1 of the *Divorce Act*, having regard to the relevant constraints. Under s. 26.1(1), the GIC is granted extremely broad authority to establish guidelines respecting child support. Section 26.1(2) constrains this authority by requiring that the guidelines be based on the principle that spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute. The *Child Support Guidelines* respect this constraint.

[116] The GIC was entitled to choose an approach to calculating child support that (1) does not take into account the recipient parent's income; (2) assumes that parents spend the same linear percentage of income on their children regardless of the parents' levels of income and the children's ages; (3) does not take into account government child benefits paid to recipient parents; (4) does not take into account direct spending on the child by the payer parent when that parent exercises less than 40 percent of annual parenting time; and (5) risks double counting certain special or extraordinary expenses. Each of these decisions fell squarely within the scope of the authority delegated to the GIC under the *Divorce Act*.

[117] The appeal is dismissed with costs to the respondent Aysel Igorevna Auer.

Appeal dismissed with costs.

Solicitors for the appellant: Jensen Shawa Solomon Duguid Hawkes, Calgary; Ronald Robinson Barrister & Solicitor, Calgary; Paul Daly Law Professional Corporation, Ottawa.

Solicitors for the respondent Aysel Igorevna Auer: Huizinga Di Toppa Coles & Layton, Edmonton.

Solicitor for the respondent the Attorney General of Canada: Attorney General of Canada, Department of Justice, National Litigation Sector — Ontario Regional Office, Toronto; Attorney General of Canada, Department of Justice, National Litigation Sector — Prairie Regional Office, Edmonton.

Solicitor for the intervener the Attorney General of Ontario: Ministry of the Attorney General, Crown Law Office — Civil, Toronto.

Solicitor for the intervener the Attorney General of Quebec: Ministère de la Justice du Québec, Québec.

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Solicitor for the intervener the Attorney General of Saskatchewan: Saskatchewan Ministry of Justice and Attorney General, Regina.

Solicitors for the intervener the Trial Lawyers Association of British Columbia: Hunter Litigation Chambers, Vancouver.

Solicitors for the interveners the HIV & AIDS Legal Clinic Ontario and the Health Justice Program: Paliare Roland Rosenberg Rothstein, Toronto.

Solicitors for the intervener the Canadian Council for Refugees: Jamie Liew, Ottawa; Lehal Law Corporation, Delta (B.C.).

Solicitor for the intervener the City of Calgary: City of Calgary, Law/Legal Services and Security, Calgary.

Solicitors for the interveners the Chicken Farmers of Canada, the Egg Farmers of Canada, the Turkey Farmers of Canada and the Canadian Hatching Egg Producers: Conway Baxter Wilson, Ottawa.

Solicitors for the intervener the National Association of Pharmacy Regulatory Authorities: Shores Jardine, Edmonton.

Solicitors for the intervener Association québécoise des avocats et avocates en droit de l'immigration: Hasa Avocats Inc., Montréal.

Solicitor for the intervener the Workers' Compensation Board of British Columbia: Workers' Compensation Board of British Columbia, Richmond.

Solicitors for the intervener the Canadian Association of Refugee Lawyers: Refugee Law Office, Toronto; Landings, Toronto.

Solicitors for the intervener the Advocates for the Rule of Law: Henein Hutchison Robitaille, Toronto.

Solicitor for the intervener the Ecojustice Canada Society: Ecojustice Canada Society, Toronto.

SUPREME COURT OF CANADA

CITATION: TransAlta Generation Partnership *v.* Alberta, 2024 SCC 37

APPEAL HEARD: April 25, 2024
JUDGMENT RENDERED: November 8, 2024
DOCKET: 40570

BETWEEN:

TransAlta Generation Partnership and TransAlta Generation (Keephills 3)
Appellants

and

His Majesty The King in Right of the Province of Alberta and Minister of Municipal Affairs for the Province of Alberta
Respondents

- and -

Attorney General of Ontario,
Attorney General of Quebec,
Attorney General of British Columbia,
Attorney General of Saskatchewan,
Trial Lawyers Association of British Columbia,
HIV & AIDS Legal Clinic Ontario, Health Justice Program,
Chicken Farmers of Canada, Egg Farmers of Canada,
Turkey Farmers of Canada, Canadian Hatching Egg Producers,
Workers' Compensation Board of British Columbia,
Canadian Association of Refugee Lawyers,
Association québécoise des avocats et avocates en droit de l'immigration,
Advocates for the Rule of Law and
National Association of Pharmacy Regulatory Authorities
Interveners

CORAM: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

REASONS FOR JUDGMENT: (paras. 1 to 65)	Côté J. (Wagner C.J. and Karakatsanis, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ. concurring)

TransAlta Generation Partnership and
TransAlta Generation (Keephills 3) *Appellants*

v.

His Majesty The King in Right of the Province of Alberta and
Minister of Municipal Affairs for the Province of Alberta *Respondents*

and

Attorney General of Ontario,
Attorney General of Quebec,
Attorney General of British Columbia,
Attorney General of Saskatchewan,
Trial Lawyers Association of British Columbia,
HIV & AIDS Legal Clinic Ontario, Health Justice Program,
Chicken Farmers of Canada, Egg Farmers of Canada,
Turkey Farmers of Canada, Canadian Hatching Egg Producers,
Workers' Compensation Board of British Columbia,
Canadian Association of Refugee Lawyers,
Association québécoise des avocats et avocates en droit de l'immigration,
Advocates for the Rule of Law and
National Association of Pharmacy Regulatory Authorities *Interveners*

Indexed as: TransAlta Generation Partnership *v.* Alberta

2024 SCC 37

File No.: 40570.

2024: April 25; 2024: November 8.

Present: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA

Administrative law — Judicial review — Standard of review — Subordinate legislation — Vires — Administrative discrimination — Property assessment guidelines challenged as ultra vires provincial minister — Standard of review applicable to review of vires of subordinate legislation — Whether guidelines within scope of authority delegated to minister by enabling statute — Whether guidelines violate common law rule against administrative discrimination — Municipal Government Act, R.S.A. 2000, c. M-26, ss. 322, 322.1 — 2017 Alberta Linear Property Assessment Minister's Guidelines, ss. 1.003, 2.003.

TransAlta owns coal-fired electric power generation facilities in Alberta. In 2016, TransAlta entered into an off-coal agreement with Alberta. Under that agreement, TransAlta agreed to cease coal-fired emissions on or before December 31, 2030, in exchange for substantial transition payments from Alberta for 14 years to compensate TransAlta for the loss resulting from the reduced life of its coal-fired facilities. TransAlta's coal-fired facilities are assessed as linear property for municipal taxation purposes. Sections 322 and 322.1 of Alberta's *Municipal Government Act* ("*MGA*") authorize the province's Minister of Municipal Affairs to establish guidelines for assessing the value of linear property.

In 2017, the Minister established the *2017 Alberta Linear Property Assessment Minister's Guidelines* ("*Linear Guidelines*") under the *MGA*. Sections 1.003 and 2.003 of the *Linear Guidelines* deprive TransAlta of the ability to claim additional depreciation on the basis of the reduction in its facilities' lifespan arising from the off-coal agreement. TransAlta challenged the *vires* of the *Linear Guidelines* on two bases: (1) they violate the common law rule against administrative discrimination; and (2) they are inconsistent with the purposes of the *MGA*.

The chambers judge upheld the validity of the *Linear Guidelines* and found that the *Linear Guidelines* did not discriminate against TransAlta. The Court of Appeal determined that the *Linear Guidelines* did not discriminate against TransAlta and held that the chambers judge did not err in finding that they were within the Minister's authority.

Held: The appeal should be dismissed.

As set out in the companion case *Auer v. Auer*, 2024 SCC 36, the reasonableness standard under *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, presumptively applies when reviewing the *vires* of subordinate legislation. In addition, certain principles from *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810, continue to inform reasonableness review, but the threshold from *Katz Group* used to determine whether subordinate legislation is *ultra vires* on the basis that it is inconsistent with the purpose of the enabling statute — that it be irrelevant, extraneous

or completely unrelated to that statutory purpose — is no longer applicable to this analysis. As well, the governing statutory scheme, other applicable statutory or common law, and the principles of statutory interpretation are particularly relevant constraints when determining whether subordinate legislation falls reasonably within the scope of the delegate's authority. In the instant case, no exception to the presumption of reasonableness review applies and thus the reasonableness standard applies when reviewing the *vires* of the *Linear Guidelines*. Having regard to the governing statutory scheme, the principles of statutory interpretation, and the common law rule against administrative discrimination, the *Linear Guidelines* are *intra vires* the Minister.

Administrative discrimination arises when subordinate legislation expressly distinguishes among the persons to whom its enabling legislation applies. Administrative discrimination is different than discrimination in the context of the *Canadian Charter of Rights and Freedoms* or human rights legislation. It relates to the drawing of distinctions between persons or classes that are discriminatory in a non-pejorative sense, in that they simply do not apply equally to all those engaged in the activity that is the subject of the enactment. The common law rule against administrative discrimination provides that subordinate legislation that discriminates in the administrative law sense is invalid unless the discrimination is authorized — either expressly or by necessary implication — by the enabling statute. It is concerned with ensuring that statutory delegates act within the scope of their authority when they distinguish between the persons to whom the enabling legislation applies. The question

of statutory authorization to discriminate falls within the reasonableness review to be conducted in a *vires* challenge to subordinate legislation, unless the legislature has indicated otherwise or a question relating to the rule of law arises which should be reviewed for correctness.

In the instant case, the *Linear Guidelines* discriminate against TransAlta and other parties to off-coal agreements by singling them out as being ineligible to claim additional depreciation on the basis of the off-coal agreements. The fact that the *Linear Guidelines* treat all parties to off-coal agreements in the same way does not mean that they are not discriminatory; they treat all parties to off-coal agreements in the same discriminatory way, as compared with owners of linear property who are not parties to off-coal agreements and expressly distinguish between owners of linear property who are parties to off-coal agreements and those who are not parties to such agreements, though both are subject to the *MGA*.

The *MGA* does not expressly authorize the Minister to discriminate against TransAlta; however, that discrimination is statutorily authorized by necessary implication. To ensure that the assessment of TransAlta's coal-fired facilities was current, correct, fair and equitable in accordance with the purpose of the *MGA*, it falls within a reasonable interpretation of the Minister's statutory grant of power to conclude that he was authorized to deprive TransAlta of the ability to claim additional depreciation. Transition payments under the off-coal agreement account for some loss of value to TransAlta's coal-fired facilities due to their reduced life and the existence

of the off-coal agreement is a specification or characteristic of TransAlta's coal-fired facilities that the Minister was authorized to consider in establishing valuation standards for those facilities. The *Linear Guidelines* are consistent with the purposes of the *MGA* and do not violate the common law rule against administrative discrimination; they are therefore *intra vires* the Minister.

Cases Cited

Applied: *Auer v. Auer*, 2024 SCC 36; **referred to:** *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653; *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47, [2016] 2 S.C.R. 293; *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810; *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11, [2021] 1 S.C.R. 175; *Reference re Impact Assessment Act*, 2023 SCC 23; *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17; *Green v. Law Society of Manitoba*, 2017 SCC 20, [2017] 1 S.C.R. 360; *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22, [2018] 1 S.C.R. 635; *La Rose v. Canada*, 2023 FCA 241, 488 D.L.R. (4th) 340; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *Fédération des producteurs de fruits et légumes du Québec v. Conserverie canadienne Ltée*, [1990] R.J.Q. 2866; *Sunshine Village Corp. v. Canada (Parks)*, 2004 FCA 166, [2004] 3 F.C.R. 600; *Montréal (City of) v. Arcade Amusements Inc.*, [1985] 1 S.C.R. 368; *Forget v. Quebec (Attorney General)*, [1988] 2 S.C.R. 90; *Shell Canada Products Ltd. v. Vancouver*

(City), [1994] 1 S.C.R. 231; *Edmonton (City) v. Army & Navy Department Stores Ltd.*, [2002] A.M.G.B.O. No. 126 (QL).

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APPEAL from a judgment of the Alberta Court of Appeal (Martin, Hughes and Kirker JJ.A.), 2022 ABCA 381, [2022] A.J. No. 1393 (Lexis), 2022 CarswellAlta 3387 (WL), affirming a decision of Price J., 2021 ABQB 37, [2021] A.J. No. 115 (Lexis), 2021 CarswellAlta 174 (WL). Appeal dismissed.

Michael J. Donaldson, *K.C.*, *Michael Sobkin*, *Andrea Sam* and *Katie Sykes*, for the appellants.

Greg G. Plester, *Rebecca L. Kos* and *Alvin R. Kosak*, for the respondent.

Judie Im and *Michele Valentini*, for the intervener the Attorney General of Ontario.

Stéphane Rochette and *Francesca Boucher*, for the intervener the Attorney General of Quebec.

Emily Lapper and *Christine Bant*, for the intervener the Attorney General of British Columbia.

Kyle McCreary and *Jared Biden*, for the intervener the Attorney General for Saskatchewan.

Aubin P. Calvert and *Devin Eeg*, for the intervener the Trial Lawyers Association of British Columbia.

Mannu Chowdhury, for the intervener HIV & AIDS Legal Clinic Ontario and the Health Justice Program.

Alyssa Holland, *David Wilson* and *Julie Mouris*, for the interveners the Chicken Farmers of Canada, the Egg Farmers of Canada, the Turkey Farmers of Canada and the Canadian Hatching Egg Producers.

Johanna Goosen, for the intervener the Workers' Compensation Board of British Columbia.

Andrew J. Brouwer and *Erin V. Simpson*, for the intervener the Canadian Association of Refugee Lawyers.

Lawrence David and *Gjergji Hasa*, for the intervener Association québécoise des avocats et avocates en droit de l'immigration.

Ewa Krajewska, *Peter Henein* and *Brandon Chung*, for the intervener the Advocates for the Rule of Law.

William W. Shores, *K.C.*, and *Annabritt N. Chisholm*, for the intervener the National Association of Pharmacy Regulatory Authorities.

The judgment of the Court was delivered by

CÔTÉ J. —

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I. Overview

[1] TransAlta Generation Partnership and TransAlta Generation (Keephills 3) (collectively, "TransAlta") own coal-fired electric power generation facilities in Alberta. In 2016, TransAlta entered into an agreement with the Crown in Right of Alberta entitled "Off-Coal Agreement". Under that agreement, TransAlta agreed to cease coal-fired emissions by December 31, 2030, in exchange for substantial

"transition payments" from Alberta for 14 years to compensate TransAlta for the loss resulting from the reduced life of its coal-fired facilities.

[2] TransAlta challenges the *vires* of the *2017 Alberta Linear Property Assessment Minister's Guidelines* (2018) ("*Linear Guidelines*") issued by the Minister of Municipal Affairs under the *Municipal Government Act*, R.S.A. 2000, c. M-26 ("*MGA*"). The *Linear Guidelines* set out the procedures for assessing all "linear property" for municipal taxation purposes. TransAlta's coal-fired facilities are considered "linear property". The *Linear Guidelines* provide that TransAlta and other parties to off-coal agreements are ineligible to claim additional depreciation to account for the reduced life of their coal-fired facilities.

[3] TransAlta submits that the *Linear Guidelines* are *ultra vires* the Minister on two bases: (1) they violate the common law rule against administrative discrimination by discriminating, without statutory authorization, against parties who have entered into off-coal agreements with Alberta; and (2) they are inconsistent with the purposes of the *MGA*.

[4] In the companion case, *Auer v. Auer*, 2024 SCC 36, our Court holds that, as established in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, the reasonableness standard presumptively applies when reviewing the *vires* of subordinate legislation. Given that no exception to that presumption applies here, this appeal provides our Court with an opportunity to illustrate how the reasonableness standard of review applies to a *vires* review of

subordinate legislation when the challenger invokes the common law rule against administrative discrimination.

[5] As I will explain, the *Linear Guidelines* discriminate against TransAlta and other parties to off-coal agreements by depriving them of the ability to claim additional depreciation reflecting the reduced lifespan of their coal-fired facilities. However, that discrimination is statutorily authorized by necessary implication. To ensure that the assessment of TransAlta's coal-fired facilities was "current, correct, fair and equitable" in accordance with the purposes of the *MGA* (*Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47, [2016] 2 S.C.R. 293, at para. 46), it falls within a reasonable interpretation of the Minister's statutory grant of power to conclude that he was authorized to deprive TransAlta of the ability to claim additional depreciation. This is because the transition payments from Alberta to TransAlta under the Off-Coal Agreement already account for at least some loss of value to TransAlta's coal-fired facilities due to their reduced life. Further, the existence of the Off-Coal Agreement is a "specification" or "characteristic" of TransAlta's coal-fired facilities that the Minister was authorized to consider in establishing valuation standards for those facilities.

[6] Given my conclusion that it is a reasonable interpretation of the Minister's statutory grant of power to conclude that discrimination is statutorily authorized by necessary implication, it follows that the *Linear Guidelines* are consistent with the purposes of the *MGA*. To reiterate, the *Linear Guidelines* serve to ensure that tax

assessments are "current, correct, fair and equitable" in accordance with the purposes of the *MGA*.

[7] Thus, having regard to the governing statutory scheme, the principles of statutory interpretation, and the common law rule against administrative discrimination, I conclude that the *Linear Guidelines* are *intra vires* the Minister.

II. Facts

[8] TransAlta's coal-fired facilities are assessed as "linear property" for municipal taxation purposes. Section 284(1)(k) of the *MGA* defines "linear property", and ss. 322 and 322.1 authorize the Minister of Municipal Affairs to establish guidelines for assessing the value of linear property. In 2017, the Minister established the *Linear Guidelines*, which provide that "[t]here will be no recognition [of] or adjustment [to depreciation] in Schedule C or Schedule D as a result of the cessation or reduction of coal-fired emissions on or before December 31, 2030 arising from an Off-Coal Agreement or Provincial or Federal legislation" (s. 1.003(d)). TransAlta brought an application for judicial review challenging the *vires* of the *Linear Guidelines* on several bases, including that they discriminate against TransAlta by depriving it, without statutory authorization, of the right to claim a form of depreciation that is available to linear property that is not subject to an off-coal agreement.

III. Judicial History

A. *Court of Queen's Bench of Alberta, 2021 ABQB 37*

[9] The chambers judge upheld the validity of the *Linear Guidelines*. She noted that, following *Vavilov*, the reasonableness standard applies when assessing the *vires* of subordinate legislation. However, her application of the reasonableness standard was largely informed by *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810. In her view, the *Linear Guidelines* were not "irrelevant", "extraneous" or "completely unrelated" to the purposes of the *MGA* (para. 57, referring to *Katz Group*, at para. 28). The *MGA* granted the Minister broad authority to establish valuation standards for regulated property, such as TransAlta's coal-fired facilities. The Minister was not limited to adopting the market value standard.

[10] The chambers judge found that the *Linear Guidelines* did not discriminate against TransAlta for two reasons. First, they did not deprive TransAlta of a form of depreciation to which it was previously entitled. Second, they did not deprive TransAlta of a form of depreciation applicable to other types of linear property. However, she explained that even if the *Linear Guidelines* were discriminatory, the Minister was authorized by the *MGA* to discriminate against TransAlta because "the creation and implementation of an assessment regime necessarily includes drawing distinctions among various types of properties" (para. 73).

B. *Court of Appeal of Alberta, 2022 ABCA 381*

[11] The Court of Appeal unanimously dismissed TransAlta's appeal. Regarding the standard of review, the court held that the principles articulated in *Katz Group* were not overtaken or modified by *Vavilov*. Applying *Katz Group*, the court held that the chambers judge did not err in finding that the *Linear Guidelines* were within the Minister's authority.

[12] The court determined that the *Linear Guidelines* did not discriminate against TransAlta since the impugned provisions applied to all coal-fired facilities subject to off-coal agreements, not just to those owned by TransAlta. In the court's view, the Minister was authorized to distinguish between coal-fired facilities and other types of electric power generation properties because the Minister was generally authorized to make regulations respecting "any . . . matter considered necessary to carry out the intent of" the *MGA*, and drawing distinctions between different classes of properties was a "necessary incident" of the authority to establish a property valuation regime (paras. 84-85).

IV. Issues

[13] The issues on appeal are as follows:

1. What is the applicable standard of review when reviewing the *vires* of subordinate legislation?

2. Are the *Linear Guidelines ultra vires* the Minister under the *MGA*?

V. Standard of Review

[14] As set out in the companion case, *Auer*, the reasonableness standard under *Vavilov* presumptively applies when reviewing the *vires* of subordinate legislation. No exception to the presumption of reasonableness review applies in this case. Indeed, the legislature has not indicated that the *Linear Guidelines* must be reviewed on a different standard, and the rule of law does not require that the correctness standard apply. Thus, the reasonableness standard applies when reviewing the *vires* of the *Linear Guidelines*.

[15] As explained in *Auer*, *Katz Group* continues to provide helpful guidance and inform reasonableness review. In particular, the following principles from *Katz Group* continue to apply:

- Subordinate legislation "must be consistent both with specific provisions of the enabling statute and with its overriding purpose or object" (*References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11, [2021] 1 S.C.R. 175 ("*GGPPA*"), at para. 87; see also *Vavilov*, at paras. 108 and 110; *Reference re Impact Assessment Act*, 2023 SCC 23, at para. 283, per Karakatsanis and Jamal JJ., dissenting in part, but not on this point).

- Subordinate legislation continues to benefit from a presumption of validity (*Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17, at para. 54).

- The challenged subordinate legislation and the enabling statute are to be interpreted using a broad and purposive approach to statutory interpretation (see *Green v. Law Society of Manitoba*, 2017 SCC 20, [2017] 1 S.C.R. 360, at para. 28; *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22, [2018] 1 S.C.R. 635, at para. 12).

- A review of the *vires* of subordinate legislation does not involve assessing policy merits. Courts are to review only the legality or validity of subordinate legislation (*West Fraser Mills*, at para. 59, per Côté J., dissenting, but not on this point; *La Rose v. Canada*, 2023 FCA 241, 488 D.L.R. (4th) 340, at para. 28).

[16] At the same time, for subordinate legislation to be *ultra vires* on the basis that it is inconsistent with the purpose of the enabling statute, it no longer needs to be "irrelevant", "extraneous" or "completely unrelated" to that statutory purpose (see *Auer*, at paras. 4, 41 and 49; see also *Katz Group*, at para. 28). Continuing to maintain this threshold from *Katz Group* would be inconsistent with the robust reasonableness review introduced by *Vavilov* and would undermine *Vavilov*'s promise of simplicity, coherence and predictability.

[17] Reviewing the *vires* of subordinate legislation is fundamentally an exercise of statutory interpretation to ensure that the delegate has acted within the scope of their

lawful authority under the enabling statute (*Vavilov*, at para. 108; M. P. Mancini, "One Rule to Rule Them All: Subordinate Legislation and the Law of Judicial Review" (2024), 55 *Ottawa L. Rev.* 245, at pp. 274-75; see, e.g., *West Fraser Mills*, at para. 23). This exercise must be carried out in accordance with the modern principle of statutory interpretation (*Vavilov*, at paras. 120-21; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21). The governing statutory scheme, other applicable statutory or common law, and the principles of statutory interpretation are particularly relevant constraints when determining whether the subordinate legislation at issue falls reasonably within the scope of the delegate's authority (J. M. Keyes, *Executive Legislation* (3rd ed. 2021), at p. 175).

[18] Before I begin this analysis, I provide an overview of the Off-Coal Agreement and the relevant legislation.

VI. Overview of the Off-Coal Agreement, the *MGA* and the *Linear Guidelines*

A. *The Off-Coal Agreement*

[19] TransAlta entered into the Off-Coal Agreement with Alberta on November 24, 2016. TransAlta agreed to cease coal-fired emissions on or before December 31, 2030 (Off-Coal Agreement, s. 2, reproduced in A.R., at p. 151). In exchange, Alberta agreed to make 14 annual transition payments of $39,851,704.60 to TransAlta (s. 3(a)).

[20] The Off-Coal Agreement does not expressly refer to property taxes or depreciation. However, the amount of the transition payments was calculated by taking the net book value of the coal-fired facilities as provided by TransAlta, "[p]ro-rated by percentage of life remaining after 2030 to give proxy for 2030 [net book value]: divided by remaining years under federal end-of-life as of November 2016, then multiplied by years stranded" (Sch. A). This formula demonstrates that the transition payments account for at least some loss of value to TransAlta's coal-fired facilities arising from their reduced lifespan under the Off-Coal Agreement. As the Court of Appeal noted, "[i]t is evident on the face of the Off-Coal Agreements that the Province sought to address some loss of value arising from the reduced life of the appellants' coal-fired electricity generation plants and to treat affected companies equivalently" (para. 23).

[21] Further, it is noteworthy that the Off-Coal Agreement provides that it runs with the facilities. Indeed, TransAlta may transfer title to or ownership interest in its facilities with Alberta's consent, but only if any new owner agrees to be bound by the terms of the Off-Coal Agreement (s. 11(n)).

B. *The Municipal Government Act*

[22] The *MGA* regulates property assessment and taxation in Alberta (*Capilano*, at para. 9; Alberta Municipal Affairs, *Guide to Property Assessment and Taxation in Alberta* (2018) ("*Guide*"), at p. 2). Property assessment is the process of estimating a property's dollar value for taxation purposes (*Guide*, at p. 3). Under the *MGA*, "assessment" means "a value of property determined in accordance with this Part [(i.e.,

Part 9 ‘Assessment of Property’)] and the regulations” (s. 284(1)(c)). Property taxation is the process of applying a tax rate to a property’s assessed value to determine the tax payable (*Guide*, at p. 3).

[23] The *MGA* sets out two types of valuation standards: the market value standard and the regulated standard (*Guide*, at p. 3). Most properties are assessed using the market value standard. The market value of a property is “the price a property might reasonably be expected to sell for if sold by a willing seller to a willing buyer after appropriate time and exposure in an open market” (p. 5; see also *MGA*, s. 1(1)(n)).

[24] There are three approaches to determining the market value of a property: the sales comparison approach, the cost approach, and the income approach (*Guide*, at p. 6). Under the sales comparison approach, the market value of a property is determined by considering the sale price of similar properties. Under the cost approach, the market value of a property is determined by aggregating the market value of the land and the net cost of improvements. This approach assumes that a buyer would not pay more to purchase a property than what it would cost to buy the land and rebuild the same improvements. Under the income approach, the market value of a property is determined on the basis of its income-earning potential. This approach is used to assess the value of rental properties (p. 7).

[25] The regulated standard is a property assessment standard based on rates and procedures prescribed by the Ministry of Municipal Affairs (*Guide*, at p. 29). It is used to assess properties that are difficult to assess under the market value standard

because they seldom trade in the marketplace, they cross municipalities and municipal boundaries or they are of a unique nature (p. 7).

[26] Under s. 284(1)(k) of the *MGA*, TransAlta's coal-fired facilities are considered "linear property", which is a subset of "designated industrial property" under s. 284(1)(f.01). Sections 322 and 322.1 of the *MGA* authorize the Minister to establish guidelines for assessing the value of linear property. TransAlta's facilities are thus assessed using the regulated standard. As noted by the Court of Appeal, "market value is not intended to be the standard for determining the value of [TransAlta's] linear properties. . . . [T]here is no mention of 'market value' in any of the linear property assessment provisions of the *MGA*" (para. 59).

[27] Assessments of linear property must be prepared by the provincial assessor (*MGA*, s. 292(1)). Each assessment must reflect the valuation standard as well as the specifications and characteristics of the linear property as specified in the regulations (s. 292(2)). In preparing an assessment of linear property, the assessor must follow the procedures set out in the Minister's guidelines (*Matters Relating to Assessment and Taxation Regulation*, Alta. Reg. 220/2004, s. 8(2)).

[28] Section 322(1) of the *MGA* delegates regulation-making power to the Minister. More specifically, it authorizes the Minister to make regulations "establishing valuation standards for property", "respecting the assessment of linear property", "respecting designated industrial property, including, without limitation, regulations respecting the specifications and characteristics of designated industrial property",

"respecting processes and procedures for preparing assessments", and "respecting any other matter considered necessary to carry out the intent of [the *MGA*]". Under s. 322(2), the Minister may make an order establishing guidelines respecting any matter for which the Minister may make a regulation under s. 322(1). The *Linear Guidelines* are deemed to be guidelines established under s. 322(2) (s. 322.1(1) and (3)).

[29] As the Court of Appeal recognized, "[t]he language used in s. 322(1) to describe the Minister's regulation-making power in relation to property assessment is indisputably broad" (para. 57). The question is whether ss. 1.003 and 2.003 of the *Linear Guidelines* are reasonably within the scope of the Minister's authority.

C. *The Linear Guidelines*

[30] On December 19, 2017, the Minister made Ministerial Order No. MAG:021/17 establishing the *Linear Guidelines*. They became effective for taxation in 2018 and subsequent years.

[31] The *Linear Guidelines* set out the procedures for calculating all linear property assessments. They require assessors to multiply the values determined under four schedules. TransAlta's challenge focuses on ss. 1.003 and 2.003 of the *Linear Guidelines*.

[32] Section 1.003 of the *Linear Guidelines* describes the schedules used in the assessment of linear property. Schedules C and D are the schedules relevant to this appeal.

[33] Schedule C provides the process for determining depreciation or lists the applicable depreciation factors. Section 1.003(c) states that "[t]he depreciation factors prescribed in Schedule C are fixed and certain and must be applied as listed in the applicable Schedule C depreciation table, without adjustment or modification" (emphasis deleted).

[34] Schedule D provides the process for determining additional depreciation or lists the applicable additional depreciation factors. Under Sch. D, "the assessor may allow additional depreciation (Schedule D) on a case-by-case basis and only if the operator provides acceptable evidence to the assessor" (s. 2.004(e)). However, the *Linear Guidelines* specify that "[t]here will be no recognition or adjustment in Schedule C or Schedule D as a result of the cessation or reduction of coal-fired emissions on or before December 31, 2030 arising from an Off-Coal Agreement or Provincial or Federal legislation" (s. 1.003(d)).

[35] Section 2.003 of the *Linear Guidelines* addresses Schs. C and D depreciation as it applies to TransAlta. It too provides that "[t]here will be no recognition or adjustment in Schedule C or Schedule D as a result of the cessation or reduction of coal-fired emissions on or before December 31, 2030 arising from an Off-Coal Agreement or Provincial or Federal legislation."

[36] The practical effect of these provisions is that an assessor cannot allow TransAlta additional depreciation for its coal-fired facilities on the basis that those facilities are subject to the Off-Coal Agreement (see *Linear Guidelines*, ss. 1.003(d) and 2.004(e)).

VII. Analysis

[37] TransAlta challenges the validity of the *Linear Guidelines* on two bases. First, it invokes the common law principle that a statutory delegate has no authority to make discriminatory distinctions unless the statute either expressly, or by necessary implication, grants them such authority. TransAlta argues that the *Linear Guidelines* discriminate against it by denying it the ability to seek additional depreciation for its coal-fired facilities and that the Minister did not have the statutory authority to establish guidelines that discriminate in this manner. Second, it asserts that the *Linear Guidelines* are inconsistent with the overarching purposes of the assessment and taxation regime under the *MGA*.

[38] In what follows, I will assess whether the *Linear Guidelines* fall reasonably within the scope of the Minister's authority under the *MGA*, having regard to the relevant constraints: (1) the common law rule against administrative discrimination; (2) the *MGA*, which is the governing statutory scheme; and (3) the principles of statutory interpretation. I will begin by outlining the common law rule against administrative discrimination. I will then consider whether the *Linear Guidelines* violate this rule.

[39] As I will explain, the *Linear Guidelines* do not violate the common law rule against administrative discrimination. This is because the *MGA* authorizes the Minister, by necessary implication, to discriminate against TransAlta and other parties to off-coal agreements by depriving them of the ability to claim additional depreciation. It follows that the *Linear Guidelines* are consistent with the purposes of the *MGA*. As will become clear, the *Linear Guidelines* serve to ensure that tax assessments are "current, correct, fair and equitable" in accordance with the purposes of the *MGA*.

A. *The Common Law Rule Against Administrative Discrimination*

[40] Administrative discrimination "arises when [subordinate] legislation expressly distinguishes among the persons to whom its enabling legislation applies" (Keyes, at pp. 370-71, citing L.-P. Pigeon, *Drafting and Interpreting Legislation* (1988), at p. 42; *Fédération des producteurs de fruits et légumes du Québec v. Conserverie canadienne Ltée*, [1990] R.J.Q. 2866 (Sup. Ct.), at p. 2871; *Sunshine Village Corp. v. Canada (Parks)*, 2004 FCA 166, [2004] 3 F.C.R. 600, at para. 13).

[41] Administrative discrimination is different than discrimination in the context of the *Canadian Charter of Rights and Freedoms* or human rights legislation: "When we speak of administrative discrimination, we are not speaking of discrimination based on personal characteristics, such as sex, race or religion, that is proscribed by many human rights statutes" (P. Salembier, *Regulatory Law and Practice* (3rd ed. 2021), at p. 303). Rather, administrative discrimination "relates to the drawing of distinctions between persons or classes that are discriminatory in a

'non-pejorative but most neutral sense of the word', in that they simply 'do not apply equally to all those engaged in the activity that is the subject of the enactment'" (p. 303, quoting *Montréal (City of) v. Arcade Amusements Inc.*, [1985] 1 S.C.R. 368, at p. 406, and *Sunshine Village Corp.*, at para. 13, citing D. J. M. Brown and J. M. Evans, *Judicial Review of Administrative Action in Canada* (looseleaf), at para. 15:3212).

[42] The common law rule against administrative discrimination provides that subordinate legislation that discriminates in the administrative law sense is invalid unless the discrimination is authorized by the enabling statute (*Arcade Amusements*, at p. 404; *Forget v. Quebec (Attorney General)*, [1988] 2 S.C.R. 90, at pp. 105-6; *Katz Group*, at para. 47; Keyes, at p. 371; Salembier, at pp. 307-8). The enabling statute may authorize administrative discrimination, either expressly or by necessary implication (*Arcade Amusements*, at p. 413; *Forget*, at pp. 105-6; *Katz Group*, at para. 47).

[43] As McLachlin J. (as she then was), dissenting, but not on this point, explained when reviewing the validity of a municipal bylaw in *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231, at p. 259, the rule against administrative discrimination is concerned with ensuring that statutory delegates act within the scope of their authority when they distinguish between the persons to whom the enabling legislation applies:

> The rule pertaining to municipal discrimination is essentially concerned with the municipality's power. Municipalities must operate within the powers conferred on them under the statutes which create and empower them. Discrimination itself is not forbidden. What is forbidden is discrimination which is beyond the municipality's powers as defined by its

> empowering statute. Discrimination in this municipal sense is conceptually different from discrimination in the human rights sense; discrimination in the sense of the municipal rule is concerned only with the ambit of delegated power.

[44] With this in mind, I turn to the question of whether the *Linear Guidelines* discriminate against TransAlta.

B. *The Linear Guidelines Discriminate Against Parties to Off-Coal Agreements*

[45] The chambers judge found that the *Linear Guidelines* did not discriminate against TransAlta because they did not deprive TransAlta of a form of depreciation to which it was previously entitled or which applied to other types of linear property (para. 72). The Court of Appeal also held that the *Linear Guidelines* did not discriminate against TransAlta. It held so on the basis that the impugned provisions apply to all coal-fired facilities subject to off-coal agreements, not just to those owned by TransAlta (para. 86).

[46] I disagree with the courts below. The *Linear Guidelines* discriminate against TransAlta and other parties to off-coal agreements by singling them out as being ineligible to claim additional depreciation on the basis of the off-coal agreements and to have the assessor consider that claim (see ss. 1.003(d) and 2.004(e)). Owners of linear property who are not parties to off-coal agreements are eligible to make claims for additional depreciation and to have those claims considered by the assessor without exclusion.

[47] The chambers judge was correct in stating that TransAlta was not entitled to additional depreciation. However, but for the impugned provisions of the *Linear Guidelines*, TransAlta would have been eligible to claim additional depreciation and to have that claim considered by the assessor. Section 2.004(e) of the *Linear Guidelines* provides that "[s]ubject to section 1.003(d) and section 2.003(b), the assessor may allow additional depreciation (Schedule D) on a case-by-case basis and only if the operator provides acceptable evidence to the assessor." TransAlta is not eligible to advance a claim for additional depreciation for consideration by the assessor on the basis of the reduction in its facilities' lifespan arising from the Off-Coal Agreement because s. 1.003(d) states that "[t]here will be no recognition or adjustment in Schedule C or Schedule D as a result of the cessation or reduction of coal-fired emissions . . . arising from an Off-Coal Agreement".

[48] The fact that the *Linear Guidelines* treat all parties to off-coal agreements in the same way does not mean that they are not discriminatory. The *Linear Guidelines* treat all parties to off-coal agreements in the same *discriminatory* way, as compared with owners of linear property who are not parties to off-coal agreements. As explained, administrative discrimination arises when subordinate legislation expressly distinguishes among the persons to whom its enabling legislation applies (Keyes, at pp. 370-71). The *Linear Guidelines* expressly distinguish between owners of linear property who are parties to off-coal agreements and those who are not parties to such agreements, though both are subject to the *MGA*.

[49] The next question is whether the *MGA* authorizes the Minister to discriminate against TransAlta on the basis of the Off-Coal Agreement, having regard to the purposes of the *MGA* and the principles of statutory interpretation. If the *MGA* does so, either expressly or by necessary implication, the *Linear Guidelines* will not be invalid for being discriminatory.

C. *The Minister Is Statutorily Authorized To Discriminate Against Parties to Off-Coal Agreements*

[50] The question of statutory authorization to discriminate falls within the reasonableness review to be conducted in a *vires* challenge to subordinate legislation, unless the legislature has indicated otherwise or a question relating to the rule of law arises which should be reviewed for correctness (*Vavilov*, at para. 53).

[51] The *MGA* does not expressly authorize the Minister to discriminate against TransAlta by distinguishing between parties who have entered into off-coal agreements with Alberta and those who have not. However, the *MGA*, by necessary implication, authorizes the Minister to draw this distinction.

[52] When a court reviews the *vires* of subordinate legislation, the challenged legislation and the enabling statute must be interpreted using a broad and purposive approach (*Katz Group*, at para. 26). TransAlta's coal-fired facilities are deemed to be linear property (*MGA*, s. 284(1)(k)). The Minister has broad authority to make regulations establishing valuation standards for linear property, respecting the

assessment of linear property, respecting the processes and procedures for preparing assessments and respecting any matter considered necessary to carry out the intent of the *MGA* (s. 322(1)(c.1), (d), (e) and (i)). The legislation is clear: the valuation standard for linear property is the one established by the Minister (ss. 322 and 322.1; *Matters Relating to Assessment and Taxation Regulation*, s. 8(2)).

[53] In establishing a valuation standard for linear property, the Minister is authorized to make regulations "respecting designated industrial property, including, without limitation, regulations respecting the specifications and characteristics of designated industrial property" (*MGA*, s. 322(1)(d.3)). The "specifications and characteristics" that the Minister sets out must be taken into account by the assessor when assessing the value of the property for taxation purposes (s. 292(2)(b)). This grant of authority is articulated in very broad terms — "without limitation" — and specifically empowers the Minister to identify and make regulations respecting the "specifications and characteristics" of industrial property. It is not possible to construe s. 322(1)(d.3) without contemplating the drawing of distinctions between types of properties on the basis of their specifications and characteristics.

[54] Additionally, it follows from the *MGA*'s purpose of ensuring "that assessments are 'current, correct, fair and equitable'" (*Capilano*, at para. 46, quoting *Edmonton (City) v. Army & Navy Department Stores Ltd.*, [2002] A.M.G.B.O. No. 126 (QL), at para. 114) that the Minister has the authority to draw distinctions on the basis of the specifications and characteristics of properties where ignoring them would create

a risk of inappropriate assessments. The inverse is also true: where appropriate, the Minister must have authority to pronounce that certain specifications and characteristics are *not* relevant to an assessment, as he did in this case. The statute, by necessary implication, grants the Minister the authority to discriminate in the manner that he did.

D. *The Linear Guidelines Are Consistent With the Scheme and Purposes of the MGA*

[55] Since I have found that the Minister had the authority to discriminate between different types of property, the next question is whether he exercised that authority in a manner that is consistent with the scheme and purposes of the *MGA*. The *MGA* has two purposes: (1) "to establish and maintain a property assessment system that fairly and equitably distributes taxes, and promotes transparency, predictability and stability for municipalities and taxpayers" (*Guide*, at p. 2); and (2) "to ensure that assessments are 'current, correct, fair and equitable'" (*Capilano*, at para. 46, quoting *Army & Navy*, at para. 114).

[56] TransAlta submits that the discrimination against it resulted in a valuation of its coal-fired facilities that was both incorrect and unfair (A.F., at paras. 49, 68, 77 and 85; transcript, at pp. 57, 67, 70-71 and 159). It submits that the Off-Coal Agreement does not account for depreciation, which is essential to an accurate valuation of its property. In its view, the transition payments compensate it purely for loss of profits (transcript, at p. 57). TransAlta also submits that the Minister was not entitled to distinguish between parties to off-coal agreements and others because being a party to

an off-coal agreement is a characteristic of the owner, not of the property itself. In other words, it is not a "specification" or "characteristic" of the linear property as contemplated in ss. 292(2)(b) and 322(1)(d.3) of the *MGA* (A.F., at para. 68).

[57] I disagree. As I will explain, ss. 1.003 and 2.003 of the *Linear Guidelines*, which deprive TransAlta of the ability to claim additional depreciation on the basis of the reduction in its facilities' lifespan arising from the Off-Coal Agreement, are consistent with the purpose of ensuring "current, correct, fair and equitable" assessments and accord with the language in ss. 292(2)(b) and 322(1)(d.3) of the *MGA*.

[58] The formula used to calculate the transition payments in the Off-Coal Agreement accounts for at least some loss of value arising from the reduced life of TransAlta's coal-fired facilities. It does so by prorating the net book value of the facilities by the percentage of life remaining after 2030 (Off-Coal Agreement, Sch. A). Even if the payments are characterized as compensation for loss of profits, because the payments promise additional revenues that run with the assets, their effect is to offset the decrease in value caused by the facilities' reduced lifespan. To be current and correct, an assessment of TransAlta's coal-fired facilities must consider the fact that the transition payments mitigate at least some depreciation that would otherwise result from the early retirement of the facilities. Therefore, in light of the *MGA*'s purpose of ensuring that assessments are current and correct, it was reasonable for the Minister to interpret his statutory grant of power as authorizing him to deprive TransAlta of the ability to claim additional depreciation under the *Linear Guidelines*.

[59] To deprive TransAlta of the ability to claim additional depreciation is also consistent with the *MGA*'s purpose of ensuring that assessments are fair and equitable. Since the transition payments already account for at least some loss of value resulting from the reduced life of TransAlta's coal-fired facilities, there would be a real risk of "double dipping" if TransAlta were able to receive additional depreciation for that same loss of value under the *Linear Guidelines*. That would not be fair or equitable.

[60] TransAlta's assertion that the existence of the Off-Coal Agreement is a characteristic of the owner — not of the property itself — is inaccurate. The Off-Coal Agreement runs with the facilities. A transfer of title to or ownership interest in the facilities requires Alberta's consent and requires the new owner to agree to be bound by the terms of the Off-Coal Agreement:

> Transfer of Ownership of Plants. The Company or the Plant Owners may transfer title to or ownership interest in all the Plants with the consent of the Province, not to be unreasonably withheld, provided that the new owner agrees to be bound by the terms of this Agreement, in which case the Company and the Plant Owners shall be released from their obligations hereunder. [s. 11(n)]

[61] While TransAlta, as the owner, entered into the Off-Coal Agreement, being subject to the Off-Coal Agreement is not merely a "characteristic" of TransAlta. Rather, because any subsequent owner of TransAlta's coal-fired facilities must agree to be bound by the terms of the Off-Coal Agreement, being subject to the Off-Coal Agreement is also properly considered a "specification" or "characteristic" of those facilities. Under s. 322(1)(d.3) of the *MGA*, the Minister may make regulations

"respecting designated industrial property, including, without limitation, regulations respecting the specifications and characteristics of designated industrial property". Since TransAlta's coal-fired facilities are deemed "designated industrial property" under s. 284(1)(f.01)(ii) of the *MGA*, the Minister was authorized to make regulations designating an off-coal agreement as a "specification" or "characteristic" of those facilities to ensure that assessments thereof would be "current, correct, fair and equitable".

VIII. Conclusion

[62] TransAlta has not met its burden of proving that the *Linear Guidelines* are *ultra vires* the Minister (*Vavilov*, at para. 100; *Katz Group*, at para. 25; *Canadian Council for Refugees*, at para. 54).

[63] The Minister is authorized under the *MGA*, by necessary implication, to discriminate against TransAlta. The Minister has indisputably broad authority to establish valuation standards for linear property under s. 322(1) of the *MGA*. This includes the authority to determine the "specifications and characteristics" of the property that an assessment must reflect in order to be "current, correct, fair and equitable" (*Capilano*, at para. 46). To properly make regulations respecting "specifications and characteristics", the Minister must therefore have the authority to contemplate the drawing of distinctions as between types of properties.

[64] Accordingly, the *Linear Guidelines* fall within a reasonable interpretation of the enabling statute having regard to the relevant constraints, and are *intra vires* the Minister. They are "consistent both with specific provisions of the enabling statute and with its overriding purpose or object" (*GGPPA*, at para. 87). They also do not contravene the common law rule against administrative discrimination.

[65] The appeal is dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellants: Lawson Lundell, Calgary; Michael Sobkin, Ottawa; TransAlta Corporation, Calgary.

Solicitors for the respondents: Brownlee, Edmonton.

Solicitor for the intervener the Attorney General of Ontario: Ministry of the Attorney General, Crown Law Office — Civil, Toronto.

Solicitor for the intervener the Attorney General of Quebec: Ministère de la Justice du Québec, Québec.

Solicitor for the intervener the Attorney General of British Columbia: Ministry of Attorney General of British Columbia, Legal Services Branch, Vancouver.

Solicitor for the intervener the Attorney General for Saskatchewan: Saskatchewan Ministry of Justice and Attorney General, Regina.

Solicitors for the intervener the Trial Lawyers Association of British Columbia: Hunter Litigation Chambers, Vancouver.

Solicitors for the intervener HIV & AIDS Legal Clinic Ontario and the Health Justice Program: Paliare Roland Rosenberg Rothstein, Toronto.

Solicitors for the interveners the Chicken Farmers of Canada, the Egg Farmers of Canada, the Turkey Farmers of Canada and the Canadian Hatching Egg Producers: Conway Baxter Wilson, Ottawa.

Solicitor for the intervener the Workers' Compensation Board of British Columbia: Workers' Compensation Board of British Columbia, Richmond.

Solicitors for the intervener the Canadian Association of Refugee Lawyers: Refugee Law Office, Toronto; Landings, Toronto.

Solicitors for the intervener Association québécoise des avocats et avocates en droit de l'immigration: Hasa Avocats Inc., Montréal.

Solicitors for the intervener the Advocates for the Rule of Law: Henein Hutchison Robitaille, Toronto.

Solicitors for the intervener the National Association of Pharmacy Regulatory Authorities: Shores Jardine, Edmonton.

Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)

Supreme Court Reports

Supreme Court of Canada

Present: McLachlin C.J. and LeBel, Abella, Rothstein, Cromwell, Moldaver and Wagner JJ.

Heard: May 14, 2013;

Judgment: November 22, 2013.

File Nos.: 34647, 34649.

[2013] 3 S.C.R. 810 | [2013] 3 R.C.S. 810 | [2013] S.C.J. No. 64 | [2013] A.C.S. no 64 | 2013 SCC 64

Katz Group Canada Inc., Pharma Plus Drug Marts Ltd. and Pharmx Rexall Drug Stores Ltd., Appellants; v. Minister of Health and Long-Term Care, Lieutenant Governor-in-Council of Ontario and Attorney General of Ontario, Respondents. - and - Shoppers Drug Mart Inc., Shoppers Drug Mart (London) Limited and Sanis Health Inc., Appellants; v. Minister of Health and Long-Term Care, Lieutenant Governor-in-Council of Ontario and Attorney General of Ontario, Respondents.

(51 paras.)

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Case Summary

Catchwords:

Food and drugs — Regulations — Validity — Province of Ontario enacting Regulations to effectively ban the sale of private label drugs by pharmacies — Purpose of Regulations to reduce drug prices — Whether Regulations are ultra vires on the ground that they are inconsistent with the statutory scheme and mandate — Drug Interchangeability and Dispensing Fee Act Regulation, R.R.O. 1990, Reg. 935, s. 9 — Ontario Drug Benefit Act Regulation, O. Reg. 201/96, s. 12.0.2.

[page811]

Summary:

For decades, Ontario has been involved in an ongoing struggle to control rising drug costs. Generic drugs have been a key part of the strategy for dealing with this problem. Persistent market practices, however, have kept generic prices high. In Ontario, the result has been an episodic and totemic tug-of-war between regulators and those engaged in the manufacture, distribution and sale of generic drugs.

In 1985, two complementary and intersecting statutes were introduced together to address the problem of rising drug prices for consumers: the *Drug Interchangeability and Dispensing Fee Act* and the *Ontario Drug Benefit Act*. The *Drug Interchangeability and Dispensing Fee Act* empowers the Ministry to designate a cheaper generic drug as "interchangeable" with a more expensive brand-name drug. Pharmacists must dispense the cheaper interchangeable generic to customers unless the prescribing physician specifies "no substitution" or the customer agrees to pay the extra cost of the brand name. This statute also limits the dispensing fees that pharmacies can charge private customers.

The *Ontario Drug Benefit Act* governs the Ontario Drug Benefit Program whereby the province reimburses pharmacies when they dispense prescription drugs at no charge to "eligible persons" -- primarily seniors and persons on social assistance. All drugs for which Ontario will provide reimbursement, along with the price that Ontario will pay for them, are listed in the Formulary. When a pharmacy dispenses a listed drug to an eligible person, the *Ontario Drug Benefit Act* requires Ontario to reimburse the pharmacy for an amount based on the Formulary price of the drug plus a prescribed mark-up and prescribed dispensing fee. This legislative scheme effectively creates two markets in Ontario for brand name and generic drugs. The private market consists of individuals buying drugs at their own expense or for reimbursement by private drug insurance plans. The "public market" is the government-funded Ontario Drug Benefit Program. Generic drugs reach consumers in Ontario's private and public markets through a supply chain that involves several participants regulated at the federal level, the provincial level, or both. They are: fabricators, who make the generic drugs; manufacturers, who sell generic drugs under their own name to wholesalers or directly to pharmacies; wholesalers, who buy drugs from manufacturers to distribute to pharmacies; and [page812] pharmacies, who buy drugs from wholesalers or manufacturers and dispense them to their customers.

Before 2006, the price at which manufacturers could apply to list generic drugs in the Formulary was capped by regulations under the two statutes. In order to be competitive, manufacturers would, however, give pharmacies a substantial rebate to induce them to buy their products. The price that manufacturers charged -- and customers paid -- was thereby artificially increased to the extent of the rebates. In 2006, in order to stop this inflationary effect on generic drug prices, the two statutes and the Regulations under them were amended to prohibit rebates. The expected savings did not occur and manufacturers continued to charge high prices for generic drugs. Instead of the rebates, manufacturers were now paying pharmacies $800 million annually in professional allowances. Amendments were therefore introduced in 2010 eliminating the "professional allowances" exception.

The Regulations to the two statutes were also amended to prevent pharmacies from controlling manufacturers who sell generic drugs under their own name but do not fabricate them. This was done by creating a category designated as "private label products", which includes products sold but not fabricated by a manufacturer which does not have an arm's length relationship with drug wholesalers or pharmacies. Under the Regulations, private label products cannot be listed in the Formulary or designated as interchangeable.

Sanis Health Inc., a subsidiary of Shoppers Drug Mart, was incorporated by Shoppers for the purpose of buying generic drugs from third party fabricators and selling them under the Sanis label in Shoppers Drug Mart stores. Katz Group Canada Inc., Pharma Plus Drug Marts Ltd. and Pharmx Rexall Drug Stores Ltd. also operate pharmacies [page813] in Ontario and, like Shoppers, have taken steps to set up their own "private label" manufacturer. In 2010, Sanis applied to list several generic drugs in the Formulary and have them designated as "interchangeable". Its application was rejected, however, because those generic drugs were "private label products". Shoppers and Katz challenged the Regulations that banned the sale of private label products as being *ultra vires* on the grounds that they were inconsistent with the purpose and mandate of the statutes. The challenge succeeded in the Divisional Court. The Court of Appeal reversed the decision.

Held: The appeal should be dismissed.

A successful challenge to the *vires* of Regulations requires that they be shown to be inconsistent with the objective of the enabling statute or the scope of the statutory mandate. Regulations benefit from a presumption of validity. This presumption has two aspects: it places the burden on challengers to demonstrate the invalidity of regulations rather than on regulatory bodies to justify them; and it favours an interpretative approach that reconciles the regulation with its enabling statute so that, where possible, the regulation is construed in a manner which renders it *intra vires*. Both the challenged regulation and the enabling statute should be interpreted using a broad and generous approach consistent with this Court's approach to statutory interpretation generally. This inquiry does not involve assessing the policy merits of the Regulations to determine whether they are necessary, wise or effective in practice. Nor is it an inquiry into the underlying political, economic, social or partisan considerations.

In this case, the original legislative intent animating the two statutes was to control the cost of prescription drugs in Ontario without compromising safety. As the legislative history shows, attempts were made to promote transparent pricing and eliminate price inflation along the drug supply chain, all in pursuit of the ultimate objective of lowering drug costs. The purpose of the 2010 Regulations banning private label products was to prevent another possible mechanism for circumventing the ban on the rebates that had kept drug prices inflated. If pharmacies were permitted to create their own affiliated manufacturers whom they controlled, they would be [page814] directly involved in setting the Formulary prices and have strong incentives to keep those prices high.

The 2010 private label Regulations contribute to the legislative pursuit of transparent drug pricing. They fit into this strategy by ensuring that pharmacies make money exclusively from providing professional health care services, instead of sharing in the revenues of drug manufacturers by setting up their own private label subsidiaries. The Regulations were therefore consistent with the statutory purpose of reducing drug costs.

Cases Cited

Referred to: *Waddell v. Governor in Council* (1983), 8 Admin. L.R. 266; *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, [2004] 1 S.C.R. 485; *Glykis v. Hydro-Québec*, 2004 SCC 60, [2004] 3 S.C.R. 285; *Jafari v. Canada (Minister of Employment and Immigration)*, [1995] 2 F.C. 595; *Ontario Federation of Anglers & Hunters v. Ontario (Ministry of Natural Resources)* (2002), 211 D.L.R. (4th) 741; *Thorne's Hardware Ltd. v. The Queen*, [1983] 1 S.C.R. 106; *CKOY Ltd. v. The Queen*, [1979] 1 S.C.R. 2; *Alaska Trainship Corp. v. Pacific Pilotage Authority*, [1981] 1 S.C.R. 261; *Re Doctors Hospital and Minister of Health* (1976), 12 O.R. (2d) 164; *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231; *Municipal Corporation of City of Toronto v. Virgo*, [1896] A.C. 88; *Forget v. Quebec (Attorney General)*, [1988] 2 S.C.R. 90.

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Ontario Drug Benefit Act, R.S.O. 1990, c. O.10, ss. 0.1, 1(1), 1.2(2)(a), 1.3, 11.5, 18(1), (6).

R.R.O. 1990, Reg. 935, ss. 2, 9(1), (2) "private label product" [ad. O. Reg. 221/10, s. 5].

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[page815]

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History and Disposition:

APPEAL from a judgment of the Ontario Court of Appeal (MacPherson, Epstein and Karakatsanis JJ.A.), 2011 ONCA 830, 109 O.R. (3d) 279, 286 O.A.C. 68, 345 D.L.R. (4th) 277, 37 Admin. L.R. (5th) 101, [2011] O.J. No. 5894 (QL), 2011 CarswellOnt 14816, setting aside a decision of Whalen, Molloy and Swinton JJ., 2011 ONSC 615, [2011] O.J. No. 480 (QL), 2011 CarswellOnt 720. Appeal dismissed.

Counsel

Terrence J. O'Sullivan and *M. Paul Michell*, for the appellants Katz Group Canada Inc., Pharma Plus Drug Marts Ltd. and Pharmx Rexall Drug Stores Ltd.

Mahmud Jamal, *Craig T. Lockwood*, *Eric Morgan* and *W. David Rankin*, for the appellants Shoppers Drug Mart Inc., Shoppers Drug Mart (London) Limited and Sanis Health Inc.

[page816]

Lise G. Favreau, *Kim Twohig* and *Kristin Smith*, for the respondents.

The judgment of the Court was delivered by

ABELLA J.

1 Canada spends more on prescription drugs per capita than almost all members of the Organisation for Economic Co-operation and Development.[1] Prescription drugs are the second largest area of health care spending.[2] Drug costs accounted for approximately 9.5% of government health care expenses in 1985. By 2010, that number had risen to 15.9%.[3]

2 A key part of the strategy for controlling drug costs has been to replace brand-name drugs

with generic drugs, in the expectation that generic drugs would be significantly cheaper. Those expectations were, however, challenged by persistent market practices that kept generic prices high. In Ontario, the result has been an episodic tug-of-war between regulators and those engaged in the manufacture, distribution and sale of generic drugs. This appeal arises out of one of those regulatory episodes.

Background

3 The sale and pricing of generic drugs is provincially regulated. In Ontario, two complementary and intersecting statutes were introduced together in 1985 to address the problem of rising drug prices: the *Drug Interchangeability and [page817] Dispensing Fee Act*, R.S.O. 1990, c. P.23, and the *Ontario Drug Benefit Act*, R.S.O. 1990, c. O.10 ("*Acts*").

4 The *Drug Interchangeability and Dispensing Fee Act* ensures that patients in Ontario receive generic drugs rather than equivalent but more expensive brand-name drugs. It does so by empowering the Executive Officer of the Ministry of Health and Long-Term Care to designate a generic drug as "interchangeable" with a brand-name drug. Pharmacists must dispense the cheaper interchangeable generic to customers unless the prescribing physician specifies "no substitution" or the customer agrees to pay the extra cost of the brand-name. The *Act* also limits the dispensing fees that pharmacies can charge private customers.

5 The *Ontario Drug Benefit Act* governs the Ontario Drug Benefit Program, whereby the province reimburses pharmacies when they dispense prescription drugs at no charge to "eligible persons" - primarily seniors and persons on social assistance. The list of all drugs for which Ontario will provide reimbursement, along with the price that Ontario will pay for them, is called the Formulary. The Executive Officer is responsible for listing drugs in the Formulary and setting their price by agreement with the drugs' manufacturers. When a pharmacy dispenses a listed drug to an eligible person, the *Ontario Drug Benefit Act* requires Ontario to reimburse the pharmacy for an amount based on the Formulary price of the drug plus a prescribed mark-up and prescribed dispensing fee.

6 This legislative scheme effectively creates two markets in Ontario for brand-name and generic drugs. The "private market" consists of individuals buying drugs at their own expense or for reimbursement by private drug insurance plans. This market [page818] includes employer benefit plans, which in 2010 provided drug coverage for 8.6 million Ontario employees and their families at a cost of $4 billion to employers. Generic drugs, in order to be in the private market, must receive Health Canada approval for safety and effectiveness, and must be designated as "interchangeable" by Ontario's Executive Officer.

7 The "public market" is the government-funded Ontario Drug Benefit Program. To be in this market, generic drugs must be approved by Health Canada, designated by Ontario as interchangeable, *and* listed in the province's Formulary. In 2010, the Ontario Drug Benefit Program provided drug coverage for 2.5 million people for the purchase of 3,300 drugs listed in the Formulary at a cost of $3.7 billion.

8 Generic drugs reach consumers in Ontario's private and public markets through a supply chain that involves several participants regulated at the federal level, the provincial level, or both. They are:

* Fabricators, who make the generic drugs. Fabricators are licensed federally under the *Food and Drug Regulations*, C.R.C., c. 870.
* Manufacturers, who are licensed under the federal *Food and Drug Regulations* to sell generic drugs under their own name to wholesalers or directly to pharmacies. Manufacturers are responsible for regulatory compliance: having the drug approved by Health Canada, and having it designated as interchangeable and listed in the Formulary. A manufacturer can either make drugs itself, in which case it is also [page819] regulated as a fabricator, or it can buy the drugs from a fabricator. The price at which manufacturers sell the drugs to wholesalers or pharmacies is regulated under the *Ontario Drug Benefit Act* and the *Drug Interchangeability and Dispensing Fee Act*. The price at which manufacturers buy drugs from fabricators is not regulated.
* Wholesalers, who are licensed under the federal *Food and Drug Regulations* to buy drugs from manufacturers to distribute to pharmacies. The prices at which wholesalers buy and sell drugs are regulated under the Ontario *Acts*. Their role is not implicated in the particular issue before this Court.
* Pharmacies, who buy drugs from wholesalers or manufacturers and dispense them to their customers. The term is used in these reasons to refer to pharmacy operators and to companies that own, operate or control pharmacies. The prices at which pharmacies buy drugs and dispense them to customers are regulated under the Ontario *Acts*.

9 The *Drug Interchangeability and Dispensing Fee Act* and the *Ontario Drug Benefit Act* give the Lieutenant Governor in Council the authority to make regulations, including the authority to prescribe the conditions drugs must meet in order to be sold in Ontario. Ontario has used that regulatory authority to impose price controls along the drug supply chain.

10 Prior to 2006, the price at which manufacturers could apply to list generic drugs in the Formulary was capped by regulations under the *Acts* at effectively 63% of the price of the brand-name drug. Pharmacies would buy drugs from manufacturers [page820] at the Formulary price, and dispense them to customers at the Formulary price, plus regulated mark-ups and dispensing fees. In order to be competitive, manufacturers would, however, give pharmacies a substantial rebate so that they would buy their products. The price that manufacturers charged - and customers paid - was thereby artificially increased to the extent of the rebates. The rebates were up to $600-800 million annually, and were said to account for 40% of the price manufacturers charged for drugs.

11 In order to stop this inflationary effect on generic drug prices, in 2006, the *Ontario Drug Benefit Act*, the *Drug Interchangeability and Dispensing Fee Act*, and the Regulations under them were amended to prohibit rebates.[4] The amendments were introduced as the *Transparent*

Drug System for Patients Act, 2006, S.O. 2006, c. 14. They also added a "Principles" clause to the *Ontario Drug Benefit Act*,[5] which stated that the public drug system "aims to operate *transparently* to the extent possible for all persons with an interest in the system, including ... consumers, *manufacturers*, wholesalers *and pharmacies*" and "aims to consistently achieve value-for-money and ensure the best use of resources at every level of the system".

12 The legislature sought to terminate one major source of revenue for pharmacies - payments from drug manufacturers - and replace it with government reimbursement for providing professional health care services. The amendments made the reimbursement of pharmacies for professional services a function of the Executive [page821] Officer, established a Pharmacy Council to advise the Minister primarily on this issue, and created a new regulation-making power allowing the Lieutenant Governor in Council to govern all aspects of professional services. Ontario also increased the prescribed dispensing fees in the public market.

13 In the expectation that the elimination of rebates would lead manufacturers to lower their prices, the Ontario government also reduced the price cap imposed by the Regulations to 50% in the public market and removed the cap entirely in the private market. Manufacturers could, however, give pharmacies "professional allowances" for direct patient care programs.

14 But the expected savings did not occur and manufacturers continued to charge high prices for generic drugs. Ontario's Ministry of Health and Long-Term Care found in 2007 that some of the leading generic drugs were three times more expensive in Ontario than in France, Germany and the United Kingdom, five times more expensive than in the United States, and twenty-two times more expensive than in New Zealand. In fact, as a Competition Bureau Report concluded, new generic drugs were entering the uncapped private market at a price higher than the previous cap of 63% (*Benefiting from Generic Drug Competition in Canada: The Way Forward* (2008), at p. 10).

15 In addition, instead of the rebates, manufacturers were now paying pharmacies $800 million annually in professional allowances. As a result, the professional allowance exception was identified as yet another inflationary loophole. Audits of 206 pharmacies showed that all of them were in violation of the rules pertaining to professional allowances, and 70% of the funds provided by manufacturers on this basis went towards higher salaries and store profits, instead of being used for patient care. The then Minister of Health, [page822] the Hon. Deborah Matthews, concluded that the continuing payments by drug manufacturers to pharmacies were the major reason Ontario still had inflated generic drug prices relative to comparable countries. In her view, drug prices could be cut by 50% if the payments were eliminated (Legislative Assembly of Ontario, *Official Report of Debates (Hansard)*, Nos. 13, 19 and 23, 2nd Sess., 39th Parl., April 12, 21 and 28, 2010).

16 Amendments were therefore introduced in 2010 to both *Acts* and to the Regulations, eliminating the "professional allowances" exception. Together with the 2006 ban on rebates, this prevented manufacturers from giving pharmacies any benefits for purchasing their drugs other than small prescribed discounts. At the same time, Ontario reduced the price cap imposed by the Regulations to 25% in the public market and re-introduced the price cap in the private

market. Ontario also amended the Regulations to provide more reimbursement to pharmacies for professional services by further increasing the prescribed dispensing fees in the public market, and by directing the Executive Officer to pay an additional service fee on most claims in the public market until March 31, 2013 in "recognition of the transition to a pharmacy reimbursement model aimed at supporting professional services" (O. Reg. 220/10, s. 1(1)). The government also allocated $100 million in funding for the development of professional services by pharmacies.

17 The Regulations to the *Ontario Drug Benefit Act*[6] and the *Drug Interchangeability and Dispensing Fee Act*[7] were also amended to prevent pharmacies from controlling manufacturers who sell generic drugs under their own name but do not [page823] fabricate them. This was done by creating a category designated as "private label products", which were defined in both sets of Regulations as follows:

> "private label product" includes a drug product in respect of which,
>
> (a) the manufacturer applying for the designation of the product as a listed drug product does not directly fabricate the product itself, and,
>
> (i) is not controlled by a person that directly fabricates the product, or
>
> (ii) does not control the person that directly fabricates the product, and
>
> (b) either,
>
> (i) the manufacturer does not have an arm's-length relationship with a wholesaler, an operator of a pharmacy or a company that owns, operates or franchises pharmacies, or
>
> (ii) the product is to be supplied under a marketing arrangement associating the product with a wholesaler or one or more operators of pharmacies or companies that own, operate or franchise pharmacies.

(O. Reg. 220/10, s. 3; O. Reg. 221/10, s. 5)

18 Private label products cannot be listed in the Formulary[8] or designated as interchangeable.[9] These restrictions essentially ban the sale of private label drugs in the private and public markets in Ontario and are at the heart of this appeal.

19 Sanis Health Inc., a subsidiary of the Canadian public company Shoppers Drug Mart Corp., is a manufacturer of private label products. It was incorporated by Shoppers for the purpose of buying generic drugs from third party fabricators and selling them under the Sanis label in Shoppers [page824] Drug Mart stores. Sanis entered into cross-licensing and fabrication agreements with Cobalt Pharmaceuticals Inc. and Mylan Pharmaceuticals ULC, two manufacturers which currently fabricate generic drugs and sell them in Ontario. Pursuant to these arrangements, Sanis would rely on Cobalt and Mylan to fabricate generic drugs for it and would piggy-back onto their regulatory submissions as manufacturers to obtain its own Health Canada approval.

20 In 2010, Sanis applied to the Executive Officer to list several generic drugs in the Formulary

and have them designated as interchangeable. The Executive Officer rejected its application for the following reasons:

> As you may be aware, the ministry recently posted a notice of proposed regulations on April 8, 2010 to amend the regulations under the [*Drug Interchangeability and Dispensing Fee Act*] and the [*Ontario Drug Benefit Act*]. These regulations propose that it is a condition of being designated under the [*Drug Interchangeability and Dispensing Fee Act*] that a product is not a private label product, and it is a condition of a product being a listed drug product under the [*Ontario Drug Benefit Act*] that it not be a private label product. These regulations will come into effect on July 1, 2010.
>
> It seems to me that [Sanis' products] would be "private label products" as defined in the regulations. Sanis does not directly fabricate the Products and it does not have an arm's length relationship with a company that owns, operates or franchises pharmacies.
>
> The purpose of the regulations is to prevent a pharmacy-controlled or related entity purchasing drug products from a person that actually makes the product at lower prices than the drug benefit price on the ODB Formulary without providing any price reduction to patients, insurers, employers, the Government of Ontario, or other payors.
>
> The government's amendments to Ontario's drug regulations seek to encourage manufacturers to provide [page825] lower prices to Ontario patients. With private label products, the price reductions that Sanis presumably enjoys would not be passed onto end-payors such as government, insurers and patients. Instead, it seems that profits would be retained within pharmacy-controlled organizations without benefiting consumers. While that would not be a "rebate" as defined in the legislation, it is a similar problem that the provisions against rebates seek to prevent. Further, there is a concern that Shoppers Drug Mart pharmacies could have an interest in dispensing [Sanis products] in preference to others, which raises the potential for a conflict of interest.
>
> As a result, I do not intend to designate the Products as interchangeable under the [*Drug Interchangeability and Dispensing Fee Act*] or as listed drug products under the [*Ontario Drug Benefit Act*].

21 Katz Group Canada Inc., Pharma Plus Drug Marts Ltd. and Pharmx Rexall Drug Stores Ltd. operate the Pharma Plus and Rexall pharmacies in Ontario and, like Shoppers, have taken steps to set up their own private label manufacturer. They have indicated that they intend to follow the same general business model as Sanis.

22 Shoppers and Katz challenged the private label regulations as being *ultra vires* on the grounds that they were inconsistent with the statutory purpose and mandate. They succeeded in the Divisional Court, where Molloy J. concluded that the private label regulations were neither consistent with the purposes of the *Ontario Drug Benefit Act* and the *Drug Interchangeability and Dispensing Fee Act*, nor authorised by the regulation-making provisions. This decision was reversed in the Court of Appeal, where a majority (MacPherson and Karakatsanis JJ.A.) found that the private label regulations were *intra vires*.

23 I agree with MacPherson and Karakatsanis JJ.A. and would dismiss the appeal.

Analysis

24 A successful challenge to the *vires* of regulations requires that they be shown to be inconsistent with the objective of the enabling statute or the scope of the statutory mandate (Guy Régimbald, *Canadian Administrative Law* (2008), at p. 132). This was succinctly explained by Lysyk J.:

> In determining whether impugned subordinate legislation has been enacted in conformity with the terms of the parent statutory provision, it is essential to ascertain the scope of the mandate conferred by Parliament, having regard to the purpose(s) or objects(s) of the enactment as a whole. The test of conformity with the Act is not satisfied merely by showing that the delegate stayed within the literal (and often broad) terminology of the enabling provision when making subordinate legislation. The power-conferring language must be taken to be qualified by the overriding requirement that the subordinate legislation accord with the purposes and objects of the parent enactment read as a whole.

(*Waddell v. Governor in Council* (1983), 8 Admin. L.R. 266, at p. 292)

25 Regulations benefit from a presumption of validity (Ruth Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at p. 458). This presumption has two aspects: it places the burden on challengers to demonstrate the invalidity of regulations, rather than on regulatory bodies to justify them (John Mark Keyes, *Executive Legislation* (2nd ed. 2010), at pp. 544-50); and it favours an interpretative approach that reconciles the regulation with its enabling statute so that, *where possible*, the regulation is construed in a manner which renders it *intra vires* (Donald J. M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada*, vol. 3 (loose-leaf), at 15: 3200 and 15: 3230).

26 Both the challenged regulation and the enabling statute should be interpreted using a "broad and purposive approach ... consistent with this Court's approach to statutory interpretation generally" (*United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, [2004] 1 S.C.R. 485, at para. 8; see also Brown and Evans, at 13: 1310; Keyes, at pp. 95-97; *Glykis v. [page827] Hydro-Québec*, 2004 SCC 60, [2004] 3 S.C.R. 285, at para. 5; Sullivan, at p. 368; *Legislation Act, 2006*, S.O. 2006, c. 21, Sch. F, s. 64).

27 This inquiry does not involve assessing the policy merits of the regulations to determine whether they are "necessary, wise, or effective in practice" (*Jafari v. Canada (Minister of Employment and Immigration)*, [1995] 2 F.C. 595 (C.A.), at p. 604). As explained in *Ontario Federation of Anglers & Hunters v. Ontario (Ministry of Natural Resources)* (2002), 211 D.L.R. (4th) 741 (Ont. C.A.):

> ... the judicial review of regulations, as opposed to administrative decisions, is usually restricted to the grounds that they are inconsistent with the purpose of the statute or that

some condition precedent in the statute has not been observed. The motives for their promulgation are irrelevant. [para. 41]

28 It is not an inquiry into the underlying "political, economic, social or partisan considerations" (*Thorne's Hardware Ltd. v. The Queen*, [1983] 1 S.C.R. 106, at pp. 112-13). Nor does the *vires* of regulations hinge on whether, in the court's view, they will actually succeed at achieving the statutory objectives (*CKOY Ltd. v. The Queen*, [1979] 1 S.C.R. 2, at p. 12; see also *Jafari*, at p. 602; Keyes, at p. 266). They must be "irrelevant", "extraneous" or "completely unrelated" to the statutory purpose to be found to be *ultra vires* on the basis of inconsistency with statutory purpose (*Alaska Trainship Corp. v. Pacific Pilotage Authority*, [1981] 1 S.C.R. 261; *Re Doctors Hospital and Minister of Health* (1976), 12 O.R. (2d) 164 (Div. Ct.); *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231, at p. 280; *Jafari*, at p. 604; Brown and Evans, at 15: 3261). In effect, although it is possible to strike down regulations as *ultra vires* on this basis, as Dickson J. observed, "it would take an egregious case to warrant such action" (*Thorne's Hardware*, at p. 111).

29 The grants of authority relevant to the private label regulations are, under the *Drug Interchangeability and Dispensing Fee Act*:

[page828]

14. (1) The Lieutenant Governor in Council may make regulations,

(a) prescribing conditions to be met by products or by manufacturers of products in order to be designated as interchangeable with other products;

(b) prescribing conditions to be met for a product to continue to be designated as interchangeable;

Under the *Ontario Drug Benefit Act*, they are:

18. (1) The Lieutenant Governor in Council may make regulations,

...

(b) prescribing conditions to be met for a drug product to be designated as a listed drug product;[10]

(b.1) prescribing conditions to be met for a listed drug product to continue to be designated as a listed drug product;

...

(m) respecting any matter considered necessary or advisable to carry out the intent and purposes of this Act.

30 To start the analysis, we must determine the purposes of the enabling statutes.

31 The original legislative intent animating the two *Acts* was to combat high drug prices caused by manufacturers quoting artificially high Formulary prices while providing hidden discounts to pharmacies. When the statutes were first introduced in 1985, the then Minister of Health, the

Hon. Murray J. Elston, explained that they were intended to address the problem of "unrealistic" drug pricing:

[page829]

> [The] formulary ... lists the prices at which government will reimburse pharmacies for drugs dispensed under the program. These formulary prices are based on quotes received from drug manufacturers. They are not set by government.
>
> *Some manufacturers realized that by quoting artificially high prices for the formulary, prices higher than what pharmacies were actually paying for drugs, there was an incentive for pharmacies to purchase their products. Government reimbursements for drugs dispensed under the ODB are, as a result, higher than the cost of many drugs to pharmacies.*
>
> *It can be easily seen how this resulted in excess costs to the Ontario drug benefit plan.* This practice of price spreading, and the fact that it was allowed to continue for so long by the previous government, represents an unnecessary burden on all Ontario taxpayers.
>
> ... since the Ontario Drug Benefit Formulary is used as a pricing guide for prescription drug sales in the cash market, its artificially high prices have resulted in excess costs for cash customers and for those on other drug plans as well. [Emphasis added.]

(Legislative Assembly, *Hansard - Official Report of Debates*, No. 41, 1st Sess., 33rd Parl., November 7, 1985, p. 1446)

32 In other words, the overarching purpose of the statutory scheme is, as Molloy J. explained, "to control the cost of prescription drugs in Ontario without compromising safety".

33 The *Acts* and the Regulations under them represent a series of deliberate and aspirational responses to what has proven to be a tenacious problem over the past 25 years: manufacturers charging exceptionally high prices for generic drugs flowing not from the actual cost of the drugs, but from the manufacturers' cost in providing financial incentives to pharmacies to induce them to purchase their [page830] products. The government has repeatedly tried to end these hidden benefits. As the legislative history shows, attempts were made to promote transparent pricing and eliminate price inflation along the drug supply chain, all in pursuit of the ultimate objective of lowering drug costs. The legislature also exerted control over the sources of pharmacy revenue, attempting to shift pharmacy revenues away from drug sales and towards the delivery of professional services. Of necessity, these legislative and regulatory responses have been incremental.

34 The purpose of the 2010 Regulations banning private label products was to prevent another possible mechanism for circumventing the ban on the rebates that kept drug prices inflated. As previously noted, the problem with rebates was that they inflated the Formulary price. In banning rebates, the expectation was that manufacturers would lower Formulary prices, and that pharmacies would pass these savings on to consumers. If pharmacies were permitted to create their own affiliated manufacturers whom they controlled, they would be directly involved in setting the Formulary prices and have strong incentives to keep these prices high. Rather than

receiving a rebate financed by inflated drug prices, the pharmacy would share in the manufacturers' profits from those prices. This was expected to keep the price of drugs to consumers high.

35 These concerns found their way into the June 2010 explanatory letter from the Executive Officer to Sanis. The relevant portions are repeated here for ease of reference:

> The purpose of the regulations is to prevent a pharmacy-controlled or related entity purchasing drug products from a person that actually makes the product at lower [page831] prices than the drug benefit price on the ODB Formulary without providing any price reduction to patients, insurers, employers, the Government of Ontario, or other payors.
>
> The government's amendments to Ontario's drug regulations seek to encourage manufacturers to provide lower prices to Ontario patients. With private label products, the price reductions that Sanis presumably enjoys would not be passed onto end-payors such as government, insurers and patients. Instead, it seems that *profits would be retained within pharmacy-controlled organizations without benefiting consumers. While that would not be a "rebate" as defined in the legislation, it is a similar problem that the provisions against rebates seek to prevent.* [Emphasis added.]

36 The private label Regulations also contribute to the legislative pursuit of transparent drug pricing. The Regulations are consistent with a recommendation in the 2008 Competition Bureau Report that "reimbursement of pharmacy services should be provided separately from reimbursement of drug costs". The Bureau's rationale was that provincial governments have difficulty setting appropriate fees for pharmacy services as long as pharmacies continue to receive massive payments from drug manufacturers and can use those revenues to offset under-funding for services and inefficient service delivery (*Benefiting from Generic Drug Competition*, at pp. 20-22 and 32). Weaning pharmacies off drug manufacturer revenues and transitioning them to a business model based on reimbursement for providing professional services has therefore been an important strategy pursued in the 2006 and 2010 amendments to the *Acts* and Regulations.

37 The private label Regulations fit into this strategy by ensuring that pharmacies make money exclusively from providing professional health care [page832] services, instead of sharing in the revenues of drug manufacturers by setting up their own private label subsidiaries. In this way too, the Regulations correspond to the statutory purpose of reducing drug costs since disentangling the cost of pharmacy services from the cost of drugs puts Ontario in a better position to regulate both.

38 The 2010 private label Regulations were therefore part of the regulatory pursuit of lower prices for generic drugs and are, as a result, consistent with the statutory purpose.

39 Shoppers and Katz argued, however, that the private label Regulations were inconsistent with the statutory purpose because they neither could nor would reduce drug prices. This, with respect, misconstrues the nature of the review exercise. The animating concern of the ban is that private label manufacturers' affiliation to pharmacies could make them more resistant to

Ontario's efforts to promote lower prices. The Regulations are therefore connected to the statutory purpose of controlling - and reducing - drug prices. Whether they will ultimately prove to be successful or represent sound economic policy is not the issue. The issue is whether they accord with the purpose of the scheme. In my view, they clearly do.

40 Shoppers and Katz also argued that the private label Regulations are inconsistent with the statutory purpose because they are under-inclusive: they do not prevent a pharmacy from owning a manufacturer who is also the fabricator of the drug. At the moment, this is pure speculation - there are no pharmacies in Ontario which [page833] own both the manufacturer and fabricator of a generic drug. It may well be that at some point this will become a corporate structure of concern, but Ontario is not obliged in its regulations to anticipate all potentially problematic scenarios. So long as what it has actually enacted is consistent with the statutory purpose and regulatory scope, Ontario is entitled to address the problem in stages. The ban on private label products is not inconsistent with or extraneous to the statutory purpose simply because it fails to include corporate models that do not currently exist.

41 It bears repeating that Ontario's totemic struggle to control generic drug prices has been an incremental one, due in part to an evolving awareness of the mechanisms that can lead to high drug prices, and in part to the dynamic nature of the problem: each time the government has introduced new measures, market participants have changed their business practices to obviate the restrictions and keep prices high.

42 The private label Regulations are part of this incremental regulatory process, tailored to address a proposed business model in which the private label manufacturer is a substitute for a manufacturer which already has its drugs on the market in Ontario. Sanis, for example, proposed to rely on Cobalt and Mylan, two manufacturers who already market generic drugs in Ontario, to fabricate its drugs and to provide it with the groundwork for obtaining regulatory approval. Brent Fraser, the Director of Drug Program Services at the Ministry of Health and Long-Term Care, expressed this very concern about Sanis' proposal. In his view, Sanis' intention to rely on other companies like Cobalt or Mylan to develop the products it proposed to sell meant that "the only role of Sanis appears to be to earn a profit for a pharmacy operator over and above the increased dispensing fees, the newly introduced transitional service fees, benefits associated with ordinary [page834] commercial terms, and the planned payments for the delivery of professional services".

43 Shoppers and Katz also argued that the private label Regulations are *ultra vires* because they interfere with commercial rights, prohibit an activity, and discriminate between drug manufacturers, none of which they say is authorised by the grants of regulation-making authority in the *Ontario Drug Benefit Act* and the *Drug Interchangeability and Dispensing Fee Act*. In my view, these arguments cannot succeed.

44 It seems to me somewhat ethereal to speak of a commercial "right" to trade in a market as highly regulated as is the pharmaceutical market in Ontario. Manufacturers have no right to sell drugs in the public market in Ontario unless they are listed in the Formulary, and no right to sell generic drugs at all unless they are designated as interchangeable. Since the *Ontario Drug*

Benefit Act and the *Drug Interchangeability and Dispensing Fee Act* give the Lieutenant Governor in Council the authority to set the conditions that a drug must meet in order to be listed in the Formulary and designated as interchangeable, they expressly authorise interference with a manufacturer's ability to enter and remain in the market.

45 Nor do the private label Regulations contravene the principle that a statutory power to regulate an activity does not include the power to prohibit it. This principle had its origins in *Municipal Corporation of City of Toronto v. Virgo*, [1896] A.C. 88 (P.C.), where Lord Davey held that

[page835]

> there is marked distinction to be drawn between the prohibition or prevention of a trade and the regulation or governance of it, and indeed a power to regulate and govern seems to imply the continued existence of that which is to be regulated or governed. [p. 93]

46 Assessing whether a regulation has crossed the line from being a permissible condition into being an impermissible prohibition requires establishing the scope of the activity to be regulated and then determining the extent to which it can continue to be carried on (Keyes, at p. 312). Here, the activity to be regulated is the sale of generic drugs in the private and public markets in Ontario. The private label Regulations do not prohibit manufacturers from selling generic drugs in Ontario's markets; they restrict market access only if a particular corporate structure is used. That cannot be characterized as a total or near-total ban on selling generic drugs in Ontario.

47 The "discrimination" or unauthorised distinctions argument is similarly without a legal foundation. Regulatory distinctions must be authorised by statute, either expressly or by necessary implication (*Forget v. Quebec (Attorney General)*, [1988] 2 S.C.R. 90, at pp. 106-7). The applicable legislation in this case expressly authorises the making of distinctions between different drug manufacturers. Section 14(1)(a) of the *Drug Interchangeability and Dispensing Fee Act* expressly states that the Lieutenant Governor in Council may make regulations "prescribing conditions to be met by products *or by manufacturers of products* in order to be designated as interchangeable with other products". Prescribing conditions to be met by drug manufacturers necessarily creates classes of manufacturers who do or do not meet those conditions, and, consequently, to whom the regulations apply differently.

[page836]

48 Both *Acts* also state that any regulations made under them "may be general or particular in [their] application" (*Ontario Drug Benefit Act*, s. 18(6), *Drug Interchangeability and Dispensing Fee Act*, s. 14(8)). Moreover, both statutes are subject to s. 82 of the *Legislation Act, 2006*, which expressly provides that the power to make regulations includes the power to have them apply differently to different classes:

> **82.** (1) A regulation may be general or particular in its application.
>
> (2) The power to make a regulation includes the power to prescribe a class.
>
> (3) For the purposes of subsection (2), a class may be defined,

(a) in terms of any attribute or combination of attributes; or

(b) as consisting of, including or excluding a specified member.

49 The Regulations focus on the sale of drugs by private label manufacturers because those manufacturers and their affiliated pharmacies are the ones considered to be particularly poised to circumvent the statutory ban on rebates that applies to *all* manufacturers and pharmacies in Ontario. Far from being "discriminatory", the distinctions they draw flow directly from the statutory purpose and the scope of the mandate.

50 Shoppers and Katz have therefore not, with respect, demonstrated that the Regulations are *ultra vires*.

51 I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors:

Solicitors for the appellants Katz Group Canada Inc., Pharma Plus Drug Marts Ltd. and Pharmx [page837] Rexall Drug Stores Ltd.: Lax O'Sullivan Scott Lisus, Toronto.

Solicitors for the appellants Shoppers Drug Mart Inc., Shoppers Drug Mart (London) Limited and Sanis Health Inc.: Osler, Hoskin & Harcourt, Toronto.

Solicitor for the respondents: Attorney General of Ontario, Toronto.

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1 *Health at a Glance 2009: OECD Indicators* (2009) (online), at p. 167.

2 Competition Bureau of Canada, *Benefiting from Generic Drug Competition in Canada: The Way Forward* (2008) (online), at p. 7.

3 Canadian Institute for Health Information, *National Health Expenditure Trends, 1975 to 2012* (2012), at p. 21.

4 *Ontario Drug Benefit Act*, s. 11.5, and O. Reg. 201/96, s. 1; *Drug Interchangeability and Dispensing Fee Act*, s. 12.1, and R.R.O. 1990, Reg. 935, s. 2.

5 *Ontario Drug Benefit Act*, s. 0.1.

6 O. Reg. 201/96.

7 R.R.O. 1990, Reg. 935.

8 *Ontario Drug Benefit Act* Regulation, O. Reg. 201/96, s. 12.0.2(1).

9 *Drug Interchangeability and Dispensing Fee Act* Regulation, R.R.O. 1990, Reg. 935, s. 9(1).

10 A "listed drug product" is a drug listed in the Formulary by the Executive Officer (ss. 1(1), 1.2(2)(a) and 1.3).

End of Document

Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A

Supreme Court of Canada Judgments

Supreme Court of Canada

Present: R. Wagner C.J. and A. Karakatsanis, S. Côté, M. Rowe, S.L. Martin, N. Kasirer, M. Jamal, M. O'Bonsawin and M.T. Moreau JJ.

Heard: March 19, 2024.

Judgment: December 20, 2024.

File No.: 40602

[2024] S.C.J. No. 43 | [2024] A.C.S. no 43 | 2024 SCC 43 | EYB 2024-559318 | 498 D.L.R. (4th) 316 | 2024 CarswellQue 14819

Commission des droits de la personne et des droits de la jeunesse, Appellant; v. Directrice de la protection de la jeunesse du CISSS A, Respondent, and Attorney General of Quebec, A, B, X, Canadian Civil Liberties Association and British Columbia Civil Liberties Association, Interveners

(122 paras.)

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Case Summary

Family law — Child protection — Child in need of protection — Protective agencies and institutions — Types — Government departments or agencies — Civil actions and liabilities — Practice and procedure — General principles — Legislation — Interpretation — Statutes — Courts — Statutory authority — Appeal by Appellant from a judgment of the Quebec Court of Appeal which set aside in part a decision of the Superior Court of Quebec, allowed in part — The legislature intended to confer on the Youth Division of the Court of Québec the corrective powers needed to ensure the fullest protection of the interests and rights of the child before it — It was not necessary for corrective measures to specifically mention the child's name in order for the measures to be related to the protection of the child's interests and rights — Regarding the CISSS A's right to be heard or duly called, the Appellant had not satisfied the Court that there was reason to intervene on the matter.

Appeal by Appellant from a judgment of the Quebec Court of Appeal which set aside in part a decision of the Superior Court of Quebec. The Youth Division of the Court of Québec (Tribunal) issued an order that X be placed in a rehabilitation centre because her security and development were in danger. Following that order, X was placed in various units in rehabilitation centres where she was subject to multiple isolation and restraint measures. X and her parents

each brought applications alleging that her rights had been encroached upon. The Tribunal declared that X's rights had been wronged and ordered several corrective measures. Some corrective measures were appealed by the Director of Youth Protection (DYP) before the Superior Court arguing that they went beyond the corrective powers conferred on the Tribunal by s. 91 para. 4 of the Youth Protection Act (YPA) because they did not relate directly to X's situation. The Superior Court allowed the DYP's appeal in part, concluding that remedial measure had to apply only to the child who had been a victim of the wrong. The orders were varied to relate only to X. The Court of Appeal determined that the initial orders were overbroad, and that the Superior Court had been correct to restrict their application only to X. The appeals were allowed only to the extent of ensuring that the orders were made against the DYP instead of the Centre intégré de santé et de services sociaux A (CISSS A) which had not formally been a party to the proceedings at first instance. The issues before the Court were to determine the scope of the corrective powers that the legislature intended to confer on the Tribunal in s. 91 para. 4 of the YPA and whether it was possible for the Tribunal to make orders against the CISSS A based on its right to be heard or duly called.
HELD: Appeal allowed in part.

The legislature intended to confer on the Tribunal the corrective powers needed to ensure the fullest protection of the interests and rights of the child before it. There was nothing to suggest that the legislature intended to authorize the Tribunal to order corrective measures that would apply to children whose situations had not been referred to it but who might find themselves in the same situation of encroachment as the child before it. If the legislature's intention had been to authorize the Tribunal to make orders that applied to children whose situations had not been referred to it, it would have done so in explicit terms. However, it was not necessary for corrective measures to specifically mention the child's name in order for the measures to be related to the protection of the child's interests and rights. To hold otherwise would be an error of law. Regarding the question of the CISSS A's right to be heard or duly called, the Appellant had not satisfied the Court that there was reason to intervene to restore the orders so as to direct them against the CISSS A.

Statutes, Regulations and Rules Cited:

Act respecting health services and social services, CQLR, c. S-4.2, s. 118.1

Act to amend the Youth Protection Act and other legislation, S.Q. 1984, c. 4, s. 10, s. 12, s. 38, s. 46

Act to amend the Youth Protection Act and other legislative provisions, S.Q. 2022, c. 11

Act to modify the organization and governance of the health and social services network, in particular by abolishing the regional agencies, CQLR, c. O-7.2, Schedule I

Charter of human rights and freedoms, CQLR, c. C-12, s. 39, s. 53, s. 80

Civil Code of Québec, C.C.Q.-1991, s. 32, s. 186, s. 199

Code of Civil Procedure, CQLR, c. C-25, art. 5

Code of Civil Procedure, CQLR, c. C-25.01, art. 17, art. 17 para. 1, art. 50

Convention on the Rights of the Child, Can. T.S. 1992 No. 3, Article 3, Article 3(1), Article 3(2), Article 3(3), Article 4

Décret 1676 91, (1992) 124 G.O. II, 51

Interpretation Act, CQLR, c. I-16, s. 40 para. 1, s. 41

Supreme Court Act, R.S.C. 1985, c. S-26, s. 45

Youth Protection Act, CQLR, c. P-34.1, Preamble, s. 2, s. 2 para. 1, s. 2.3 para. 1(a), s. 3, s. 3 para. 1, ss. 23-27, s. 23(a), s. 23(b), s. 23(c), s. 23(e), s. 23(f), s. 25.2, s. 25.3, ss. 28-30.8, s. 28, s. 47.1, ss. 51-51.8, ss. 52 et seq., s. 73 para. 1, s. 73.1, s. 74.1 para. 1, s. 74.1 para. 2, s. 74.2, ss. 90 et seq., s. 91, s. 91 paras. 1 to 3, s. 91 para. 1(n), s. 91 para. 4, s. 112, s. 128, s. 129, s. 133, s. 133.1, s 156.1 para. 1, s. 156.2, Chapter III, Chapter V

Youth Protection Act, S.Q. 1977, c. 20, s. 23(d), s. 23(e)

Subsequent History:

NOTE: This document is subject to editorial revision before its reproduction in final form in the Canada Supreme Court Reports.

Court Catchwords:

Status of persons -- Child protection -- Encroachment upon child's rights -- Corrective powers of tribunal -- Tribunal declaring that young person's rights had been encroached upon in context of social intervention -- Tribunal ordering corrective measures -- Director of youth protection challenging measures on ground that they did not relate directly to young person's situation referred to tribunal -- Scope of corrective powers conferred on Youth Division of Court of Québec in cases of encroachment upon child's rights -- Youth Protection Act, CQLR, c. P-34.1, s. 91 para. 4.

Court Summary:

In the context of social intervention, a young person and her parents filed an application with the Youth Division of the Court of Québec ("tribunal") for a declaration of encroachment upon rights under s. 91 para. 4 of the *Youth Protection Act* ("*YPA*"). That provision states that where "the tribunal concludes that the rights of a child in difficulty have been wronged by persons, bodies or institutions, it may order the situation to be corrected". The tribunal identified four situations that had encroached upon the young person's rights, and it recommended and ordered a series of

corrective measures. Four of these measures were challenged by the director of youth protection for the Centre intégré de santé et de services sociaux A ("DYP"), who took the view that they went beyond the corrective powers conferred on the tribunal by s. 91 para. 4 of the *YPA* because they did not relate directly to the young person's situation. To begin with, as regards the first two measures, the tribunal ordered that the youth workers, educators and intervention officers who worked in the individualized treatment units be able to receive specific training on mental health and that these units be able to obtain support from a healthcare professional specializing in mental health. Next, as regards the other two measures, the tribunal ordered the Centre intégré de santé et de services sociaux A ("CISSS A") to implement a protocol within a reasonable time period to set out the steps to be taken when a child spits during an intervention and to adapt all isolation rooms so that they were safer and their walls were covered with a material that prevented injury.

The Superior Court allowed the DYP's appeal in part, holding that the four impugned orders exceeded the powers conferred on the tribunal by the legislature because they applied to children other than the one whose situation had been referred to the tribunal. The Superior Court varied the impugned orders so that they applied specifically to the young person's situation and they named her expressly. The decision was subsequently appealed by the young person, by her parents and by the Commission des droits de la personne et des droits de la jeunesse. That commission had intervened for the first time before the Superior Court to argue that s. 91 para. 4 gives the tribunal broad corrective powers allowing it to make general orders not specifically intended to correct the situation experienced by the child before it. Like the Superior Court judge, the majority of the Court of Appeal found that the four impugned orders were general in nature, went beyond the situation of the child who was the subject of the proceedings and therefore had to be narrowed. However, the majority of the Court of Appeal varied two of the impugned measures, as varied by the Superior Court, so that they were ordered against the DYP rather than the CISSS A.

Held: The appeal should be allowed in part.

The legislature intended to confer on the tribunal the corrective powers needed to ensure the fullest protection of the interests and rights of the child whose situation has been referred to it, that is, protection that applies to both the present and the future and that takes account of the circumstances at the source of the encroachment upon rights as well as the impact of the encroachment on the child's psychological and physical state. The tribunal may order corrective measures whose purpose is to put an end to the situation of encroachment where it is still encroaching upon the child's rights, to remedy the psychological or physical consequences for the child resulting from the encroachment upon rights, and to prevent the recurrence of the situation of encroachment for the child. A preventive corrective measure may be ordered only if the child whose rights have been encroached upon is at risk of being subjected to the situation of encroachment again, if the corrective measure can effectively help to prevent the recurrence of the situation of encroachment and if the measure is related to the protection of the interests and rights of the child whose situation has been referred to the tribunal.

The *YPA* must be given a large and liberal interpretation that will ensure the attainment of its

object and the carrying out of its provisions according to their true intent, meaning and spirit. Every provision of the *YPA* must also be interpreted in accordance with the *Charter of human rights and freedoms*, while bearing in mind the *Convention on the Rights of the Child* ("*CRC*"). The starting point in any interpretive exercise is the text of the provision. In the absence of statutory definitions, what should be focused on is the grammatical and ordinary meaning of the text, that is, the natural meaning that appears when the provision is simply read through as a whole.

In this case, consideration of the grammatical and ordinary meaning of the phrase "the situation to be corrected" in s. 91 para. 4 leads to the conclusion that the legislature intended to grant the tribunal corrective powers that allow it to redress a situation, to restore order or the normal state of affairs. However, this consideration does not make it possible to say with certainty which situation is in question. Furthermore, consideration of the grammatical and ordinary meaning of the phrase is of little assistance in determining whether the legislature's intention in granting the tribunal the corrective powers set out in s. 91 para. 4 was that, in exercising them, the tribunal concern itself exclusively with protecting the rights and interests of the child whose situation has been referred to it, or whether the legislature also intended that the tribunal concern itself with protecting the rights and interests of all other children who, though not the subject of the proceedings, are or may find themselves in the same situation as the child before the tribunal.

An analysis of the scheme of the *YPA* suggests that the legislature did not intend the tribunal to be able to order corrective measures aimed in whole or in part at protecting the rights and interests of children whose situations have not been referred to it but who may find themselves in the same situation of encroachment as the child before it. The tribunal's mandate is to render justice in an individualized and particularized manner on the basis of the interests and rights of the child whose situation has been referred to it. With a view to ensuring functional complementarity between social intervention and judicial intervention, the tribunal must make decisions that are in the interest of the child and that respect the child's rights, the ultimate goal being to limit any danger to the child's security and development, but also to prevent abuse.

The fact that the tribunal is called upon to render justice in an individualized and particularized manner on the basis of a single child's situation is also clear from all of the provisions relating to the tribunal's jurisdiction. No provision of the *YPA* reveals an intention to depart from this logic of individualized and particularized justice that runs throughout the *YPA* when it comes to encroachment upon rights. The legislature did not intend to grant the tribunal powers going beyond those required to carry out the mandate assigned to it. This conclusion is also supported by the fact that other actors have been given a mandate to examine the system as a whole, to identify its shortcomings and to reform it. The proper functioning of the youth protection system depends on the actions of a range of political, social and legal actors that have been given roles, responsibilities and powers that are both distinct and complementary. There is nothing to suggest that, under the wide-ranging reform of the *YPA*, the tribunal's mandate has been broadened to allow it to take a critical look at systemic issues in child protection and to order corrective measures to reform the system for the benefit of children whose situations have not been referred to it.

The legislative history of s. 91 para. 4 and of other related provisions concerning encroachment upon rights confirms what the scheme of the *YPA* already reveals: the tribunal can deal with the situation of only one child at a time. Moreover, there is nothing to suggest that the legislature intended to authorize the tribunal to order corrective measures that would apply to children whose situations have not been referred to it but who may find themselves in the same situation of encroachment as the child before it. The legislature's decision to omit the words "encroaching upon the rights of the young person" within the phrase "the situation to be corrected" in s. 91 para. 4 should not be interpreted as a broadening of the tribunal's power to order corrective measures to protect the interests and rights of children whose situations have not been referred to it.

The *YPA* establishes a scheme whose purpose is to protect the interests and rights of children whose security or development is in danger, thereby helping to implement Canada's obligations under the *CRC* in domestic law. The *CRC* weighs in favour of interpreting s. 91 para. 4 in a large and liberal manner so that the tribunal will have all the corrective powers it needs to ensure that the child whose rights have been encroached upon has the fullest and most effective protection possible. However, there is no indication that, in order to comply with the *CRC*, provincial and territorial legislatures must, in cases of encroachment upon rights, give courts or tribunals the mandate and powers they need to concern themselves with protecting the interests and rights of more than one child at a time. States parties to the *CRC* possess a margin of discretion in determining what measures are appropriate to promote the best interests of the child and to protect the child's rights.

In the case of social and judicial intervention, the legislature had in mind that this fundamental purpose of protecting the children who are the most vulnerable in society would be attained through the cumulative effect of individualized and particularized interventions aimed at protecting the interests and rights of one child at a time. The recourse for a declaration of encroachment upon rights is one of the legal tools put in place by the legislature to achieve this purpose. The corrective powers conferred on the tribunal by s. 91 para. 4 must therefore be interpreted in a large and liberal manner to ensure the attainment of this purpose, which is clearly affirmed in the *Charter of human rights and freedoms*. The various types of corrective measures that can be ordered must be conceived of generously to ensure the fullest possible protection for the child whose rights have been encroached upon. Over and above correcting the situation at the source of the encroachment upon rights, the tribunal must also be able to order preventive corrective measures that will follow the child through the system to ensure that the child is adequately protected in the future.

At least three validity criteria govern the exercise of the tribunal's power to order preventive corrective measures under s. 91 para. 4. These criteria are based on the limits built into this enabling provision. First, for a preventive corrective measure to be ordered, the child whose situation has been referred to the tribunal must be at risk of being subjected to the situation of encroachment again. This criterion will generally be met where the child is still the subject of intervention under the *YPA*. Second, the preventive corrective measure ordered must be able to effectively help to prevent the recurrence of the situation of encroachment. Once the source of

the encroachment upon rights is identified, the tribunal will be able to consider one or more corrective measures that could effectively help to prevent the recurrence of the situation of encroachment. These measures will logically focus on one or more of the circumstances shown by the evidence to be at the source of the encroachment. The wide range of corrective measures that can effectively help to prevent the recurrence of the situation of encroachment will, however, be narrowed once account is taken of an additional criterion: any preventive corrective measure must, third, be related to preventing the recurrence of the situation of encroachment for the child whose situation has been referred to the tribunal. This requirement flows from the legislative intent discerned from s. 91 para. 4 of the *YPA*. The corrective measure must therefore be primarily intended to protect the interests and rights of the child whose situation has been referred to the tribunal. The corrective measure must be related to events experienced by the child in environments where the child has spent or might spend time, on the basis of the evidence and the context. The tribunal must confine itself to ordering a corrective measure that reflects the risk of harm faced by the child, as shown by the evidence. That being said, the order, to be valid, does not necessarily have to expressly name the child whose situation has been referred to the tribunal.

To effectively protect the child whose rights have been encroached upon, the preventive corrective measures will sometimes have to be broad in scope. At least two types of measures can be contemplated. First, the tribunal may order a corrective measure specifically directed at persons, bodies or institutions that, in light of the evidence, could potentially contribute to the recurrence of the encroachment upon the child's rights. Second, the tribunal may order a measure that will follow the child through the system, either as an alternative to or in addition to the first type of measure, in light of the evidence in the record, the circumstances of the case and the need to protect the child for the future. Broad corrective measures will generally have the advantage of protecting the interests and rights of many other children in an indirect and incidental manner, but this is of no relevance in determining whether the measures were validly imposed. A preventive corrective measure related to the interests and rights of the child whose situation has been referred to the tribunal may very well have positive indirect and incidental consequences for a large number of children. There is nothing to prevent the tribunal from ordering a corrective measure to eliminate a systemic or institutional practice, provided that the three validity criteria are met. Lastly, the magnitude of the budgetary impact of the corrective measure is not in itself a criterion for the validity of the order. Such a validity criterion has no basis in the *YPA*, and its application would entail considerable practical difficulties, adding another barrier to access to justice in the youth protection system.

Where rights have been encroached upon, the tribunal has a power to make recommendations that it derives from the text, scheme and object of the *YPA*. When the circumstances do not lend themselves to stating a conclusion in the form of an order, the tribunal can still make a non-binding recommendation anchored in the evidence concerning the encroachment upon the rights of the child whose situation has been referred to it. This power to make recommendations is to be exercised with caution and allows the tribunal to point out the existence of a problem relating to an encroachment upon the child's rights and to encourage the authorities to address it. The recommendation must be based on the situation of encroachment experienced by the child, as shown by the evidence.

In this case, the four corrective measures challenged by the DYP were ordered to prevent abusive or inadequate restraint and isolation measures from being used again, where it was established that the young person was at risk of being subjected to the identified situations of encroachment again. As regards the first two orders, the tribunal erred by not limiting the scope of these measures so that they were related to preventing the recurrence of the situation of encroachment for the young person. Nothing in the evidence adduced supported the conclusion that such broad orders were necessary to protect the young person's interests and rights in the future. The Superior Court properly intervened to narrow the scope of these orders so that they were related to the protection of the young person's interests and rights. As for the third order, the tribunal exceeded its powers by ordering the CISSS A to implement a protocol that set out the steps to be taken when a child spits during an intervention. The order as worded was not related to preventing the recurrence of the situation of encroachment for the young person. In light of the findings of fact, the order should have been directed at the rehabilitation centres for young persons with adjustment problems ("RCYPAPs") of the CISSS A and at any other RCYPAP that would be responsible for the young person. The order should also have been made against the DYP. Finally, as regards the fourth order, which required that the isolation rooms be made safer, this corrective measure was not sufficiently anchored in the evidence and the context. The order should have been varied to direct the DYP, and not the CISSS A, to have at least one isolation room, covered with a material that prevented injury, available for the young person at all times in units A and B of the CISSS A and in the other RCYPAP units to which she would be entrusted. Other alternative orders were also available and acceptable and could therefore have been made. However, since the young person is no longer the subject of social intervention under the *YPA* and never will be again given that she is now an adult, no order will be made.

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Grebliunas, 2022 SCC 22; *B.J.T. v. J.D.*, 2022 SCC 24; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39, [2015] 2 S.C.R. 789; *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17; *R. v. Appulonappa*, 2015 SCC 59, [2015] 3 S.C.R. 754; *Protection de la jeunesse - 174220*, 2017 QCCQ 9973; *Protection de la jeunesse - 175726*, 2017 QCCQ 10171; *Protection de la jeunesse - 1610815*, 2016 QCCQ 20163; *Protection de la jeunesse - 202094*, 2020 QCCQ 1912; *Protection de la jeunesse - 212922*, 2021 QCCQ 5132; *Protection de la jeunesse - 2023*, 2020 QCCQ 61; *Protection de la jeunesse - 137151*, 2013 QCCQ 17367; *Protection de la jeunesse - 171278*, 2017 QCCQ 2752; *P. (D.) v. S. (C.)*, [1993] 4 S.C.R. 141; *Canadian National Railway Co. v. Canada (Canadian Human Rights Commission)*, [1987] 1 S.C.R. 1114; *Moore v. British Columbia (Education)*, 2012 SCC 61, [2012] 3 S.C.R. 360; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *Canada (Transportation Safety Board) v. Carroll-Byrne*, 2022 SCC 48; *Hydro-Québec v. Matta*, 2020 SCC 37, [2020] 3 S.C.R. 595; *TELUS Communications Inc. v. Wellman*, 2019 SCC 19, [2019] 2 S.C.R. 144; *Québec (Protection de la jeunesse) v. C.P.*, 2000 CanLII 11372; *Protection de la jeunesse - 236587*, 2023 QCCQ 12263; *Protection de la jeunesse - 211624*, 2021 QCCQ 2868; *Protection de la jeunesse*, [1985] AZ-50942189; *Protection de la jeunesse - 10174*, 2010 QCCA 1912, [2010] R.J.Q. 2291; *Protection de la jeunesse - 18935*, 2018 QCCQ 10532; *Protection de la jeunesse - 211323*, 2021 QCCQ 2238.

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History and Disposition:

APPEAL from a judgment of the Quebec Court of Appeal (Levesque, Schrager and Hogue JJ.A.), 2022 QCCA 1653, [2022] AZ-51899040, [2022] Q.J. No. 13560 (Lexis), 2022 CarswellQue 21735 (WL), setting aside in part a decision of Poirier J., 2021 QCCS 2251, [2021] AZ-51770110, [2021] J.Q. nº 6108 (Lexis), 2021 CarswellQue 8125 (WL), setting aside in part a decision of Roy J.C.Q., 2019 QCCQ 3916, [2019] AZ-51608758, [2019] J.Q. nº 5507 (Lexis), 2019 CarswellQue 7385 (WL). Appeal allowed in part.

Counsel

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Stéphane Pouliot and *Gabrielle Gallio*, for the interveners A and B.

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Karine Joizil and *Simon Bouthillier*, for the intervener the Canadian Civil Liberties Association.

Vincent Larochelle, for the intervener the British Columbia Civil Liberties Association.

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the child whose situation has been referred to the tribunal. This means that a preventive corrective measure may be ordered only if the child whose rights have been encroached upon is at risk of being subjected to the situation of encroachment again. Where this is the case, the tribunal may order any corrective measure that can effectively help to prevent the recurrence of the situation of encroachment, provided that the measure is related to the protection of the child's interests and rights. The budgetary impact of the corrective measure has no bearing on its validity.

21 Contrary to what is suggested by the DYP, the Superior Court judge and the majority of the Court of Appeal, it is not necessary for corrective measures to specifically mention the child's name in order for the measures to be related to the protection of the child's interests and rights. Moreover, depending on the circumstances and the evidence adduced, it is possible for a broad corrective measure -- that corrects, for example, an institutional factor at the source of the situation of encroachment -- to be a measure related to the protection of the child's interests and rights. Such corrective measures will generally have the advantage of protecting the interests and rights of many other children in an indirect and incidental manner.

22 With regard to the question of the CISSS A's right to be heard or duly called (art. 17 para. 1 *C.C.P.*), the appellant has not satisfied me that there is reason to intervene to restore the orders so as to direct them, as the tribunal did, against the CISSS A.

V. Analysis

A. *Judicial Intervention in Cases of Encroachment Upon Rights: Scope of the Corrective Powers Conferred on the Tribunal Under Section 91 Paragraph 4 of the YPA*

(1) Principles That Must Guide the Interpretive Exercise

23 It is well settled that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87, quoted in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26; *La Presse inc. v. Quebec*, 2023 SCC 22, at para. 22).

24 In this case, it is important to highlight a few principles that guide the interpretation of s. 91 para. 4 of the *YPA*. First, the *YPA* must be given a large and liberal interpretation that will ensure the attainment of its object and the carrying out of its provisions according to their true intent, meaning and spirit (see *Interpretation Act*, CQLR, c. I-16, s. 41; *Protection de la jeunesse - 123979*, at para. 21). However, just as the text must be considered in light of the context and object, the object of a statute and that of a provision must be considered with close attention always being paid to the text of the statute, which remains the anchor of the interpretive exercise. The text specifies, among other things, the means chosen by the legislature to achieve its purposes. These means "may disclose qualifications to primary purposes, and this is why the text remains the focus of interpretation" (M. Mancini, "The Purpose Error in the Modern Approach to Statutory Interpretation" (2022), 59 Alta. L. Rev. 919, at p. 927; see also pp. 930-

31). In other words, they may "tell an interpreter just how far a legislature wanted to go in achieving some more abstract goal" (p. 927). As this Court recently noted, an interpreter must "interpret the 'text through which the legislature seeks to achieve [its] objective', because 'the goal of the interpretative exercise is to find harmony between the words of the statute and the intended objective ...'" (*R. v. Breault*, 2023 SCC 9, at para. 26, quoting *MediaQMI inc. v. Kamel*, 2021 SCC 23, [2021] 1 S.C.R. 899, at para. 39; see also *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32, [2020] 3 S.C.R. 426, at para. 10).

25 Second, every provision of the *YPA* must be interpreted in accordance with the *Charter of human rights and freedoms*, CQLR, c. C-12 ("*Quebec Charter*"), which is a source of fundamental law. It is especially important to bear in mind s. 39 of the *Quebec Charter*, which enshrines the right of every child "to the protection, security and attention that his parents or the persons acting in their stead are capable of providing". While this Court has already stated in *obiter*, in a case that concerned neither the *YPA* nor the normative scope of s. 39, that this provision "do[es] not directly implicate the state at all" (*Gosselin v. Quebec (Attorney General)*, 2002 SCC 84, [2002] 4 S.C.R. 429, at para. 89), it is clear that this section applies when the state, through a director of youth protection, exercises attributes of parental authority (see, e.g., *YPA*, s. 91 para. 1*(n)*; *Civil Code of Québec*, arts. 186 and 199). There is also no doubt that this section is relevant in interpreting the *YPA*'s provisions, including provisions like s. 91 para. 4 that may affect the state's rights and obligations. Indeed, since 2022, the legislature has expressly referred to s. 39 of the *Quebec Charter* in the preamble to the *YPA*, which only confirms the interpretive value of this provision in explaining the object and purport of any provision of the *YPA* (see *Interpretation Act*, s. 40 para. 1; *Quebec Charter*, s. 53; *Quebec (Commission des normes, de l'équité, de la santé et de la sécurité du travail) v. Caron*, 2018 SCC 3, [2018] 1 S.C.R. 35, at paras. 32-33, quoting *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Communauté urbaine de Montréal*, 2004 SCC 30, [2004] 1 S.C.R. 789, at para. 20).

26 Third, in the interpretation of any provision of the *YPA*, it is important to bear in mind the *Convention on the Rights of the Child*, Can. T.S. 1992 No. 3 ("*CRC*"), which was ratified by Canada on December 13, 1991, and by which Quebec declared itself to be bound through an order in council (see Décret 1676-91, (1992) 124 G.O. II, 51; *YPA*, preamble (ad. 2022, c. 11, s. 1)). In keeping with the presumption of conformity, the *YPA* must be interpreted in a manner consistent with Canada's obligations under the *CRC*, insofar as the text allows. While the interpretive weight of this international instrument is undeniable, I note that the analysis must remain focused on the legislature's intention and not on the obligational content of the treaty. It is imperative to interpret first and foremost "what the legislature (federally and provincially) has enacted" rather than subordinating the result of this exercise to what the federal executive has agreed to internationally or to the international treaties by which a provincial executive has declared its intention to be bound through an order in council. This is a matter of respect for the principle of separation of powers (*Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association*, 2022 SCC 30, at para. 48; see also paras. 45-47; *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62, [2014] 3 S.C.R. 176, at para. 60; *R. v. Hape*, 2007 SCC 26, [2007] 2 S.C.R. 292, at paras. 53-54; *Michel v. Graydon*, 2020 SCC 24,

Guide to Property Assessment and Taxation in Alberta

Alberta Municipal Affairs

Alberta's *Municipal Government Act* and its regulations are the source for the information in this guide. If there are differences between the information in the Act and regulations, and what is presented in this guide, the legislation and regulations take precedence.

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Preface

The *Guide to Property Assessment and Taxation in Alberta* was written to provide general information about the province's property assessment and taxation system. This guide will be helpful for anyone who wants or needs to have an understanding of how the province's property assessment and taxation system works.

The guide is structured to reflect the organization and process of the property assessment system in Alberta. It begins with the foundations of the system—the legislation and history—and follows the process through to show how property taxes are determined and levied based on a property's assessment.

Municipal Affairs welcomes feedback regarding this guide. Comments can be directed to the Assessment Services Branch at 780-422-1377 or lgsmail@gov.ab.ca.

This publication is available online at www.municipalaffairs.alberta.ca.

Chapter 1

Chapter 1

Overview of Alberta's property assessment and taxation system

This chapter highlights the nature, rationale, and foundations of the property assessment and taxation system in Alberta.

Topics include:

- The main features of the system
- The relationship between assessment and taxation

A brief history of property assessment and taxation

The purpose of assessment and taxation legislation in Alberta is to establish and maintain a property assessment system that fairly and equitably distributes taxes, and promotes transparency, predictability and stability for municipalities and taxpayers.

What is property assessment?

Property assessment is the process of assigning a dollar value to a property for taxation purposes. In Alberta property is taxed based on the *ad valorem* principle. *Ad valorem* means "according to value." This means the amount of tax paid is based on the value of the property.

Property taxes are a primary source of revenue for municipalities. Property taxes are used to finance local programs and services, such as:

- Garbage collection
- Water and sewer services
- Road construction and maintenance
- Parks and leisure facilities
- Police and fire protection
- Seniors' lodges
- Education

Property assessment is the method used to distribute the tax burden among property owners in a municipality. Each municipality is responsible for ensuring that each property owner pays his or her share of taxes.

Relationship between property assessment value and property taxes

Often the terms "assessment" and "taxation" are considered to be interchangeable. However, assessment and taxation are very different. Although one impacts the other, each is a distinct and independent process.

"Assessment" is the process of estimating a dollar value on a property for taxation purposes. This value is used to calculate the amount of taxes that will be charged to the owner of the property.

"Taxation" is the process of applying a tax rate to a property's assessed value to determine the taxes payable by the owner of that property.

The *Municipal Government Act* gives direction to Alberta municipalities in the areas of governance and administration, planning and development, and assessment and taxation.

2012-2017 - The *Municipal Government Act*

The government undertook an extensive review of the *Municipal Government Act* (MGA) between 2012-2017 with the objective to update and modernize the legislation to keep pace with our changing province. As part of the MGA review process, all related regulations were reviewed to support a modernized MGA, with existing regulations updated and some new regulations created to align with changes to the MGA.

The updated MGA is a culmination of over four years of comprehensive review and consultation.

Changes to the MGA were developed through careful analysis from Alberta stakeholders through discussion papers and collaborative work with key municipal partners, local citizens and businesses, community organizations, industry, builders and developers, the Alberta Urban Municipalities Association and the Alberta Association of Municipal Districts and Counties.

The MGA gives direction to municipalities to prepare assessments every year.

The MGA sets out two types of valuation standards—the market value standard and the regulated standard.

The market value standard is considered the most fair and equitable means of assessing property. It is fair because similar properties are assessed in the same manner; it is equitable because owners of similar properties in a municipality will pay a similar amount of property tax.

The regulated standard uses rates and procedures prescribed by Municipal Affairs to calculate assessed values for certain types of properties. These types of properties include farmland, machinery and equipment, and designated industrial property.

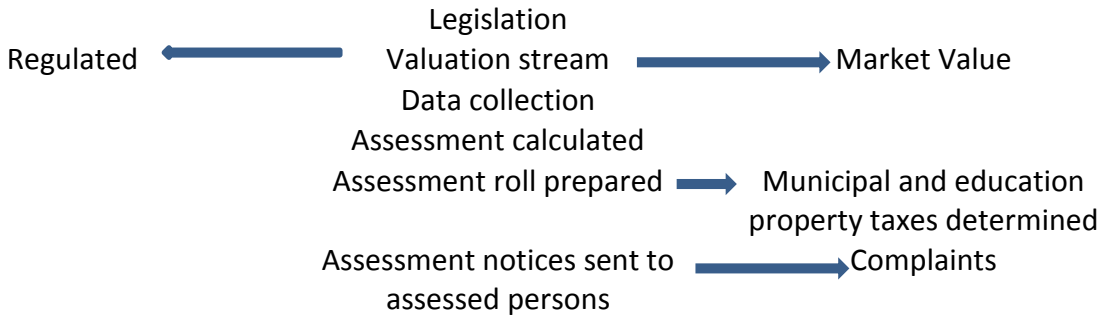
The valuation standards and property types are explained in further detail in Chapter 2.

The Alberta model of property assessment and taxation

The following chart illustrates the processes, connections, and components of the property assessment and taxation process in Alberta. Each step in the chart is explained in later chapters.

The assessment and taxation system begins with the laws outlined in the *MGA*. All activities that are associated with property assessment and taxation are governed by this legislation and its regulations.

Figure 1.1 The *Municipal Government Act*



The assessor interprets these rules to determine which valuation method must be used for each property. This process is explained in Chapter 2.

The assessor collects a variety of information to calculate a property assessment. The process of arriving at a property value is explained in Chapter 3.

Once the assessment is complete, the assessed value is entered on the assessment roll, which lists all of the property assessments in a municipality. Assessment notices are created from the information on the assessment roll. A notice is mailed to every property owner in a municipality. These steps are detailed in Chapter 3.

If a property owner does not agree with the information on his or her assessment notice, he or she may file a complaint. Alberta's assessment complaint process is explained in Chapter 3.

The assessment roll is used to calculate the amount of municipal and education property tax payable on each property. These are explained in Chapter 4.

Chapter 2

Chapter 2

Property assessment valuation standards in Alberta

This chapter describes the two valuation standards that are used to value property for assessment and property taxation purposes in Alberta—the market value standard and the regulated standard.

Topics include:

- Definition of market value
- How market value is determined
- Properties that are assessed with regulated rates and procedures
- How regulated values are determined

Market value standard

The market value standard is used to determine the assessed values for the majority of properties in Alberta.

Market value is the price a property might reasonably be expected to sell for if sold by a willing seller to a willing buyer after appropriate time and exposure in an open market.
Key characteristics of market value are:

- It is the most probable price, not the highest, lowest, or average price.
- It is expressed in terms of a dollar value.
- It assumes a transaction between unrelated parties in the open market.
- It assumes a willing buyer and a willing seller, with no advantage being taken by either party.
- It recognizes the present use and potential use of the property.

Sometimes the market value assessment of a property is assumed to be the sale price of an individual property. It is important to note that a market value assessment may not be the sale price. The sale price is an historical fact.

The sale price is the amount the purchaser agrees to pay and the seller agrees to accept under the circumstances surrounding the sale.

A sale price might not equal market value for any of the following reasons:

- The sale might not have occurred in the assessment year or the date on which the property was valued.
- The purchaser might not have been aware that similar properties were selling for more or less than the price for which the property was purchased.
- The buyer or seller may have been unduly motivated (for example, transferred to another city, needed to sell property as part of a divorce settlement, etc.).
- The sale may have involved a trade, partial interest, special financing, personal property, or assumed leases.

Assessors gather information on ranges of sale prices in the marketplace. This statistical data is used as part of the process for calculating market value assessments.

Sale price information helps to develop market value assessments. Assessments are calculated by analyzing the range of sale prices of groups of similar properties at a specific point in time. Several sales of similar properties are compared to determine typical market values of specific types of properties that have similar characteristics.

How Market Value is Determined

TABLE 2.1 THE THREE APPROACHES TO VALUE

Sales comparison approach	Compare sales prices of similar properties to the property being assessed
Cost approach	Market value of land + (cost of improvements – depreciation) = value of property
Income approach	Estimate what a potential purchaser would pay for a property given its expected rate of return (i.e. income-producing potential)

There are three approaches to determine the market value assessment of a property: the sales comparison approach; the cost approach; and the income approach. One or more of these approaches is used to arrive at a property's assessed value using the market value standard. The following sections outline each approach, and the types of properties each is best suited to.

Sales comparison approach
This approach is based on the theory that the market value of a property is directly related to the sale price of similar properties. When property types are similar, the sales comparison approach provides an indication of market value. This approach is best suited to residential properties and other types of property that sell frequently.

Cost approach
The cost approach is used when the property being valued is new or nearly new, in situations where few comparable sales are available, or when the improvements are unique or specialized.

The cost approach is based on the assumption that a purchaser would not pay any more to purchase a property than it would cost to buy the land and then rebuild the same improvements. An improvement is a building or structure so affixed to the land that it does not require special mention in a transfer document.
Values for properties that are assessed using the cost approach are determined by using the following formula:

Market value of land + (cost of improvements
– improvement depreciation) = total value of property

The assessor first determines the market value for the land. The cost of constructing the improvements is then added to the land value. Once the costs of the improvements have been determined, the assessor makes a deduction for depreciation of the improvement. Depreciation is a loss in value due to any reason. This includes normal wear and tear or a change in needs or style of a building.

Depreciation must be subtracted from the cost of the improvements to accurately value the improvements in their current condition.

Income approach
The theory behind this approach is that income-producing properties are bought and sold based on their income-earning potential. This approach is used to assess the value of rental properties, such as apartment buildings or rental office buildings.

Regulated standard

Some types of properties are difficult to assess using a market value assessment standard because:

- They seldom trade in the marketplace. When they do trade, the sale price usually includes non-assessable items that are difficult to separate from the sale price.
- They cross municipalities and municipal boundaries.
- They are of a unique nature.

Municipal Affairs prescribes rates and procedures to assess these types of properties, which are referred to as "regulated property". Rates and procedures are determined by what a type of property is used for, its activity, or its production capability.

Regulated property includes:

- Farmland
- Machinery and equipment
- Designated Industrial Property, including linear property, railway, and major industrial plants

Farmland

Farmland is assessed on the basis of its productive value for agricultural use. There are four classifications for agricultural use – dry arable land, dry pasture land, irrigated arable land, and woodlot.

Productive value means the ability of the land to produce income from the growing of crops or other horticultural products and/or the raising of livestock. The productive value of farmland is determined using a process that sets a value for the best soils, and then makes adjustments for less-than-optimum conditions such as climatic influences, the presence of stones, sloughs and other impediments to production, topography, etc.. A woodlot operation requires an approved woodland management plan.

When land is no longer used for farming operations, such as when the top soil has been removed in preparation for future development, the land will become assessable at market value.

Machinery and Equipment

Machinery and equipment includes a broad range of items used in manufacturing, processing and other industrial facilities, such as tanks, mixers, separators, fuel gas scrubbers, compressors, pumps, chemical injectors, and metering and analysis equipment.

Machinery and equipment is used in conjunction with properties such as meat processing plants, refineries, chemical plants, pulp and paper plants, and oil sands plants. Most machinery and equipment is assessed by the municipal assessor; however, machinery and equipment that is part of designated industrial property is assessed by the provincial assessor.

Designated Industrial Property

Designated industrial property includes linear property, railway, and specific major plants. The definition of designated industrial (DI) properties can be found in the MGA section 284 (f.01).

Linear properties have distribution lines or other facilities, and may cross municipal boundaries.

Linear property includes:

- Pipelines to transport petroleum products
- Electric power systems (generation, transmission, and distribution facilities)
- Telecommunication systems (including cellular telephone systems)
- Cable television systems
- Railway property
- Oil and gas wells

Assessment of these property types is carried out separately by the province.

The provincial assessor's assessment must reflect the specifications and characteristics for these regulated properties and the valuation standard, as outlined in the regulations.

Chapter 3

Chapter 3

Preparing property assessments

This chapter describes the property assessment process in Alberta.

The main topics include:

- What property is assessed
- Who prepares assessments in Alberta
- How assessments are prepared
- Inspections
- The property owner's right to information
- The assessment roll
- Assessment notices
- What property owners can do if they do not agree with their assessments

What is assessed?

Not all property is assessable for property tax purposes. The *MGA* outlines what property is assessable for taxation. The act defines property as:

- A parcel of land
- An improvement
- A parcel of land and the improvements to it

It does not include things like furniture, jewellery, automobiles, or other personal possessions. If a property cannot be assessed, this means it cannot be taxed. Properties that are not assessed or taxed include:

- Publicly owned infrastructure or equivalent privately owned facilities
- Minerals
- Indigenous reserves and settlements
- Growing crops

Some properties are assessable, but not taxable. Properties that are assessed but then exempted (in whole or in part) from taxation include:

- Most farm residences and improvements
- Environmental, conservation, municipal, and school reserves and other

underdeveloped property reserved for public utilities
- Government properties such as hospitals, libraries, and schools
- Colleges and universities
- Privately operated schools
- Churches and cemeteries
- Property owned by some non-profit organizations such as benevolent societies, boys' and girls' clubs, etc.
- Hostels

Who prepares assessments in Alberta?

Assessments for all types of property are prepared by professional, certified assessors. Assessors receive training in a variety of areas including property valuation techniques, legislation, and quality assurance.

The provincial assessor is responsible for all designated industrial property, while assessors employed or contracted by municipalities assess all other types of property.

Under provincial legislation, a municipality must appoint, by bylaw, a designated assessor. A designated assessor is responsible for the completion of a number of tasks laid out by provincial legislation and regulations.

To be the designated assessor for a municipality, an assessor must hold at least one of the following professional designations:

- Accredited Municipal Assessor of Alberta (AMAA) as granted by the Alberta Assessors' Association
- Certified Assessment Evaluator (CAE) as granted by the International Association of Assessing Officers
- Accredited Appraiser Canadian Institute (AACI) as granted by the Appraisal Institute of Canada

An assessor who does not hold one of the above designations may be designated the municipality's assessor if, in the opinion of the Minister of Municipal Affairs, he or she has a combination of education and professional experience that is equivalent to any or all of the three designations.

An assessor is hired by a municipality in one of two ways—as an employee of the municipality, or as a contractor. Contracting often occurs in smaller municipalities where the duties associated with calculating assessments are not a full- time activity. Regardless of the assessor's employment situation, all assessors, whether they are contractors or municipal employees, must follow the same procedures and legislation.

How assessments are prepared

The majority of assessments prepared by the municipal assessor are done based on market value using a technique called mass appraisal.

Mass appraisal

An appraisal is an estimate of value. Mass appraisal is the process of valuing a group of properties as of a given date, using common data, mathematical models, and statistical tests. Mass appraisal techniques allow assessors to accurately value a large number of properties in a short period of time.

Data collection

Before an assessment can be prepared, property data must be collected. Accurate and complete property records lead to more accurate assessed values. The more accurate the assessed values, the more equitable the entire assessment system is.

Detailed information about each property is gathered by making on-site visits or by corresponding with the owner of the property. Correspondence with a property owner usually occurs when the assessor is requesting information about commercial, industrial, or rental properties (such as apartment buildings or hotels). Information collected by the assessor in the assessment process is also available from other sources including Alberta Land Titles, real estate Multiple Listing Services, and financial institutions.

Valuation and condition dates

In Alberta, there are two key legislated dates by which certain assessment processes must be complete—the valuation date and the physical condition date.

The valuation date is a fixed point in time at which assessment values are based. The valuation date ensures that all properties in a municipality are valued as of the same date. The valuation date established by legislation is July 1. For example, for the 2018 tax year, the valuation date for property assessment is July 1, 2017. This means that a 2018 property assessment must reflect the value of the property as of July 1, 2017.

The second legislated date in the valuation process is the “characteristics and physical condition” date. This is the date on which the condition of the property is recorded for property assessment purposes. Under Alberta legislation, the condition date for property other than designated industrial property is December 31. For example, for the 2018 tax year, the condition date would be December 31, 2017. This means that although the value of the property reflects the market conditions as of July 1, it must reflect the physical condition of the property as of December, 31

Example: If a garage has been added to the property during 2017, the property assessment for the 2018 tax year would be based on its market value as of July 1, 2017. The previous year’s property assessment would not have included the garage because it was not built by the condition date (December 31, 2016).

Inspections

Sometimes, an assessor may decide that he or she needs to inspect a property in order for a fair and accurate assessment to be determined.

An inspection is conducted so that all characteristics of the property that affect the value are considered when the assessor determines the property's assessment. All newly constructed properties require an inspection. Likewise, existing properties need to be reviewed from time to time to ensure the information that is used to create the property's assessment remains accurate.

Under the *MGA*, an assessor may enter and inspect property and request any document to be produced to assist in preparing the assessment. The legislation states:

- The assessor is required to give reasonable notice to the owner or occupier before an inspection.
- The inspection must be at a reasonable time.
- The assessor is required to make copies of anything necessary to the inspection
- The assessor must be able to produce identification.

During an on-site inspection, the assessor will first explain the purpose of the visit, and request permission to carry out the inspection. The assessor will observe, record, and verify relevant physical details of the property.

This may include both an interior and exterior inspection of the property.

Where an assessor has requested information or documents about the property in order to prepare the assessment, and the person failed to provide the information within 60 days, the person cannot file a complaint on that property's assessment in the following year.

Property owners' rights to assessment information

Just as assessors abide by rules when collecting information for assessment purposes, taxpayers have a legislated right to know how their assessment is determined.
A municipality must provide information for the current year that is in the assessor's possession at the time of the request, showing how the assessment of a property was prepared, including:

a) all documents, records and other information in respect of that property;
b) descriptors and codes for variables used in the valuation model that was applied to the property;
c) where there is a range of descriptors or codes for a variable, the range and what descriptor and code was applied to the property; and
d) any adjustments that were made outside the value of the variables used in the valuation model that affected the assessment of the property.

In addition, the assessed person has the right to see the assessment roll, which lists the

assessed values for all properties in the municipality.

If requested to do so, a municipality must provide an assessed person with a summary of the assessment of any assessed property in the municipality, as long as the municipality is sure that necessary confidentiality will not be breached. A municipality may charge a fee for providing this information.

A summary of an assessment must include the following information that is in the assessor's possession or under the assessor's control at the time of the request:

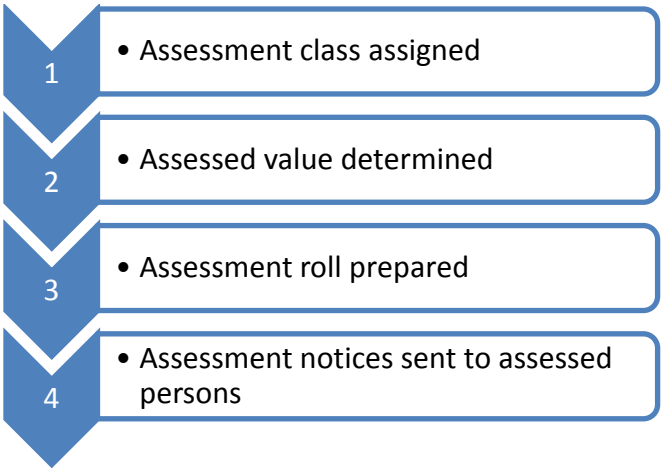
a) a description of the parcel of land and any improvements, to identify the type and use of the property;
b) the size and measurements of the parcel of land;
c) the age and size or measurement of any improvements;
d) the key attributes of any improvements to the parcel of land;
e) the assessed value and any adjustments to the assessed value of the parcel of land; and
f) any other information prescribed or otherwise described in the regulations.

If the person has filed a complaint against the assessment for that property, the municipality is no longer obligated to respond to a request for information until the complaint has been heard and decided by an assessment review board.

Similar rules apply for access to provincial assessment records for designated industrial property. The provincial assessor must comply provided confidentiality will not be breached.

After the assessed values of all properties in a municipality have been determined, there are a number of assessment documents that must be prepared.

Figure 3.1 Beyond Assessed Value



Assessment classes

After the assessed value of a property has been determined, the property is assigned an assessment class. This is an important part of the assessment and taxation process.

The assessment class determines the tax rate that will be applied to each property, as assessment classes may have different tax rates.

The assessor for the municipality is responsible for assigning the assessment classes to property. Property is classified according to its actual use. The classes are set out in the *MGA*.

They are:
Class 1 – residential
Class 2 – non-residential
Class 3 – farmland
Class 4 – machinery and equipment

Assessment roll

An assessment roll is a listing of all assessable properties in a municipality and their assessed values. The *MGA* requires each municipality to prepare an assessment roll no later than February 28 of each year.

The assessment roll prepared by a municipality must contain the following information for each assessed property:

- Assessed person (typically, the owner of the property), including name and mailing address
- Location
- Description of the property assessed (land, improvements, or land and improvements)
- Assessed value
- Assessment class(es)
- School support declaration
- Taxable status (total or partial exemption from taxation)

School support declarations

Canada's Constitution and the *Alberta School Act* establish Alberta's public and separate school system. As such, municipalities ask property owners to declare whether they support public school or a local Catholic or Protestant separate school district. Property owners indicate their support based on their faith and the proportion of ownership they hold in a property (50 per cent for two owners, 33 per cent for three owners, etc.). Where there is no separate school district, or a declaration is not filed, 100 per cent of education property tax dollars are directed to the public school boards.

Property owners may change their school support declaration at any time. A school support notice filed by a property owner becomes effective in the year following the year in which it is filed.

Assessment notices

Assessment notices are created from the information on the assessment roll. The assessment notice is the document municipalities send to property owners to tell them about the assessment of their property.

An assessment notice or an amended assessment notice must show the following:

a) the same information that is required to be shown on the assessment roll;
b) the notice of assessment date;
c) a statement that the assessed person may file a complaint not later than the complaint deadline; and
d) information respecting filing a complaint in accordance with the regulations.

Each year, municipalities and the provincial assessor will be required to set a "notice of assessment date" between January 1 and July 1 and mail the assessment notices seven days prior to the "notice of assessment date." Every municipality is required to send an assessment notice to every assessed person listed on the assessment roll. Each municipality must publish a notification in one issue of a local newspaper to announce that the assessment notices have been mailed to property owners within the municipality.

Sometimes an error is found on an assessment notice. The assessed person can contact the assessor to have this information corrected. Corrections can only be made to current-year assessment notices. This means that an assessor cannot change an error, omission, or wrong description on an assessment notice from a previous year.

Each property listed on the assessment roll in a municipality receives an assessment notice, even if it is exempt from property tax. One of the important features of Alberta's assessment system is that assessed persons have the ability to complain about their assessment or tax status. If an assessed party believes that his or her property should receive an exemption from assessment, property taxation, or both, then the property's exemption status can be challenged via an assessment complaint.

Assessment complaint system

To ensure that property owners have a voice in the property assessment system, the *MGA* provides property owners with the ability to ask for an independent review of their property assessment. Currently, there are three bodies that hear complaints, depending on the type of property being assessed: Local Assessment Review Boards (LARBs), Composite Assessment Review Boards (CARBs), and the Municipal Government Board (MGB).

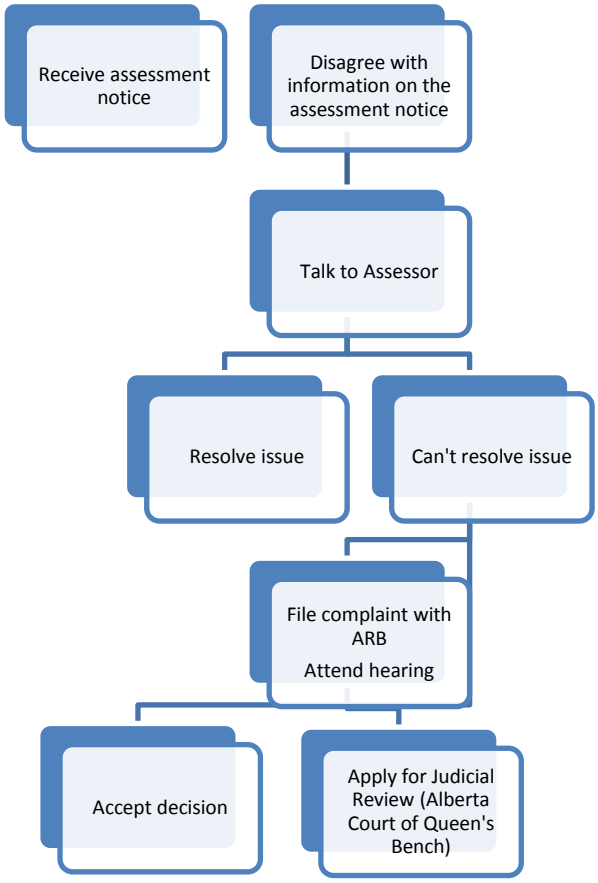
LARBs hear assessment complaints about residential properties with 3 or fewer dwelling units and

farmland, as well as complaints about tax notices other than those for property tax, business tax, or improvement area tax. CARBs hear assessment complaints about all other property types such as multi-family residential buildings, commercial and business properties, light industrial properties, etc., but not including any property that falls under designated industrial property. CARBs also hear complaints on tax notices for business tax or improvement areas. The MGB hears complaints on all designated industrial property, as well as equalized assessments.

The first step an assessed person should take if he or she believes his or her property assessment is unfair or inaccurate is to contact the assessor. The assessor can be reached by calling the municipality's office at the number listed on the assessment notice. The assessor may request to inspect the property to determine if an error was made. If the assessor agrees that the original notice is not accurate, a corrected notice may be issued.

If the assessor and the property owner cannot come to an agreement, the property owner may begin the formal complaint process by filing a complaint with the municipality's assessment review board. The deadline for filing a complaint with the assessment review board is noted on the assessment notice.

FIGURE 3.2 The Complaint System



Where an assessed person seeks judicial review of a board's decision, that person may file an application for judicial review to the Alberta Court of Queen's Bench.

An assessor may make a correction to an assessment that is under complaint. In such an instance, the assessor will send an amended assessment notice to the assessed person, and the assessor must also provide to the assessment review board a copy of the amended assessment notice along with a statement explaining why the correction was made, what the correction was, and how it affects the assessment. In this event, the assessment review board or the Municipal Government Board will cancel the current complaint and return the complaint fee, and the assessed person will have the right to a new complaint in respect of the amended assessment.

Assessment review boards

The assessment review board is a quasi-judicial administrative board.

This means it is created, empowered, and staffed according to the legislation laid out in the *MGA*. The board is like a court as it can order something to be done. In this case, it can order a change to the assessment on a property.

Assessment review boards hear complaints for all types of property assessments except designated industrial property.

Local assessment review board panels consist of three members who are appointed by the municipality. Composite assessment review board panels are made up of two members that are appointed by the municipality and one provincial member from the Municipal Government Board. The provincial member will act as presiding officer of a composite assessment review board and provide oversight and a provincial perspective. No three-person assessment review board panel may have more than one councilor.

Occasionally, one-member panels are established to deal with administrative or preliminary matters. The one-member panel for a local assessment review board cannot be a councilor and the one-member panel for a composite assessment review board must be the provincial member.

Who can make a complaint

Any assessed person, taxpayer, or person acting on behalf of an assessed person or taxpayer may file an assessment complaint. An agent for fee acting on behalf of a property owner or taxpayer must have written authorization to do so. If ownership of a property changes while a complaint is in progress, the new owner of the property or business then becomes the complainant involved in any proceeding before the board.

Complainants must demonstrate that the assessment of their property is not correct. Preparing a case for the complaint Hearing will take some time and research. Property owners who are considering filing a complaint may wish to consult the publication titled "Filing a property assessment complaint and preparing for your hearing." Copies of this publication may be found at the municipal office, or online at: www.municipalaffairs.alberta.ca.

As well, complainants may wish to contact their assessment review board office for details about the process and information required.

What a complaint can be about

A complaint may be filed about any of the following items listed on the assessment or tax notice:

- the description of the property or business
- the name or mailing address of an assessed person or taxpayer
- assessment amount
- assessment class
- assessment sub-class
- the type of property
- the type of improvement
- school support
- whether the property or business is assessable
- whether the property or business is exempt from taxation.

The assessment review board cannot hear complaints about the amount of property taxes or tax rates. Assessment review boards cannot change the tax rates or the services provided by the municipality. If a property owner has specific concerns about these issues, he or she may discuss them with the municipality's administration or council.

How to file a complaint

Complaints must be filed in the form prescribed in the regulations on or before the deadline shown on the assessment notice.

The complaint must:

- indicate what information shown on an assessment notice or tax notice is incorrect;
- explain in what respect that information is incorrect;
- indicate what the correct information is; and
- identify the requested assessed value, if the complaint relates to an assessment.

If an assessment notice and tax notice are combined, the deadline for filing a complaint is on the tax notice. Municipalities must give the assessed person 60 days from the notice of assessment date to file a complaint.

Once the complaint has been filed, the assessment review board clerk will receive, review, and categorize the complaint. All parties will be notified of the date of the hearing, the timelines by which disclosure of evidence is required to be provided to the other parties and to the board, and the rules for disclosure of evidence. At the hearing, the complainant presents his or her case to the board. The respondent (usually the local assessor) presents information on behalf of the municipality. The assessment review board has 30 days after the hearing within which to render its decision. All decisions of an assessment review board must be in writing.

Court of Queen's Bench of Alberta

Sometimes those affected by an assessment review board decision (property owners, assessors, etc.) are not happy with a decision made by the assessment review board. In this case, the assessed person may file an application for judicial review to the Court of Queen's Bench of Alberta. An application for judicial review must be filed within 60 days of the assessment review board's date of decision.

Impact of assessment complaint decisions

It is important to note that any decision an assessment review board makes is for the current year's assessment only.

This means that the decision does not apply to previous assessments, nor will it be applicable to the next year's property assessment. For example, if the assessed value of a property is decreased as a result of a board's decision, it will not result in adjustments to previous years' assessments, nor will it necessarily have any bearing on assessments that are prepared in the future.

Chapter 4

Chapter 4

Property assessments and taxes

This chapter examines taxation as a source of revenue for a municipality.

Topics include:

- Municipal property tax
- Provincial education property tax
- The importance of the equalized assessment
- Other property-related taxes used in Alberta

Municipal property taxation

Under the *MGA*, municipalities are responsible for collecting taxes for municipal and educational purposes. Property taxes are levied based on the value of the property as determined from the property assessment process. Property taxes are not a fee for service, but a way of distributing the cost for local government services and programs fairly throughout a municipality.

The property tax system is comprised of two distinct processes—preparing the assessments and setting the tax rate. The assessor's job is to prepare assessments. The municipal council is responsible for completing the second process, setting the tax rate. In addition to setting the tax rate, the municipal council is responsible for calculating the taxes payable, and collecting the taxes.

Tax rate

Each year, municipal councils determine the amount of money they need to operate their municipality. From this amount, the council then subtracts known revenues (for example, licenses, grants, and permits). The remainder is the amount of money the municipality needs to raise through property taxes in order to provide services for the year.

This revenue requirement is then used to calculate the tax rate. The tax rate is the percentage of assessed value at which each property is taxed in a municipality. The revenue requirement is divided by the assessment base (the total value of all assessed properties in the municipality). The tax rate calculation is expressed in the following formula:

Revenue Requirement / Assessment Base = Tax Rate

The tax rate is applied to each individual property assessment using the following formula:

Property Assessment x Tax rate = Taxes Payable

This formula means that the assessed value of the property in dollars is multiplied by the tax rate set by the municipality.

Education property taxes

In Alberta, education is a provincial program. The taxes that fund the program are raised and distributed on a provincial basis. Education property tax dollars are pooled in the Alberta School Foundation Fund and then allocated among school boards throughout the province.

This system of pooling taxes from all municipalities enables the province to provide all students with a standard level of education, no matter where they live.

Each year the province calculates the amount every Alberta municipality must contribute towards the public education system. The calculation is based on a formula that takes into account the equalized assessment in each municipality and the provincial uniform education property tax rate.

The province notifies municipalities of the amount of education taxes they are required to collect. Each municipality then establishes a local education property tax rate. This tax rate is calculated by dividing the required amount by the municipality's current taxable assessment.

The municipality then applies its local education tax rate to the assessed value of each property to determine the amount of education taxes each property owner is required to pay for the year. Municipalities include the education property tax on their annual property tax bills to property owners.

Municipalities collect education tax dollars from their ratepayers, and send them to the province and, in some instances, to a separate school board.

Other taxes

In addition to property tax, municipalities may generate revenue through other forms of tax.

Supplementary assessment and taxation

A municipality may pass a bylaw that allows it to assess improvements added to land after the December 31 condition date and collect property taxes on them for a portion of the current year. To do this, the assessor for the municipality must determine the value of the new improvements added since December 31 of the previous year.

This assessed value is then placed on the supplementary assessment roll. A supplementary assessment roll is prepared for new improvements with the same information as an annual assessment roll. The supplementary assessment roll is used to produce supplementary assessment notices.

Supplementary assessment notices must be sent to assessed persons before the end of the calendar year. Property taxes based on the supplementary assessment are pro-rated to reflect only the portion of the year the new improvement is completed, occupied, or in operation in the municipality.

Example: If a building was not completed on December 31, 2017, the annual assessment notice would reflect the value of the portion completed and taxes would be based on that amount. Assume the building is completed on May 1, 2018, a supplementary assessment notice could be sent out for the additional value of the building, and prorated property taxes could be levied for the remainder of the year (May1 – December 31, 2018).

Business tax

A municipality may choose to raise revenue by imposing a business tax bylaw on the businesses operating within its boundaries.

A business tax bylaw must be passed by the council before a municipality can impose a business tax. The business tax is payable by the person who operates the business, not the property owner. If the property owner also operates a business on the property, then the owner of that property would pay both property and business taxes.

In order for a municipality to be able to calculate business taxes, an assessor must first calculate a business assessment. There are five methods of calculating business assessment set out in the *MGA*. The methods that business assessment can be based on are:

- A percentage of the gross (before deductions) rental value of the building;
- A percentage of the net (after deductions) rental value of the building;
- The storage capacity of the building occupied by the assessed business;
- The floor space occupied by the business; or
- A percentage of the property assessment.

Councils may choose the method they feel best suits their municipality.

Business Improvement Area Tax
Sometimes business owners wish to improve the area in which they do business. Improving the area can mean constructing improvements, installing decorative lighting, plantings, boulevards, improving parking in the business improvement area, or any other type of improvements that will beautify and maintain property. They may lobby the local council to establish a Business Improvement Area levy (BIA). It is within the BIA that any improvements will be done. Specific BIA taxes will be shown on business tax notices for all businesses operating in the BIA. The tax is paid by the business owner, like business tax, and is payable for the current year on the same date business taxes are due.

Community Aggregate Payment Levy
A municipality may pass a community aggregate payment levy bylaw to impose a levy in respect of all sand and gravel businesses operating in the municipality. This levy is intended to raise revenue to be used toward the payment of infrastructure and other costs in the municipality. A community aggregate payment levy must be paid by the persons who operate sand and gravel operations in the municipality.

Local Improvement Tax
A local improvement tax is imposed on a specific area within a municipality to fund a service or improvement applied to a particular area only. The improvement benefits that particular area of the municipality rather than the municipality as a whole. Some examples of local improvements are sidewalks, lane lighting, or paving.

Local improvement taxes are applied to land. This means that the owner of the land is responsible for paying the local improvement tax. A local improvement tax is allocated as an annual charge but may be charged for a set number of years.

Special Tax
A municipality may choose to provide or construct a special service that will benefit a defined area within a municipality. The municipality would levy a special tax to fund the project.

Some examples of special services or constructions include:

- Waterworks and sewers
- Boulevards, pavement, and drainage ditches
- Dust treatment
- Repair and maintenance of roads, boulevards, sewers, and water lines
- Ambulance service and fire protection
- Recreational services

A special tax can only be imposed if council passes a bylaw. This must be done on an annual basis. Any revenue from a special tax must be applied to the specific service or purpose that is

stated in the bylaw. A property owner is responsible for paying this tax.

Well Drilling Equipment Tax

This tax is imposed on equipment used to drill an oil or gas well. It is payable by the person who holds a license under the *Oil and Gas Conservation Act* for the well being drilled.

The well drilling equipment tax is a one-time tax. It is an optional tax that municipalities may choose to impose.

Grants in Place of Taxes

As mentioned previously, some types of property are exempt from taxation. One kind of exempt property is property owned by the Alberta or federal government.

A municipality can apply for a grant in place of taxes equal to the amount it would have collected in property taxes if it were owned by a party other than the government. An example of this would be an office building that is owned by the Government of Alberta.

If the property was owned by anyone other than the Crown, the owner would pay property taxes. Because the building is owned by the government, the municipality annually applies for a grant from the provincial government equal to what the property taxes would be for that property for that year.

Glossary

Ad Valorem	According to value. An ad valorem tax is one that is levied in proportion to the value of the thing(s) being taxed.
Alberta School Foundation Fund	A provincial government fund into which all education funds are pooled. This fund was created to provide equitable educational funding to all school boards. The province then allocates the funds to public and separate system schools in the province.
Assessment	Process of placing a dollar value on properties for taxation purposes. The value of the assessment determines the amount of taxes that will be charged to the owner of the property.
Assessment base	The total assessed value of all property within a municipality.
Assessment classes	Under Alberta legislation, one of four classes (residential, non-residential, farmland, and machinery and equipment) to which assessed property is assigned.
Assessment notice	Assessment notices are created from the information on the assessment roll.
Assessment Review Board	Provides a forum for individuals or corporations to challenge their property or business assessments, except linear property.
Assessment roll	List of all assessable properties and their assessed values. The MGA requires each municipality to produce an assessment roll each year. The roll must be completed by February 28 each year.
Business improvement area tax	Tax imposed on a designated business revitalization zone to fund improvements that will beautify and maintain the area.
Business tax	Tax to raise revenues from businesses within a municipality's boundaries. A municipal council must pass a bylaw to impose a business tax. The business tax payable is the responsibility of the person operating the business.
Community aggregate payment levy	A levy on all sand and gravel businesses operating in a municipality to raise revenue to be used toward the payment of infrastructure and other costs in the municipality.
Condition date	The date on which the condition of the property is fixed for property assessment purposes. The condition date in Alberta is October 31 for Designated Industrial Property, and December 31 for all other property.
Cost approach	One of the approaches used to value property for assessment purposes. The cost approach is based on the theory that a person would pay no more for an object than it would cost to replace it. With regard to property, the assumption is that a purchaser would not pay any more to purchase a property than it would cost to buy the land and then rebuild the same buildings or improvements.

Court of Queen's Bench	Hears judicial reviews from decisions of assessment review boards.
Designated Industrial Properties	Facilities regulated by the Alberta Energy Regulator, the Alberta Utilities Commission or the National Energy Board, including land and improvements; linear property which includes electric power systems, telecommunication systems, wells, pipelines, and railway; major plants as set out in the regulations.
Depreciation	A loss in value due to any cause.
Education requisition	The amount of tax a municipality must collect for education purposes.
Education tax	The amount each assessed person must contribute towards a municipality's overall provincial education requisition. It is included on each property owner's tax bill.
Equalized assessment	Equalized assessment is an annual calculation that creates a common assessment base for distributing the provincial education property tax requisition among municipalities, the regional requisitions of some housing authorities, and may also be used to distribute provincial and federal grants among municipalities.
Exemption	A complete or partial elimination of assessment and/or property taxation.
Improvements	Buildings, or other structures, and attachments to land that are intended to remain attached (i.e. sidewalks, tunnels, pavement, etc.).
Income approach	One of the approaches used to value property for assessment purposes. The income approach is based on the theory that income-producing properties are bought and sold based on their income-earning potential.
Linear property	Property that generally has distribution networks or other facilities, and may extend across municipal boundaries (for example, oil and gas wells, pipelines, and electric power systems).
Local improvement tax	A tax imposed on a specific region in a municipality that funds a service or improvement applied to a particular area only.
Market value	The price a property might reasonably be expected to sell for if sold by a willing seller to a willing buyer after appropriate time and exposure on an open market.
Market value standard	Property assessment standard based on market value.
Mass appraisal	Process of valuing a group of properties as of a given date, using common data, mathematical models, and statistical tests. The use of mass appraisal allows assessors to accurately value a large number of properties in a short period of time.

Municipal Government Act	The legislation governing aspects of municipal government activities in Alberta, including assessment and municipal taxation powers.
Personal property	All moveable items of property not permanently attached to, or part of, the real estate. Examples include automobiles, furniture, jewellery, and works of art.
Real estate	The physical parcel of land and all improvements permanently attached.
Regulated Standard	Property assessment standard based on rates and procedures prescribed by Municipal Affairs.
Regulated property	Farmland, machinery and equipment, linear property, and railway property.
Sales comparison approach	One of the approaches used to value property for assessment purposes. This approach is based on the theory that the market value of a property is directly related to the prices of similar properties.
Special tax	A tax to fund a special service that will benefit a defined area within a municipality.
Supplementary assessment	Assessment of improvements that were constructed during a year and not captured on the annual assessment notice.
Supplementary taxation	Levying taxes based on supplementary assessments.
Tax burden	Economic costs or losses resulting from the imposition of a tax.
Tax rate	Percentage of assessed value at which each property is taxed in a municipality. Some municipalities express this in terms of mills or mill rate.
Taxation	The process of applying a tax rate to an assessed value to determine the taxes owing.
Valuation date	A fixed point in time on which assessment values are based. The valuation date in Alberta is July 1.
Well drilling equipment tax	Tax imposed on equipment used to drill an oil or gas well.

For Further Information

www.municipalaffairs.alberta.ca

or

Assessment Services Branch
780 422 1377

To call toll free, dial 310 0000 first.

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Rizzo & Rizzo Shoes Ltd. (Re)

Supreme Court Reports

Supreme Court of Canada

Present: Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

1997: October 16 / 1998: January 22.

File No.: 24711.

[1998] 1 S.C.R. 27 | [1998] 1 R.C.S. 27 | [1998] S.C.J. No. 2 | [1998] A.C.S. no 2

Philippe Adrien, Emilia Berardi, Paul Creador, Lorenzo Abel Vasquez and Lindy Wagner on their own behalf and on behalf of the other former employees of Rizzo & Rizzo Shoes Limited, appellants; v. Zittrer, Siblin & Associates, Inc., Trustees in Bankruptcy of the Estate of Rizzo & Rizzo Shoes Limited, respondent, and The Ministry of Labour for the Province of Ontario, Employment Standards Branch, party.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Case Summary

Employment law — Bankruptcy — Termination pay and severance available when employment terminated by the employer — Whether bankruptcy can be said to be termination by the employer — Employment Standards Act, R.S.O. 1980, c. 137, ss. 7(5), 40(1), (7), 40a — Employment Standards Amendment Act, 1981, S.O. 1981, c. 22, s. 2(3) — Bankruptcy Act, R.S.C., 1985, c. B-3, s. 121(1) — Interpretation Act, R.S.O. 1990, c. I.11, ss. 10, 17.

A bankrupt firm's employees lost their jobs when a receiving order was made with respect to the firm's property. All wages, salaries, commissions and vacation pay were paid to the date of the receiving order. The province's Ministry of Labour audited the firm's records to determine if any outstanding termination or severance pay was owing to former employees under the Employment Standards Act ("ESA") and delivered a proof of claim to the Trustee. The Trustee disallowed the claims on the ground that the bankruptcy of an employer does not constitute dismissal from employment and accordingly creates no entitlement to severance, termination or vacation pay under the ESA. The Ministry successfully appealed to the Ontario Court (General Division) but the Ontario Court of Appeal overturned that court's ruling and restored the Trustee's decision. The Ministry sought leave to appeal from the Court of Appeal judgment but discontinued its application. Following the discontinuance of the appeal, the Trustee paid a dividend to Rizzo's creditors, thereby leaving significantly less funds in the estate. Subsequently, the appellants, five former employees of Rizzo, moved to set aside the discontinuance, add themselves as parties to the proceedings, and requested and were granted an order granting them leave to appeal. At issue here is whether the termination of employment caused by the bankruptcy of an employer give rise to a claim provable in bankruptcy for termination pay and severance pay in accordance with the provisions of the ESA.

Held: The appeal should be allowed.

At the heart of this conflict is an issue of statutory interpretation. Although the plain language of ss. 40 and 40a of the ESA suggests that termination pay and severance pay are payable only when the employer terminates the employment, statutory interpretation cannot be founded on the wording of the legislation alone. The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. Moreover, s. 10 of Ontario's Interpretation Act provides that every Act "shall be deemed to be remedial" and directs that every Act shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit".

The objects of the ESA and of the termination and severance pay provisions themselves are broadly premised upon the need to protect employees. Finding ss. 40 and 40a to be inapplicable in bankruptcy situations is incompatible with both the object of the ESA and the termination and severance pay provisions. The legislature does not intend to produce absurd consequences and such a consequence would result if employees dismissed before the bankruptcy were to be entitled to these benefits while those dismissed after a bankruptcy would not be so entitled. A distinction would be made between employees merely on the basis of the timing of their dismissal and such a result would arbitrarily deprive some of a means to cope with economic dislocation.

The use of legislative history as a tool for determining the intention of the legislature is an entirely appropriate exercise. Section 2(3) of the Employment Standards Amendment Act, 1981 exempted from severance pay obligations employers who became bankrupt and lost control of their assets between the coming into force of the amendment and its receipt of royal assent. Section 2(3) necessarily implies that the severance pay obligation does in fact extend to bankrupt employers. If this were not the case, no readily apparent purpose would be served by this transitional provision. Further, since the ESA is benefits-conferring legislation, it ought to be interpreted in a broad and generous manner. Any doubt arising from difficulties of language should be resolved in favour of the claimant.

When the express words of ss. 40 and 40a are examined in their entire context, the words "terminated by an employer" must be interpreted to include termination resulting from the bankruptcy of the employer. The impetus behind the termination of employment has no bearing upon the ability of the dismissed employee to cope with the sudden economic dislocation caused by unemployment. As all dismissed employees are equally in need of the protections provided by the ESA, any distinction between employees whose termination resulted from the bankruptcy of their employer and those who have been terminated for some other reason would be arbitrary and inequitable. Such an interpretation would defeat the true meaning, intent and spirit of the ESA. Termination as a result of an employer's bankruptcy therefore does give rise to an unsecured claim provable in bankruptcy pursuant to s. 121 of the Bankruptcy Act for termination and severance pay in accordance with ss. 40 and 40a of the ESA. It was not necessary to address the applicability of s. 7(5) of the ESA.

Cases Cited

Distinguished: Re Malone Lynch Securities Ltd., [1972] 3 O.R. 725; Re Kemp Products Ltd. (1978), 27 C.B.R. (N.S.) 1; Mills-Hughes v. Raynor (1988), 63 O.R. (2d) 343; referred to: U.F.C.W., Loc. 617P v. Royal Dressed Meats Inc. (Trustee of) (1989), 76 C.B.R. (N.S.) 86; R. v. Hydro-Québec, [1997] 1 S.C.R. 213; Royal Bank of Canada v. Sparrow Electric Corp., [1997] 1 S.C.R. 411; Verdun v. Toronto-Dominion Bank, [1996] 3 S.C.R. 550; Friesen v. Canada, [1995] 3 S.C.R. 103; Machtinger v. HOJ Industries Ltd., [1992] 1 S.C.R. 986; Wallace v. United Grain Growers Ltd., [1997] 3 S.C.R. 701; R. v. TNT Canada Inc. (1996), 27 O.R. (3d) 546; Re Telegram Publishing Co. v. Zwelling (1972), 1 L.A.C. (2d) 1; R. v. Vasil, [1981] 1 S.C.R. 469; Paul v. The Queen, [1982] 1 S.C.R. 621; R. v. Morgentaler, [1993] 3 S.C.R. 463; Abrahams v. Attorney General of Canada, [1983] 1 S.C.R. 2; Hills v. Canada (Attorney General), [1988] 1 S.C.R. 513; British Columbia (Director of Employment Standards) v. Eland Distributors Ltd. (Trustee of) (1996), 40 C.B.R. (3d) 25; R. v. Z. (D.A.), [1992] 2 S.C.R. 1025.

Statutes and Regulations Cited

Bankruptcy Act, R.S.C., 1985, c. B-3 [now the Bankruptcy and Insolvency Act], s. 121(1). Employment Standards Act, R.S.O. 1970, c. 147, s. 13(2). Employment Standards Act, R.S.O. 1980, c. 137, ss. 7(5) [rep. & sub. 1986, c. 51, s. 2], 40(1) [rep. & sub. 1987, c. 30, s. 4(1)], (7), 40a(1) [rep. & sub. ibid., s. 5(1)]. Employment Standards Act, 1974, S.O. 1974, c. 112, s. 40(7). Employment Standards Amendment Act, 1981, S.O. 1981, c. 22, s. 2. Interpretation Act, R.S.O. 1980, c. 219 [now R.S.O. 1990, c. I.11], ss. 10, 17. Labour Relations and Employment Statute Law Amendment Act, 1995, S.O. 1995, c. 1, ss. 74(1), 75(1).

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Christie, Innis, Geoffrey England and Brent Cotter. Employment Law in Canada, 2nd ed. Toronto: Butterworths, 1993. Côté, Pierre-André. The Interpretation of Legislation in Canada, 2nd ed. Cowansville, Que.: Yvon Blais, 1991. Driedger, Elmer A. Construction of Statutes, 2nd ed. Toronto: Butterworths, 1983. Ontario. Legislature of Ontario Debates, 1st sess., 32nd Parl., June 4, 1981, pp. 1236-37. Ontario. Legislature of Ontario Debates, 1st sess., 32nd Parl., June 16, 1981, p. 1699. Sullivan, Ruth. Driedger on the Construction of Statutes, 3rd ed. Toronto: Butterworths, 1994. Sullivan, Ruth. Statutory Interpretation. Concord, Ont.: Irwin Law, 1997.

APPEAL from a judgment of the Ontario Court of Appeal (1995), 22 O.R. (3d) 385, 80 O.A.C. 201, 30 C.B.R. (3d) 1, 9 C.C.E.L. (2d) 264, 95 C.L.L.C. par. 210-020, [1995] O.J. No. 586 (QL), reversing a judgment of the Ontario Court (General Division) (1991), 6 O.R. (3d) 441, 11 C.B.R. (3d) 246, 92 C.L.L.C. par. 14,013, ruling that the Ministry of Labour could prove claims on behalf of employees of the bankrupt. Appeal allowed.

Steven M. Barrett and Kathleen Martin, for the appellants. Raymond M. Slattery, for the respondent. David Vickers, for the Ministry of Labour for the Province of Ontario, Employment Standards Branch.

Solicitors for the appellants: Sack, Goldblatt, Mitchell, Toronto. Solicitors for the respondent:

16 Austin J.A. concluded that, because the employment of Rizzo's former employees was terminated by the order of bankruptcy and not by the act of the employer, no liability arose with respect to termination, severance or vacation pay. The order of the trial judge was set aside and the Trustee's disallowance of the claims was restored.

4. Issues

17 This appeal raises one issue: does the termination of employment caused by the bankruptcy of an employer give rise to a claim provable in bankruptcy for termination pay and severance pay in accordance with the provisions of the ESA?

5. Analysis

18 The statutory obligation upon employers to provide both termination pay and severance pay is governed by ss. 40 and 40a of the ESA, respectively. The Court of Appeal noted that the plain language of those provisions suggests that termination pay and severance pay are payable only when the employer terminates the employment. For example, the opening words of s. 40(1) are: "No employer shall terminate the employment of an employee. . . ." Similarly, s. 40a(1a) begins with the words, "Where . . . fifty or more employees have their employment terminated by an employer. . . ." Therefore, the question on which this appeal turns is whether, when bankruptcy occurs, the employment can be said to be terminated "by an employer".

19 The Court of Appeal answered this question in the negative, holding that, where an employer is petitioned into bankruptcy by a creditor, the employment of its employees is not terminated "by an employer", but rather by operation of law. Thus, the Court of Appeal reasoned that, in the circumstances of the present case, the ESA termination pay and severance pay provisions were not applicable and no obligations arose. In answer, the appellants submit that the phrase "terminated by an employer" is best interpreted as reflecting a distinction between involuntary and voluntary termination of employment. It is their position that this language was intended to relieve employers of their obligation to pay termination and severance pay when employees leave their jobs voluntarily. However, the appellants maintain that where an employee's employment is involuntarily terminated by reason of their employer's bankruptcy, this constitutes termination "by an employer" for the purpose of triggering entitlement to termination and severance pay under the ESA.

20 At the heart of this conflict is an issue of statutory interpretation. Consistent with the findings of the Court of Appeal, the plain meaning of the words of the provisions here in question appears to restrict the obligation to pay termination and severance pay to those employers who have actively terminated the employment of their employees. At first blush, bankruptcy does not fit comfortably into this interpretation. However, with respect, I believe this analysis is incomplete.

21 Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, Statutory Interpretation (1997); Ruth Sullivan, Driedger on the Construction of Statutes (3rd ed. 1994) (hereinafter "Construction of Statutes"); Pierre-André Côté, The Interpretation of Legislation in Canada (2nd ed. 1991)), Elmer Driedger in Construction of Statutes (2nd ed.

1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

Recent cases which have cited the above passage with approval include: R. v. Hydro-Québec, [1997] 1 S.C.R. 213; Royal Bank of Canada v. Sparrow Electric Corp., [1997] 1 S.C.R. 411; Verdun v. Toronto-Dominion Bank, [1996] 3 S.C.R. 550; Friesen v. Canada, [1995] 3 S.C.R. 103.

22 I also rely upon s. 10 of the Interpretation Act, R.S.O. 1980, c. 219, which provides that every Act "shall be deemed to be remedial" and directs that every Act shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit".

23 Although the Court of Appeal looked to the plain meaning of the specific provisions in question in the present case, with respect, I believe that the court did not pay sufficient attention to the scheme of the ESA, its object or the intention of the legislature; nor was the context of the words in issue appropriately recognized. I now turn to a discussion of these issues.

24 In Machtinger v. HOJ Industries Ltd., [1992] 1 S.C.R. 986, at p. 1002, the majority of this Court recognized the importance that our society accords to employment and the fundamental role that it has assumed in the life of the individual. The manner in which employment can be terminated was said to be equally important (see also Wallace v. United Grain Growers Ltd., [1997] 3 S.C.R. 701). It was in this context that the majority in Machtinger described, at p. 1003, the object of the ESA as being the protection of ". . . the interests of employees by requiring employers to comply with certain minimum standards, including minimum periods of notice of termination". Accordingly, the majority concluded, at p. 1003, that, ". . . an interpretation of the Act which encourages employers to comply with the minimum requirements of the Act, and so extends its protections to as many employees as possible, is to be favoured over one that does not".

25 The objects of the termination and severance pay provisions themselves are also broadly premised upon the need to protect employees. Section 40 of the ESA requires employers to give their employees reasonable notice of termination based upon length of service. One of the primary purposes of this notice period is to provide employees with an opportunity to take preparatory measures and seek alternative employment. It follows that s. 40(7)(a), which provides for termination pay in lieu of notice when an employer has failed to give the required statutory notice, is intended to "cushion" employees against the adverse effects of economic dislocation likely to follow from the absence of an opportunity to search for alternative employment. (Innis Christie, Geoffrey England and Brent Cotter, Employment Law in Canada (2nd ed. 1993), at pp. 572-81.)

26 Similarly, s. 40a, which provides for severance pay, acts to compensate long-serving

United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)

Supreme Court Reports

Supreme Court of Canada

Present: McLachlin C.J. and Iacobucci, Major, Bastarache, Binnie, Arbour, LeBel, Deschamps and Fish JJ.

Heard: December 8, 2003;

Judgment: March 25, 2004.

File No.: 29321.

[2004] 1 S.C.R. 485 | [2004] 1 R.C.S. 485 | [2004] S.C.J. No. 19 | [2004] A.C.S. no 19 | 2004 SCC 19

City of Calgary, appellant; v. United Taxi Drivers' Fellowship of Southern Alberta, Rashpal Singh Gosal, Haringer Singh Dhesi, Aero Cab Ltd. and Air Linker Cab Ltd., respondents, and Attorney General of Alberta, intervener.

(18 paras.)

Case Summary

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA

Catchwords:

Municipal law — Bylaws — Jurisdiction to pass bylaws — Municipal bylaw regulating taxi industry by stipulating licence requirements and freezing number of licences — Proper approach to interpretation of statutes empowering municipalities — Whether bylaw ultra vires municipality under its governing legislation — Municipal Government Act, S.A. 1994, c. M-26.1, ss. 7, 8, 9.

Catchwords:

Administrative law — Judicial review — Standard of review applicable to decision of municipality delineating its jurisdiction.

Summary:

The City of Calgary regulates its taxi industry by virtue of the *Taxi Business Bylaw* which requires that all taxis have a taxi plate licence. In 1993, the bylaw froze the number of taxi plate licences issued. The following year, the provincial government enacted a new *Municipal Government Act*. The respondents challenged the validity of the freeze on the issuance of taxi

plate licences on the basis that the freeze is *ultra vires* the City under its governing legislation, the *Municipal Government Act*. The trial judge held that the City had authority under the new [page486] Act to limit the number of taxi plate licences. A majority of the Court of Appeal reversed that decision.

Held: The appeal should be allowed.

The City of Calgary was authorized under the *Municipal Government Act* to enact the bylaw and to limit the number of taxi plate licences. Municipalities must always be correct in delineating their jurisdiction. Such questions will always be subject to a standard of review of correctness.

The evolution of the municipality has produced a shift in the proper approach to interpreting statutes that empower municipalities. A broad and purposive approach to the interpretation of municipal legislation reflects the true nature of modern municipalities which require greater flexibility in fulfilling their statutory purposes and is consistent with the Court's approach to statutory interpretation generally. The *Municipal Government Act* reflects the modern method of drafting municipal legislation which must be construed using this broad and purposive approach.

Under the *Municipal Government Act* the City still has the power to limit the issuance of taxi plate licences. There is no indication in the Act that the legislature intended to remove the municipality's power to limit the number of taxi plate licences. To the contrary, s. 9(b) indicates that the legislature sought to enhance the City's powers under the Act. Further, the respondents' narrow interpretation cannot be reconciled with the language of the Act. Section 7 which empowers municipalities to pass bylaws respecting business must be read with s. 8 of the Act illustrating some of the broad powers exercisable by a municipality. The power to limit the number of licences could fall under either s. 8(a), the power to regulate, or s. 8(c), the power to provide for a system of licences. Thus, the City has the power under the Act to pass bylaws limiting the number of taxi plate licences.

Cases Cited

Referred to: Nanaimo (City) v. Rascal Trucking Ltd., [2000] 1 S.C.R. 342, 2000 SCC 13; Shell Canada Products Ltd. v. Vancouver (City), [1994] 1 S.C.R. 231; Bell ExpressVu Limited Partnership v. Rex, [2002] 2 S.C.R. 559, 2002 SCC 42; Merritt v. City of Toronto (1895), 22 O.A.R. 205.

Statutes and Regulations Cited

Alberta Bill of Rights, R.S.A. 2000, c. A-14, s. 1.

Canadian Charter of Rights and Freedoms, ss. 6, 7, 15.

[page487]

Cities Act, S.S. 2002, c. C-11.1.

City of Calgary, Bylaw No. 91/77, Taxi Business Bylaw (April 18, 1977), ss. 7(1), 9.1(a), (b) [am. 23M93], 9.2(a), (b), 9.3(a).

Gaming and Liquor Act, R.S.A. 2000, c. G-1, s. 37(1)(d).

Interpretation Act, R.S.A. 2000, c. I-8, s. 10.

Municipal Act, R.S.Y. 2002, c. 154.

Municipal Act, S.M. 1996, c. 58, C.C.S.M. c. M225.

Municipal Act, 2001, S.O. 2001, c. 25.

Municipal Government Act, R.S.A. 1980, c. M-26, ss. 234(1) [am. 1991, c. 23, s. 3(13)], (2)(a) [idem], (b) [idem], 8.

Municipal Government Act, S.A. 1994, c. M-26.1 [now R.S.A. 2000, c. 26], ss. 3, 7, 8, 9, 70-75, 715.

Municipal Government Act, S.N.S. 1998, c. 18.

Wildlife Act, R.S.A. 2000, c. W-10, s. 13(1)(a).

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Oxford English Dictionary, vol. XIII, 2nd ed. Oxford: Clarendon Press, 1989, "regulate".

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History and Disposition:

APPEAL from a judgment of the Alberta Court of Appeal, [2002] 8 W.W.R. 51, 3 Alta. L.R. (4th) 211, 303 A.R. 249, 273 W.A.C. 249, 94 C.R.R. (2d) 290, 30 M.P.L.R. (3d) 155, [2002] A.J. No. 694 (QL), 2002 ABCA 131, reversing a judgment of the Court of Queen's Bench (1998), 60 Alta. L.R. (3d) 165, 217 A.R. 1, 45 M.P.L.R. (2d) 16, [1998] A.J. No. 1478 (QL), 1998 ABQB 184. Appeal allowed.

Counsel

Leila J. Gosselin, Brand R. Inlow, Q.C., and R. Shawn Swinn, for the appellant.

Dale Gibson and Sandra Anderson, for the respondents United Taxi Drivers' Fellowship of Southern Alberta, Rashpal Singh Gosal and Haringer Singh Dhesi.

No one appeared for the respondent Aero Cab Ltd.

Gabor I. Zinner, for the respondent Air Linker Cab Ltd.

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Lorne Merryweather, for the intervener.

The judgment of the Court was delivered by

BASTARACHE J.

I. Overview

1 The City of Calgary (the "City") regulates its taxi industry by virtue of Bylaw No. 91/77, the *Taxi Business Bylaw* (the "bylaw"), which sets out several licensing requirements. Among them is a requirement that all taxi vehicles have a taxi plate licence. In 1986, the City's Taxi Commission adopted a restricted entry system for the taxi business to increase efficiency and stability, and accordingly froze the number of taxi plate licences. The freeze was continued in 1993 under s. 9.1 of the bylaw. Other sections of the bylaw permitted the transfer of licences and the creation of a lottery system to distribute revoked or relinquished licences. The following year, the provincial government enacted a new *Municipal Government Act*, S.A. 1994, c. M-26.1 (now R.S.A. 2000, c. M-26). Section 715 of the new Act deemed the existing bylaw to have the same effect as if it had been passed under the new Act.

2 The respondents, the United Taxi Drivers' Fellowship of Southern Alberta, Rashpal Singh Gosal, Haringer Singh Dhesi, Aero Cab Ltd. and Air Linker Cab Ltd., challenged the validity of the freeze and the lottery process. The respondents sought a declaration that the City's actions were: *ultra vires* the City's governing legislation, the *Municipal Government Act*; a violation of the common law rule prohibiting municipalities from enacting discriminatory legislation; and an unconstitutional violation of their mobility rights, their right to liberty and their right to be free from discrimination as guaranteed by ss. 6, 7 and 15 of the *Canadian Charter of Rights and Freedoms*. The only issue before this Court is whether the City's freeze on the issuance of taxi plate licences [page489] was *ultra vires* the City under the *Municipal Government Act*.

3 The trial judge concluded that the City had the authority under the *Municipal Government Act* to limit the number of taxi plate licences: (1998), 60 Alta. L.R. (3d) 165, 1998 ABQB 184. The majority of the Court of Appeal disagreed: [2002] 8 W.W.R. 51, 2002 ABCA 131. Wittmann J.A., writing for the majority, concluded that while the old *Municipal Government Act* expressly granted the City the power to limit the number of taxi plate licences, the new Act did not. O'Leary

J.A., in dissent, held that the new *Municipal Government Act* expressly and impliedly authorized the limit on the issuance of taxi plate licences.

II. Relevant Statutory Provisions

4 City of Calgary, Bylaw No. 91/77 (*Taxi Business Bylaw*)

7. (1) The Commission may limit the number of taxi licenses, which may be issued in any one-license period.

...

9.1 (a) The prohibition on the issuance of any new taxi licenses for the operation of a regular class taxi instituted by the Taxi Commission as of February 6, 1986, and continued by the Taxi Commission up to the date of the passage of this Bylaw, is hereby continued and the Taxi Commission shall issue no new licenses for the operation of a regular class taxi but only renew to licensees, in accordance with the Taxi Business Bylaw, such regular class taxi licenses as were issued to such licensees for the previous license year.

(b) Notwithstanding subsection (a) the Taxi Commission may issue licenses in accordance with the lottery provisions described in Section 9(28) ... .

9.2 (a) "immediate family member" means the spouse, siblings or children of the taxi licensee.

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(b) Notwithstanding section 9(15) a taxi license held by a deceased taxi licensee shall be capable of being transferred to the estate of the deceased licensee, or to an immediate family member of the deceased, if the transfer occurs without remuneration from the estate of the deceased to the transferee.

...

9.3 (a) The licensee of a taxi license shall not transfer or otherwise dispose of a taxi license unless:

(1) the licensee does so in accordance with this Bylaw and the regulations; and

(2) the licensee pays the license transfer fee as set out in this Bylaw.

Municipal Government Act, R.S.A. 1980, c. M-26

234(1) A council may pass by-laws licensing, regulating and controlling the taxi and limousine business.

(2) Without restricting the generality of the foregoing a council may pass by-laws to

(a) establish and specify the rates or fares that may be charged for hire of taxis and limousines;

(b) limit the number of taxi and limousine licences that may be issued in the municipality having regard to its population or the area to be served in it or by any other means the council considers to be just and equitable;

...

(8) A council, by by-law, may establish a commission to be known as the taxi commission

(a) which shall be composed of the number of resident electors the council selects including, if it seems desirable, any members of council or officials of the municipality who are considered appropriate, and

(b) which may exercise any power or make any decisions which the council may make pursuant to this section as the by-law provides.

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Municipal Government Act, S.A. 1994, c. M-26.1

3 The purposes of a municipality are

(a) to provide good government,

(b) to provide services, facilities or other things that, in the opinion of council, are necessary or desirable for all or a part of the municipality, and

(c) to develop and maintain safe and viable communities.

...

7 A council may pass bylaws for municipal purposes respecting the following matters:

(a) the safety, health and welfare of people and the protection of people and property;

...

(d) transport and transportation systems;

(e) businesses, business activities and persons engaged in business; ...

8 Without restricting section 7, a council may in a bylaw passed under this Division

(a) regulate or prohibit;

(b) deal with any development, activity, industry, business or thing in different ways, divide each of them into classes and deal with each class in different ways;

(c) provide for a system of licences, permits or approvals, including ... :

...

(iii) prohibiting any development, activity, industry, business or thing until a licence, permit or approval has been granted;

(iv) providing that terms and conditions may be imposed on any licence, permit or approval, [page492] the nature of the terms and conditions and who may impose them;

(v) setting out the conditions that must be met before a licence, permit or approval is granted or renewed, the nature of the conditions and who may impose them;

(vi) providing for the duration of licences, permits and approvals and their suspension or cancellation for failure to comply with a term or condition of the bylaw or for any other reason specified in the bylaw;

...

9 The power to pass bylaws under this Division is stated in general terms to

(a) give broad authority to councils and to respect their right to govern municipalities in whatever way the councils consider appropriate, within the jurisdiction given to them under this or any other enactment, and

(b) enhance the ability of councils to respond to present and future issues in their municipalities.

...

715 A bylaw passed by a council under the former *Municipal Government Act* ... continues with the same effect as if it had been passed under this Act.

III. Analysis

A. *The Standard of Review*

5 The only question in this case is whether the freeze on the issuance of taxi plate licences was *ultra vires* the City under the *Municipal Government Act*. M unicipalities do not possess any greater institutional competence or expertise than the courts in delineating their jurisdiction. Such a question will always be reviewed on a standard of correctness: *Nanaimo (City) v. Rascal Trucking Ltd.*, [2000] 1 S.C.R. 342 , 2000 SCC 13, at para. 29. There is no need to engage in the pragmatic and functional approach in a review for *vires*; such an inquiry is [page493] only required where a municipality's adjudicative or policy-making function is being exercised.

B. *The Proper Approach to the Interpretation of Municipal Powers*

6 The evolution of the modern municipality has produced a shift in the proper approach to the

interpretation of statutes empowering municipalities. This notable shift in the nature of municipalities was acknowledged by McLachlin J. (as she then was) in *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231, at pp. 244-45. The "benevolent" and "strict" construction dichotomy has been set aside, and a broad and purposive approach to the interpretation of municipal powers has been embraced: *Nanaimo, supra*, at para. 18. This interpretive approach has evolved concomitantly with the modern method of drafting municipal legislation. Several provinces have moved away from the practice of granting municipalities specific powers in particular subject areas, choosing instead to confer them broad authority over generally defined matters: *The Municipal Act*, S.M. 1996, c. 58, C.C.S.M. c. M225; *Municipal Government Act*, S.N.S. 1998, c. 18; *Municipal Act*, R.S.Y. 2002, c. 154; *Municipal Act, 2001*, S.O. 2001, c. 25; *The Cities Act*, S.S. 2002, c. C-11.1. This shift in legislative drafting reflects the true nature of modern municipalities which require greater flexibility in fulfilling their statutory purposes: *Shell Canada*, at pp. 238 and 245.

7 Alberta's *Municipal Government Act* follows the modern method of drafting municipal legislation. The legislature's intention to enhance the powers of its municipalities by drafting the bylaw passing provisions of the Act in broad and general terms is expressly stated in s. 9. Accordingly, to determine whether a municipality is authorized to exercise a certain power, such as limiting the issuance of taxi plate licences, the provisions of the Act must be construed in a broad and purposive manner.

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8 A broad and purposive approach to the interpretation of municipal legislation is also consistent with this Court's approach to statutory interpretation generally. The contextual approach requires "the words of an Act ... to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87; *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, 2002 SCC 42, at para. 26. This approach is also consistent with s. 10 of Alberta's *Interpretation Act*, R.S.A. 2000, c. I-8, which provides that every provincial enactment must be given a fair, large and liberal construction and interpretation that best ensures the attainment of its objects.

C. *The City's Power to Limit the Number of Licences*

9 The respondents argue that the City does not have the power to limit the number of taxi plate licences under the Act. They submit that the authority to regulate has never implied numerical limits and that ss. 7 and 8 of the current *Municipal Government Act*, unlike s. 234 of the previous *Municipal Government Act*, neither expressly nor impliedly grant a municipality the power to limit the number of taxi plate licences. The respondents argue that while the Act expands the "matters" over which municipalities may enact bylaws under s. 7, the Act limits the "powers" exercisable by municipalities to those expressly specified. As the power to limit the number of taxi plate licences is not expressly specified in s. 8, the respondents allege it has been abolished.

10 In my respectful opinion, the respondents' argument must fail.

11 It is well established that the legislature is presumed not to alter the law by implication: *Sullivan and Driedger on the Construction of Statutes* (4th ed. 2002), at p. 395. Rather, where it intends to depart from prevailing law, the legislature will do so expressly. Here, there is no indication in the Act that the legislature intended to remove the municipality's [page495] power to limit the number of taxi plate licences. To the contrary, s. 9(b) indicates that the legislature did not intend to curtail the powers exercised by municipalities but rather sought to enhance those powers under the new Act subject to the limitations in ss. 70 to 75, which do not preclude limiting the number of taxi licences. It is inconceivable, in my view, that the legislature would have intended to indirectly limit the ability of municipalities to regulate the taxi industry according to a practice dating 15 years and to adopt the restrictive approach defined in *Merritt v. City of Toronto* (1895), 22 O.A.R. 205, at pp. 207-8, simply by changing its method of drafting legislation. The new method was in fact specifically designed to avoid the need for listing specific matters and powers. Accordingly, a provision explicitly limiting the number of licences such as s. 13(1)(a) of the *Wildlife Act*, R.S.A. 2000, c. W-10, and s. 37(1)(d) of the *Gaming and Liquor Act*, R.S.A. 2000, c. G-1, is unnecessary.

12 The respondents' narrow interpretation cannot be reconciled with the language of the Act. According to the respondents, the broad authority conferred on municipalities only applies to s. 7 which deals exclusively with matters and not to s. 8 which deals exclusively with powers. I disagree. First, s. 9 clearly states that the power to pass bylaws is stated in general terms to "give broad authority" in respect of matters attributed to them. Second, to accept this matter/power distinction renders the opening words of s. 8, "[w]ithout restricting section 7", useless. Rather, ss. 7 and 8 must be read together, as one is without restriction to the other. Section 8 is supplementary to s. 7 and speaks of the "broad authority" mentioned in s. 9. On this reading of ss. 7, 8 and 9 the respondents' interpretation must be rejected because their narrow and literal approach to s. 8 effectively restricts s. 7, which grants the power to regulate businesses.

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13 Applying a broad and purposive interpretation, ss. 7 and 8 grant the City the power to pass bylaws limiting the number of taxi plate licences. As discussed, s. 8 supplements s. 7 by illustrating some of the broad powers exercisable by a municipality. Here the power to limit the number of licences could fall under either s. 8(a), the power to regulate, or s. 8(c), the power to provide for a system of licences. To "regulate", as defined in the *Oxford English Dictionary* (2nd ed. 1989), vol. XIII, is "subject to ... restrictions". Thus, as O'Leary J.A. in dissent aptly stated, the "jurisdiction to regulate the taxi business necessarily implies the authority to limit the number of TPLs [taxi plate licences] issued": para. 202. This accords with the legislative history.

14 The power to limit the issuance of licences also falls under the power to provide for a system of licences under s. 8(c). Sections 8(c)(i) through (vi) represent some of the types of bylaws that provide for a system of licences. The use of the word "including" indicates that the list is non-exhaustive; therefore, any type of bylaw that is consistent with the list is authorized. There is clearly no room for the application of the *expressio unius est exclusio alterius* principle

advocated by the respondents. Common to each of the provisions is the power to impose limitations on licences such as setting out the conditions that must be satisfied before a licence is granted or renewed. The bylaw limiting the number of taxi plate licences is consistent with the examples provided as it also imposes a specific limit on a licensed activity.

15 The respondents have also argued that the bylaw is inconsistent with the right to enjoyment of property protected by the *Alberta Bill of Rights*, R.S.A. 2000, c. A-14, s. 1, and with s. 3 of the *Municipal Government Act* which provides that the purposes of municipalities are good governance and the development and maintenance of safe and viable communities. Both arguments relate to the effects of the bylaw which the respondents allege have transformed taxi licences into an expensive commodity benefiting a small group of brokers.

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16 As noted earlier in these reasons, there is no challenge before this Court to the legislation based on the *Charter* and no record to support the allegation now being made that the *Alberta Bill of Rights* has been breached. This Court in *Bell ExpressVu, supra*, at para. 62, held that absent any challenge on constitutional grounds, courts are bound to interpret and apply statutes in accordance with the sovereign intent of the legislature. In this case, I find no ambiguity in the legislation that would bring me to consider whether the Act is reflective of *Charter* values and no reason to question the authority of the Council for the City of Calgary to decide the best interests of its citizens in the regulation of the taxi industry. Here, as in *Bell ExpressVu*, some citizens are affected by the restrictions imposed, but this has no bearing on the jurisdiction of the municipal government to regulate.

17 Accordingly, the City of Calgary was authorized under the Act to enact Bylaw 91/77.

IV. Conclusion

18 The appeal is allowed with costs throughout.

Solicitors

Solicitor for the appellant: City of Calgary Law Department, Calgary.

Solicitors for the respondents United Taxi Drivers' Fellowship of Southern Alberta, Rashpal Singh Gosal and Haringer Singh Dhesi: Dale Gibson & Associates, Edmonton.

Solicitors for the respondent Air Linker Cab Ltd.: Zinner & Sara, Calgary.

Solicitor for the intervener: Attorney General of Alberta, Edmonton.

End of Document

INTERPRETATION ACT

Chapter I-8

Table of Contents

Enactments always speaking

9 An enactment shall be construed as always speaking and shall be applied to circumstances as they arise.

RSA 1980 cI-7 s9

Enactments remedial

10 An enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects.

RSA 1980 cI-7 s10

Enacting clause

11 The words "HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:" indicate the authority by virtue of which an Act is passed.

RSA 2000 cI-8 s11;AR 217/2022

Preambles and reference aids

12(1) The preamble of an enactment is a part of the enactment intended to assist in explaining the enactment.

(2) In an enactment,

(a) tables of contents,

(b) marginal notes and section headers, and

(c) statutory citations after the end of a section or schedule

are not part of the enactment, but are inserted for convenience of reference only.

RSA 2000 cI-8 s12;2002 c17 s3

Definitions and interpretation provisions

13 Definitions and other interpretation provisions in an enactment

(a) are applicable to the whole enactment, including the section containing the definitions or interpretation provisions, except to the extent that a contrary intention appears in the enactment, and

(b) apply to regulations made under the enactment except to the extent that a contrary intention appears in the enactment or in the regulations.

RSA 1980 cI-7 s13

Roncarelli v. Duplessis

Supreme Court Reports

Supreme Court of Canada

Present: Kerwin C.J. and Taschereau, Rand, Locke, Cartwright, Fauteux, Abbott, Martland and Judson JJ.

1958: June 2, 3, 4, 5, 6 / 1959: January 27.

[1959] S.C.R. 121 | [1959] R.C.S. 121

Frank Roncarelli (plaintiff), appellant; and The Honourable Maurice Duplessis (defendant), respondent.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Case Summary

Crown — Officers of the Crown — Powers and responsibilities — Prime Minister and Attorney-General — Quebec Liquor Commission — Cancellation of licence to sell liquor — Whether made at instigation of Prime Minister and Attorney-General — The Alcoholic Liquor Act, R.S.Q. 1941, c. 255 — The Attorney-General's Department Act, R.S.Q. 1941, c. 46 — The Executive Power Act, R.S.Q. 1941, c. 7.

Licences — Cancellation — Motives of cancellation — Done on instigation of Prime Minister and Attorney-General — Whether liability in damages — Whether notice under art. 88 of the Code of Civil Procedure required.

The plaintiff, the proprietor of a restaurant in Montreal and the holder of a licence to sell intoxicating liquor, sued the defendant personally for damages arising out of the cancellation of his licence by the Quebec Liquor Commission. He alleged that the licence had been arbitrarily cancelled at the instigation of the defendant who, without legal powers in the matter, had given orders to the Commission to cancel it before its expiration. This was done, it was alleged, to punish the plaintiff, a member of the Witnesses of Jehovah, because he had acted as bailsman for a large number of members of his sect charged with the violation of municipal by-laws in connection with the distribution of literature. The trial judge gave judgment for the plaintiff for part of the damages claimed. The defendant appealed and the plaintiff, seeking an increase in the amount of damages, cross-appealed. The Court of Appeal dismissed the action and the cross-appeal.

Held (Taschereau, Cartwright and Fauteux JJ. dissenting): The action should be maintained and the amount awarded at trial should be increased by $25,000. By wrongfully and without legal justification causing the cancellation of the permit, the defendant became liable for damages under art. 1053 of the Civil Code.

Per Kerwin C.J.: The trial judge correctly decided that the defendant ordered the Commission to cancel the licence, and no satisfactory reason has been advanced for the Court of Appeal setting aside that finding of fact.

Per Kerwin C.J. and Locke and Martland JJ.: There was ample evidence to sustain the finding of the trial judge that the cancellation of the permit was the result of an order given by the defendant to the manager of the Commission. There was, therefore, a relationship of cause and effect between the defendant's acts and the cancellation of the permit.

The defendant was not acting in the exercise of any of his official powers. There was no authority in the Attorney-General's Department Act, the Executive Power Act, or the Alcoholic Liquor Act enabling the defendant to direct the cancellation of a permit under the Alcoholic Liquor Act. The intent and purpose of that Act placed complete control over the liquor traffic in the hands of an independent commission.

Cancellation of a permit by the Commission, at the request or upon the direction of a third party, as was done in this case, was not a proper and valid exercise of the powers conferred upon the Commission by s. 35 of the Act.

The defendant was not entitled to the protection provided by art. 88 of the Code of Civil Procedure since what he did was not "done by him in the exercise of his functions". To interfere with the administration of the Commission by causing the cancellation of a liquor permit was entirely outside his legal functions. It involved the exercise of powers which in law he did not possess at all. His position was not altered by the fact that he thought it was his right and duty to act as he did.

Per Rand J.: To deny or revoke a permit because a citizen exercises an unchallengeable right totally irrelevant to the sale of liquor in a restaurant is beyond the scope of the discretion conferred upon the Commission by the Alcoholic Liquor Act. What was done here was not competent to the Commission and a fortiori to the government or the defendant. The act of the defendant, through the instrumentality of the Commission, brought about a breach of an implied public statutory duty toward the plaintiff. There was no immunity in the defendant from an action for damages. He was under no duty in relation to the plaintiff and his act was an intrusion upon the functions of a statutory body. His liability was, therefore, engaged. There can be no question of good faith when an act is done with an improper intent and for a purpose alien to the very statute under which the act is purported to be done. There was no need for giving a notice of action as required by art. 88 of the Code of Civil Procedure, as the act done by the defendant was quite beyond the scope of any function or duty committed to him so far so that it was one done exclusively in a private capacity however much, in fact, the influence of public office and power may have carried over into it.

Per Abbott J.: The cancellation of the licence was made solely because of the plaintiff's association with the Witnesses of Jehovah and with the object and purpose of preventing him from continuing to furnish bail for members of that sect. This cancellation was made with the

express authorization and upon the order of the defendant. In purporting to authorize and instruct the Commission to cancel the licence the defendant was acting, as he was bound to know, without any legal authority whatsoever. A public officer is responsible for acts done by him without legal justification. The defendant was not entitled to avail himself of the exceptional provision of art. 88 of the Code of Civil Procedure since the act complained of was not "done by him in the exercise of his functions" but was an act done when he had gone outside his functions to perform it. Before a public officer can be held to be acting "in the exercise of his functions" within the meaning of art. 88, it must be established that at the time he performed the act complained of such public officer had reasonable ground for believing that such act was within his legal authority to perform.

Per Taschereau J., dissenting: The action cannot succeed because the plaintiff did not give the notice required by art. 88 of the Code of Civil Procedure to the defendant who was a public officer performing his functions. The failure to fulfil this condition precedent was a total bar to the claim. That failure may be raised by exception to the form or in the written plea to the action, and the words "no judgment may be rendered" indicate that the Court may raise the point propio motu. Even if what was said by the defendant affected the decision taken by the Commission, the defendant remained, nevertheless, a public officer acting in the performance of his duties. He was surely a public officer, and it is clear that he did not act in his personal quality. It was as legal adviser of the Commission and also as a public officer entrusted with the task of preventing disorders and as protector of the peace in the province, that he was consulted. It was the Attorney-General, acting in the performance of his functions, who was required to give his directives to a governmental branch. It is a fallacious principle to hold that an error, committed by a public officer in doing an act connected with the object of his functions, strips that act of its official character and that its author must then be considered as having acted outside the scope of his duties.

Per Cartwright J., dissenting: The loss suffered by the plaintiff was damnum sine injuria. Whether the defendant directed or merely approved the cancellation of the licence, he cannot be answerable in damages since the act of the Commission in cancelling the licence was not an actionable wrong. The Courts below have found, on ample evidence, that the defendant and the manager of the Commission acted throughout in the honest belief that they were fulfilling their duty to the province. On the true construction of the Alcoholic Liquor Act, the Legislature, except in certain specified circumstances which are not present in the case at bar, has not laid down any rules as to the grounds on which the Commission may decide to cancel a permit; that decision is committed to the unfettered discretion of the Commission and its function in making the decision is administrative and not judicial or quasi-judicial. Consequently, the Commission was not bound to give the plaintiff an opportunity to be heard and the Court cannot be called upon to determine whether there existed sufficient grounds for its decision. Even if the function of the Commission was quasi-judicial and its order should be set aside for failure to hear the plaintiff, it is doubtful whether any action for damages would lie.

Per Fauteux J., dissenting: The right to exercise the discretion with respect to the cancellation of the permit, which under the Alcoholic Liquor Act was exclusively that of the Commission, was abdicated by it in favour of the defendant when he made the decision executed by the

Commission. The cancellation being illegal, imputable to the defendant, and damageable for the plaintiff, the latter was entitled to succeed on an action under art. 1053 of the Civil Code.

As the notice required by art. 88 of the Code of Civil Procedure was not given, the action, however, could not be maintained. The failure to give notice, when it should be given, imports nullity and limits the very jurisdiction of the Court. In the present case, the defendant was entitled to the notice since the illegality reproached was committed "in the exercise of his functions". The meaning of this expression in art. 88 was not subject to the limitations attending expressions more or less identical appearing in art. 1054 of the Civil Code. The latter article deals with responsibility whereas art. 88 deals with procedure. Article 88 has its source in s. 8 of An Act for the Protection of Justices of the Peace, Cons. Stat. L.C., c. 101, which provided that the officer "shall be entitled" to the protection of the statute although "he has exceeded his powers or jurisdiction, and has acted clearly contrary to law". That section peremptorily establishes that, in pari materia, a public officer was not considered as having ceased to act within the exercise of his functions by the sole fact that the act committed by him might constitute an abuse of power or excess of jurisdiction, or even a violation of the law. An illegality is assumed under art. 88. The jurisprudence of the province, which has been settled for many years, is to the effect that the incidence of good or bad faith has no bearing on the right to the notice.

The illegality committed by the defendant did not amount to an offence known under the penal law or a delict under art. 1053 of the Civil Code. He did not use his functions to commit this illegality. He did not commit it on the occasion of his functions, but committed it because of his functions. His good faith has not been doubted, and on this fact there was a concurrent finding in the Courts below.

APPEALS from two judgments of the Court of Queen's Bench, Appeal Side, Province of Quebec [[1956] Que. Q.B. 447], reversing a judgment of Mackinnon J. Appeals allowed, Taschereau, Cartwright and Fauteux JJ. dissenting.
F. R. Scott and A.L. Stein, for the plaintiff, appellant. L.E. Beaulieu, Q.C., and L. Tremblay, Q.C., for the defendant, respondent.

Attorneys for the plaintiff, appellant: A.L. Stein and F.R. Scott, Montreal. Attorneys for the defendant, respondent: L.E. Beaulieu and Edouard Asselin, Montreal.

THE CHIEF JUSTICE

No satisfactory reason has been advanced for the Court of Queen's Bench (Appeal Side) [[1956] Que. Q.B. 447] setting aside the finding of fact by the trial judge that the respondent ordered the Quebec Liquor Commission to cancel the appellant's licence. A reading of the testimony of the respondent and of the person constituting the commission at the relevant time satisfies me that the trial judge correctly decided the point. As to the other questions, I agree with Mr. Justice Martland.

within the "discretion" of the Commission; but that means that decision is to be based upon a weighing of considerations pertinent to the object of the administration.

In public regulation of this sort there is no such thing as absolute and untrammelled "discretion", that is that action can be taken on any ground or for any reason that can be suggested to the mind of the administrator; no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute. Fraud and corruption in the Commission may not be mentioned in such statutes but they are always implied as exceptions. "Discretion" necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption. Could an applicant be refused a permit because he had been born in another province, or because of the colour of his hair? the legislature cannot be so distorted.

To deny or revoke a permit because a citizen exercises an unchallengeable right totally irrelevant to the sale of liquor in a restaurant is equally beyond the scope of the discretion conferred. There was here not only revocation of the existing permit but a declaration of a future, definitive disqualification of the appellant to obtain one: it was to be "forever". This purports to divest his citizenship status of its incident of membership in the class of those of the public to whom such a privilege could be extended. Under the statutory language here, that is not competent to the Commission and a fortiori to the government or the respondent: McGillivray v. Kimber [(1915), 52 S.C.R. 146, 26 D.L.R. 164.]. There is here an administrative tribunal which, in certain respects, is to act in a judicial manner; and even on the view of the dissenting justices in McGillivray, there is liability: what could be more malicious than to punish this licensee for having done what he had an absolute right to do in a matter utterly irrelevant to the Liquor Act? Malice in the proper sense in simply acting for a reason and purpose knowingly foreign to the administration, to which was added here the element of intentional punishment by what was virtually vocation outlawry.

It may be difficult if not impossible in cases generally to demonstrate a breach of this public duty in the illegal purpose served; there may be no means, even if proceedings against the Commission were permitted by the Attorney-General, as here they were refused, of compelling the Commission to justify a refusal or revocation or to give reasons for its action; on these questions I make no observation; but in the case before us that difficulty is not present: the reasons are openly avowed.

The act of the respondent through the instrumentality of the Commission brought about a breach of an implied public statutory duty toward the appellant; it was a gross abuse of legal power expressly intended to punish him for an act wholly irrelevant to the statute, a punishment which inflicted on him, as it was intended to do, the destruction of his economic life as a restaurant keeper within the province. Whatever may be the immunity of the Commission or its member from an action for damages, there is none in the respondent. He was under no duty in relation to the appellant and his act was an intrusion upon the functions of a statutory body. The injury done by him was a fault engaging liability within the principles of the underlying public law of Quebec: Mostyn v. Fabrigas [98 E.R. 1021], and under art. 1053 of the Civil Code. That, in the presence of expanding administrative regulation of economic activities, such a step and its consequences are to be suffered by the victim without recourse or remedy, that an

administration according to law is to be superseded by action dictated by and according to the arbitrary likes, dislikes and irrelevant purposes of public officers acting beyond their duty, would signalize the beginning of disintegration of the rule of law as a fundamental postulate of our constitutional structure. An administration of licences on the highest level of fair and impartial treatment to all may be forced to follow the practice of "first come, first served", which makes the strictest observance of equal responsibility to all of even greater importance; at this stage of developing government it would be a danger of high consequence to tolerate such a departure from good faith in executing the legislative purpose. It should be added, however, that that principle is not, by this language, intended to be extended to ordinary governmental employment: with that we are not here concerned.

It was urged by Mr. Beaulieu that the respondent, as the incumbent of an office of state, so long as he was proceeding in "good faith", was free to act in a matter of this kind virtually as he pleased. The office of Attorney-General traditionally and by statute carries duties that relate to advising the Executive, including here, administrative bodies, enforcing the public law and directing the administration of justice. In any decision of the statutory body in this case, he had no part to play beyond giving advice on legal questions arising. In that role his action should have been limited to advice on the validity of a revocation for such a reason or purpose and what that advice should have been does not seem to me to admit of any doubt. To pass from this limited scope of action to that of bringing about a step by the Commission beyond the bounds prescribed by the legislature for its exclusive action converted what was done into his personal act.

"Good faith" in this context, applicable both to the respondent and the general manager, means carrying out the statute according to its intent and for its purpose; it means good faith in acting with a rational appreciation of that intent and purpose and not with an improper intent and for an alien purpose; it does not mean for the purposes of punishing a person for exercising an unchallengeable right; it does not mean arbitrarily and illegally attempting to divest a citizen of an incident of his civil status.

I mention, in order to make clear that it has not been overlooked, the decision of the House of Lords in Allen v. Flood [[1898] A.C. 1.], in which the principle was laid down that an act of an individual otherwise not actionable does not become so because of the motive or reason for doing it, even maliciously to injure, as distinguished from an act done by two or more persons. No contention was made in the present case based on agreed action by the respondent and Mr. Archambault. In Allen v. Flood, the actor was a labour leader and the victims non-union workmen who were lawfully dismissed by their employer to avoid a strike involving no breach of contract or law. Here the act done was in relation to a public administration affecting the rights of a citizen to enjoy a public privilege, and a duty implied by the statute toward the victim was violated. The existing permit was an interest for which the appellant was entitled to protection against any unauthorized interference, and the illegal destruction of which gave rise to a remedy for the damages suffered. In Allen v. Flood there were no such elements.

Nor is it necessary to examine the question whether on the basis of an improper revocation the appellant could have compelled the issue of a new permit or whether the purported revocation was a void act. The revocation was de facto, it was intended to end the privilege and to bring about the consequences that followed. As against the respondent, the appellant was entitled to treat the breach of duty as effecting a revocation and to elect for damages.

LOCAL AUTHORITIES ELECTION ACT

Chapter L-21

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Part 2
Voting Procedure

Part 4
Recount Procedure

Part 5
Controverted Elections

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

(a) "advance vote" means a vote taken in advance of election day;

(a.1) "Alberta employee organization" means any organization that bargains collectively for employees in Alberta, and for the purposes of this Act all branches in Alberta of an

employee organization are deemed to be one employee organization;

(a.2) "Alberta trade union" means a trade union as defined in the *Labour Relations Code*, the *Public Service Employee Relations Act* or the *Canada Labour Code* (Canada) that holds bargaining rights for employees in Alberta, and for the purposes of this Act all locals of a trade union are deemed to be one trade union;

(b) "area" means the area within the boundaries of a local jurisdiction;

(c) "bribery" means bribery within the meaning of section 116;

(d) "by-election" means an election other than a general election or a first election;

(e) "bylaw" includes a resolution on which the opinion of the electors is to be obtained;

(e.1) "candidate" means, except in Part 5.1, an individual who has been nominated to run for election in a local jurisdiction as a councillor or school board trustee;

(f) "constable" means a person appointed under this Act as a constable;

(g) "council" means the council of a municipality as described in the *Municipal Government Act*;

(h) "councillor" means a member of council;

(i) "Court" means the Court of King's Bench;

(j) "deputy" means the deputy returning officer;

(k) "elected authority" means

(i) a council under the *Municipal Government Act*, or

(ii) a board of trustees under the *Education Act*;

(iii) repealed 2001 c11 s4;

(l) "election" means a general election, first election, by-election and a vote on a bylaw or question;

(m) "election day" means the day fixed for voting at an election;

Access for campaigners

52(1) A person to whom a candidate, an official agent or a campaign worker on behalf of a candidate has produced identification in the prescribed form indicating that the person is a candidate, an official agent or a campaign worker shall not

(a) obstruct or interfere with, or

(b) cause or permit the obstruction or interference with

the free access of the candidate, official agent or campaign worker to each residence in a building containing 2 or more residences or to each residence in a mobile home park.

(2) Repealed 2024 c11 s1(24).

RSA 2000 cL-21 s52;2003 c27 s18;2006 c22 s26;2018 c23 s21; 2024 c11 s1(24)

Proof of elector eligibility

53(1) Every person who attends at a voting station for the purpose of voting must be permitted to vote if

(a) the person

(i) is named on the permanent electors register, and

(ii) produces one piece of identification issued by a Canadian government, whether federal, provincial or local, or an agency of that government, that contains a photograph of the person,

or

(b) the person

(i) makes a statement that the person is eligible to vote as an elector in the presence of an officer at the voting station, in the prescribed form, and

(ii) validates the person's identity and address of the person's residence in accordance with subsection (3).

(iii) repealed 2024 c11 s1(25).

(2) A statement referred to in subsection (1)(b)(i) must include the address of the person's residence.

(3) A person may validate the person's identity and the address of the person's residence for the purpose of subsection (1)(b)(ii)

(a) repealed 2024 c11 s1(25),

(b) by producing one of the following:

(i) one piece of identification issued by a Canadian government, whether federal, provincial or local, or an agency of that government, that contains a photograph of the person, the person's name and the address of the person's residence;

(ii) one piece of identification authorized by the Chief Electoral Officer under the *Election Act* for the purposes of section 100(2)(b) of that Act that establishes the person's name and current address;

(iii) one piece of other acceptable identification referred to in section 53.02.

(3.1) The identification referred to in subsection (3)(b)(i) includes a person's driver's licence or motor vehicle operator's licence issued by or on behalf of the Government of Alberta or an identification card issued by or on behalf of the Government of Alberta that contains a photograph of the person and the person's name and post office box number.

(4) Notwithstanding subsection (1)(b)(ii), a person may validate the address of the person's residence if the person is accompanied by an elector who

(a) validates the elector's identity and the address of the elector's residence in accordance with subsection (3), and

(b) vouches for the person in accordance with subsection (7).

(5) A scrutineer shall not vouch for a person under subsection (4)(b).

(6) An elector shall not vouch for a person if any of the following circumstances apply:

(a) the elector has relied on the process described in subsection (4) to validate the elector's address;

(b) subject to subsection (6.1), the elector has already vouched for another person;

(c) the elector's name is not contained in the permanent electors register.

(6.1) An elector may vouch for more than one person if every person the elector vouches for shares the same place of residence.

(7) For the purposes of subsection (4)(b), an elector who vouches for a person must make a statement, in the prescribed form, that

(a) the elector knows the person,

(b) the elector knows that the person resides at the address indicated in the person's statement, and

(c) the elector has not relied on the process described in subsection (4) to validate the elector's address.

(8) A person who attends at a voting station shall not be permitted to vote unless that person meets the requirements of this section.

RSA 2000 cL-21 s53;2006 c22 s27;2012 c5 s109;2018 c23 s22; 2020 c22 s9;2021 c24 s7;2024 c11 s1(25)

53.01 Repealed 2024 c11 s1(26).

Bylaws with respect to proof of elector eligibility repealed

53.011 A bylaw or any portion of a bylaw passed by an elected authority prior to the coming into force of this section that provides for the number and types of identification that are required to be produced by a person to verify or validate the person's name, address or age and that was in effect immediately before the coming into force of this section is repealed on the coming into force of this section.

2024 c11 s1(27)

Other acceptable identification

53.02(1) The relevant Minister may, by order,

(a) establish other acceptable identification for the purpose of section 53(3)(b)(iii), and

(b) provide a process for establishing the address of a person's residence if the person produces identification under section 53(1)(b) that uses a non-residential address.

(2) The *Regulations Act* does not apply to an order referred to in subsection (1).

2018 c23 s22;2024 c11 s1(28)

53.1 and **54** Repealed 2024 c11 s1(29).

Westcan Recyclers Ltd. v. Calgary (City)

Alberta Judgments

Alberta Court of Appeal

J. Antonio J.A., K.P. Feehan J.A. and A. Woolley J.

Heard: November 6, 2024.

Judgment: February 27, 2025.

Docket: 2101-09833

Registry: Calgary

[2025] A.J. No. 202 | 2025 ABCA 67

Between Westcan Recyclers Ltd and 664078 Alberta Ltd, Respondents (Plaintiffs), and The City of Calgary, Appellant (Defendant) Between Westcan Recyclers Ltd and 664078 Alberta Ltd, Respondents (Applicants), and The City of Calgary, Appellant (Respondent)

(143 paras.)

Case Summary

Municipal law — Government — Council and committee proceedings — Open and closed meetings — Statutory matters for in camera meetings — Property acquisition, disposal, expropriation — Appeal by appellant against the respondents concerning the expansion of a street allowed — Appellant, through its Real Estate and Development Services (REDS) unit, assumed control of a park development — It required expanding 68th Street SE, closing the respondents' current access — Alternative access via 86th Ave and 90th Ave SE was proposed but deemed inadequate by respondents, who filed for an injunction — Chambers judge quashed the by-law, citing procedural unfairness, but appellant appealed, asserting its validity — Court found that respondents did not demonstrate irreparable harm and the balance of convenience favored appellant, given the public interest in completing road expansion for safety and economic development.

Municipal law — Powers of municipality — Expropriation — Authority to enter and use — Procedure — Notice — Hearing or inquiry — Judicial review — Appeals — Appeal by appellant against the respondents concerning the expansion of a street allowed — Appellant, through its Real Estate and Development Services (REDS) unit, assumed control of a park development — It required expanding 68th Street SE, closing the respondents' current access — Alternative access via 86th Ave and 90th Ave SE was proposed but deemed inadequate by respondents, who filed for an injunction — Chambers judge quashed the by-law, citing procedural unfairness, but appellant appealed, asserting its validity — Court found that respondents did not demonstrate

irreparable harm and the balance of convenience favored appellant, given the public interest in completing road expansion for safety and economic development.

Appeal by appellant against the respondents' claim concerning the expansion of 68th Street SE in Calgary. The appellant, through its Real Estate and Development Services (REDS) unit, took over the development of the Point Trotter Industrial Park after the original developer sought protection under the Companies' Creditors Arrangement Act. The development required the expansion of 68th Street SE, which would result in the closure of the respondents' current access to the street. The appellant proposed alternative access points via 86th Ave and 90th Ave SE, which the respondents found inadequate, arguing that their operations would cease if forced to use these alternatives. The respondents filed a statement of claim seeking an interim injunction to prevent the expansion, which the appellant initially consented to. However, the chambers decision denied the appellant's application to vacate the injunction. The appellant later enacted a by-law to close the respondents' access, leading to further legal challenges. The chambers judge found that the appellant acted unfairly by conflating the roles of REDS as a developer and as part of the appellant administration, leading to procedural unfairness in the enactment of the by-law. The judge quashed the by-law, finding it was passed for an improper purpose, benefiting the appellant as a developer rather than serving the public interest. The appellant appealed the chambers judge's decision, arguing that the enactment of the closure by-law was procedurally fair and substantively valid.
HELD: Appeal allowed.

The Court of Appeal upheld the appellant's appeal, concluding that the chambers judge mistakenly differentiated between REDS and the appellant. The court affirmed that REDS was an integral part of the appellant's administration and that the closure by-law's enactment aligned with the appellant's statutory objectives. It dismissed claims of bias or breach of legitimate expectations, affirming the by-law's substantive validity. The court overturned the chambers judge's decision to uphold the injunction blocking the respondents' access to closure. It determined that the respondents failed to prove irreparable harm and that the balance of convenience favoured the appellant, considering the public interest in completing the road expansion for safety and economic growth. Consequently, the order nullifying the closure by-law was reversed, and the injunction order was lifted.

Statutes, Regulations and Rules Cited:

Companies' Creditors Arrangement Act, RSC 1985, c. C-36

Highways Development and Protection Act, SA 2004, c. H-8.5, s. 28(3), s. 29(1), s. 29(2), s. 29(4)

Municipal Government Act, RSA 2000, c M-26, s. 3, s. 539, s. 655

Appeal From:

Appeal from the Orders of The Honourable Justice E.J. Sidnell Dated the 20th day of July, 2023 Filed the 13th day of October, 2023 (2023 ABKB 442, Dockets: 2101-09833, 2201-10049)

bias in the decision-maker (as can occur - see, for example, *Report of the Inquiry Committee concerning the Hon Paul Cosgrove*, November 27, 2008 at paras 144-147). A decision-maker cannot control what a party submits and should not be at risk of being considered biased simply by virtue of having heard something that ought not to have been said. There is nothing in the record to support the suggestion that the City councillors were not open to persuasion.

iii. Legitimate Expectations

52 We also see no basis for the assertion in the chambers decision that the City created and breached a legitimate expectation of the respondents with respect to procedure.

53 The chambers decision finds a legitimate expectation that the closure by-law would be brought forward "in a manner that would clearly outline that it was a developer's condition that was conflicting with Westcan's operations": *Chambers Decision* at para 178. It does not, however, identify the "clear, unambiguous and unqualified" representation that would give rise to such an expectation: *Agraira* at paras 95-96. Further, as already explained, the submissions before the Infrastructure and Planning Committee and Council clearly outlined that the expansion of 68th Street SE was a condition of the subdivision approval and that the respondents objected to the City's approach. The submissions identified the role of REDS and the background of the dispute between the parties. Even if this legitimate expectation existed, it was satisfied by the procedure followed.

iv. Conclusion on Procedural Fairness

54 The enactment of the closure by-law was procedurally fair.

IV. Is the Closure By-Law Substantively Valid

a. Decision Below

55 To assess the substantive validity of the closure by-law the chambers decision applies the standard of review established by the Supreme Court in *Catalyst* at para 12, that municipal by-laws can be set aside where they fall outside the scope of the empowering legislative scheme: *Chambers Decision* at para 186.

56 The chambers decision finds the by-law to be substantively invalid on the basis that it was passed for an improper purpose, furthering the interests of the City as a developer rather than as part of its good governance mandate. It characterizes the closure by-law as a matter of private development not public infrastructure. The decision concludes that "no reasonable body understanding that the developer was obtaining the benefit to the detriment of a landowner would pass the Closure Bylaw" and, as such, it must be quashed: *Chambers Decision* at paras 192-193.

b. Grounds of Appeal

Canadian Natural Resources Ltd. v. Elizabeth Métis Settlement

Alberta Judgments

Alberta Court of Queen's Bench

N.E. Devlin J.

Heard: December 11, 2019.

Judgment: March 27, 2020.

Docket: 1901 09334

Registry: Calgary

[2020] A.J. No. 368 | 2020 ABQB 210 | 14 R.P.R. (6th) 30 | [2021] 1 W.W.R. 405 | 10 Alta. L.R. (7th) 389 | 316 A.C.W.S. (3d) 782 | 2020 CarswellAlta 583

Between Canadian Natural Resources Limited, Husky Oil Operations Ltd., Crescent Point Energy Corp., Altagas Ltd., Altagas Holdings Inc. and Altagas Processing Partnership and Altagas Extraction and Transmission Limited Partnership as Successors to Altagas Services Inc., Applicants, and Elizabeth Métis Settlement and the Métis Settlements General Council, Respondents

(134 paras.)

Case Summary

Municipal law — Powers of municipality — Local improvements — Grounds for quashing bylaw — Miscellaneous — Application by four companies asking to quash bylaw which imposed rate of tax (Property Tax Bylaw) on basis that it was invalidly enacted and was substantively unreasonable allowed — Elizabeth levied property taxes amounting to 187 percent of assessed land value on four natural resource companies whose lands comprised virtually its entire taxable base — Tax Bylaw was quashed — Impugned Property Tax Bylaw was product of Metis frustration with failure to achieve its objective — Levying taxes at rate that obviated commercial activities for which entire Part of statutory regime was drafted was internally contradictory to purposes of legislation.

Municipal law — Bylaws and resolutions — Statutory authority — Conflict between bylaw and statute — Grounds for invalidity — Failure to observe procedural bylaw — Unreasonableness — Quashing — Procedures — Application by four companies asking to quash bylaw which imposed rate of tax (Property Tax Bylaw) on basis that it was invalidly enacted and was substantively unreasonable allowed — Elizabeth levied property taxes amounting to 187 percent of assessed land value on four natural resource companies whose lands comprised virtually its entire taxable base — Tax Bylaw was quashed — Impugned Property Tax Bylaw was product of Metis frustration with failure to achieve its objective — Levying taxes at rate that obviated commercial activities for

which entire Part of statutory regime was drafted was internally contradictory to purposes of legislation.

Application by four companies asking to quash bylaw which imposed rate of tax (Property Tax Bylaw) on basis that it was invalidly enacted and was substantively unreasonable. Elizabeth Metis Settlement (Elizabeth) was a small Metis community of just over 600 residents on the eastern edge of Alberta, south of Cold Lake. In 2019, Elizabeth levied property taxes amounting to 187 percent of assessed land value on four natural resource companies (Applicants) whose lands comprised virtually its entire taxable base. Elizabeth responded that Applicants had no standing to challenge the Property Tax Bylaw, that its unusual procedures in enacting it were justified by a looming financial emergency, and that the context of Alberta's Metis settlements uniquely informed the question of what constituted a reasonable rate of taxation in this situation. Similar to municipalities, the sole source of tax revenue for the Settlements was through property taxation. Due to the structure of land holding on the Settlements, however, Elizabeth appeared to have only four taxpayers, Canadian Natural Resources Limited (CNRL), Husky Oil Operations Limited, Crescent Point Energy Corp., and Altagas Limited and its related companies, who were Applicants in this case.
HELD: Application allowed.

Tax Bylaw was quashed as unlawfully enacted and unreasonable in substance. Counsel indicated that Applicant companies made tax payments to Elizabeth equal to previous year's levy, and would not seek reimbursement of these amounts if successful. That was a fair and reasonable position. Applicants were therefore granted the declaration they sought that they paid their allotted share of property tax for 2019. Impugned Property Tax Bylaw was the product of Metis frustration with the failure to achieve its objective. Ironically, the lack of adequate capital funding for Metis Settlements, or a viable model for the Settlements to raise capital funds through economic benefits derived on their territory, drove Elizabeth to enact a measure that would severely, if not fatally, impair its ability to attract the investment it needed to develop a viable tax base in the future. Levying taxes at a rate that obviated the commercial activities for which an entire Part of the statutory regime was drafted was internally contradictory to the purposes of legislation.

Statutes, Regulations and Rules Cited:

Business Property Contributions Policy, GC-P9602, s. 1.02, s. 2.03(3)(b)

Constitution Act, 1982, 1982, c 11 (UK), s. 35

Constitution of Alberta Amendment Act,1990

Metis Settlements Act, RSA 2000, c M-14, s. 54, s. 56, s. 224(1), s. 245

Metis Settlements General Council Property Assessment Policy 2018, GC-P1807

Metis Settlements General Council Property Taxation Policy 2018, GC-P1806

subordinate legislation. Specifically, it has been repeatedly held that sub-delegated decision-makers, such as municipalities, must strictly adhere to their statutory procedural requirements when exercising powers that directly or indirectly strip citizens of property. In ***Costello and Dickhoff v City of Calgary***, [1983] 1 SCR 14 ["***Costello***"] at 21, the Court unanimously held that:

> The courts have endeavoured to avoid interference with municipal enactments by an overly strict approach to their construction, but have generally insisted upon strict compliance with enabling legislation that authorizes municipalities to exercise extraordinary powers or pass by-laws concerning taxation, expropriation, or other interference with private rights. ... [Emphasis added]

65 In that same judgment, the Supreme Court described this rule of strict compliance as being "of long-standing", and cited Ian Rogers, *The Law of Canadian Municipal Corporations*, 2nd ed (Toronto: Carswell, 1971) at 432 for the proposition that:

> As a general rule, in the exercise of extraordinary powers conferred by legislation authorizing interference by the municipality with private rights, all conditions precedent to the exercise of such power must be strictly complied with prior to the performance thereof, which, if done without specific statutory authority, would be tortious. Likewise with formalities required for the exercise of taxing and expropriation powers and other powers entitling local authorities to interfere with common law rights: ***Costello*** at paras 22-23. [Emphasis added]

66 Métis Settlements are not completely analogous to municipal governments. They may well be afforded different and/or greater range in decision-making that touches upon the core animating values that underlie their existence, namely the preservation and promotion of Métis culture and society. That said, when Settlements levy property tax, they perform a function virtually indistinguishable from municipal governments, and derive their authority to do so through a similar process of sub-delegation. Moreover, the power they exercise in this capacity is no less impactful on the people against whom it is used. Therefore, I adopt the approach taken by Desjardins JA in her concurring opinion in ***Canadian Pacific Ltd v Matsqui Indian Band*** (1999), [2000] 1 FC 325, 1999 CanLII 9362 (FCA) ["***Matsqui CA***" cited to CanLII] at para 76, where, speaking in the context of a First Nation, she says:

> I am of the view that band councils are a *sui generis* type of subordinate statutory bodies. As such, I fail to see, however, how they could escape the principles of administrative law which govern subordinate statutory bodies.

67 In the context of this case, I conclude that the principles of administrative law apply to Settlements as subordinate statutory bodies, just as Desjardins JA concluded in ***Matsqui CA***. On this basis, the decisions of the Supreme Court of Canada in ***Costello*** and ***Catalyst Paper*** apply with equal force to Métis Settlement taxation bylaws.

(v) A preferred understanding of section 245

68 There is also a preferable reading of section 245 that does not generate the extreme result advocated by Elizabeth and the MSGC. Specifically, this section is better understood as creating a process and limitation period for the three parties responsible for decision-making under the

> The very high rate of the tax authorized, which would in ten years' time impose in the aggregate an amount of tax equal to the assessed value of the minerals, indicates, in my opinion, that the true nature and purpose of the legislation is something other than the raising of revenue for provincial purposes under head 2 of s. 92. ...

95 In a similar vein, in ***McCormick (Re)***, [1948] 3 DLR 70, [1948] OJ No 361 (HC) (QL), the Ontario High Court of Justice quashed a City of Toronto bylaw which purported to impose regulatory fees, but was found in fact to be an attempt to drive a certain type and segment of business out of the community altogether. Since the City lacked the power to enact such a prohibition, and in particular to do so in the guise of regulatory fees, the Court quashed the bylaw, concluding:

> What was given here was a power to pass by-laws for the licensing, regulating and governing of tourist camps. It was not a right to prohibit tourist camps, but to regulate and govern them. Under the guise of a licensing by-law the municipality cannot, in my opinion, impose fees which in effect are confiscatory and prohibitive. ...: at para 8.

96 A taxation measure will be quashed as invalid when it is driven by an ulterior motive, even when that motive may, in and of itself, be a legitimate policy aim of the enacting body. In ***TimberWest Forest Corp v Campbell River (City)***, 2009 BCSC 1804 at para 100, the Court struck down as *ultra vires* a property tax bylaw which imposed differential taxation on a particular class of property at such a level that it would compel landowners to withdraw those lands from that class and convert them to a use consistent with the city's planning objectives. The fact that zoning and planning are legitimate municipal undertakings did not save the infringing tax measures.

97 In summary, the jurisprudence describes a standard of review whereby the impugned decision must be shown to transcend the spectrum of reasonable policy options available in view of the legitimate legislative purpose in play. The decision must be so out of range vis-à-vis the power the municipality was purporting to exercise that it is only understandable as an attempt to achieve an improper purpose, an act of raw irrationality, or a bad faith taking. The standard is not so much one of examining the reasonableness of the taxing authority's policy choice, but asking whether the delegated legislator has remained within the object of the enabling statute: ***Katz Group Canada Inc v Ontario (Health and Long-Term Care)***, 2013 SCC 64 at para 24. This is as deferential a standard as exists in judicial review.

(iii) Deference to Ameliorative Legislation Involving Métis and First Nations

98 An additional layer of context is added to the analysis of 'reasonableness' when reviewing administrative acts of Métis Settlements. In such cases, it is appropriate for the Court to take into account the unique role, structure, and mandate of the Settlements in preserving and promoting Métis life and culture. This is an additional component of the "context and nature of the impugned administrative act" under consideration and may, in certain cases, mean that the flexible deferential standard the court should apply will result in greater leeway being given to Settlement decisions: ***Catalyst Paper*** at para 23.

99 This approach honours the principle of prioritizing protection of Indigenous interests when

(vi) The MSA permits property tax only -- not an income or profit tax

121 Elizabeth defended the rate of tax on the basis that it had not been established that it destroyed the economic value of the taxed assets, as they may be generating income that could offset the tax. This argument must be understood in light of Ms. Zimmer's evidence that the Métis Settlements do not reap any benefits of mineral leases pre-existing the *MSA*, and that a moratorium on new leases between 2008 and 2013 deprived the Settlements of the economic benefits that might have flowed from the Co-Management Agreements contemplated by the *MSA* during the richest years of Alberta's energy heyday.

122 While the Record reveals no contemplation or consideration of the economic viability or rationale for the 187% tax rate, the subtext of Ms. Zimmer's evidence, and the Respondents' argument, is that the Applicant resource companies have done very well off their holdings within the Settlement and will continue to reap profits from these, allowing them to contribute generously to the community's needs.

123 Section 222(1)(i) of the *MSA* permits and empowers the MSGC and the Settlements to impose "assessment or taxation, or both, of land, interests in land or improvements on land, in a settlement area, including rights to occupy, posses or use land in a settlement area." This is a power to impose a tax on the value of property. It is expressly not a power to tax on revenues, profitability, or ongoing commercial activity. A property tax must be reasonable as a tax on the assessed value of the land, not as a disguised income tax, profit-sharing scheme, or social redistribution of economic resources.

124 Elizabeth's defence of the Property Tax Bylaw, put at its highest, is that it was reasonable to believe that these taxpayers could and would pay because they were making enough money off these properties over time. That reasoning transforms the Property Tax Bylaw into a form of income tax. That is *ultra vires* of the Settlement, and outside the proper purposes of the taxing powers granted by the *MSA*, irrespective of how valid Elizabeth's need for the money may be.

125 Providing renewed and viable infrastructure may be a proper purpose driving Elizabeth's Amended Budget, but the laudability of this aim does not salvage a property tax that, at best, would function, and is defended, as a disgorgement of past and future commercial income. Moreover, the Record does not contain any evidence supporting the contention that the taxpayers in this case could afford the punishing tax being levied by virtue of their long-term profitability. This approach to taxation in not within Elizabeth's authority, and is not supported as factually reasonable on the Record in any event.

(vii) Minimum taxes of low-value land engage different principles

126 Elizabeth and the MSGC argue that even a tax at or near the assessed value of the property may be reasonable, relying on this Court's decision in ***Bergman v Innisfree (Village)***, 2018 ABQB 326. That case, however, concerned the imposition of a $750 minimum tax that would apply to low-value properties in the municipality. It is broadly distinguishable. First, the Court in ***Bergman*** found that the Legislature had expressly contemplated that the authorization of a minimum property tax could result in a very high assessment-to-tax ratio for a handful of low

Telus Communications Inc. v. Opportunity (Municipal District No. 17)

Alberta Judgments

Alberta Court of Queen's Bench

Judicial District of Edmonton

Lee J.

October 30, 1998.

Action No. 9803 13086

[1998] A.J. No. 1181 | 1998 ABQB 884 | 235 A.R. 274 | 49 M.P.L.R. (2d) 34 | 83 A.C.W.S. (3d) 856

Between Telus Communications Inc., Nova Gas Transmission Ltd., Amoco Canada Petroleum Company Ltd., Anderson Exploration Ltd., Transalta Utilities Corp., Pinnacle Resources Ltd. and Alberta Power Limited, applicants, and Municipal District of Opportunity No. 17, respondent

(11 pp.)

Case Summary

Statutes, Regulations and Rules Cited:

Alberta Rules of Court. Municipal Government Act, S.A. 1994, c. M-26.1, ss. 3, 8(b), 10(1), 10(2), 10(3), 243(3), 247, 297(2)(b), 334, 347, 347(1)(b), 353, 353(2), 354, 354(1).

Municipal law — Bylaws — Quashing bylaws, grounds for judicial interference — Discrimination — Conflict with statute — Real property tax — Tax concessions — Properties entitled — Restitution — Unjust enrichment.

Application for judicial review to challenge the validity of a bylaw. The respondent passed a bylaw which established tax rates for the 1998 calendar year. The respondent then purported to cancel a part of municipal property taxes for certain properties, declaring the cancellation to be a business incentive. The applicants argued that the bylaw constituted an attempt to raise revenue greater than budgeted expenditures, contrary to the Municipal Government Act. They further argued that the bylaw unreasonably discriminated against properties within the same class, contrary to principles of equitable assessment and taxation. They also contended that the purported cancellation of taxes discriminated against certain property holders and created a sub-class of non-residential property. The applicants sought to recover funds paid to the municipality under the allegedly ultra vires bylaw.
HELD: Application allowed.

The bylaw was not invalid simply because budgeted revenues exceeded budgeted expenditures. Reasonable contingencies and reserves were commonly part of a prudent budgeting practice. However, the bylaw was invalid for discriminating against certain property

holders by creating different tax rates. The cancellation of taxes was invalid as it extended only to a specific sub-class of property, rather than to a specific class. As such, by the principles of unjust enrichment, the respondent was ordered to return any surplus wrongfully collected under the impugned bylaw.

Counsel

Gilbert Ludwig, Anthony Bell, for the applicants. Leo J. Burgess, for the respondent.

REASONS FOR DECISION

LEE J.

PART I BACKGROUND

1 The Applicants are communications, utilities, oil, gas and pipeline companies carrying on business in the Province of Alberta and elsewhere, and in particular, the owners of linear properties in the Municipal District of Opportunity No. 17. ("Opportunity").

2 On June 10th, 1998, the Municipal District of Opportunity No. 17 passed their 1998 taxation bylaw, Bylaw 98-06 which established tax rates for the 1998 calendar year [the bylaw under review]. Pursuant to the bylaw, non-residential properties were to be taxed at a rate of 16.25 mills. Opportunity mailed out combined assessment and tax notices on June 1st, 1998 to all of the property holders in the municipality, including TELUS Communications Inc ("TELUS"). They received a notice which taxed non-residential property classed as commercial at a mill rate of 6.37. The Applicants submit that was not authorized by the taxation bylaw of Opportunity for the year 1998.

3 On July 8th, 1998 at the Municipal District of Opportunity No. 17 council meeting Opportunity adopted motion 238-98-17MDC which purported to cancel a part of the municipal property taxes payable by properties in a Schedule A to these minutes, effectively reducing the taxation rate for those properties from 19.75 to 6.37 mills. The stated purpose for the partial cancellation was to provide a "business incentive".

4 The assessment for TELUS property, with roll number 42959, mailed July 1st , 1998 was listed as one of the properties having their taxes cancelled on July 10th, 1998.

5 On July 31st , 1998 the Applicants commenced this Judicial Review Application challenging the validity of Bylaw 98-06 and the Council Resolution.

PART II ISSUES

5a

A. Does Bylaw 98-06 constitute an attempt by the Municipal District of Opportunity No. 17 ("Opportunity") to raise revenue greater than the expenditures, transfers and requisitions set out in the municipal budget, thereby violating the provisions of the Municipal Government Act, Statutes of Alberta 1994, c. M-26.1, as amended;

B. Does motion 238-98-17MDC of Opportunity discriminate against linear property holders and establish a subclass of non-residential property in contravention of the Municipal Government Act, Statutes of Alberta 1994, c. M-26.1;

C. Does Bylaw 98-06 unreasonably discriminate against properties within the same class in violation of the provisions of the Municipal Government Act, and contrary to the long-standing principles regarding equitable assessment and taxation; and

D. Can the Applicants recover funds paid to the municipality pursuant to an ultra vires taxation bylaw?

[The Court did not assign a paragraph number to the Issues. QL has assigned the number 5a.]

PART III ANALYSIS

A. Does Bylaw 98-06 constitute an attempt by the Municipal District of Opportunity No. 17 to raise revenue greater than the expenditures, transfers and requisitions set out in the municipal budget, thereby violating the provisions of the Municipal Government Act, Statutes of Alberta 1994, c. M-26.1, as amended;

6 The process whereby a municipality creates a taxation bylaw is governed by the Municipal Government Act. Prior to passing a property taxation bylaw for a given year, the municipality must adopt an operating and capital budget for that year. Section 247 Municipal Government Act

7 Once the budgets have been adopted, the municipality can pass a taxation bylaw. This bylaw authorizes the council to impose taxes to raise revenues to be used towards the payment of the expenditures and transfers set out in the budgets of the municipality and the requisitions, if any. Section 353 Municipal Government Act

8 The bylaw must set out all of the rates necessary to raise the revenue required for the expenditures and transfers plus requisitions referred to above. Section 354 Municipal Government Act

9 From this, however can one infer that the taxation bylaw should be designed such that the revenue collected under it will equal the budgets of the municipality and any requisitions for a given year?

10 Bylaw 98-06 on its face would result in the municipality collecting more revenue than necessary for its budgets and requisitions by approximately $1.2 million.

11 This apparent surplus can be calculated by multiplying the total property value for each class by the mill rate (thousandths), and subtracting the total from the amount to be raised via property tax, and then subtracting the requisition amounts. The figure left over represents the amount of revenue over budgets and requisitions the bylaw will generate.

12 However in the 1998 operating budget the estimated required tax revenues were $13,882,001.00, but the property tax bylaw imposed taxes estimated to raise $14,089,587.00. This would result in a surplus of $207,586.00, or approximately 1.25 percent higher than estimated in the operating budget.

13 The Applicants submit that on the face of the bylaw then, 98-06 violates s. 354(1) as the rates in it appear to raise more revenue than required under s. 353(2) of the Municipal Government Act.

14 With respect, I disagree because in the context of the budgeting process, such a variation still substantially complies with s. 353 of the Municipal Government Act.

15 Budgets are estimates only, and it is inevitable that actual revenues and expenditure will never precisely match the estimates for reasons such as the non- collection of taxes due to default or appeals, final grant monies received and final expenditures being often different from estimates, etc.

16 Accordingly, implicit reasonable contingencies and reserves are inherent factors within the estimates as a prudent and common budgeting practice. This is consistent with s. 243(3) of the Municipal Government Act which provides that the revenue portion of the operating budget must be "at least sufficient" to pay the estimated expenditures, simply a common sense requirement.

B. Does motion 238-98-17MDC of Opportunity discriminate against linear property holders and establish a subclass of non-residential property in contravention of the Municipal Government Act, Statutes of Alberta 1994, c. M-26.1.

17 An important principle of municipal taxation is that municipalities in levying taxation or exempting properties therefrom cannot discriminate between the same class of tax payers within the municipality unless the legislative authority to do so is clear and explicit. Carleton Woollen Co. v. Town of Woodstock (1907), 38 S.C.C. p. 411 at 417

18 The new 1994 Municipal Government Act does, however, generally expands the powers of municipalities to those of "natural person powers".

19 Section 3 of the new 1994 Municipal Government Act states:

3. The purposes of a municipality are

(a) to provide good government,

(b) to provide services, facilities or other things that, in the opinion of Council, are necessary or desirable for all or a part of the municipality, and

(c) to develop and maintain safe and viable communities.

20 The purposes of a municipal corporation are stated very broadly to provide a wide scope for municipal activities and to provide maximum flexibility in the governance of local citizens. Subject to any statutory or constitutional limitations which may apply, a municipal council can undertake any action which it in good faith considers to be in the public interest.

21 Included within the purposes of a municipality are "good government" and the development of "viable communities". These would include matters related to financially sound municipal operations as well as the economic well being of citizens and businesses within the community.

22 A recent decision of this Court, United Taxi Drivers' Fellowship of Southern Alberta et al. v. City of Calgary (unreported, Q.B. Action 9201-14639, March 5, 1998) reviews some of the traditional considerations applicable to the interpretation of municipal statutes and municipal bylaws. Some of the more relevant principles applicable to the present case can be summarized as follows:

(a) Where a bylaw is in substantial compliance with the statutory authorization, the bylaw should not be quashed (p. 19, paragraphs 31-32).

(b) Municipal bylaws should be benevolently interpreted and supported if possible. Further, the courts should be slow to condemn as invalid any bylaw on the ground of unreasonableness (p. 18-19, paragraph 30 an pp. 19-20, paragraph 33).

(c) Municipal bylaws cannot "discriminate", as that term is used in the judicial decisions, within a class of persons unless he enabling legislation provides to the contrary (p. 14-15, paragraphs 20-21; p. 16, paragraph 24 and pp. 32-33, paragraph 54).

(d) In recent years, the courts have shown increased deference to municipal actions and the interpretation of municipal statutory authority. Further, the courts are very reluctant to "second guess" the actions of municipal councils where the council decision involves policy considerations or determination of the public interest (pp. 27-29, paragraphs 47-49 and p. 31, paragraph 52).

23 Certain older authorities were decided on the rule of interpretation that taxing statutes and statutes of a "penal" nature must be strictly construed. Historically, this was the approach used by the courts. However, taxing statutes should now be interpreted in the same manner as any other statute.

24 The Municipal Government Act mandates that a municipality may create two sub classes to the non-residential class of property, those being improved or non-improved. Section 297(2)(b), Municipal Government Act

25 The effect of granting a tax rebate to all assessments classed as commercial,[or cancelling a portion of the total taxes payable by a group as listed in schedule A to the motion] which otherwise would receive the non-residential tax rate of 19.75 mills., is to create a third sub-class to the non-residential class, that of Schedule "A" properties which received a rebate producing an effective tax rate of 6.37 mills.

26 As such, motion 238-98-17MDC passed on July 8th, 1998 which creates the rebate by cancelling part of the taxes owing on certain properties is in conflict with Section 297(2)(b) of the Municipal Government Act. When asked about this, Mr. Prockiw on behalf of Opportunity acknowledged that the list of properties in Schedule "A" was identical to the group of properties given a tax rebate in 1997. He stated that Council's intention was to give the commercial subclass and the three sawmills a business incentive.

27 The only section of the Municipal Government Act, supra., which specifically mentions cancelling of taxes is Section 347. Section 347 states:

> 347(1), if a council considers it equitable to do so, it may generally or with respect to a particular taxable property or business or a class of taxable property or business to one or more of the following with or without conditions:... (b) cancel or refund all or part of the tax;....

28 Section 347(1)(b) allows a tax rebate generally, to a specific property or to a specific class. It does not authorize a rebate to a specific sub-class, which is arguably what the Opportunity motion creates in effect. The creation of a subclass was accomplished by cancelling individual property taxes en bloc rather than naming a particular subclass. Section 347(1)(b), Municipal Government Act

29 Section 334 of the Municipal Government Act states that the tax notices must show the same information that is required to be shown on the tax roll. Section 329 of the Municipal Government Act states that a roll must show the name, tax rate, and amount of each tax imposed in respect of the proprietor business. The tax notices sent out July 1, 1998 to the properties listed on Schedule "A" to Resolution 238-98-17MDC, one week before the tax "cancellation" did not list the tax rates imposed by Opportunity's 98-06 tax bylaw. They only listed the rate of 6.37 mills, rather than 16.25 mills for general municipal taxation, 1.5 mills for seniors' lodge and 2.0 mills for secondary highway construction for a total of 1975 mills. The July 1, 1998 tax notices appear to have taken into account the tax "cancellation" which happened one week after the notices were sent. There is no statutory authority for the notices that were sent July 1, 1998 to properties listed in Schedule "A" of the July 8, 1998 Resolution.

30 I conclude then that the tax cancellation effected by motion 238-98-17MDC is invalid as its effect is contrary to Section 297(2)(b) and is not authorized by Section 347(1)(b) as it applies to a subclass rather than all, a whole class or an individual property or business.

C. "DISCRIMINATION" UNDER THE MUNICIPAL GOVERNMENT ACT

> Does Bylaw 98-06 unreasonably discriminate against properties within the same class in violation of the provisions of the Municipal Government Act, and contrary to the long-standing principles regarding equitable assessment and taxation?

31 The Opportunity motion has discriminated against linear property holders in the municipality by taxing them at 19.75 mills, while other members of the non-residential class (commercial properties) received a rebate producing an effective tax rate of 6.37 mills. Motion 238-98-17MDC

32 The Municipality has not provided any documentation outlining the justification for the motion, but it is stated to be a "business incentive". This likely is within the Municipality's general powers of governance in the public interest, and in any event no allegation of "bad faith" has been established here.

33 However, the Applicants submit that the Municipal Government Act does not allow a municipality to discriminate in such a manner.

34 Dealing with the general provisions of the Municipal Government Act, Section 8(b) appears to allow discrimination:

> 8. Without restricting Section 7, council may in a by-law passed under this division... (b) deal with any development, activity, industry, business or thing in a different ways, divide each of them into classes and deal with each class in different ways.

35 However, Section 10(1), (2), (3) states that:

> 10(1) In this section, "specific by-law passing power" means a municipality's powers or duties to pass a by-law that is set out in an enactment other than this division, but do not include a municipality's natural powers. (2) If a by-law could be passed under this division and under a specific by-law passing powers, the by-law passed in this division is subject to any conditions contained in the specific by-law passing powers. (3) If there is an inconsistency between a by-law passed under this division and one passed under a specific by-law passing powers, the by-law passed out of this division is of no effect to the extent that it is inconsistent with the specific by-law passing power.

36 So, pursuant to Sections 10(2) & (3), the right to discriminate granted in such Section 8(b) is restricted by conditions set out in other divisions of the Municipal Government Act. Since Section 297(2)(b) only allows a municipality by bylaw to create two (2) sub-classes to the non-residential class, Section 8 cannot be used to create further sub-classes. Sections 8(b), 10(1),(2),(3) and 279(2)(b) of the Municipal Government Act

37 Rooke, J. in United Taxi Drivers et al. v. the City of Calgary, supra, held that the general discrimination provisions of the Municipal Government Act cannot be interpreted as allowing discrimination interclass.

38 As such, it is arguable that the Act itself does not allow a municipality to discriminate in this fashion.

BONUSING

39 The practice of conferring benefits upon businesses in order to attract them to a municipality is akin to the practice called bonusing. This practice was extensively considered in an article by Professor Laux entitled "Municipal Bonuses and Tax Exemptions to Entice Private Developments". He concluded that there was nothing in the Municipal Government Act [as it stood in 1986] which would allow a municipality to confer a benefit on a business where the sole benefit to the municipality would be that flowing from the normal operation of a business. Municipal Bonuses and Tax Exemptions to Entice Private Developments (1987), Alberta Law Review XXV, p. 225 at 248

40 While reviewing the area, Laux stated that "bonusing laws were viewed as invidious because;... (2) they created unseemly bidding wars amongst municipalities falling over one another to give the best deals; (3) they were inherently discriminatory; unless expressly authorized, these sort of schemes were illegal. Supra at pages 237and 241

41 When considering whether a statute authorized such a scheme, he noted that the court should construe to sections very strictly, citing the Supreme Court of Canada case of Cogswell v. Holland, (1889), 21 N.S.R. p. 155 at 161; affirmed 17 S.C.C. 420:

> It cannot... be disputed that the principles of quality and uniformity should pervade all local taxation which ought to be uniform on the same class of subject, and assess upon all properties according to its proper evaluation and... a court should hesitate to give any interpretation to taxing act which would disturb that equality or give any advantages or exemptions in respect of any particular portion of the property within the district over which the assessment extends unless it is clearly warranted by the statute imposing the tax.

42 As such, I conclude that the Court should be hesitant to interpret Section 347 as allowing a mass cancellation of taxes akin to a bonus scheme, under the purported rationale of creating a "business incentive".

D. Can the Applicants recover funds paid to the municipality pursuant to an ultra vires taxation bylaw?

43 It is a basic principle of equity that where a party has been unjustly enriched, the Courts will order that party to disgorge the enrichment. Specifically, the Courts will give relief for unjust enrichment where, 1) there has been a benefit to the Defendant; 2) a corresponding detriment to the Plaintiff; and 3) the absence of any juridical reason for the Defendant's retention of the benefit. Peel v. Canada (1992) 12 M.P.L.R. (2nd) 229 @ 243 (S.C.C.)

44 The Applicants submit that on basic principles, a payment by a taxpayer to a municipality pursuant to an ultra vires by-law would fit this analysis. The municipality receives a benefit in the form of money, the taxpayer is correspondingly deprived of that same money, and as the by-law is a nullity being ultra vires there is no juridical reason for the municipality to retain the payment.

45 The Supreme Court of Canada commented on the topic of repayment of funds paid pursuant to ultra vires taxation statutes in the case of Air Canada v. British Columbia. Half of the panel (which consisted of a total of six judges, as Justice LeDain took no part in the decision) expressed the opinion that a municipality would not have to disgorge the funds in that situation. Their reasoning was that for public policy goals, specifically the avoidance of financial chaos, it was best to let the loss rest with the taxpayer, absent a relationship between the state and a particular taxpayer resulting in the collection of the tax as unjust or oppressive in the circumstances. Air Canada v. British Columbia (1989) 36 B.C.L.R. (2nd) 145 @ 180-182

46 The ratio of the Air Canada decision was that the taxation statute at issue was ultra vires the Province, therefore the view expressed by half the panel was obiter dicta and not binding. Two other members of the panel expressed no opinion on the effect of an ultra vires statute on repayment, and Wilson J. dissented on the topic, [supra at p.151].

47 Everyone involved in this process recognizes that the repayment of all funds collected under the impugned by-law would result in chaos to Opportunity, and could result in the municipality breaching financial obligations to third parties. It is not suggested that the Applicants should not pay a fair amount of taxes.

48 The error made by Opportunity in the bylaw would appear to result in a surplus to the municipality, although it is unclear to me where this surplus would be at this time. As it is still during the current budget year, no audited financial statements are presently available. A repayment of the Applicants' share of the surplus should not result in chaos for Opportunity.

49 This raises the issue of what exactly the Applicants should receive in the form of financial compensation. The alternatives could be a) ordering the municipality to render a new taxation statute with a reduced mill rate applied to the Applicants, refunding the difference between the new amount owed with that already paid; b) ordering the municipality to render a new taxation statute with the same mill rates as 1996, with the difference in amounts to be reimbursed to the Applicants; and c) simply reimburse to the Applicants an amount equal to their pro-rata share of the surplus, if any, generated by Bylaw 98-06.

50 Given the concerns expressed by some members of the Supreme Court of Canada in the Air Canada case, supra, it would appear that any financial compensation arguably should come from reserves of the municipality in order to avoid financial chaos. Further, any award this Court gives is not designed to be a windfall for the Applicants.

51 A reference to a Master would be an appropriate way of determining the amount of surplus, if any, the municipality will have in 1998, which amounts would be refunded to the Applicants equal to their pro-rata share of the surplus generated by Bylaw 98-06.

CONCLUSION

52 The cancellation of property taxes contained in motion 238-98-17MDC of Opportunity is ultra

vires the municipality, on the basis that it is against the express provisions of the Act in that it creates a third sub-class of the non-residential class prohibited by Section 297(2)(b) of the Act, and also as Section 347(1)(b) arguably does not support a cancellation to a sub-class. Further, the motion is ultra vires the municipality as it is discriminatory in nature and not explicitly authorized by the empowering statute.

PART IV RELIEF GRANTED

53 A declaration pursuant to Part 56.1 of the Alberta Rules of Court that the Municipal District of Opportunity's Bylaw 98-06 and motion 238-98-17 MDC are ultra vires, void and invalid;

54 An Order in the nature of certiorari quashing Bylaw 98-06 and motion 238-98-17 MDC and any subsequent bylaw or motion enacted by the Municipal District of Opportunity No. 17 of similar purpose or effect;

55 An Order compelling the municipality to return to the Applicants any actual "surplus" monies wrongfully collected under the impugned bylaw or its successors. [The taxation amounts of the individual applicants are to be provided in due course, and a reference to a Master will then determine the amount of the "surplus", if any.]

56 An Order granting the Applicants' their costs of the within Application.

LEE J.

End of Document

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *TimberWest Forest Corp. v. Campbell River (City),* 2009 BCSC 1804

Date: 20091231
Docket: S094365
Registry: Vancouver

Between:

TimberWest Forest Corp.,
TimberWest Holdings Ltd.,
TimberWest Forest I Limited,
and TimberWest Forest III Limited

Petitioners

And

City of Campbell River

Respondent

Before: The Honourable Madam Justice Gerow

Reasons for Judgment

Counsel for the Petitioners:	K.M. Stephens S.L. McHugh D.E. Gruber
Counsel for the Respondent:	G.E. McDannold
Place and Dates of Hearing:	Vancouver, B.C. September 8 and 9, 2009
Place and Date of Judgment:	Vancouver, B.C. December 31, 2009

[95] On April 29, 2009, the City issued a press release announcing the completion of the City's financial planning process which included the following statement:

> A $938,000 increase in Class 7 (Managed Forest Lands) taxation is focused on lands where use in the foreseeable future is not forestry – to encourage economic stimulation through alternative land use and related activity explains Mayor Cornfield.

[96] On May 12, 2009, the Mayor made the following statement in council on the adoption of the Bylaws:

> The City of Campbell River agrees that the "across the board" tax increase on class 7 managed forest lands is meant to apply only to those lands slated for future development. Upon the City and TimberWest agreeing to which lands are slated for future development, TimberWest shall take the necessary steps to have those lands removed from Class 7 designation. Thereafter the remaining class 7 Managed Forest Lands will be taxed at a rate that promotes sustainable forestry.

[97] The reasonable inference to be drawn from the documents, as well as the City's argument (that this was to be a one year tax and that once that a portion of the lands had been removed for development purposes the rest of the property would be taxed on the basis that is was private managed forest lands), is that the taxes were being raised to an uneconomic level to force TimberWest to remove lands from its private managed forest lands so that they could be developed for a non-forestry use. In other words, the taxing bylaws do not incidentally bring about a change in land use, they are intended to bring about a change in land use.

[98] Although s. 197 of the *Community Charter* empowers the City to use property tax bylaws to raise revenue, it does not expressly confer the power to effect changes in land use, nor can such power be necessarily or fairly implied since such powers are conferred elsewhere under the planning and land use provisions of the *Local Government Act*, R.S.B.C. 1996, c. 323.

[99] Even if taxation powers might be construed to confer a power to regulate, the power to regulate does not give a power to pass a bylaw which has the effect of restricting a forest management activity in contravention of s. 21 of the *Private Managed Forest Land Act*.

This Act is current to March 4, 2025

See the Tables of Legislative Changes for this Act's legislative history, including any changes not in force.

ASSESSMENT AUTHORITY ACT

[RSBC 1996] CHAPTER 21

Contents

Definitions

1 In this Act:

"assessment" has the same meaning as in the *Assessment Act*;

"assessment roll" includes a supplementary assessment roll;

"authority" means the British Columbia Assessment Authority continued under this Act;

"board of directors" means the board of directors of the authority;

"chief executive officer" means the chief executive officer of the authority appointed under section 13;

"director" means a member of the board of directors;

"minister" includes a person designated in writing by the minister;

"net taxable value", in relation to land and improvements in the treaty lands of a treaty first nation or Nisga'a Lands, means the net taxable value of the land and improvements determined for regional hospital district purposes as if the *Assessment Act*, the *Hospital District Act* and the *Taxation (Rural Area) Act* apply for the purposes of the assessment and taxation of those lands and improvements;

"property" includes land and improvements as defined in the *Assessment Act*;

"Union of British Columbia Municipalities" means the corporation incorporated by Act under that name.

Conflict with other Acts

2 (1) If there is a conflict between this Act and any other Act, this Act prevails.

(2) Subsection (1) does not apply to a conflict between this Act and any of the following Acts:

(a) the *Financial Administration Act*;

(b) the *Public Sector Employers Act*;

(c) an Act prescribed by the Lieutenant Governor in Council.

Corporation continued

3 (1) The corporation known as the "British Columbia Assessment Authority" is continued consisting of the board of directors appointed under section 11.

(2) [Repealed 2007-13-35.]

(3) The authority may pay to a director

(a) an allowance set by the minister for reasonable travelling and incidental expenses necessarily incurred by the director in the discharge of duties as a director, and

(b) remuneration at rates set by the minister.

(4) A majority of the directors holding office constitutes a quorum at meetings of the board of directors.

(5) The *Business Corporations Act* does not apply to the authority, but the Lieutenant Governor in Council may direct that certain provisions of that Act apply to the authority.

Head office

4 (1) The head office of the authority must be in the Capital Regional District.

(2) The authority may establish and maintain offices at other places in British Columbia it considers necessary or advisable.

Power to acquire property

5 The authority may, for the purposes of this Act,

(a) acquire, hold and dispose of property, and

(b) with the prior approval of the minister, borrow money on the credit of the authority and give security.

Powers and duties of the board of directors

5.1 (1) The board of directors must manage the affairs of the authority or supervise the management of those affairs.

(2) The board of directors may do the following:

(a) by resolution or bylaw, exercise the powers and perform the duties of the authority under this Act or any other Act on behalf of the authority;

(b) by resolution or bylaw, delegate to another person the exercise of any power conferred or the performance of any duty imposed on the board of directors or the authority under this Act or any other Act, other than

(i) the power to delegate under this paragraph, and

(ii) the power to make regulations or orders under this Act or any other Act;

(c) pass resolutions and make bylaws it considers necessary or advisable for the management and conduct of the affairs of the authority, the exercise of the powers of the board of directors and the performance of the duties of the board of directors.

(3) The board of directors must submit to the minister reports in the form, with the information and at the time required by the minister.

Meetings of the board of directors

6 (1) The board of directors must meet in accordance with the bylaws or, in the absence of a bylaw, at times and places the chair determines.

(2) A majority of the board of directors may, at any time, by notice in writing directed to the chair, require the chair to call a meeting.

Majority vote

7 Bylaws and resolutions of the authority must be passed by a majority of the votes of the directors who are at a meeting of the board of directors and entitled to vote.

Vacancy on the board of directors

8 A vacancy on the board of directors does not affect the power and jurisdiction of the authority under this Act or impair the power of the remaining directors to act on behalf of the authority.

Purpose of the authority

9 The purpose of the authority is to establish and maintain assessments that are uniform in the whole of British Columbia in accordance with the *Assessment Act*.

Powers and duties of the authority

10 For its purposes the authority has the following powers and duties:

(a) to develop and administer a complete system of property assessment;

(a.1) to give directions respecting the preparation and completion of assessment rolls;

(b) to divide British Columbia into the number of assessment areas it considers advisable;

(c) to develop and maintain programs for the education, training and technical or professional development of assessors, appraisers and other persons qualified in property assessment matters;

(d) to prescribe and maintain standards of education, training and technical or professional competence for assessors, appraisers and other persons employed or engaged in property assessment, and to require compliance with these standards;

(e) if considered advisable, to authorize the officers or employees to perform technical or professional services, other than those required under the *Assessment Act*, and to set and charge fees for those services;

(f) to ensure that the general public is adequately informed respecting procedures relating to property assessment in British Columbia;

(g) to exercise and carry out other powers and duties that may be required to carry out its purpose, or as may be required under any other Act or order of the Lieutenant Governor in Council.

Appointment of directors and chair

11 (1) The board of directors consists of up to 12 directors.

(2) The Lieutenant Governor in Council may appoint an individual as a director for a term of up to 3 years.

(3) An individual may be reappointed as a director under subsection (2).

(4) The Lieutenant Governor in Council must appoint a director as chair of the board of directors.

(5) In appointing directors the Lieutenant Governor in Council should take into account regional interests.

Repealed

12 [Repealed 2007-13-43.]

Staff

13 (1) The board of directors may

(a) appoint assessors, appraisers, officers and other employees of the authority that are necessary to carry on the business and operations of the authority,

(b) define their duties, and

(c) set their remuneration.

(2) The board of directors must appoint under subsection (1) an individual as the chief executive officer of the authority.

(2.1) The chief executive officer is responsible for general supervision, and direction of the operations, of the authority and its staff and must perform those duties that are specified in the resolutions of the board of directors.

(2.2) The chief executive officer may exercise all of the powers of an assessor.

(3) Out of its money, the authority must pay the remuneration required under this section, and all other costs and expenses incurred in the administration of this Act.

(4) The *Public Service Act* and the *Public Service Labour Relations Act* do not apply to a person appointed under this section.

Application of *Labour Relations Code*

14 The *Labour Relations Code* applies to employees under this Act.

Repealed

15 [Repealed 1999-44-31.]

Accounts and audits

16 (1) The minister charged with the administration of the *Financial Administration Act* may direct the Comptroller General to examine and report to the Treasury Board on any or all of the financial and accounting operations of the authority.

(2) The fiscal year of the authority begins on April 1 in each year and ends on March 31 in the following year.

(3) Unless the Auditor General is appointed in accordance with the *Auditor General Act* as the auditor of the authority, the authority must appoint an auditor to audit the accounts of the authority at least once each year.

(4) The authority must establish and maintain an accounting system satisfactory to the minister charged with the administration of the *Financial Administration Act* and must, whenever required by that minister, render detailed accounts of its revenues and expenditures for the period or to the date that minister designates.

(5) The minister charged with the administration of this Act or a person designated in writing by the minister may inspect, without notice, all books or records of account, documents and other financial records of the authority.

Finances

17 (0.1) In this section:

"improvements" has the same meaning as in the *Assessment Act*;

"land" means land as defined in section 1 (1) of the *Assessment Act*.

(1) The authority must establish and maintain an operating fund, being the total amount required to meet the annual operating and capital expenses of the authority.

(1.1) The authority must determine the rates, sufficient to maintain the operating fund established under subsection (1), to be applied to the net taxable value of all land and improvements in British Columbia other than the following property:

(a) property that is taxable for school purposes only by special Act;

(b) property in the treaty lands of a treaty first nation that is not to be given a requisition under section 20 (4.1);

(c) property in Nisga'a Lands if the Nisga'a Nation is not to be given a requisition under section 20 (4.3).

(2) With the prior approval of the Lieutenant Governor in Council, the authority must, by bylaw,

(a) impose a tax on the net taxable value of all land and improvements in British Columbia, other than property referred to in subsection (1.1) (a), in treaty lands or in Nisga'a Lands,

(b) for each treaty first nation that is to receive a requisition under section 20 (4.1), specify the rates to be applied to the net taxable value of all land and improvements in the treaty lands of the treaty first nation in order to calculate the amount of the requisition, and

(c) if the Nisga'a Nation is to receive a requisition under section 20 (4.3), specify the rates to be applied to the net taxable value of all land and improvements in Nisga'a Lands in order to calculate the amount of the requisition.

(3) In determining rates for the purposes of subsection (1.1) the authority must take into account the amount of the annual operating grant appropriated for the purposes of the authority by the Legislature.

(4) [Repealed 2024-13-17.]

(5) Each year before March 31, the minister may submit a requisition to the authority for the amount required to cover the anticipated costs to the government, for its next fiscal year, of complaints and appeals under the *Assessment Act* to the property assessment review panels and the property assessment appeal board.

(6) Subject to subsection (7), the authority must pay the amount requisitioned under subsection (5) to the government in quarterly instalments, with the first instalment due on June 30 in the year for which the requisition is made.

(7) The minister may require the authority to adjust the final instalment for a fiscal year such that the total amounts paid for the fiscal year cover the actual costs of the complaints and appeals referred to in subsection (5) for that fiscal year.

(8) An amount requisitioned under subsection (5), as adjusted under subsection (7), is deemed to be part of the annual operating and capital expenses of the authority for the purposes of this section.

Variable tax rate system

18 (1) In this section:

"property class" means a class of property prescribed by the Lieutenant Governor in Council under section 19 of the *Assessment Act*;

"variable tax rate system" means a system under which individual tax rates are determined and imposed for each property class.

(2) Where the authority sets rates under section 17, it must adopt a variable tax rate system.

(3) The Lieutenant Governor in Council may make regulations in respect of the variable tax rate system as follows:

(a) prescribing limits on tax rates;

(b) prescribing relationships between tax rates;

(c) prescribing formulas for calculating the limits or relationships referred to in paragraphs (a) and (b).

Application of *School Act* exemptions

19 Except in relation to the treaty lands of a treaty first nation and Nisg̲a'a Lands, sections 130, 131, 131.01 and 132 to 134 of the *School Act* apply for assessment and taxation purposes under section 17 (2) (a) and (3) of this Act.

Exemptions for treaty lands and Nisg̲a'a Lands

19.1 (1) For the purposes of calculating the rates under section 17 (1.1) and the amount of a requisition referred to in section 17 (2) (b), the following property in the treaty lands of a treaty first nation must, subject to this section, be treated as if it were exempt:

(a) property of a treaty first nation member or treaty first nation constituent, as applicable under the treaty first nation's final agreement, that is exempt under the law of the treaty first nation from property taxation by the treaty first nation;

(b) property that is exempt under the treaty first nation's final agreement from property taxation;

(c) property that is exempt under a tax treatment agreement of the treaty first nation from property taxation under this Act;

(d) property that would be exempt under Division 6 of Part 7 of the *Community Charter* from property taxation if that Division applied;

(e) property that

(i) would be permitted to be exempt under Division 7 of Part 7 of the *Community Charter* from property taxation if that Division applied, and

(ii) is exempt under a law of the treaty first nation made under Part 2 of the *Treaty First Nation Property Taxation Enabling Act* from property taxation.

(1.1) For the purposes of calculating the rates under section 17 (1.1) and the amount of a requisition referred to in section 17 (2) (c), the following property in Nisg̲a'a Lands must, subject to this section, be treated as if it were exempt:

(a) property of a Nisg̲a'a citizen that is exempt under Nisg̲a'a laws from property taxation by the Nisg̲a'a Lisims Government;

(b) property that is exempt under the Nisg̲a'a Final Agreement from property taxation;

(c) property that, under the Taxation Agreement as defined in section 6.1 of the *Nisg̲a'a Final Agreement Act*, is exempt from property taxation under this Act;

(d) property that would be exempt under Division 6 of Part 7 of the *Community Charter* from property taxation if that Division applied;

(e) property that

(i) would be permitted to be exempt under Division 7 of Part 7 of the *Community Charter* from property taxation if that Division applied, and

(ii) is exempt under a Nisg̲a'a law made under Part 3 of the *Nisg̲a'a Final Agreement Act* from property taxation.

(2) Subject to subsection (3), 50% of the assessed value of a parcel, or a portion of a parcel, of land must be treated as if it were exempt for the purposes of calculating the rates under section 17 (1.1) and the amount of a requisition referred to in section 17 (2) (b) or (c), as applicable, if

(a) the parcel or portion is classified as a farm under the *Assessment Act*, or

(b) the parcel or portion is in the agricultural land reserve within the meaning of the *Agricultural Land Commission Act*, is subject to sections 18 to 20.3 and 28 of that Act and satisfies one or more of the conditions set out in subsection (3) of this section.

(3) The parcel or portion of a parcel referred to in subsection (2) (b) must be

(a) vacant and unused,

(b) used for a farm or residential purpose, or

(c) used for a purpose that is permitted by the Lieutenant Governor in Council under this Act.

(4) Land must be treated as if it were exempt for the purposes of calculating the rates under section 17 (1.1) and the amount of a requisition referred to in section 17 (2) (b) or (c), as applicable, if the land is included in a timber lease or timber licence issued under an enactment of British Columbia or of Canada

(a) for which a stumpage, as defined in the *Forest Act*, has not been reserved or not made available to the government, or

(b) which is held for the specific purpose of cutting and removing timber, and for no other purpose while so held.

(5) Property that would be exempt from taxation under laws of a treaty first nation or Nisg̲a'a laws, that have the same effect in respect of the treaty lands of the treaty first nation or Nisg̲a'a Lands, as applicable, as a bylaw authorized under section 225 *[partnering and other exemptions]* of the *Community Charter* has in respect of land within a municipality in relation to

(a) a partnering agreement under the applicable law,

(b) a golf course, or

(c) a cemetery, mausoleum or columbarium,

must be treated as if it were taxable for the purposes of calculating the rates under section 17 (1.1), and the amount of a requisition referred to in section 17 (2) (b) or (c), as applicable, of this Act unless it can be treated as exempt under subsection (6) or (8) of this section.

(6) The Lieutenant Governor in Council may make regulations requiring that land and improvements that must be treated as taxable under subsection (5) must be treated as exempt.

(7) Regulations under subsection (6) may

(a) require that all or part of the property that is exempted under the law of the treaty first nation or Nisg̲a'a laws, as applicable, be treated as exempt,

(b) require the property be treated as exempt for all or part of the term of the exemption under the law of the treaty first nation or Nisg̲a'a laws, as applicable, and

(c) be different for different classes or uses of property, different classes of owners and different classes of partnering agreements.

(8) The Lieutenant Governor in Council, by order in relation to property referred to in subsection (5) that is specified in the order, may require that

(a) all or part of the property be treated as exempt for the purposes of calculating the rates under section 17 (1.1) and the amount of a requisition referred to in

section 17 (2) (b) or (c), as applicable, and

(b) the property be treated as exempt for those purposes for all or part of the term of the exemption under the laws of the treaty first nation or Nisg̲a'a laws, as applicable.

(9) Property must not be treated as exempt for the purposes of calculating the rates under section 17 (1.1) or the amount of a requisition referred to in section 17 (2) (b) or (c) if the property is exempted from property taxation under, as applicable,

(a) a law of a treaty first nation that has the same effect in respect of its treaty lands, or

(b) a Nisg̲a'a law that has the same effect in respect of Nisg̲a'a Lands

as a bylaw has under section 226 *[revitalization tax exemptions]* of the *Community Charter* in respect of land within a municipality.

Tax proceeds

20 (1) On or before April 15 in each year, the authority must give to the tax collector of every municipality in British Columbia and to the Surveyor of Taxes a copy of the bylaw of the authority imposing the taxes under this Act.

(2) On receipt of a copy of the bylaw, the tax collector of each municipality or the Surveyor of Taxes, as the case may be, must have the taxes levied placed on the tax roll.

(3) The proceeds of the taxes levied and collected must be paid to the authority by the municipality or the minister charged with the administration of the *Financial Administration Act*, as the case may be, before August 1 in the year the tax was levied.

(4) On or before February 1 in each year, the amount received by the Surveyor of Taxes or the tax collector in a municipality by way of grant in lieu of taxes under the *Payments in Lieu of Taxes Act* (Canada) from the government of Canada or from a corporation included in Schedule III or IV of that Act in the immediately preceding calendar year must be paid to the authority in an amount attributable to the portion of the grant that is received for authority purposes.

(4.1) If a treaty first nation has, by law, adopted the *Assessment Act* and the regulations under that Act, in their entirety and as amended from time to time, the authority must, on or before April 30 in each year, give to the treaty first nation

(a) a requisition for the amount

(i) determined by applying the rates approved under section 17 (2) (b) of this Act for the treaty first nation to the net taxable value of all land and improvements in the treaty lands of the treaty first nation,

(ii) payable on or before August 1 of the same year, and

(iii) bearing interest at the rate prescribed under subsection (7) of this section on any part of that amount remaining unpaid on August 1, and

(b) a statement of the rates referred to in paragraph (a) of this subsection.

(4.2) [Repealed 2024-13-21.]

(4.3) If the Nisg̲a'a Lisims Government has, by law, adopted the *Assessment Act* and the regulations under that Act, in their entirety and as amended from time to time, the authority must, on or before April 30 in each year, give to the Nisg̲a'a Nation

(a) a requisition for the amount

(i) determined by applying the rates approved under section 17 (2) (c) of this Act to the net taxable value of all land and improvements in Nisga'a Lands,

(ii) payable on or before August 1 of the same year, and

(iii) bearing interest at the rate prescribed under subsection (7) of this section on any part of that amount remaining unpaid on August 1, and

(b) a statement of the rates referred to in paragraph (a) of this subsection.

(5) Until receipt of the proceeds of taxes and requisitions, the authority may borrow an amount not exceeding those proceeds from the consolidated revenue fund or from a bank, trust company or credit union approved by the minister charged with the administration of the *Financial Administration Act*, and the loan must be paid from those proceeds.

(6) If a municipality fails to pay the proceeds of taxes as required by subsection (3), it is liable to pay to the authority, beginning on August 1 in the year the taxes were levied, interest on the amount not paid at the rate prescribed under subsection (7).

(7) The Lieutenant Governor in Council may, by regulation, establish a rate of interest for the purpose of subsections (4.3) and (6).

Repealed

21 [Repealed 2003-66-25.]

Cooperation and preparation

22 (1) If requested, an employee of the government or a municipality must cooperate with the authority and supply to it any information respecting assessment that it may request.

(2) Despite any other Act, an assessment roll of the government or a municipality must be prepared and completed in accordance with this Act and the regulations or direction of the authority.

Consultations

22.1 The minister may require the authority to consult on a matter, with any persons and within any period specified by the minister.

Policy directions

22.2 (1) The Lieutenant Governor in Council may, by regulation, issue policy directions to the authority with respect to the exercise of its powers or the performance of its duties under this Act or any other Act.

(2) The authority must comply with any policy directions issued under subsection (1).

Offences

22.3 Section 5 of the *Offence Act* does not apply to this Act or the regulations.

Power to make regulations

23 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) The Lieutenant Governor in Council may authorize the authority to make regulations.

This Act is current to March 4, 2025

See the Tables of Legislative Changes for this Act's legislative history, including any changes not in force.

ASSESSMENT ACT

[RSBC 1996] CHAPTER 20

Contents

Definitions

1 (1) In this Act:

"agricultural land reserve" has the same meaning as in the *Agricultural Land Commission Act*;

"appraiser" means a property valuator appointed under the *Assessment Authority Act*;

"assessment" means a valuation and classification of property;

"assessment authority" means the British Columbia Assessment Authority;

"assessment roll" includes a revised assessment roll, a supplementary assessment roll and any amendments made under sections 63 and 65 (10);

"assessment roll number" means the alphanumeric identifier described as an assessment roll number on an assessment roll and used to identify a particular property;

"assessor" means an assessor appointed under the *Assessment Authority Act*;

"board" means the property assessment appeal board established under this Act;

"closed circuit television corporation" includes a person operating for a fee or charge a television signal receiving antenna or similar device, or equipment for the transmission of television signals to television receivers of subscribers, or any or all of those devices and equipment;

"electronic transmission" means

(a) the transmission of a notice by electronic means, or

(b) the provision of access to a notice by electronic means;

"eligible supportive housing property", in relation to a taxation year, means property that is used by or on behalf of a person who received funding from the government, a regional health board, a treaty first nation or the Nisg̲a'a Nation in the preceding calendar year for the provision of supportive housing on that property;

"farm" means an area of land classified as a farm under this Act;

"file", in relation to a notice or record required to be filed with an assessor, the board or the assessment authority, includes mail to or leave with the assessor, board or assessment authority or deposit in the mail receptacle at their office;

"highway" includes a street, road, lane, bridge, viaduct and any other way open to the use of the public, but does not include a private right of way on private property;

"improvements" means any building, fixture, structure or similar thing constructed or placed on or in land, or water over land, or on or in another improvement, but does not include any of the following things unless that thing is a building or is deemed to be included in this definition by subsection (2):

(a) production machinery;

(b) anything intended to be moved as a complete unit in its day to day use;

(c) furniture and equipment that is not affixed for any purpose other than its own stability and that is easily moved by hand;

"land" includes

(a) land covered by water,

(b) quarries, and

(c) sand and gravel,

but does not include coal or other minerals;

"land title office", in relation to real property, means, as applicable, the land title office for the land title district, the land registry office of the treaty first nation for the treaty lands, or the Nisg̲a'a land registry for the Nisg̲a'a Lands, in which the real property is located;

"manufactured home" means a manufactured home to which the *Manufactured Home Tax Act* applies;

"natural gas" means a gaseous mixture of hydrocarbon and other gases received from wells, and includes that gas after refinements;

"Nisg̲a'a land registry" means a land registry that is part of the land title or land registry system established by the Nisg̲a'a Lisims Government under paragraph 50 of the Nisg̲a'a Government Chapter of the Nisg̲a'a Final Agreement;

"occupier" means

(a) a person who, if a trespass has occurred, is entitled to maintain an action for trespass,

(b) the person who is in possession of Crown land that is held under a homestead entry, pre-emption record, lease, licence, agreement for sale, accepted application to purchase, easement or other record from the Crown, or who simply occupies the land,

(c) a person who is in possession of land the fee of which is in a municipality and that is held under a lease, licence, agreement for sale, accepted application to purchase, easement or other record from the municipality, or who simply occupies the land,

(d) a person who is in possession of land the fee of which is in, or is held on behalf of, a person who is exempted from taxation under an Act and that is held under a lease, licence, agreement for sale, accepted application to purchase, easement, or other record from the person exempted from taxation or who simply occupies the land, or

(e) in relation to land that

(i) is Crown land, land the fee of which is in a municipality or land the fee of which is in, or held on behalf of, a person who is exempted from taxation under an Act, and

(ii) in ordinary conditions

(A) is covered by non-tidal water, or

(B) sometime during a calendar year is covered by tidal water,

a person who is entitled under a licence or lease to possess or occupy, or who simply occupies, the land, the water covering the land or the surface of the water covering the land;

"owner", in respect of real property, means the registered owner of an estate in fee simple, and includes,

(a) if a person is a registered owner of a life estate, the tenant for life,

(b) if there is an agreement for sale and purchase of the real property, the registered holder of the last registered agreement for sale and purchase, and

(c) if the real property is held or occupied in the manner referred to in sections 26, 27 and 28, the holder or occupier;

"parcel" means a lot, block, or other area in which real property is held or into which real property is subdivided and includes the right or interest of an occupier of Crown land, treaty lands of a treaty first nation or Nisg̲a'a Lands, but does not include a highway or portion of a highway;

"person" includes a partnership, syndicate, association, corporation and the agent and trustee of a person;

"petroleum" or **"petroleum products"** means crude oil or liquid hydrocarbons, or any product or byproduct of them;

"pipe line corporation" means a person owning or operating a pipe line, all or any part of which is located in British Columbia, for the purpose of gathering or transporting natural gas, petroleum or petroleum products;

"production machinery" means any

(a) engine,

(b) motor, or

(c) machine

used to manufacture, process, repair or convey a product;

"property" includes land and improvements;

"property class" means a class of property prescribed under section 19 (14);

"regional health board" means a board as defined in section 1 of the *Health Authorities Act*;

"registered" and **"registration"**, in respect of real property, refer to registration in the books of the land title office;

"registered owner" or **"registered owner in fee simple"** means a person registered in the books of the land title office as entitled to an estate in fee simple in real property, and, in

respect of a lesser estate, includes a person who registers a charge;

"review panel" means a property assessment review panel appointed under section 31;

"revised assessment roll" means an assessment roll as amended under sections 10 and 42;

"rural area" means an area of land in British Columbia that is not located within the boundaries of a municipality;

"school district" means a school district created under the *School Act*;

"spouse" means

(a) a person who is married to another person, or

(b) a person who

(i) is living with another person in a marriage-like relationship, and

(ii) has been living in that relationship for a continuous period of at least 2 years;

"taxation year" means the calendar year to which an assessment roll applies for the purposes of taxation as referred to in section 3 (2);

"timber" means timber as defined in the *Forest Act*;

"trustee" includes

(a) a committee under the *Patients Property Act*,

(b) an attorney under Part 2 of the *Power of Attorney Act*,

(c) a receiver, and

(d) any person having or taking on the possession, administration or control of property affected by any express trust, or having, by law, the possession, management or control of the property of a person under a legal disability.

(2) Without limiting the definition of **"improvements"** in subsection (1), the following things are deemed to be included in that definition unless excluded from it by a regulation under section 22 (1) (a) or 74 (2) (d):

(a) anything that is an integral part of a building or structure and is intended to serve or enhance the building or structure, including elevators, escalators and systems for power distribution, heating, lighting, ventilation, air conditioning, communications, security and fire protection;

(b) any building or structure that is capable of maintaining a controlled temperature or containing a special atmosphere, including dry kilns, steam chests, greenhouses and cooling towers;

(c) any lighting fixtures, paving and fencing;

(d) any

(i) piling, retaining walls and bulkheads, and

(ii) water system, storm drainage system and industrial or sanitary sewer system,

the value of which is not included by the assessor in the value of the land;

(e) any foundations, such as footings, perimeter walls, slabs, pedestals, piers, columns and similar things, including foundations for machinery and equipment;

(f) any pipe racks, tending platforms, conveyor structures and supports for machinery and equipment, including structural members comprising trestles, bents, truss and joist sections, stringers, beams, channels, angles and similar things;

(g) any aqueducts, dams, reservoirs and artificial lagoons and any tunnels other than mine workings;

(h) any roads, airstrips, bridges, trestles and towers, including ski towers;

(i) any mains, pipes or pipelines for the movement of fluids or gas;

(j) any track in place, including railway track in place;

(k) any pole lines, metallic or fibre optic cables, towers, poles, wires, transformers, substations, conduits and mains that are used to provide electric light, power, telecommunications, broadcasting, rebroadcasting, transportation and similar services, including power wiring for production machinery up to the main electrical panels or motor control centre, those panels and that centre;

(l) any vessels, such as tanks, bins, hoppers and silos, with a prescribed capacity and any structure that is connected to those vessels;

(m) docks, wharves, rafts and floats;

(n) floating homes and any other floating structures and devices that are used principally for purposes other than transportation;

(o) that part of anything referred to in paragraphs (a) to (n) or of any building, fixture, structure or similar thing that, whether or not completed or capable of being used for the purpose for which it is designed,

(i) is being constructed or placed, and

(ii) is intended, when completed, to constitute, or will with the addition of further construction constitute, any of those things.

Part 1 — Preparation of Annual Assessment Roll

Estimates of assessed values

2 Before October 31 of each year, the assessment authority must supply to each municipality and treaty first nation and to the Nisg̲a'a Nation

(a) an estimate of the total assessed value of each property class in the municipality, the treaty lands of the treaty first nation or Nisg̲a'a Lands, as applicable, and

(b) for each property class specified for the purpose of this section by regulation of the Lieutenant Governor in Council, estimates of the distribution of value changes that have occurred in the property class in the municipality, the treaty lands or Nisg̲a'a Lands, as applicable, since the previous revised assessment roll and the completion of any supplementary roll.

Completion of assessment roll

3 (1) On or before December 31 of each year, the assessor must

(a) complete a new assessment roll containing a list of each property that is in a municipality, the treaty lands of a treaty first nation, Nisg̱a'a Lands or another rural area and that is liable to assessment, and

(b) subject to subsection (2.2), deliver an assessment notice to each person named in the assessment roll.

(2) Subject to this Act, an assessment roll completed under subsection (1) is the assessment roll for the purpose of taxation during the calendar year following completion of that roll.

(2.1) In relation to property in the treaty lands of a treaty first nation or Nisg̱a'a Lands, an assessment roll completed under subsection (1) is the assessment roll

(a) for the purpose of taxation, during the calendar year following completion of that roll,

(i) by the treaty first nation, if the treaty first nation has adopted this Act and the regulations, in their entirety and as amended from time to time, for the purposes of valuing and classifying interests in real property within its treaty lands, or

(ii) by the Nisg̱a'a Lisims Government, if the Nisg̱a'a Lisims Government has adopted this Act and the regulations, in their entirety and as amended from time to time, for the purposes of valuing and classifying interests in real property within Nisg̱a'a Lands, and

(b) for the purpose of requisitioning the treaty first nation or Nisg̱a'a Nation during that calendar year.

(2.2) The requirement in subsection (1) (b) to deliver an assessment notice to each person named in the assessment roll does not apply in relation to an assessment roll prepared for the purpose of requisitioning a treaty first nation or the Nisg̱a'a Nation.

(3) The assessment roll and assessment notice must be in the form and contain the information specified by regulations made under the *Assessment Authority Act*.

(4) When completing an assessment roll, the assessor must use the information contained in the records of the land title office as those records stood on November 30 of the year in which the assessment roll is completed.

(5) In the case of a parcel of land for which a land title office description is not available, the assessor must use the best description available to the assessor.

(6) The assessor must exercise reasonable care in obtaining and setting down the address of an owner, and must more particularly adopt the following alternatives in the order named:

(a) the address known to the assessor;

(b) the address as it appears in the application for registration or otherwise in the land title office.

(7) If the address of the owner is not known to the assessor and is not recorded in the land title office, the assessor must,

(a) in the case of a city, town or village municipality, set down the address of the owner as the main post office, and

(b) in the case of a district municipality, the treaty lands of a treaty first nation, Nisg̱a'a Lands or another rural area, set down the address of an owner as the post office

located nearest the land in question.

(8) An assessment notice required under subsection (1) (b) to be delivered must be delivered to the person named in the assessment roll

(a) by mail at the address on the assessment roll, or

(b) by electronic transmission, if the person provides authorization under section 65.1 (1) (a), using the email address provided under section 65.1 (2).

Request for copy of assessment notice

4 (1) A holder of a registered charge may, at any time, give notice, with full particulars of the nature, extent, and duration of the charge, to the assessor and request copies of all assessment and tax notices issued during the duration of the charge.

(2) The assessor to whom a notice and request is given under subsection (1) must enter the holder's name and address on the assessment roll.

(3) The fee required under section 6 (5) does not apply in respect of a request under subsection (1) of this section.

Splitting and grouping of parcels

5 (1) Without limiting subsection (2), if a building or other improvement extends over more than one parcel of land, those parcels, if contiguous, may be treated by the assessor as one parcel and assessed accordingly.

(2) For the purposes of section 20.2, parcels of land and parts of parcels of land may be treated by the assessor as one parcel and assessed accordingly.

Assessment notice

6 (1) Any number of parcels of land assessed in the name of the same owner may be included in one assessment notice.

(2) If several parcels of land are assessed in the name of the same owner at the same value, the assessment notice is sufficient if it clearly identifies the property assessed, setting it out as a block, parts of a block or as a series of lots, without giving in full the description of each parcel as it appears in the assessment roll.

(3) Despite section 3, if property is wholly exempt from taxation, the assessor need not deliver an assessment notice in respect of that property.

(4) [Repealed 2004-12-2.]

(5) An assessor must provide, to any person who requests it and pays the prescribed fee, the information contained in the current assessment notice delivered by the assessor under section 3.

(6) In subsection (7), **"lessee"** means a lessee holding property under a lease or sublease, other than a registered lease or registered sublease, for a term of one year or more.

(7) After receiving an assessment notice for a property included in a class specified for the purpose of this subsection by regulation of the Lieutenant Governor in Council, the owner of the property must, on request by a lessee of all or part of the property, promptly deliver a copy of the notice to the lessee.

Providing assessment rolls

7 (1) [Repealed 2004-12-3.]

(2) The assessor must provide the following, as soon as they become available, to the appropriate municipality, regional district or treaty first nation and to the Nisg̲a'a Nation:

(a) the assessment roll completed under section 3;

(b) the revised assessment roll;

(c) an amendment to the assessment roll ordered or directed under section 63 or 65 (10).

(3) Despite section 69 (1), the assessment rolls and amendments referred to in subsection (2) of this section must be provided to the appropriate municipality, regional district or treaty first nation, and to the Nisg̲a'a Nation, free of charge.

Assessment roll available for inspection

8 (1) An assessor must maintain the assessment roll for the geographic area assigned to that assessor by the board of directors of the assessment authority.

(2) The assessment roll referred to in subsection (1) must be

(a) available for public inspection during regular business hours at the office of that assessor, and

(b) in the format and presented in the manner prescribed by regulation.

Certification

9 Upon completion of an assessment roll, the assessor must certify in writing that the assessment roll was completed in accordance with the requirements of this Act.

Errors and omissions in completed assessment roll

10 (1) In accordance with section 34, the assessor must notify a review panel of all errors or omissions in the assessment roll completed under section 3, except those errors or omissions corrected under subsection (2).

(2) Before March 16 of the year following the completion of the assessment roll under section 3, the assessor may amend an individual entry in the completed assessment roll to correct an error or omission, with the consent of

(a) the owner of the affected property, and

(b) the complainant, if the complainant is not the owner of the affected property.

(3) Without limiting subsection (1), the assessor must give notice to the review panel in respect of any of the following circumstances:

(a) because of a change of ownership that occurs after November 30 and before the following January 1 and that is recorded in the records of the land title office before that January 1,

(i) land or improvements or both that were not previously liable to taxation become liable to taxation, or

(ii) land or improvements or both that were previously liable to taxation cease to be liable to taxation;

(b) after October 31 and before the following January 1, a manufactured home is moved to a new location, substantially damaged or destroyed;

(c) after October 31 and before the following January 1, a manufactured home is placed on land that has been assessed or the home is purchased by the owner of land that has been assessed;

(c.1) improvements, other than a manufactured home, that are assessable under this Act

(i) are substantially damaged or destroyed after October 31 and before the following January 1, and

(ii) cannot reasonably be repaired or replaced before the following January 1;

(d) after November 30 and before the following January 1, land or improvements or both are transferred to or from the British Columbia Hydro and Power Authority and the transfer is recorded in the records of the land title office before that January 1;

(e) land or improvements or both that are owned by the British Columbia Hydro and Power Authority are held or occupied by another person, whose interest begins or ends after November 30 and before the following January 1;

(f) land or improvements or both that are owned by the British Columbia Railway Company or by its subsidiary are held or occupied by another person, whose interest begins or ends after November 30 and before the following January 1;

(g) land or improvements or both that are referred to in section 26, 27 or 28 are held or occupied by a person other than the owner of the fee simple, and the interest of the holder or occupier begins or ends after November 30 and before the following January 1.

Validity as confirmed by review panel

11 The revised assessment roll is, unless changed or amended under section 12, 63 or 65 (10),

(a) valid and binding on all parties concerned, despite

(i) any omission, defect or error committed in, or with respect to, that assessment roll,

(ii) any defect, error or misstatement in any notice required, or

(iii) the omission to deliver the notice, and

(b) for all purposes, the assessment roll of the municipality, treaty lands of the treaty first nation, Nisga'a Lands or other rural area, as applicable, until the next revised assessment roll.

Supplementary roll

12 (1) [Repealed 1998-22-6.]

(2) If, after the completion of an assessment roll, the assessor finds that any property or any thing liable to assessment

(a) was liable to assessment for the current year, but has not been assessed on the current roll, or

(b) has been assessed for less than the amount for which it was liable to assessment,

the assessor must assess the property or thing on a supplementary roll, or further supplementary roll, subject to the conditions of assessment governing the current

assessment roll on which the property or thing should have been assessed.

(3) If, after the completion of an assessment roll, the assessor finds that any property or any thing liable to assessment

(a) was liable to assessment for a previous year, but has not been assessed on the roll for that year, or

(b) has been assessed in a previous year for less than the amount for which it was liable to assessment,

the assessor must assess the property or thing on a supplementary roll or further supplementary roll for that year, subject to the conditions of assessment governing the assessment roll on which the property or thing should have been assessed, but only if the failure to assess the property or thing, or the assessment for less than it was liable to be assessed, is attributable to

(c) an owner's failure to disclose,

(d) an owner's concealment of particulars relating to assessable property,

(e) a person's failure to make a return, or

(f) a person's making of an incorrect return,

required under this or any other Act.

(4) Despite sections 10, 11 and 42, and in addition to supplementary assessments under subsections (2) and (3), the assessor may, at any time before December 31 of the year following completion of the assessment roll under section 3, correct errors and omissions in a completed assessment roll by means of entries in a supplementary assessment roll.

(5) The assessor must not make a change or amendment that would be contrary to an amendment in the assessment roll ordered or directed by the board under section 63 or 65 (10).

(6) Nothing in subsection (2), (4) or (5) authorizes the preparation of a supplementary roll, or the correction of a roll, for the purpose of changing or updating an assessment roll later than 12 months after that assessment roll is completed.

Provisions applicable to supplementary assessment roll

13 (1) The duties imposed on the assessor with respect to the annual assessment roll and the provisions of this Act relating to assessment rolls, so far as they are applicable, apply to supplementary assessment rolls.

(2) On receipt of a notice of complaint under section 33 in respect of a supplementary assessment roll, the assessor must

(a) record receipt of the notice, and

(b) if the complaint is not resolved under section 10 (2), ensure the complaint is brought before a review panel at the next sitting of review panels.

Part 2 — Inspections and Returns

Definition

13.1 In this Part, **"authorized person"** means any of the following:

(a) the assessor;

(b) an appraiser;

(c) any other employee of the assessment authority who is authorized by the assessment authority.

Inspections and assessment powers

14 An authorized person may, for any purposes relating to assessment, enter into or on and inspect land and improvements.

Return of information

15 (1) [Repealed 2007-13-9.]

(2) At any time, an authorized person may by written notice require a person who owns, occupies or disposes of property to provide to the authorized person, within 21 days of the date on which the notice is sent or a longer period specified in the notice, information for any purpose related to the administration of this Act.

(3) A person who does not provide information as required by notice under subsection (2) commits an offence.

(4) An authorized person is not bound by the information provided, but may, if the authorized person has reason to doubt its accuracy, assess the property in the manner and for the amount the authorized person believes to be correct.

Power to examine property and accounts

16 (1) An authorized person may enter on any premises and may examine any property

(a) to determine an assessment of land and improvements, in respect of which the authorized person thinks a person may be liable to assessment, or

(b) to confirm an assessment.

(2) An authorized person must be given access to, and may examine and take copies of and extracts from, the books, accounts, vouchers, documents and appraisals of the person referred to in subsection (1), who must, on request, furnish every facility and assistance required for the entry and examination.

(3) An authorized person, a member of a review panel, a member of the board or any other person who has custody or control of information or records obtained or created under this Act must not disclose the information or records to any other person except

(a) in the course of administering this Act or performing functions under it,

(b) in proceedings before a review panel, the board or a court of law,

(c) in accordance with subsection (4), or

(d) in accordance with a regulation under subsection (6).

(4) An authorized person may disclose to the agent of a property owner confidential information relating to the property if the disclosure has been authorized in the prescribed form by the owner or, if a form has not been prescribed for the property class, authorized in writing by the owner.

(5) An agent must not use information disclosed under subsection (4) except for the purposes authorized by the owner in the form or writing referred to in that subsection.

(6) The Lieutenant Governor in Council may make regulations respecting the disclosure of information obtained or created under this Act, including, without limitation, information respecting the declared value, financing and physical characteristics of property.

Assessor to be advised of sales, etc.

17 (1) If land of the Crown or treaty lands have been leased, granted or sold, the minister of the relevant ministry, or the representative designated by the treaty first nation by notice in writing to the assessment authority, as the case may be, must immediately advise the assessor of the assessment area in which the land is located, the name and address of the lessee, grantee or purchaser, the legal description, consideration and other details of the transfer.

(2) All public officers and officers and employees of Crown corporations and agencies, and individuals occupying similar positions with a treaty first nation or a public institution of a treaty first nation, must, on the written request of an authorized person, provide without fee all information as may be requested to complete assessments under this Act.

Part 3 — Valuation

Valuation and status dates

18 (1) For the purpose of determining the actual value of property for an assessment roll, the valuation date is July 1 of the year during which the assessment roll is completed.

(2) The actual value of property for an assessment roll is to be determined as if on the valuation date

(a) the property and all other properties were in the physical condition that they are in on October 31 following the valuation date, and

(b) the permitted use of the property and of all other properties were the same as on October 31 following the valuation date.

(3) Subsection (2) (a) does not apply to property referred to in section 10 (3) (b), (c) or (c.1).

(4) The actual value of property referred to in section 10 (3) (b), (c) or (c.1) for an assessment roll is to be determined as if on the valuation date the property was in the physical condition that it is in on December 31 following the valuation date.

Property assessment

18.1 All land and improvements in British Columbia are liable to assessment under this Act unless exempted from assessment under this or another enactment.

Valuation for purposes of assessment

19 (1) In this section:

"accommodation unit" means a unit that is rented or offered for rent as overnight accommodation for periods of less than 28 days for at least the prescribed percentage of the 12-month period ending June 30 of the year previous to the taxation year for which the assessment roll is completed;

"actual value" means the market value of the fee simple interest in land and improvements;

"eligible residential property" means a parcel of land on which there are improvements if

(a) the parcel does not exceed 2.03 ha in area, and

(b) the improvements are designed to accommodate and are used only to accommodate no more than 3 families;

"leasehold accommodation property" means a parcel of land or contiguous parcels of land on which there are buildings that

(a) collectively include at least a prescribed number of leasehold units, and

(b) do not consist of any strata lots;

"leasehold unit" means an accommodation unit

(a) that is leased for a term of at least a prescribed number of years, and

(b) for which the lease is registered in the land title office;

"strata accommodation property" means a strata lot in respect of which the following requirements are met:

(a) the strata lot is in a strata plan that, with or without contiguous strata plans, includes 20 or more strata lots;

(b) the strata lot is rented or offered for rent as overnight accommodation for periods of less than 28 days for at least the prescribed percentage of the 12-month period ending June 30 of the year previous to the taxation year for which the assessment roll is completed.

(1.1) For the purposes of the definitions of "accommodation unit" and "strata accommodation property", an accommodation unit or a strata lot is not rented or offered for rent as overnight accommodation if the accommodation unit or strata lot is used or available for parking, storage or similar purposes or for commercial purposes other than overnight accommodation.

(2) The assessor must determine the actual value of land and improvements and must enter the actual value of the land and improvements in the assessment roll.

(3) In determining actual value, the assessor may, except where this Act has a different requirement, give consideration to the following:

(a) present use;

(b) location;

(c) original cost;

(d) replacement cost;

(e) revenue or rental value;

(f) selling price of the land and improvements and comparable land and improvements;

(g) economic and functional obsolescence;

(h) any other circumstances affecting the value of the land and improvements.

(4) Without limiting the application of subsections (1) to (3), if an industrial or commercial undertaking, a business or a public utility enterprise is carried on, the land and improvements used by it must be valued as the property of a going concern.

(5) If the land and improvements are to be assessed under section 26, 27 or 28, the assessor must include in the factors that the assessor considers under subsection (3), any restriction placed on the use of the land and improvements by the owner of the fee.

(6) The duration of the interest of a holder or occupier of land and improvements referred to in subsection (5), or the right of the owner of the fee to terminate that interest, is not a restriction within the meaning of that subsection.

(7) In determining actual value, the assessor must give consideration to any terms or conditions contained, as applicable,

(a) in a covenant registered under section 219 of the *Land Title Act*,

(b) in a covenant or similar instrument registered under a law of a treaty first nation in the land registry office of the treaty first nation, or

(c) in a covenant or similar instrument registered under a Nisg̲a'a law in a Nisg̲a'a land registry.

(7.1) Despite any provision of this Act, if a natural area exemption certificate under Part 7.1 of the *Islands Trust Act* applies to a parcel, the actual value of the parcel is deemed to be what it would be if

(a) the protection covenant to which the natural area exemption certificate relates did not apply, and

(b) no natural area exemption certificate was in effect.

(8) Despite any requirement of this section respecting actual value, if the assessor receives, on or before January 31 in any year, from the owner and occupier of eligible residential property, a notice in the form prescribed by the assessment authority that the owner and occupier owned and occupied the eligible residential property as the owner and occupier's principal place of residence during the entire 10 year period ending on the preceding October 31, the actual value of the eligible residential property, for the purpose of the assessment roll for the calendar year following that October 31, must be determined taking into consideration only the actual use of the land and improvements that comprise the eligible residential property and not taking into consideration any other use to which the land or improvements could be put.

(9) If eligible residential property is the subject of a notice referred to in subsection (8) and the eligible residential property is, during the lifetime of the owner and occupier, or by will or on an intestacy, transferred to the spouse of the owner and occupier, the notice continues to be a valid notice for the purposes of subsection (8), and the spouse to whom the property is transferred is deemed to have owned and occupied the eligible residential property as that spouse's principal place of residence for the period referred to in subsection (8) and may in subsequent years give the notice referred to in subsection (8) on that basis.

(10) Despite any requirement of this section respecting actual value, the actual value of land and improvements must be determined by taking into consideration the terms and conditions of any heritage protection of the property if, on October 31 following the valuation date under section 18, land and improvements, or a portion of the land and improvements, is

(a) designated under section 9 of the *Heritage Conservation Act*,

(b) designated under section 611 of the *Local Government Act* or section 593 of the *Vancouver Charter*,

(c) included under section 614 (3) (b) of the *Local Government Act* in a schedule to an official community plan,

(d) treaty lands designated under a law of the treaty first nation enacted for the purpose of conserving and protecting heritage sites and heritage objects, or

(e) Nisg̲a'a Lands designated under a Nisg̲a'a law enacted for the purpose of conserving and protecting heritage sites and heritage objects.

(11) Despite this or any other Act, the assessor, unless ordered by the board of directors of the assessment authority, need not, in respect of land and improvements that are exempt from taxation,

(a) assess the land and improvements, or

(b) prepare an annual assessment roll.

(12) Despite this or any other Act, improvements designed, constructed or installed to provide emergency protection for persons or domestic animals in the event of an emergency within the meaning of the *Emergency and Disaster Management Act* are exempt from assessment.

(13) Land and improvements must be assessed at their actual value.

(14) The Lieutenant Governor in Council must prescribe classes of property for the purpose of administering property taxes and must define the types or uses of land or improvements, or both, to be included in each property class.

(14.01) If the Lieutenant Governor in Council prescribes supportive housing property as a class of property under subsection (14), the Lieutenant Governor in Council may, by regulation, designate eligible supportive housing property as included in the supportive housing property class for a taxation year rather than defining the types or uses of land or improvements to be included in that property class.

(14.02) A designation under subsection (14.01)

(a) is to be by assessment roll number, and

(b) applies to the property that is identified by the assessment roll number and that is used for the provision of supportive housing or for purposes ancillary to the provision of supportive housing.

(14.03) Subject to subsection (14.04), in order to be effective for a taxation year, a regulation under subsection (14.01) must be in force on or before October 31 in the preceding year.

(14.04) If eligible supportive housing property

(a) is included on a supplementary roll under section 26 (5) (a), and

(b) is designated under subsection (14.01) of this section,

the designation, regardless of when the regulation under subsection (14.01) comes into force, is effective for that portion of the taxation year on and after the date that the assessor made the entry on the supplementary roll.

(14.1) The Lieutenant Governor in Council may make regulations as follows:

(a) prescribing a percentage for the purposes of the definition of "strata accommodation property";

(a.1) for the purposes of the definition of "accommodation unit", prescribing a percentage;

(a.2) for the purposes of the definition of "leasehold accommodation property", prescribing a number of leasehold units;

(a.3) for the purposes of the definition of "leasehold unit", prescribing a number of years;

(b) respecting the inclusion of leasehold accommodation property or strata accommodation property in the class 1 property class for all or a portion of a year if specified conditions are met, which conditions may relate to any matters respecting the property, including matters other than the defined type or use of land and improvements included in that property class;

(c) providing that strata accommodation property is not included in the class 1 property class if the owner of the strata accommodation property, and if the owner is a corporation, any affiliate, as defined in the *Business Corporations Act*, of the owner, own more than a prescribed number or percentage of strata accommodation properties in a strata plan or in contiguous strata plans;

(c.1) providing that leasehold accommodation property is not included in the class 1 property class if a lessee of a leasehold unit in the leasehold accommodation property, and if the lessee is a corporation, any affiliate, as defined in the *Business Corporations Act*, of the lessee, lease more than a prescribed number or percentage of the leasehold units in the leasehold accommodation property;

(c.2) providing that leasehold accommodation property is not included in the class 1 property class if the property has more than a prescribed number or percentage of accommodation units that are not leasehold units;

(d) requiring the owner of a prescribed type of strata lot to supply to the assessment authority, by a prescribed date, prescribed information respecting the property required by the assessment authority to assess the property, and different dates and information may be prescribed for different types of strata lots;

(d.1) requiring the owner of a prescribed type of leasehold accommodation property to supply to the assessment authority, by a prescribed date, prescribed information respecting the property required by the assessment authority to assess the property, and different dates and information may be prescribed for different types of properties;

(d.2) prescribing information for the purposes of subsection (14.2) or (14.4);

(e) in relation to property that is classified in 2 or more property classes, respecting the attribution of the actual value of the property to each class by the assessor.

(14.2) If a regulation made under subsection (14.1) (d) requires an owner to supply information respecting a strata lot, the owner may supply prescribed information in the form of an average number for all of the strata lots of that type in the strata plan.

(14.3) For the purposes of a regulation made under subsection (14.1) (d), an average number supplied under subsection (14.2) is deemed to be information supplied by the owner in respect of the strata lot, subject to the owner supplying information that is specifically in respect of the strata lot.

(14.4) If a regulation made under subsection (14.1) (d.1) requires an owner to supply information respecting accommodation units in a leasehold accommodation property, the owner may

supply prescribed information in the form of an average number for all of the accommodation units in the leasehold accommodation property.

(14.5) For the purposes of a regulation made under subsection (14.1) (d.1), an average number supplied under subsection (14.4) is deemed to be information supplied by the owner in respect of each accommodation unit in the leasehold accommodation property, subject to the owner supplying information that is specifically in respect of an accommodation unit.

(15) The actual values of land and improvements determined under this section must be set down separately on the assessment notice and in the assessment roll together with information specified under section 3 (3).

Continued classification of strata lot in class 1

19.1 (1) Despite the regulations under section 19, the assessor must classify a strata lot as being in the class 1 property class if

(a) except in respect of classifying the strata lot for the 2008 taxation year, the strata lot

(i) was classified as being only in the class 1 property class for the previous taxation year, and

(ii) met the requirements in paragraph (b) when the strata lot was classified for the previous taxation year, and

(b) the strata lot meets the following requirements:

(i) the strata lot is in a strata plan that, with or without contiguous strata plans, includes 20 or more strata lots;

(ii) the strata lot is used or available for overnight accommodation;

(iii) the strata lot is not

(A) controlled or managed by one or more persons who control or manage 85% or more of the strata lots in the strata plan or contiguous strata plans referred to in subparagraph (i), or

(B) offered for rent, or rented, for periods of less than 7 days as overnight accommodation for at least 50% of the 12-month period ending on June 30 of the year previous to the taxation year for which the assessment roll is completed.

(2) For the purposes of subsection (1) (b) (ii), a strata lot is not used or available for overnight accommodation if the strata lot is used or available for parking, storage or similar purposes or for commercial purposes other than overnight accommodation.

Classification of treaty lands or Nisga'a Lands in supportive housing class

19.2 (1) This section applies if the Lieutenant Governor in Council prescribes supportive housing property as a class of property under section 19 (14).

(2) A treaty first nation may, by law, designate as included in the supportive housing property class for a taxation year eligible supportive housing property that meets the following criteria:

(a) the property is located within the treaty lands of the treaty first nation;

(b) the property is used for the provision of supportive housing or for purposes ancillary to the provision of supportive housing;

(c) the property meets other criteria that are set out in a law of the treaty first nation.

(3) The Nisg̲a'a Lisims Government may, by law, designate as included in the supportive housing property class for a taxation year eligible supportive housing property that meets the following criteria:

(a) the property is located within Nisg̲a'a Lands;

(b) the property is used for the provision of supportive housing or for purposes ancillary to the provision of supportive housing;

(c) the property meets other criteria that are set out in a Nisg̲a'a law.

(4) A designation under subsection (2) or (3) is to be by assessment roll number.

(5) In order to be effective for a taxation year, a law under subsection (2) or (3) must be in force on or before October 31 in the preceding year.

Classification of treaty lands or Nisg̲a'a Lands in class 8

19.3 (1) A treaty first nation may, by law, require the following property to be classified as class 8 property:

(a) land within its treaty lands that is used predominantly as an outdoor recreational facility for an activity or use specified in the treaty first nation's law;

(b) that part of any land and improvements within its treaty lands that is used predominantly for a cultural activity or community purpose specified in the treaty first nation's law.

(2) The Nisg̲a'a Lisims Government may, by law, require the following property to be classified as class 8 property:

(a) land within the Nisg̲a'a Lands that is used predominantly as an outdoor recreational facility for an activity or use specified in the Nisg̲a'a law;

(b) that part of any land and improvements within the Nisg̲a'a Lands that is used predominantly for a cultural activity or community purpose specified in the Nisg̲a'a law.

Major industry valuation

20 (1) In this section:

"cost of industrial improvement" means the cost of replacing an existing industrial improvement with an improvement that

(a) has the same area and volume as the existing industrial improvement,

(b) serves the same function that the existing industrial improvement was designed for or, if the existing industrial improvement is no longer used for that function, serves the same function that the existing industrial improvement now serves, and

(c) is constructed using current, generally accepted construction techniques and materials for the type of improvement being constructed;

"eligible major industry property" means land and improvements that comprise property of the class described in subsection (3), or a portion of land and improvements that comprise

that property, the actual value of which is directly affected by a local government's adoption of an official community plan under the *Local Government Act*;

"industrial improvement", subject to subsection (2), means an improvement that is part of a plant, whether or not the plant can be operated as a going concern or is temporarily or permanently unprofitable, if the plant is designed and built for the purpose of one or more of the following:

(a) mining, extracting, beneficiating or milling of metallic or non-metallic ore;

(b) mining, breaking, washing, grading or beneficiating of coal;

(c) producing of aluminum;

(d) smelting or refining of metal from ore or ore concentrate;

(e) producing, manufacturing, processing or refining of petroleum or natural gas;

(f) manufacturing of lumber or other sawmill and planing mill products;

(g) manufacturing of wood veneer, plywood, particle board, wafer board, hardboard and similar products;

(h) manufacturing of gypsum board;

(i) manufacturing of pulp, paper or linerboard;

(j) manufacturing of chemicals;

(k) manufacturing of chemical fertilizer;

(l) manufacturing of synthetic resins or the compounding of synthetic resins into moulding compounds;

(m) manufacturing of cement;

(n) manufacturing of insulation;

(o) manufacturing sheet glass or glass bottles;

(p) building, refitting or repairing ships;

(q) loading cargo onto sea-going ships or barges, and associated cargo storage and loading facilities, including grain elevators;

"relevant year", in relation to eligible major industry property, means the year in which the official community plan described in the definition of "eligible major industry property" was adopted in respect of the property.

(2) The Lieutenant Governor in Council may exempt from the definition of "industrial improvement" improvements in a plant or class of plant that has less than a prescribed capacity and may prescribe different capacities for different types of plants.

(3) Despite section 19, there is continued a class of properties consisting of

(a) land used in conjunction with the operation of industrial improvements, and

(b) industrial improvements.

(4) The actual value of properties to which this section applies is

(a) the actual value of the land as determined under section 19 or 20.3, and

(b) the cost of industrial improvements less depreciation that is at a rate and applied in a manner prescribed by the Lieutenant Governor in Council, and the Lieutenant

Governor in Council may prescribe different rates and different manners of application of depreciation for individual properties or classes or types of properties.

(5) For the purposes of the definition of "cost of industrial improvement" in subsection (1), subject to the prior approval of the Lieutenant Governor in Council, the assessment authority by order may establish or adopt by reference manuals establishing rates, formulas, rules or principles for the calculation of the cost of replacing an existing industrial improvement described in that definition.

(5.1) Copies, in print or electronic format, of the manuals established or adopted under subsection (5) must be

(a) kept at the offices of the assessment authority, and

(b) made available for public inspection at those offices during normal office hours.

(6) If, for the year 2000 and subsequent taxation years, in the opinion of the Lieutenant Governor in Council the assessed values for a class of plant are substantially different in a taxation year than they were in the previous taxation year, the Lieutenant Governor in Council may, by regulation, order that the changes in assessed values be phased in by the assessment authority as directed in the regulation.

(7) For the purposes of subsection (6), the Lieutenant Governor in Council may make regulations specifying classes of plants for which changes in assessed values are to be phased in over a period of up to 3 years and for that purpose may make regulations

(a) prescribing the manner in which the changes in assessed values are to be phased in, and

(b) prescribing different rates and different periods of time for the phasing in of changes in assessed values for different classes of plants.

(8) Despite sections 18 (2) and 19 respecting actual value, but subject to subsections (9) and (12) of this section, if the assessor receives, on or before December 31 in the relevant year, from the owner and occupier of eligible major industry property, a notice in the form prescribed by the assessment authority that, during the 2 taxation years following the relevant year, the owner and occupier intends

(a) to operate the industrial improvements on the eligible major industry property as a going concern, and

(b) to use the eligible major industry property for the same purpose and at an equivalent or greater level of production as at the time the notice is given,

the actual value of the eligible major industry property, for the purpose of the assessment roll for the 2 taxation years following the relevant year, must be determined by taking into consideration only the actual use of the land and improvements that comprise the eligible major industry property and not taking into consideration any other use to which the land or improvements could be put.

(9) If, after completing an assessment roll for a taxation year referred to in subsection (8), the assessor determines that, at any time before December 31 in that year, the operation or use of eligible major industry property for which notice was given under that subsection is not consistent with the operation or use described in the notice, the assessor must

(a) determine the actual value of the eligible major industry property in accordance with subsection (4), and

(b) reassess the eligible major industry property by means of an entry on a supplementary assessment roll.

(10) If, on or before October 31 in the later of the 2 taxation years referred to in subsection (8), the assessor receives, from the owner and occupier of eligible major industry property for which notice was given under that subsection, a notice in the form prescribed by the assessment authority that, during one or more subsequent taxation years, the owner and occupier intends

(a) to operate the industrial improvements on the eligible major industry property as a going concern, and

(b) to use the eligible major industry property for the same purpose and at an equivalent or greater level of production as at the time notice was given under subsection (8),

the Lieutenant Governor in Council, by order made on or before December 31 in the later of the 2 taxation years referred to in subsection (8), may extend the application of that subsection to the eligible major industry property for one or more subsequent taxation years, as specified in the order.

(11) If an order is made under subsection (10) in respect of eligible major industry property for a taxation year,

(a) despite sections 18 (2) and 19 respecting actual value, but subject to paragraph (b) of this subsection, the actual value of the eligible major industry property for the purpose of the assessment roll for the taxation year must be determined in accordance with subsection (8) of this section, and

(b) subsection (9) applies in relation to the eligible major industry property for the taxation year.

(12) Notice may be provided under subsection (8) or (10) only once in relation to an eligible major industry property.

Special valuation rules for dams, power plants and substations

20.1 (1) In this section:

"dam" means any structure designed and built to control or store water flowing in a water course for the purposes of, or for purposes ancillary to, generating electricity;

"power plant" means any structure designed and built to

(a) contain boilers, turbines or compressors for the purposes of, or for purposes ancillary to, generating electricity, or

(b) support, contain or have affixed to it components that convert sunlight into electricity, either directly or indirectly, if the primary purpose of the structure is for use in the business of generating electricity;

"substation" means a facility at which electric current is switched, transformed or converted

(a) at a dam or a power plant,

(b) between a power plant and a transmission system, or

(c) between a transmission system and a distribution network.

(2) This section applies to properties where there is a dam, power plant or substation, other than properties to which section 20 applies.

(3) Despite any other section of this Act, the actual value of a property to which this section applies is

(a) the actual value of the land as determined under section 19 or 20.3, and

(b) the cost of

(i) the dams, power plants and substations on the property, and

(ii) any other improvements on the property, except those exempted under subsection (4.1),

determined in accordance with the manuals described in subsection (4) of this section, less depreciation determined in accordance with the rates and applied in the manner prescribed under subsection (4.1) of this section.

(4) For the purposes of this section, subject to the prior approval of the Lieutenant Governor in Council, the assessment authority by order may establish or adopt by reference manuals establishing rates, formulas, rules or principles for the calculation of cost.

(4.1) For the purposes of this section, the Lieutenant Governor in Council may make regulations

(a) excluding from the definition of "improvements" any category or type of thing used in the generation of electricity at a power plant, and

(b) prescribing depreciation rates and principles for the application of depreciation.

(5) Orders under subsection (4) and regulations under subsection (4.1) (b) may be different for individual properties or properties with different categories of dams, power plants and substations.

(6) Copies, in print or electronic format, of the manuals established or adopted by order under subsection (4) must be

(a) kept at the offices of the assessment authority, and

(b) made available for public inspection at those offices during normal office hours.

Special valuation rules for designated ski hill property

20.2 (1) In this section:

"designated ski hill property" means eligible property that is designated under subsection (4) (a);

"eligible property" means land identified by a specific assessment roll number, and any improvements on that land, if the following apply to the property:

(a) in the case of land on which there are improvements, all the improvements are recreational improvements;

(b) in the case of land on which there are no improvements, the land is necessarily incidental to the provision of recreational activities on a ski hill;

"recreational improvements" means improvements used to provide recreational activities on a ski hill, including

(a) lifts, tows, day-use facilities, parking facilities, trails, snowmaking piping, surfaced pathways, service roads or other facilities or works, and

(b) utilities that support the facilities or works referred to in paragraph (a) and that are not assessed as property in class 2 under the Prescribed Classes of Property Regulation.

(2) The actual value of designated ski hill property is the actual value as determined in accordance with the regulations.

(3) For the purposes of entry on the assessment roll, the actual value by classification of land and improvements that are designated ski hill property is the actual value of the designated ski hill property apportioned to the land and improvements in each property class in accordance with the regulations.

(4) For the purposes of this section, the Lieutenant Governor in Council may make regulations as follows:

(a) designating eligible property as ski hill property;

(b) establishing rates, formulas, rules or principles for determining the actual value of designated ski hill property;

(c) respecting the apportionment of the actual value of designated ski hill property between property classes and between land and improvements for the purposes of entry on the assessment roll.

(5) A designation under subsection (4) (a)

(a) is to be by assessment roll number, and

(b) applies to the land identified by the assessment roll number and to all improvements on that land, whether the improvements were on the land at the date of designation or added later.

(6) In order to be effective for a taxation year, a regulation under subsection (4) (a) must be in force on or before October 31 in the preceding year.

(7) Without limiting subsection (4) (b), regulations made under that subsection may do one or more of the following:

(a) determine actual value based in whole or in part on revenue relating to the designated ski hill property;

(b) treat designated ski hill properties as one designated ski hill property for the purposes of determining actual value and provide for the apportionment of the actual value between the designated ski hill properties;

(c) in determining actual value, provide for adjustments in respect of fluctuating revenues or actual value over a specified period.

(8) In making regulations under this section, the Lieutenant Governor in Council may do one or both of the following:

(a) define classes of designated ski hill properties;

(b) make different regulations for different designated ski hill properties or for different classes defined under paragraph (a).

Special valuation rules for designated port land

20.3 (1) In this section:

"designated port land" means land that

(a) is designated under subsection (3) (a), and

(b) is assessed as property in the class referred to in section 20 (3);

"eligible port land" means land identified by a specific assessment roll number if the following apply to that land and the improvements on that land:

(a) the land is located next to a navigable waterway;

(b) the land and the improvements on that land are assessed, in whole or in part, as property in the class referred to in section 20 (3);

(c) the land and improvements on that land

(i) include one or more improvements that are assessed as property in the class referred to in section 20 (3) by reason of being industrial improvements within the meaning of paragraph (q) *[sea-going cargo loading and storage]* of the definition of "industrial improvement" in section 20 (1), or

(ii) are used or held primarily in association with property that is otherwise eligible port land;

(d) the land and the improvements on that land, when considered as a whole, are not primarily used or held for the purpose of the transport of crude oil or petroleum fuel products or both, or for purposes that are ancillary to that transport;

(e) the improvements referred to in paragraph (c) (i) are not primarily used or held for the purpose of the transport of products from an industrial production or processing facility that is on the land or is near that land, or for purposes that are ancillary to that transport.

(2) The actual value of designated port land is the actual value as determined in accordance with the regulations.

(3) For the purposes of this section, the Lieutenant Governor in Council may make regulations as follows:

(a) designating land that is eligible port land on the date of designation;

(b) prescribing the actual value of designated port land;

(c) establishing rates, formulas, rules or principles for determining the actual value of designated port land.

(4) A designation under subsection (3) (a)

(a) is to be by assessment roll number as at a date specified in the regulation, and

(b) applies to the land that

(i) is identified by the assessment roll number, and

(ii) is assessed as property in the class referred to in section 20 (3).

(5) [Repealed 2010-2-59.]

(6) Despite section 74 (5), if land

(a) is included on a supplementary roll under section 26 (5) (a), and

(b) is designated under subsection (3) (a) of this section,

the designation, regardless of when the regulation under subsection (3) (a) comes into force, is effective for that portion of the taxation year on and after the date that the assessor made the entry on the supplementary roll.

(6.1) Despite section 74 (5), if

(a) an entry is made on a supplementary roll under section 26 (5) (b) with respect to land that is designated under subsection (3) (a) of this section, and

(b) the Lieutenant Governor in Council rescinds the designation,

the rescission, regardless of when the regulation rescinding the designation comes into force, is effective for that portion of the taxation year on and after the date that the assessor made the entry on the supplementary roll.

(7) Without limiting subsection (3) (c), in making regulations under that subsection, the Lieutenant Governor in Council may provide for

(a) the use of a consumer price index published by Statistics Canada under the *Statistics Act* (Canada), and

(b) any matters respecting the use of a consumer price index.

Special valuation rules for supportive housing property

20.4 (1) Despite any other section of this Act, the actual value of a property in the supportive housing property class is the actual value otherwise determined under this Act reduced by an amount established by the Lieutenant Governor in Council by regulation.

(2) For the purposes of this section, the Lieutenant Governor in Council may make regulations as follows:

(a) establishing the amount for the purposes of subsection (1);

(b) establishing rates, formulas, rules or principles for determining the amount for the purposes of subsection (1);

(c) respecting the apportionment of the actual value of property in the supportive housing property class between land and improvements for the purposes of entry on the assessment roll.

Special valuation rules for restricted-use property

20.5 (1) In this section:

"designated restricted-use property" means eligible property that is designated under subsection (4) (a);

"eligible person" means a prescribed person or a person in a prescribed category of persons who uses property under a restricted-use agreement on a not-for-profit basis or whose use of property under a restricted-use agreement is publicly funded;

"eligible property", in relation to a taxation year, means property

(a) that is used by an eligible person, and

(b) that is either

(i) to be assessed under section 26, 27 or 28, or

(ii) owned by a not-for-profit corporation and held or occupied under a lease, licence or other agreement, whether or not the property is to be assessed under section 26, 27 or 28;

"restricted-use agreement", with respect to a property, means a lease, licence or other agreement under which the use of the property is restricted to the provision of a service of benefit to the public.

(2) The actual value of designated restricted-use property is the actual value as determined in accordance with the regulations.

(3) For the purposes of entry on the assessment roll, the actual value by classification of land and improvements that are designated restricted-use property is the actual value of the designated restricted-use property apportioned to the land and improvements in each property class in accordance with the regulations.

(4) For the purposes of this section, the Lieutenant Governor in Council may make regulations as follows:

(a) designating eligible property as restricted-use property;

(b) prescribing persons or categories of persons for the purposes of the definition of "eligible person" in subsection (1);

(c) prescribing the actual value of designated restricted-use property;

(d) establishing rates, formulas, rules or principles for determining the actual value of designated restricted-use property;

(e) respecting the apportionment of the actual value of designated restricted-use property between property classes and between land and improvements for the purposes of entry on the assessment roll.

(5) A designation under subsection (4) (a)

(a) is to be by assessment roll number, and

(b) applies to the property identified by the assessment roll number.

(6) Despite section 74 (5), if property

(a) is included on a supplementary roll under section 26 (5) (a), and

(b) is designated under subsection (4) (a) of this section,

the designation, regardless of when the regulation under subsection (4) (a) comes into force, is effective for that portion of the taxation year on and after the date that the assessor made the entry on the supplementary roll.

(7) Despite section 74 (5), if

(a) an entry is made on a supplementary roll under section 26 (5) (b) with respect to property that is designated under subsection (4) (a) of this section, and

(b) the Lieutenant Governor in Council rescinds the designation,

the rescission, regardless of when the regulation rescinding the designation comes into force, is effective for that portion of the taxation year on and after the date that the assessor made the entry on the supplementary roll.

(8) Without limiting subsection (4) (c) or (d), regulations made under that subsection may do one or both of the following:

(a) in determining actual value, provide for adjustments over a specified period;

(b) provide for the use of a consumer price index published by Statistics Canada under the *Statistics Act* (Canada) and for any matters respecting that use.

(9) In making regulations under this section, the Lieutenant Governor in Council may do one or both of the following:

(a) define categories of designated restricted-use property;

(b) make different regulations for different designated restricted-use properties or categories defined under paragraph (a).

Valuation for certain purposes not actual value

21 (1) The actual value of the following must be determined using rates prescribed by the assessment authority:

(a) the pole lines, metallic or fibre optic cables, towers, poles, wires, transformers, conduits and mains of a telecommunications, trolley coach, bus or electrical power corporation, but not including substations;

(b) the track in place of a railway corporation, whether the track is on a public highway or on a privately owned right of way;

(c) the pipe lines of a pipe line corporation for the transportation of petroleum, petroleum products or natural gas, including valves, cleanouts, fastenings, and appurtenances located on the right of way, but not including distribution pipelines, pumping equipment, compressor equipment, storage tanks and buildings;

(d) the right of way for pole lines, cables, towers, poles, wires, transformers, conduits, mains and pipe lines referred to in paragraphs (a) and (c);

(e) the right of way for track referred to in paragraph (b).

(2) In prescribing rates respecting improvements referred to in subsection (1) (a) to (c), the assessment authority

(a) must base the rates on the average current cost of the existing improvements,

(b) may, within the rates, make an allowance for physical depreciation,

(b.1) may, within the rates, make an allowance for a decline in the cost of constructing or installing a similar improvement of the same or similar functional utility,

(c) may express the rates in terms of an amount

(i) per customer served by the improvements, or

(ii) per kilometre of the improvements that may vary according to

(A) the size of the improvements,

(B) the capacity of the improvements,

(C) the type of use or extent of use of the improvements, or

(D) the location of the improvements, and

(d) may prescribe different rates or a reduction in rates for improvements that should, in the opinion of the assessment authority, be valued differently from other improvements of the same type by reason of

(i) lack of use for a period specified in the regulation,

(ii) in the case of railway track in place, use at less than its annual rated capacity, or

(iii) other special circumstances that are specified in the regulation and relate to the construction or installation of the improvements.

(3) For the purposes of subsection (2):

"average current cost" means the cost to construct or install the existing improvements

(a) including all materials, labour, overhead and indirect costs, and

(b) assuming the improvements were to be constructed or installed

(i) on July 1 in the year previous to the year in which the assessment roll is prepared, and

(ii) at a location that has average construction and installation difficulty;

"functional utility" means the ability of an improvement to meet market standards.

(4) In prescribing rates respecting the right of way referred to in subsection (1) (d) and (e), the assessment authority must base the rates on the criteria prescribed under section 74 (2) (f).

(4.1) If, in the opinion of the assessment authority, the rate prescribed for the purposes of subsection (1) is substantially different in a taxation year than it was in the previous taxation year, the assessment authority, by regulation, may order that the rate change be phased in as directed in the regulation.

(4.2) For the purposes of subsection (4.1), the assessment authority may make regulations specifying types of improvements or rights of way for which rate changes are to be phased in over a period of up to 5 years and for that purpose may make regulations

(a) prescribing the manner in which the rate changes are to be phased in, and

(b) prescribing different rates and periods of time for the phasing in of rate changes for different types of improvements or rights of way.

(5) The rates prescribed by the assessment authority are subject to appeal to the board by notice filed with the board and the assessment authority before February 1 following delivery of the assessment notice.

(6) An appeal under subsection (5) of rates prescribed in respect of improvements referred to in subsection (1) (a) to (c) must be made, heard and decided only on the ground that the assessment authority did not prescribe the rates in accordance with one or more of subsection (2) (a), (b) or (b.1).

(7) The notice of appeal filed with the board must be accompanied by the prescribed fee.

(8) For the purposes of an appeal under this section, sections 50 (4) (b) to (g) and (5), 52 (2), 55 and 59 to 62 and Part 7 apply with all necessary changes.

(9) If, on an appeal referred to in subsection (6), the board decides that the assessment authority did not prescribe the rates in accordance with one or both of paragraphs (a) and (b) of subsection (2), the board must

(a) refer the rates back to the assessment authority for the purpose of prescribing new rates under subsection (10), and

(b) advise the assessment authority of its reasons.

(10) If rates prescribed under subsection (1) (a), (b) or (c) are referred back to the assessment authority by the board, the assessment authority may prescribe new rates to replace those rates within

(a) 3 months after the date on which the board referred the rates back to the assessment authority, or

(b) a period of time longer than 3 months that the board, on application by the assessment authority, may direct.

(11) Rates prescribed under subsection (1) (a), (b) or (c) that are referred back to the assessment authority by the board remain in full force until

(a) new rates are prescribed under subsection (10), or

(b) the time for prescribing new rates under subsection (10) has expired,

whichever is earlier.

(12) Rates prescribed under subsection (10)

(a) apply for the purposes of assessment and taxation for the taxation years to which the rates they are replacing applied, and

(b) may, within one month after the date on which they were prescribed, be appealed as if they were rates prescribed under subsection (1).

(13) For the purposes of subsection (1) (d), **"right of way"** does not include

(a) land of which the corporation referred to in subsection (1) (a) or (c) is not the owner within the meaning of this Act, and

(b) land that the corporation referred to in subsection (1) (a) or (c) leases to a lessee.

(14) For the purposes of subsection (1) (e), **"right of way"** means land that meets the criteria prescribed under section 74 (2) (e).

(15) For the purpose of applying subsection (1) (b), the **"track in place of a railway corporation"** includes all structures, erections and things, other than any buildings, bridges, trestles, viaducts, overpasses and similar things, coal bunkers, corrals, stand pipes, fuel oil storage tanks, oil fuelling equipment, water tanks, station houses, engine houses, roundhouses, turntables, docks, wharves, freight sheds, weigh scales, repair and cleaning shops and equipment, boiler houses, offices, sand towers and equipment, pavement, platforms, yard fencing and lighting, powerhouses, transmission stations or substations, and the separate equipment for each of them, that are necessary for the operation of the railway.

Special rules for railway property

22 (1) The Lieutenant Governor in Council may make regulations as follows:

(a) excluding from the definition of "improvements" bridges, trestles, viaducts, overpasses and similar things that carry track in place of a railway corporation;

(b) prescribing adjustment factors for property of a railway corporation;

(c) prescribing, for the purposes of section 21 (1) (e), in relation to a specified jurisdiction or authority to or for which taxes are to be paid, or a specified class of those jurisdictions and authorities, criteria for land that is to be dealt with as right of way that differ from the criteria prescribed under section 74 (2) (e).

(2) Regulations under this section may be different for one or more of the following:

(a) different property to which different rates under section 21 apply;

(b) different bridges and other property as specified in the regulations;

(c) different jurisdictions or authorities to or for which taxes are to be paid, or classes of those jurisdictions or authorities;

(d) different areas or classes of area as specified in the regulations.

(3) The Lieutenant Governor in Council may make a regulation under this section only after the minister has consulted with representatives of the Union of British Columbia Municipalities respecting the proposed regulation.

(4) Despite any other section of this Act, the actual value of property for which an adjustment factor is prescribed under subsection (1) (b), other than property to which section 25 applies, is the actual value as otherwise determined under this Act multiplied by the adjustment factor.

(5) For the 1996 taxation year, the Lieutenant Governor in Council may make a regulation under this section only in relation to taxes under the *School Act*.

Classification of land as a farm

23 (0.1) In this section:

"owner's dwelling" means the dwelling referred to in subsection (3.1) (a) (iii);

"retire" means retire from being actively involved in the day-to-day activities on a farm;

"retired farmer" means an individual

(a) who, at all times during a prescribed period or periods of time,

(i) occupied, as the individual's principal residence, a dwelling that was owned by the individual or the individual's spouse and was located on land that was

(A) owned by the individual or the individual's spouse,

(B) used for the dwelling, and

(C) classified as a farm, and

(ii) was actively involved in the day-to-day activities on land that was

(A) owned by the individual or the individual's spouse,

(B) classified as a farm, and

(C) part of the parcel or adjacent to the parcel on which the dwelling was located, and

(b) who has retired.

(1) An owner of land who wants all or part of the land classified as a farm must apply to the assessor using the application form, and following the procedure, prescribed by the assessment authority.

(2) Subject to this Act, the assessor must classify as a farm any land, or any part of a parcel of land, that meets the standards prescribed under subsection (3).

(3) The Lieutenant Governor in Council must prescribe standards for classification of land as a farm.

(3.1) Despite this Act and any regulations made under this Act except a regulation made under subsection (3.2), the assessor must, on receipt of an application from an owner of land in respect of a taxation year, classify the land as a farm for the taxation year if the following requirements are met:

(a) when the application is made, the owner

(i) is

(A) a retired farmer,

(B) the spouse of a retired farmer, or

(C) a person who was the spouse of a retired farmer at the time of the retired farmer's death,

(ii) has reached the prescribed age, and

(iii) owns a dwelling on the land and occupies the dwelling as the owner's principal residence;

(b) if the owner is a person referred to in paragraph (a) (i) (B) or (C), the owner meets the prescribed requirements, if any;

(c) when the application is made, the land is used for the owner's dwelling;

(d) when the retired farmer retired,

(i) the retired farmer or the retired farmer's spouse owned the owner's dwelling,

(ii) the owner occupied the owner's dwelling as the owner's principal residence,

(iii) the land was classified as a farm, and

(iv) the retired farmer met the prescribed requirements, if any;

(e) the land is in the agricultural land reserve, within the meaning of the *Agricultural Land Commission Act*, on October 31 of the year preceding the taxation year in respect of which the application is made;

(f) the owner's dwelling is located

(i) on a parcel of land that, under subsection (2), is classified in whole or in part as a farm for the taxation year in respect of which the application is made, or

(ii) on a parcel of land adjacent to a parcel of land

(A) that is owned by the owner or the owner's spouse, and

(B) that, under subsection (2), is classified in whole or in part as a farm for the taxation year in respect of which the application is made;

(g) the application is

(i) in the form prescribed by the assessment authority, and

(ii) received by the assessor on or before October 31 of the year preceding the taxation year in respect of which the application is made;

(h) the requirements, if any, prescribed by regulation.

(3.2) The Lieutenant Governor in Council may make regulations respecting classification of land as a farm under subsection (3.1), including, without limitation, for the purposes of subsections (0.1) and (3.1).

(3.3) In making regulations under subsection (3.2), the Lieutenant Governor in Council may make different regulations for different classes of persons, classes of land, classes of places or classes of things.

(4) Land classified as a farm must, while so classified, be valued at its actual value as a farm, without regard to its value for other purposes.

(5) The actual value of improvements on a farm must be determined under section 19.

(6) If land classified as a farm ceases to meet the standards for that classification merely because the farm is reduced in area as a result of a portion being expropriated for a public purpose, the land continues to be classified as a farm until it no longer meets the standards in some other respect.

(7) For the purposes of valuing a farm under subsection (4), the assessment authority must prescribe land value schedules for use by assessors in determining the actual value of the land as a farm without regard to its value for other purposes.

(8) In subsections (9) and (10), **"assessed value"** means assessed value before exemptions.

(9) If the assessed value determined under section 19 (13) for any year of land classified as a farm exceeds the assessed value for the preceding year by more than 10%, its assessed value for that year is the total of

(a) 110% of the assessed value for the preceding year, and

(b) 25% of the difference between the assessed value determined under section 19 (13) for that year and 110% of the assessed value for the preceding year.

(10) If an obvious error or omission occurred in the preparation of the assessed value in the preceding year, the assessed value under subsection (9) must be determined as though the error or omission had not occurred.

Classification and valuation of forest land

24 (1) In this section:

"council" means the Private Managed Forest Land Council established under section 4 of the *Private Managed Forest Land Act*;

"managed forest land" means land, other than farm land,

(a) that is being used for the production and harvesting of timber,

(b) that is managed in accordance with

(i) the *Private Managed Forest Land Act* and the regulations under that Act, or

(ii) the *Forest and Range Practices Act*,

(c) in respect of which

(i) there is a management commitment under section 17 of the *Private Managed Forest Land Act*, or

(ii) a management plan has been approved under the *Forest Act*,

(d) with respect to paragraphs (b) (i) and (c) (i), for which the assessor

(i) receives notification from the council under section 17 (4) of the *Private Managed Forest Land Act*, and

(ii) has not received notification from the council under section 31 (1) or (2) (b) of the *Private Managed Forest Land Act*, and

(e) that meets other requirements prescribed by regulation of the assessment authority for classification of land as managed forest land under this Act.

(2) The assessor must classify as managed forest land any land that meets the requirements set out in the definition of "managed forest land".

(3) The assessor must declassify all or part of a parcel of land as managed forest land if the assessor is

(a) notified by September 30 of the year in which the assessment roll is completed,

(i) under section 31 (1) of the *Private Managed Forest Land Act* that the owner or a contractor, an employee or an agent of the owner has contravened or is contravening a provision of that Act or the regulations made under it, or

(ii) under section 31 (2) (b) of the *Private Managed Forest Land Act* that the owner has withdrawn the owner's management commitment, or

(b) not satisfied, on September 30 of the year in which the assessment roll is completed, that the land meets all requirements to be classified as managed forest land.

(4) The actual value of managed forest land is the total of

(a) the value that the land has for the purpose of growing and harvesting trees, but without taking into account the existence on the land of any trees, and

(b) a value for cut timber determined in accordance with subsection (8).

(5) Despite subsection (4), if land is classified as managed forest land but its classification changes before the value of timber cut on the land is added to the value of the land for assessment purposes,

(a) the value of the cut timber must be added to the value of the land, and

(b) the cut timber must be assessed as if the land were still managed forest land.

(6) The actual value of managed forest land must be determined on the basis of its topography, accessibility, soil quality, parcel size and location.

(7) For the purpose of valuing managed forest land, the assessment authority must prescribe land value schedules for use by assessors in determining the actual value of the land.

(8) The value of cut timber referred to in subsection (5) (b) must be determined by the assessor as follows:

(a) for the purpose of taxation during an odd numbered year, the value must be determined on the basis of

(i) the scale of that timber under the *Forest Act* during the last odd numbered year before that taxation year, and

(ii) schedules of timber values prescribed by the assessment authority under subsection (9);

(b) for the purpose of taxation during an even numbered year, the value must be determined on the basis of

(i) the scale of that timber under the *Forest Act* during the last even numbered year before that taxation year, and

(ii) schedules of timber values prescribed by the assessment authority under subsection (9).

(9) The assessment authority must prescribe schedules of timber values based on the following factors:

(a) the species and grade of logs;

(b) the locality in which the timber is cut;

(c) in relation to timber cut from a coastal area as defined in the regulations, the average price for logs in the year of cutting determined on the basis of the value reported for the Vancouver log market and the distance from Howe Sound of the parcel on which the cutting occurred;

(d) in relation to timber cut from an interior area as defined in the regulations, the average price for logs, delivered to the nearest sawmill, in the year of cutting determined on the basis of the selling prices of timber products, the costs of milling and the distance from the nearest sawmill of the parcel on which the cutting occurred.

(10) An owner of managed forest land must submit to the assessment authority the following information respecting the forest land:

(a) the volume of timber scaled under the *Forest Act*;

(b) other matters prescribed by regulation of the assessment authority;

(c) other information that the assessment authority may require that is not inconsistent with this Act and the regulations.

Classification and valuation of treaty first nation managed forest land

24.1 (1) In this section:

"forest management objectives" means forest management objectives established by law of a treaty first nation that address the following matters:

(a) conservation of soil;

(b) water quality;

(c) protection of fish habitat;

(d) critical wildlife habitat;

(e) reforestation of areas where timber has been harvested;

"forest management plan" means a plan that contains information about the proposed use of land within the treaty lands of a treaty first nation for the production and harvesting of timber, including, without limitation, the strategies that will be used to attain the forest management objectives of the treaty first nation during and following the production and harvesting of timber;

"treaty first nation managed forest land" means land, other than farm land, within the treaty lands of a treaty first nation

(a) that is being used for the production and harvesting of timber,

(b) that is managed in accordance with the treaty first nation's laws respecting forest management,

(c) in respect of which a forest management plan has been approved under the laws of the treaty first nation, and

(d) in respect of which the assessor receives a recommendation under subsection (2).

(2) If a treaty first nation has, under its law, approved a forest management plan for an area of land within its treaty lands, the treaty first nation may recommend to the assessor that the area of land be classified as managed forest land.

(3) The assessor must classify as managed forest land any land within the treaty lands of a treaty first nation that meets the criteria set out in the definition of "treaty first nation managed forest land".

(4) After classifying land under subsection (3), the assessor must notify the treaty first nation and the owner of the land.

(5) The assessor must declassify as managed forest land all or part of a parcel of land within the treaty lands of a treaty first nation if the assessor is

(a) notified by the treaty first nation, by September 30 of the year in which the assessment roll is completed,

(i) that the owner or a contractor, an employee or an agent of the owner has contravened or is contravening a provision of the treaty first nation's law respecting management of forest land, or

(ii) the owner has withdrawn the owner's forest management plan, or

(b) not satisfied, on September 30 of the year in which the assessment roll is completed, that the land meets all criteria set out in the definition of "treaty first nation managed forest land".

(6) Section 24 (4) to (10) applies for the purpose of determining the actual value of managed forest land classified under subsection (3) of this section.

Classification and valuation of Nisg̲a'a managed forest land

24.2 (1) In this section:

"forest management plan" means a plan that contains information about the proposed use of land within Nisg̲a'a Lands for the production and harvesting of timber, including, without limitation, the strategies that will be used to attain the Nisg̲a'a forest management objectives during and following the production and harvesting of timber;

"Nisg̲a'a forest management objectives" means forest management objectives established by Nisg̲a'a law that address the following matters:

(a) conservation of soil;

(b) water quality;

(c) protection of fish habitat;

(d) critical wildlife habitat;

(e) reforestation of areas where timber has been harvested;

"Nisg̲a'a managed forest land" means land, other than farm land, within the Nisg̲a'a Lands

(a) that is being used for the production and harvesting of timber,

(b) that is managed in accordance with the Nisg̲a'a laws respecting forest management,

(c) in respect of which a forest management plan has been approved under the Nisg̲a'a laws, and

(d) in respect of which the assessor receives a recommendation under subsection (2).

(2) If the Nisg̲a'a Nation has, under Nisg̲a'a law, approved a forest management plan for an area of land within the Nisg̲a'a Lands, the Nisg̲a'a Nation may recommend to the assessor that the area of land be classified as managed forest land.

(3) The assessor must classify as managed forest land any land that meets the criteria set out in the definition of "Nisg̲a'a managed forest land".

(4) After classifying land under subsection (3), the assessor must notify the Nisg̲a'a Nation and the owner of the land.

(5) The assessor must declassify as managed forest land all or part of a parcel of land within the Nisg̲a'a Lands if the assessor is

(a) notified by the Nisg̲a'a Nation, by September 30 of the year in which the assessment roll is completed,

(i) that the owner or a contractor, an employee or an agent of the owner has contravened or is contravening a provision of a Nisg̲a'a law respecting management of forest land, or

(ii) the owner has withdrawn the owner's forest management plan, or

(b) not satisfied, on September 30 of the year in which the assessment roll is completed, that the land meets all criteria set out in the definition of "Nisg̲a'a managed forest land".

(6) Section 24 (4) to (10) applies for the purpose of determining the actual value of managed forest land classified under subsection (3) of this section.

Occupiers of railway land

25 (1) If any parcel liable to assessment is railway land and part of it is leased, that part must be treated under this Act as a separate parcel and a separate entry made on the assessment roll in respect of the land or improvements or both.

(2) If part of a parcel of railway land is treated as a separate parcel under subsection (1), the remainder of the parcel must be treated under this Act as a separate parcel and a separate entry made on the assessment roll in respect of the land or improvements or both.

(3) The actual value of land or improvements, or both, referred to in subsection (1) or (2) must be determined under section 19.

(4) If the whole of any parcel of railway land liable to assessment is leased or a part of a parcel is assessed under subsection (1), the owner or lessee may give notice, with full particulars of the duration of the lease, to the assessor and request that copies of all assessment and tax notices issued during the duration of the lease be sent to the lessee.

(5) After receiving a notice under subsection (4), the assessor must enter the name and address of the lessee on the assessment roll.

Assessment of land the fee of which is in the Crown

26 (1) Land, the fee of which is in the Crown, or in some person on behalf of the Crown, that is held or occupied otherwise than by, or on behalf of, the Crown, is, with the improvements on it, to be assessed in accordance with this section.

(2) The land referred to in subsection (1) with the improvements on it must be entered in the assessment roll in the name of the holder or occupier, whose interest must be valued at the actual value of the land and improvements determined under this Part.

(3) This section applies, with the necessary changes and so far as it is applicable, to improvements owned by, leased to, held, or occupied by some person other than the Crown, located on land the fee of which is in the Crown, or in some person on behalf of the Crown.

(4) This section applies, with the necessary changes and so far as it is applicable, if land is held in trust for a tribe or band of Indians and occupied, in other than an official capacity, by a person who is not an Indian.

(5) As soon as the assessor determines that

(a) land is held or occupied, or

(b) land ceases to be held or occupied

in the manner referred to in subsection (1), the assessor must make an entry on a supplementary roll.

(6) Subsection (5) does not apply in respect of land in a rural area.

Assessment of exempt land held by occupier

27 (1) Land, the fee simple of which is held by or on behalf of a person who is exempted from taxation under an Act, and which is held or occupied otherwise than by or on behalf of that person, is, with its improvements, to be assessed in accordance with this section.

(2) The land and improvements referred to in subsection (1) must be entered in the assessment roll in the name of the holder or occupier, whose interest must be valued at the actual value of the land and improvements determined under this Part.

(3) This section applies to improvements owned by, leased to, held or occupied otherwise than by, or on behalf of, a person exempted from taxation by an Act, located on land the fee simple of which is held by or on behalf of a person exempted from taxation by any Act.

Assessment of land the fee of which is in the municipality

28 (1) Land, the fee of which is in the municipality, held or occupied otherwise than by, or on behalf of, the municipality, is, with the improvements on it, to be assessed in accordance with this section.

(2) The land referred to in subsection (1) with the improvements on it must be entered in the assessment roll in the name of the holder or occupier, whose interest must be valued at the actual value of the land and improvements determined under this Part.

(3) This section applies, with the necessary changes and so far as it is applicable, to improvements owned by, leased to, held, or occupied by some person other than the municipality, located on land the fee of which is in the municipality, or in some person on behalf of the municipality.

(4) This section does not apply to any land or improvements that were exempted from taxation by the municipality under the terms of a lease agreement entered into before July 1, 1997.

Joint interests

29 If land or improvements or both are held or occupied in the manner referred to in section 26, 27 or 28 by 2 or more persons and there is no paramount occupier, the land or improvements or both must be assessed in the names of those persons jointly.

Assessment of an improvement on land under other ownership

30 (1) Any structure, aqueduct, pipe line, tunnel, bridge, dam, reservoir, road, storage tank, transformer, substation, pole lines, cables, towers, poles, wires, transmission equipment or other improvement that extends over, under or through land may be separately assessed to the person owning, leasing, maintaining, operating or using it, even though the land may be owned by some other person.

(2) Each individual residential building located on a land cooperative or multi dwelling leased parcel, as those terms are defined in the *Home Owner Grant Act*, must be separately assessed.

Part 4 — Property Assessment Review Panels

Appointment of property assessment review panels

31 (1) The minister must appoint property assessment review panels, each comprised of 3 members, to review and consider

(a) the annual assessments of land and improvements in British Columbia, and

(b) in accordance with the *South Coast British Columbia Transportation Authority Act*, parking site rolls as that term is defined in section 131 of that Act.

(2) The minister must appoint and designate one member of each panel as the chair of the panel, after a merit-based process, to hold office for an initial term of 3 to 5 years.

(3) The minister may appoint members of a panel, other than the chair, after a merit-based process, to hold office for an initial term of 2 to 4 years.

(4) A member may be reappointed by the minister as a member or chair of a panel for additional terms of up to 5 years.

(5) A member of a review panel must faithfully, honestly and impartially perform the member's duties and must not, except in the proper performance of those duties, disclose to any person any information obtained as a member.

(6) If a member is absent or incapacitated for an extended period of time or expects to be absent for an extended period of time, the minister may appoint another person, who would otherwise be qualified for appointment as a member, to replace the member until the member returns to full duty or the member's term expires, whichever comes first.

(6.1) The appointment of a person to replace a member under subsection (6) is not affected by the member returning to less than full duty.

(7) Sections 1, 4, 6 to 8, 10, 18, 40 (1) to (4), 44, 46.3, 48, 49, 55, 56 and 61 of the *Administrative Tribunals Act* apply to a review panel.

Complaints respecting completed assessment roll

32 (1) Subject to the requirements in section 33, a person may make a complaint against an individual entry in an assessment roll on any of the following grounds:

(a) there is an error or omission respecting the name of a person in the assessment roll;

(b) there is an error or omission respecting land or improvements, or both land and improvements, in the assessment roll;

(c) land or improvements, or both land and improvements, are not assessed at actual value;

(d) land or improvements, or both land and improvements, have been improperly classified;

(e) an exemption has been improperly allowed or disallowed.

(2) Subject to the requirements in section 33, the Minister of Finance or the assessment authority may make a complaint against all or any part of the completed assessment roll, based on any of the grounds specified in subsection (1) of this section.

(3) Subject to the requirements in section 33, a local government may make a complaint against all or any part of the completed assessment roll relating to property in the municipality or regional district, as the case may be, based on any of the grounds specified in subsection (1) of this section.

(3.1) Subject to the requirements in section 33, a treaty first nation may make a complaint against all or any part of the completed assessment roll relating to its treaty lands, based on any of the grounds specified in subsection (1) of this section.

(3.2) Subject to the requirements in section 33, the Nisg̲a'a Nation may make a complaint against all or any part of the completed assessment roll relating to Nisg̲a'a Lands, based on any of the grounds specified in subsection (1) of this section.

(4) Subject to the requirements in section 33, an assessor may make a complaint against all or any part of the assessment roll completed by the assessor, based on any of the grounds specified in subsection (1) of this section.

(5) Without limiting subsections (2) to (4), complaints under those subsections may be in respect of a class, category or type of property or interest in land or improvements, or both land and improvements.

Notice of complaint

33 (1) A person who wishes to make a complaint under section 32 must file notice of the complaint with the assessor responsible for the assessment that is the subject of the complaint.

(2) The notice of complaint must be filed with the assessor no later than January 31 of the year following the year in which the assessment roll is completed under section 3 or changed or amended under section 12, as the case may be.

(3) The notice of complaint must

(a) clearly identify the property in respect of which the complaint is made,

(b) include the full name of the complainant and a telephone number at which the complainant may be contacted during regular business hours,

(c) indicate whether or not the complainant is the owner of the property to which the complaint relates,

(d) if the complainant has an agent to act on the complainant's behalf in respect of the complaint, include the full name of the agent and a telephone number at which the agent may be contacted during regular business hours,

(e) include an address for delivery of any notices in respect of the complaint,

(f) state the grounds on which the complaint is based under section 32 (1), and

(g) include any other prescribed information.

Assessor recommendations

34 Before March 16 of each year, an assessor must, for the purpose of correcting an error or omission under section 10 that is not corrected with the consent of the owner of the affected property, recommend to a review panel changes to the assessment roll completed by the assessor.

Notice of hearing

35 (1) If a complaint is received under section 33 (1) and is not resolved under section 10 (2), the assessor must

(a) set a time for a hearing of the complaint by a review panel before March 16,

(b) deliver notice of the hearing to the complainant's address for delivery, and

(c) if the complainant is not the owner of the property in respect of which the complaint is made, deliver notice of the hearing to each owner of that property.

(2) Despite subsection (1) (c), if the complaint is made under section 32 (2), (3), (3.1), (3.2) or (4), the requirement set out in subsection (1) (c) of this section is satisfied by publication of notice of the hearing in 2 current issues of a newspaper circulating in the municipality, the treaty lands of the treaty first nation, Nisga'a Lands or the other rural area, in which the property that is the subject of the complaint is located.

(3) An assessor is not required to deliver notice of the hearing to the owner of a property affected by a recommendation for change under section 34 if

(a) [Repealed 2003-66-13.]

(b) the recommendation

(i) results in a decrease in the assessed value of the property,

(ii) does not change the classification of the property, and

(iii) does not result in the removal of an exemption.

(4) and (5) [Repealed 2003-66-13.]

(6) A notice under this section must include a statement that the recipient may file written submissions instead of appearing at the hearing.

Daily schedule

36 (1) The daily schedule of matters for review and consideration by a review panel, as set by the assessor, must be posted at the place where the review panel is to meet.

(2) The review panel must proceed to deal with complaints and assessor recommendations in accordance with that schedule, unless the review panel considers a change in the schedule necessary and desirable in the circumstances.

Notice of withdrawal

37 (1) A complainant may apply to withdraw a complaint made under section 33 by filing with the assessor a notice of withdrawal.

(2) The review panel may summarily dismiss the complaint referred to in subsection (1) on consent of the assessor.

(3) No appeal lies under section 50 (1) in respect of summary dismissal of a complaint under subsection (2) of this section.

Duties and powers of review panels

38 (1) A review panel may review and consider the assessment roll and the individual entries made in it to ensure accuracy and that assessments are at actual value applied in a consistent manner in the municipality, treaty lands of the treaty first nation, Nisga'a Lands or other rural area.

(2) For the purpose of subsection (1), a review panel

(a) may investigate the assessment roll and the individual entries made in it, whether or not the investigation is based on a complaint or an assessor recommendation,

(b) must adjudicate the matters set for its consideration under section 36,

(c) when considering whether land or improvements are assessed at actual value, must consider the total assessed value of the land and improvements together, and

(d) may direct amendments to be made to the assessment roll, subject to the requirements of subsections (4) to (6).

(3) Despite subsection (2) (b), the review panel may

(a) refuse to adjudicate a matter set for its consideration if the notice of complaint was not filed in accordance with section 33 (2), and

(b) summarily dismiss a matter set for its consideration if a notice of withdrawal is filed in accordance with section 37.

(4) A review panel must before March 16 complete

(a) any investigation referred to in subsection (2) (a), and

(b) adjudication of the matters set for its consideration under section 36.

(5) If the review panel intends to direct that an amendment be made that is not based on a complaint or on an assessor recommendation and the amendment would

(a) increase the assessed value of the property,

(b) change the classification of the property, or

(c) result in the removal of an exemption,

the review panel must order the assessor to set a hearing in respect of the proposed amendment, giving the owner of the affected property an opportunity to make submissions.

(6) For the purposes of subsection (5), the assessor must, at least 5 days before the hearing, deliver to the owner of the affected property a notice of the hearing and the notice must include

(a) particulars of the proposed amendment, and

(b) a statement that the owner may file written submissions instead of appearing at the hearing.

(7) The chair of the review panel may

(a) determine the procedures to be followed at proceedings of the review panel,

(b) administer an oath or solemn affirmation to a person or witness before the person's or witness's evidence is taken, and

(c) for the purposes of section 36 (2), but subject to the requirement of subsection (4), adjourn the hearings from day to day or from time to time and from place to place within the geographic area of the review panel's jurisdiction.

(8) The chair of the review panel must make a record of a summary dismissal under section 37, a refusal to adjudicate a matter under section 38 (3) (a) and any decision made in relation to an investigation, adjudication or direction by the review panel.

(9) The chair of the review panel must provide the assessor with information necessary to

(a) amend the assessment roll in accordance with a decision referred to in subsection (8), and

(b) provide sufficient notice under section 41 (1).

Power to compel witnesses and order disclosure

39 (1) At any time before or during a hearing, but before its decision, a review panel may make an order requiring a person

(a) to attend an oral or electronic hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in an application, or

(b) to produce for the review panel or a party a document or other thing in the person's possession or control, as specified by the review panel, that is admissible and relevant to an issue in an application.

(2) A review panel may apply to the court for an order

(a) directing a person to comply with an order made by the review panel under subsection (1), or

(b) directing any directors and officers of a person to cause the person to comply with an order made by the review panel under subsection (1).

Burden of proof

40 In a hearing before the review panel, the burden of proof is

(a) on the complainant, or

(b) if the matter concerns an assessor recommendation under section 34, on the assessor.

Notice of decisions and corrections

41 (1) Before April 7 following the sitting of the review panel, the assessor must deliver notice of the decision made by the review panel, or of its refusal to adjudicate the complaint made, to

(a) the owner of the property to which the decision relates, and

(b) the complainant, if the complainant is not the owner.

(1.1) Before April 7, the assessor must deliver notice of the amendment made by the assessor under section 10 (2) to

(a) the owner of the property to which the amendment relates, and

(b) the complainant, if the amendment resolved a complaint and the complainant is not the owner.

(2) Notice under subsection (1) or (1.1) must include

(a) a statement that the decision or amendment may be appealed to the board in accordance with section 50, and

(b) information on the procedures to be followed for initiating the appeal.

Amendment of assessment roll

42 (1) The assessor must ensure that all amendments are made to the assessment roll in accordance with the directions of the review panel under section 38 (2) (d).

(2) [Repealed 2003-66-16.]

Part 5 — Property Assessment Appeal Board

Property assessment appeal board

43 (1) The property assessment appeal board is continued consisting of at least 6 members appointed after a merit-based process as follows:

(a) one member appointed and designated by the Lieutenant Governor in Council as the chair;

(b) one or more members appointed and designated by the Lieutenant Governor in Council as vice chairs after consultation with the chair;

(c) other members appointed by the Lieutenant Governor in Council after consultation with the chair.

(2) The board has jurisdiction to determine

(a) appeals brought under section 50,

(b) appeals from the rates prescribed by the assessment authority under section 21,

(c) complaints referred to the board for its determination under the regulations, and

(d) appeals brought under section 23 of the *Forest Land Reserve Act*.

(3) [Repealed 2015-10-41.]

(4) The chair is the chief executive officer of the board.

(5) to (7) [Repealed 2003-47-15.]

(8) A member of the board must faithfully, honestly and impartially perform the member's duties and must not, except in the proper performance of those duties, disclose to any person any information obtained as a member.

Application of *Administrative Tribunals Act*

43.1 The following provisions of the *Administrative Tribunals Act* apply to the property assessment appeal board:

(a) Part 1 *[Interpretation and Application]*;

(a.1) Part 2 *[Appointments]*;

(b) Part 3 *[Clustering]*;

(b.1) section 11 *[general power to make rules respecting practice and procedure]*;

(c) section 13 *[practice directives tribunal may make]*;

(c.1) section 14 *[general power to make orders]*;

(d) section 15 *[interim orders]*;

(d.1) section 16 *[consent orders]*;

(e) section 17 (2) *[order of tribunal may include terms of settlement]*;

(e.1) section 18 *[failure of party to comply with tribunal orders and rules]*;

(f) section 19 *[service of notice or documents]*;

(f.1) section 20 *[when failure to serve does not invalidate proceeding]*;

(g) section 28 *[facilitated settlement]*;

(g.1) section 29 *[disclosure protection]*;

(h) section 31 (1) (a), (b) and (e) *[summary dismissal]*;

(i) section 32 *[representation of parties to an application]*;

(j) section 33 *[interveners]*;

(k) section 34 (3) and (4) *[tribunal may compel witnesses and order disclosure]*;

(l) section 35 *[recording tribunal proceedings]*;

(m) section 37 *[applications involving similar questions]*;

(n) section 38 *[examination of witnesses]*;

(o) section 39 *[adjournments]*;

(p) section 40 *[information admissible in tribunal proceedings]*;

(q) section 44 *[tribunal without jurisdiction over constitutional questions]*;

(r) section 46.3 *[tribunal without jurisdiction to apply the Human Rights Code]*;

(s) section 48 *[maintenance of order at hearings]*;

(t) section 49 *[contempt proceeding for uncooperative witness or other person]*;

(u) Part 7 *[Decisions]*, except sections 50 (1) and 52 *[notice of decision]*;

(v) Part 8 *[Immunities]*;

(w) section 59.1 *[surveys]*;

(x) section 59.2 *[reporting]*;

(y) section 60 (1) (a), (b) and (g) to (i) and (2) *[power to make regulations]*;

(z) section 61 *[application of Freedom of Information and Protection of Privacy Act]*.

Organization of the board

44 (1) The chair of the board may organize the board into panels, each comprised of one or more members.

(2) If the chair organizes a panel comprised of more than one member, the chair must designate one of those members as chair of the panel.

(3) The members of the board may sit

(a) as a board, or

(b) as a panel of the board,

and 2 or more panels may sit at the same time.

(4) If members of the board sit as a panel,

(a) the panel has the jurisdiction of, and may exercise and perform the powers and duties of, the board, and

(b) an order, decision or action of the panel is an order, decision or action of the board.

(5) The decision of a majority of the members of a panel of the board is a decision of the board and, in the case of a tie, the decision of the chair of the panel governs.

(6) If a member of a panel is unable for any reason to complete the member's duties, the remaining members of that panel may, with consent of the chair of the board, continue to hear and determine the matter, and the vacancy does not invalidate the proceeding.

(7) [Repealed 2003-47-16.]

(8) If the panel is a single member and that member is unable for any reason to complete the member's duties, with the consent of all parties to the application the chair of the board may organize a new panel to continue to hear and determine the matter on terms agreed to by the parties, and the vacancy does not invalidate the proceeding.

Staff of the board

45 (1) The chair of the board may appoint, in accordance with the *Public Service Act*, employees necessary to enable the board to perform its duties.

(2) For the purpose of the application of the *Public Service Act* to subsection (1) of this section, the chair is deemed to be a deputy minister.

(3) The chair of the board may retain consultants, investigators, expert witnesses or other persons as may be necessary for the board to discharge its functions under this Act and may establish their remuneration and other terms and conditions of their retainers.

(4) The *Public Service Act* does not apply to a person retained under subsection (3) of this section.

General board powers

46 (1) [Repealed 2004-45-72.]

(2) Members of the board may, in the performance of their duties,

(a) enter on and inspect any land or improvement,

(b) require the production of any record, and

(c) administer oaths, solemn affirmations or declarations.

(3) The chair may in writing delegate the powers of the board under subsection (2) (a) and (b) to a person designated by the chair.

(4) The board may at any time require the assessment authority to provide any information or record, obtained or created under this Act, that is in the custody or control of the assessment authority, including, without limitation, a revised assessment roll and any information respecting an assessment dealt with by a review panel.

(5) Despite section 69 (1), the information or record referred to in subsection (4) of this section must be provided to the board free of charge and in the form and manner required by the board.

Repealed

47 [Repealed 2004-45-72.]

Board records

48 A record purporting to be a record of an order or decision of the board is admissible in all courts of British Columbia, without proof of appointment, authority or signature and is evidence of the record.

Report

49 (1) In accordance with a regulation made under section 74 (2) (g) (iv), the board must annually and at other times it considers appropriate, report to the minister on its activities under this Act.

(2) The minister must promptly lay the board's annual report before the Legislative Assembly if it is in session and, if the Legislative Assembly is not in session when the report is submitted, within 15 days after the beginning of the next session.

Part 6 — Appeals to the Board from Review Panel Decisions

Definition

49.1 In this Part, except in section 57, **"appeal under this Part"** includes an application for leave to appeal under section 50 (1.1).

Appeals to board

50 (1) Subject to the requirements of subsections (2) to (4), a person may appeal to the board if the person is dissatisfied

(a) with a decision of a review panel,

(b) with an omission or refusal of the review panel to adjudicate a complaint made under section 33 (1), or

(c) with an amendment to the assessment roll under section 10 (2).

(1.1) Subject to the requirements of subsections (2) to (4.2), an owner may, with leave of the board, appeal to the board if the owner failed to file a notice of complaint in respect of the owner's property within the time required under section 33 (2).

(2) The appeal must be based on one or more of the grounds referred to in section 32 (1).

(3) A notice of appeal under this section and the prescribed appeal fee must be filed with the board on or before April 30 following the sitting of the review panel.

(4) The notice of appeal must

(a) clearly identify the property in respect of which the appeal is made,

(b) include the full name of the appellant and a telephone number at which the appellant may be contacted during regular business hours,

(c) indicate whether or not the appellant is the owner of the property to which the appeal relates,

(d) if the appellant has an agent to act on the appellant's behalf in respect of the appeal, include the full name of the agent and a telephone number at which the agent may be contacted during regular business hours,

(e) include an address for delivery of any notices in respect of the appeal,

(f) state the grounds on which the appeal is based, and

(g) include any other prescribed information.

(4.1) In addition to the requirements under subsection (4), a notice of appeal for an appeal under subsection (1.1) must state the reasons why leave should be granted under subsection (4.3).

(4.2) All evidence on which the owner relies in support of the reasons why leave should be granted must be filed with the notice of appeal.

(4.3) The board may grant leave to appeal under subsection (1.1) if the board is satisfied that the owner's failure to file a notice of complaint within the time required under section 33 (2) was due to circumstances beyond the owner's control.

(5) If a notice of appeal is deficient or if the prescribed appeal fee is outstanding, the chair of the board may in the chair's discretion allow a reasonable period of time within which the notice may be perfected or the fee is to be paid.

Copies of appeal to persons

51 If the board receives a notice of appeal in accordance with section 50, the board must promptly provide a copy of the notice to each of the following who is not the appellant:

(a) the owner of the property;

(b) the assessor;

(c) if the property is located in a municipality, a regional district or the treaty lands of a treaty first nation, the municipality, regional district or treaty first nation, as applicable;

(c.1) if the property is located in Nisg̲a'a Lands, the Nisg̲a'a Nation;

(d) the chief executive officer of the assessment authority;

(e) the complainant before the review panel, if that person is not a person specified in paragraphs (a) to (d).

Parties to an appeal

52 (1) The following persons are parties to an appeal under this Part:

(a) the appellant;

(b) the owner of the property, if not the appellant;

(c) the complainant at the review panel, if not the owner or appellant;

(d) the assessor.

(2) The board may direct that any other person who may be affected by the appeal may be added as a party to the appeal, including, without limitation,

(a) a local government or treaty first nation in respect of which the property is located,

(a.1) if the property is located in Nisg̲a'a Lands, the Nisg̲a'a Nation, or

(b) the government.

(3) and (4) [Repealed 2004-45-72.]

Repealed

53-54 [Repealed 2004-45-72.]

Means of hearing appeals and notice of hearings

55 (1) In a proceeding, the board may hold any combination of written, electronic and oral hearings.

(2) The chair of the board must give notice of a hearing under subsection (1) to all parties and intervenors.

Repealed

56 [Repealed 2004-45-74.]

Powers and duties of board in an appeal

57 (1) In an appeal under this Part, the board

(a) may reopen the whole question of the property's assessment to ensure accuracy and that assessments are at actual value applied in a consistent manner in the municipality, treaty lands of the treaty first nation, Nisg̲a'a Lands or other rural area, and

(b) when considering whether land or improvements are assessed at actual value, must consider the total assessed value of the land and improvements together.

(2) Nothing in subsection (1) (a) empowers the board to determine an assessment of a property other than the property that is the subject of the appeal, except to the extent permitted under subsection (3).

(3) If the property referred to in subsection (1) includes a building or other improvement that extends over one or more contiguous parcels of land that actually abut that property but the other parcels were not originally the subject of the appeal, the board may, if the board considers it necessary to accurately determine the assessment of the property referred to in subsection (1), include those parcels in its determinations.

(4) The board may order the assessment authority to reassess at actual value land and improvements in all or part of a municipality, the treaty lands of a treaty first nation, Nisga'a Lands or other rural area, whether or not they are the subject of the appeal, if the board finds

(a) that the assessments in the municipality, treaty lands, Nisga'a Lands or other rural area, or in part of any of them, are above their actual value, or

(b) that the assessment appealed against is at actual value but that the assessments of similar land and improvements in the municipality, treaty lands, Nisga'a Lands or other rural area, or in part of any of them, are below their actual value.

(5) Despite section 12 (6), the assessor must enter any reassessments ordered under subsection (4) of this section on a supplementary assessment roll.

Repealed

58 [Repealed 2004-45-74.]

Order for compliance

59 (1) The board or a party to an appeal under this Part may apply to the Supreme Court for an order

(a) directing a person to comply with an order or decision of the board under this Part, and

(b) directing any directors and officers of the person to cause the person to comply with an order or decision of the board under this Part.

(2) Subsection (1) is in addition to and not instead of any other remedy or course of action that may be available to the board or a party under this Act or otherwise available by law.

Costs

60 (1) Subject to the regulations, the board may order that a party to an appeal under this Part or an intervenor pay another party or intervenor or the board any or all of the actual costs in respect of the appeal.

(2) An order under subsection (1) has, after filing in the court registry, the same effect as an order of the Supreme Court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

Decision of board

61 (1) The board must issue a decision at the earliest opportunity after hearing an appeal under this Part.

(2) [Repealed 2004-45-74.]

Notice of board decision

62 (1) The board must deliver a notice of its decision on an appeal under this Part to

(a) the parties to the appeal and any intervenors, and

(b) the chief executive officer of the assessment authority.

(2) Notice under subsection (1) must include

(a) the board's decision,

(b) a statement that the decision may be appealed to the Supreme Court on a question of law, and

(c) information on the procedures to be followed for such an appeal.

Amending the roll to reflect board decisions

63 (1) On receipt of notice of the board's decision under section 62, the assessor must

(a) ensure that all amendments ordered to be made in the assessment roll by the board are made promptly, and

(b) ensure that a copy of the notice is available for public inspection during regular business hours.

(2) If there is a conflict between the revised assessment roll and an amendment made under this section, the amendment prevails.

Part 7 — References and Stated Cases on Appeal

Reference on question of law to Supreme Court

64 (1) At any stage of a proceeding before it, the board, on its own initiative or at the request of one or more of the persons affected by the appeal, may refer a question of law in the proceeding to the Supreme Court in the form of a stated case.

(1.1) If the question of law that is referred under subsection (1) is a constitutional question, the party who raises the question must give notice in compliance with section 8 of the *Constitutional Question Act*.

(2) The stated case must be in writing and filed with the court registry, and must include a statement of the facts and all evidence material to the stated case.

(3) The board must

(a) suspend the proceeding as it relates to the stated case and reserve its decision until the opinion of the Supreme Court has been given, and

(b) decide the appeal in accordance with the opinion.

(4) The stated case must be brought on for hearing within one month from the date on which it is filed under subsection (2).

(5) Subject to subsection (6), the court must hear and determine the stated case and within 2 months give its decision.

(6) The court may send the stated case back to the board for amendment and the board must promptly amend and return the stated case for the opinion of the court.

Appeal of board decision on question of law

65 (1) Subject to subsection (2), a person affected by a decision of the board on appeal, including a local government, a treaty first nation, the government, the Nisga'a Nation or the assessment authority, may require the board to refer the decision to the Supreme Court for appeal on a question of law alone in the form of a stated case.

(2) Within 21 days after receiving the decision referred to in subsection (1), the person must deliver to the board a written request to refer the decision to the Supreme Court, and must include in the request the question of law to be referred.

(3) On receipt of the request under subsection (2), the board must promptly provide written notice of the request to

(a) the parties to the appeal from which the reference is requested and any intervenors, and

(b) the chief executive officer of the assessment authority.

(4) Within 21 days after receiving the request under subsection (2), the board must file the stated case with the court registry, including the decision on appeal, a statement of the facts and all evidence material to the stated case.

(5) The stated case must be brought on for hearing within one month from the date on which it is filed under subsection (4).

(6) Subject to subsection (7), the court must hear and determine the stated case and within 2 months give its decision.

(7) The court may send the stated case back to the board for amendment and the board must promptly amend and return the stated case for the opinion of the court.

(8) The costs of, and incidental to, a stated case under this section are at the discretion of the court.

(9) An appeal on a question of law lies from a decision of the Supreme Court to the Court of Appeal with leave of a justice of the Court of Appeal.

(10) The board must direct the assessor to make any amendment to the assessment roll necessary to give effect to a decision made by the Supreme Court or the Court of Appeal under this section.

Part 8 — General

Authorization for electronic transmission of notices

65.1 (1) A person may,

(a) if the assessment authority provides for electronic transmission, authorize, in writing, the assessment authority to electronically transmit a notice under this Act to the person, and

(b) at any time, in writing, withdraw the authorization provided under paragraph (a).

(2) If a person provides an authorization under subsection (1) (a), the person must provide to the assessment authority an email address for the purposes of electronic transmission.

Assessment authority to provide information to the government

66 (0.1) In this section, **"net taxable value"**, in relation to land and improvements in the treaty lands of a treaty first nation or Nisga'a Lands, means the net taxable value of the land and improvements determined for regional hospital district purposes as if this Act, the *Hospital District Act* and the *Taxation (Rural Area) Act* apply for the purposes of the assessment and taxation of those lands and improvements.

(1) The assessment authority must provide assessment information to the government for purposes of determining tax liability, collecting a tax or, if applicable, requisitioning under the *Speculation and Vacancy Tax Act*, the *Police Act*, the *School Act* and the *Taxation (Rural Area) Act*, as follows:

(a) before February 1 in each year, information from or respecting the completed assessment roll on December 31 of the previous year;

(b) before March 26 in each year, information from or respecting the assessment roll as amended by the review panels in that year;

(c) when it becomes available, information from or respecting an assessment roll as it is amended or changed under section 10, 12, 42, 63 or 65 (10).

(1.1) On request of the government, the assessment authority must provide assessment inventory and valuation information to the government for purposes of determining a school tax refund under section 131.1 of the *School Act*.

(2) Despite section 69 (1), information under subsection (1) or (1.1) of this section must be provided to the government free of charge and in the form and manner required by the Minister of Finance.

(3) Before April 15 in each year, the assessment authority must provide free of charge to regional hospital district boards information setting out the current year net taxable value of all land and improvements in each member municipality, the treaty lands of each treaty first nation and the other rural area, in the district, on both the completed and the revised assessment rolls, for the purpose of requisitioning and raising funds under the *Hospital District Act*.

(4) In the case of the North West Regional Hospital District, in addition to the information provided under subsection (3), the assessment authority must provide free of charge the net taxable value of all land and improvements in Nisg̲a'a Lands.

Open hearings

67 Except for an order that may be made in relation to a prehearing conference, a hearing under this Act must be open to the public.

Protection of privacy in assessment roll and records

68 (1) On application by an owner, the assessment authority may omit or obscure the owner's name, address or other information about the owner that would ordinarily be included in an assessment roll if, in the opinion of the assessment authority, the inclusion of the name, address or other information could reasonably be expected to threaten the safety or mental or physical health of the owner or a member of the owner's household.

(2) Names of individuals must be deleted from

(a) an assessment roll other than an assessment roll that is

(i) supplied under subsection (4),

(ii) available for public inspection under section 8, or

(iii) accessible through the B.C. OnLine information service or through another electronic information service used by the assessment authority, and

(b) other prescribed records that are obtained or created under this Act.

(3) For the purpose of tracing unauthorized use of information, the assessment authority may have fictitious or false entries or information included in an assessment roll or other record related to an assessor's valuations under Part 2 or 3, that is available for public inspection under this Act or may otherwise be disclosed in accordance with a regulation under section 16 (6).

(4) Subsections (1) and (3) do not apply to an assessment roll or record that is supplied

(a) to a person or for a purpose specified in section 33 of the *Freedom of Information and Protection of Privacy Act*,

(b) to any of the following:

(i) the government;

(ii) a municipality, regional district or treaty first nation;

(ii.1) the Nisga'a Nation;

(iii) a prescribed entity with taxing authority under an enactment of British Columbia or Canada, or

(c) to the board.

Use of and access to information in records

69 (1) Subject to the requirements of this section and section 68 and any prescribed limits on the fees that may be charged, if this Act, or a regulation under this Act, requires or authorizes the disclosure or public inspection or other use of or access to a record, including an assessment roll, a person may obtain a copy of the record or assessment roll on payment of any fee that may be set for the copy by the assessment authority or by the chair of the board, as the case may be.

(2) A person must not, directly or indirectly, use the assessment roll or information contained in the assessment roll or a record referred to in subsection (1) as follows:

(a) to obtain names, addresses or telephone numbers for solicitation purposes, whether the solicitations are made by telephone, mail or any other means;

(b) to harass an individual;

(c) for other uses or purposes specified by regulation.

(3) A person who wishes to inspect or obtain a copy of a record referred to in subsection (1) may be required to complete a declaration in the prescribed form

(a) specifying the purpose for which the information is to be used, and

(b) certifying that the information contained in the record will not be used in a manner prohibited under subsection (2).

(4) A person who contravenes subsection (2) commits an offence.

Offences in relation to false or misleading information

70 (1) A person who does any of the following commits an offence:

(a) provides false or misleading information when required under this Act to provide information;

(b) makes a false or misleading statement or declaration when required under this Act to make a statement or declaration.

(2) A person is not guilty of an offence under this section if the person establishes that, at the time the information was given or the statement or declaration was made, the person did not know that it was false or misleading and exercised reasonable care and diligence in providing the information or making the statement or declaration.

Fines and penalties for offences

71 (1) A person who commits an offence under section 15 (3), 69 (4) or 70 (1) is liable on conviction to a fine of not more than $10 000 or imprisonment for a term not longer than 2 years, or both.

(2) If a person is convicted of an offence under section 69 (4) or 70 (1) and the court is satisfied that, as a result of the commission of the offence, the person acquired any monetary benefits or that monetary benefits accrued to the person, the court may order the person to pay a fine equal to the court's estimation of the amount of those monetary benefits.

(3) A fine under subsection (2) is in addition to and not in place of the fine or punishment that may be imposed under subsection (1) and is not limited to the maximum fine prescribed under subsection (1).

Offences and penalties

72 Section 5 of the *Offence Act* does not apply to this Act or the regulations.

Act prevails

73 If there is a conflict between this Act and any other Act, this Act prevails.

Power to make regulations and bylaws

74 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(a) defining any expression used and not defined in this Act;

(b) prescribing capacity for the purposes of section 1 (2) (l) and different capacities may be prescribed for different categories or types of vessels referred to in that section;

(c) exempting classes of interest in land or improvements, or both, from assessment under section 26, 27, 28 or 29;

(d) excluding from the definition of "improvements" any category or type of thing included in that definition by section 1 (2);

(e) prescribing criteria for determining the land that is considered for the purposes of section 21 to be right of way for the track in place of a railway corporation;

(f) prescribing criteria to be applied by the assessment authority in prescribing rates under section 21 (1) (d) and (e), including different criteria for different categories of right of way;

(g) respecting

(i) forms and returns required by the assessment authority or by the board,

(ii) the format and manner in which assessment rolls under section 8 must be presented,

(iii) any other form or notice referred to in this Act, and

(iv) the form, content and filing of reports by the board to the minister under section 49;

(h) requiring railway corporations, tramway corporations, pipe line corporations, closed circuit television corporations and corporations engaged in the supply, transmission or distribution of gas, water, electricity, telephone services or telegraph services to supply to the assessment authority, by prescribed dates, information respecting the property of the corporation and its operational and other costs required by the assessment authority to determine the actual value of the property;

(h.1) requiring persons to supply to the assessment authority, by prescribed dates, information respecting the designated ski hill property owned, held or occupied by the person and revenue relating to the property required by the assessment authority to determine the actual value of the property;

(i) extending the time within which any of the provisions of this Act must be performed, carried out or completed;

(j) [Repealed 1999-11-15.]

(k) prescribing the circumstances and the manner in which the board may award costs under section 60;

(l) prescribing information that must be included in a notice of complaint under section 33 (3) or a notice of appeal under section 50 (4);

(m) prescribing records for the purposes of section 68 (2) (b);

(n) prescribing an entity for the purposes of section 68 (4) (b) (iii);

(o) specifying uses or purposes for which information contained in an assessment roll or record referred to in section 69 (1) must not be used;

(p) respecting witness fees and authorizing fees to be payable to the board for any services provided by the board or its staff in relation to an appeal or to a stated case under Part 7;

(q) prescribing fees payable by persons for appeals and complaints to the board, and different fees may be prescribed for different types of appeals and the fees prescribed may be different for

(i) different property classes,

(ii) different assessed values of property, and

(iii) different appeals by the same appellant respecting assessments recorded on the same assessment roll;

(r) providing for classes of complaints under section 32 to be referred to, heard and determined directly by the board instead of a review panel, and the classes may be based on value of property, property class, geographic location or any other matter that the minister considers necessary or advisable;

(s) governing the rules, practice and procedures for making, hearing and determining complaints referred to in paragraph (r), including, without limitation,

making all or any part of Part 4 or Part 6 applicable with any modifications the minister considers necessary or advisable;

(t) respecting orders that may be made by the board in its proceedings;

(u) prescribing rules of practice and procedure for appeals to the board, complaints to the board under the regulations or any part of proceedings conducted by the board;

(v) for the purposes of section 69 (1), limiting fees payable by the government or by different classes of persons, for different classes of records or for different uses of the records, including, without limitation, prescribing the circumstances in which no fees are payable.

(3) For purposes of any regulation made under subsection (2) (h), the information referred to in subsection (2) (h) must be segregated, in a manner specified by the assessment authority, according to the location of the property of the corporations.

(3.1) For purposes of any regulation made under subsection (2) (h.1), the information referred to in subsection (2) (h.1) must be segregated, in the manner specified by the assessment authority, according to the location of the property of the person.

(4) For the purposes of this Act, the assessment authority may make bylaws, not inconsistent with this Act or the regulations, that it considers necessary or advisable.

(5) If an order or regulation affecting classification, valuation or exemption on the assessment roll is made in any year, under this Act or another Act, on or before the date set by section 3 of this Act for completing the assessment roll in that year, or any later date established by a regulation under subsection (2) (i) of this section, the order or regulation applies for the purposes of assessment and taxation

(a) in the taxation year following the year in which the order or regulation is made, and

(b) subject to the order or regulation being amended or repealed, in any subsequent taxation year.

B.C. Reg. 438/81
O.C. 2198/81

Filed November 2, 1981

This consolidation is current to March 4, 2025.

Link to consolidated regulation (PDF)

Link to Point in Time

Assessment Act

PRESCRIBED CLASSES OF PROPERTY REGULATION

[Last amended September 16, 2024 by B.C. Reg. 263/2024]

Contents

Interpretation

0.1 In this regulation, **"gathering pipeline"** means a pipeline used for the transportation of

(a) natural gas from a well-head to the intake valve at a scrubbing, processing or refining plant which precedes the transfer of gas to a transmission line or a distribution line, or

(b) petroleum or a petroleum product from a well-head to the intake valve at a refining, processing or storage facility which precedes transfer of the petroleum or petroleum product to a transportation line.

[en. B.C. Reg. 449/2003, s. 1.]

Part 1 — Prescribed Classes of Property

Class 1 — residential

1 (1) Class 1 property shall include only:

(a) land or improvements, or both, used for residential purposes, including single family residences, duplexes, multi-family residences, apartments, condominiums, manufactured homes, nursing homes, rest homes, summer and seasonal dwellings, bunkhouses, cookhouses and ancillary improvements compatible with and used in conjunction with any of the above, but not including

(i) hotels or motels other than the portion of the hotel or motel building occupied by the owner or manager as that person's residence,

(ii) land or improvements or both that are owned by the Crown in right of Canada or the Province, or by an agent of either, and are used for the purposes of

(A) a penitentiary or correctional centre,

(B) a provincial mental health facility as defined in the *Mental Health Act*, or

(C) a hospital for the care of the mentally or physically handicapped,

(iii) a strata accommodation property except, subject to subparagraph (iii.1), if

(A) the owner of the strata accommodation property has the right to use the property for 7 or more days in the 12-month period ending June 30 of the year previous to the taxation year for which the assessment roll is completed,

(B) either

(I) the owner exercises the owner's right to use that property, or

(II) in respect of more than 50% of the strata accommodation properties in the strata plan or contiguous strata plans, the owners exercise their right to use their property

for 7 or more days in the 12-month period ending June 30 of the year previous to the taxation year for which the assessment roll is completed, and

(C) the owner of that property supplies the information as required under section 11 in respect of the property,

the property is included in class 1 but not in respect of that part of a year equal to the number of days, if any, by which the number of days reported under section 11 (a) for the property exceeds 36 days,

(iii.1) a strata accommodation property in a strata plan or contiguous strata plans that is owned by an owner or, if the owner is a corporation, any affiliate of the owner, if the owner and any affiliates of the owner own more than 14

strata accommodation properties in the strata plan or contiguous strata plans,

(iii.2) a leasehold accommodation property except, subject to subparagraphs (iii.3) and (iii.4), if

(A) in respect of each leasehold unit in the leasehold accommodation property, the lessee of the leasehold unit has the right to use the property for 7 or more days in the 12-month period ending June 30 of the year previous to the taxation year for which the assessment roll is completed,

(B) in respect of more than 50% of the leasehold units in the leasehold accommodation property, the lessees exercise their right to use their property for 7 or more days in the 12-month period ending June 30 of the year previous to the taxation year for which the assessment roll is completed, and

(C) the owner of that property supplies the information as required under section 13 in respect of the property,

the property is included in class 1 but not in respect of that part of a year equal to the number of days, if any, by which the average of the number of days reported under section 13 (c) for accommodation units in the property exceeds 36 days,

(iii.3) a leasehold accommodation property if a lessee and, if the lessee is a corporation, any affiliate of the lessee, lease more than 14 leasehold units in the leasehold accommodation property,

(iii.4) a leasehold accommodation property if the property has more than 15 accommodation units that are not leasehold units, and

(iv) in respect of a single family residence that is the principal residence of the owner or manager,

(A) rooms within the residence that are offered for rent or rented by the owner or manager as bed and breakfast accommodation

(I) for periods of less than 7 days, and

(II) for at least 50% of the 12-month period ending on October 31 of the year previous to the taxation year for which the assessment roll is completed,

other than that area equivalent to 3 times the average room size of all the rooms within the residence that are offered for rent or rented by the owner or manager as bed and breakfast accommodation, and

(B) the proportion of the common area of the residence that the area of the rooms described in clause (A) and not included in this class is of the total area of the residence;

(b) improvements on land classified as a farm under section 23 (2) of the *Assessment Act* and used in connection with the farm operation, including the farm residence and outbuildings;

(c) land which has no present use and which is neither specifically zoned nor held for business, commercial or industrial purposes, except that

(i) if land is included in Class 9, it is not included in Class 1, and

(ii) if

(A) a zoning bylaw under section 479 or 482 of the *Local Government Act* or under section 565 or 565.1 of the *Vancouver Charter*, a phased development agreement under section 516 of the *Local Government Act*, an official development plan under section 562 of the *Vancouver Charter*, a covenant under section 219 of the *Land Title Act*, or a land use contract under the *Local Government Act* applies to the land, and

(B) the bylaw, agreement, plan, covenant or contract, either itself or, if more than one applies, read together, permits a specified portion, or a percentage, of the land to be used for residential purposes but does not permit that portion or percentage to be used for business, commercial or industrial purposes, other than a home occupation or bed and breakfast use in conjunction with a single family residence that is the principal residence of the owner or manager,

only that portion or percentage is included in Class 1;

(d) land or improvements, or both, used for child daycare purposes, including group daycares, preschools, special needs daycares, family daycares, out of school care, residential care, emergency care and child minding, as defined in the *Community Care Facility Act* or regulations to that Act.

(2) For the purposes of subsection (1) (a) (iv) and (c), **"single family residence"** includes

(a) a single family dwelling,

(b) a single family dwelling in a duplex, an apartment building or a condominium complex, and

(c) a manufactured home.

[am. B.C. Regs. 220/86; 348/87; 402/93; 474/94; 485/95; 67/2001; 340/2004, s. (a); 560/2004; 221/2007, s. 1; 297/2008, Sch., s. 1; 275/2009, s. 2; 323/2010; 344/2010; 138/2012, s. (b); 117/2018, s. 18; 64/2021, s. 3.]

Class 2 — utilities

2 Class 2 property includes only

(a) land or improvements used or held as track in place, right of way or a bridge for the purposes of, or for purposes ancillary to, the business of transportation by railway, and

(b) land or improvements used or held for the purposes of, or for purposes ancillary to, the business of

(i) transportation, transmission or distribution by pipeline,

(ii) telecommunications, including transmission of messages by means of electric currents or signals for compensation,

(iii) generation, transmission or distribution of electricity, or

(iv) receiving, transmission and distribution of closed circuit television,

except that part of land or improvements

(c) included in Classes 1, 4 or 8,

(c.1) used as a gathering pipeline,

(d) used as an office, retail sales outlet, administration building or for an ancillary purpose, or

(e) used for a purpose other than a purpose described in paragraphs (a) or (b).

[en. B.C. Reg. 327/96, s. 1; am. B.C. Regs. 356/2000, s. 2; 449/2003, s. 2.]

Repealed

3 Repealed. [B.C. Reg. 340/2004, s. (b).]

Class 3 — supportive housing

3.1 Class 3 property must include only the eligible supportive housing property designated in Schedule B.

[en. B.C. Reg. 208/2008, Sch. 2, s. 1.]

Class 4 — major industry

4 Class 4 property shall include only the property referred to in section 20 (3) of the *Assessment Act*, that is to say,

(a) land used in conjunction with the operation of industrial improvements, and

(b) industrial improvements.

[en. B.C. Reg. 99/88; am. B.C. Reg. 212/2013, s. 1 (a).]

Class 5 — light industry

5 Class 5 property must include only land or improvements, or both,

(a) used as a gathering pipeline,

(b) used or held for the purpose of extracting, processing, manufacturing or transporting of products, or

(c) used for the storage of products as ancillary to or in conjunction with the extracting, processing, manufacturing or transporting of products referred to in paragraph (b),

but does not include those lands or improvements, or both,

(d) included in class 2 or 4,

(e) used or held for the purposes of, or for purposes ancillary to, the business of transportation by railway,

(f) used principally as an outlet for the sale of a finished product to a purchaser for purposes of the purchaser's own consumption or use and not for resale in either the form in which it was purchased or any other form, and

(g) used for extracting, processing, manufacturing or storage of food, non-alcoholic beverages or water.

[en. B.C. Reg. 99/88; am. B.C. Regs. 364/88; 389/94; 327/96, s. 2; 449/2003, s. 3; 64/2021, s. 3.]

Class 6 — business and other

6 Class 6 property shall include all land and improvements not included in Classes 1 to 5 and 7 to 9.

Class 7 — managed forest land

7 Class 7 property must include only land meeting the definition of managed forest land.

[en. B.C. Reg. 340/2004, s. (c).]

Class 8 — recreational property/non-profit organization

8 (1) Class 8 property shall include only:

(a) land, but not improvements on that land, used solely as an outdoor recreational facility for the following activities or uses:

(i) golf;

(ii) skiing;

(iii) tennis;

(iv) ball games of any kind;

(v) lawn bowling;

(vi) public swimming pool;

(vii) motor car racing;

(viii) trap shooting;

(ix) archery;

(x) ice skating;

(xi) waterslides;

(xii) museums;

(xiii) amusement parks;

(xiv) horse racing;

(xv) rifle shooting;

(xvi) pistol shooting;

(xvii) horseback riding;

(xviii) roller skating;

(xix) marinas;

(xx) parks and gardens open to the public;

(xxi) hang gliding;

(xxii) bicycling in addition to, or as part of, one of the activities or uses set out in subparagraphs (i) to (xxi);

(xxiii) camping;

(b) that part of any land and improvements used or set aside for use as a place of public worship or as a meeting hall for a non-profit fraternal organization of persons of any sex or gender, together with the facilities necessarily incidental to that use, for at least 150 days in the year ending on June 30, of the calendar year preceding the calendar year for which the assessment roll is being prepared, not counting any day in which the land and improvements so used or set aside are also used for

(i) any purpose by an organization that is neither a religious organization nor a non-profit fraternal organization,

(ii) entertainment where there is an admission charge, or

(iii) the sale or consumption, or both, of alcoholic beverages;

(c) land

(i) that is in a rural area,

(ii) that is part of a parcel of land or contiguous parcels of land used for overnight commercial accommodation offered predominantly to facilitate an outdoor recreational activity,

(iii) that is not under improvements, and

(iv) that

(A) is used for an outdoor recreational activity,

(B) is used for purposes ancillary to an outdoor recreational activity,

(C) is used for purposes ancillary to the overnight accommodation, or

(D) has no present use and is specifically zoned or held for business, commercial or industrial purposes.

(2) In subsection (1) (c), **"outdoor recreational activity"** means any of the following activities that are organized by or through the operator of the overnight commercial accommodation, or which are carried out with a guide:

(a) hunting;

(b) fishing;

(c) kayaking;

(d) canoeing;

(e) white-water rafting;

(f) horseback riding;

(g) mountain biking;

(h) wildlife viewing;

(i) hiking;

(j) mountain climbing;

(k) backcountry skiing.

[en. B.C. Reg. 477/92; am. B.C. Regs. 517/2004; 348/2005; 274/2009; 64/2021, s. 8.]

Class 9 — farm

9 Class 9 property shall include only land classified as farm land.

Split classification

10 Where a property falls into 2 or more prescribed classes, the assessor shall determine the share of the actual value of the property attributable to each class and assess the property according to the proportion each share constitutes of the total actual value.

[en. B.C. Reg. 268/91.]

Information required to assess strata accommodation property

11 The owner of a strata accommodation property must supply the following information to the assessment authority on or before August 31 of each year:

(a) for the period beginning on July 1 of the previous year and ending on June 30 of the year, the number of days the strata accommodation property was rented as overnight accommodation as part of a period of rental of less than 28 days;

(b) for the period beginning on July 1 of the previous year and ending on June 30 of the year, the number of days

(i) the owner had the right to use the strata accommodation property, and

(ii) the owner used the strata accommodation property.

[en. B.C. Reg. 221/2007, s. 2; am. B.C. Reg. 281/2007, ss. 1 and 2.]

Strata accommodation property — prescribed percentage

12 The percentage prescribed for the purposes of the definition of "strata accommodation property" in section 19 of the *Assessment Act* is 20%.

[en. B.C. Reg. 221/2007, s. 2.]

Information required to assess leasehold accommodation property

13 On or before August 31 of each year, the owner of a leasehold accommodation property must supply the following information to the assessment authority:

(a) the number of leasehold units in the leasehold accommodation property;

(b) the number of accommodation units in the leasehold accommodation property;

(c) for the period beginning on July 1 of the previous year and ending on June 30 of the year, the number of days each accommodation unit in the leasehold accommodation property was rented as overnight accommodation as part of a period of rental of less than 28 days;

(d) in respect of each leasehold unit in the leasehold accommodation property, the number of days, for the period beginning on July 1 of the previous year and ending on June 30 of the year,

(i) the lessee had the right to use the leasehold unit, and

(ii) the lessee used the leasehold unit;

(e) whether a lessee and, if the lessee is a corporation, any affiliate of the lessee lease more than 14 leasehold units in the leasehold accommodation property.

[en. B.C. Reg. 297/2008, Sch., s. 2; am. B.C. Reg. 297/2008, s. 4.]

Leasehold accommodation property — prescribed matters

14 (1) For the purposes of the definition of "accommodation unit" in section 19 of the *Assessment Act*, the prescribed percentage is 20%.

(2) For the purposes of the definition of "leasehold accommodation property" in section 19 of the *Assessment Act*, the prescribed number of leasehold units is 15.

(3) For the purposes of the definition of "leasehold unit" in section 19 of the *Assessment Act*, the prescribed number of years is 99.

[en. B.C. Reg. 297/2008, Sch., s. 2.]

Aggregate information for strata and leasehold accommodation properties

15 (1) For the purposes of section 19 (14.2) of the *Assessment Act*, the information described in section 11 (a) of this regulation is prescribed.

(2) For the purposes of section 19 (14.4) of the *Assessment Act*, the information described in section 13 (c) of this regulation is prescribed.

Part 2

Repealed. [B.C. Reg. 485/83.]

Schedule A

Repealed. [B.C. Reg. 485/83.]

Schedule B

[en. B.C. Reg. 263/2024.]

(section 3.1)

Interpretation

1 An assessment roll number set out in column 1 of the table in section 2 is the number on the assessment roll prepared by the assessment authority for the 2025 taxation year.

Designated eligible supportive housing properties

2 For the purposes of section 19 (14.01) of the *Assessment Act*, the eligible supportive housing properties identified by the assessment roll numbers listed in column 1 of the following table are designated for the 2025 taxation year:

Item	Column 1 **Assessment Roll Number**
1	01-234-01006020
2	01-234-01008021
3	01-234-01010011
4	01-234-01020002
5	01-234-01020018
6	01-234-01020019
7	01-234-01075020
8	01-234-01499009
9	01-234-01521059
10	01-234-02118005
11	01-234-03194011
12	01-234-03208127
13	01-234-03209011
14	01-234-07492030
15	01-234-07492107
16	01-234-08582002
17	01-234-09663002
18	01-234-09690016
19	01-234-10711036
20	01-234-10736005
21	01-234-10738014

This Act is current to March 4, 2025

See the Tables of Legislative Changes for this Act's legislative history, including any changes not in force.

SPECULATION AND VACANCY TAX ACT

[SBC 2018] CHAPTER 46

Assented to November 27, 2018

Contents

Part 1 — Interpretation, Special Rules and Application of Act

Division 1 — Definitions

Definitions

1 In this Act:

"administrator" means the person designated under section 117 by the minister to administer this Act;

"apartment" means a self-contained residential accommodation unit that has cooking, sleeping, bathroom and living room facilities;

"assessed value" means the assessed value determined under the *Assessment Act*;

"assessment", in relation to an assessment under this Act, includes a reassessment;

"assessment roll" has the same meaning as in section 1 (1) of the *Assessment Act*;

"beneficial owner", in relation to an interest in a residential property, means an individual who is, in respect of the interest, a beneficial owner within the meaning of section 2 *[meaning of "beneficial owner"]*;

"class 1 property" means property that is assessed as property in the class 1 property class under the *Assessment Act*;

"class 9 property" means land that is assessed as property in the class 9 property class under the *Assessment Act*;

"corporate interest holder", in relation to a corporation, means an individual who is, in respect of the corporation, a corporate interest holder within the meaning of section 3 *[meaning of "corporate interest holder"]*;

"declaration" means a declaration required to be filed under section 62 *[annual declaration]* or 63 *[declaration required on demand]*;

"declaration due date", in relation to filing a declaration under section 62 for a calendar year, means, as applicable,

(a) March 31 in the year following the calendar year, or

(b) if the date referred to in paragraph (a) is extended by the administrator under section 119 *[extension of time]*, the later date;

"federal Act" means the *Income Tax Act* (Canada);

"improvements" has the same meaning as in the *Assessment Act*;

"income taxation year" has the same meaning as "taxation year" in section 249 (1) of the federal Act;

"Indigenous nation" means any of the following:

(a) a band as defined in section 2 (1) of the *Indian Act* (Canada);

(b) the Nisg̲a'a Nation;

(c) a Nisg̲a'a Village;

(d) the shíshálh Nation continued under the *shíshálh Nation Self-Government Act* (Canada);

(e) the shíshálh Nation Government District continued under the *shíshálh Nation Self-Government Act* (Canada);

(f) a treaty first nation;

(g) the Westbank First Nation as defined in the agreement approved under the *Westbank First Nation Self-Government Act* (Canada);

(h) a prescribed Indigenous entity;

"land" has the same meaning as in section 1 (1) of the *Assessment Act*;

"medical practitioner" includes a person authorized to practise medicine in another jurisdiction;

"minor" has the same meaning as in the *Age of Majority Act*;

"non-arm's length tenant" has the meaning given to it in section 36 (1) *[definitions and interpretation]*;

"owner", except in a reference to a beneficial owner, means a person who is one of the following:

(a) a registered owner of the estate in fee simple of a residential property, unless the registered owner has disposed of the registered owner's interest to a person referred to in paragraph (b), (c) or (d);

(b) a registered holder of the last registered agreement for sale of a residential property;

(c) a life tenant under a registered life estate in a residential property;

(d) a registered occupier of a residential property;

"owner's interest" means the owner's interest in a residential property determined under section 8 *[determining owner's interest in residential property]*;

"parcel" has the same meaning as in section 1 (1) of the *Assessment Act*;

"partnership interest holder", in relation to an interest in a residential property that is partnership property and is registered in the name of a partner in a partnership, means an individual who is, in respect of the interest in the residential property, a partnership interest holder within the meaning of section 4 *[meaning of "partnership interest holder"]*;

"permanent resident of Canada" means an individual who is a permanent resident as defined in section 2 (1) of the *Immigration and Refugee Protection Act* (Canada);

"person with disabilities" means any of the following:

(a) an individual who is designated as a person with disabilities under section 2 (2) *[persons with disabilities]* of the *Employment and Assistance for Persons with Disabilities Act*;

(b) an individual who is considered to be disabled under section 42 (2) of the *Canada Pension Plan*;

(c) an individual who is entitled to a deduction under section 118.3 (1) of the federal Act, or would have been entitled to that deduction if that section were read without reference to paragraph (c) of that section;

"principal residence" means, subject to section 10 (1) *[rules relating to principal residence of spouses]*, the place in which an individual resides for a longer period in a calendar year than any other place;

"property" has the same meaning as in section 1 (1) of the *Assessment Act* except in

(a) the definition of "unreported income" in section 5 (1) *[meaning of "untaxed worldwide earner"]*,

(b) section 53 (c) *[amalgamations]*, and

(c) section 114 *[lien]*;

"property class" has the same meaning as in section 1 (1) of the *Assessment Act*;

"provincial nominee" means an individual who is named in a valid nomination certificate issued by the government in accordance with an agreement referred to in section 8 (1) of the *Immigration and Refugee Protection Act* (Canada) between the government and Canada;

"registered" means registered in the books of the land title office;

"registered occupier" means a person who is in possession of property under a registered lease;

"residence" means any of the following:

(a) a detached house, cottage or other single family dwelling;

(b) a dwelling that is a strata lot;

(c) an apartment in

(i) a single family dwelling,

(ii) a dwelling that is a strata lot, or

(iii) a duplex or other multi-family dwelling;

"resident of British Columbia", in relation to a calendar year, means an individual who

(a) is, for the calendar year, a specified Canadian citizen or specified permanent resident of Canada, and

(b) is, for the income taxation year of the individual that ends at the end of the calendar year, either

(i) resident only in British Columbia for the purposes of the federal Act, or

(ii) deemed, under section 2607 of the Income Tax Regulations (Canada), to have been resident in British Columbia for the purposes of the federal Act,

but does not include an individual who is, for the income taxation year of the individual that ends at the end of the calendar year, deemed not to be a resident of Canada for the purposes of the federal Act;

"residential property", in relation to a calendar year, means any of the following property as assessed on an assessment roll for the calendar year:

(a) a parcel or portion of a parcel of land that is class 1 property if there are no improvements on the parcel of land;

(b) a parcel or portion of a parcel of land that is class 1 property, together with any improvement or portion of an improvement that is class 1 property;

(c) improvements or portions of improvements, other than farm outbuildings as defined in section 1 of the *Home Owner Grant Act*, that are

(i) class 1 property, and

(ii) on a parcel or portion of a parcel of land that is class 9 property;

(d) improvements or portions of improvements that are

(i) class 1 property, and

(ii) assessed separately from the parcel or portion of a parcel of land under the improvements,

but does not include

(e) property the assessed value of which is equal to or less than $150 000, or

(f) prescribed land or improvements, or both;

"specified area" means any of the following:

(a) a municipality within the Capital Regional District;

(b) a municipality, other than the Village of Lions Bay, within the Metro Vancouver Regional District;

(c) the City of Abbotsford;

(d) the City of Chilliwack;

(e) the City of Kelowna;

(f) the City of Nanaimo;

(g) the City of West Kelowna;

(h) the District of Lantzville;

(i) the District of Mission;

(j) that part of Electoral Area A within the Metro Vancouver Regional District that comprises the University of British Columbia and University Endowment Land as defined in section 1 of the *University Endowment Land Act*;

(k) a prescribed area,

but does not include any of the following:

(l) an island, if any, within an area referred to in paragraphs (a) to (j), if the island is usually accessible only by air or water throughout a calendar year;

(m) a prescribed area that is all or part of an area referred to in paragraphs (a) to (j);

(n) subject to the regulations, any of the following:

(i) a reserve as defined in section 2 (1) of the *Indian Act* (Canada);

(ii) Nisg̲a'a Lands;

(iii) Nisg̲a'a Fee Simple Lands as defined in the Definitions Chapter of the Nisg̲a'a Final Agreement;

(iv) shíshálh lands as defined in section 2 (1) of the *shíshálh Nation Self-Government Act* (Canada);

(v) treaty lands of a treaty first nation;

(vi) Other Maa-nulth First Nation Lands as defined in the Definitions Chapter of the Maa-nulth First Nations Final Agreement;

(vii) Other Tla'amin Lands as defined in the Definitions Chapter of the Tla'amin Final Agreement;

(viii) Other Tsawwassen Lands as defined in the Definitions Chapter of the Tsawwassen First Nation Final Agreement;

"specified Canadian citizen", in relation to a calendar year, means an individual who is a Canadian citizen other than a Canadian citizen who is, for the calendar year, an untaxed worldwide earner;

"specified permanent resident of Canada", in relation to a calendar year, means an individual who is a permanent resident of Canada other than a permanent resident of Canada who is, for the calendar year, an untaxed worldwide earner;

"spouse", except in section 50 *[exemption on breakdown of marriage or common-law partnership]*, has the same meaning as "cohabiting spouse or common-law partner" in section 122.6 of the federal Act;

"tax" means tax imposed under this Act;

"trust" includes an estate;

"trustee" includes a personal representative;

"untaxed worldwide earner", in relation to a calendar year, means an individual who is, for the calendar year, an untaxed worldwide earner within the meaning of section 5 *[meaning of "untaxed worldwide earner"]*.

Meaning of "beneficial owner"

2 Subject to the exclusions, if any, in the regulations, an individual is a beneficial owner in respect of an interest in a residential property registered in the name of a trustee of a trust if any of the following apply:

(a) the individual has, in respect of the interest in the residential property, a beneficial interest, other than an interest that is contingent on the death of another individual;

(b) the individual has the power to revoke the trust and receive the interest in the residential property;

(c) the individual is a corporate interest holder in a corporation that has

(i) a beneficial interest in respect of the interest in the residential property, or

(ii) the power to revoke the trust and receive the interest in the residential property;

(d) the individual has a prescribed interest in respect of the interest in the residential property.

Meaning of "corporate interest holder"

3 (1) Subject to this section and the exclusions, if any, in the regulations, an individual is a corporate interest holder in respect of a corporation if any of the following apply:

(a) the individual has legal or beneficial ownership or control, directly or indirectly, of

(i) shares of the corporation representing 25% or more of the value of the equity of that corporation, or

(ii) 25% or more of the voting rights in respect of the corporation;

(b) the individual has the right, directly or indirectly, to appoint or remove from office the majority of the board of directors of the corporation;

(c) the individual has the right to exercise or does exercise, under a unanimous shareholders' agreement or otherwise, significant influence or control over the corporation;

(d) the individual has a prescribed right or interest in relation to the corporation.

(2) For the purposes of subsection (1) (a) or (b), a direct or indirect interest, power or right includes an interest, power or right that an individual has

(a) alone,

(b) together with one or more persons with common interests, or

(c) through

(i) a corporation,

(ii) a trustee of a trust,

(iii) a personal or legal representative,

(iv) an agent, or

(v) any other intermediary.

(3) A determination under this section about whether an individual is a corporate interest holder in respect of a corporation is to be made without regard to any appointment of a receiver of the corporation.

(4) For greater certainty, an individual is not a corporate interest holder in respect of a corporation in the individual's capacity as

(a) a receiver of the corporation, or

(b) an agent of a corporation that is a receiver of the corporation.

(5) For the purposes of this section, a receiver includes a receiver manager.

Meaning of "partnership interest holder"

4 Subject to the exclusions, if any, in the regulations, an individual is a partnership interest holder in relation to an interest in a residential property registered in the name of a partner in a partnership if the interest in the residential property is partnership property and either of the following applies:

(a) the individual has an interest, as a partner in the partnership, in the interest in the residential property;

(b) the individual is a corporate interest holder in respect of a corporation

(i) that is a partner in the partnership, and

(ii) that has an interest, as a partner in the partnership, in the interest in the residential property.

Meaning of "untaxed worldwide earner"

5 (1) In this section:

"assessment" has the same meaning as in section 248 (1) of the federal Act;

"reported total income", in relation to an individual for a calendar year, means the total of the following amounts each of which is applicable to the individual for an income taxation year of the individual that ends in the immediately preceding calendar year:

(a) if the individual has been assessed under Part I of the federal Act for the income taxation year, the amount described on the assessment as the individual's total income for the purposes of line 15000 of a return for that income taxation year;

(b) if the individual has filed a return for the income taxation year but an assessment has not been issued to the individual under Part I of the federal Act, the amount the individual reported as the individual's total income for the purposes of line 15000 of a return for that income taxation year;

(c) if the individual is, at any time in the income taxation year, resident in Canada for the purposes of the federal Act, is not required to file a return and has not filed a return, the amount the individual would be required to report as the individual's total income for the purposes of line 15000 of a return for the income taxation year if the individual were to file a return for that income taxation year;

(d) if the individual is not, at any time in the income taxation year, resident in Canada for the purposes of the federal Act, is not required to file a return and has not filed a return, nil;

(e) if the individual is required to file a return under the federal Act for the income taxation year but has not filed a return for that income taxation year, nil;

"return" means a return of income for the purposes of Part I of the federal Act;

"unreported income", in relation to an individual for a calendar year, means the total of all amounts the individual earns or realizes in any manner inside or outside Canada, including amounts earned or realized from the disposition of property, if the amounts

(a) are earned or realized in the immediately preceding calendar year, and

(b) have not been reported in respect of the individual for the purposes of the federal Act,

but does not include an amount expended to earn or realize those amounts.

(2) For the purposes of the definition of "unreported income", a reference to an amount is a reference to money, rights or things expressed in terms of the amount of money or the value in terms of money of the right or thing, unless the money, right or thing is prescribed.

(3) The following rules apply for the purposes of this section:

(a) an individual who is not subject to taxation under Part I of the federal Act must determine the individual's income taxation year as if the individual were subject to taxation under Part I of the federal Act;

(b) the calculation of an individual's reported total income and unreported income is not affected by section 7 *[owner treated as separate person in certain circumstances]*.

(4) An individual is an untaxed worldwide earner for a calendar year if

(a) the total of the individual's unreported income for the calendar year and the unreported income for the calendar year of any spouse of the individual

is greater than

(b) the total of the individual's reported total income for the calendar year and the reported total income for the calendar year of any spouse of the individual.

Division 2 — Interpretation and Special Rules

References in Act and regulations

6 (1) Except in this Part, a reference in this Act and the regulations to a residential property is a reference to a residential property located wholly or partly within a specified area.

(2) Unless a contrary intention appears, a reference in this Act and the regulations to an owner of a residential property in relation to a calendar year is a reference to a person who is an owner of the residential property at the end of the last day of the calendar year.

(3) Unless a contrary intention appears, a reference in this Act and the regulations to a person who is the spouse of an individual in relation to a calendar year is a reference to a person who is the spouse of that individual at the end of the last day of the calendar year.

(4) A reference in this Act and the regulations to an assessment roll in relation to a calendar year is a reference to an assessment roll that, under the *Assessment Act*, is completed for the immediately following calendar year.

Owner treated as separate person in certain circumstances

7 (1) If an owner holds an interest in a residential property for a calendar year as a partner in a partnership, this Act and the regulations apply to the owner for the calendar year as if

(a) the owner were a separate person in respect of any interest in a residential property held by the person other than as a partner in a partnership, and

(b) the owner were a separate person in respect of each partnership in which the owner is a partner.

(2) If an owner holds an interest in a residential property for a calendar year as a trustee of a trust, this Act and the regulations apply to the owner for the calendar year as if

(a) the owner were a separate person in respect of any interest in a residential property held by the person other than as a trustee of a trust, and

(b) the owner were a separate person in respect of each trust for which the owner is a trustee.

Determining owner's interest in residential property

8 (1) If only one owner holds an interest in a residential property at the end of the last day of a calendar year, the owner's interest in the residential property for the calendar year is the entire interest.

(2) If 2 or more owners each hold an interest in a residential property at the end of the last day of a calendar year, each owner's interest in the residential property for the calendar year is determined as follows:

(a) owners who are joint tenants are considered to have equal interests in the residential property;

(b) owners who are tenants in common are considered to have one of the following, as applicable:

(i) the interest specified on the title to the residential property, in the registered agreement for sale or in the registered lease;

(ii) if no interest is specified in an instrument referred to in subparagraph (i), equal interests.

Rules relating to residential property

9 (1) For the purposes of this Act, the administrator may treat 2 or more residential properties as a single residential property for a calendar year if all of the following apply:

(a) each of the residential properties is within a specified area;

(b) the residential properties are contiguous;

(c) the residential properties are owned by the same person or persons;

(d) on the first day of the calendar year, one of the residential properties includes a residence;

(e) the residential properties are used for the residence or for purposes ancillary to or in conjunction with the residence.

(2) For the purposes of determining whether a residential property located wholly or partly within a specified area is subject to tax for a calendar year, the administrator may, in the circumstances set out in subsection (3), consider whether a residential property located wholly outside a specified area would be subject to tax for the calendar year if the residential property were located within a specified area.

(3) Subsection (2) applies in the following circumstances:

(a) the residential property located wholly or partly within a specified area is contiguous to the residential property located wholly outside the specified area;

(b) the residential property located wholly or partly within the specified area is owned by the same person or persons as the residential property located wholly outside the specified area;

(c) on the first day of the calendar year, either the residential property located wholly or partly within the specified area or the residential property located wholly outside the specified area includes a residence.

(4) For the purposes of this section, a residential property is considered to include a residence on the first day of a calendar year and to be used for a residence, or for purposes ancillary to or in conjunction with the residence, if

(a) a residence that is part of the residential property is, in the immediately preceding calendar year, substantially damaged or destroyed as contemplated by section 24 *[exemption for hazardous or damaged residential property]*, and

(b) because of the substantial damage or destruction, the residential property does not include a residence on the first day of the calendar year.

(5) For the purposes of this section, a residential property is considered to include a residence on the first day of a calendar year and to be used for a residence, or for purposes ancillary to or in conjunction with the residence, if

(a) building activity, as defined in section 40 *[definitions]*, has started or is continuing in relation to a residence being constructed or placed on the residential property, and

(b) because of the stage of the building activity, the residential property does not include a residence on the first day of the calendar year.

Rules relating to principal residence of spouses

10 (1) Subject to this section, if an individual and a person who is, for a calendar year, the individual's spouse each have a separate principal residence for the calendar year, for the purposes of this Act, the spouses are considered to have only one principal residence between them for the calendar year, determined as follows:

(a) the principal residence of the spouses for the calendar year is the residence

(i) that would, but for this section, be the principal residence of one of the spouses for the calendar year, and

(ii) that is designated for the calendar year by each spouse in the form and manner required by the administrator;

(b) if no residence is designated for the calendar year by the spouses or each spouse designates a different residence for the calendar year, the principal residence of the spouses for the calendar year is the residence designated by the administrator.

(2) An individual and a person who is, for a calendar year, the individual's spouse may each be considered to have a separate principal residence for the calendar year if

(a) the spouses live separate and apart to enable one of them to carry on business or work in a particular location, and

(b) either of the following applies:

(i) the principal residence of one spouse is located on Vancouver Island and the principal residence of the other spouse is not;

(ii) the distance between the principal residence of the spouse carrying on business or working in the particular location referred to in paragraph (a) and that particular location is at least 100 km less than the distance between the principal residence of the other spouse and that particular location.

(3) An individual and a person who is, for a calendar year, the individual's spouse may each be considered to have a separate principal residence for the calendar year

(a) if, in the opinion of a medical practitioner, one of the spouses has a health condition the ongoing management of which requires that spouse to reside in a different residence from the other spouse, and

(b) if an owner of the residential property that includes the principal residence of the spouse with the health condition files, with a declaration, a document that is

completed by the medical practitioner.

(4) The document completed by the medical practitioner must be

(a) filed in the manner required by the administrator, and

(b) in the form and contain the information required by the administrator.

Provincial nominees

11 (1) For the purposes of this Act, an individual who becomes a provincial nominee in a calendar year and the individual's spouse, if any, are deemed to be residents of British Columbia at the end of the last day of the calendar year if, at that time, the individual is

(a) a provincial nominee,

(b) a Canadian citizen, or

(c) a permanent resident of Canada.

(2) The individual and the individual's spouse, if any, are deemed to be residents of British Columbia at the end of the last day of the calendar year immediately following the calendar year referred to in subsection (1) if, at that time, the individual is

(a) a provincial nominee,

(b) a Canadian citizen, or

(c) a permanent resident of Canada.

Arm's length dealings

12 (1) Sections 251 and 252 of the federal Act apply for the purposes of this Act.

(2) In applying section 251 of the federal Act for the purposes of this Act, subsection (1) of that section is to be read as if paragraph (b) were excluded.

Division 3 — Application of Act

Application of Act

13 This Act applies to calendar years beginning on or after January 1, 2018.

Part 2 — Imposition of Tax

Tax on value of residential property

14 An owner of a residential property must, for a calendar year, pay tax to the government in the amount determined by the following formula:

tax payable = tax rate × (owner's interest × assessed value)

where

tax rate	=	the tax rate applicable under section 15, 16, 17, 18 or 19 to the owner for the calendar year;
owner's interest	=	the owner's interest in the residential property, expressed as a percentage;
assessed value	=	the assessed value of the residential property determined on July 1 of the calendar year.

Highest tax rate — other owners

15 (1) For the purposes of section 14, a tax rate of 2% is applicable for a calendar year to an owner of a residential property unless section 16 (1) or 17 (1) applies to the owner for the calendar year.

(2) Without limiting subsection (1), a tax rate of 2% is applicable to an owner of a residential property if the owner is a corporation in respect of which there are no corporate interest holders.

Lowest tax rate — specified Canadian citizens and specified permanent residents of Canada

16 (1) For the purposes of section 14, a tax rate of 0.5% is applicable for a calendar year to an owner of a residential property to whom this subsection applies unless section 17 (1) applies to the owner for the calendar year.

(2) Subsection (1) applies to an owner, other than an owner whose interest in the residential property is held as a partner in a partnership or as a trustee of a trust, if the owner

(a) is an individual who is, at the end of the last day of the calendar year, a specified Canadian citizen or a specified permanent resident of Canada, or

(b) is a corporation in respect of which all of the corporate interest holders are, at the end of the last day of the calendar year, specified Canadian citizens or specified permanent residents of Canada.

(3) Subsection (1) applies to an owner whose interest in the residential property is held as a partner in a partnership if, at the end of the last day of the calendar year,

(a) all of the partnership interest holders in respect of the interest in the residential property are specified Canadian citizens or specified permanent residents of Canada, and

(b) none of the partners in the partnership is

(i) a corporation in respect of which there are no corporate interest holders, or

(ii) a partnership.

(4) Subsection (1) applies to an owner whose interest in the residential property is held as a trustee of a trust if all of the beneficial owners in respect of the interest in the residential property are, at the end of the last day of the calendar year, specified Canadian citizens or specified permanent residents of Canada.

Lowest tax rate — residents of British Columbia

17 (1) For the purposes of section 14, a tax rate of 0.5% is applicable for a calendar year to an owner of a residential property to whom this subsection applies.

(2) Subsection (1) applies to an owner, other than an owner whose interest in the residential property is held as a partner in a partnership or as a trustee of a trust, if the owner

(a) is an individual who is a resident of British Columbia at the end of the last day of the calendar year, or

(b) is a corporation in respect of which all of the corporate interest holders are residents of British Columbia at the end of the last day of the calendar year.

(3) Subsection (1) applies to an owner whose interest in the residential property is held as a partner in a partnership if, at the end of the last day of the calendar year,

(a) all of the partnership interest holders in respect of the interest in the residential property are residents of British Columbia, and

(b) none of the partners in the partnership is

(i) a corporation in respect of which there are no corporate interest holders, or

(ii) a partnership.

(4) Subsection (1) applies to an owner whose interest in the residential property is held as a trustee of a trust if, at the end of the last day of the calendar year, all of the beneficial owners in respect of the interest in the residential property are residents of British Columbia.

Tax rate applicable if no declaration filed

18 Despite sections 15, 16 and 17, for the purposes of section 14, a tax rate of 2% is applicable for a calendar year to every owner of a residential property who fails to file a declaration for the calendar year.

Tax rate applicable for 2018 calendar year

19 Despite sections 15, 16, 17 and 18, for the purposes of section 14, a tax rate of 0.5% is applicable to every owner of a residential property for the 2018 calendar year.

Part 3 — Exemptions from Tax

Division 1 — Exemptions for Certain Owners

Exemption for specified owners

20 An owner of a residential property is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if the owner is one of the following at the end of the last day of the calendar year:

(a) a registered charity as defined in section 248 (1) of the federal Act;

(b) an association as defined in section 1 (1) of the *Cooperative Association Act*;

(c) a municipality;

(d) the government;

(e) an agent of the government;

(f) an Indigenous nation;

(g) an organization included in the government reporting entity as defined in section 1 (1) of the *Budget Transparency and Accountability Act*;

(h) a government body as defined in section 1 of the *Financial Administration Act*;

(i) a local public body as defined in Schedule 1 *[Definitions]* of the *Freedom of Information and Protection of Privacy Act*;

(j) a body referred to in Schedule 2 *[Public Bodies]* of the *Freedom of Information and Protection of Privacy Act*;

(k) a corporation owned by a municipality;

(l) a corporation owned by a regional district;

(m) a corporation owned by an Indigenous nation;

(n) a corporation incorporated or continued by an enactment;

(o) a prescribed person or entity or a person or entity in a prescribed class of persons or entities.

Exemption for trustees of trust for benefit of registered charity

20.1 An owner of residential property is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if the owner is, at the end of the last day of the calendar year, a person whose interest in the residential property is held as a trustee of a trust for the benefit of a registered charity as defined in section 248 (1) of the federal Act.

Exemption for not-for-profit corporations

21 An owner of a residential property is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if both of the following apply:

(a) the owner is, at the end of the last day of the calendar year, a not-for-profit corporation whose interest in the residential property is held other than as a partner in a partnership or as a trustee of a trust;

(b) during the calendar year, the residential property is primarily used for a prescribed purpose.

Exemption for bankrupts

22 (1) An owner of a residential property is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if the owner is, at the end of the last day of the calendar year, a person whose interest in the residential property is held as a trustee in bankruptcy.

(2) An owner of a residential property is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if the owner's interest in the residential property is vested in a trustee in bankruptcy

(a) for a period of at least 60 consecutive days in the calendar year, or

(b) at the end of the last day of that calendar year.

Exemption for Indigenous nations

23 An owner of a residential property is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if the owner is, at the end of the last day of the calendar year, a person whose interest in the residential property is held as a trustee of a trust for the benefit of an Indigenous nation.

Division 2 — Exemptions for Certain Residential Property

Exemption for hazardous or damaged residential property

24 (1) In this section:

"hazardous condition", in relation to a residence that is part of a residential property, means

(a) a structural component of the residence, including, without limitation, the roof, the foundation, external walls, interior supporting walls, floors and staircases, is defective or damaged,

(b) oil, gas or another poisonous or dangerous substance is present in the residence, or

(c) any other condition relating to the residence that is hazardous to the health or safety of its occupants;

"disaster" means

(a) an earthquake,

(b) a fire,

(c) a flood,

(d) a landslide,

(e) a spill or leakage of oil, gas or another poisonous or dangerous substance, or

(f) any other natural disaster or dangerous event.

(2) A residential property is exempt from tax for a calendar year if all of the following apply:

(a) in the calendar year or fewer than 60 days before the end of the immediately preceding calendar year, a residence that is part of the residential property

(i) becomes uninhabitable because it is substantially damaged or destroyed by a disaster, or

(ii) becomes uninhabitable because the residence is in a hazardous condition;

(b) the disaster or hazardous condition was caused by circumstances beyond the reasonable control of an owner of the residential property;

(c) the residence remains uninhabitable for a period of at least 60 consecutive days in the calendar year.

(3) The residential property is exempt from tax for the calendar year immediately following the calendar year referred to in subsection (2) if the residence that is part of the residential property is not repaired or replaced, as the case may be, to the extent that the residence can be inhabited before March 1 in the calendar year immediately following the calendar year referred to in subsection (2).

(4) A residential property is exempt from tax for the 2021 calendar year if all of the following apply:

(a) the residential property is located wholly or partly within the City of Abbotsford, the City of Chilliwack or the District of Mission;

(b) fewer than 60 days before the end of the 2021 calendar year, a residence that is part of the residential property became uninhabitable because it was substantially damaged or destroyed by a flood or landslide;

(c) the flood or landslide was caused by circumstances beyond the reasonable control of an owner of the residential property;

(d) had the residence not become uninhabitable as a result of the flood or landslide, an owner would have been entitled to an exemption in respect of the residential property for the 2021 calendar year under

(i) Division 3 *[Exemptions Relating to Principal Residence]* of this Part, or

(ii) Division 4 *[Exemptions for Tenanted Residential Property]* of this Part.

Exemption for daycares

25 (1) In this section:

"care" has the same meaning as in section 1 of the *Community Care and Assisted Living Act*;

"child" has the same meaning as in section 1 of the *Community Care and Assisted Living Act*;

"community care facility" has the same meaning as in section 1 of the *Community Care and Assisted Living Act*.

(2) A residential property is exempt from tax for a calendar year if the residential property is, on October 31 of the calendar year, used as a child daycare other than a daycare that

(a) is operated out of a residence that is part of the residential property, and

(b) is not a community care facility licensed under the *Community Care and Assisted Living Act* to provide care to a child.

Exemption for residential property without a residence — 2018 calendar year

26 A residential property is exempt from tax for the 2018 calendar year if, on October 16, 2018, the residential property does not include a residence or any part of an improvement that is intended to be a residence.

Exemption for strata accommodation properties

27 (1) In this section, **"strata accommodation property"** has the same meaning as in section 19 (1) of the *Assessment Act*.

(2) A residential property is exempt from tax for a calendar year if the residential property is a strata accommodation property on an assessment roll for the applicable calendar year.

Division 3 — Exemptions Relating to Principal Residence

Definitions

28 In this Division:

"eligible individual", in relation to an owner of a residential property for a calendar year, means any of the following:

(a) an individual who is a corporate interest holder in respect of a corporation that is an owner of the residential property if

(i) the corporation holds the interest in the residential property other than as a partner in a partnership or as a trustee of a trust, and

(ii) all of the corporate interest holders in respect of the corporation are residents of British Columbia at the end of the last day of the calendar year;

(b) an individual who is a partnership interest holder in respect of an interest in the residential property if

(i) the owner of the residential property who holds the interest in the residential property holds the interest as a partner in a partnership,

(ii) all of the partnership interest holders in respect of the interest in the residential property are residents of British Columbia at the end of the last day of the calendar year, and

(iii) none of the partners in the partnership is a corporation in respect of which there are no corporate interest holders or a partnership;

(c) an individual who is a beneficial owner in respect of an interest in the residential property if

(i) the owner of the residential property who holds the interest in the residential property holds the interest as a trustee of a trust, and

(ii) all of the beneficial owners in respect of the interest in the residential property are residents of British Columbia at the end of the last day of the calendar year;

"eligible owner", in relation to a residential property for a calendar year, means an owner of the residential property if the owner is an individual

(a) whose interest in the residential property is held other than as a partner in a partnership or as a trustee of a trust,

(b) who is a resident of British Columbia at the end of the last day of the calendar year, and

(c) who is not, on the last day of the calendar year, a minor living with the minor's parent or guardian in a residence that is part of the residential property.

Principal residence exemption — general

29 An owner of a residential property is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if a residence that is part of the residential property is, for the calendar year, the principal residence of one of the following:

(a) the owner, if the owner is an individual who is an eligible owner;

(b) an individual who is, for the calendar year, an eligible individual in relation to the owner.

Principal residence exemption — person with disabilities

30 (1) A residential property is exempt from tax for a calendar year if a residence that is part of the residential property is, for the calendar year, the principal residence of a person who is a person with disabilities at any time in that calendar year.

(2) A designation made under section 10 (1) *[rules relating to principal residence of spouses]* does not apply for the purposes of this section.

Principal residence exemption — other

31 (1) Subject to subsection (2), an owner of a residential property is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if all of the following apply:

(a) a residence that is part of the residential property is, for the calendar year, the principal residence of one of the following:

(i) the owner, if the owner is an individual who would have been an eligible owner had the individual been a resident of British Columbia at the end of the last day of the calendar year;

(ii) an individual who would have been an eligible individual in relation to the owner for the calendar year if

(A) the individual had been a resident of British Columbia at the end of the last day of the calendar year, and

(B) the owner is an owner who would have been an owner referred to in paragraph (a), (b) or (c) of the definition of "eligible individual" and in respect of whom all of the applicable requirements would have been met had an individual referred to in clause (A) not ceased residing in British Columbia before the end of the last day of the calendar year;

(b) the individual referred to in paragraph (a) (i) or (ii), as applicable, ceases to reside in British Columbia before the end of the last day of the calendar year;

(c) the individual referred to in paragraph (a) (i) or (ii), as applicable, would have been a resident of British Columbia at a time in the calendar year before the individual ceased residing in British Columbia if residency were, for the purposes of the federal Act, determined at that time.

(2) Subsection (1) does not apply for a calendar year to an owner of a residential property in respect of the owner's interest in the residential property if

(a) the owner was exempt under this section in respect of the residential property for a calendar year immediately preceding the calendar year, and

(b) the owner was not exempt under section 29 *[principal residence exemption — general]* in respect of the residential property for any calendar year since the last calendar year for which the owner was exempt under this section.

Residence exempt despite residing in residential care facility

32 (1) In this section, **"residential care facility"** means a facility in which an individual resides primarily because of age, disability, addiction, illness, frailty or other prescribed circumstances if, in the facility, services are available to the residents, including, without limitation, any of the following:

(a) daily meals;

(b) housekeeping;

(c) nursing care.

(2) Subject to this section, an owner of a residential property is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if both of the following apply:

(a) the owner was previously exempt under section 29 *[principal residence exemption — general]* in respect of the residential property for a calendar year specified in subsection (4) because a residence that is part of the residential property was, for the specified calendar year, the principal residence of one of the following:

(i) the owner, if the owner is an individual who was an eligible owner for that specified calendar year;

(ii) an individual who was an eligible individual in relation to the owner for that specified calendar year;

(b) the owner does not qualify for an exemption under section 29 in respect of the residential property for the calendar year because the same individual in respect of whom the owner was previously exempt under section 29 for the specified

calendar year resides in a residential care facility for a longer period in the calendar year than any other place.

(3) Subject to this section, an owner of a residential property is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if all of the following apply:

(a) the owner is, for the calendar year, one of the following:

(i) an individual who is an eligible owner;

(ii) an owner referred to in paragraph (a), (b) or (c) of the definition of "eligible individual" and in respect of whom all of the requirements set out in the applicable paragraph are met;

(b) a residence that is part of the residential property was, for a calendar year specified in subsection (4), the principal residence of one of the following:

(i) the owner, if the owner is an individual who would have been an eligible owner for the specified calendar year had the individual been a resident of British Columbia at the end of the last day of that specified calendar year;

(ii) an individual who would have been an eligible individual in relation to the owner for the specified calendar year had the individual been a resident of British Columbia at the end of the last day of that specified calendar year;

(c) the owner was not previously exempt under section 29 in respect of the residential property for the specified calendar year because the individual referred to in paragraph (b) (i) or (ii), as applicable, was not a resident of British Columbia at the end of the last day of that specified calendar year;

(d) the owner does not qualify for an exemption under section 29 in respect of the residential property for the calendar year because the same individual referred to in paragraph (b) (i) or (ii), as applicable, resides in a residential care facility for a longer period in the calendar year than any other place.

(4) For the purposes of this section, the following calendar years are specified:

(a) the calendar year immediately preceding the calendar year referred to in subsection (2) or (3), as applicable;

(b) if the owner was exempt in respect of the residential property under one of the following provisions for the period comprising the calendar year immediately preceding the calendar year referred to in subsection (2) or (3), or for the period comprising 2 or more consecutive calendar years immediately preceding that calendar year, the calendar year immediately preceding the applicable period:

(i) this section;

(ii) section 24 *[exemption for hazardous or damaged residential property]*;

(iii) section 33 *[residence exempt despite extended medical absence]*;

(iv) section 34 *[residence exempt despite extended absence]*;

(v) section 41 *[exemption for vacant residential property — construction or renovation]*;

(vi) section 42 *[exemption for vacant heritage property — conservation]*.

(5) Subsections (2) and (3) do not apply for a calendar year to an owner of a residential property in respect of the owner's interest in the residential property if

(a) the owner was exempt under this section in respect of the residential property for the 2 calendar years immediately preceding the calendar year,

(b) the owner was exempt under this section in respect of the residential property for a total of 2 calendar years preceding the calendar year and was not exempt under section 29 in respect of the residential property for any calendar year since the last calendar year for which the owner was exempt under this section, or

(c) in respect of the individual who resides in a residential care facility for a longer period in the calendar year than any other place, the owner is, for the calendar year, exempt under this section in respect of the owner's interest in a different residential property.

(6) For the purpose of determining whether this section applies in relation to a calendar year before the 2018 calendar year, the following rules apply:

(a) subsection (2) (a) and (b) is to be read as if the references to "was previously exempt" were references to "could have been previously exempt";

(b) subsection (3) (c) is to be read as if the reference to "was not previously exempt" were a reference to "could not previously have been exempt";

(c) subsection (4) (b) is to be read as if the reference to "was exempt" were a reference to "could have been exempt".

Residence exempt despite extended medical absence

33 (1) In this section, **"medical reason"**, in relation to an individual for a calendar year, means participation in a course of treatment

(a) that, in the opinion of a medical practitioner, is required for the health of the individual, and

(b) that is impractical for the individual to obtain in reasonably close proximity to the residence that would, but for the absence contemplated by this section, be the principal residence of the individual for the calendar year.

(2) Subject to this section, an owner of a residential property is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if both of the following apply:

(a) the owner was previously exempt under section 29 *[principal residence exemption — general]* in respect of the residential property for a calendar year specified in subsection (4) because a residence that is part of the residential property was, for the specified calendar year, the principal residence of one of the following:

(i) the owner, if the owner is an individual who was an eligible owner for that specified calendar year;

(ii) an individual who was an eligible individual in relation to the owner for that specified calendar year;

(b) the owner does not qualify for an exemption under section 29 in respect of the residential property for the calendar year because the same individual in respect of whom the owner was previously exempt under section 29 for the specified calendar year resides, for a medical reason related to

(i) that individual,

(ii) a person who is, for the calendar year, the spouse of that individual, or

(iii) a person who is the child of that individual and, at any time in the calendar year, a minor,

in a location other than the residence referred to in paragraph (a) of this subsection for a longer period in the calendar year than any other place.

(3) Subject to this section, an owner of a residential property is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if all of the following apply:

(a) the owner is, for the calendar year, one of the following:

(i) an individual who is an eligible owner;

(ii) an owner referred to in paragraph (a), (b) or (c) of the definition of "eligible individual" and in respect of whom all of the requirements set out in the applicable paragraph are met;

(b) a residence that is part of the residential property was, for a calendar year specified in subsection (4), the principal residence of one of the following:

(i) the owner, if the owner is an individual who would have been an eligible owner for the specified calendar year had the individual been a resident of British Columbia at the end of the last day of that specified calendar year;

(ii) an individual who would have been an eligible individual in relation to the owner for the specified calendar year had the individual been a resident of British Columbia at the end of the last day of that specified calendar year;

(c) the owner was not previously exempt under section 29 in respect of the residential property for the specified calendar year because the individual referred to in paragraph (b) (i) or (ii), as applicable, was not a resident of British Columbia at the end of the last day of that specified calendar year;

(d) the owner does not qualify for an exemption under section 29 in respect of the residential property for the calendar year because that same individual referred to in paragraph (b) (i) or (ii), as applicable, resides, for a medical reason related to

(i) that individual,

(ii) a person who is, for the calendar year, the spouse of that individual, or

(iii) a person who is the child of that individual and, at any time in the calendar year, a minor,

in a location other than the residence referred to in paragraph (b) of this subsection for a longer period in the calendar year than any other place.

(4) For the purposes of this section, the following calendar years are specified:

(a) the calendar year immediately preceding the calendar year referred to in subsection (2) or (3), as applicable;

(b) if the owner was exempt in respect of the residential property under one of the following provisions for the period comprising the calendar year immediately preceding the calendar year referred to in subsection (2) or (3), or for the period comprising 2 or more consecutive calendar years immediately preceding that calendar year, the calendar year immediately preceding the applicable period:

(i) this section;

(ii) section 24 *[exemption for hazardous or damaged residential property]*;

(iii) section 34 *[residence exempt despite extended absence]*;

(iv) section 41 *[exemption for vacant residential property — construction or renovation]*;

(v) section 42 *[exemption for vacant heritage property — conservation]*.

(5) Subsections (2) and (3) do not apply for a calendar year to an owner of a residential property in respect of the owner's interest in the residential property if

(a) the owner was exempt under this section in respect of the residential property and in respect of the same medical reason for the 2 calendar years immediately preceding the calendar year,

(b) both of the following apply:

(i) the owner was exempt under this section in respect of the residential property and in respect of the same medical reason for a total of 2 calendar years preceding the calendar year;

(ii) the owner was not exempt under section 29 in respect of the residential property for any calendar year since the last calendar year for which the owner was exempt under this section in respect of the residential property for the medical reason referred to in subparagraph (i), or

(c) in respect of the individual who resides in a location other than the residence referred to in subsection (2) (a) or (3) (b), as applicable, for a longer period in the calendar year than any other place, the owner is, for the calendar year, exempt under this section in respect of a different residential property.

(6) For the purposes of determining whether this section applies in relation to a calendar year before the 2018 calendar year, the following rules apply:

(a) subsection (2) (a) and (b) is to be read as if the references to "was previously exempt" were references to "could have been previously exempt";

(b) subsection (3) (c) is to be read as if the reference to "was not previously exempt" were a reference to "could not previously have been exempt";

(c) subsection (4) (b) is to be read as if the reference to "was exempt" were a reference to "could have been exempt".

(7) In order to claim an exemption under this section, the owner referred to in subsection (2) or (3), as applicable, must file, with a declaration, a document that is completed by a medical practitioner.

(8) The document that is completed by the medical practitioner must be

(a) filed in the manner required by the administrator, and

(b) in the form and contain the information required by the administrator.

Residence exempt despite extended absence

34 (1) Subject to this section, an owner of a residential property is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if both of the following apply:

(a) the owner was previously exempt under section 29 *[principal residence exemption — general]* in respect of the residential property for a calendar year specified in

subsection (3) because a residence that is part of the residential property was, for the specified calendar year, the principal residence of one of the following:

(i) the owner, if the owner is an individual who was an eligible owner for that specified calendar year;

(ii) an individual who was an eligible individual in relation to the owner for that specified calendar year;

(b) the owner does not qualify for an exemption under section 29 in respect of the residential property for the calendar year because the same individual in respect of whom the owner was previously exempt under section 29 for the specified calendar year resides in a location other than the residence referred to in paragraph (a) of this subsection for a longer period in the calendar year than any other place.

(2) Subject to this section, an owner of a residential property is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if all of the following apply:

(a) the owner is, for the calendar year, one of the following:

(i) an individual who is an eligible owner;

(ii) an owner referred to in paragraph (a), (b) or (c) of the definition of "eligible individual" and in respect of whom all of the requirements set out in the applicable paragraph are met;

(b) a residence that is part of the residential property was, for a calendar year specified in subsection (3), the principal residence of one of the following:

(i) the owner, if the owner is an individual who would have been an eligible owner for the specified calendar year had the individual been a resident of British Columbia at the end of the last day of that specified calendar year;

(ii) an individual who would have been an eligible individual in relation to the owner for the specified calendar year had the individual been a resident of British Columbia at the end of the last day of that specified calendar year;

(c) the owner was not previously exempt under section 29 in respect of the residential property for the specified calendar year because the individual referred to in paragraph (b) (i) or (ii), as applicable, was not a resident of British Columbia at the end of the last day of that specified calendar year;

(d) the owner does not qualify for an exemption under section 29 in respect of the residential property for the calendar year because the same individual referred to in paragraph (b) (i) or (ii), as applicable, resides in a location other than the residence referred to in paragraph (b) of this subsection for a longer period in the calendar year than any other place.

(3) For the purposes of this section, the following calendar years are specified:

(a) the calendar year immediately preceding the calendar year referred to in subsection (1) or (2), as applicable;

(b) if the owner was exempt in respect of the residential property under one of the following provisions for the period comprising the calendar year immediately preceding the calendar year referred to in subsection (1) or (2), or for the period

comprising 2 or more consecutive calendar years immediately preceding that calendar year, the calendar year immediately preceding the applicable period

(i) this section;

(ii) section 24 *[exemption for hazardous or damaged residential property]*;

(iii) section 32 *[residence exempt despite residing in residential care facility]*;

(iv) section 33 *[residence exempt despite extended medical absence]*;

(v) section 41 *[exemption for vacant residential property — construction or renovation]*;

(vi) section 42 *[exemption for vacant heritage property — conservation]*.

(4) Subsections (1) and (2) do not apply for a calendar year to an owner of a residential property in respect of the owner's interest in the residential property if

(a) the individual referred to in subsection (1) (a) (i) or (ii) or (2) (b) (i) or (ii), as applicable, is absent from the residential property for an extended period in the calendar year because the individual is incarcerated,

(b) the owner was exempt under this section in respect of the residential property for one out of the 10 calendar years immediately preceding the calendar year, or

(c) in respect of the individual who resides in a location other than the residence referred to in subsection (1) (a) or (2) (b), as applicable, the owner is, for the calendar year, exempt under this section in respect of a different residential property.

(5) For the purposes of determining whether this section applies in relation to a calendar year before the 2018 calendar year, the following rules apply:

(a) subsection (1) (a) and (b) is to be read as if the references to "was previously exempt" were references to "could have been previously exempt";

(b) subsection (2) (c) is to be read as if the reference to "was not previously exempt" were a reference to "could not previously have been exempt";

(c) subsection (3) (b) is to be read as if the reference to "was exempt" were a reference to "could have been exempt".

Additional residential property exempt — certain spouses

35 (1) An owner of a residential property is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if all of the following apply:

(a) the owner is, for the calendar year, one of the following:

(i) an individual who is an eligible owner;

(ii) an owner referred to in paragraph (a), (b) or (c) of the definition of "eligible individual" and in respect of whom all of the requirements set out in the applicable paragraph are met;

(b) one of the following applies:

(i) in the case of an owner referred to in paragraph (a) (i), the owner is the spouse of another person for the calendar year;

(ii) in the case of an owner referred to in paragraph (a) (ii), an individual who is an eligible individual in relation to the owner for the calendar year is the spouse of another person for the calendar year;

(c) because of the application of section 10 (2) or (3) *[rules relating to principal residence of spouses]*, the spouses referred to in paragraph (b) (i) or (ii) of this subsection, as applicable, are each considered to have a separate principal residence for the calendar year;

(d) a residence that is part of the residential property is, for the calendar year, the principal residence of only one of the spouses referred to in paragraph (b) (i) or (ii), as applicable.

(2) An owner of a residential property is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if all of the following apply:

(a) the owner is, for the calendar year, one of the following:

(i) an individual who is an eligible owner;

(ii) an owner described in paragraph (a), (b) or (c) of the definition of "eligible individual" and in respect of whom all of the requirements set out in the applicable paragraph are met;

(b) one of the following applies:

(i) in the case of an owner referred to in paragraph (a) (i), the owner is the spouse of another person for the calendar year;

(ii) in the case of an owner referred to in paragraph (a) (ii), an individual who is an eligible individual in relation to the owner for the calendar year is the spouse of another person for the calendar year;

(c) but for a designation under section 10 (1) *[rules relating to principal residence of spouses]*, the spouses referred to in paragraph (b) (i) or (ii), as applicable, would each have a separate principal residence for the calendar year;

(d) a residence that is part of the residential property

(i) has not been designated for the calendar year as the principal residence of the spouses referred to in paragraph (b) (i) or (ii), as applicable,

(ii) is, despite the designation of a different residence, the principal residence for the calendar year of one of the spouses referred to in paragraph (b) (i) or (ii), as applicable, and

(iii) is not, for the calendar year, the principal residence of the other spouse only because that spouse is, for the calendar year, an individual who is

(A) absent for a reason contemplated in section 32 *[residence exempt despite residing in residential care facility]*, 33 *[residence exempt despite extended medical absence]* or 34 *[residence exempt despite extended absence]*, and

(B) exempt in respect of the residential property under a provision referred to in clause (A) or who would be exempt if the individual were an owner of that residential property.

Division 4 — Exemptions for Tenanted Residential Property

Definitions and interpretation

36 (1) In this Division:

"arm's length tenant", in relation to an owner of a residential property, means, subject to subsection (4), an individual

(a) who occupies, under a tenancy agreement, a residence that is part of the residential property, and

(b) who, on the date the tenancy agreement comes into effect, deals at arm's length with the following:

(i) if the owner of the residential property is an individual whose interest in the residential property is held other than as a partner in a partnership or as a trustee of a trust, the owner;

(ii) if the owner of the residential property is a corporation whose interest in the residential property is held other than as a partner in a partnership or as a trustee of a trust, all of the corporate interest holders in respect of the corporation;

(iii) if the owner of the residential property is a person whose interest in the residential property is held as a partner in a partnership, all of the partnership interest holders in respect of the interest in the residential property;

(iv) if the owner of the residential property is a person whose interest in the residential property is held as a trustee of a trust, all of the beneficial owners in respect of the interest in the residential property,

but does not include an individual described in paragraph (a) if the owner of the residential property is a person whose interest in the residential property is held as a partner in a partnership in which any of the partners is a partnership;

"non-arm's length tenant", in relation to an owner of a residential property, means, subject to subsection (5), an individual

(a) who occupies, for a period of at least one month, a residence that is part of the residential property, and

(b) who, at any time during a period of occupation, does not deal at arm's length with any of the following:

(i) if the owner of the residential property is an individual whose interest in the residential property is held other than as a partner in a partnership or as a trustee of a trust,

(A) the owner, or

(B) the spouse, if any, of the owner referred to in clause (A);

(ii) if the owner of the residential property is a corporation whose interest is held other than as a partner in a partnership or as a trustee of a trust,

(A) a corporate interest holder in respect of the corporation, or

(B) the spouse, if any, of a corporate interest holder referred to in clause (A);

(iii) if the owner of the residential property is a person whose interest in the residential property is held as a partner in a partnership,

(A) a partnership interest holder in respect of the interest in the residential property, or

(B) the spouse, if any, of a partnership interest holder referred to in clause (A);

(iv) if the owner of the residential property is a person whose interest in the residential property is held as a trustee of a trust,

(A) a beneficial owner in respect of the interest in the residential property, or

(B) the spouse, if any, of a beneficial owner referred to in clause (A),

but does not include an individual described in paragraph (a) who occupies a residence that is part of the residential property under a tenancy agreement if, on the date the tenancy agreement comes into effect, the individual is an arm's length tenant in relation to the owner;

"tenancy agreement" means an agreement, in writing, that

(a) is a tenancy agreement as defined in section 1 of the *Residential Tenancy Act*, and

(b) provides for a tenancy on a monthly or longer basis;

"tenant" means an arm's length tenant or a non-arm's length tenant.

(2) For the purposes of this Division, other than section 37 *[tenancy exemption for widely held owners]*, a residence that is part of a residential property is occupied by an arm's length tenant for each month in a calendar year that

(a) the tenant is entitled, under a tenancy agreement, to occupy the residence, and

(b) the residence is a place the tenant makes the tenant's home.

(3) For the purposes of this Division, other than section 37, a residence that is part of a residential property is occupied by a non-arm's length tenant for each month in a calendar year that

(a) the tenant has permission from one of the owners of the residential property to occupy the residence, and

(b) the residence is the place in which the tenant resides for a longer period in the month than any other place.

(4) An individual who is an arm's length tenant in relation to an owner of a residential property on the date a tenancy agreement applicable to the individual comes into effect may not be considered an arm's length tenant in relation to the owner for a calendar year for which the individual is the spouse of any of the following:

(a) if the owner of the residential property is an individual whose interest in the residential property is held other than as a partner in a partnership or as a trustee of a trust, the owner;

(b) if the owner of the residential property is a corporation whose interest in the residential property is held other than as a partner in a partnership or as a trustee of a trust, a corporate interest holder in respect of the corporation;

(c) if the owner is a person whose interest in the residential property is held as a partner in a partnership, a partnership interest holder in respect of the interest in the residential property;

(d) if the owner is a person whose interest in the residential property is held as a trustee of a trust, a beneficial owner in respect of the interest in the residential

property.

(5) The following persons may not, for a calendar year, be considered a non-arm's length tenant in relation to an owner of a residential property:

(a) if the owner of the residential property is an individual whose interest in the residential property is held other than as a partner in a partnership or as a trustee of a trust,

(i) the owner,

(ii) a person who is, for the calendar year, the spouse of the owner, or

(iii) a person who is a child of the owner if the child is a minor on the last day of the calendar year and living with the child's parent or guardian in a residence that is part of the residential property;

(b) if the owner of the residential property is a corporation whose interest in the residential property is held other than as a partner in a partnership or as a trustee of a trust,

(i) a corporate interest holder in respect of the corporation,

(ii) a person who is, for the calendar year, the spouse of the corporate interest holder referred to in subparagraph (i), or

(iii) a person who is a child of the corporate interest holder referred to in subparagraph (i) if the child is a minor on the last day of the calendar year and living with the child's parent or guardian in a residence that is part of the residential property;

(c) if the owner is a person whose interest in the residential property is held as a partner in a partnership,

(i) a partnership interest holder in respect of the interest in the residential property,

(ii) a person who is, for the calendar year, the spouse of the partnership interest holder referred to in subparagraph (i), or

(iii) a person who is a child of the partnership interest holder referred to in subparagraph (i) if the child is a minor on the last day of the calendar year and living with the child's parent or guardian in a residence that is part of the residential property;

(d) if the owner is a person whose interest in the residential property is held as a trustee of a trust,

(i) a beneficial owner in respect of the interest in the residential property,

(ii) a person who is, for the calendar year, the spouse of the beneficial owner referred to in subparagraph (i), or

(iii) a person who is a child of the beneficial owner referred to in subparagraph (i) if the child is a minor on the last day of the calendar year and living with the child's parent or guardian in a residence that is part of the residential property.

Tenancy exemption for widely held owners

37 (1) In this section, **"designated stock exchange"** has the same meaning as in section 248 (1) of the federal Act.

(2) An owner of a residential property is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if

(a) a residence that is part of the residential property is occupied by an individual under a tenancy agreement for one or more periods each of which is at least one month in duration and that total at least 6 months in the calendar year, and

(b) the owner is one of the following at the end of the last day of the calendar year:

(i) a corporation, if the shares of the corporation are listed or traded on a designated stock exchange;

(ii) a person whose interest in the residential property is held as a trustee of a trust if the trust is any of the following:

(A) a mutual fund trust within the meaning of section 132 (6) of the federal Act;

(B) a real estate investment trust as defined in section 122.1 (1) of the federal Act;

(C) a SIFT trust as defined in section 122.1 (1) of the federal Act;

(D) a trust, if the investments in the trust are listed or traded on a designated stock exchange;

(iii) an owner in a prescribed class of owners.

(3) Despite subsection (2), an owner of a residential property is, for the 2018 calendar year, exempt from tax in respect of the owner's interest in the residential property if

(a) a residence that is part of the residential property is occupied by an individual under a tenancy agreement for one or more periods each of which is at least one month in duration and that total at least 3 months in the calendar year, and

(b) the owner is one of the following at the end of the last day of the calendar year:

(i) a corporation, if the shares of the corporation are listed or traded on a designated stock exchange;

(ii) a person whose interest in the residential property is held as a trustee of a trust if the trust is any of the following:

(A) a mutual fund trust within the meaning of section 132 (6) of the federal Act;

(B) a real estate investment trust as defined in section 122.1 (1) of the federal Act;

(C) a SIFT trust as defined in section 122.1 (1) of the federal Act;

(D) a trust, if the investments in the trust are listed or traded on a designated stock exchange;

(iii) an owner in a prescribed class of owners.

Tenancy exemption for specified owners

38 (1) An owner of a residential property is, for the 2019 or a subsequent calendar year, exempt from tax in respect of the owner's interest in the residential property if

(a) a residence that is part of the residential property is, for one or more periods that total at least 6 months in the calendar year, occupied by an individual who is, in relation to the owner of the residential property,

(i) an arm's length tenant occupying the residence in accordance with section 36 (2) *[definitions and interpretation]*, or

(ii) a non-arm's length tenant occupying the residence in accordance with section 36 (3), and

(b) the owner is, for the calendar year, an owner who is subject to a rate of tax under section 16 *[lowest tax rate — specified Canadian citizens and specified permanent residents of Canada]* or 17 *[lowest tax rate — residents of British Columbia]*.

(2) An owner of a residential property is, for the 2018 calendar year, exempt from tax in respect of the owner's interest in the residential property if

(a) a residence that is part of the residential property is, for one or more periods that total at least 3 months in the 2018 calendar year, occupied by an individual who is, in relation to the owner of the residential property,

(i) an arm's length tenant occupying the residence in accordance with section 36 (2), or

(ii) a non-arm's length tenant occupying the residence in accordance with section 36 (3), and

(b) the owner is, for the calendar year, an owner who, but for section 19 *[tax rate applicable for 2018 calendar year]*, would be subject to a rate of tax under section 16 or 17.

Tenancy exemption for other owners

39 (1) In this section, **"BC income"**, in relation to an individual for a calendar year, is the individual's BC income for the calendar year as determined under section 60 (3).

(2) An owner of a residential property is, for the 2019 or a subsequent calendar year, exempt from tax in respect of the owner's interest in the residential property if all of the following apply:

(a) a residence that is part of the residential property is, for one or more periods that total at least 6 months in the calendar year, occupied by an individual who is, in relation to the owner of the residential property,

(i) an arm's length tenant occupying the residence in accordance with section 36 (2) *[definitions and interpretation]*, or

(ii) a non-arm's length tenant occupying the residence in accordance with section 36 (3);

(b) for the calendar year, the owner

(i) is an owner who is subject to a rate of tax under section 15 (1) *[highest tax rate — other owners]*, and

(ii) is not an owner described in section 37 *[tenancy exemption for widely held owners]*;

(c) each non-arm's length tenant, if any, referred to in paragraph (a) (ii) is an individual

(i) who is a resident of British Columbia at the end of the last day of the calendar year, and

(ii) whose BC income for the calendar year is equal to or greater than 3 times the annual fair market rent for the entire residential property, determined

in accordance with the regulations.

(3) An owner of a residential property is, for the 2018 calendar year, exempt from tax in respect of the owner's interest in the residential property if all of the following apply:

(a) a residence that is part of the residential property is, for one or more periods that total at least 3 months in the calendar year, occupied by an individual who is, in relation to the owner of the residential property,

(i) an arm's length tenant occupying the residence in accordance with section 36 (2), or

(ii) a non-arm's length tenant occupying the residence in accordance with section 36 (3);

(b) for the calendar year, the owner

(i) is an owner who, but for section 19 *[tax rate applicable for 2018 calendar year]*, would be subject to a rate of tax under section 15 (1) *[highest tax rate — other owners]*, and

(ii) is not an owner described in section 37 *[tenancy exemption for widely held owners]*;

(c) each non-arm's length tenant, if any, referred to in paragraph (a) (ii) is an individual

(i) who is a resident of British Columbia at the end of the last day of the calendar year, and

(ii) whose BC income for the calendar year is equal to or greater than 3 times the annual fair market rent for the entire residential property, determined in accordance with the regulations.

Division 5 — Exemptions for Residential Property Under Construction or Renovation

Definitions

40 In this Division:

"building activity" means any of the following activities relating to the construction, placement or substantial renovation, as the case may be, of a residence that is part of a residential property:

(a) applying for financing;

(b) applying for a permit or other necessary approval;

(c) entering into contracts for designing, building or engineering;

(d) demolishing or removing existing improvements;

(e) clearing or excavating the site;

(f) constructing or placing the residence on the residential property or substantially renovating the residence;

(g) any other activity necessary for the construction, placement or substantial renovation of the residence;

"substantial renovation" means a renovation of an existing residence that is part of a residential property to such an extent that the residence must be vacant.

Exemption for vacant residential property — construction or renovation

41 A residential property is, for a calendar year, exempt from tax if all of the following apply:

(a) in the calendar year, building activity is started or continued

(i) in relation to the construction or placement of a residence on the residential property, or

(ii) in relation to the substantial renovation of an existing residence on the residential property;

(b) in the calendar year, an owner of the residential property takes reasonable steps to ensure that building activity in relation to the residence progresses without undue delay;

(c) if there is any undue delay in the progression of building activity in relation to the residence, the delay is caused by circumstances beyond the reasonable control of an owner of the residential property;

(d) because of the stage of building activity, either

(i) the residential property does not yet include a residence, or

(ii) there is a period of at least 90 days in the calendar year during which a residence that is part of the residential property cannot be occupied.

Exemption for vacant heritage property — conservation

42 (1) In this section:

"conservation" has the same meaning as in section 1 of the *Heritage Conservation Act*;

"heritage property" means property that is

(a) designated under section 9 of the *Heritage Conservation Act*,

(b) protected heritage property within the meaning of section 1 of the Schedule to the *Local Government Act*, or

(c) protected heritage property within the meaning of section 2 *[interpretation]* of the *Vancouver Charter*.

(2) A residential property that includes heritage property is, for a calendar year, exempt from tax if, because of an owner's conservation of the heritage property, there is a period of at least 90 days in the calendar year during which a residence that is part of the residential property cannot be occupied.

Exemption for phased developments of residential property

43 (1) In this section, **"phased residential development"** means a development of 5 or more residences on 2 or more residential properties if

(a) the development will be carried out in phases, and

(b) every owner of the residential properties is the same person or is a related person within the meaning of section 251 (2) of the federal Act.

(2) Subject to this section, a residential property is, for a calendar year, exempt from tax if all of the following apply:

(a) the residential property is part of a phased residential development;

(b) in the calendar year, building activity is started or continued in relation to the construction or placement of a residence on one or more of the residential properties that are part of the phased residential development;

(c) in the calendar year, an owner of a residential property that is part of the phased residential development takes reasonable steps to ensure that building activity referred to in paragraph (b) progresses without undue delay;

(d) if there is any undue delay in the progression of building activity, the delay is caused by circumstances beyond the reasonable control of an owner of a residential property that is part of the phased residential development.

(3) Subsection (2) does not apply to a residential property that is part of a phased residential development if a residence that is part of the residential property can be occupied for a period of at least 180 days in the calendar year.

Exemption for vacant new inventory

44 (1) In this section, **"residential development"** means a development of 5 or more residences on one or more residential properties.

(2) An owner of a residential property is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if all of the following apply:

(a) the residential property is part of a residential development;

(b) a residence has been newly constructed or placed on the residential property;

(c) the residence is not occupied as a residence at the end of the last day of the calendar year and has not been occupied as a residence since it was constructed or placed on the land;

(d) in the calendar year, the residence is offered to the public for sale;

(e) the owner of the residential property was a developer of the residential property.

Division 6 — Exemptions for Certain Circumstances

Additional residential property exempt — medical reason

45 (1) In this section:

"medical reason", in relation to an individual for a calendar year, means participation in a course of treatment

(a) that, in the opinion of a medical practitioner, is required for the health of the individual, and

(b) that can be obtained in a facility that is in reasonably close proximity to a residence in which the individual periodically resides;

"qualifying individual", in relation to an owner, means any of the following:

(a) if the owner of the residential property is an individual whose interest in the residential property is held other than as a partner in a partnership or as a trustee of a trust, the owner;

(b) if the owner of the residential property is a corporation whose interest in the residential property is held other than as a partner in a partnership or as a trustee of a trust, a corporate interest holder in respect of the corporation;

(c) if the owner of the residential property is a person whose interest in the residential property is held as a partner in a partnership, a partnership interest holder in respect of the interest in the residential property;

(d) if the owner of the residential property is a person whose interest in the residential property is held as a trustee of a trust, a beneficial owner in respect of the interest in the residential property.

(2) An owner of a residential property is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if, in the calendar year, an individual who is a qualifying individual in relation to the owner for the calendar year or who is the spouse or child, if any, of a qualifying individual, periodically resides in a residence that is part of the residential property for a medical reason related to the individual.

(3) In order to claim an exemption under this section, the owner referred to in subsection (2), must file, with a declaration, a document that is completed by a medical practitioner.

(4) The document that is completed by the medical practitioner must be

(a) filed in the manner required by the administrator, and

(b) in the form and contain the information required by the administrator.

Exemption on death

46 (1) Subject to subsection (2), on the death of an individual who is an owner of a residential property, any owner of the residential property is, for the calendar year in which the death occurs and the immediately following calendar year, exempt from tax in respect of that owner's interest in the residential property.

(2) Subsection (1) only applies to an owner of the residential property other than the individual who died if

(a) the owner was an owner of the residential property on the date the death occurred, or

(b) the owner is the personal representative of the deceased.

Exemption on testamentary trust

47 (1) An owner of a residential property is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if both of the following apply:

(a) the owner is a person whose interest is held as a trustee of a testamentary trust for the benefit of a person who is a minor at any time in the calendar year;

(b) the testamentary trust was created by a parent or guardian of the minor.

(2) The owner referred to in subsection (1) is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if, in that calendar year, the minor referred to in subsection (1) (a) dies.

Exemption in year of acquisition — as a consequence of death

48 (1) Subject to subsection (2), an owner of a residential property is exempt from tax in respect of the owner's interest in the residential property for the calendar year in which the owner acquires that interest if the owner acquires that interest as a consequence of the distribution of a person's estate as defined in section 1 (1) of the *Wills, Estates and Succession Act*.

(2) Subsection (1) does not apply for a calendar year to an owner of a residential property if the owner or any other owner of the residential property was exempt under this section in respect of the residential property in a preceding calendar year as a consequence of a distribution from the same estate.

Exemption in year of acquisition — other

49 (1) An owner who is a registered owner of the estate in fee simple of a residential property is exempt from tax in respect of the owner's interest in the residential property for the calendar year in which the owner acquires that interest if, in respect of the transaction in which the owner acquires that interest,

(a) the owner paid tax under the *Property Transfer Tax Act*, or

(b) the owner did not pay tax under the *Property Transfer Tax Act* only because the owner qualified for an exemption under any of the following provisions of that Act:

(i) section 5 *[first time home buyers' exemption]*;

(ii) section 12.02 *[new housing exemption]*;

(iii) section 14 (3) (k) *[reversion, escheat or forfeit of land]*;

(iv) section 14 (3) (o) *[transfer of land by trustee in bankruptcy]*;

(v) section 14 (3) (p) *[transfer of principal residence by trustee in bankruptcy]*;

(vi) section 14 (4) (p.3) *[transfer of land by Public Guardian and Trustee]*;

(vii) section 14 (4) (r) *[transfer to a veteran or veteran's spouse]*.

(2) An owner who is a registered holder of the last registered agreement for sale of a residential property is exempt from tax in respect of the owner's interest in the residential property for the calendar year in which the owner acquires that interest if, in respect of the transaction in which the owner acquires that interest,

(a) the owner paid tax under the *Property Transfer Tax Act*, or

(b) the owner did not pay tax under the *Property Transfer Tax Act* only because the owner qualified for an exemption under any of the following provisions of that Act:

(i) section 5 *[first time home buyers' exemption]*;

(ii) section 12.02 *[new housing exemption]*;

(iii) section 14 (3) (k) *[reversion, escheat or forfeit of land]*;

(iv) section 14 (3) (l) *[transfer of land in respect of which tax has been paid]*;

(v) section 14 (3) (o) *[transfer of land by trustee in bankruptcy]*;

(vi) section 14 (3) (p) *[transfer of principal residence by trustee in bankruptcy]*;

(vii) section 14 (4) (p.3) *[transfer of land by Public Guardian and Trustee]*;

(viii) section 14 (4) (r) *[transfer to a veteran or veteran's spouse]*.

(3) An owner who is a registered occupier of a residential property is exempt from tax in respect of the owner's interest in the residential property for the calendar year in which the owner acquires that interest if the owner was not, in the immediately preceding calendar year, a registered occupier in relation to that residential property.

Exemption on breakdown of marriage or common-law partnership

50 (1) In this section:

"common-law partner", in relation to a person, means an individual who has lived with the person in a marriage-like relationship for a continuous period of at least 2 years;

"common-law partnership" means the relationship between 2 persons who are the common-law partners of one another;

"eligible individual", in relation to an owner of a residential property, means any of the following:

(a) an individual who is a corporate interest holder in respect of a corporation, if the corporation is an owner of the residential property that holds an interest in the residential property other than as a partner in a partnership or as a trustee of a trust;

(b) an individual who is a partnership interest holder in respect of an interest in the residential property, if

(i) the owner of the residential property who holds the interest in the residential property holds the interest as a partner in a partnership, and

(ii) none of the partners in the partnership is a corporation in respect of which there are no corporate interest holders or a partnership;

(c) an individual who is a beneficial owner in respect of an interest in the residential property, if the owner of the residential property who holds the interest holds the interest as a trustee of a trust;

"spouse" includes a common-law partner.

(2) An owner of a residential property is, for a calendar year, exempt from tax in respect of the owner's interest in the residential property if all of the following apply:

(a) the owner is, for the calendar year,

(i) an individual who holds the interest in the residential property other than as a partner in a partnership or as a trustee of a trust, or

(ii) an owner referred to in paragraph (a), (b) or (c) of the definition of "eligible individual" and in respect of whom all of the requirements set out in the applicable paragraph are met;

(b) because of a breakdown of the marriage or common-law partnership of an individual referred to in paragraph (a) (i) or an individual who is an eligible individual in relation to the owner for the calendar year,

(i) the individual and the person who was the individual's spouse at the time of the breakdown begin living separate and apart in the calendar year and live separate and apart for at least 90 days in the calendar year, or

(ii) all of the following apply in respect of the individual and the person who was the individual's spouse at the time of the breakdown:

(A) the spouses began living separate and apart in the immediately preceding calendar year;

(B) a final agreement or final court order respecting property division was not made in that immediately preceding calendar year;

(C) the spouses continue to live separate and apart throughout the calendar year;

(c) in the case of an eligible individual referred to in paragraph (b), the eligible individual or the person who was the eligible individual's spouse at the time of the breakdown is, or both of them are,

(i) if the owner is an owner referred to in paragraph (a) of the definition of "eligible individual", the only corporate interest holder or holders, as applicable, in respect of the corporation that is the owner,

(ii) if the owner is an owner referred to in paragraph (b) of the definition of "eligible individual", the only partnership interest holder or holders, as applicable, in respect of the interest in the residential property held by the owner, or

(iii) if the owner is an owner referred to in paragraph (c) of the definition of "eligible individual", the only beneficial owner or owners, as applicable, in respect of the interest in the residential property held by the owner;

(d) at the end of the last day of the calendar year, the spouses referred to in paragraph (b) (i) or (ii), as applicable, have not reconciled;

(e) the residential property is family property, within the meaning of Part 5 *[Property Division]* of the *Family Law Act*, of the spouses referred to in paragraph (b) (i) or (ii), as applicable, or a right or interest held by the spouses referred to in paragraph (b) (i) or (ii), as applicable, in the residential property is family property of those spouses within the meaning of Part 5 of the *Family Law Act*.

(3) The owner of a residential property referred to in subsection (2) is, for the calendar year immediately following the calendar year referred to in that subsection, exempt from tax in respect of the owner's interest in the residential property if all of the following apply:

(a) the spouses referred to in subsection (2) (b) (i) or (ii), as applicable, continue to live separate and apart throughout the calendar year;

(b) in the case of spouses referred to in subsection (2) (b) (ii), the spouses began living separate and apart fewer than 90 days before the end of the calendar year immediately preceding the calendar year referred to in subsection (2);

(c) at the end of the last day of the calendar year, the spouses referred to in subsection (2) (b) (i) or (ii), as applicable, have not reconciled;

(d) a final agreement or final court order respecting property division was not made in the calendar year referred to in subsection (2).

Exemption for restricted rentals — 2018 and 2019 calendar years

51 An owner of a residential property is, for the 2018 and 2019 calendar years, exempt from tax in respect of the owner's interest in the residential property if, on or before October 16, 2018,

(a) the owner acquired the interest in the residential property, and

(b) a covenant under section 219 of the *Land Title Act* or a bylaw of a strata corporation prohibited the occupation of a residence that is part of the residential property by an arm's length tenant, as defined in section 36 (1) *[definitions and interpretation]* of this Act, in a manner that would entitle the owner to an exemption in respect of the residential property under any of the following:

(i) section 37 *[tenancy exemption for widely held owners]*;

(ii) section 38 *[tenancy exemption for specified owners]*;

(iii) section 39 *[tenancy exemption for other owners]*.

Part 4 — Tax Credits

Definitions and interpretation

52 (1) In this Part:

"amalgamation" means an amalgamation within the meaning of section 53;

"BC income" means an individual's or a corporation's BC income for a calendar year as determined under section 60;

"eligible taxpayer" means,

(a) for the 2019 or a subsequent calendar year, an owner of a residential property who is subject to a rate of tax under section 15 *[highest tax rate — other owners]* or 16 *[lowest tax rate — specified Canadian citizens and specified permanent residents of Canada]* for the calendar year, or

(b) for the 2018 calendar year, an owner of a residential property who, but for section 19 *[tax rate applicable for 2018 calendar year]*, would be subject to a rate of tax under section 15 or 16 for the 2018 calendar year,

but does not include an owner who holds an interest in the residential property as a partner in a partnership;

"new corporation" means the corporation that results from the amalgamation of 2 or more corporations;

"predecessor corporation" means a corporation that amalgamates with one or more corporations.

(2) For the purposes of this Part and without limiting section 7,

(a) a person who is a trustee of a trust is

(i) a separate person from the person in the capacity as a trustee, and

(ii) a separate person in respect of each trust for which the person is a trustee,

(b) an individual in the individual's capacity as a partner in a partnership or as a trustee of a trust may not

(i) transfer an amount to the individual's spouse under section 58 *[transfer of BC income balance to spouse]*, or

(ii) receive a transfer of an amount under section 58,

(c) the calculation of a person's BC income in the capacity as a trustee of a trust does not affect the calculation of the person's own BC income, and

(d) if a trust has more than one trustee, only one trustee of the trust may determine under section 60 (5) the trustee's BC income for a calendar year as a trustee of the trust.

Amalgamations

53 For the purposes of this Part, an amalgamation of 2 or more corporations occurs if all of the following requirements are met:

(a) the amalgamation was effected under

(i) Division 3 of Part 9 of the *Business Corporations Act* or similar provisions of another enactment of British Columbia,

(ii) sections 181 to 186 of the *Canada Business Corporations Act* or similar provisions of another enactment of Canada, or

(iii) similar provisions of an enactment of another jurisdiction;

(b) all of the predecessor corporations are continued in the new corporation as a result of the amalgamation;

(c) the property, rights and interests of each predecessor corporation continue to be the property, rights and interests of the new corporation;

(d) the new corporation continues to be liable for the obligations of each predecessor corporation.

Tax credit for resident of British Columbia

54 (1) Subject to subsection (2), this section applies to an owner in respect of a residential property for a calendar year if

(a) the owner is an individual who is a resident of British Columbia at the end of the last day of the calendar year,

(b) the owner must pay tax for the calendar year in respect of the owner's interest in the residential property,

(c) the owner,

(i) for the 2019 or a subsequent calendar year, is subject to a rate of tax under section 17 *[lowest tax rate — residents of British Columbia]* for the calendar year, or

(ii) for the 2018 calendar year, would be subject to a rate of tax under section 17 but for section 19 *[tax rate applicable for 2018 calendar year]*, and

(d) the owner is not a minor on the last day of the calendar year.

(2) This section does not apply to an owner in respect of the owner's interest in the residential property held as a partner in a partnership or as a trustee of a trust.

(3) Subject to subsections (4) and (5), the tax otherwise payable for a calendar year in respect of a residential property by an owner to whom this section applies is reduced by the amount not exceeding the lesser of

(a) $2 000, and

(b) the amount determined by multiplying $2 000 by the owner's interest in the residential property for the calendar year, expressed as a percentage.

(4) The total of all reductions made under subsection (3) to an owner's tax payable for a calendar year in respect of all residential properties in which the owner holds an interest may not exceed $2 000.

(5) If an owner must pay tax for a calendar year in respect of the owner's interest in more than one residential property, the administrator must determine for which of those residential properties the owner's tax payable is reduced under subsection (3) and the amount of that reduction.

(6) If the tax otherwise payable for a calendar year is reduced under this section after the date the tax was payable under section 78 *[payment of tax]*, the reduction is deemed to have occurred on that date.

Tax credit for eligible taxpayer

55 (1) If an eligible taxpayer must pay tax for a calendar year in respect of an eligible taxpayer's interest in a residential property, the eligible taxpayer may deduct from the eligible taxpayer's tax otherwise payable for the calendar year in respect of the residential property an amount not exceeding the lesser of

(a) the amount equal to the eligible taxpayer's tax credit balance for the calendar year determined under section 56, less any amount of that balance claimed for the calendar year by the eligible taxpayer in respect of another residential property, and

(b) the eligible taxpayer's maximum tax credit for the calendar year in respect of the residential property, determined under subsection (2) of this section.

(2) An eligible taxpayer's maximum tax credit for a calendar year in respect of a residential property is

(a) the amount referred to in subsection (1) that is the eligible taxpayer's tax otherwise payable for the calendar year in respect of the residential property if

(i) the eligible taxpayer is an individual whose interest in the residential property is held other than as a trustee of a trust and who would have been exempt under Part 3 from tax for the calendar year in respect of the residential property had the eligible taxpayer been an owner referred to in section 17 (2) (a),

(ii) the eligible taxpayer is a corporation whose interest in the residential property is held other than as a trustee of a trust and that eligible taxpayer would have been exempt under Part 3 from tax for the calendar year in respect of the residential property had the eligible taxpayer been an owner referred to in section 17 (2) (b), or

(iii) the eligible taxpayer is a person whose interest in the residential property is held as a trustee of a trust and who would have been exempt under Part 3 from tax for the calendar year in respect of the residential property had the eligible taxpayer been an owner referred to in section 17 (4), or

(b) the amount determined by the following formula, in any other case:

$$\text{amount} = \text{tax payable} \times \left[\frac{(\text{applicable tax rate} - \text{lowest tax rate})}{\text{applicable tax rate}} \right]$$

where

tax payable	=	the eligible taxpayer's tax otherwise payable for the calendar year in respect of the residential property;
applicable tax rate	=	the tax rate applicable under section 15 or 16 to the eligible taxpayer for the calendar year;
lowest tax rate	=	the tax rate under section 17 for the calendar year.

(3) If an eligible taxpayer is, for a calendar year, an owner of a residential property who is subject to a rate of tax under section 16 *[lowest tax rate — specified Canadian citizens and specified permanent residents of Canada]*,

(a) subsection (2) (b) of this section does not apply for the purposes of determining the eligible taxpayer's maximum tax credit in respect of the residential property, and

(b) the eligible taxpayer's maximum tax credit in respect of the residential property is nil if subsection (2) (a) does not apply to the eligible taxpayer.

(4) For the 2018 calendar year,

(a) subsection (2) (b) does not apply for the purposes of determining an eligible taxpayer's maximum tax credit in respect of a residential property, and

(b) an eligible taxpayer's maximum tax credit in respect of a residential property is nil if subsection (2) (a) does not apply to the eligible taxpayer.

Tax credit balance

56 For the purposes of section 55, an eligible taxpayer's tax credit balance for a calendar year is the amount determined in accordance with the following formula:

tax credit balance = (BC income balance − spousal transfer) × applicable rate × 10

where

BC income balance	=	the eligible taxpayer's BC income balance for the calendar year determined under section 57;
spousal transfer	=	any amount of the eligible taxpayer's BC income balance for the calendar year transferred under section 58 *[transfer of BC income balance to spouse]* for the calendar year by the eligible taxpayer;
applicable rate	=	the tax rate applicable under section 15, 16 or 19 to the eligible taxpayer for the calendar year.

BC income balance

57 (1) For the purposes of section 56 and subject to this section, an individual's or a corporation's BC income balance for a calendar year is an amount equal to the total of the following:

(a) in the case of an individual, an amount transferred for the calendar year to the individual under section 58 *[transfer of BC income balance to spouse]*;

(b) the individual's or corporation's BC income for the second preceding calendar year, less any of the following amounts:

(i) in the case of an individual, any deductible amount determined under section 58 (6) for the second preceding calendar year and the preceding calendar year;

(ii) any deductible amount determined under section 59 (3) for the second preceding calendar year and the preceding calendar year;

(c) the individual's or corporation's BC income for the preceding calendar year, less any of the following amounts:

(i) in the case of an individual, the deductible amount determined under section 58 (6) for the preceding calendar year;

(ii) the deductible amount determined under section 59 (3) for the preceding calendar year;

(d) the individual's or corporation's BC income for the calendar year.

(2) A deductible amount determined under section 58 (6) or 59 (3) and to be deducted under subsection (1) (b) or (c) of this section is to be deducted in accordance with the following rules:

(a) in the case of an individual, a deduction under subsection (1) (b) (i) or (c) (i) is to be made before a deduction under subsection (1) (b) (ii) or (c) (ii) is made;

(b) a deduction is to be made in relation to the earliest calendar year for which a deduction may be made, with any remaining part of the deductible amount to be deducted in relation to the following calendar year if applicable;

(c) the amount of a deduction made under subsection (1) (b) or (c) may not exceed the amount otherwise determined under that subsection before the deduction is made.

(3) If a corporation is at any time subject to a loss restriction event, within the meaning of section 251.2 (2) of the federal Act,

(a) the corporation's BC income balance for a calendar year ending before that time may not include income earned after that time, and

(b) the corporation's BC income balance for a calendar year ending after that time may not include income earned before that time.

(4) If a trust is at any time subject to a loss restriction event, within the meaning of section 251.2 (2) of the federal Act,

(a) the BC income balance for a calendar year ending before that time of a person who is a trustee of the trust may not include income earned after that time, and

(b) the BC income balance for a calendar year ending after that time of a person who is a trustee of the trust may not include income earned before that time.

(5) Subject to subsection (3), if 2 or more corporations amalgamate, the new corporation's BC income balance for a calendar year is determined under subsection (1) by including all amounts each of which is a predecessor corporation's BC income for an applicable calendar year, to the extent the predecessor corporation's BC income is not otherwise included in the new corporation's BC income for a calendar year, less any amounts under subsection (1) (b) (ii) and (c) (ii) to be deducted from the predecessor corporation's BC income for the applicable calendar year.

(6) Subject to subsection (4), if a new trustee of a trust is appointed to hold an interest in a residential property, the new trustee's BC income balance for a calendar year is determined under subsection (1) as if all amounts relevant to the calculation of the BC income balance of a former or another trustee of the trust were amounts determined for the new trustee.

(7) An individual's or a corporation's BC income for a calendar year before 2017 may not be included in determining the individual's or corporation's BC income balance for a calendar year.

Transfer of BC income balance to spouse

58 (1) Subject to this section, an individual who has a spouse at the end of the last day of a calendar year may transfer an amount from the individual's BC income balance for the calendar year to the individual's spouse if that spouse is an eligible taxpayer for the calendar year in respect of a residential property.

(2) The amount that an individual may transfer under this section for a calendar year may not exceed the individual's BC income balance for the calendar year determined under section 57.

(3) If an individual has transferred under this section an amount for a calendar year to a spouse and, but for this subsection, the amount determined for the individual's spouse in accordance with the formula in section 59 (1) is a negative amount, despite this section and the transfer document filed under subsection (7), the individual is deemed to have transferred under this section an amount equal to the amount necessary to have the amount determined for the individual's spouse in accordance with the formula in section 59 (1) equal zero.

(4) An individual may not transfer an amount under this section for a calendar year for which the individual receives an amount transferred under this section.

(5) For the purposes of subsection (6), an individual's deductible amount for a calendar year is the positive amount, if any, equal to the amount transferred under subsection (1) for the calendar year by the individual less the amount, if any, determined for that individual under section 57 (1) (b) for the second preceding calendar year when determining that individual's BC income balance for that calendar year.

(6) If an individual has a deductible amount under this section for a calendar year, for the purposes of determining the individual's BC income balance for the following 2 calendar years, that individual's deductible amount is to be deducted under section 57 (1) (b) (i) and (c) (i), as applicable.

(7) In order to give effect to a transfer of an amount for the purposes of this section, the individual receiving the transfer must file, with the individual's tax credit application filed under section 61,

(a) a transfer document in the manner required by the administrator, and

(b) any other information and records required by the administrator to be filed with the transfer document.

(8) A transfer document must be

(a) completed by the eligible taxpayer's spouse, and

(b) in the form and contain the information required by the administrator.

Deductions from BC income balance

59 (1) If an individual or a corporation claims under section 55 *[tax credit for eligible taxpayer]* a tax credit in respect of tax otherwise payable for a particular calendar year, for the purposes of determining the individual's or corporation's BC income balance for the following 2 calendar years, the amount, subject to subsection (2), to be deducted in accordance with subsection (3) is the amount determined in accordance with the following formula:

$$\text{deduction} = \left[\frac{\text{tax credit claimed}}{(\text{applicable rate} \times 10)} \right] - \text{transfer}$$

where

tax credit claimed = the amount of the tax credit claimed under section 55 by the individual or corporation for that particular calendar year;

applicable rate = the tax rate applicable under section 15, 16 or 19 to the individual or corporation for that particular calendar year;

transfer = the following applicable amount:
(a) in the case of an individual, the amount transferred for the particular calendar year under section 58 to the individual from the individual's spouse;
(b) in any other case, nil.

(2) For the purposes of subsection (3), an individual's or a corporation's deductible amount for a particular calendar year is equal to the positive amount, if any, determined by the following formula:

deductible amount = deduction − adjustment

where

deduction = the amount determined under subsection (1) as the deduction for the individual or corporation for the particular calendar year;

adjustment = the positive amount, if any, equal to the amount, if any, determined for the individual or corporation under section 57 (1) (b) for the second preceding calendar year when determining that individual's or corporation's BC income balance for the particular calendar year less, in the case of an individual, the lesser of
(a) the amount of the individual's BC income balance for that particular calendar year transferred under section 58 for that particular calendar year, and
(b) the amount deducted under section 58 (5) when determining the individual's deductible amount under section 58 (5) for that particular calendar year.

(3) If an individual or a corporation has a deductible amount under this section for a calendar year, for the purposes of determining the individual's or corporation's BC income balance for the following 2 calendar years, that individual's or corporation's deductible amount is to be deducted under section 57 (1) (b) (ii) and (c) (ii), as applicable.

(4) If a corporation is a new corporation formed as a result of an amalgamation, each amount that would otherwise be deducted in accordance with subsection (3) for the following 2 calendar years for the new corporation and each predecessor corporation of that new corporation is to be deducted from the new corporation's BC income for a calendar year.

BC income

60 (1) In this section:

"income earned in the taxation year in British Columbia" has the same meaning as in section 4 (1) of the *Income Tax Act*;

"notional income", in relation to a corporation for an income taxation year, means,

(a) subject to paragraph (b), the corporation's income for the income taxation year determined under Division B of Part I of the federal Act and attributable to British Columbia as determined in accordance with regulations made under section 124 (4) of the federal Act if in those regulations the references to "taxable income" are read as references to "income", or

(b) in the case of a corporation that was not resident in Canada, within the meaning of the federal Act, at any time in the income taxation year, the corporation's taxable income earned in Canada for the income taxation year determined under section 115 (1) (a) (ii) to (vii), (b) and (c) and (2.2) of the federal Act and attributable to British Columbia as determined in accordance with regulations made under section 124 (4) of the federal Act.

(2) Subsections (3) and (4) do not apply to an individual or a corporation in the individual's or corporation's capacity as a trustee of a trust.

(3) For the purposes of this Part, an individual's BC income for a calendar year is the total of all amounts each of which is the individual's income earned in the taxation year in British Columbia for an income taxation year ending in the calendar year.

(4) For the purposes of this Part, a corporation's BC income for a calendar year is as follows:

(a) in the case of a corporation whose income taxation year coincides with the calendar year, the corporation's notional income for that income taxation year;

(b) in the case of a corporation that has all or part of more than one income taxation year in the calendar year, the total of all applicable amounts for each income taxation year in that calendar year, each of which applicable amount is the amount determined by dividing the number of days in the income taxation year that are in that calendar year by the total number of days in that income taxation year and multiplying the quotient by the corporation's notional income for that income taxation year;

(c) in the case of a corporation that is a new corporation formed in the calendar year as a result of an amalgamation, the total of all applicable amounts that would otherwise be determined under paragraph (b) for that calendar year for that new corporation and each predecessor corporation of the new corporation.

(5) For the purposes of this Part, if an individual or a corporation is a trustee of a trust, the individual's or corporation's BC income for a calendar year as a trustee of the trust is equal to the trust's BC income determined as follows:

(a) subject to paragraph (b), the total of all amounts each of which is the trust's income earned in the taxation year in British Columbia for the income taxation year ending in the calendar year;

(b) if the trust is a graduated rate estate, as defined in section 248 (1) of the federal Act, at any time in an income taxation year all or a part of which is in the calendar year, the total of all applicable amounts for each income taxation year all or a part of which is in that calendar year, each of which applicable amount is the amount determined by dividing the number of days in the income taxation year that are in that calendar year by the total number of days in that income taxation year and multiplying the quotient by the trust's income earned in that income taxation year in British Columbia as determined under paragraph (a) of this subsection.

(6) The calculation of an individual's or a corporation's BC income is not affected by section 7 (1) *[owner treated as separate person in certain circumstances]*.

Filing requirements — tax credit for eligible taxpayer

61 (1) In order to claim a tax credit under section 55 *[tax credit for eligible taxpayer]* in respect of a residential property for a calendar year, an eligible taxpayer must file with the administrator, on or before the date applicable under subsection (3) of this section,

(a) a tax credit application in the manner required by the administrator, and

(b) any other information and records required by the administrator to be filed with the application.

(2) A tax credit application must be in the form and contain the information required by the administrator.

(3) An eligible taxpayer must file the application, information and records under subsection (1) in respect of a residential property for a calendar year on or before the latest of

(a) December 31 in the third year after the end of the calendar year,

(b) the time referred to in any of the following, as applicable:

(i) section 68 (4) (b) *[consequential assessments — income taxes]*;

(ii) section 69 (4) (b) *[consequential assessments — person with disabilities]*;

(iii) section 70 (4) (b) *[consequential assessments — changes under the Assessment Act]*,

(c) the date that is 90 days after the date of a notice of assessment in respect of tax payable for the calendar year under any of the following, as applicable:

(i) section 67 (1) *[assessments — general rules]*;

(ii) section 71 (2) *[consequential reassessments after appeal]*;

(iii) section 72 *[other assessments — disposition of appeal]*;

(iv) section 77 (3) *[anti-avoidance rule]*, and

(d) the date that is 90 days after the date of the minister's notice of decision under section 98 (8) (c) *[appeal to minister]* in respect of an assessment for tax payable for the calendar year.

Part 5 — Administration and Enforcement

Division 1 — Declarations

Annual declaration

62 (1) Subject to subsection (2), for each calendar year, a person must file with the administrator a separate declaration

(a) for each residential property in respect of which the person is an owner for the calendar year, and

(b) for each interest in a residential property in respect of which the owner is, for the calendar year, a separate person for the purposes of this Act.

(2) Subsection (1) does not apply to an owner of a residential property for a calendar year in respect of which

(a) the owner is a person or entity referred to in section 20 *[exemption for specified owners]*, or

(b) the owner is in a prescribed class of owners.

(3) The owner must, without notice or demand, file the declaration under subsection (1) for a calendar year on or before the declaration due date.

Declaration required on demand

63 (1) On written demand given to an owner by the administrator, the owner must file with the administrator, on or before the date specified in the demand, a declaration for a calendar

year in respect of an interest in a residential property.

(2) Subsection (1) applies whether or not a declaration has been or is required to be filed under section 62.

Form and contents of declaration

64 (1) A declaration must be in the form and contain the information required by the administrator.

(2) A person required to file a declaration must

(a) file the declaration in the manner required by the administrator, and

(b) file, with the declaration, any other information or records required by the administrator.

Division 2 — Assessments

Definitions

65 In this Division:

"assessable amount", in relation to a person, means

(a) any tax payable by the person,

(b) any penalties payable under this Act by the person,

(c) an amount payable under section 79 *[excess refund]* by the person, and

(d) any interest payable under this Act by the person;

"normal reassessment period" means the period referred to in section 67 (1) (b) *[assessments — general rules]* for an owner of a residential property for a calendar year.

Examination of declaration and resulting assessment

66 (1) After the administrator receives a declaration for a calendar year filed by an owner of a residential property in respect of the owner's interest in the residential property and any other information or records to be filed with the declaration, the administrator must

(a) examine the declaration, and

(b) assess the owner for any assessable amounts for the calendar year in respect of the owner's interest in the residential property.

(2) Subsection (1) does not apply in respect of a declaration for a calendar year that is filed under section 62 *[annual declaration]* after the later of

(a) December 31 in the third year after the end of the calendar year, and

(b) the time referred to in any of the following, as applicable:

(i) section 68 (4) (b) *[consequential assessments — income taxes]*;

(ii) section 69 (4) (b) *[consequential assessments — person with disabilities]*;

(iii) section 70 (4) (b) *[consequential assessments — changes under the Assessment Act]*.

Assessments — general rules

67 (1) The administrator may assess an owner of a residential property for an assessable amount for a calendar year in respect of the owner's interest in the residential property

(a) at any time, if

(i) the owner has failed to file a declaration for the calendar year in respect of the interest,

(ii) the owner or a person filing the owner's declaration for the calendar year in respect of the interest has made any misrepresentation or committed any fraud

(A) in filing the declaration, or

(B) in supplying, at any time, other information or records required under the Act for the calendar year, or

(iii) a waiver filed under subsection (2) by the owner for the calendar year in respect of the interest is in effect at that time,

(a.1) if the administrator decides to examine a declaration filed by the owner after the date referred to in section 66 (2) (a), but within the normal reassessment period, within 6 years after the date the declaration is received, or

(b) in any other case, within 6 years after the earlier of the following:

(i) the date of the original notice of assessment for the calendar year;

(ii) the date on which tax is required under this Act to be paid for the calendar year.

(2) An owner of a residential property may, before the expiration of the normal reassessment period for a calendar year, file with the administrator a waiver for the calendar year in respect of the owner's interest in the residential property.

(3) A waiver filed under subsection (2) continues in effect until 6 months after the owner files with the administrator a notice revoking the waiver.

(4) A waiver filed under subsection (2) and a notice filed under subsection (3) must be filed in the form and manner, and containing the information, required by the administrator.

(5) Despite subsection (1), an assessment to which subsection (1) (a) (ii) or (iii) applies in respect of an owner for a calendar year may be made after the owner's normal reassessment period for the calendar year, but only to the extent that the assessment can reasonably be considered as relating to,

(a) if subsection (1) (a) (ii) applies to the assessment, any misrepresentation made by the owner or another person who filed the owner's declaration for the calendar year or any fraud committed by the owner or that other person in filing the declaration or in supplying any other information or records under this Act, or

(b) if subsection (1) (a) (iii) applies to the assessment, a matter specified in the waiver filed with the administrator for the calendar year.

(6) The authority of the administrator to assess an owner for an assessable amount under sections 68 to 74 *[consequential assessments, other assessments and assessments of other amounts]*

(a) is in addition to the authority to make an assessment under section 66 or this section,

(b) is not limited by the authority to make an assessment under section 66 or this section, and

(c) does not limit the authority to make an assessment under section 66 or this section.

Consequential assessments — income taxes

68 (1) Subsection (3) applies in relation to an owner of a residential property for a calendar year in respect of the owner's interest in the residential property if

(a) any of the following is issued a notice of assessment, reassessment or additional assessment under the *Income Tax Act* or the federal Act:

(i) if the owner is an individual whose interest is held other than as a partner in a partnership or as a trustee of a trust, the owner;

(ii) if the owner is a corporation whose interest is held other than as a partner in a partnership or as a trustee of a trust,

(A) the corporation, or

(B) an individual who is a corporate interest holder in respect of the corporation;

(iii) if the owner is a person whose interest is held as a partner in a partnership, an individual who is a partnership interest holder in respect of the interest in the residential property;

(iv) if the owner is a person whose interest is held as a trustee of a trust,

(A) a trust, as defined in section 248 (1) of the federal Act, in respect of which the owner is a trustee, or

(B) an individual who is a beneficial owner in respect of the interest in the residential property;

(v) a person who is, for the calendar year, the spouse of any of the following:

(A) an owner referred to in subparagraph (i);

(B) a corporate interest holder referred to in subparagraph (ii) (B);

(C) a partnership interest holder referred to in subparagraph (iii);

(D) a beneficial owner referred to in subparagraph (iv) (B);

(vi) a person who is, for the calendar year, a non-arm's length tenant in relation to the owner and in respect of whom the owner was exempt in relation to the residential property for the calendar year under section 39 *[tenancy exemption for other owners]*, and

(b) an amount relevant in calculating an assessable amount under this Act for the owner for the calendar year would be changed if an assessment were made under this Act.

(2) If a notice referred to in subsection (1) (a) is issued to

(a) an owner of the residential property, or

(b) a trust in respect of which the trustee is an owner whose interest is held in the owner's capacity as a trustee of the trust,

the owner must notify the administrator, on or before the later of the date that is 90 days after receiving the notice and the declaration due date for the calendar year, by filing with the administrator

(c) a notice, in the form and manner, and containing the information, required by the administrator, and

(d) with the notice, any other information or records required by the administrator.

(3) If this subsection applies in relation to an owner of a residential property for a calendar year in respect of the owner's interest in the residential property, the administrator may, subject to subsection (4), assess the owner for an assessable amount for the calendar year in respect of the interest in the residential property, but only to the extent that the assessment can reasonably be considered as relating to the assessment, reassessment or additional assessment under the *Income Tax Act* or the federal Act.

(4) The administrator may make an assessment under subsection (3) only before the later of

(a) the last day of the normal reassessment period for the calendar year, and

(b) the end of the day that is one year after the day that is the earlier of

(i) the day that the administrator is notified under subsection (2), and

(ii) the day that the administrator is otherwise notified of the assessment, reassessment or additional assessment under the *Income Tax Act* or the federal Act.

Consequential assessments — person with disabilities

69 (1) Subsection (3) applies in relation to an owner of a residential property for a calendar year in respect of the owner's interest in the residential property if

(a) an owner of the residential property has, in a declaration filed for the calendar year, claimed an exemption under section 30 *[principal residence — person with disabilities]* in respect of the residential property,

(b) any of the following occurs in relation to the person with disabilities:

(i) a decision is made under the *Employment and Assistance for Persons with Disabilities Act* to rescind the designation of the person as a person with disabilities, effective for the calendar year;

(ii) a determination is made that the person was not, for the calendar year, entitled to be considered disabled under section 42 (2) of the *Canada Pension Plan*;

(iii) a person is issued, in relation to an income taxation year ending in the calendar year, a notice of determination under section 152 (1.01) of the federal Act, and

(c) an amount relevant in calculating an assessable amount under this Act for the owner for the calendar year would be changed if an assessment were made under this Act.

(2) If an owner of the residential property

(a) is notified of a decision or determination referred to in subsection (1) (b) (i) or (ii), as applicable, or

(b) is issued a notice referred to in subsection (1) (b) (iii),

the owner must notify the administrator, on or before the later of the date that is 90 days after receiving the notice and the declaration due date for the calendar year, by filing with the administrator

(c) a notice, in the form and manner, and containing the information, required by the administrator, and

(d) with the notice, any other information or records required by the administrator.

(3) If this subsection applies in relation to an owner of a residential property for a calendar year in respect of the owner's interest in the residential property, the administrator may, subject to subsection (4), assess the owner for an assessable amount for the calendar year in respect of the interest in the residential property, but only to the extent that the assessment can reasonably be considered as relating to an applicable decision or determination referred to in subsection (1) (b) (i), (ii) or (iii).

(4) The administrator may make an assessment under subsection (3) only before the later of

(a) the last day of the normal reassessment period for the calendar year, and

(b) the end of the day that is one year after the day that is the earlier of

(i) the day that the administrator is notified under subsection (2), and

(ii) the day that the administrator is otherwise notified of the applicable decision or determination referred to in subsection (1) (b) (i), (ii) or (iii).

Consequential assessments — changes under the *Assessment Act*

70 (1) Subsection (3) applies in relation to an owner of a residential property for a calendar year in respect of the owner's interest in the residential property if

(a) all or part of the residential property is included on a revised assessment roll or a supplementary assessment roll for the calendar year, and

(b) an amount relevant in calculating an assessable amount under this Act for the owner for the calendar year would be changed if an assessment were made under this Act.

(2) Subsection (3) applies in relation to a person for a calendar year in respect of an interest the person holds in a parcel of land or improvements, or both, if, as a consequence of the property being included on a revised assessment roll or a supplementary assessment roll for the calendar year,

(a) the person is an owner of a residential property for the calendar year, and

(b) an amount relevant in calculating an assessable amount under this Act for the person for the calendar year would be changed if an assessment were made under this Act.

(3) If this subsection applies in relation to a person for a calendar year in respect of an interest the person holds in a property, the administrator may, subject to subsection (4), assess the person for an assessable amount for the calendar year, but only to the extent that the assessment can reasonably be considered as relating to the inclusion of the property on a revised assessment roll or supplementary assessment roll under the *Assessment Act*.

(4) The administrator may make an assessment under subsection (3) only before the later of

(a) the last day of the normal reassessment period for the calendar year, and

(b) the end of the day that is one year after the day that the administrator is notified that the property was included on a revised assessment roll or supplementary assessment roll under the *Assessment Act*.

Consequential reassessments after appeal

71 (1) This section applies in relation to a person if

(a) a court has, on the disposition of an appeal by the person in respect of an assessment,

(i) allowed the appeal,

(ii) varied the decision from which the appeal was made, or

(iii) referred the decision back to the administrator for reconsideration, and

(b) any further appeal is disposed of or the time for filing any further appeal has expired.

(2) If this section applies in relation to a person, the administrator must reassess the person for an assessable amount in accordance with the decision of the court.

Other assessments — disposition of appeal

72 For the purpose of disposing of an appeal made under this Act, the administrator may at any time, with the owner's written consent, assess an owner of a residential property in respect of the owner's interest in the residential property for an assessable amount for any calendar year as is necessary to give effect to the consent.

Assessments of other amounts payable

73 The administrator may at any time assess a person for any amount payable under section 79 *[excess refund]*.

Assessments of penalties and interest

74 (1) The administrator may assess a person for a penalty to which the person is liable under this Act, and any interest payable in relation to the penalty, but the assessment may not be made after the latest of the applicable dates by which the administrator may assess, under any of the following provisions, an owner of a residential property in respect of whose liability the penalty is assessed:

(a) section 67 *[assessments — general rules]*;

(b) section 68 *[consequential assessments — income taxes]*;

(c) section 69 *[consequential assessments — person with disabilities]*;

(d) section 70 *[consequential assessments — changes under the Assessment Act]*;

(e) section 71 *[consequential reassessments after appeal]*;

(f) section 72 *[other assessments — disposition of appeal]*.

(2) The administrator may at any time reassess a person

(a) as is necessary to give effect to a cancellation under section 85 *[waiver or cancellation of penalty]* of all or part of a penalty otherwise payable under this Act by the person, or

(b) as is necessary to give effect to a cancellation under section 91 *[waiver or cancellation of interest]* of all or part of any interest otherwise payable under this Act by the person.

Rules relating to assessments

75 (1) Despite a prior assessment, or if no assessment has been made, a person continues to be liable for an amount owing to the government under this Act.

(2) In making an assessment, the administrator

(a) is not bound by a declaration filed under this Act or any other information or records supplied under this Act, and

(b) may assess an assessable amount despite the filing of a declaration or the supply of any other information or records under this Act or if no declaration has been filed.

(3) Subject to being amended or varied on appeal or by a reassessment, an assessment is valid and binding despite any error, defect or omission in the assessment or in procedure.

Notice of assessment

76 (1) After making an assessment in respect of a person, the administrator must, subject to subsection (2), give the person a notice of assessment that includes a statement of the assessable amounts.

(2) The administrator may decline to give a notice of assessment to a person for a calendar year in respect of an interest in a residential property if both of the following apply:

(a) a notice of assessment has not previously been issued to the person for the calendar year in respect of the interest in the residential property;

(b) the tax payable for the calendar year is,

(i) if an amount is prescribed for the purposes of this subparagraph, less than the prescribed amount, or

(ii) if no amount is prescribed under subparagraph (i), nil.

(3) If a notice of assessment has been given to a person as required by this Act, the assessment is deemed to have been made on the date of the notice.

(4) Evidence that a notice of assessment has been given is proof, in the absence of evidence to the contrary, that the amounts assessed under this Act are due and owing, and the onus of proving otherwise is on the person liable to pay the amounts assessed.

Anti-avoidance rule

77 (1) In this section:

"avoidance transaction" means a transaction

(a) that, but for this section, would result, directly or indirectly, in a tax benefit, or

(b) that is part of a series of transactions, which series, but for this section, would result, directly or indirectly, in a tax benefit,

but does not include a transaction that may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than for the purpose of obtaining a tax benefit;

"tax benefit" means

(a) a reduction, avoidance or deferral of tax, or of another amount, payable under this Act, or

(b) an increase in a refund of tax, or of another amount, under this Act;

"tax consequences", in relation to a person, means any amount of tax or another amount that is payable or refundable to the person under this Act or that is relevant for the purposes of calculating that amount;

"transaction" includes an arrangement or event.

(2) For the purposes of this section, a series of transactions is deemed to include any related transactions completed in contemplation of the series.

(3) If a transaction is an avoidance transaction, the administrator may, by assessment, determine the tax consequences to a person who is an owner of a residential property for a calendar year in a manner that is reasonable in the circumstances in order to deny a tax benefit that, but for this section, would result, directly or indirectly, from that transaction or from a series of transactions that includes that transaction.

Division 3 — Payment of Tax and Excess Refund

Payment of tax

78 (1) In this section, **"annual tax due date"**, in relation to a calendar year, means, as applicable,

(a) July 2 in the year following the calendar year, or

(b) if the date referred to in paragraph (a) is extended by regulation, the later date.

(2) An owner of a residential property must pay to the government the amount remaining unpaid of the owner's tax payable for a calendar year as follows:

(a) if the owner filed a declaration under section 62 *[annual declaration]* for the calendar year on or before the declaration due date for that calendar year, on or before the later of

(i) the date that is 30 days after the date of the original notice of assessment for that calendar year, and

(ii) the annual tax due date for that calendar year;

(b) in any other case, the annual tax due date for the calendar year.

(3) If, for a calendar year, an additional amount of tax is payable by an owner of a residential property because of an assessment of the owner under a provision referred to in section 74 (1) (b) to (f) *[consequential and other assessments]*, the owner must pay to the government the additional amount as stated in a notice of assessment on or before the later of

(a) the date that is 30 days after the date of the notice of assessment, and

(b) the annual tax due date for the calendar year.

Excess refund

79 (1) If it appears from an inspection, audit, examination or investigation or from other information available to the administrator that an amount has been refunded to a person in excess of the amount to which the person was entitled as a refund under this Act, the excess is deemed to be an amount that became payable to the government by the person on the day on which the amount was refunded.

(2) If an amount applied under section 92 (2) *[refund of overpayment]* to an amount owing by a person is in excess of the amount to which the person is entitled as a refund under this Act,

this section applies in respect of the amount applied as if that amount had been refunded to the person on the day the amount was applied to the amount owing.

Division 4 — Administrative Penalties

Late payment penalty

80 If an owner of a residential property fails to pay all or part of the owner's tax payable for the 2020 or a subsequent calendar year by the date on which the tax is required under this Act to be paid, the administrator may impose a penalty equal to 10% of the unpaid tax.

Penalty for failure to provide required information

81 If a person who is required to file a declaration fails to include in the declaration any required information or fails to file with the declaration any other required information or records, the person is liable, in respect of each failure, to a penalty equal to the greater of

(a) $100, and

(b) $25 for each day during which the failure continues, to a maximum of $2 500.

Penalties respecting information and records

82 (1) A person who fails to comply with a provision specified in subsection (2) is liable, in respect of each failure, to a penalty equal to the greater of

(a) $100, and

(b) $25 for each day during which the failure continues, to a maximum of $2 500.

(2) For the purposes of subsection (1), the following provisions are specified:

(a) section 68 (2) *[consequential assessments — income taxes]*;

(b) section 69 (2) *[consequential assessments — person with disabilities]*;

(c) section 93 (3) *[production of records]*;

(d) section 93 (8) (a) or (b) *[interfering with inspection or audit]*;

(e) section 94 (1) *[requirement to provide records]*;

(f) section 94 (3) *[requirement to provide records in English]*;

(g) section 95 (2) *[demand for information]*.

Gross negligence

83 (1) In this section, **"additional tax"** means the amount by which the tax payable by a person for the calendar year calculated on the basis of accurate and complete information exceeds the tax payable by the person for the calendar year calculated on the basis of the false statement or omission described in subsection (2).

(2) If a person knowingly, or under circumstances amounting to gross negligence, makes, or participates in, assents to or acquiesces in the making of, a false statement or an omission in a declaration, notice, application or other record filed or supplied or in information supplied under this Act for a calendar year, the person is liable to a penalty equal to the greater of

(a) $100, and

(b) 100% of the additional tax.

Misrepresentation by third party

84 (1) Section 163.2 of the federal Act applies for the purposes of this Act with the changes the circumstances require for the purposes of this Act.

(2) Without limiting subsection (1), in applying section 163.2 of the federal Act for the purposes of this Act, the following rules apply:

(a) a reference in that section to the federal Act is to be read as a reference to this Act;

(b) a reference in that section to an assessment is to be read as a reference to an assessment under this Act;

(c) that section is to be read without reference to the definition of "excluded activity" in subsection (1) of that section and without reference to subsections (7) and (8) (b) (i) and (ii) of that section;

(d) subsection (5) of that section is to be read as if

(i) the reference to "subsection 163 (2)" were a reference to section 83 (2) of this Act, and

(ii) the reference to "return filed for the purposes of this Act" were a reference to "declaration, notice, application or other record filed or supplied or in information supplied under this Act";

(e) subsection (10) of that section is to be read as if the reference to "section 163 (3)" were a reference to subsection (3) of this section;

(f) subsection (15) of that section is to be read as if the reference to "or an employee engaged in an excluded activity" were excluded.

(3) In an appeal to the Supreme Court under section 99 *[appeal to court]* of this Act, the onus is on the minister to establish the facts justifying the assessment of a penalty to which a person is liable under this section.

Waiver or cancellation of penalty

85 The administrator may at any time waive or cancel

(a) all of a penalty otherwise payable under section 80 by a person, and

(b) all or part of a penalty otherwise payable under any other provision of this Act by a person.

Division 5 — Interest

Interest on unpaid taxes

86 If an owner fails to pay tax as required under section 78 *[payment of tax]*, the owner must pay to the government interest on the amount unpaid from the date the tax was payable under that section until the date of payment.

Interest on excess refund

87 If an amount is deemed under section 79 (1) *[excess refund]* to be an amount payable by a person, the person is liable to pay interest on the amount from the date the amount became payable under that section until the date of payment.

Interest on penalties

88 A person must pay to the government interest on a penalty assessed under this Act as follows:

(a) in the case of a penalty under section 80 *[late payment penalty]*, from the date on which tax was payable until the date of payment;

(b) in the case of a penalty under section 81 *[penalty for failure to provide required information]*, from the date on which the declaration was filed until the date of payment;

(c) in the case of a penalty under section 82 *[penalties respecting information and records]* for a failure to comply with section 68 (2) *[consequential assessments — income taxes]* or 69 (2) *[consequential assessments — person with disabilities]*, from the date on which the notice was required to be filed until the date of payment;

(d) in the case of a penalty under section 83 (2) *[gross negligence]*, from the date on which the declaration, notice, application or other record was filed or supplied, or the date on which the information was supplied, until the date of payment;

(e) in the case of any other penalty, from the date of the notice of assessment that specifies the amount of the penalty assessed until the date of payment.

Calculation of interest

89 Interest payable to the government under this Act must be calculated at the prescribed rate and in the prescribed manner.

No interest if full payment within 30 days

90 Despite any other provision of this Division, if

(a) a notice of assessment or statement of account given to a person by the administrator specifies an amount owing to the government, and

(b) the person, within 30 days after the date of the notice of assessment or statement of account, pays the amount owing in full,

interest is not payable on the amount owing from the date of the notice of assessment or statement of account until the date of payment.

Waiver or cancellation of interest

91 The administrator may at any time waive or cancel all or part of any interest otherwise payable under this Act by a person.

Division 6 — Refunds

Refund of overpayment

92 (1) If the administrator believes, based on the results from an inspection, audit, examination or investigation or from other information available to the administrator, that an overpayment has been made under this Act by a person, the minister, on the certificate of the administrator, must refund the amount overpaid to the person from the consolidated revenue fund.

(2) Despite subsection (1), if there is an amount owing to the government under this Act by a person, the amount overpaid must first be applied in satisfaction of the amount owing, and notice must be given by the administrator to the person, accompanied by the refund of any amount overpaid and remaining unapplied.

(3) Despite subsections (1) and (2), if the amount to be refunded under subsection (1) or (2) is less than $10, the administrator may decline to refund the amount overpaid, and, in the case of subsection (2), remaining unapplied.

Division 7 — Inspections and Audits

Inspection and audit powers

93 (1) In this section:

"electronic" has the same meaning as in section 1 of the *Electronic Transactions Act*;

"specified location" means any place

(a) used by a person as a residence or in relation to a business carried on by the person, or

(b) where the records of a person are kept.

(2) Subject to subsection (4), the administrator may, at any reasonable time and for any purpose related to the administration and enforcement of this Act and the regulations,

(a) enter a specified location,

(b) inspect a specified location if the specified location is a residential property,

(c) inspect, audit and examine records,

(d) make copies of records, and

(e) subject to subsection (7), remove records from the specified location for the purpose of making copies.

(3) A person occupying a specified location must do all of the following, as applicable:

(a) produce or provide electronic access to all records as may be required by the administrator;

(b) in the case of records in electronic form, produce or provide electronic access to the records in the form and manner required by the administrator;

(c) answer all questions of the administrator relating to the matters referred to in subsection (2).

(4) The power to enter a specified location under subsection (2) must not be used to enter or inspect a specified location that is occupied as a residence without the consent of the occupier except under the authority of a warrant under subsection (5).

(5) On being satisfied by evidence on oath that entry on or into any place is necessary for any purpose relevant to the administration and enforcement of this Act and the regulations, a justice may issue a warrant authorizing a person named in the warrant to enter on or into the place in accordance with the warrant in order to exercise the powers referred to in subsection (2) (a) to (e).

(6) The administrator may make an application for a warrant under subsection (5) without notice to any other person.

(7) If the administrator removes records from a specified location for the purpose of making copies, the administrator must return the records within a reasonable time.

(8) A person must not

(a) interfere with, hinder or molest a person doing anything that the person is authorized to do under this section, or

(b) prevent or attempt to prevent a person from doing anything that the person is authorized to do under this section.

Requirement to provide records

94 (1) When required by the administrator, a person must provide to the administrator all records that the administrator considers necessary to determine whether this Act and the regulations are being or have been complied with.

(2) The administrator may, by giving written notice to the person, specify the form and manner in which the records referred to in subsection (1) are to be provided, including requiring the records to be in the English language or to be provided with an English translation of the records verified in a manner satisfactory to the administrator.

(3) If the administrator gives a person a written notice under subsection (2), the person must provide the records referred to in subsection (1) in the form and manner required.

Demand for information

95 (1) For any purpose related to the administration or enforcement of this Act or the regulations, the administrator may, by giving a person a demand notice, require from the person

(a) any information or additional information,

(b) the production of any records, or

(c) a written statement.

(2) A person to whom a demand notice is given under this section must comply with the notice within the time specified in the notice.

Records required to be kept

96 (1) A person who is an owner of a residential property for a calendar year must keep adequate records for the purposes of this Act.

(2) If the records kept by an owner are, in the opinion of the administrator, not adequate for the purposes of this Act, the administrator may specify one or more of the following in respect of the records to be kept by the owner:

(a) the information to be contained in the records;

(b) the form or manner in which the records are to be kept.

(3) A person who is required to keep records under this section must retain the records for a period of 6 years after the end of the calendar year to which the records relate.

Evidence — copies of records

97 A record certified by the administrator to be a copy of a record obtained by the administrator under this Act is evidence of the nature and content of the original.

Part 6 — Appeals

Appeal to minister

98 (1) Subject to this section, an appeal to the minister lies from

(a) an assessment made under Division 2 *[Assessments]* of Part 5 *[Administration and Enforcement]*,

(b) a determination made under section 114 (12) *[lien — associated corporations]*, and

(c) an assessment made under section 108 (1) *[joint and several liability — assessment and discharge of liability]*.

(2) Subsection (3) applies to a person in relation to an assessment under Division 2 of Part 5 if at any time the administrator makes the assessment under any of the following provisions:

(a) section 67 (1) (a) (ii) or (iii) *[assessments — misrepresentation, fraud or waiver]*;

(b) section 68 (3) *[consequential assessments — income taxes]*;

(c) section 69 (3) *[consequential assessments — person with disabilities]*;

(d) section 70 (3) *[consequential assessments — changes under the Assessment Act]*;

(e) section 74 (1) *[assessments of penalties and interest]*;

(f) section 77 (3) *[anti-avoidance rule]*.

(3) If this subsection applies to a person in relation to an assessment under Division 2 of Part 5, the person may, under subsection (1) of this section, appeal from the decision of the administrator in relation to the assessment, but only to the extent that the reasons for the appeal can reasonably be considered as relating to any matter that gave rise to the assessment and that was not conclusively determined by a court.

(4) Subsection (3) does not limit the right of a person to appeal, under subsection (1), a decision of the administrator made before the time referred to in subsection (2).

(5) A person may, under subsection (1), appeal from a decision of the administrator in relation to an assessment under section 108 (1), but only to the extent that the reasons for the appeal can reasonably be considered as relating to a matter that is specified in any of the following provisions and that was not conclusively determined by a court:

(a) section 104 *[joint and several liability]*;

(b) section 105 *[joint and several liability — other owners]*;

(c) section 106 *[joint and several liability — parents or guardians of minor]*;

(d) section 107 *[joint and several liability — property not transferred at arm's length]*.

(6) Written notice of the appeal must be given to the minister within 90 days after the date of the notice of assessment or the determination, as the case may be.

(7) The appellant must set out in the notice of appeal a statement of all material facts and the reasons in support of the appeal.

(8) On receiving the notice of appeal, the minister must

(a) consider the matter,

(b) either

(i) affirm, amend or change the assessment, determination or nature of the assessment, or

(ii) direct the administrator to reconsider the assessment, determination or nature of the assessment, and

(c) promptly give the appellant written notice of the result of the appeal.

(8.1) In making a decision under subsection (8) (b) (i), the minister is not required to increase an amount set out in the assessment or determination.

(8.2) If the administrator does not change an assessment or determination, or the nature of an assessment, after a reconsideration under subsection (8) (b) (ii), the administrator must issue a notice of reconsideration to the person who appealed to the minister.

(8.3) A person may appeal a notice of reconsideration by giving a notice of appeal to the minister within 90 days after the date shown on the notice of reconsideration.

(9) An appeal may not be made under this section

(a) in relation to an assessment made under any of the following provisions:

(i) section 67 (1) (a) (i) *[assessments — failure to file declaration]*, except in relation to the administrator's determination that a person is an owner for the purposes of the Act;

(ii) section 71 *[consequential reassessments after appeal]*;

(iii) section 72 *[other assessments — disposition of appeal]*;

(iv) section 73 *[assessments of other amounts payable]*;

(v) section 74 (2) *[cancellation of penalties and interest]*, and

(b) for greater certainty, in relation to an issue for which the right of appeal has been waived in writing by the person.

(10) The minister may, in writing, delegate any of the minister's powers or duties under this section.

(11) A delegation under subsection (10) may be to a named person or to a class of persons.

Notice of appeal

98.1 (1) The date on which a notice of appeal is given to the minister under section 98 (6) or (8.3) is the date it is received by the minister.

(2) A notice of appeal is conclusively deemed to have been given to the minister if it is received at a location and by a method specified by the minister.

Appeal to court

99 (1) A decision of the minister under section 98 (8) (b) (i) may be appealed to the Supreme Court by way of a petition proceeding.

(2) Subject to this section and the regulations, the Supreme Court Civil Rules relating to petition proceedings apply to appeals under this section.

(2.1) Rule 18-3 *[Appeals]* of the Supreme Court Civil Rules does not apply to appeals under this section.

(3) A petition must be filed in the court registry within 90 days after the date on the minister's notice of decision.

(4) In the petition filed under subsection (3), the government must be designated "Her Majesty the Queen in right of the Province of British Columbia".

(5) Within 14 days after the filing of the petition under subsection (3), the petition must be served on the government in accordance with section 8 of the *Crown Proceeding Act*.

(6) An appeal under this section is a new hearing that is not limited to the evidence and issues that were before the minister.

(7) The court may

(a) dismiss the appeal,

(b) allow the appeal,

(c) vary the decision from which the appeal is made, or

(d) refer the decision back to the administrator for reconsideration.

(8) [Repealed 2021-18-75.]

Irregularities

100 An assessment made by the administrator under this Act must not be varied or disallowed by a court because of an irregularity, informality, omission or error on the part of a person in the observation of any directory provision up to the date of the notice of assessment.

Tax collection not affected by pending appeal

101 Neither the giving of a notice of appeal by a person nor a delay in the hearing of an appeal

(a) affects the date an amount, that is owing to the government under this Act and that is the subject matter of the appeal, is payable under this Act,

(b) affects the amount of interest payable on an amount that is owing to the government under this Act and that is the subject matter of the appeal, or

(c) delays the collection of an amount that is owing to the government under this Act and that is the subject matter of the appeal, or any interest payable under this Act on that amount.

If decision set aside or amount reduced or increased on appeal

102 (1) If the administrator's or the minister's decision is set aside, or the amount of an assessment or an amount owing to the government under this Act is reduced on appeal, the minister must refund to the appellant from the consolidated revenue fund

(a) the amount or excess amount paid, and

(b) any interest paid on the amount or excess amount paid, as the case may be.

(2) If the amount of an assessment or an amount owing to the government under this Act is increased on appeal, the appellant must pay to the government

(a) the additional amount owing to the government under this Act, and

(b) any additional interest payable on the additional amount owing to the government under this Act.

Part 7 — Recovery of Amounts Owing

Division 1 — Joint and Several Liability

Definition of "defaulting owner"

103 In this Division, **"defaulting owner"** means a person

(a) who is or was an owner of a residential property at the end of the last day of a calendar year, and

(b) who fails to pay tax as required under this Act for the calendar year.

Joint and several liability

104 (1) Sections 105 *[joint and several liability — other owners]*, 106 *[joint and several liability — parents or guardians of minor]* and 107 *[joint and several liability — property not transferred at arm's length]* apply in relation to a person for a calendar year if, in respect of a defaulting owner referred to in the applicable section, one of the following has occurred:

(a) a certificate has been filed under section 111 *[summary proceedings]* with respect to the amount the defaulting owner is liable to pay under this Act;

(b) in the case of a defaulting owner that is a corporation,

(i) the corporation has been dissolved or has commenced liquidation or dissolution proceedings in any jurisdiction, or

(ii) the corporation has obtained a court order granting a stay of proceedings under section 11.02 of the *Companies' Creditors Arrangement Act* (Canada);

(c) in the case of a defaulting owner whose interest in the residential property is held as a partner in a partnership, the partnership has been dissolved or has commenced liquidation or dissolution proceedings in any jurisdiction;

(d) in the case of a defaulting owner whose interest in the residential property is held as a trustee of a trust, the trust has been wound up or proceedings have been commenced, in any jurisdiction, to wind up the trust;

(e) the defaulting owner has, under the *Bankruptcy and Insolvency Act* (Canada),

(i) made an assignment in bankruptcy,

(ii) filed a notice of intention to make a proposal with the official receiver, or

(iii) made a proposal under Division 1 of Part III of that Act;

(f) a bankruptcy order has been made against the defaulting owner under the *Bankruptcy and Insolvency Act* (Canada);

(g) the defaulting owner has been or is subject in any jurisdiction to a proceeding of a similar nature to a proceeding referred to in paragraphs (b) (ii), (e) or (f).

(2) For greater certainty, a person is not jointly and severally liable under section 105 (1), 106 or 107 (1) for an amount for which the defaulting owner is jointly and severally liable under any of those sections.

Joint and several liability — other owners

105 (1) Subject to subsection (2), every person who is an owner of a residential property for a calendar year is jointly and severally liable for

(a) an amount of tax assessed under Division 2 *[Assessments]* of Part 5 *[Administration and Enforcement]* for the calendar year against a defaulting owner in respect of the defaulting owner's interest in the residential property, and

(b) any interest payable on an amount referred to in paragraph (a).

(2) Subsection (1) does not apply to an owner who is, for the calendar year, exempt in respect of the residential property under any of the following provisions:

(a) section 20 *[exemption for specified owners]*;

(a.1) section 20.1 *[exemption for trustees of trust for benefit of registered charity]*;

(b) section 21 *[exemption for not-for-profit corporations]*;

(c) section 22 *[exemption for bankrupts]*;

(d) section 23 *[exemption for Indigenous nations]*.

Joint and several liability — parents or guardians of minor

106 A parent or guardian of a defaulting owner who is a minor on the last day of a calendar year is jointly and severally liable for

(a) an amount of tax assessed under Division 2 of Part 5 for the calendar year against the defaulting owner in respect of the defaulting owner's interest in the residential property, and

(b) any interest payable on an amount referred to in paragraph (a).

Joint and several liability — property not transferred at arm's length

107 (1) If a defaulting owner transfers an interest in a residential property to another person with whom the defaulting owner does not deal at arm's length and, immediately following the transfer, the transferee is an owner in respect of the interest in the residential property, subject to this section, the transferee is jointly and severally liable for

(a) an amount of tax assessed under Division 2 of Part 5 for a calendar year against the defaulting owner in respect of the defaulting owner's interest in the residential property, and

(b) any interest payable on an amount referred to in paragraph (a).

(2) Subsection (1) does not apply if the transfer referred to in that subsection is made under a final agreement or final court order respecting property division following the breakdown of the relationship between an individual and the individual's spouse.

(3) Subsection (1) does not apply to a transferee who is, as an owner of the residential property, exempt for the calendar year under any of the following provisions:

(a) section 20 *[exemption for specified owners]*;

(a.1) section 20.1 *[exemption for trustees of trust for benefit of registered charity]*;

(b) section 21 *[exemption for not-for-profit corporations]*;

(c) section 22 *[exemption for bankrupts]*;

(d) section 23 *[exemption for Indigenous nations]*.

(4) For the purposes of subsection (1), a transferor deals at arm's length with a transferee in the following circumstances:

(a) if the transferor is an individual whose interest in the residential property was held other than as a partner in a partnership or as a trustee of a trust, the transferor deals, at the time of the transfer, at arm's length with the individual or individuals specified in subsection (5) (a) to (d), as applicable;

(b) if the transferor is a corporation whose interest in the residential property was held other than as a partner in a partnership or as a trustee of a trust, all of the corporate interest holders in respect of the corporation deal, at the time of the

transfer, at arm's length with the individual or individuals specified in subsection (5) (a) to (d), as applicable;

(c) if the transferor is a person whose interest in the residential property is held as a partner in a partnership, all of the partnership interest holders in respect of the interest in the residential property deal, at the time of the transfer, at arm's length with the individual or individuals specified in subsection (5) (a) to (d), as applicable;

(d) if the transferor is a person whose interest in the residential property is held as a trustee of a trust, all of the beneficial owners in respect of the interest in the residential property deal, at the time of the transfer, at arm's length with the individual or individuals specified in subsection (5) (a) to (d), as applicable.

(5) For the purposes of subsection (4) (a) to (d), the following individuals are specified:

(a) if the transferee is an individual whose interest in the residential property is held other than as a partner in a partnership or as a trustee of at trust, the individual;

(b) if the transferee is a corporation whose interest in the residential property is held other than as a partner in a partnership or as a trustee of at trust, all of the corporate interest holders in respect of the corporation;

(c) if the transferee is a person whose interest in the residential property is held as a partner in a partnership, all of the partnership interest holders in respect of the interest in the residential property;

(d) if the transferee is a person whose interest in the residential property is held as a trustee of a trust, all of the beneficial owners in respect of the interest in the residential property.

Joint and several liability — assessment and discharge of liability

108 (1) The administrator may assess a particular person in respect of an amount that has become payable under section 105 (1), 106 or 107 (1) by the particular person.

(2) If the administrator makes an assessment under subsection (1),

(a) the provisions of Division 2 *[Assessments]* of Part 5 *[Administration and Enforcement]* apply in respect of the assessment as if it were an assessment made under that Division and as if the particular person assessed were an owner in respect of the interest in the residential property for the calendar year to which the assessment relates, and

(b) the administrator must give a written notice of the assessment and the amount of the liability to the defaulting owner in respect of whose tax the particular person is liable.

(3) Despite subsection (2), an amount assessed under subsection (1) against a particular person is not considered tax payable for the purposes of this Act.

(4) If, because of section 105 (1), 106 or 107 (1), a particular person has become jointly and severally liable with another person in respect of all or part of the defaulting owner's liability under this Act,

(a) a payment by the particular person on account of that defaulting owner's liability discharges the liability of both the particular person and the defaulting owner to the extent of the payment, and

(b) a payment by the defaulting owner on account of that defaulting owner's own liability only discharges the liability of the particular person to the extent that the payment reduces the defaulting owner's liability to an amount that is less than the amount in respect of which the particular person is jointly and severally liable under section 105 (1), 106 or 107 (1), as applicable.

Joint and several liability — refunds

109 (1) Despite sections 92 *[refund of overpayment]* and 102 (1) *[amount reduced on appeal]*, subsection (2) applies if the administrator is satisfied that the total of

(a) the amount paid by one or more particular persons who are, under section 105 (1), 106 or 107 (1), jointly and severally liable with a defaulting owner, and

(b) the amount paid by the defaulting owner,

exceeds the amount owed by the defaulting owner under this Act for the calendar year in respect of which the particular persons are jointly and severally liable with the defaulting owner.

(2) If this subsection applies, the minister, on the certificate of the administrator, must pay a refund from the consolidated revenue fund in accordance with the following:

(a) if only one particular person paid all or part of the amount for which one or more particular persons and the defaulting owner were jointly and severally liable under section 105 (1), 106 or 107 (1), a refund must be paid to the particular person of the amount of the excess, up to the amount paid by the particular person;

(b) if 2 or more particular persons paid all or part of the amount for which the particular persons and the defaulting owner were jointly and severally liable under section 105 (1), 106 or 107 (1), a refund must be paid to the particular persons of the amount of the excess divided equally among the particular persons, up to the amount paid by each particular person;

(c) after making the payment under paragraph (a) or (b), as applicable, a refund must be paid to the defaulting owner of any remaining amount of the excess, up to the amount paid by the defaulting owner.

Division 2 — Other Methods of Recovery

Court proceeding to recover amount owing

110 The government may commence a proceeding in a court of competent jurisdiction to recover an amount owing to the government under this Act as a debt due to the government.

Summary proceedings

111 (1) If a person fails to pay an amount owing to the government under this Act, the administrator may issue a certificate specifying the amount owed and the name of the person who owes it.

(2) The administrator may file with the Supreme Court a certificate issued under subsection (1).

(3) A certificate filed under subsection (2) has the same force and effect, and all proceedings may be taken on the certificate, as if it were a judgment of the court in favour of the government for the recovery of a debt in the amount specified in the certificate against the person named in the certificate.

(4) If the amount specified in a certificate is different from the actual amount owing to the government under this Act, the administrator may correct the amount by issuing a new certificate specifying the revised amount owed and the name of the person who owes it.

(5) The administrator may file with the Supreme Court a certificate issued under subsection (4).

(6) A certificate filed under subsection (5)

(a) revises the certificate filed under subsection (2) that names the same person,

(b) is deemed to be filed at the same time as the certificate it revises, and

(c) has the same force and effect, and all proceedings may be taken on the certificate, as if it were a judgment of the court in favour of the government for the recovery of a debt in the amount specified in the certificate against the person named in the certificate.

Alternative remedies

112 (1) Remedies available to the government for the recovery of an amount owing to the government under this Act may be exercised separately, concurrently or cumulatively.

(2) The liability of a person for the payment of an amount owing to the government under this Act is not affected by a fine or penalty imposed on or paid by the person for contravention of this Act.

Attachment of funds

113 (1) In this section, **"debtor"** means any person who is liable to pay to the government an amount under this Act.

(2) If the administrator knows or suspects that a person is or is about to become indebted or liable to make a payment to a debtor, the administrator may demand that that person pay to the government on account of the debtor's liability under this Act all or part of the money otherwise payable to the debtor.

(3) Without limiting subsection (2), if the administrator knows or suspects that a person is about to advance money to or make a payment on behalf of a debtor, or make a payment in respect of a negotiable instrument issued by a debtor, the administrator may demand that that person pay to the government on account of the debtor's liability under this Act the money that would otherwise be advanced or paid.

(4) If under this section the administrator demands that a person pay to the government, on account of a debtor's liability under this Act, money otherwise payable by that person to the debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the demand

(a) is applicable to all of those payments to be made by the person to the debtor until the liability under this Act is satisfied, and

(b) operates to require payments to the government out of each payment of the amount stipulated by the administrator in the demand.

(5) Money or a beneficial interest in money in a savings institution

(a) on deposit to the credit of a debtor at the time a demand is given, or

(b) deposited to the credit of a debtor after a demand is given

is money for which the savings institution is indebted to the debtor within the meaning of this section, but money on deposit or deposited to the credit of a debtor as described in paragraph (a) or (b) does not include money on deposit or deposited to the credit of a debtor in the debtor's capacity as a trustee.

(6) A demand under this section continues in effect until the earliest of the following:

(a) subject to paragraphs (b) and (c), the demand is satisfied;

(b) subject to paragraph (c), 90 days after the demand is given;

(c) 3 years after the demand is given, if the demand is made in respect of an outstanding legal claim or insurance claim that, if resolved in the debtor's favour, will result in money becoming available to the debtor.

(7) Despite subsection (6), if a demand is made in respect of a periodic payment referred to in subsection (4), the demand continues in effect until it is satisfied unless no periodic payment is made or is liable to be made within 90 days after the demand is given, in which case the demand ceases to have effect at the end of that period.

(8) Money demanded from a person by the administrator under this section becomes payable

(a) as soon as the person is given the demand, if that person is indebted or liable to make a payment to the debtor at the time the demand is given, or

(b) as soon as the person becomes indebted or liable to make a payment to the debtor, in any other case.

(9) A person who fails to comply with a demand under subsection (2) or (4) is liable to pay to the government an amount equal to the amount that the person was required to pay under subsection (2) or (4).

(10) A person who fails to comply with a demand under subsection (3) is liable to pay to the government an amount equal to the lesser of

(a) the total of the money advanced or paid, and

(b) the amount that the person was required to pay under subsection (3).

(11) Money paid by any person to the government in compliance with a demand under this section

(a) satisfies the original liability to the extent of the payment, and

(b) is deemed to have been paid by that person to the debtor.

Lien

114 (1) In this section:

"amount owing" means an amount remaining unpaid, any related penalty and any interest on that amount and the penalty;

"associated corporation" includes a corporation that is determined under subsection (12) to be associated with another corporation for the purposes of this section;

"collateral" has the same meaning as in the *Personal Property Security Act*;

"financing statement" has the same meaning as in the *Personal Property Security Act*;

"inventory" has the same meaning as in the *Personal Property Security Act*;

"personal property registry" means the registry under the *Personal Property Security Act*;

"proceeds" has the same meaning as in the *Personal Property Security Act*;

"property", when referring to the property of an associated corporation, means property that is used in, or in conjunction with, the business in respect of which the amount referred to in subsection (2) is required to be levied and remitted;

"purchase money security interest" has the same meaning as in the *Personal Property Security Act*;

"security interest" has the same meaning as in the *Personal Property Security Act*.

(2) If a person is required to pay an amount to the government under this Act and does not pay the amount, the administrator may register a lien

(a) against the real property of

(i) the person, or

(ii) an associated corporation of the person

by registering a certificate of lien in the prescribed form in the appropriate land title office in the same manner that a charge is registered under the *Land Title Act*, and

(b) against the personal property of

(i) the person, or

(ii) an associated corporation of the person

by registering a financing statement in the personal property registry.

(3) On registration of a certificate of lien against the real property of a person under subsection (2) (a), a lien is created on the real property against which the lien is registered for the amount owing.

(4) On registration of a lien against the personal property of a person under subsection (2) (b), a lien is created on the present and after acquired personal property in which the person has a legal or equitable interest for the amount owing.

(5) A lien registered under subsection (2) (b) against personal property does not have priority over

(a) a security interest that secures unpaid wages under section 87 (3) *[lien for unpaid wages]* of the *Employment Standards Act*, regardless of when that security interest arises, or

(b) a purchase money security interest in collateral other than collateral that at the time the purchase money security interest attaches is inventory or its proceeds.

(6) In relation to a certificate of lien registered under subsection (2) (a) against the real property of a person, the administrator may register a certificate of lien in the form prescribed for the purposes of subsection (2) (a) in the appropriate land title office in the same manner that a charge is registered under the *Land Title Act* if

(a) the certificate of lien registered under subsection (2) (a) against the real property of the person contains a statement of the amount owing, and

(b) the administrator is satisfied that the amount referred to in paragraph (a) of this subsection that is stated in that certificate of lien is incorrect.

(7) In relation to a financing statement registered under subsection (2) (b) against the personal property of a person, the administrator may register a financing change statement, as defined in the *Personal Property Security Act*, in the personal property registry if

(a) the financing statement registered under subsection (2) (b) against the personal property of the person contains a statement of the amount owing, and

(b) the administrator is satisfied that the amount referred to in paragraph (a) of this subsection that is stated in that financing statement is incorrect.

(8) A certificate of lien registered under subsection (6) and a financing change statement registered under subsection (7) must contain a revised statement of the amount owing.

(9) On registration of a certificate of lien against the real property of a person under subsection (6), the certificate of lien registered under subsection (2) (a) against the real property of the person is, at the same time it was originally registered, deemed to be revised to set out the amount owing as stated in the certificate of lien registered under subsection (6).

(10) On registration of a financing change statement against the personal property of a person under subsection (7), the financing statement registered under subsection (2) (b) against the personal property of the person is, at the same time it was originally registered, deemed to be revised to set out the amount owing as stated in the financing change statement registered under subsection (7).

(11) If the administrator believes that one corporation is associated with another corporation within the meaning of section 256 of the federal Act, the administrator may request one or both of the corporations to provide to the administrator the records and information required by the administrator to confirm or rebut that belief.

(12) The administrator may determine that corporations are associated corporations for the purposes of this section if

(a) a corporation that has been requested to provide records or information to the administrator under subsection (11) fails or refuses to comply with that request within a period of time considered by the administrator to be reasonable in the circumstances, or

(b) the records or information provided to the administrator under this section confirm the administrator's belief that the corporations are associated.

(13) Immediately after a corporation is determined under this section to be associated with a person referred to in subsection (2) (a) (i) and (b) (i), the administrator

(a) must notify the corporation of this in writing, and

(b) may register a lien under this section against the real and personal property of the corporation.

(14) The administrator may seize personal property against which a lien is registered under subsection (13) at any time after the registration of the lien, but must not take any action to realize on those assets until the later of

(a) the date that is 90 days after the date on which the notice required under subsection (13) (a) was given to the corporation, and

(b) if a notice of appeal is given to the minister in respect of the determination within the time provided by section 98 (6) *[appeal to minister]*, the date on which the

minister upholds the determination under that appeal or directs the administrator to reconsider the determination.

(15) If, at any time, the administrator becomes convinced that the corporations were not associated within the meaning of section 256 of the federal Act at the time that the lien was registered under subsection (13) (b) of this section or if the minister or a court of competent jurisdiction upholds the corporation's appeal against the administrator's determination on the basis that the corporations were not associated at the time that the lien was registered, the administrator must,

(a) if the administrator has not realized on any of the assets against which the lien was registered, promptly release the lien, and

(b) if the administrator has realized on some or all of the assets against which the lien was registered, promptly release the lien against the remaining assets and pay the proceeds realized from the sale of the realized assets minus any costs or expenses incurred in the sale

(i) to the corporation, or

(ii) if the administrator considers it appropriate to do so, into the Supreme Court under Rule 10-3 of the Supreme Court Civil Rules.

(16) The release of the lien under subsection (15) (a) or the release of the lien and payment of the applicable net sale proceeds under subsection (15) (b) is deemed to be full satisfaction of all claims any person, including the corporation, might have arising out of or in any way connected with the determination made under subsection (12), the registration of the lien or the seizure or sale of any or all of the assets against which the lien was registered.

Notice of enforcement proceedings

115 (1) Before taking proceedings for the recovery of an amount owing to the government under this Act, the administrator must give to the person who owes the amount notice of the administrator's intention to enforce payment.

(2) Failure to give notice under subsection (1) does not affect the validity of proceedings taken for the recovery of an amount owing to the government under this Act.

Limitation period

116 (1) In this section, **"collection proceeding"** means

(a) a proceeding, under section 110, for the recovery of an amount owing to the government,

(b) the filing of a certificate under section 111 *[summary proceedings]*,

(c) the making of a demand under section 113 *[attachment of funds]*, and

(d) the registration or enforcement of a lien under section 114 *[lien]*.

(2) A collection proceeding may be commenced at any time within 7 years after the date of the notice of assessment for the amount claimed in the collection proceeding.

(3) Despite subsection (2), a collection proceeding that relates to a contravention of this Act or the regulations and that involves wilful default or fraud may be commenced at any time.

(4) If, before the expiry of the limitation period that applies under subsection (2) to an amount claimed, a person acknowledges liability in respect of the amount claimed, the date of the

notice of assessment is deemed to be the day on which the acknowledgement is made.

(5) Subsection (4) does not apply to an acknowledgement, other than an acknowledgement referred to in subsection (6), unless the acknowledgement is

(a) in writing,

(b) signed, by hand or by electronic signature within the meaning of the *Electronic Transactions Act*,

(c) made by the person making the acknowledgement or the person's agent, and

(d) made to the government or an agent of the government.

(6) In the case of an amount claimed to which the limitation period under subsection (2) applies, for the purposes of subsection (4), part payment of the amount by the person against whom the claim is or may be made or by the person's agent is an acknowledgement by the person against whom the claim is or may be made of liability in respect of the claim.

(7) Section 24 (2), (4) and (10) *[limitation periods extended if liability acknowledged]* of the *Limitation Act* applies for the purposes of this section.

(8) The liability of a person for the payment of an amount owing to the government under this Act is not affected by the expiry of the limitation period that applies under subsection (2) to the amount claimed.

Part 8 — General

Designation of administrator

117 The minister may designate a person who is appointed under the *Public Service Act* as administrator to administer this Act.

Delegation

118 (1) The administrator may, in writing, delegate any of the administrator's powers or duties under this Act.

(2) A delegation under subsection (1) may be to a named person or to a class of persons.

Extension of time

119 The administrator may at any time extend the date, referred to in paragraph (a) of the definition of "declaration due date", for filing a declaration under section 62 (1) *[annual declaration]*.

Communication of information

120 (1) In this section:

"authorized person" means,

(a) in subsection (5) (k), an authorized person as defined in section 13.1 of the *Assessment Act*,

(b) in subsection (5) (m), a person who is engaged or employed, or who was formerly engaged or employed, by or on behalf of the Land Title and Survey Authority of British Columbia to assist in carrying out provisions of the *Land Title and Survey Authority Act*, and

(c) in any other case, a person who is engaged or employed, or who was formerly engaged or employed, by or on behalf of the government of British Columbia to assist in carrying out the provisions of this Act;

"designated person" has the same meaning as in section 241 (10) of the federal Act;

"finance minister" means the member of the Executive Council charged with the administration of the *Financial Administration Act*;

"official" means any person

(a) who is employed in the service of, who occupies a position of responsibility in the service of or who is engaged by or on behalf of the government of British Columbia, another province or Canada, or

(b) who was formerly so employed or formerly occupied such a position or was formerly so engaged,

and, for the purposes of subsections (2) and (3), **"official"** includes a designated person;

"police officer" means a police officer as defined in section 462.48 (17) of the *Criminal Code*;

"taxpayer" has the same meaning as in section 248 (1) of the federal Act;

"taxpayer information" means information of any kind and in any form relating to one or more taxpayers

(a) that is obtained for the purposes of this Act by or on behalf of the minister, or

(b) that is prepared from information referred to in paragraph (a),

but does not include information that does not directly or indirectly reveal the identity of the taxpayer to whom the information relates.

(2) Despite any other enactment or law, except as authorized by this section an official must not

(a) knowingly provide, or knowingly allow to be provided, to any person any taxpayer information,

(b) knowingly allow any person to have access to any taxpayer information, or

(c) knowingly use any taxpayer information otherwise than in the course of the administration and enforcement of this Act or for a purpose for which it was provided under this section.

(3) Despite any other enactment or law, an official must not be required, in connection with any legal proceedings, to give or produce evidence relating to any taxpayer information.

(4) Subsections (2) and (3) do not apply in respect of legal proceedings

(a) referred to in section 241 (3) of the federal Act, or

(b) related to either of the following:

(i) the *Home Owner Grant Act*;

(ii) the *Land Tax Deferment Act*.

(5) Subject to subsection (6), an official may do one or more of the following:

(a) provide to any person taxpayer information that can reasonably be considered necessary for the purposes of the administration or enforcement of this Act, solely for those purposes;

(b) provide to any person taxpayer information that can reasonably be considered necessary for the purposes of determining

(i) any tax, interest, penalty or other amount that is or may become payable by the person under this Act,

(ii) any refund, exemption or tax credit to which the person is or may become entitled under this Act, or

(iii) any other amount that is relevant for the purposes of a determination under subparagraph (i) or (ii);

(c) provide taxpayer information as follows:

(i) to an official of the Department of Finance of the Government of Canada solely for the purposes of the formulation or evaluation of fiscal policy;

(ii) to an official solely for the purposes of the initial implementation of a fiscal policy or for the purposes of the administration or enforcement of an Act of the Parliament of Canada that provides for the imposition and collection of a tax or duty;

(iii) to an official solely for the purposes of the administration or enforcement of an enactment of British Columbia or another province that provides for the imposition or collection of a tax or duty;

(iv) to an official solely for the purposes of the administration or enforcement of the *Home Owner Grant Act* or the *Land Tax Deferment Act*;

(v) to an official of the ministry of the finance minister solely for the purposes of the formulation or evaluation of fiscal policy;

(vi) to an official solely for the purposes of setting off against any sum of money that may be due or payable by the government of British Columbia a debt due to that government or to the government of another province or of Canada;

(d) provide taxpayer information, or allow the inspection of or access to those types of information, as the case may be, under, and solely for the purposes of,

(i) sections 44 (1) *[powers of commissioner in conducting investigations, audits or inquiries]* and 61 (1) *[powers, duties and protections of adjudicator]* of the *Freedom of Information and Protection of Privacy Act*, or

(ii) sections 15 *[staff in government or government organizations]*, 16 *[access to information, documents or things]* and 17 *[summons and requests]* of the *Auditor General Act*;

(e) provide taxpayer information solely for the purposes of sections 17 to 19 *[write off of assets and uncollectable debts, extinguishment of debts and remissions]* of the *Financial Administration Act*;

(f) use taxpayer information to compile information in a form that does not directly or indirectly reveal the identity of the taxpayer to whom the information relates;

(g) use, or provide to any person, taxpayer information solely for a purpose relating to the supervision, evaluation or discipline of an authorized person by the government in respect of a period during which the authorized person was employed by, or engaged by or on behalf of, the government to assist in the administration or enforcement of this Act, to the extent that the information is relevant for the purpose;

(h) use taxpayer information relating to a taxpayer to provide information to the taxpayer;

(i) provide taxpayer information to a police officer solely for the purpose of investigating whether an offence has been committed under the Criminal Code, or the laying of an information or the preferring of an indictment, if

(i) the taxpayer information can reasonably be considered necessary for the purpose of ascertaining

(A) the circumstances in which an offence under the *Criminal Code* may have been committed, or

(B) the identity of the person who may have committed an offence,

with respect to an official, or with respect to any person related to that official,

(ii) the official was or is engaged in the administration or enforcement of this Act, and

(iii) the offence can reasonably be considered to be related to that administration or enforcement;

(j) provide taxpayer information to, or allow inspection of or access to taxpayer information by, any person otherwise legally entitled to the information under a prescribed enactment of British Columbia solely for the purposes for which that person is entitled to the information;

(k) provide taxpayer information to, or allow inspection of or access to taxpayer information by, an authorized person solely for the purposes of the administration or enforcement of the *Assessment Act*;

(l) provide taxpayer information to, or allow inspection of or access to taxpayer information by, a person who is, in relation to the City of Vancouver, a designated person, solely for the purposes of the administration or enforcement the vacancy tax as defined in section 615 of the *Vancouver Charter*;

(m) provide taxpayer information to, or allow inspection of or access to taxpayer information by, an authorized person solely for the purposes set out in section 4 (1) (a) of the *Land Title and Survey Authority Act*.

(6) Except in accordance with an agreement entered into under section 121, an official must not, under subsection (5) (a) to (c) and (e) to (m) of this section, provide taxpayer information to, or allow inspection of or access to taxpayer information by, an official of

(a) a public body, as defined in the *Freedom of Information and Protection of Privacy Act*, other than the ministry or, under subsection (5) (c) (v) of this section, the ministry of the finance minister,

(b) the government of Canada, or

(c) the government of another province.

(7) Section 241 (3.1), (4.1) and (5) of the federal Act applies for the purposes of this Act.

(8) In applying section 241 of the federal Act for the purposes of this Act,

(a) the reference to "the Minister" in subsection (3.1) of that section is to be read as a reference to the minister responsible for this Act,

(b) the reference to "authorized person" in subsection (4.1) of that section is to be read as a reference to "authorized person" within the meaning of paragraph (a) of that definition in subsection (1) of this section, and

(c) the reference to "official" in subsection (5) of that section is to be read as a reference to official within the meaning of this section.

(9) [Repealed 2023-23-172.]

(10) To the extent of any inconsistency or conflict with sections 32 *[use of personal information]* and 33 *[disclosure of personal information]* of the *Freedom of Information and Protection of Privacy Act*, this section applies despite that Act.

Information-sharing agreements

121 (1) In this section:

"information-sharing agreement" means an agreement or arrangement to exchange, by electronic data transmission, electronic data matching or any other means, information for a purpose described in section 120 (5);

"taxpayer information" has the same meaning as in section 120.

(2) The minister may enter into an information-sharing agreement with any of the following:

(a) the government of Canada or an agency of that government;

(b) the government of a province or other jurisdiction in Canada or an agency of that government;

(c) a public body as defined in the *Freedom of Information and Protection of Privacy Act*.

(3) Subject to subsection (4), taxpayer information obtained by the minister under an information-sharing agreement may only be used or disclosed for the purpose for which it was obtained under the applicable agreement.

(4) Subsection (3) does not prevent

(a) any taxpayer information obtained by the minister under an information-sharing agreement with the government of Canada or an agency of that government from being used or disclosed for the purpose of administering or enforcing any of the following:

(i) an enactment administered by the minister that provides for the imposition and collection of a tax;

(ii) the *Home Owner Grant Act*;

(iii) the *Land Tax Deferment Act*, or

(b) any taxpayer information obtained by the minister under an information-sharing agreement from being used or disclosed for the purpose of administering or enforcing an Act of the Parliament of Canada that provides for the imposition and collection of a tax or duty.

(5) The Lieutenant Governor in Council may prescribe terms and conditions that are to be included in the information-sharing agreements entered into by the minister.

How and when documents are given by administrator

122 (1) If, under this Act, a document must or may be given by the administrator to a person, the document may be given in accordance with subsection (2).

(2) The administrator may give a document to a person as follows:

(a) if the person is an individual, by leaving the document with the individual;

(b) if the person is a corporation, by leaving the document with a board member or senior officer of the corporation;

(c) if the person is an extraprovincial corporation, by leaving the document with

(i) a person referred to in paragraph (b), or

(ii) an attorney for the extraprovincial corporation;

(d) by leaving the document with a person apparently employed at the place of business of the person;

(e) by sending the document by ordinary mail or registered mail to the last known address of the person according to the records of the administrator;

(f) by sending the document by electronic mail to the last known electronic mail address of the person according to the records of the administrator;

(g) by sending the document by fax to the last known fax number of the person according to the records of the administrator;

(h) by sending the document to the person by another communication method agreed to by the person and the administrator.

(3) If a person carries on business under a name or style other than the person's own name or style, the document to be given in accordance with this Part may be addressed to the name or style under which the person carries on business.

(4) A document sent by ordinary mail, registered mail, electronic mail, fax or a communication method referred to in subsection (2) (h) is conclusively deemed to have been given on the date the document was sent.

(5) Despite subsection (4), if a notice of assessment is sent by registered mail, ordinary mail or electronic mail, the notice, for the purposes of this Act, is deemed to have been given on the date of that notice.

(6) For the purposes of this Act, the date of a notice or statement given by the administrator is, subject to section 116 (4) *[limitation period]*, the date stated on the notice or statement.

Proof of receipt

123 (1) Proof of receipt by a person of a document to which section 122 applies may be established in any court by showing that the document was given in accordance with that section.

(2) A person seeking to establish the fact that a document referred to in subsection (1) was not received by the person bears the burden of proving that fact.

How and when documents are given by minister

124 If, under this Act, a document must or may be given by the minister to a person,

(a) the document may be given in accordance with section 122 (2), and

(b) if the document is given in accordance with that section, the document is conclusively deemed to have been given on the date of that document.

When payment is received

125 If, under this Act, an amount must or may be paid to the government, the amount is conclusively deemed to be paid on the day it is received by the government.

Repealed

126 [Repealed 2022-11-108.]

Procedure and evidence

127 (1) The administrator may issue a document certifying one or more of the following:

(a) that a person has not filed a declaration, notice or application required to be filed or given under this Act;

(b) that a record, other than a declaration, notice or application referred to in paragraph (a), was not filed or given under this Act;

(c) that a person filed a declaration, notice or application required to be filed or given under this Act on a particular day;

(d) that a record, other than a declaration, notice or application referred to in paragraph (c), was filed or given under this Act on a particular day;

(e) that a document that must or may be given by the administrator was given to a person in a particular manner on a particular day;

(f) that a notice of appeal to the minister was not filed within the time allowed.

(2) A document issued under subsection (1) is proof, in the absence of evidence to the contrary, of the matter certified in the document.

(3) In a prosecution or any proceeding in respect of any matter arising under this Act, the facts necessary to establish compliance on the part of the administrator with this Act or the regulations may be sufficiently proved in any court by the production of an affidavit of the administrator, or a person authorized by the administrator, setting out the facts.

Access to records

128 Despite any other enactment, for the purposes of administering and enforcing this Act and the regulations, the following persons and entities must provide to the administrator, free of charge, assistance and access to the records of the person or entity, as the case may be:

(a) the British Columbia Assessment Authority, continued by section 3 (1) of the *Assessment Authority Act*;

(b) the Land Title and Survey Authority, established by section 2 (1) of the *Land Title and Survey Authority Act*;

(c) the British Columbia Hydro and Power Authority, continued by section 2 of the *Hydro and Power Authority Act*;

(d) the Insurance Corporation of British Columbia, continued by section 2 (1) of the *Insurance Corporation Act*;

(e) the ministry of the minister responsible for the administration of section 3 *[registration, licence and insurance]* or 25 *[application for licence]* of the *Motor Vehicle Act*, in respect of the registration and licensing of motor vehicles and licensing and certification of drivers of motor vehicles.

Administrator to keep information for each regional district

129 For the purposes of section 9.7 (4.1) *[Housing Priority Initiatives special account]* of the *Special Accounts Appropriation and Control Act*, the administrator must keep the information the administrator considers necessary to advise the minister of the total of the amounts received by the government under this Act, in each fiscal year of the government, in respect of each regional district that includes a specified area.

Part 9 — Offences

General offences

130 A person who does any of the following commits an offence:

(a) makes, or participates in, assents to or acquiesces in the making of, a false or deceptive statement in a declaration, notice, application or other record required to be filed or given under this Act;

(b) destroys, alters, mutilates, hides or otherwise disposes of a record to evade payment of an amount to be paid to the government under this Act;

(c) makes, or participates in, assents to or acquiesces in the making of, a false or deceptive entry in a record related to an amount to be paid to the government under this Act;

(d) omits, or participates in, assents to or acquiesces in the omission of, a material particular in a record required to be kept under this Act;

(e) makes or uses, or participates in, assents to or acquiesces in the making or use of, a record in a false or deceptive manner in order to obtain a tax or other benefit;

(f) wilfully, in any manner, fails to comply with this Act or the regulations;

(g) wilfully, in any manner, evades or attempts to evade payment of tax or another amount payable under this Act;

(h) conspires with any person to do anything described in paragraphs (a) to (g).

Offences for failure to provide records or information required by administrator or for interference

131 A person who contravenes section 93 (3) (a) or (8) (a) or (b) *[production of records and interfering with inspection or audit]* commits an offence.

Penalties

132 (1) An individual who commits an offence under section 130 or 131 is liable to

(a) a fine equal to an amount

(i) that is not less than the amount of tax that was sought to be evaded, and

(ii) that is not more than the sum of the following:

(A) the amount of tax that was sought to be evaded;

(B) $100 000,

(b) imprisonment for not more than 2 years, or

(c) both the fine and imprisonment referred to in paragraphs (a) and (b).

(2) A corporation that commits an offence under section 130 or 131 is liable to a fine equal to an amount

(a) that is not less than the amount of tax that was sought to be evaded, and

(b) that is not more than the sum of the following:

(i) the amount of tax that was sought to be evaded;

(ii) $200 000.

Offences in relation to confidential information

133 (1) A person commits an offence if

(a) the person contravenes section 120 (5) *[communication of information]*, or

(b) the person knowingly contravenes an order made under section 241 (4.1) of the federal Act as that section applies for the purposes of this Act.

(2) A person

(a) to whom taxpayer information has been provided for a particular purpose under section 120 (5) (b), (d), (g), (j), (k) (l) or (m), or

(b) who is an official to whom taxpayer information has been provided for a particular purpose under section 120 (5) (a), (c) or (e),

and who for any other purpose knowingly uses, provides to any person, allows the provision to any person of or allows access to that information commits an offence.

(3) An individual who commits an offence under subsection (1) or (2) is liable to

(a) a fine of not more than $5 000,

(b) imprisonment for not more than 12 months, or

(c) both the fine and imprisonment referred to in paragraphs (a) and (b) of this subsection.

(4) A corporation that commits an offence under subsection (1) or (2) is liable to a fine of not more than $5 000.

Offence by corporation

134 (1) If a corporation commits an offence under this Act, an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the offence also commits that offence, whether or not the corporation is prosecuted or convicted.

(2) In a prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee, officer, director or agent of the defendant, whether or not the employee, officer, director or agent is identified, prosecuted or convicted for the offence.

(3) Subsection (2) does not apply if the defendant establishes that the defendant exercised due diligence to prevent the commission of the offence.

Administrative penalties as alternative to offence proceedings

135 (1) If the administrator imposes an administrative penalty on a person, a prosecution for an offence under this Act for the same contravention may not be brought against the person.

(2) A person who has been charged with an offence under this Act may not be subject to an administrative penalty in respect of the circumstances that gave rise to the charge.

Limitation period for prosecution

136 The time limit for laying an information for an offence under this Act is 6 years after the date when the act or omission that is alleged to constitute the offence occurred.

Section 5 of *Offence Act*

137 Section 5 *[general offence]* of the *Offence Act* does not apply to this Act or the regulations.

Part 10 — Regulations

General regulation-making authority

138 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(a) respecting any matter for which regulations are contemplated by this Act;

(b) defining any word or expression used but not defined in this Act.

(3) The authority to make regulations under another provision of this Act does not limit subsection (1) or (2).

(4) In making a regulation under this Act, the Lieutenant Governor in Council may do one or more of the following:

(a) delegate a matter to a person;

(b) confer a discretion on a person;

(c) make different regulations for

(i) different persons, trusts, partnerships, places, circumstances, transactions, interests in property or other things, or

(ii) different classes of persons, trusts, partnerships, places, circumstances, transactions, interests in property or other things;

(d) establish or define classes of persons, trusts, partnerships, places, circumstances, transactions, interests in property or other things.

Regulations in relation to appeals

138.1 (1) The Lieutenant Governor in Council may make regulations as follows:

(a) establishing rules governing the practice and procedure of the Supreme Court in an appeal under this Act;

(b) providing that a rule under the Supreme Court Civil Rules does not apply to an appeal under this Act;

(c) modifying a rule under the Supreme Court Civil Rules that applies to an appeal under this Act;

(d) adopting a rule under the Supreme Court Civil Rules that otherwise does not apply to an appeal under this Act and modifying that rule for the purposes of an appeal under this Act.

(2) Without limiting subsection (1), in making a regulation under subsection (1), the Lieutenant Governor in Council may make any rule authorized by sections 1 and 2 of the *Court Rules Act*.

(3) To the extent of any inconsistency or conflict between a regulation made under subsection (1) and the Supreme Court Civil Rules, the regulation made under subsection (1) prevails.

Other regulations

139 (1) The Lieutenant Governor in Council may make regulations as follows:

(a) for the purposes of paragraph (f) of the definition of "residential property" in section 1 *[definitions]*, prescribing land or improvements, or both, as land or improvements that are not residential property;

(b) for the purposes of paragraph (k) of the definition of "specified area" in section 1, prescribing an area as a specified area for the purposes of the Act;

(c) for the purposes of paragraph (m) of the definition of "specified area" in section 1, prescribing an area as excluded from being a specified area referred to in paragraphs (a) to (j) of that definition;

(d) for the purposes of paragraph (n) of the definition of "specified area" in section 1, providing that all or part of an area referred to in paragraph (n) (i) to (viii) of that definition is a specified area for the purposes of this Act;

(e) for the purposes of section 5 (2) *[meaning of "untaxed worldwide earner"]*, prescribing money, rights or things;

(f) for the purposes of paragraph (o) of section 20 *[exemption for specified owners]*, prescribing persons or entities or classes of persons or entities;

(g) respecting exemptions from tax, including, without limitation, respecting limits or conditions on those exemptions;

(h) for the purposes of section 39 (2) (c) (ii) and (3) (c) (ii) *[tenancy exemption for other owners]*, respecting the determination of annual fair market rent for residential properties by any method, including, without limitation, using data published by Statistics Canada, the Canada Mortgage and Housing Corporation or other organizations;

(i) for the purposes of paragraph (b) of the definition of "annual tax due date" in section 78 (1) *[payment of tax]*, prescribing a later date by which tax remaining unpaid is due;

(j) prescribing interest rates and the manner of calculating interest for the purposes of this Act.

(2) A regulation made under subsection (1) (a), (c), (e), (f) or (g), on or before December 31, 2019, may be made retroactive to a date that is not earlier than the date this section comes into force and, if made retroactive, is deemed to have come into force on the specified date.

Part 11 — Review of Act and Regulations

Review of Act and regulations

140 (1) On or before December 31, 2021, and at least once every 5 years after that, the government must initiate a review of this Act and the regulations and make public a report of the review.

(2) A review under subsection (1)

(a) must take into account the effectiveness of the Act and the regulations having regard to housing affordability, including vacancy rates, sale prices of residential property, rents for residential property and other relevant factors, and

(b) may include recommended amendments.

Annual consultation with mayors

141 (1) On or before December 31, 2019, and once every year after that, the minister must conduct a consultation with the mayors referred to in subsection (2) about the following:

(a) the tax;

(b) the definition of "specified area" in section 1;

(c) the factors referred to in section 140 (2) (a).

(2) The minister must invite, to participate in a consultation referred to in subsection (1), all of the mayors of municipalities that are, in whole or in part, specified areas.

(3) The minister must, in respect of each consultation conducted under subsection (1), lay a report before the Legislative Assembly.

(4) A review under section 140, including recommended amendments under that section, must take into account the results of a consultation conducted under subsection (1) of this section.

Part 12 — Transitional Provisions, Amendments to This Act and Consequential Amendments

Division 1

Repealed

142 [Repealed 2018-46-142 (4).]

Division 2 — Amendments to This Act

Amendments to This Act

Editorial Note

Section(s)	Affected Act
143-151	*Budget Measures Implementation (Speculation and Vacancy Tax) Act, 2018*

Division 3 — Consequential Amendments

Consequential Amendments

Section(s)	Affected Act
152	*Assessment Act*
153	*Home Owner Grant Act*

154	*Hydro and Power Authority Act*
155	*Land Tax Deferment Act*
156-157	*Property Transfer Tax Act*
158	*Special Accounts Appropriation and Control Act*
159-160	*Taxation (Rural Area) Act*

Commencement

161 The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1 **Provisions of Act**	Column 2 **Commencement**
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Sections 144 to 151	By regulation of the Lieutenant Governor in Council

This Act is current to March 4, 2025

See the Tables of Legislative Changes for this Act's legislative history, including any changes not in force.

VANCOUVER CHARTER

[SBC 1953] CHAPTER 55

Contents

Preamble

WHEREAS by the *Vancouver Enabling Act, 1949*, the City of Vancouver was authorized, without conforming with the requirements of the Standing Orders relating to Private Bills as to notices or fees, to apply to the Legislature for a Private Bill, to be known as the *Vancouver Charter*, to supersede and replace the said *Vancouver Incorporation Act, 1921*, and all amendments thereto:

And whereas a petition has been presented by the City of Vancouver praying accordingly:

And whereas it is expedient to grant the prayer of the said petition:

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

Short title

1. This Act may be cited as the *Vancouver Charter*.

1953-55-1.

Interpretation

2. In this Act, and in any by-law passed pursuant to this Act, unless the context otherwise requires,

"animal control officer" means

(a) an employee, officer or agent designated by the Council as an animal control officer for the purposes of this Act, or

(b) a peace officer;

"assent voting" means assent voting under Part II *[Assent Voting]*;

"assessed value" means assessed value as determined under the *Assessment Act*;

"assessor" means an assessor appointed under the *Assessment Authority Act*;

"city" means the City of Vancouver;

the by-law does not apply to the parcel to the extent necessary to allow a permitted use or the permitted density.

(2) As an exception to subsection (1), a by-law that has an effect referred to in that subsection applies without limit to a parcel if the Council, by resolution, commits the city to

(a) pay compensation to the owner of the parcel for any reduction in the market value caused by the prohibition, or

(b) provide, by development permit or otherwise, alternative means for the parcel to be used for a permitted use or developed to the permitted density.

(3) For the purposes of subsection (2) (a), the compensation must be as determined and paid as soon as reasonably possible in an amount set

(a) by agreement between the owner and the city, or

(b) if no agreement is reached, by the court in accordance with the *Expropriation Act*.

(4) For the purposes of subsection (2) (b), the Council may issue a development permit on its own initiative without an application from the owner.

(5) Except as provided in subsection (2), no compensation is payable to any person for a reduction in the value of any interest in land that results from a by-law under this Part or the issuance or refusal of a permit under this Part.

(6) A by-law or permit under this Part does not apply to land and the trees on it if the land is land to which section 21 of the *Private Managed Forest Land Act* applies.

2003-52-516; 2003-80-62; 2004-61-37.

Reconsideration of delegate's decision

614. If the Council delegates powers, duties or functions under this Part, the owner or occupier of real property that is subject to a decision of a delegate is entitled to have the Council reconsider the matter.

2003-52-516.

Part XXX — Vacancy Tax

Definitions for this Part

615. In this Part

"property status declaration" means a property status declaration required under section 618 (a) *[permissive vacancy tax by-law powers]*;

"residential property", subject to any applicable regulations, means real property classified as class 1 property (residential) under the *Assessment Act*;

"status", in relation to a residential property, means whether the property is any of the following, as applicable:

(a) in a category of residential property that is exempt under section 617 (f) *[required vacancy tax by-law provisions]* from the vacancy tax;

(b) vacant property;

(c) taxable property;

"taxable property", in relation to a vacancy tax, means residential property that is all of the following:

(a) vacant property;

(b) not exempt from taxation under section 373 *[annual rating by-law]*;

(c) not in a category of residential property that is exempt under section 617 (f) from the vacancy tax;

"vacancy reference period" means a period of time specified by a vacancy tax by-law for the purpose of determining whether residential property was unoccupied during the period such that it is vacant property;

"vacancy tax" means a tax imposed on taxable property by a vacancy tax by-law;

"vacancy tax by-law" means a by-law under section 616 (1) *[vacancy tax]*;

"vacant property" means residential property that is unoccupied during the vacancy reference period for at least the total length of time specified by a vacancy tax by-law and in the circumstances established in the vacancy tax by-law.

2016-27-1.

Vacancy tax

616. (1) The Council may, by by-law, impose an annual vacancy tax on a parcel of taxable property in accordance with this Part.

(2) A registered owner of taxable property must pay the vacancy tax imposed on that parcel of taxable property by a vacancy tax by-law.

(3) A vacancy tax, together with any applicable penalties and interest payable under section 618 (d) *[permissive vacancy tax by-law powers]*, owed to the city is a debt due to the city and is a levy that

(a) is a charge or lien on the real property on or in respect of which the vacancy tax is imposed,

(b) has priority over any claim, lien, privilege or encumbrance of any person except the Crown, and

(c) does not require registration to preserve it.

(4) The city may use monies raised from a vacancy tax only for the purposes of initiatives respecting affordable housing and for the administration and collection of the vacancy tax.

2016-27-1.

Required vacancy tax by-law provisions

617. A vacancy tax by-law must do the following:

(a) provide for a process for the administration and collection of a vacancy tax;

(b) establish circumstances in which residential property is to be considered unoccupied;

(c) specify a vacancy reference period and the total length of time that apply for the purpose of determining whether a residential property is vacant property;

(d) establish the basis on which the vacancy tax is imposed, which may be any basis in relation to taxable property;

(e) establish the rate or amount of the vacancy tax;

(f) establish exemptions from the vacancy tax;

(g) establish requirements respecting notice to a registered owner of a residential property that is subject to the vacancy tax;

(h) provide for a record of taxable properties and for a process to correct and update that record;

(i) provide for a process to hear and determine complaints respecting the imposition of a vacancy tax, including providing for a review process for determinations of complaints;

(j) provide for a process to refund to a registered owner any excess amount of vacancy tax paid by the registered owner and any amount of penalty and interest paid under section 618 (d) *[permissive vacancy tax by-law powers]* on the excess;

(k) provide for the preparation of an annual report respecting the vacancy tax, which report must include the amount of monies raised from the vacancy tax and how the monies were used;

(l) provide for making the annual report referred to in paragraph (k) available to the public.

2016-27-1.

Permissive vacancy tax by-law powers

618. A vacancy tax by-law may do any of the following:

(a) provide that a registered owner of a residential property must make a property status declaration;

(b) establish requirements and provide for a process respecting property status declarations;

(c) provide for requiring a registered owner of a residential property to provide information respecting the status of the property, including providing information to support a property status declaration and submitting evidence to verify the declaration;

(d) establish penalties and interest payable for failure to pay the vacancy tax and for failure to pay the vacancy tax by a specified date;

(e) authorize employees of the city or other persons to enter onto residential property in accordance with section 621 *[entering onto residential property]*;

(f) provide that a vacancy tax is a levy lawfully inserted in the real-property tax roll and, if that provision is made, section 409 (2) and (3) *[special charges that are to be collected as real-property taxes]* applies.

2016-27-1.

Vacancy tax by-law variation power

619. The Council may, in a vacancy tax by-law,

(a) establish categories of residential property, registered owners and vacant property,

(b) make different provisions for different categories established under paragraph (a) in respect of the following:

(i) different vacancy reference periods and different total lengths of time that apply for the purpose of determining whether a residential property is vacant property;

(ii) different rates or amounts of vacancy tax;

(iii) different exemptions;

(iv) different requirements respecting notices to a registered owner;

(v) different requirements respecting a property status declaration, including respecting any information or evidence required under section 620 *[property status declarations]*;

(vi) different requirements respecting information that a registered owner must provide respecting the status of a residential property of the owner, and

(c) make different provisions for different times, conditions or circumstances.

2016-27-1.

Property status declarations

620. (1) For the purposes of administering a vacancy tax, a vacancy tax by-law may do any of the following respecting property status declarations:

(a) provide for requiring a registered owner of a residential property to provide information respecting the property and the identity and address of the registered owner and the individual occupying the property, if any, which may include information respecting the status of the property and the nature of its occupancy during the vacancy reference period;

(b) require a registered owner of a residential property to submit evidence necessary to verify a property status declaration and the status of the property during the vacancy reference period;

(c) specify the type and form of information that a registered owner must provide or of the evidence that a registered owner must submit;

(d) provide for determining the information and evidence that is to be considered satisfactory to demonstrate the status of a residential property;

(e) establish fines and penalties that may be imposed on a registered owner who, in relation to a residential property,

(i) fails to make a property status declaration,

(ii) makes a false property status declaration,

(iii) fails to provide required information or to submit required evidence,

(iv) provides information or submits evidence that is not considered satisfactory, or

(v) provides false information or submits false evidence;

(f) provide that, if a registered owner does anything listed in paragraph (e) (i) to (v), the residential property is considered to be vacant property and is subject to the

vacancy tax.

(2) For certainty, a vacancy tax by-law may require a registered owner to provide information or submit evidence whether or not the owner makes a property status declaration.

2016-27-1.

Entering onto residential property

621. (1) The authority to enter onto a residential property may be exercised by an authorized employee of the city or other person authorized by the city only

(a) in relation to a residential property for which a property status declaration may be required under a vacancy tax by-law,

(b) for the purpose of determining the status of the property and whether the property is subject to the vacancy tax,

(c) at reasonable times and in a reasonable manner, and

(d) after reasonable steps are taken to advise the registered owner and the individual occupying the property, if any, before entering onto the property.

(2) An authorized employee of the city or other authorized person may enter into a residential property that is a private dwelling only if the individual occupying the property, if any, consents.

2016-27-1.

Regulations

622. (1) For the purposes of this Part, the Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations for the purposes of the definition of "residential property" in section 615 *[definitions for this Part]*

(a) excluding real property that is expressly included as class 1 property (residential) under the *Assessment Act*, and

(b) including real property that is expressly excluded from class 1 property (residential) under the *Assessment Act*.

2016-27-1.

Part XXXI — Transitional and Interim Provisions

Division (1) — Interpretation

Transition — definition for this Part

623. In this Part, **"zoning by-law"** has the same meaning as in section 559 *[definitions for Part XXVII]*.

2023-45-43.

Division (2) — Small-Scale Multi-Family Housing

Transition — extended compliance period for small-scale multi-family housing

Municipal Act, 2001

S.O. 2001, CHAPTER 25

CURRENT Consolidation period: November 6, 2024 - e-Laws currency date (March 11, 2025)

Last amendment: 2024, c. 20, Sched. 13.

Legislative History

Definitions

(2) In this section,

"general reassessment" has the same meaning as in section 306; ("réévaluation générale")

"municipal restructuring" means,

(a) the incorporation of a new municipality,

(b) the amalgamation of municipalities,

(c) the alteration of the boundaries of a municipality, or

(d) the dissolution of a municipality.

(e) Repealed: 2019, c. 14, Sched. 7, s. 14 (3).

2001, c. 25, s. 338 (2); 2019, c. 14, Sched. 7, s. 14 (3).

v Section Amendments with date in force (d/m/y)

PART IX.1
OPTIONAL TAX ON VACANT RESIDENTIAL UNITS

Designated municipality

338.1 The Minister of Finance may, by regulation, designate municipalities to which this Part applies. 2017, c. 8, Sched. 19, s. 5.

v Section Amendments with date in force (d/m/y)

Power to impose tax, vacant residential units

338.2 (1) In addition to taxes imposed under Part VIII, a designated municipality may, by by-law passed in the year to which it relates, impose a tax in the municipality on the assessed value, as determined under the *Assessment Act*, of vacant units that are classified in the residential property class and that are taxable under that Act for municipal purposes. 2017, c. 8, Sched. 19, s. 5.

Requirements for by-law

(2) A by-law described in subsection (1) must satisfy the following criteria:

1. It must state the tax rate.

2. It must state the conditions of vacancy that, if met, make a unit subject to the tax. 2017, c. 8, Sched. 19, s. 5.

Other contents of by-law

(3) A by-law described in subsection (1) may provide for such matters as the council of the municipality considers appropriate, including,

(a) exemptions from the tax;

(b) rebates of tax;

(c) audit and inspection powers; and

(d) except as otherwise provided for in the regulations, the establishment and use of dispute resolution mechanisms. 2017, c. 8, Sched. 19, s. 5.

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v **Section Amendments with date in force (d/m/y)**

Regulations re: power to impose tax

338.3 (1) The Minister of Finance may make regulations prescribing such matters as the Minister considers necessary or desirable in relation to this Part, including,

(a) designating municipalities to which this Part applies;

(b) prescribing conditions and limits with respect to the imposition of a tax under a by-law made under this Part;

(c) prescribing persons and entities who are not subject to a tax imposed under this Part;

(d) defining “vacant unit” for the purposes of this Part;

(e) governing the collection of a tax imposed under this Part;

(f) prescribing provisions of this Act that apply or do not apply for the purposes of this Part and providing for such modifications to those provisions as the Minister considers appropriate;

(g) governing the manner for apportioning an assessment that is attributable to vacant units;

(h) governing dispute resolution. 2017, c. 8, Sched. 19, s. 5.

Same

(2) On the recommendation of the Minister of Finance, the Lieutenant Governor in Council may make regulations defining any word or expression used in this Part. 2017, c. 8, Sched. 19, s. 5.

Retroactive

(3) A regulation under this section may be retroactive to a date not earlier than January 1 of the year in which the regulation is made. 2017, c. 8, Sched. 19, s. 5.

Conflicts

(4) In the event of a conflict between a regulation made under this section and a provision of any Act or regulation, the regulation made under this section prevails. 2017, c. 8, Sched. 19, s. 5.

v **Section Amendments with date in force (d/m/y)**

Effect re: Part VIII

338.4 This Part does not limit the authority of a municipality under Part VIII (Municipal Taxation). 2017, c. 8, Sched. 19, s. 5.

v **Section Amendments with date in force (d/m/y)**

Sharing of tax information

338.4.1 (1) In this section,

"land transfer tax information" means information obtained by the Minister of Finance in the administration or enforcement of the *Land Transfer Tax Act*; ("renseignements sur les droits de cession immobilière")

"personal information" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*; ("renseignements personnels")

"vacant units tax information" means, with respect to a municipality, information obtained by the municipality in the administration or enforcement of a by-law mentioned in subsection 338.2 (1). ("renseignements sur l'impôt sur les logements vacants") 2024, c. 20, Sched. 13, s. 1.

Disclosure

(2) The Minister of Finance, or a person authorized by the Minister of Finance, may disclose to a municipality land transfer tax information that relates to conveyances of land in the municipality, and a municipality may disclose vacant units tax information to the Minister of Finance, if the information to be disclosed is for use by the Minister of Finance or the municipality, as the case may be, for any of the following purposes:

1. The administration or enforcement of a tax.

2. The development or evaluation of economic, fiscal or tax policy. 2024, c. 20, Sched. 13, s. 1.

Personal information

(3) The Minister of Finance, a person authorized by the Minister of Finance or a municipality may collect and disclose personal information under subsection (2). 2024, c. 20, Sched. 13, s. 1.

Limits on collection

(4) The Minister of Finance, a person authorized by the Minister of Finance or a municipality shall not collect more personal information under this section than is reasonably necessary to serve the purpose of the collection. 2024, c. 20, Sched. 13, s. 1.

Notice

(5) The notice required by subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act* or subsection 29 (2) of the *Municipal Freedom of Information and Protection of Privacy Act* may be given by a public notice posted on,

(a) if personal information is being collected by the Minister of Finance, a website of the Government of Ontario; or

(b) if personal information is being collected by a municipality, a website of the municipality. 2024, c. 20, Sched. 13, s. 1.

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v **Section Amendments with date in force (d/m/y)**

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S.O. 2006, CHAPTER 11

SCHEDULE A

CURRENT Consolidation period: November 6, 2024 - e-Laws currency date (March 7, 2025)

Last amendment: 2024, c. 20, Sched. 3.

related editorial notes.

Legislative History

provision of the regulation or of this Part does not apply in the City unless the City passes a by-law to have it apply, subject to any prescribed conditions. 2016, c. 37, Sched. 3, s. 7 (2).

Definitions

(2) In this section,

"general reassessment" has the same meaning as in section 273; ("réévaluation générale")

"municipal restructuring" means,

(a) the amalgamation of the City and another municipality,

(b) the alteration of the boundaries of the City, or

(c) the dissolution of the City. ("restructuration municipale") 2006, c. 11, Sched. A, s. 302 (2).

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v **Section Amendments with date in force (d/m/y)**

PART XII.1
OPTIONAL TAX ON VACANT RESIDENTIAL UNITS

Power to impose tax, vacant residential units

302.1 (1) In addition to taxes imposed under Part XI, the City may, by by-law passed in the year to which it relates, impose a tax in the City on the assessed value, as determined under the *Assessment Act*, of vacant units that are classified in the residential property class and that are taxable under that Act for municipal purposes. 2017, c. 8, Sched. 4, s. 8.

Requirements for by-law

(2) A by-law described in subsection (1) must satisfy the following criteria:

1. It must state the tax rate.

8.

Other contents of by-law

(3) A by-law described in subsection (1) may provide for such matters as city council considers appropriate, including,

(a) exemptions from the tax;

(b) rebates of tax;

(c) audit and inspection powers; and

(d) except as otherwise provided for in the regulations, the establishment and use of dispute resolution mechanisms. 2017, c. 8, Sched. 4, s. 8.

v **Section Amendments with date in force (d/m/y)**

Regulations re power to impose tax

302.2 (1) The Minister of Finance may make regulations prescribing such matters as the Minister considers necessary or desirable in relation to this Part, including,

(a) prescribing conditions and limits with respect to the imposition of a tax under a by-law made under this Part;

(b) prescribing persons and entities who are not subject to a tax imposed under this Part;

(c) defining “vacant unit” for the purposes of this Part;

(d) governing the collection of a tax imposed under this Part;

(e) prescribing provisions of this Act that apply or do not apply for the purposes of this Part and providing for such modifications to those provisions as the Minister considers appropriate;

(f) governing the manner for apportioning an assessment that is attributable to vacant units;

(g) governing dispute resolution. 2017, c. 8, Sched. 4, s. 8.

Lieutenant Governor in Council may make regulations defining any word or expression used in this Part. 2017, c. 8, Sched. 4, s. 8.

Retroactive

(3) A regulation under this section may be retroactive to a date not earlier than January 1 of the year in which the regulation is made. 2017, c. 8, Sched. 4, s. 8.

Conflicts

(4) In the event of a conflict between a regulation made under this section and a provision of any Act or regulation, the regulation made under this section prevails. 2017, c. 8, Sched. 4, s. 8.

v **Section Amendments with date in force (d/m/y)**

Effect re part XI

302.3 This Part does not limit the authority of the City under Part XI (Traditional Municipal Taxes). 2017, c. 8, Sched. 4, s. 8.

v **Section Amendments with date in force (d/m/y)**

Sharing of tax information

302.4 (1) In this section,

"land transfer tax information" means information obtained by the Minister of Finance in the administration or enforcement of the *Land Transfer Tax Act*; ("renseignements sur les droits de cession immobilière")

"personal information" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*; ("renseignements personnels")

"vacant units tax information" means information obtained by the City in the administration or enforcement of a by-law mentioned in subsection

Disclosure

(2) The Minister of Finance, or a person authorized by the Minister of Finance, may disclose to the City land transfer tax information that relates to conveyances of land in the City, and the City may disclose vacant units tax information to the Minister of Finance, if the information to be disclosed is for use by the Minister of Finance or the City, as the case may be, for any of the following purposes:

1. The administration or enforcement of a tax.

2. The development or evaluation of economic, fiscal or tax policy. 2024, c. 20, Sched. 3, s. 1.

Personal information

(3) The Minister of Finance, a person authorized by the Minister of Finance or the City may collect and disclose personal information under subsection (2). 2024, c. 20, Sched. 3, s. 1.

Limits on collection

(4) The Minister of Finance, a person authorized by the Minister of Finance or the City shall not collect more personal information under this section than is reasonably necessary to serve the purpose of the collection. 2024, c. 20, Sched. 3, s. 1.

Notice

(5) The notice required by subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act* or subsection 29 (2) of the *Municipal Freedom of Information and Protection of Privacy Act* may be given by a public notice posted on,

(a) if personal information is being collected by the Minister of Finance, a website of the Government of Ontario; or

(b) if personal information is being collected by the City, a website of the City. 2024, c. 20, Sched. 3, s. 1.

SULLIVAN
ON THE
CONSTRUCTION OF STATUTES

Sixth Edition

by

Ruth Sullivan

It is arguable that an analysis of this sort, based on the principles underlying transitional law, is superior to an analysis based on situating facts in time – at least in those cases where the legal situation (the facts and their legal effect) can be characterized in more than one way.

THE RETROACTIVE APPLICATION OF LEGISLATION

§25.50 ***Retroactivity.*** Legislation receives a retroactive application when the effect of applying it to particular facts is to deem the law to have been different from what it actually was when the facts occurred. This is the standard definition of retroactivity in current Canadian law, as explained in the *Gustavson Drilling (1964) Ltd. v. Canada (Minister of National Revenue)*.[51] The Supreme Court of Canada there ruled that applying an amended provision of the *Income Tax Act* to the facts in question was not retroactive because it did not change the past. Dickson J. wrote:

> ... [the] enactment in the present case, although undoubtedly affecting past transactions, does not operate retrospectively [in the terminology of this text, retroactively]...; [it] does not reach into the past and declare that the law or the rights of parties as of an earlier date shall be taken to be something other than they were as of that earlier date.[52]

It is obvious that reaching into the past and declaring the law to be different from what it was is a serious violation of rule of law. As Raz points out, the fundamental principle on which rule of law is built is advance knowledge of the law.[53] No matter how reasonable or benevolent retroactive legislation may be, it is inherently arbitrary for those who could not know its content when acting or making their plans. And when retroactive legislation results in a loss or disadvantage for those who relied on the previous law, it is unfair as well as arbitrary. Even for persons who are not directly affected, the stability and security of law are diminished by the frequent or unwarranted enactment of retroactive legislation.

§25.51 For these reasons it is strongly presumed that legislation is not intended to be retroactive. As stated by Dickson J. in *Gustavson Drilling*:

> The general rule is that statutes are not to be construed as having retrospective [i.e. retroactive] operation unless such a construction is expressly or by necessary implication required by the language of the Act.[54]

Later, in *Reference re ss. 193 and 195.1(1)(c) of the Criminal Code* (Man.), he wrote:

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51 [1975] S.C.J. No. 116, [1977] 1 S.C.R. 271 (S.C.C.).

52 *Ibid.*, at 279.

53 J. Raz, "The Rule of Law and its Virtue" in *The Authority of Law* (New York: Oxford University Press, 1979).

54 *Gustavson Drilling (1964) Ltd. v. Canada (Minister of National Revenue)*, [1975] S.C.J. No. 116, [1977] 1 S.C.R. 271, at 279 (S.C.C.).

ceived an interlocutory judicial declaration that the pallets it leased for its business were not "returnable containers" as defined in the Act and therefore their rental created no tax liability. This interpretation was confirmed by the Ontario Court of Appeal, which returned the case to the court below. In response, the Legislature amended the definition of "returnable container" so that it clearly included the pallets. When the issue reached the Court of Appeal the second time, it did not occur to the Court that the purpose of the amendment might be to correct a mistake in its own interpretation. It took it for granted that the amendment was intended to change the law "by broadening the definition."[79] However, because the amendment was clearly intended to be retroactive, it applied to the pending appeal. Had that intention not been clear, the amended definition would not have applied.

§25.68 In the *Merck Frosst* case, the respondent sought damages from the appellant under s. 8 of the *Patented Medicines (Notice of Compliance) Regulations*. That section permitted a generic drug manufacturer (the generic) to recover damages from the manufacturer of a patented drug (the patentee) if the patentee obtained a prohibition order against the generic that was later reversed on appeal. The order at issue in the case was made in 1993 and reversed on appeal in 1998, shortly after s. 8 was amended. The amending regulation included a transitional provision stating that the amended version of s. 8 applied to pending applications. The Federal Court of Appeal agreed that without clear legislative authority to do so, a regulation could not apply retroactively or retrospectively nor could it interfere with vested rights. However, the Court concluded that the amendment to s. 8 was largely declaratory and therefore was neither retroactive nor retrospective and did not interfere with vested rights. Stratas J.A. wrote:

> ... the Regulatory Impact Analysis Statement suggests that the 1998 Regulations did not work a revolution in the substantive content of section 8 of the 1993 Regulations. Instead, it was aimed at providing a "clearer indication" of the circumstances in which damages could be awarded.
>
> In this way, the 1998 Regulations, for the most part, made aspects of the section 8 of the 1993 Regulations clearer by declaring, with greater specificity, the bases of liability for damages. Legislation that largely declares the state of an earlier, uncertain law is not retrospective.[80]
>
> Declaratory or clarifying legislation, which corrects defects in the earlier legislation, does not implicate the concerns associated with retrospective or retroactive legislation and may even bolster the known purposes of the earlier legislation.[81]

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79 *Procter & Gamble Inc. v. Ontario (Finance)*, [2010] O.J. No. 780, 2010 ONCA 149, at para. 6 (Ont. C.A.), leave to appeal refused [2010] S.C.C.A. No. 173 (S.C.C.). See *also Reference re Supreme Court Act, ss. 5 and 6*, [2014] S.C.J. No. 21, 2014 SCC 21, at para. 106 (S.C.C.).

80 *Merck Frosst Canada & Co. v. Apotex Inc.*, [2011] F.C.J. No. 1664, 2011 FCA 329, at paras. 46-47 (F.C.A.).

81 *Ibid.*, at para. 50.

THE PRESUMPTION AGAINST INTERFERENCE WITH VESTED RIGHTS: CREATING STRUCTURE OUT OF THE CONFUSION

MICHAEL CUSTER*

Canadian courts interpret statutes flexibly, as they remain unbridled by strict interpretive rules or principles. Consequently, ambiguity in statutory interpretation has emerged, particularly regarding the temporal application of statutory amendments. In this article, the author suggests that clearer rules should be established to remedy such uncertainty, focusing predominantly on clarifying the presumption against interference with vested rights. The article first proposes a step-by-step approach to the vested rights analysis, explaining how it operates and interacts with other temporal application presumptions. Next, the article traces the history and jurisprudence of the presumption against interference with vested rights, and attempts to resolve outstanding issues relating to the presumption. Finally, it applies this background to the proposed step-by-step approach, ultimately synthesizing the law and theory underpinning the discussed presumptions.

TABLE OF CONTENTS

* JD Candidate, 2018, University of Alberta Faculty of Law. I would primarily like to thank Dr. Cameron Hutchison at the Faculty of Law, University of Alberta, who introduced me to this topic as my Statutory Interpretation professor, took me on as his student researcher, and provided me with encouragement and helpful comments throughout the writing process of this article. Any errors, however, are mine. I am also indebted to the two anonymous reviewers who highlighted the points of the article which required more attention; the final product is much better off because of it. Finally, an honourable mention goes out to those of my friends and family who patiently listened to me ramble repeatedly on this topic of law: Dave Custer, Edith Bérard-Custer, Marc Custer, Jordyn Dryden, Zubair Hussain, and Robert Marquette.

Brosseau v. Alberta (Securities Commission)

Supreme Court Reports

Supreme Court of Canada

Present: Dickson C.J. and Estey *, Lamer, Wilson, Le Dain *, La Forest and L'Heureux-Dubé JJ.

1988: March 28 / 1989: March 9.

File No.: 19832.

[1989] 1 S.C.R. 301 | [1989] 1 R.C.S. 301 | [1989] S.C.J. No. 15 | [1989] A.C.S. no 15 | 1989 CanLII 121

Georges R. Brosseau, appellant; v. The Alberta Securities Commission, respondent.

ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA

* Estey and Le Dain JJ. took no part in the judgment.

Case Summary

Administrative law — Reasonable apprehension of bias — Commission conducting hearing with respect to trading in securities and/or the possible deprivation of certain statutory exemptions — Chairperson of Commission receiving report in his investigative capacity prior to hearing — Whether or not reasonable apprehension of bias.

Statutes — Interpretation — Retrospective effect — Statute imposing penalty related to a past event — Goal of penalty not to punish person in question but to protect the public — Whether or not statute attracting presumption against retrospective effect — Securities Act, S.A. 1981, c. S-6.1, ss. 28, 165, 166.

Appellant Brosseau, in his capacity as solicitor, prepared the prospectus of a company that later went into bankruptcy. The R.C.M.P. and the Alberta Securities Commission conducted separate investigations into the affairs of the company. The investigation initiated by the Securities Commission found no evidence of any violations of the Securities Act. The R.C.M.P. investigation, however, resulted in the laying of criminal charges against Brosseau and a colleague, Barry. The charges related to the making of false or misleading statements in the prospectus under the old' Securities Act, R.S.A. 1970, c. 333.

The Commission's investigation was reopened when the Assistant Deputy Minister of the Department of Consumer and Corporate Affairs informed the Chairman that litigation was pending concerning the collapse of the company, and that the Alberta Government was named as a party. There was a suggestion in some documents that the Alberta Government felt that any [page302] liability which attached to it would do so because of negligence on the part of the Commission. The Chairman forwarded the materials received from the Assistant Deputy Minister to the Deputy Director, Enforcement, of the Securities Commission. A review was

conducted, and a copy of the Commission's staff report was given to the Chairman in March 1984.

The Alberta Securities Commission gave a notice of hearing to determine if Brosseau and Barry should be made subject to a cease trading order and/or possible deprivation of certain statutory exemptions. Brosseau and Barry, after their acquittal on the criminal charges in 1985, brought a preliminary application before the Alberta Securities Commission seeking an order and declaration that the Commission had no jurisdiction to hold a hearing against them. The Commission ruled it had jurisdiction pursuant to s. 26 of the "new" Securities Act, S.A. 1981, c. S-6.1, denied the application and directed that the hearing continue. An appeal to the Alberta Court of Appeal was dismissed. Barry discontinued his appeal before this Court and appellant Brosseau restricted his to two issues. The first was whether or not there was a reasonable apprehension of bias given the fact that the Commission Chairperson, in his investigative capacity, had received a report prior to the hearing from the Deputy Director of Enforcement. The second was whether or not the action taken by the Commission under the "new" Securities Act attracted the presumption against the retrospectivity of statutes. Before this Court, the appellant abandoned all argument based on s. 11 of the Charter.

Held: The appeal should be dismissed.

The facts of this case neither raise a reasonable apprehension of bias nor do they undermine public confidence in the impartiality of the Securities Commission.

The principle that no one should be a judge in his own action underlies the doctrine of "reasonable apprehension of bias". An exception occurs, however, where an overlap of functions is authorized by statute.

It was not necessary to decide to what extent the Chairman initiated the investigation because the Act contemplated his involvement at several stages of the proceedings.

The broad and formal investigatory powers granted the Commission by s. 28 of the Securities Act suggest that the Commission has the implied authority to conduct a more informal internal review. The Commission logically would first investigate the facts before ordering [page303] a s. 28 investigation. Only if irregularities were uncovered would the Commission proceed to either a more thorough s. 28 investigation or a hearing to probe more deeply into the matter.

Securities commissions, by their nature, undertake several different functions. The Commission's empowering legislation clearly indicates that the Commission was not meant to act like a court in conducting its internal reviews and certain activities, which might otherwise be considered "biased", form an integral part of its operations. A section 28 investigation is of a different nature from this type of proceeding.

A security commission's protective role, which gives it a special character, its structure and responsibilities, must be considered in assessing allegations of bias. A "reasonable

apprehension of bias" affecting the Commission as a whole cannot be said to exist if the Chairman did not act outside of his statutory authority and if there were no evidence to show involvement beyond the Chairman's fulfilling his statutory duties.

The Chairman, as Chief Executive Officer of the Commission, did not exceed the bounds of authority of his office. The report in question was also made available to the appellant.

There was no element of "improper purpose" in the Commission's conduct of the proceedings against the appellant. Any suspicion that the Commission's actions were motivated with a view to escaping its own potential liability in any pending litigation was not supported by the evidence.

The presumption against retrospectivity, that statutes are not to be construed as having retrospective operation unless such a construction is expressly or by necessary implication required by the language of the Act, applies only to "penal" statutes. It does not apply to statutes imposing a penalty related to a past event, so long as the goal of the penalty is not to punish the person in question, but to protect the public. The provisions here are designed to disqualify persons from trading in securities that the Commission found to have committed acts calling their business integrity into question. The presumption against the retrospective effect of statutes is effectively rebutted because these provisions in question are designed to protect the public in keeping with the general regulatory role of the Commission. [page304]

Cases Cited

Considered: Re W. D. Latimer Co. and Attorney-General for Ontario (1973), 2 O.R. (2d) 391, aff'd sub nom. Re W. D. Latimer Co. and Bray (1974), 6 O.R. (2d) 129; distinguished: Angus v. Sun Alliance Insurance Co., [1988] 2 S.C.R. 256; referred to: Committee for Justice and Liberty v. National Energy Board (the Crowe case), [1978] 1 S.C.R. 369; Gregory & Co. v. Quebec Securities Commission, [1961] S.C.R. 584; Nova, An Alberta Corporation v. Amoco Canada Petroleum Co., [1981] 2 S.C.R. 437; Gustavson Drilling (1964) Ltd. v. Minister of National Revenue, [1977] 1 S.C.R. 271; R. v. Vine (1875), 10 L.R. Q.B. 195; Re A Solicitor's Clerk, [1957] 3 All E.R. 617.

Statutes and Regulations Cited

Canadian Charter of Rights and Freedoms, ss. 1, 11(d), (h). Securities Act, R.S.A. 1970, c. 333, s. 136. Securities Act, S.A. 1981, c. S-6.1, ss. 11, 28, 29, 65, 66, 107, 115, 116, 132, 133, 165, 166.

Authors Cited

Côté, Pierre-André. The Interpretation of Legislation in Canada. Cowansville, Quebec: Yvon Blais, 1984. Driedger, Elmer A. "Statutes: Retroactive, Retrospective Reflections" (1978), 56 Can. Bar Rev. 264. Driedger, Elmer A. Construction of Statutes, 2nd ed. Toronto: Butterworths, 1983. Krauss, Michel. "Réflexions sur la rétroactivité des lois" (1983), 14 R.G.D. 287.

APPEAL from a judgment of the Alberta Court of Appeal (1986), 67 A.R. 222, 25 D.L.R. (4th) 730, dismissing an appeal from a judgment of the Alberta Securities Commission. Appeal dismissed.
Rostyk Sadownik, for the appellant. P.J. McIntyre, for the respondent.

Solicitors for the appellant: Wheatley, Sadownik, Edmonton. Solicitors for the respondent: Burnet, Duckworth & Palmer, Calgary.

The judgment of the Court was delivered by

L'HEUREUX-DUBÉ J.

1 The facts of this case raise two main issues. The first concerns the existence of a reasonable apprehension of bias with respect to the activities of the Alberta Securities Commission (the Commission). The second deals with the retroactive application of the Alberta Securities Act, S.A. 1981, c. S-6.1, as amended.

[page305]

Facts

2 The appellant Brosseau was the solicitor for Dial Mortgage Co. Ltd. (Dial). In his capacity as solicitor, he prepared the company's prospectus, and filed it with the Commission in 1980.

3 In 1981, it became apparent that Dial was experiencing financial troubles. It was placed in receivership on February 2, 1981, and went into bankruptcy on April 16, 1981.

4 The Commission was concerned about the collapse of Dial. It ordered its staff to conduct a review of its files to determine if there had been any violation of the Securities Act, R.S.A. 1970, c. 333. On March 13, 1981 the staff reported that there was no evidence of any violations.

5 In March of 1982 the R.C.M.P. became involved in an investigation surrounding the affairs of Dial. They asked the Commission about its role in approving the Dial prospectus. The investigation was undertaken with a view to the laying of criminal charges. At the request of the R.C.M.P., the Commission provided them with documents from their files.

6 In early 1983, the Assistant Deputy Minister of the Department of Consumer and Corporate Affairs informed the Chairman of the Commission that litigation was pending which named the Alberta Government as a party to an action concerning the collapse of Dial. There is a suggestion in the documents in the case on appeal that the Alberta government felt that any liability which attached to it would be as a result of negligence on the part of the Commission. Subsequently, the Chairman forwarded the materials received from the Assistant Deputy Minister to the Deputy Director, Enforcement, of the Commission. The Deputy Director directed the Commission staff to conduct an investigation into the matter. The investigation included a review of the Commission's files, as well as meetings with former employees of the Commission,

in order to clarify matters relating to the prospectus filed by Dial. The investigators also reviewed seized documents at R.C.M.P. headquarters, and attended an R.C.M.P. interview of the appellant Brosseau.

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7 The Chairman was given a copy of the Commission staff's report on March 13, 1984. A notice of hearing was issued by the commission on June 25, 1984.

Proceedings

8 I will turn now to a discussion of the proceedings which ensued as a result of the investigations by both the Commission and the R.C.M.P. The investigation involved two individuals, Georges Brosseau and Wayne Barry. The latter, who was originally a party to the appeal, withdrew.

9 The R.C.M.P. investigation led to the laying of charges against Brosseau and Barry. The charge stated that:

> ... between the 29th day of November, A.D. 1979, and the 2nd day of April, A.D. 1980, at or near the city of Edmonton and elsewhere in the Province of Alberta, did jointly and severally make statements in a prospectus dated the 29th day of August, A.D. 1979, required to be filed or furnished under The Securities Act, 1970 R.S.A. c. 333 or the Regulations enacted thereunder, which said statements at the time and in the light of the circumstances under which they were made, were false or misleading with respect to material facts, the particulars of the said statements appearing in the said prospectus include, but are not limited ....

10 On February 26, 1985, the Alberta Provincial Court held that it had no jurisdiction to proceed with the charges "because the limitation period had lapsed upon swearing of the Information". The accused were acquitted.

11 On June 25, 1984, pursuant to ss. 165 and 166 of the Alberta Securities Act, the Commission issued a notice of hearing in order to determine whether the Commission should make an order against either or both of them:

> (a) under section 165 that trading cease in respect of any securities or that a person or company cease trading in securities or specified securities for a period of time as specified in the order
>
> and to order, or alternatively may order, as against the Respondents, or each of them,

[page307]

(b) under section 166 that any or all of the exemptions contained in sections 65, 66, 107, 115, 116, 132 and 133, or in the Regulations do not apply to the person or company named in the order.

(One notes that the criminal charges based on substantially the same allegations were brought under the "old" Securities Act, R.S.A. 1970, c. 333, whereas the notice of hearing was based on the provisions of the "new" Securities Act, S.A. 1981, c. S-6.1.)

12 The hearing before the Commission was adjourned from time to time at the request of the parties in order to allow for the completion of the hearing of the charges in Provincial Court. Ultimately, the hearing before the Commission was never proceeded with, due to a preliminary application brought by Brosseau and Barry. After their acquittal from the criminal charges, they sought an order and declaration that the Commission did not have jurisdiction to hold a hearing against them pursuant to ss. 165 and 166 of the Alberta Securities Act, S.A. 1981, c. S-6.1.

13 The bases of the preliminary application before the Commission are set out as follows in the decision of the Commission dated September 11, 1985:

1. Double jeopardy -- an infringement of the Respondents' rights as set out in section 11(h) of the Canadian Charter of Rights and Freedoms
2. Bias
3. Improper purpose
4. Expiry of limitation date for commencement of the proceedings
5. Other grounds

The Commission dismissed each of these arguments, ruled it had jurisdiction, denied the application and directed that the hearing continue. Brosseau and Barry appealed the decision to the Alberta Court of Appeal. Stevenson J.A., delivering the unanimous judgment of the Court of Appeal (1986), 67 A.R. 222, rejected their contentions and dismissed the appeal.

[page308]

14 In their motion for leave to appeal to this Court, Brosseau and Barry raised constitutional issues which the Chief Justice stated as follows:

1. Does a hearing of the Alberta Securities Commission pursuant to ss. 165 and 166 of the Securities Act, S.A. 1981, c. S-6.1, to determine whether certain persons should be subject to a cease-trading order and deprived of certain exemptions provided by the said Act, infringe or deny the rights guaranteed by s. 11(h) of the Canadian Charter of Rights and Freedoms of persons who previously had been acquitted of an offence under s. 136 of the Securities Act, R.S.A. 1970, c. 333, in respect of the same factual allegations?
2. Does a hearing of the Alberta Securities Commission pursuant to ss. 165 and 166 of the Securities Act, S.A. 1981, c. S-6.1, infringe or deny the right to a fair and public hearing by an independent and impartial tribunal guaranteed by s. 11(d) of the

Canadian Charter of Rights and Freedoms if the Alberta Securities Commission was involved in the investigation of allegations which are to be considered at the hearing?

3. If and to the extent that such a hearing of the Alberta Securities Commission would infringe or deny rights guaranteed by s. 11(d) or s. 11(h), is such a hearing justifiable under s. 1 of the Canadian Charter of Rights and Freedoms as a reasonable limit prescribed by law?

15 On March 1, 1988, before this case was to be heard, the appellant Brosseau informed the Court that he was abandoning any argument based on s. 11 of the Charter and would restrict his argument to the following two points:

1. Reasonable apprehension of bias, and
2. Statutory interpretation.

As a consequence, the Attorneys General of Canada, Alberta, Manitoba, Ontario, Quebec and New Brunswick, who had intervened in the case, gave notice of the withdrawal of their intervention.

Issues

16 After the Charter questions were dropped by the appellant, his two remaining arguments were as follows:

[page309]

18. Whether the Court of Appeal erred in holding that, apart from the Charter, participation by the same members of the Commission in both investigative and adjudicatory functions did not raise a reasonable apprehension of bias precluding the Commission from holding the Hearing.
19. Whether the Court of Appeal erred in holding that the objects of Sections 165 and 166 of the New Act are protective, rather than punitive, and that therefore the presumption against retrospective application of statutes does not apply to prohibit the Commission from holding the Hearing to consider whether sanctions only provided for in the New Act should be imposed against the Appellants in respect of acts alleged to have been committed at a time when the Old Act governed the trading of securities in Alberta.

17 I will deal with these issues in the order in which they were argued.

Reasonable Apprehension of Bias

18 The appellant contends that a reasonable apprehension of bias arose by the fact that the Chairman, who had received the investigative report, was also designated to sit on the panel at the hearing of the matter. He objects to the Chairman's participation at both the investigatory and adjudicatory levels.

19 The maxim nemo judex in causa sua debet esse underlies the doctrine of "reasonable apprehension of bias". It translates into the principle that no one ought to be a judge in his own cause. In this case, it is contended that the Chairman, in acting as both investigator and adjudicator in the same case, created a reasonable apprehension of bias. As a general principle, this is not permitted in law because the taint of bias would destroy the integrity of proceedings conducted in such a manner.

20 As with most principles, there are exceptions. One exception to the "nemo judex" principle is where the overlap of functions which occurs has been authorized by statute, assuming the constitutionality of the statute is not in issue. A case in point relied on by the respondents, Re W.[page310]D. Latimer Co. and Attorney-General for Ontario (1973), 2 O.R. (2d) 391, affirmed sub nom. Re W. D. Latimer Co. and Bray (1974), 6 O.R. (2d) 129, addresses this particular issue with respect to the activities of a securities commission. In that case, as in this one, members of the panel assigned to hear proceedings had also been involved in the investigatory process. Dubin J.A. for the Court of Appeal found that the structure of the Act itself, whereby commissioners could be involved in both the investigatory and adjudicatory functions did not, by itself, give rise to a reasonable apprehension of bias. He wrote at pp. 140-41:

> Where by statute the tribunal is authorized to perform tripartite functions, disqualification must be founded upon some act of the tribunal going beyond the performance of the duties imposed upon it by the enactment pursuant to which the proceedings are conducted. Mere advance information as to the nature of the complaint and the grounds for it are not sufficient to disqualify the tribunal from completing its task.

21 In order to disqualify the Commission from hearing the matter in the present case, some act of the Commission going beyond its statutory duties must be found.

22 Administrative tribunals are created for a variety of reasons and to respond to a variety of needs. In establishing such tribunals, the legislator is free to choose the structure of the administrative body. The legislator will determine, among other things, its composition and the particular degrees of formality required in its operation. In some cases, the legislator will determine that it is desirable, in achieving the ends of the statute, to allow for an overlap of functions which in normal judicial proceedings would be kept separate. In assessing the activities of administrative tribunals, the courts must be sensitive to the nature of the body created by the legislator. If a certain degree of overlapping of functions is authorized by statute, then, to the extent that it is authorized, it will not generally be subject to the doctrine of "reasonable apprehension of bias" per se. In this case, the appellant complains that the Chairman was both the investigator and adjudicator and that therefore, the hearing should be prevented from continuing on the grounds of reasonable apprehension of bias.

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23 In the course of deciding this case, it became clear to this Court that the arguments presented by the parties in their factums and in oral argument before this Court were insufficient

to properly address these questions. As a result, the parties were requested to provide written submissions in answer to the following questions:

(1) pursuant to what statutory authority was the investigation directed?

(2) was the investigation directed solely at the initiative of the Chairman?

(3) was the investigation confined to documents on file with the Commission, i.e. was it a purely internal investigation or was it broader in scope?

24 In his written submissions, the appellant claimed that there was no authority for the investigation. He maintained that it was directed solely at the initiative of the Chairman, and was not confined to documents on file. Not surprisingly, the respondents disagreed. They argued that while not specifically authorized by statute, implicit authority for the investigation could be found in the general scheme of the Securities Act.

25 If the investigation was without statutory authority, and if it was also directed at the initiative of the Chairman, then it is clear that the Chairman was attempting to act in the role of both investigator and adjudicator in circumstances which would not permit an abrogation of the general rules against bias. The appellant claims that the investigation was initiated by the Chairman. The respondent contends that it was, in fact, the Director who ordered the investigation. In my view, the available evidence does not favour one position over the other. While it appears that the Chairman may have had some role in "initiating" the investigation, it is far from clear that he initiated it in the sense of directing what should be done, how, and by whom. However, I do not feel it necessary to decide this point since I believe that the Act contemplates the involvement of the Chairman at several stages of proceedings.

26 Section 28 of the Securities Act provides authority for the Commission to carry out a full scale investigation which includes a wide range of [page312] powers. The person appointed to make the investigation under s. 28 has, by virtue of s. 29, "the same power as is vested in the Court of Queen's Bench for the trial of civil actions." Because of the extensive nature of the powers granted to an investigator under s. 28, such an investigation must be ordered by the Commission, and not by the Chairman alone.

27 There is no evidence in the present case that a s. 28 investigation was ordered by the Commission. In fact, the record and submissions suggest that this was not the route chosen by the Commission. The appellant contends that the only permissible route for an investigation is s. 28, and that therefore there was no statutory authorization for the action taken by the Chairman.

28 The respondent argues that the Act implies powers on a different level from the s. 28 formal investigative procedures. It contends that an informal "enforcement review" is the mechanism used by the Commission to bring to its attention those matters which warrant a more in depth investigation. Because of the formalities surrounding the s. 28 investigation, and because of the broad powers conferred, I am inclined to agree that the Commission must have the implied authority to conduct a more informal internal review. It would be unreasonable to say that a securities commission requires express statutory authority to review the documents it has on file, or to keep itself informed of the course of an R.C.M.P. investigation. To do so would be to

make mandatory a resort to a s. 28 investigation for what are often simple administrative purposes. Such an approach might have the effect of paralysing the operations of the Commission. It would seem logical that before ordering a s. 28 investigation, the Commission would have first investigated the facts. If no wrongdoing is found, that would end the matter. If irregularities are uncovered, then the Commission could proceed either to a more thorough s. 28 investigation or to order a hearing, as in this case, to probe more deeply into the matter.

29 Section 11 of the Securities Act provides that the Chairman of the Commission is its Chief Executive Officer. As such, it appears to me that [page313] he would necessarily have the authority to receive information from the Assistant Deputy Minister or from the R.C.M.P., pass this material along to the Director of the Commission, require that the Director verify the allegations and complaints, and receive a report of any review made by the Director. There is no evidence that his participation went beyond these bounds. It is also to be noted that the report in question was made available to the appellant.

30 Certain other factors should be taken into consideration along with the question of statutory authorization. For example, in a specialized body such as the Commission, it is more than likely that the same decision-makers will have repeated dealings with a given party on a number of occasions and for a variety of reasons. It is hardly surprising, given the fact that there is only one Alberta Securities Commission, that the Commission in this case was required to deal with many aspects of the failure of Dial over a period of years.

31 Securities commissions, by their nature, undertake several different functions. They are involved in overseeing the filing of prospectuses, regulating the trade in securities, registering persons and companies who trade in securities, carrying out investigations and enforcing the provisions of the Act. By their nature, they will have repeated dealings with the same parties. The dealings could be in an administrative or adjudicative capacity. When a party is subjected to the enforcement proceedings contemplated by the s. 165 or s. 166 of the Act, that party is given an opportunity to present its case in a hearing before the Commission, as was done in this case. The Commission both orders the hearing and decides the matter. Given the circumstances, it is not enough for the appellant to merely claim bias because the Commission, in undertaking this preliminary internal review, did not act like a court. It is clear from its empowering legislation that, in such circumstances, the Commission is not meant to act like a court, and that certain activities which might otherwise be considered [page314] "biased" form an integral part of its operations. A section 28 investigation is of a different nature from this type of proceeding.

32 Securities acts in general can be said to be aimed at regulating the market and protecting the general public. This role was recognized by this Court in Gregory & Co. v. Quebec Securities Commission, [1961] S.C.R. 584, where Fauteux J. observed at p. 588:

> The paramount object of the Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public, in the province or elsewhere, from being defrauded as a result of certain activities initiated in the province by persons therein carrying on such a business.

33 This protective role, common to all securities commissions, gives a special character to such bodies which must be recognized when assessing the way in which their functions are carried out under their Acts.

34 The special circumstances of the tribunal in this case are substantially the same as those in the case of Re W. D. Latimer Co. and Attorney-General for Ontario, supra. In the Supreme Court of Ontario, Wright J. made the following observation at p. 404:

> What fair play is in particular circumstances, and whether and how the power of the Courts to enforce it should be exercised are what the Court must decide. It must on the one hand see that the citizen is not unfairly dealt with or put in a position of potential unjustified peril at the hands of some person or body exercising jurisdiction. It must on the other hand see that such persons or bodies seeking to perform their public duty are not unduly hampered in their work and that the purpose of the Legislature, if it be the source of their jurisdiction, is respected and realized as it has been expressed.

35 The particular structure and responsibilities of the Commission must be considered in assessing allegations of bias. Upon the appeal of Latimer to the Ontario Court of Appeal, Dubin J.A., for a [page315] unanimous Court, dismissed the complaint of bias. He acknowledged that the Commission had a responsibility both to the public and to its registrants. He wrote at p. 135:

> ... I view the obligation of the Commission towards its registrants as analogous to a professional body dealing in disciplinary matters with its members. The duty imposed upon the Commission of protecting members of the public from the misconduct of its registrants is, of course, a principal object of the statute, but the obligation of the Commission to deal fairly with those whose livelihood is in its hands is also by statute clearly placed upon it, and nothing is to be gained, in my opinion, by placing a priority upon one of its functions over the other.

36 Dubin J.A. found that the structure of the Act whereby commissioners could be involved in both the investigatory and adjudicatory functions did not, by itself, give rise to a reasonable apprehension of bias.

37 I am in agreement with this proposition. So long as the Chairman did not act outside of his statutory authority, and so long as there is no evidence to show involvement above and beyond the mere fact of the Chairman's fulfilling his statutory duties, a "reasonable apprehension of bias" affecting the Commission as a whole cannot be said to exist.

Improper Purpose

38 Although not argued before this Court, I have also considered the question of whether there may have been some element of "improper purpose" in the conduct of the proceedings against the appellant. For example, if the Commission conducted a review of Dial and ordered a hearing with a view to escaping its own potential liability in any pending litigation against the Commission, then otherwise legitimate proceedings could be tainted with bias. However, after a careful review of the file I am satisfied that any such "suspicion" of the motives of the Chairman,

or of the Commission, is completely unfounded. While there seems, at one point, to have been pending litigation, there is no evidence as to the actual existence of claims against the Commission. More importantly, there is no evidence of the nature of such claims, or of [page316] the possible defences available to the Commission. In short, any argument of bias founded on such scanty information would hardly be a reasonable suspicion. It would be more easily categorized as sheer conjecture.

39 Of course, had there been any evidence of a possible conflict between the interest of the Commission in the outcome of the hearing, and their duty to give a fair hearing to the appellant, it would be a different matter, and might raise a reasonable apprehension of bias. However, in my view, this is not the case here.

Conclusion

40 In Committee for Justice and Liberty v. National Energy Board (the Crowe case), [1978] 1 S.C.R. 369, Chief Justice Laskin stated the principle behind the test of reasonable apprehension of bias. He wrote, at p. 391:

> This test is grounded in a firm concern that there be no lack of public confidence in the impartiality of adjudicative agencies ....

41 In my view, the facts of this case do not raise a reasonable apprehension of bias, nor can they undermine public confidence in the impartiality of the Commission. I would therefore dismiss this first ground of appeal.

Retroactivity

42 The appellant claims that ss. 165 and 166 of the new Act (1981) cannot be applied retrospectively to him. The appellant maintains that these provisions of the new Act broaden the powers of the Commission. He submits that the Court of Appeal erred "in relying upon the case of Re A Solicitor's Clerk, [1957] 3 All E.R. 617, as authority for the proposition that where the objectives of a statute are protective', rather than penal', then the presumption against retrospective operation of statutes does not apply." The appellant contends that under ss. 165 and 166 of the new Act (1981), sanctions are penal and consequently the Act should not be applied retrospectively.

[page317]

43 The relevant legislation consists of s. 136 of the Securities Act, R.S.A. 1970, c. 333, and ss. 165 and 166 of the current Securities Act, S.A. 1981, c. S-6.1:

> 136. (1) Every person or company who
>
> . . .
>
> (b) makes a statement in any application, report, prospectus ... required to be filed or furnished ... that ... is false or misleading is ... guilty of an offence.

165(1) The Commission may order that

(a) trading cease in respect of any security for a period of time as is specified in the order, or

(b) that a person or company cease trading in securities or specified securities for a period of time as is specified in the order.

(2) The Commission shall not make an order under subsection (1) without conducting a hearing.

166(1) The Commission may order that any or all of the exemptions contained in sections 65, 66, 107, 115, 116, 132 and 133 or in the regulations do not apply to the person or company named in the order.

(2) The Commission shall not make an order under subsection (1) without conducting a hearing.

44 The basic rule of statutory interpretation, that laws should not be construed so as to have retrospective effect, was reiterated in the recent decision of this Court in Angus v. Sun Alliance Insurance Co., [1988] 2 S.C.R. 256. That case, however, dealt with the question of the retrospective effect of procedural versus substantive provisions. The present case presents a different facet of the problem of retrospectivity.

45 While the presumption against retrospective effect is clear, there seems to be a great deal of confusion among the authorities and case law as to what constitutes such an effect. Michel Krauss in "Réflexions sur la rétroactivité des lois" (1983), 14 R.G.D. 287, observes at p. 291:

> [TRANSLATION] ... there is unanimity when it comes to recognizing that the "non-retrospectivity rule" is now applicable. However, the content of this presumption has still to be determined in order to apply it consistently [page318] and precisely. In our opinion, this concept is not precisely defined in our law.

46 Pierre-André Côté (The Interpretation of Legislation in Canada (1984)) wrote on the subject of the application of the rule against retroactive application of laws at p. 91:

> Examination of the case law reveals a great number of judgments based on general principles. It is difficult to discern a logical thread in this panoply of decisions that are difficult to reconcile.

47 This Court has had the opportunity to consider the matter of the retrospective application of laws. In Nova, An Alberta Corporation v. Amoco Canada Petroleum Co., [1981] 2 S.C.R. 437, Estey J. dealt with the issue of retrospectivity by scrutinizing the intent behind the particular piece of legislation. He stated at p. 448 that "each statute must, for the purpose of its interpretation, stand on its own and be examined according to its terminology and the general legislative pattern it establishes". In Gustavson Drilling (1964) Ltd. v. Minister of National Revenue, [1977] 1 S.C.R. 271, Dickson J. (as he then was) stated the general principle with respect to retrospectivity of enactments at p. 279:

> The general rule is that statutes are not to be construed as having retrospective operation unless such a construction is expressly or by necessary implication required by the

> language of the Act. An amending enactment may provide that it shall be deemed to have come into force on a date prior to its enactment or it may provide that it is to be operative with respect to transactions occurring prior to its enactment. In those instances the statute operates retrospectively.

48 The so-called presumption against retrospectivity applies only to prejudicial statutes. It does not apply to those which confer a benefit. As Elmer Driedger, Construction of Statutes (2nd ed. 1983), explains at p. 198:

> ... there are three kinds of statutes that can properly be said to be retrospective, but there is only one that attracts the presumption. First, there are the statutes that attach benevolent consequences to a prior [page319] event; they do not attract the presumption. Second, there are those that attach prejudicial consequences to a prior event; they attract the presumption. Third, there are those that impose a penalty on a person who is described by reference to a prior event, but the penalty is not intended as further punishment for the event; these do not attract the presumption.

49 A sub-category of the third type of statute described by Driedger is enactments which may impose a penalty on a person related to a past event, so long as the goal of the penalty is not to punish the person in question, but to protect the public. This distinction was elaborated in the early case of R. v. Vine (1875), 10 L.R. Q.B. 195, where Cockburn C.J. wrote at p. 199:

> If one could see some reason for thinking that the intention of this enactment was merely to aggravate the punishment for felony by imposing this disqualification in addition, I should feel the force of Mr. Poland's argument, founded on the rule which has obtained in putting a construction upon statutes -- that when they are penal in their nature they are not to be construed retrospectively, if the language is capable of having a prospective effect given to it and is not necessarily retrospective. But here the object of the enactment is not to punish offenders, but to protect the public against public-houses in which spirits are retailed being kept by persons of doubtful character ... the legislature has categorically drawn a hard and fast line, obviously with a view to protect the public, in order that places of public resort may be kept by persons of good character; and it matters not for this purpose whether a person was convicted before or after the Act passed, one is equally bad as the other and ought not to be intrusted with a licence.

50 In Re A Solicitor's Clerk, [1957] 3 All E.R. 617, a statute concerning the practice of law by solicitors was amended so as to enable an order disqualifying a person from acting as a solicitor's clerk if such person had been convicted of larceny, embezzlement or fraudulent conversion of property. A clerk who had been convicted of one of those offenses before the coming into effect of the new law, contested his disqualification on the basis that the law was being given a retrospective effect. The Court of Queen's Bench dismissed these arguments. Lord Goddard C.J. found that there was no [page320] retrospective effect since the real aim of the law was prospective and aimed at protecting the public. He wrote at p. 619:

> In my opinion, however, this Act is not in truth retrospective. It enables an order to be made disqualifying a person from acting as a solicitor's clerk in the future and what happened in the past is the cause or reason for the making of the order; but the order has no retrospective effect. It would be retrospective if the Act provided that anything done

> before the Act came into force or before the order was made should be void or voidable or if a penalty were inflicted for having acted in this or any other capacity before the Act came into force or the order was made. This Act simply enables a disqualification to be imposed for the future which in no way affects anything done by the appellant in the past.

51 Elmer Driedger summarizes the point in "Statutes: Retroactive, Retrospective Reflections" (1978), 56 Can. Bar Rev. 264, at p. 275:

> In the end, resort must be had to the object of the statute. If the intent is to punish or penalize a person for having done what he did, the presumption applies, because a new consequence is attached to a prior event. But if the new punishment or penalty is intended to protect the public, the presumption does not apply.

52 Stevenson J.A. of the Court of Appeal likened the situation in the present appeal to that in the Solicitor's Clerk case at p. 229:

> In my view the principle in the Solicitor's Clerk case is indistinguishable. An additional power is given to the Commission -- based on previous conduct. A new punishment cannot be added but that is not the nature of the office of ss. 166 and 167. It is the same office that the Solicitor's Clerk case deals with, namely to provide a disqualification based on past conduct which may show unfitness for the exemption.

53 The present case involves the imposition of a remedy, the application of which is based upon conduct of the appellant before the enactment of ss. 165 and 166. Nonetheless, the remedy is not designed as a punishment for that conduct. Rather, it serves to protect members of the public.

54 The fact that the relief is not really punitive in nature is supported by the conclusion of Stevenson J.A. that the imposition of the new remedy did not [page321] lie at the root of the appellant's concern in this matter at p. 229:

> In essence, the appellants fear the stigma arising from a finding that they did, or failed to do, what is alleged in the hearing notice. That root concern was well illustrated by the suggestion made in argument that neither would be particularly aggrieved by the remedy being imposed against them, indeed they could accept the remedies, but were concerned about the finding of wrong doing.

55 The provisions in question are designed to disqualify from trading in securities those persons whom the Commission finds to have committed acts which call into question their business integrity. This is a measure designed to protect the public, and it is in keeping with the general regulatory role of the Commission. Since the amendment at issue here is designed to protect the public, the presumption against the retrospective effect of statutes is effectively rebutted.

56 In the result, I would dismiss this appeal with costs.

Hayward v. Hayward

Nova Scotia Judgments

Nova Scotia Court of Appeal

Halifax, Nova Scotia

L.L. Oland, J.E. Fichaud and D.R. Beveridge JJ. A.

Heard: May 17, 2011.

Judgment: December 20, 2011.

Docket: CA 334009

Registry: Halifax

[2011] N.S.J. No. 682 | 2011 NSCA 118 | 311 N.S.R. (2d) 136 | 13 R.F.L. (7th) 20 | 345 D.L.R. (4th) 25 | 210 A.C.W.S. (3d) 562 | 2011 CarswellNS 891

Between Michael Philip Hayward in his personal capacity as well as in his capacity as Administrator of the Estate of George Michael Hayward, Appellant, and Nancy Vera Hayward, Respondent

(164 paras.)

Case Summary

Statutory interpretation — Statutes — Operation of — Retroactivity and retrospectivity — Appeal by son of deceased from order removing son as executor and substituting deceased's former wife as executor and beneficiary allowed — Deceased did nor revoke or replace will naming wife as beneficiary after parties divorced — Amendments to Wills Act coming into force after spouses divorced but before deceased passed away applied retrospectively, revoking provisions of will naming wife as sole executor and beneficiary — Other provisions of will remained in effect, naming son as executor and sole beneficiary — Couple's separation agreement, in which both waived right to share of other's estate, established deceased's intention — Interpretation Act, ss. 3, 9.

Wills, estates and trusts law — Wills — Construction and interpretation — General principles — Testator's intention to be given effect — Testamentary intention — Revocation — By operation of law — By dissolution of marriage — Appeal by son of deceased from order removing son as executor and substituting deceased's former wife as executor and beneficiary allowed — Deceased did nor revoke or replace will naming wife as beneficiary after parties divorced — Amendments to Wills Act coming into force after spouses divorced but before deceased passed away applied retrospectively, revoking provisions of will naming wife as sole executor and beneficiary — Other provisions of will remained in effect, naming son as executor and sole beneficiary —

Couple's separation agreement, in which both waived right to share of other's estate, established deceased's intention — Wills Act, ss. 8A, 19A.

Appeal by the son of the deceased from an order removing him as administrator of his father's estate and appointing his father's former wife as executor and beneficiary of the estate. The deceased made a will in 1995, naming his then wife as sole executor and beneficiary. The deceased's son was to be the sole beneficiary if the wife did not survive the deceased for 30 days. The deceased and the wife separated twice before divorcing in 2004. Their divorce order incorporated a separation agreement, containing a provision by way of which both spouses waived all rights to share in the estate of the other. The deceased died in 2008, a few weeks after amendments to the Wills Act came into effect, providing that divorce revoked a will and requiring a will to be construed as if the former spouse predeceased the testator. The amendments also relaxed the formal requirements for what could be considered a testamentary document. The deceased had never revoked his 1995 will, nor had he made a new will. The son was granted administration of the estate by virtue of the will and the divorce documents. The wife successfully applied to have the son removed and she was appointed sole executor and declared beneficiary of the estate. The judge found the amendment to the Act did not act retroactively or retrospectively, and that waivers and renunciations found in the couple's separation agreement did not bind the wife because no reference to the deceased's will was made in the agreement.
HELD: Appeal allowed.

The appointment of the deceased's wife in the will as executor, and the bequest of the estate to her were revoked. The other provisions of the will remained in effect. The judge erred in refusing to apply the amendments to the act retrospectively. The Court of Appeal looked to case law from Ontario and British Columbia interpreting similar legislation in finding that the amendment stating that divorce revoked a will had effects in the future for transactions taking place in the past. The deceased's will had to be interpreted as if the wife predeceased him. The separation agreement was relevant as an expression of the deceased's testamentary intentions.

Statutes, Regulations and Rules Cited:

An Act to Amend Chapter 505 of the Revised Statutes, 1989, the Wills Act

Apportionment Act, 1870

Attorney General Statutes Amendment Act, S.B.C. 1982, c. 46

Conveyancing Act, 1892, s. 3

Interpretation Act, R.S.N.S. 1989, c. 235, s. 3, s. 9, s. 9(1), s. 9(5)

Mortmain and Charitable Uses Act, 1891

Succession Law Reform Act, R.S.O. 1980, c. 488, s. 17(2), s. 43

Succession Law Reform Act, R.S.O. 1990, c. S.26

Uniform Wills Act

Wills Act (Manitoba), s. 23

Wills Act, R.S.B.C. 1979, c. 434, s. 16, s. 46, s. 46(1), s. 46(3)

Wills Act, R.S.N.S. 1989, c. 505, s. 6, s. 6(2), s. 8A, s. 8A(b), s. 9(2)(3), s. 15, s. 17A, s. 19A

Wills Act, S.N.S. 2006, c. 49, s. 2, s. 6

Court Summary:

Wills — Separation Agreements — Divorce — Sections 8A and 19A of the Wills Act — Statutory Interpretation — Retrospectivity.

While married, the testator made a will which named his spouse as his executor and beneficiary. After they separated, the couple signed a separation agreement. They later divorced. The testator did not change or revoke his will. He died after ss. 8A and 19A to the *Wills Act* came into effect. Their son was granted administration of the estate. His former spouse successfully applied for their son's removal and her appointment as executor and beneficiary. The son appeals.

Issues: Whether the judge erred in finding that s. 19A of the *Wills Act* did not apply, in failing to consider the separation agreement pursuant to s. 8A, and in his application of equitable estoppel to the facts in this case.

Result: Appeal allowed, with costs of both parties to be paid on a solicitor-client basis out of the estate.

(Oland J.A.) When construed, in their ordinary literal sense, the words of s. 19A are clear and unambiguous, and demonstrate a legislative intention that the provision operate retrospectively. The presumption against interference with vested rights does not apply because the former spouse's entitlement under the will was no more than an expectancy. The judge erred in his interpretation of s. 8A. Since there was no evidence of reliance by the testator on acts of his former spouse, the estoppel argument is without merit. In the result, the appointment in the will of the testator's former spouse and the bequest to her of his estate are revoked. All other provisions of the will remain in full force and effect.

(Beveridge J.A.), concurring in result, the presumption against giving statutes retrospective operation did not apply. The judge at first instance did consider the separation agreement under s. 8A, and made no error in his conclusion that the agreement did not express an intention by the testator to revoke or alter his will.

correctness standard. The final issue on the judge's application of the principles of equitable estoppel to the facts is a question of mixed law and fact, which is reviewable on the standard of palpable and overriding error. See *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, on standards of review.

Retrospectivity

17 The major question on this appeal concerns the temporal operation of s. 19A of the *Wills Act* which pertains to the effect of a divorce. Neither of the parties suggests that it has retroactive effect; that is, that it operates as of a time prior to its enactment.

18 The issue is narrowed to whether s. 19A is to be read prospectively or retrospectively. If, as the judge found, the provision is prospective, George Hayward's former wife would remain the sole beneficiary of his estate pursuant to his Will. However, if it is retrospective, their divorce terminated her entitlement under his Will.

19 Whether an enactment has prospective or retrospective effect is a matter of statutory interpretation. The modern approach to statutory interpretation is well established: one is to seek the intent of the legislature by reading the words of the provision in context and according to their grammatical and ordinary sense, harmoniously with the scheme and the object of the statute: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27.

20 Statutory interpretation is also guided by certain rules, presumptions and principles. In *Gustavson Drilling (1964) Ltd. v. Minister of National Revenue*, [1977] 1 S.C.R. 271, at p. 279, Dickson J. (as he then was) stated the general principle with respect to retrospectivity of enactments:

> The general rule is that statutes are not to be construed as having retrospective operation unless such a construction is expressly or by necessary implication required by the language of the Act. An amending enactment may provide that it shall be deemed to have come into force on a date prior to its enactment or it may provide that it is to be operative with respect to transactions occurring prior to its enactment. In those instances the statute operates retrospectively.

21 There is also a presumption that, absent a clear indication in the enactment, Parliament and the provincial legislatures do not intend to prejudicially affect or interfere with the liberty, accrued rights or property of the subject: *Spooner Oils Ltd And Spooner v. The Turner Valley Gas Conservation Board And The Attorney-General of Alberta*, [1933] S.C.R. 629, at p. 638. Where vested rights are affected, the courts will find retrospective application only if the legislative intent is express or "plainly manifested by unavoidable inference": *Dikranian v. Quebec (Attorney General*), 2005 SCC 73, [2005] 3 S.C.R. 530, citing *Spooner* at & 33.

22 In *R. v. Nova Scotia Pharmaceutical Society*, [1991] N.S.J. No. 169, this court considered the case law and academic commentary on retrospectivity. Clarke, C.J.N.S. for the court wrote:

> [54] ... Professor Driedger stated in his article **Statutes: Retroactive B Retrospective Reflections** (1978), 56 Can. Bar Rev. 264, at p. 264:

> "One of the most difficult problems in the process of statutory construction is the application of the presumption against the retrospective operation of statutes."

[55] Professor Driedger distinguishes between a statute which will operate retroactively and one which will operate retrospectively. In his text, **Construction of Statutes** (Second Edition, Butterworths 1983), he explains the distinction at p. 186:

> "A retroactive statute is one that operates backwards, that is to say, it is operative as of a time prior to its enactment. It makes the law different from what it was during a period prior to its enactment. A statute is made retroactive in one of two ways; either it is stated that it shall be deemed to have come into force at a time prior to its enactment, or it is expressed to be operative with respect to past transactions as of a past time, as, for example, the **Act of Indemnity** considered in **Phillips v. Eyre.** A retroactive statute is easy to recognize, because there must be in it a provision that changes the law as of a time prior to its enactment. ...
>
> "A retrospective statute, on the other hand, changes the law only for the future, but it looks to the past and attaches new prejudicial consequences to a completed transaction. ... A retrospective statute operates as of a past time in the sense that it opens up a closed transaction and changes its consequences, although the change is effective only for the future.

...

[56] At p. 197, Professor Driedger comments that the presumption against retroactivity applies to both types of statutes but that the test to determine retroactivity or retrospectivity is different.

> "For retroactivity the question is: is there anything in the statute to indicate that it must be deemed to be the law as of a time prior to its enactment? For retrospectivity the question is: is there anything in the statute to indicate that the consequences of a prior event are changed, not for a time before its enactment, but henceforth from the time of enactment, or from the time of its commencement if that should be later?
>
> "But not all retrospective statutes attract the presumption; only those, to use the words of Sedgwick, that
>
> > 'create a new obligation, or impose a new duty or attach a new disability in respect to transactions or considerations already passed.'
>
> "In brief, the presumption applies only to prejudicial statutes; not beneficial ones. Thus, there are three kinds of statutes that can properly be said to be retrospective, but there is only one that attracts the presumption. First, there are the statutes that attach benevolent consequences to a prior event; they do not attract the presumption. Second, there are those that attach prejudicial consequences to a prior event; they attract the presumption. Third, there are those that impose a penalty on a person who is described by reference to a prior event, but the penalty is not intended as further punishment for the event; these do not attract the presumption." [Emphasis in original]

23 The distinction between retroactivity and retrospectivity explained by Professor Driedger in & 55 of the above quotation has been approved many times, including by the Supreme Court of

Canada in *Épiciers Unis Métro-Richelieu Inc., division "Éconogros" v. Collin*, 2004 SCC 59, [2004] 3 S.C.R. 257 at & 46.

24 Two additional cases of the Supreme Court of Canada provide useful guidance on retrospectivity. In *Brosseau v. Alberta (securities commission),* [1989] 1 S.C.R. 301, one of the issues was whether certain securities legislation had retrospective effect. L'Heureux-Dubé, J. for the court relied upon Driedger's text to state at & 48 that the presumption against retrospectivity applies only to prejudicial statutes, and not to beneficial ones. The purpose of the securities enactment in *Brousseau* was held not to be penal but rather the protection of the public; accordingly, the presumption against the retrospective effect of statutes was rebutted.

25 The 2005 decision of the Supreme Court of Canada in *Dikranian* also considered retrospectivity. This was a class action against the Quebec government brought by the appellant on behalf of some 70,000 students in regard to student loans which included an exemption from paying interest during a specified period. Legislative amendments reduced and then eliminated the interest exemption period. The representative appellant sought reimbursement of interest that had been paid. The Superior Court, [2001] Q.J. No. 6159, and a majority of the Court of Appeal, [2004] Q.J. No. 303, dismissed the action.

26 The majority of the Supreme Court of Canada allowed the appeal. In writing for the majority, Bastarache, J. at & 37-39 approved what Pierre-André Côté set out in *The Interpretation of Legislation in Canada*, 3rd ed. (Scarborough, Ont: Carswell, 2000) at p. 160-161 as necessary for an individual to have a vested right. This he described as follows:

> Côté maintains that an individual must meet two criteria to have a vested right: (1) the individual's legal (judicial) situation must be tangible and concrete rather than general and abstract; and (2) this legal situation must have been sufficiently constituted at the time of the new statute's commencement.

According to the majority, the loan certificate contract crystallized the parties' rights and obligations, and there was nothing in the legislative enactments which justified imputing an intention to interfere with vested rights, namely the repayment terms.

The Judge's Reasons on Temporal Operation of s. 19A

27 I return then to the decision under appeal. In his reasons, the judge referred to writings by Professor Driedger on retrospectivity, and the presumptions against retrospectivity and non-interference with vested rights as set out in the decisions of the Supreme Court of Canada in *Gustavson Drilling* and *Québec (A.G.) v. Healy*, [1987] 1 S.C.R. 158. His analysis then immediately focussed on the case law which had considered s. 19A or provisions similar to s. 19A enacted in other provinces. The British Columbia Court of Appeal in *Matejka Estate (Re)*, [1984] B.C.J. No. 1645 (C.A.) (Q.L.) decided that its enactment was prospective. The Ontario Court of Appeal in *Page Estate v. Sachs*, [1993] O.J. No. 269 (C.A.) (Q.L.) came to the opposite conclusion, holding that its was retrospective. The judge here rejected *Page Estate* and agreed with the conclusion in *Thibault Estate (Re)*, 2009 NSSC 4, which followed *Matejka Estate*, that s. 19A is prospective and cannot be read retrospectively.

Montréal (City) v. Arcade Amusements Inc.

Supreme Court Reports

Supreme Court of Canada

Present: Ritchie *, Dickson, Beetz, Estey, McIntyre, Chouinard and Wilson JJ.

1983: March 22, 23, 24 / 1985: April 24.

File No.: 16708.

[1985] 1 S.C.R. 368 | [1985] 1 R.C.S. 368 | [1985] S.C.J. No. 16 | [1985] A.C.S. no 16

City of Montreal, appellant; and Arcade Amusements Inc., respondent; and Attorney General of Quebec, mis en cause. And between City of Montreal, appellant; and The Fountainhead Fun Centres Ltd., Nivel Sales (1969) Limited, Boules de Miel Carnaval Inc. and Louis Zuckerman, respondents; and Attorney General of Quebec, mis en cause; and Attorney General of Canada, intervener.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

* Ritchie J. took no part in the judgment.

Case Summary

Municipal law — By-law on amusement machines and halls — Validity — Access to amusement halls prohibited to persons under eighteen — Whether by-law prohibitory, vague or discriminatory — Charter of the City of Montreal 1959-60 (Que.) c. 102, as amended, arts. 516, 517 f., g., s., 521(4), 521(7), 521(33), 524(2) a., b. — By-law of the City of Montreal, No. 5156.

Constitutional law — Municipal by-law on amusement machines and halls — Validity — Whether by-law ultra vires as invasion of federal criminal law powers — By-law of the City of Montreal, No. 5156.

By petitions to annul, respondents challenged the validity of By-law 5156 of the City of Montreal regarding [page369] amusement machines and halls on the grounds that the By-law was prohibitory, vague, discriminatory and unconstitutional. The petition of respondents Fountainhead et al. asked that all the provisions of the by-law be annulled, while that of respondent Arcade was directed only at s. 8, which prohibits persons less than eighteen years of age from using amusement machines or being in amusement halls. The Superior Court dismissed the petitions. The Court of Appeal reversed the two judgments, allowed the petitions and annulled the By-law.

Held: The appeal relating to the petition of respondent Arcade Amusements Inc. should be dismissed. The appeal relating to the petition of Fountainhead Fun Centres Ltd. et al. should be

allowed in part. The By-law of the City of Montreal on amusement machines and halls is invalid in part: s. 8 and para. D of s. 12 are ultra vires and should be annulled.

The By-law is not disguised legislation which, under colour of being a zoning by-law, both in its effects and purpose prohibits amusement machines. Though s. 7 limits the operation of amusement halls to a tiny part of the City's territory, this limitation does not amount to a prohibition. The By-law permits the free operation of amusement machines and halls in the premises and sectors authorized. Additionally, respondents did not show that the By-law had the effect of preventing them from doing business. Section 3, which locates amusement machines in amusement halls, is not a zoning provision. That section and ss. 4, 5 and 6 are provisions which regulate commerce enacted in accordance with paras. 4, 7 and 33 of art. 521 of the Charter of the City of Montreal. These sections are in no way prohibitory. Section 4 even safeguards rights acquired in connection with amusement machines operated outside of amusement halls. Such safeguarding is in general inconsistent with a prohibitory provision.

The By-law is also not illegal because it is too vague. The concept of "young children" in s. 2, which provides that an "apparatus designed to amuse or entertain young children" is not an "amusement machine", is not so vague that residents of the City, and in particular individuals already operating or wishing to operate amusement halls, cannot understand the meaning and scope of the By-law. If any vagueness does exist in the definition, it will at most produce certain difficulties in interpretation, which is not a sufficient reason for declaring the By-law to be invalid.

[page370]

Section 8, however, is discriminatory and must be annulled. That section, which is severable from the rest of the By-law, contravenes the rule of administrative law that the power to make by-laws does not include a power to enact discriminatory provisions unless the authorizing legislation provides the contrary. The provisions of the Charter regarding the general powers of the City and its police powers, in particular paras. g. and s. of art. 517, do not authorize the City, expressly or by necessary inference, to make distinctions based on age. This also applies to the specific powers of the City. Paragraph D of s. 12, which prohibits persons under eighteen years of age from being admitted to billiard halls, is also ultra vires for the same reasons.

Finally, the By-law does not trench on federal legislative authority over the criminal law. The purpose of the By-law is not to prohibit gaming on grounds of public morals and to fill in what are perceived as gaps in the Criminal Code. The By-law in general deals with commerce and zoning and was also adopted for policing purposes to protect youth and prevent delinquency. The regulation of local commerce, zoning, the protection of youth and the prevention of crime are all areas within the authority of the province.

Cases Cited

In re Barclay and the Municipality of the Township of Darlington (1854), 12 U.C.R. 86; Regina v. Levy (1899), 30 O.R. 403; Re T. W. Hand Fireworks Co. and the City of Peterborough, [1962] O.R. 794; Fountainhead Fun Centres Ltd. v. Ville St-Laurent, [1979] C.S. 132; Re Leavey and City of London (1979), 107 D.L.R. (3d) 411; Re Hamilton Independent Variety & Confectionery

Stores Inc. and City of Hamilton (1983), 143 D.L.R. (3d) 498, followed; Kruse v. Johnson, [1898] 2 Q.B. 91; Jonas v. Gilbert (1881), 5 S.C.R. 356; Rex v. Paulowich, [1940] 1 W.W.R. 537; Re Ottawa Electric Railway Co. and Town of Eastview (1924), 56 O.L.R. 52; Rex ex rel. St-Jean v. Knott, [1944] O.W.N. 432; Regina v. Flory (1889), 17 O.R. 715; Phaneuf v. Corporation du Village de St-Hugues (1936), 61 Que. K.B. 83; City of Montreal v. Civic Parking Center Ltd., [1981] 2 S.C.R. 541; Forst v. City of Toronto (1923), 54 O.L.R. 256; S.S. Kresge Co. v. City of Windsor (1957), 7 D.L.R. (2d) 708; City of Calgary v. S.S. Kresge Co. (1965), 52 D.L.R. (2d) 617; Regina v. Varga (1979), 106 D.L.R. (3d) 101; Entreprises Anicet Gauthier Inc. v. Ville de Sept-Îles, [1983] C.S. 709, applied; Re Bright and City of Langley (1982), 131 D.L.R. (3d) 445, disapproved; Hanson v. Ontario Universities Athletic Association (1975), 65 D.L.R. (3d) 385; Medicine Hat v. Wahl, [1979] 2 S.C.R. 12, reversing [page371] [1977] 5 Alta. L.R. (2d) 70, considered; Landreville v. Ville de Boucherville, [1978] 2 S.C.R. 801; Toronto v. Virgo, [1896] A.C. 88; City of Prince George v. Payne, [1978] 1 S.C.R. 458; Re London Drugs Ltd. v. City of North Vancouver (1972), 24 D.L.R. (3d) 305; City of Montreal v. Morgan (1920), 60 S.C.R. 393; Johnson v. Attorney General of Alberta, [1954] S.C.R. 127; Regent Vending Machines Ltd. v. Alberta Vending Machines Ltd. (1956), 6 D.L.R. (2d) 144; Parkway Amusement Co. v. Cité de Montréal, [1958] C.S. 209; Westendorp v. The Queen, [1983] 1 S.C.R. 43; Goldwax v. City of Montreal, [1984] 2 S.C.R. 525; Citizens Insurance Co. v. Parsons (1881), 7 A.C. 96; Bédard v. Dawson, [1923] S.C.R. 681; Reference re the Adoption Act, [1938] S.C.R. 398; Di Iorio v. Warden of Montreal Jail, [1978] 1 S.C.R. 152; Nova Scotia Board of Censors v. McNeil, [1978] 2 S.C.R. 662; Attorney General for Canada and Dupond v. City of Montreal, [1978] 2 S.C.R. 770; Attorney General of Quebec v. Lechasseur, [1981] 2 S.C.R. 213; Schneider v. The Queen, [1982] 2 S.C.R. 112; Township of Scarborough v. Bondi, [1959] S.C.R. 444; City of Hamilton v. Hamilton Distillery Co. (1907),38 S.C.R. 239, referred to.

Statutes and Regulations

By-law on Amusement Machines and Halls, By-law of the City of Montreal, No. 5156. Charter of the City of Montreal, 1960, 1959-60 (Que.), c. 102 as amended, art. 516, 517 f., g., s., 518, 520(6), (7), 521(3), (4), (7), (33), 524(2)a., b. Constitutional Act, 1867. Criminal Law Amendment Act, 1975, 1974-75-76 (Can.), c. 93 s. 180(3).

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Côté, P.A. "Le règlement municipal indéterminé" (1973), 33 R. du B. 474. Dussault, René et Louis Borgeat. Traité de droit administratif, t. 1, Quebec, P.U.L., 1984. Pépin, Gilles et Yves Ouellette. Principes de contentieux administratif, 2e éd., Cowansville, Éditions Yvon Blais Inc., 1982. Pigeon, Louis-Philippe. Rédaction et interprétation de lois, Québec, Éditeur Officiel, réimpression 1978. Rogers, Ian M. The Law of Canadian Municipal Corporations, vol. 1, 2nd ed., Toronto, Carswell, 1971.

APPEAL from two judgments of the Quebec Court of Appeal, [1981] C.A. 468, 128 D.L.R. (3d) 579, reversing two judgments of the Superior Court, (1978) 4 M.P.L.R. 193, dismissing the petitions to annul filed by respondents. The appeal relating to the petition of Arcade [page372] Amusements Inc. is dismissed. The appeal relating to the petition of respondents Fountainhead Fun Centres Ltd. et al. is allowed in part.

7.1.0, 7.3, 8.1, 8.2, 8.3, 12-C and 14, either directly or through the definition of an "amusement hall".

81 The Court of Appeal did not rule on this argument as it did not have to do so.

82 The trial judge found the definitions in s. 2 to be sufficiently explicit. Of the cases cited by the parties, he noted in particular the comments of the presiding judge in Re London Drugs Ltd. v. City [page400] of North Vancouver (1972), 24 D.L.R. (3d) 305, from which he cited the following passage:

> In my view the wording objected to in the by-law before me does not have that quality of vagueness and uncertainty which is such as to render the by-law invalid in part or in whole. It may be that the by-law here will occasion some difficulty in interpretation. But difficulty of interpretation is not to be confused with vagueness and uncertainty to the point of invalidity.

83 I consider that the trial judge properly dismissed this argument.

84 Almost but not quite all the cases and writers agree that a municipal by-law can be annulled because it is too vague, but first there has to be agreement on the kind or degree of vagueness necessary; thus Mr. P.A. Côté, in an article titled "Le règlement municipal indéterminé" (1973), 33 R. du B. 474, summarizes the matter by saying (at p. 482):

> [TRANSLATION] All judges are not agreed that any vagueness which may occur in the wording of a by-law should render it invalid. Not every instance of vagueness in wording may have the effect of invalidating a by-law: if that were the case, we know of few by-laws whose validity would be beyond question. The courts have held that this vagueness must be such that a reasonable effort at interpretation is unable to determine the meaning of the council...

85 In the second edition of their book Principes de contentieux administratif (1982), Messrs Pépin and Ouellette write (at p. 126):

> [TRANSLATION] In short, the vagueness must be so serious that the judge concludes that a reasonably intelligent man, sufficiently well-informed if the by-law is technical in nature, is unable to determine the meaning of the by-law and govern his actions accordingly.

86 Mere uncertainty as to the scope of a by-law will not suffice to make it void. In the decision by this Court in City of Montreal v. Morgan (1920), 60 S.C.R. 393, at p. 404, Anglin J. wrote:

> I fully recognize the force of the general rules that the language of by-laws should be explicit and free from [page401] ambiguity, and that by-laws in restraint of rights of property as well as penal by-laws should be strictly construed. But the very statement of the latter rule implies that a by-law is not necessarily invalid because its terms call for construction -- as does also another well recognized rule, viz., that a by-law of a public representative body clothed with ample authority should be "benevolently" interpreted and supported if possible: Kruse v. Johnson [1982] 2 Q.B. 91, at p. 99. It may be a counsel of perfection that in drafting by-laws the use of words susceptible of more than

> one interpretation should be avoided; but it is too much to exact of municipal councils that such a degree of certainty should always be attained. It would be going quite too far to say that merely because a term used in a by-law may be susceptible of more than one interpretation the by-law is necessarily bad for uncertainty.

87 Respondents and the City cited several judgments in support of their respective arguments: in each of them the courts had to determine whether some provision or certain words in a by-law were so vague as to make the by-law void. Each case is practically unique, and the courts have to determine each time whether the true meaning of the by-law in question can be understood by the persons to whom it applies.

88 In the case at bar, therefore, the question is whether the vagueness alleged by respondents is such that the residents of the City, and in particular individuals already operating or wishing to operate amusement halls, cannot understand the meaning and scope of the By-law as regards what constitutes an "amusement machine" referred to therein.

89 The testimony of Jack Lerner is significant in this regard. To the question of what type of customers his amusement machines attract, he answered:

> My equipment appeals to everybody, there is absolutely no distinction between any certain type of equipment that will go for a, that is designated specifically for younger or older people.
>
> Likely, it could interest a six (6) year old or an eighty-six (86) year old, they can play the same machine [page402] or a grandmother can play, a grandchild can play the same machine, competition on themselves and there would be no difference other than a kiddy car or a kiddy horse where an older person will not get on it, but what would be specifically for young ones.
>
> (Emphasis added.)

90 Mr. Lerner thus illustrated precisely the distinction which s. 2 of By-law 5156 seeks to establish. His testimony confirmed the existence and knowledge by a reasonable man involved in this type of business of certain amusement devices for which a sum of money is required, which are designed for the amusement or entertainment of very young children, in terms of the size of the devices and the lack of interest which children who have more or less attained the age of reason are likely to feel for such amusements. These are not machines intended for the newborn nor for children who attend school alone, beyond the kindergarten level.

91 A reasonable individual reading By-law 5156 is undoubtedly able to distinguish between, for example, an electronic video game and a toy car or horse, intended primarily for pre-school children, which the witness referred to as a "kiddy car" and "kiddy horse", and which could in no case be regarded as intended to amuse anyone other than young children, or as the witness Lerner observed, children six years of age or less who are usually accompanied by their parents. It is this type of machine which the City intended to exclude from the restrictions imposed by its By-law 5156, and this is what it did, by s. 2 of that By-law, in language which leaves as little room as possible for the arbitrary and subjective. A reasonable individual such as Mr. Lerner knows at once what an amusement machine intended for young children is.

Hamilton Independent Variety and Confectionary Stores Inc. v. Hamilton (City) (Ont. C.A.)

Ontario Judgments

Supreme Court of Ontario - Court of Appeal

Toronto, Ontario

Arnup, Lacourciere, Goodman, Robins and Grange JJ.A

Heard: November 29, 30, December 1, 2, 1982.

Judgment: January 17, 1983.

[1983] O.J. No. 3 | 143 D.L.R. (3d) 498 | 4 C.R.R. 230 | 20 M.P.L.R. 241 | 17 A.C.W.S. (2d) 490 | 1983 CanLII 3114

IN THE MATTER OF The Judicial Review Procedure Act, S.O. 1971, Chapter 48 and amendments thereto AND IN THE MATTER OF The Municipal Act, R.S.O. 1970, Chapter 284 as amended AND IN THE MATTER OF The Municipal Amendment Act S.O. 1978, Chapter 17 AND IN THE MATTER OF The Corporation of the City of Hamilton By-law No. 79-144, To License, Regulate, Govern, Classify and Inspect, Etc., Adult Entertainment Parlours Between Hamilton Independent Variety & Confectionery Stores Inc., Applicant (Respondent), and The Corporation of the City of Hamilton, Respondent (Appellant)

(24 pp.)

David R. Vickers, for the Appellant. H. Turkstra, for the Respondent. T. Marshall, Q.C., for the Attorney General of Ontario.

The judgment of the Court was delivered by Lacourciere J.A., dismissing the appeal and concurred in by Arnup, Goodman, Robins and Grange JJ.A.

LACOURCIERE J.A.

1 This is an appeal brought by leave of this Court from the unanimous decision of the Divisional Court. The only issue raised by the appellant municipality is whether that court erred in declaring that those portions of By-law No. 79-144 of the City of Hamilton dealing with Class "A" licences for adult entertainment parlours are invalid as being unauthorized by s. 368b of the Municipal Act, R.S.O. 1970, c. 284 as amended by 1978 (Ont.), c. 17 and c. 104 (now s. 222, R.S.O. 1980, c. 302). The respondent supports the interpretation placed on the Municipal Act by the Divisional Court. In addition, the respondent presented other grounds to support the Divisional Court judgment as follows: (1) that the impugned by-law was enacted in bad faith, (2) that it is void for vagueness and uncertainty, (3) that it is discriminatory in the choice of the class of goods regulated and (4) that it involves an unlawful delegation of council's power to a licensing committee without laying down any standards. We did not call on the appellant to present any argument on grounds (1) and (3), being satisfied that the record does not disclose

bad faith, as that expression is commonly understood in municipal jurisprudence, and that no discrimination is involved in regulating a class or classes of adult entertainment parlours as authorized by the Municipal Act.

2 In the event that this Court finds that Class "A" licences are authorized by the provincial legislation, the respondent raises the constitutional argument that s. 368b and By-law 79- 144 are ultra vires as they deal with criminal law within the exclusive jurisdiction of the Parliament of Canada. In the further alternative, the respondent submits that the relevant sections of the Municipal Act and the by-law infringe the guarantee of freedom of expression enshrined in s. 2(b) of the Canadian Charter of Rights and Freedoms, being Part I of the Constitution Act 1982, and abridge the requirement for fundamental justice in s. 7 and the security from unreasonable search and seizure in s. 8 of the Charter. The Attorney General of Ontario and the municipality support the constitutional validity of the provincial and municipal legislation and deny any infringement or abridgment of any Charter rights.

3 The standing of the respondent to bring this application was not challenged either in the Divisional Court or in this Court. We are all of the view that it was desirable for the Divisional Court to grant the respondent standing and to dispose of the application to determine the validity of the impugned by-law.

The Legislation

4 By-law No. 79-144 was passed by the City of Hamilton on the 8th day of May, 1979, to license, regulate, govern, classify and inspect adult entertainment parlours. It is based on s. 368b of the Municipal Act which came into force in its present form on December IS, 1978, and which reads as follows:

> 368b.- (1) By-laws may be passed by the councils of all municipalities for licensing, regulating, governing, classifying and inspecting adult entertainment parlours or any class or classes thereof and for revoking or suspending any such licence and for limiting the number of such licences to be granted, in accordance with subsection 3.
>
> (2) A by-law passed under this section may provide for regulating the placement, construction, size, nature and character of signs, advertising, and advertising devices, including any printed matter, oral or other communication or thing, posted or used for the purpose of promoting adult entertainment parlours or any class or classes thereof or for the prohibition of such signs, advertising or advertising devices.
>
> (3) Notwithstanding subsection 6 of section 246, a by-law passed under this section may define the area or areas of the municipality in which adult entertainment parlours or any class or classes thereof may or may not operate and may limit the number of licences to be granted in respect of adult entertainment parlours or any class or classes thereof in any such area or areas in which they are permitted.
>
> (4) A by-law passed under this section may provide that no premises in which an adult entertainment parlour is located shall be constructed or equipped so as to hinder or prevent the enforcement of the by-law.

(5) Where a medical officer of health or a public health inspector acting under his direction, or a peace officer, has reason to suspect that a breach of any provision of a by-law passed under this section has occurred in respect of an adult entertainment parlour, he may enter such adult entertainment parlour, at any time of the night or day, for purposes of carrying out the enforcement of a by-law passed under this section.

(6) Notwithstanding subsection 2a of section 246 and section 355, a by-law passed under this section may regulate the hours of operation of adult entertainment parlours or any class or classes thereof.

(7) A by-law passed under this section may prohibit any person carrying on or engaged in the trade, calling, business or occupation for which a licence is required under this section from permitting any person under the age of eighteen years to enter or remain in the adult entertainment parlour or any part thereof.

(8) By-laws passed under this section do not apply to premises or trades, callings, businesses or occupations carried on in premises licensed under The Theatres Act or licensed under a by-law passed under section 368a of this Act.

(9) In this section,

(a) "adult entertainment parlour" means any premises or part thereof in which is provided, in pursuance of a trade, calling, business or occupation, goods or services appealing to or designed to appeal to erotic or sexual appetites or inclinations;

(b) "goods" includes books, magazines pictures, slides, film, phonograph records, prerecorded magnetic tape and any other reading, viewing or listening matter;

(c) "to provide" when used in relation to goods includes to sell, offer to sell or display for sale, by retail or otherwise such goods, and "providing" and "provision" have corresponding meanings;

(d) "to provide" when used in relation to services includes to furnish, perform, solicit, or give such services and "providing" and "provision" having corresponding meanings;

(e) "services" includes activities, facilities, performances, exhibitions, viewings and encounters;

(f) "services designed to appeal to erotic or sexual appetites or inclinations" includes,

(i) services of which a principal feature or characteristic is the nudity or partial nudity of any person,

(ii) services in respect of which the word "nude", "naked", "topless", "bottomless", "sexy" or any other word or any picture, symbol or representation having like meaning or implication is used in any advertisement.

(10) For the purpose of any prosecution or proceeding under a by-law passed under this section, the holding out to the public that goods or services described in

this section are provided in premises, or any part thereof, is admissible in evidence as prima facie proof that the premises or part thereof is an adult entertainment parlour.

(10) Nothing in this section affects the power that may be exercised by a municipality under this or any other general or special Act to license, regulate or govern any other trade, calling, business or occupation.

5 The power given to municipalities to license and regulate premises or places such as adult entertainment parlours includes the power to license and regulate the persons carrying on business in such places or premises (see R.S.O. 1980, c. 302, s. 110(2)). The statute defines an "adult entertainment parlour" as "any premises or part thereof in which is provided, in pursuance of a trade, calling, business or occupation, goods or services appealing to or designed to appeal to erotic or sexual appetites or inclinations" (s. 368b(9)(a)). The same subsection defines "to provide" goods as including "to sell, offer to sell or display for sale", and defines "goods" as including, inter alia, "books, magazines, pictures, slides, film, phonograph records, prerecorded magnetic tape and any other reading, viewing or listening matter".

6 Schedule 1.01 of By-law 79-144 repeats verbatim the Municipal Act definitions of the words "adult entertainment parlour" and "to provide" in relation to goods. It adopts all the definitions contained in s. 368b(9) except the definition of "goods". The schedule of the by-law defines goods as including only "magazines" and does not mention books, pictures, slides, film, phonograph records, etc. In addition, it defines "erotic goods" as "goods appealing to or designed to appeal to erotic or sexual appetites or inclinations".

7 The enabling provincial legislation may be described as a self-contained code dealing with adult entertainment parlours. In Re Sharlmark Hotels Ltd. and Municipality of Metropolitan Toronto (1981), 32 O.R. (2d) 129, the Divisional Court held that the legislation was within the jurisdiction of the provincial legislature. Saunders J., delivering the judgment of the Court, concluded, after a careful review of the authorities, that the section was regulatory in nature, dealing in pith and substance with the regulation of a permitted business, and that it did not purport to deal with morality, indecency or obscenity. Leave to appeal to this Court was refused on April 27, 1981. The refusal of leave does not, of course, preclude raising the constitutional issue in this Court.

8 The constitutional issue in the present appeal is substantially different from the one raised in the Sharlmark decision. The present by-law purports to regulate the provision of erotic goods, including magazines. The Metropolitan Toronto by-law which was considered in the Sharlmark case, supra, was concerned solely with the provision of erotic "services" as therein defined. Thus the only portion of the by-law impugned in this appeal was not contained in the by-law considered in Sharlmark, that is, the requirement of a separate licence for certain magazine vendors.

Class "A" Licences Under the By-law

9 By s. 23 of the by-law, schedules 1.00 and 1.01 are annexed to and form part of By-law 79-144.

10 Schedule 1.01 contains the definitions aforementioned and provides, by s. 2:

> 2. Every owner, operator and attendant shall take out a separate licence for one or more of the following classes of adult entertainment parlours:
>
> | | |
> |---|---|
> | Class "A" -- | Authorizing the licensee to provide goods that are magazines appealing to or designed to appeal to erotic or sexual appetites or inclinations.... |

Listed are six other classes of licensees providing erotic services. Part I of schedule 1.01, as amended by By-law 79-228, sets out the specific terms of the by-law directly governing Class "A" adult entertainment parlours:

> 1. For the purpose of this Part, "erotic goods" are goods in respect of which a Class "A" licence is issued.
> 2. Every owner and every operator to whom a Class "A" licence is issued, shall comply with the following regulations:
>
> 1. Keep and maintain the erotic goods at least five feet six inches above floor level or behind the sales counter.
> 2. Keep and maintain the erotic goods, while on display or available for purchase, in a sealed transparent package or wrapping on which is imprinted in legible writing the name and address of the distributor.
> 3. Permit only the title of the erotic goods to be exposed to viewing while the erotic goods are on display.

11 Schedule 1.00 requires a licence fee of $15.00 for the owner and the operator of each Class "A" adult entertainment parlour. It requires no licence fee for attendants.

12 The Divisional Court dealt with the application before it solely on the basis that the portion of the by-law dealing with Class "A" licences was unauthorized by the enabling legislation and hence invalid. Steele J., delivering the oral judgment of the court, quoted the relevant sections of the Act as well as the definitions and restrictions of the by-law. He made it clear that the decision was based on the finding that the legislation, when read as a whole, evinced an intention to regulate places where the principal business was adult entertainment, but not to regulate every category of magazine vendors.

13 The Divisional Court's view was that if the legislature had intended the Act to provide for the licensing of magazine vendors it would have said so in clear words and would not have left it as a matter of inference based on the words of the definition sections. The by-law has been applied by the City to all establishments which sell erotic magazines so defined. Application forms

prescribed for Class "A" licences were mailed out to businesses with a foodstuff or tobacco licence, deemed to be adult entertainment parlours as defined, and not just to variety stores.

14 Mr. Vickers, for the appellant, relies on the province's definition of "adult entertainment parlour" which includes premises or part thereof where erotic goods, including magazines, are provided in pursuance of the business pursued. The City's authority to regulate magazine vendors would appear to rest mainly on the three words underlined. He argues that because the word "principal" is vague and uncertain (see Re Leavey et al. and City of London (1979), 27 O.R. (2d) 649 at 659-60) and is not used in the Municipal Act, the City could not use the word in its by-law. He submits, therefore, that the Divisional Court created a major change in the intention of the provincial legislation by introducing the concept of "principal business".

15 The word "premises" in ss. 9(a) of s. 368b refers to lands and buildings; the added words "or part thereof" were obviously meant to cover, inter alia, businesses which occupy only a portion of certain premises or businesses carried on in premises in which the provision of goods or services appealing to or designed to appeal to erotic or sexual appetites or inclinations is restricted to only a part thereof.

16 I agree with the City's contention that the undefined and uncertain concept of "principal business" could not properly have been introduced by the legislature as part of the definition of "adult entertainment parlours". Its language is sufficiently clear and explicit that it does not require the addition of words which would alter the stated intention of the legislature. Subsection 10 of s. 368b declares what evidence is admissible in a prosecution as prima facie proof "that the premises or part thereof is an adult entertainment parlour": this includes a holding out to the public that goods described in the section are provided. Hence, the Class "A" portion of the by-law should not be invalidated on the ground that it was unauthorized by the legislature merely because a court may, in a prosecution, come to the conclusion that a variety store or other store operator selling magazines does not operate an adult entertainment parlour as its principal business.

17 In my opinion, the principal flaw in the appellant municipality's attempt to license and control the sale of "erotic" magazines is the vagueness and lack of certainty in the definition of "erotic" goods. As pointed out earlier, the only definition of such goods in the by-law is taken, verbatim, from the definition of "adult entertainment parlour" in s. 368b(9)(a). In relation to services appealing or "designed to appeal to erotic or sexual appetites or inclinations", the legislature and the by-law have been specific enough to include services of which a principal feature or characteristic is the nudity or partial nudity of any person or services advertised in a certain way. In relation to goods, there is no definition, amplification or description of what magazines are meant to be included in the general words "appealing to or designed to appeal to erotic or sexual appetites or inclinations."

18 Dictionary definitions of "erotic" are as follows:

> "Pertaining to love, or the act of lovemaking or sexual desire." The Canadian Law Dictionary by Datinder S. Sodhi, 1980.

> "Relating to sexual passion; lustful; having the quality to arouse sexual drive." Stedman's Medical Dictionary, 4th Lawyer's ed., 1976.
>
> "Of or pertaining to the sexual passion; treating of love; amatory." The Shorter Oxford English Dictionary, 1973.
>
> "Tending to arouse sexual desire." The American Heritage Dictionary of the English Language, 1970.
>
> "1. Of or arousing sexual feelings or desires; having to do with sexual love; amatory.
>
> 2. Highly susceptible to sexual stimulation." Webster's New World Dictionary, 2nd ed., 1976.

19 It is impossible for a store owner reading this by-law to decide whether he is in fact selling "erotic" magazines covered under it. I was surprised to hear Mr. Vickers state during his argument that a store selling "Playboy" and "Penthouse" magazines would not come under Class "A" regulations. If these well-known magazines are not covered by the by-law's broad definition, how is the Class "A" licence holder to determine what publications are covered and required to be wrapped and placed beyond the reach of children?

20 The duty of a municipal council in framing a by-law is to express its meaning with certainty:

> 1329. By-laws must be certain. A by-law must provide a clear statement of the course of action which it requires to be followed or avoided, and must contain adequate information as to the duties and identity of those who are to obey, although all the information need not be apparent on the face of the by-law. However, if the words of the by-law are ambiguous but their meaning can be resolved to give a reasonable result the courts will give effect to that result. Any penalty provided must also be expressed with certainty.
>
> Halsbury's Laws of England, 4th ed., vol. 28, p. 731.

21 The obligation of clarity is to enable every citizen to understand the by-law in order to comply with it. Kelly J.A., delivering the judgment of the court in R. v. Sandler, [1971] 3 O.R. 614, said at p. 620:

> When a municipal council purports to legislate under the powers found in the Municipal Act and thereby creates obligations to be observed by its citizens, the failure to observe which attracts punishment, it is to be expected that the by-law creating such obligations will itself be so explicit that a well-intentioned citizen seeking to observe the provisions of the by-law may, from a reading of the by-law, without the enlargements of its requirement by the order of a municipal servant, be able to satisfy himself that he has complied with its requirements.

22 In Re Bunce and Town of Cobourg, [1963] 2 O.R. 343 at 346, 39 D.L.R. (2d) 513 at 516, Roach J.A., delivering the judgment of the Ontario Court of Appeal, quoted the passage above reproduced from an earlier edition of Halsbury's and held that a closing by-law purporting to exclude from its terms shops which specialize in the retail sale of articles of small value was unauthorized as well as invalid for vagueness and uncertainty.

23 In Re Weir et al. and The Queen (1979), 26 O.R. (2d) 326, 102 D.L.R. (3d) 273, the Divisional Court declared the anti- smoking by-law of the City of Toronto to be invalid in that it imposed an uncertain duty and a vague obligation upon the proprietor of a retail shop to make reasonable efforts to prevent smoking in violation of the by-law.

24 Re Neon Products Ltd. and Borough of North York et al. (1974), 5 O.R. (2d) 736, a declaration of this Court, provides another example of a by-law containing sufficient vagueness and uncertainty in a definition as to make it impossible to detect a clear and unequivocal intention of the municipality.

25 The need to re-affirm the necessity of explicitness and specificity so that the "well-intentioned citizen" of common intelligence will not have to guess at the meaning of a by-law is particularly important in a by-law purporting to license and regulate the sale of magazines. In Young, Mayor of Detroit, et al. v. American Mini Theatres, Inc. et al., 427 U.S. 50 (1976), the majority of the United States Supreme Court held that zoning ordinances regulating adult movies did not violate the due process clause of the Fourteenth Amendment on the ground of vagueness. The ordinance was directed at theatres presenting material "characterized by an emphasis on matter depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas"". The terms used were explicitly defined: see p. 53, footnote 4.

26 In my view, it is no answer to the vagueness and uncertainty argument in this case to say that the by-law incorporates the exact definitions of the Municipal Act. While the definition in an enabling legislation may deal in generalities when broadly granting the power to enact a by-law, the by-law itself must be sufficiently specific to enable the proposed licensee to perceive his obligations in advance. The mere repetition of the formula or definition in the Municipal Act, without specifying particulars, fails to give any indication of the scope of the by-law.

27 In Canadian Institute of Public Real Estate Companies et al. v. City of Toronto et al., [1979) 2 S.C.R. 2, (1979), 7 M.P.L.R. 39, a development control by-law merely repeated the power granted in the enabling legislation. The City did not exercise that power by enacting a by-law defining the desired regulation. The Supreme Court of Canada held the by-law to be unauthorized. The court relied on its judgment in Brant Dairy Company Limited et al. v. The Milk Commission of Ontario et al., [1973] S.C.R. 131.

28 The portions of By-law No. 79-144 as amended dealing with Class "A" licences have left the store owners without any guide as to the kind of magazines it purports to cover, because of the vague and uncertain definitions or the absence of definitions of what constitutes erotic goods. I would therefore declare invalid those portions of the by-law dealing with Class "A" licences for adult entertainment parlours in that they do not meet the requirement of certainty. I do not find it necessary or desirable to consider the legality of council's delegation of powers to the licensing committee without laying down standards. I may say, however, that the vagueness of the by-law prevents any proper delegation, even if it is otherwise authorized.

29 My decision is based on the presumption of the constitutional validity of s. 368b of the

Municipal Act and of the by-law, but I am not to be taken as having made any decision on this difficult aspect of the case. In view of the conclusion I have reached on the issue of vagueness and uncertainty, it is unnecessary to consider whether the required explicitness and specificity would expose the by-law to an attack on the constitutional ground that it involves the control of obscenity reserved to Parliament as criminal law. I equally refrain from basing my judgment on s. 2(b) of the Charter.

Other General Provisions of the By-law

30 In addition to the Class "A" portions of the by-law which I would declare invalid, I am bound to consider other provisions of the general by-law which have been attacked by the respondent. The validity of these sections was not considered in the Divisional Court. Sections 19 and 20 of the by-law read:

> 19.(1) The chief licence inspector, a licence inspector, a constable, the medical officer or a public health inspector may at all times inspect the adult entertainment parlour.
>
> (2) The chief licence inspector, a licence inspector, a constable, the medical officer or a public health inspector may at all times inspect,
>
> (a) goods, chattels, articles or material of any sort, or building or structure; or
>
> (b) books, records, documents or any paper or writing,
>
> used for or in connection with and upon the adult entertainment parlour.
>
> (3) The chief licence, inspector, a licence inspector, a constable, the medical officer or a public health inspector may at any time remove any paper, document, record book or other writing for inspection or review or for use in the courts.
>
> 20. (1) No person shall hinder, obstruct, molest or interfere with, or attempt to hinder, obstruct, molest or interfere with the chief licence inspector, a licence inspector, a constable, the medical officer or a public health inspector in the exercise of his powers or duties under this by-law, or a by-law of the city.
>
> (2) Every person shall furnish all necessary means in his power to facilitate entry, inspection, examination, testing or inquiry by the chief licence inspector, a licence inspector, a constable, the medical officer or a public health inspector in the exercise of his powers and duties under this by-law, or a by-law of the city.
>
> (3) No person shall neglect or refuse to produce any books, records, papers, letters, copies of letters, licence certificates, licence identification cards, documents or any other writings of any nature, and any tangible personal property as may be required by,
>
> (a) the licensing committee;
>
> (b) the chief licence inspector, a licence inspector, a constable, the medical officer or a public health inspector in the exercise of his powers and duties under this by-law, or a by-law of the city.
>
> (4) No person shall furnish false information to, or refuse or neglect to furnish information required by, the licensing committee or the licence administrator, or the chief licence

inspector, or a licence inspector, or a constable, or the medical officer or a public health inspector.

31 Subsection 5 of s. 368b gives the right to municipal officials or to a peace officer who has reason to suspect that a breach of any provision of the by-law has occurred to enter the adult entertainment parlour at any time of the night of day "for purposes of carrying out the enforcement of" the by-law. Section 19(3) of the by-law seeks to extend this power by granting to the officials or to a constable the right "at any time [to] remove any paper, document, record, book or other writing for inspection or review or for use in the courts".

32 Freedom from unreasonable search and seizure is an historic common law right recently reaffirmed by the Supreme Court of Canada in Colet v. The Queen, [1981] 1 S.C.R. 2, 119 D.L.R. (3d) 521. This right is now enshrined in s. 8 of the Canadian Charter of Rights and Freedoms which is the supreme law of Canada. Section 8 provides that "[e]veryone has the right to be secure against unreasonable search or seizure."

33 Mr. Vickers now concedes and I am satisfied that the legislature did not intend, in s. 368b(5), to delegate to municipal councils the authority to infringe this common law right by allowing municipal officials to enter the premises day or night, without a warrant or reasonable and probable cause, and to remove whatever they deem necessary. I would go further and hold that ss. 19 and 20 of the by-law are unauthorized. In contrast to other subsections of s. 368b, s-s. 5 does not grant to a municipality any authority to enact by-laws with respect to entry; it does not delegate the authority to regulate entry or search and seizure. On the contrary, s-s. 5 itself defines the conditions of entry for purposes of carrying out the enforcement of the by-law. Nor can the authority to enact these sections be implied from the general powers contained in s. 368b of the Municipal Act. The legislature has specifically regulated entry: the municipality has no authority to enlarge or modify the statutory right of entry or to grant additional powers of search and seizure. In my view, ss. 19 and 20 should be severed and struck from the by-law.

34 Portions of s. 39, contained in part 8 of schedule 1.01 headed "General Requirements", apply to Class "A" adult entertainment parlours providing goods. It contains the following subsections:

> 39. Every owner operator and attendant shall comply with the following regulations:
>
> 2. Not carry on a trade, calling, business or occupation other than that specified in the licence.
>
> 4. Not offer to provide or provide any erotic goods or erotic services in an adult entertainment parlour to any person under the age of eighteen years.
>
> 10. Produce his licence for inspection upon demand by a police constable or the chief licence inspector or the medical officer or a public health inspector.

35 The age restriction in s. 368b(7) allows the municipality to pass by-laws prohibiting any person under the age of 18 years to enter or remain in the adult entertainment parlour or any part thereof. The impugned by-law, s. 39(4) of schedule 1.01, does not prohibit the entry or presence of a person under 18 years, but purports to prohibit any offer to provide or any

provision of erotic goods (magazines) or services to that category of customer. It is now conceded by the appellant that s. 39(4) of schedule 1.01 is unauthorized and should be severed and struck from the by-law.

36 In conclusion, I would declare ss. 19 and 20 of the by-law and s. 39(4) of schedule 1.01 of the by-law to be unauthorized and to be severed. Subject to this variation, although I find that the invalidity of the portions of By-law 79-144 dealing with Class "A" licences rests on a different ground than the one adopted by the Divisional Court, I would dismiss the appeal with costs. There should be no costs to or against the Attorney General of Ontario, whose counsel confined his argument to the questions with which I have not found it necessary to deal.

LACOURCIERE J.A.
ARNUP J.A.:— I agree.
GOODMAN J.A.:— I agree.
ROBINS J.A.:— I agree.
GRANGE J.A.:— I agree.

Saint John (City) v. Crowe's Place Ltd.

New Brunswick Judgments

New Brunswick Provincial Court

Saint John, New Brunswick

Brien Prov. Ct. J.

Judgment: December 21, 2000.

[2000] N.B.J. No. 475 | [2000] A.N.-B. no 475 | 2000 NBPC 3 | 234 N.B.R. (2d) 110

Between The City of Saint John, and Crowe's Place Ltd

(32 paras.)

Case Summary

Municipal law — Bylaws — Construction or interpretation — Severability — Quashing bylaws, grounds for judicial interference — Unlawful delegation.

Motion by the defendant Crowe's Place to quash an information alleging an offence under section 3(m) of the City of Saint John Noise By-Law. Crowe's Place was charged with violating emitting sounds clearly audible on a street that would tend to disturb the peace by operating a device for amplifying sound without authorization in writing by the Chief of Police. Section 6 of the By-Law provided that the Chief of Police could grant permission in writing for a person to do the acts referred to in section 3(m) in relation to public activities and celebrations. Under the Municipalities Act, the City was allowed to make bylaws regulating or prohibiting noise that was likely to cause a public nuisance or otherwise disturb inhabitants. Crowe's Place argued that the By-Law was ultra vires as an improper delegation of authority, void as discriminatory and void for uncertainty or vagueness.
HELD: Motion allowed.

Paragraph 3(m) of the By-Law was invalid and the information was quashed. The delegation to the Chief of Police to permit what was prohibited under section 3(m) of the By-Law was a delegation of a discretionary power. The power was unfettered with no set standards for the exercise of the power. It was not authorized by the Municipalities Act. The invalid delegation could not be severed from the By-Law without leading to unintended results. The By-Law would prohibit traditional public activities without any mechanism for permission to be granted. The severance of the delegation would change the purpose of that part of the By-Law.

Statutes, Regulations and Rules Cited:

Municipalities Act, R.S.N.B. c. M-22, s. 11(1)(l).

Counsel

Bernard A. Cullinan, for the City. Stephen F. Horgan, for the defendant.

REASONS ON MOTION

BRIEN PROV. CT. J.

Motion:

1 This is a motion brought by the Defendant to quash the information alleging an offence under the City of Saint John Noise By-Law. Both parties agreed to argue this on the basis of submissions prior to calling evidence on the charge.

Charge:

2 The defendant is charged with violating paragraph 3(m) of the By-Law between July 15 and 16,2000 and the wording of the charge tracks the wording of that paragraph.

3 Paragraph 3(m) of the By-Law reads as follows:

> "3) No person shall within the City during the times set forth herein emit or cause or permit the emission of sound or sounds resulting from an act listed herein, which sound is clearly audible on a street and
>
> which disturbs or would tend to disturb the peace and tranquility of two or more persons using the street or living in separate houses or separate apartments or flats close to the street:
>
> (m) The operation of any public address system, gramophone, radio or other device or apparatus for reproducing or amplifying sound - at any time unless authorized in writing by the Chief of Police."

4 A corresponding section of the By-Law is section 6 which reads as follows:

> "6) The Chief of Police may grant permission in writing for a person or persons to do the acts referred to in subsections (k), (l) and (m) of Section 3 in relation to public activities and celebrations."

Agreed Facts:

5 The City of Saint John (herein "the City") is a municipality as set out in the Municipalities Act RSNB c. M-22 (herein "the Act").

6 S. 11(1)(l) of that Act allows a municipality to make by-laws ".... regulating or prohibiting the making of noise likely to cause a public nuisance or otherwise disturbs inhabitants."

7 The City enacted such a by-law cited as the Saint John Noise By-Law in October 1983 (herein "the By-Law").

8 As can be seen Section 3 of the By-Law identifies a number of situations, sources of sound and times in which the emissions of certain sounds which could or do disturb the peace are prohibited.

Issues:

9 In disputing the legality of the By-Law the Defendant attacks the By-Law on three grounds:

(a) ultra vires as an improper delegation of authority

(b) void as discriminatory

(c) void for uncertainty or vagueness

10 The City argues against the attacks and contends that if the court finds a part of the By-Law invalid, that the doctrine of severability may be applied to sever such part. The Defendant argues that the doctrine does not apply.

Ultra Vires Issue

11 The focus of the defendant challenge on this issue is the purported delegation of authority to the Chief of Police to permit that which is prohibited under paragraph 3(m) of the By-Law. Similarly, for section 6 which appears to place parameters on the exercise of such delegated authority.

12 The Defendant's position is that this is a delegation of a discretionary power.

13 Further, the Defendant argues that there is no express statutory authority in the Act or otherwise to permit this delegation of authority.

(see R. v. Pride Cleaners & Dyers (1965) 49 D.L.R. (2d) 752.

14 Following the caselaw, the first question is whether the authority delegated to the Chief of Police is discretionary or administrative in nature. (see Pride Cleaners & Dyers (supra); Dhillon v. Richmond (Municipality) [1987] B.C.J. No. 1566; R. v. Harvey [1988] B.C.J. No. 1285.

15 Upon reading the By-Law it is clear that it is the delegation of a discretionary power. It is the City in which is vested the power to regulate or prohibit noise, not the Chief of Police. It is obvious that legal consequences for citizens and residents of the City could flow, including prosecution and the imposition of fines if the Chief of Police exercises his power not to permit exceptions to certain paragraphs of section 3. Finally , the power appears to be unfettered and with no set standards being set out for the exercise of the power. Section 6 attempts to identify some activities where permits may be given, namely public activities and celebrations, however as worded, this section is permissive and subjective to the Chief of Police alone.

16 The second question is whether the City had the statutory authority to so delegate. In this

regard the Act does not expressly authorize this delegation, and no enabling legislation that would apply has been brought to my attention.

17 While this analysis would no doubt apply to paragraph (k) and (l) of section 3 as well, those are not the subject matter in this case.

18 Accordingly, I find the delegation of the discretionary power to the Chief of Police in paragraph 3(m) and section 6 of the By-Law is invalid.

19 By reason of my finding above, and keeping in mind that this is not an application for declaratory relief, it will not be necessary to deal with the other two grounds of attack raised by the Defendant. I will then move on to the severability issue.

Severability Issue

20 One preliminary matter with respect to this issue was whether the court could , under the doctrine , sever parts of a paragraph or parts of a section of a by-law provided that such severance met the applicable tests. Counsel for the Defendant took the position that the court did not have that authority.

21 In my opinion, the court can apply the doctrine to any part of a by-law, including part of a paragraph. (see: Alcoholism Foundation of Manitoba v. Winnipeg, [1988] M.J. No. 431; The Queen and Debaji Foods Ltd. 124 D.L.R. (3d) 254; Verri v. Stoney Creek [1995] O.J. No. 915; 356226 British Columbia Ltd. v. Vancouver [1994] B.C.J. No. 1727).

22 The test for severance is whether the invalid provision is an integral or an indispensable part of the whole by-law. The portion which is good must be clearly distinguishable from the portion which is bad so that the good portion forms a complete by-law. Whether a bad portion of a by-law is severable from the good portion is, of course a matter to be considered in each case. (see Rogers, The Law of Canadian Municipal Corporations (1991) 2d ed. p. 1032.1 et seq.; Dhillon v. Richmond (Municipality) [1987] B.C.J. No. 1566 Oppal J. and Pride Cleaners and Dyers Ltd. supra).

23 Rogers put the test in these words: "... has the council shown an intention to deal with a part of the subject matter legislated upon irrespective of the rest of the alleged matter."

24 In this case, the subject matter is contained in paragraph 3(m) and the corresponding part of section 6 and the severance sought by the City is only the words setting out the invalid delegation. The City submits that the words "unless authorized in writing by the Chief of Police" could be excised from paragraph 3(m) as well as the whole of section 6.

25 However, the defendant quite rightly points out that to allow that type of severance would be to leave a by-law which prohibits sound emission from acts that, by their nature it could not be said that a city council would have intended without providing for some exception.

26 If the remainder of paragraph 3(m) were permitted to stand then such sound emitting acts as fireworks, public address systems and amplifying apparatus would be prohibited if found disturbing to 2 or more people in the proximity.

27 Given the nature of public activities where sound emitting acts are utilized, could it be said that city council would not provide some mechanism to permit exceptions to such a prohibition. For instance, would the City have intended to prohibit a public address system at an outdoors Remembrance Day ceremony or similar public activity?

28 This point is clearly evident in the attempt, albeit invalid, to provide for someone to permit sound emitting acts for such activities even if 2 or more persons may be disturbed by such.

29 In my opinion, the severance sought by the City could leave the citizens and residents without recourse to gain permission to allow sound emitting acts which are part of traditional public activities and which could but not necessarily would offend the intent of the By-Law.

30 Clearly the excision of the delegation in paragraph 3(m) and section 6 would change the purpose of that part of the By-Law as noted, however, it could not be said that such excision would change the purpose of the By-Law. Based upon my understanding of the law and tests to be applied it would appear to me that the City would have passed the By-Law in its present form with paragraph 3(m) and section 6 excised.

31 However, as pointed out previously, this is not an application for declaratory relief that the whole of the By-Law be found invalid, it is a motion to quash the information alleging an offence under Paragraph 3(m) based upon its invalidity.

Conclusion

32 For the above reasons, the motion of the Defendant is granted, paragraph 3(m) of the By-Law is found invalid and the information alleging a breach of that paragraph is quashed.

End of Document

Cenam Construction Ltd. v. Cowichan Valley Regional District

British Columbia Judgments

British Columbia Supreme Court

Vancouver, British Columbia

(In Chambers)

Melnick J.

Heard: September 4 and 9, 1992

Filed: December 3, 1992

Vancouver Registry No. A922839

[1992] B.C.J. No. 2580 | 13 M.P.L.R. (2d) 232 | 37 A.C.W.S. (3d) 136

IN THE MATTER OF the Municipal Act, R.S.B.C. 1979, c. 290 and the Judicial Review Procedure Act, R.S.B.C. 1979, c. 209 Between Cenam Construction Ltd., Petitioner, and Cowichan Valley Regional District, Respondent

(80 paras.)

Case Summary

Administrative law — Judicial review — Standard of review — Local government bylaws — Procedure for adoption — Statutory requirements of notice and public hearings — Effect of non- compliance — Presumption of regularity.

Application for judicial review of a bylaw. The petitioner alleged defects in the procedure for adopting the bylaw. Among the defects in the process of the bylaw's adoption were the improper delegation of the public hearing that preceded its enactment and the failure of the notice of the public hearing to specify the date when copies of the bylaw could be viewed as required by statute. While the respondent conceded most of those defects, it argued that since the petitioner did not assert prejudice and since four years had elapsed since the bylaw's adoption, relief should be denied.

HELD: Application allowed.

The bylaw was void ab initio. The respondent acted outside its jurisdiction in adopting the bylaw when it failed to comply with the statutory requisites. Improper delegation of the hearings and failure to specify the dates of inspection of the bylaw were not mere procedural or formal defects. They were preconditions to the board's power to enact the bylaw.

STATUTES, REGULATIONS AND RULES CITED:

Code of Civil Procedure, R.S.Q. 1977, c. C-25, art. 33. Interpretation Act, S.B.C. 1974, c. 42. Judicial Review Procedure Act, R.S.B.C. 1979, c. 209, s. 2. Municipal Act, R.S.B.C. 1979, c.

290, s. 814, 944, 947(2), 947(2)(a), 956, 956(3), 956(4), 956(6), 957, 957(2)(a) (iii), 957(2)(a)(v). Municipal Government Act, R.S.A. 1970, c. 246.
Counsel for the Petitioner: Peter Kenward. Counsel for the Respondent: Raymond E. Young.

MELNICK J.

1 The petitioner applies, pursuant to s. 2 of the Judicial Review Procedure Act, R.S.B.C. 1979, c. 209, to set aside Official Community Plan Bylaw No. 1140, 1988 (the "OCP Bylaw") of the Cowichan Valley Regional District and a rezoning bylaw (No. 1297, 1990) which was subsequently adopted.

FACTS:

The petitioner owns land within the region affected by both the OCP and rezoning bylaws. The petitioner alleges that there were numerous defects in the procedure by which the OCP Bylaw was adopted, particularly with respect to notice requirements and the holding of a public hearing. In that the procedure followed for the adoption of the rezoning bylaw relied on the validity of the OCP, it is conceded by the respondent that if the OCP Bylaw is invalidated, then the rezoning bylaw cannot stand.

2 The OCP Bylaw was adopted on May 25, 1988, as authorized by s. 944 of the Municipal Act, R.S.B.C. 1979, c. 290. The plan covers the North Oyster/Diamond region which forms the eastern portion of Electoral Area "H" of the Cowichan Valley Regional District. The OCP Bylaw is intended to set out guidelines and policies for the planning and management of the region and provide direction as to its future development. Thus it establishes a framework against which development proposals may be considered. The bylaw also establishes certain development permit areas.

3 On November 14, 1990, the respondent adopted the rezoning bylaw. The effect of this bylaw was to increase the minimum lot size applicable to the subdivision of land from two hectares to eight hectares (five acres to twenty acres).

4 On November 13, 1991, the respondent refused to grant a development permit to the petitioner. On November 18, 1991, an approving officer refused the petitioner's subdivision application. The refusal was based, in part, on non-compliance with the OCP and rezoning bylaws. I am satisfied that it was only at this time that the petitioner realized the rezoning bylaw applied to the subdivision. Since the petitioner's subdivision application had been submitted prior to the enactment of the rezoning bylaw, the petitioner says that it mistakenly believed the bylaw had no application. The refusals, says the petitioner, led to its inquiry into the enactment of the rezoning bylaw and the OCP, which revealed the alleged irregularities.

ISSUES:

The procedure which must be followed by a Regional District in enacting bylaws is set out in the Municipal Act. The petitioner alleges a number of procedural defects which primarily relate to

the respondent's failure to comply with the strict terms of the statutory notice and hearing requirements when it enacted the OCP bylaw and the rezoning bylaw. The respondent, in addition to dealing with the specific allegations of deficiencies, also raises an issue as to what the legal consequences of the defects, if proven, are. Specifically, the respondent says the Court should deny relief to the petitioner on the grounds of a four year delay in bringing the application, the technical nature of the breach, and the absence of any proof of actual prejudice. The broad issues, therefore, are as follows:

1. Were there procedural deficiencies in the enactment of the OCP Bylaw?
2. If so, what are the legal consequences of the defects?

ISSUE 1: PROCEDURAL DEFECTS

A. Challenges to the OCP

1. Improper delegation of the public hearing.

Section 956 of the Municipal Act provides that a public hearing must be held by the Regional Board before the enactment of official community plan bylaws. Pursuant to s. 956(6), a Board of a Regional District may delegate the holding of a public hearing:

a) to the director of the electoral area in which the land concerned is located, or

b) with the consent of the director referred to in paragraph (a)

i) to the alternate director of that electoral area, or

ii) to any other director or directors.

5 In this case, the hearing was chaired by the Director of Electoral "H" and a director from a non-adjacent electoral area.

6 The petitioner argues that this was an improper delegation because there was no specific act of delegation. While s. 956(6) authorizes the delegation of "a hearing", the petitioner argues that this does not amount to an authorization of the delegation of hearings generally.

7 The respondent argues that the absence of evidence of a specific act of delegation is irrelevant since the hearing was, in fact, delegated as authorized by the statute. The respondent also points to the standing policy on delegation adopted by the Board in 1984. This policy stated:

> That in accordance with the provisions of Section 814 of the Municipal Act the Board delegate the holding of public hearings to the following where possible: the Director of the electoral area concerned to be Chairman, two Directors from adjacent electoral areas or member municipalities, plus the Director of Planning or Regional Planner to be present.

8 The petitioner argues that the Board cannot delegate the holding of public hearings generally, and in any case, as it stood in 1984, s. 814 of the Municipal Act authorized the delegation of

public hearings for rezonings only. Thus the standing policy which specifically referenced s. 814 could only have applied to rezoning bylaws and not the OCP Bylaw.

9 In the alternative, the respondent argues that the power to delegate is permissive and for the benefit of the Board rather than for the protection of the public. The respondent says that the absence of a specific act of delegation of a duty as opposed to a power is a "mere irregularity" in the face of evidence that the hearing was held before the proper person who made the required recommendations. The respondent also takes issue with the petitioner's standing to make this challenge given that its representative did not attend the meeting so it cannot argue it was denied the right to be heard by the decision maker.

10 I conclude that the public hearing with respect to the OCP bylaw was improperly delegated. I am satisfied that the standing policy with respect to delegation related only to rezoning bylaws and that, in any case, hearings could not be generally delegated.

2. Deficiencies in notice

11 The petitioner alleges a number of deficiencies in the notice provided of the public hearing.

i) Failure to adequately describe purpose of the OCP

Bylaw.

12 Section 957(2)(a)(iii) of the Municipal Act provides that notice of the public hearing shall state "in general terms, the purpose of the bylaw". The notice in this case gave a broad overview of the contents of the proposed bylaw and disclosed that the plan introduced a number of development permit areas.

13 The petitioner argues that while the notice disclosed the proposed establishment of the development permit areas, it did not provide a proper description of the lands to be included nor did it disclose the nature of the development areas. The petitioner also points out that the notice did not discuss the specific policies of the plan and did not disclose that land was designated for a park.

14 The respondent says that where the proposed bylaw is a comprehensive one, all that is required is notice of its "essential nature" and that any attempt to give more detail would result in the publication of the entire OCP.

15 The leading case on the issue of what is sufficient notice of purpose is Loring v. Victoria (City) (1989), 48 M.P.L.R. 113 (B.C.S.C.). In that case, Mr. Justice Bouck held that the purpose of requiring notice of intent is to allow the reader to come to an informed conclusion as to what affect the bylaw might have on his or her interests and therefore decide whether to attend the meeting. In assessing how detailed the notice must be, Mr. Justice Bouck stated at p. 121:

> The degree of detail in the notice may be different when the by-law is only dealing with one parcel of land as compared to a comprehensive by-law affecting many parcels. Where there is a comprehensive by-law, the municipality or city is not expected to publish all the minutiae by way of "massive tomes of details"; [Fouty v.

> Nanaimo (Regional District) (1986), 8 B.C.L.R. (2d) 364] at p. 375. That would be asking too much.
>
> (Citation added)

16 The petitioner says the standard established in Loring relates to an official community plan bylaw that sets out general planning statements. The petitioner argues that a different standard applies to the OCP Bylaw which directly affects its ability to subdivide land and obtain a building permit. Given this context, the petitioner says there is a greater burden on the respondent in describing the purpose of the bylaw than that suggested in Loring.

17 The petitioner points to the decision of Mr. Justice Rae in Peterson v. Resort Municipality of Whistler (1982), 39 B.C.L.R. 221, in support of this argument. In that case, the court held that notice of a proposed rezoning bylaw, which gave only partial indication of the use to which the rezoned land could be put, failed to meet the statutory requirements.

18 In my opinion the statement of intent in the notice at issue was sufficient to allow the reader to come to an informed conclusion as to whether to attend the meeting. The notice at issue in Peterson v. Whistler had to do with a rezoning bylaw, not an official community plan. As Mr. Justice Bouck pointed out in Loring, the degree of detail required will depend on the comprehensiveness of the proposed bylaw. It seems to me that an onerous and unnecessary burden would be placed on the respondent if it was required to publish notice of the purpose of the bylaw in the detail suggested by the petitioner.

ii) Failure to describe lands which are subject to Bylaw.

19 Section 957(2)(a)(iii) of the Municipal Act provides that notice shall state "the land or lands that are the subject of the bylaw". The notice in this case is headed "Official Community Plan Bylaw No. 1140 Electoral Area "H" North Oyster Diamond". The notice goes on to state that a public hearing would be held to consider the proposed adoption of a Community Plan for "Electoral Area 'H'". Further in the notice is the statement, "The Community Plan will, upon its adoption, replace North Oyster/Diamond Settlement Plan Bylaw No. 55".

20 The petitioner argues that the notice wrongly describes the lands since it proposes the adoption of a Community Plan for Electoral Area "H" when, in fact, the OCP Bylaw only covers the eastern portion of that electoral area.

21 The respondent says that the area was designated as required by statute and that the North Oyster Land District and Diamond Water Improvement Area are locally well known and defined areas of the Regional District. Further, says the respondent, the alleged deficiency does not have the effect of misleading citizens who might otherwise deem their interests affected.

22 I am satisfied that the notice provides an adequate description of the lands affected. The identification of the lands affected as "Electoral Area H" is both preceded and followed by an identification of the precise region affected, North Oyster/Diamond. There was sufficient information as to the area involved to alert the petitioner.

iii) Failure to specify dates for inspection of Bylaw

23 Section 957(2)(a)(v) of the Municipal Act provides that the notice shall state "the place where and the times and dates when" copies of the bylaw may be inspected. In this case, the notice specified the time and place for inspection, but not the dates.

24 In Blair v. District of West Vancouver (1989), 45 M.P.L.R. 288, our Court of Appeal set aside a bylaw due to the omission of dates from a notice published pursuant to s. 957 of the Municipal Act. The Court adopted the reasoning of Mr. Justice Gow (41 M.P.L.R. 301) who had held that the omission of dates amounted to non-performance of a statutory duty thus the bylaw was void for illegality.

25 The respondent does not appear to dispute that the omission of dates from the notice amounted to non-compliance with statutory requisites. The respondent's argument on this point is restricted to the issue of the legal consequences of such a defect given the discretionary nature of judicial review.

iv) Opportunity to be heard.

26 Section 956(3) of the Municipal Act provides that at a public hearing, "all persons" who believe that their interest in property is affected by the proposed bylaw shall be given a reasonable opportunity to be heard. The notice of the hearing in this case invited "residents and owners of land within the electoral area who deem their interests to be affected" to review the proposed bylaw.

27 The Petitioner argues this amounted to a failure to comply with the principle of procedural fairness in that it denied persons whose interests were affected but were not property owners an opportunity to be heard.

28 The respondent points out that the notice of public hearing invited "all persons who deem their interests to be affected by the proposed bylaw" to attend the hearing. The respondent further argues that the petitioner is, in any case, a property owner and there is no assertion that it, or anyone else, suffered prejudice as a result of the alleged procedural defect thus it has no standing to make this challenge.

29 I agree with the respondent that the statutory requirements have been met in this instance. The Municipal Act provides that "all persons" who believe that their interest in property is affected by the proposed bylaw shall have an opportunity to be heard at the hearing. By the terms of the notice, "all persons who deem their interests affected" were invited to the meeting and there is no suggestion that non-property owners were denied the opportunity to be heard.

3. Non-compliance with referral and review requirements.

i) Referral to adjoining municipalities.

30 Section 947(2) of the Municipal Act provides that, after the first reading of a community plan bylaw, the Regional Board shall refer it to an adjoining municipality or regional district which is affected by the bylaw.

31 The Petitioner alleges that the Regional District did not refer the plan to the adjoining municipality (the Township of Ladysmith) or the adjoining regional district (Nanaimo) for comment between the first and third reading.

32 Ulmar Olcay, planner of the respondent, states in an affidavit, that prior to the introduction of the OCP Bylaw, a draft substantially in the same form ultimately adopted was made available to both the Regional District of Nanaimo and the Town of Ladysmith. After review by both local governments it was agreed that nothing in the OCP Bylaw required formal referral as neither felt its interests would be affected.

33 Once again, the respondent argues that the petitioner lacks standing to raise this ground and that the only persons with standing are regional districts who feel themselves affected and who object to the failure to refer the plan.

34 Clearly the bylaw was not referred to adjoining municipalities according to the statutory procedure. However, given that a draft substantially in the same form was referred to the adjoining regions, I agree with the respondent that this was a "mere irregularity" or "formal defect" rather than a failure to comply with a statutory requisite.

ii) Review Requirements.

35 Section 947(2)(a) of the Municipal Act provides that after first reading of the bylaw, the Regional Board shall examine the plan in conjunction with its most recent capital expenditure program and any waste management plan or economic strategy plan that is applicable to the Regional District to ensure consistency.

36 The petitioner says that there is no evidence that such a review was carried out in this case.

37 The respondent relies on the presumption of regularity. Where a statutory power is exercised by the appropriate authority, there is a rebuttable presumption that the procedural steps have been properly taken: see Health Sciences Assn. of B.C. v. B.C. (A.G.) (1986), 6 B.C.L.R. 17 (B.C.S.C.). The respondent further submits that it is unnecessary for the Board to keep minutes of every matter considered by it pursuant to the requirements of the Act. In Watling and Bragg v. Municipal Council of Oak Bay (1969), 70 W.W.R. 534, the B.C. Supreme Court held that it was unnecessary for a council to give formal consideration to every matter contained in the Municipal Act's subsections. At p. 537 Mr. Justice Dryer (as he then was) stated:

> It is putting mental processes on an unpractical basis to say that aldermen, who deal with zoning bylaws from time to time and who must, therefore, be presumed to know from past acquaintance the matters to be considered, must audibly go over the paragraphs of subs. (2) of s. 702 and check off each one.

38 The respondent argues that the best evidence available that the review requirements were met in this case is the Board's fulfilment of the requirement that it submit the results of such a

review to the Minister of Municipal Affairs. Attached to Ulmar Olcay's affidavit is a copy of the Regional District's submission to the Minister of the results of the required review.

39 I am satisfied that it can be presumed, in the absence of evidence to the contrary, that the review requirements were met.

B. Challenges to the Rezoning Bylaw

1. Waiver of Public Hearing

40 The petitioner's primary challenge to the rezoning bylaw is that if the OCP is invalid, then the Regional Board could not have waived the public hearing of the bylaw pursuant to s. 956(4) of the Municipal Act since such a waiver relies on the validity of the OCP. The respondent concedes that if the OCP Bylaw is invalid, then so is the rezoning bylaw. The respondent points out that such a holding would also affect the validity of number of other zoning bylaws adopted and development permits issued over the years since the enactment of the OCP.

41 On July 25, 1990, the Board adopted a motion that the public hearing for the zoning bylaw be waived but that prior to the close of the public notification and advertising period, planning staff notify all owners of parcels directly affected. The petitioner abandoned its argument that there was non-compliance with the terms of the waiver because such notification was not given in respect of certain properties. In any event, I would have agreed with the respondent that this amounted to non-compliance with self-imposed directions rather than with statutory notice requirements and therefore did not affect the validity of the rezoning bylaw.

2. Waiver of Public Hearing Notice

42 The petitioner argues that the notice referred to above did not adequately describe the land which is subject to the bylaw in that it did not state the location of the certain lands, the minimum parcel size of which was being rezoned.

43 Once again, I am satisfied that these were self-imposed rather than statutory notice requirements.

C. Standing

44 An argument made by the respondent, with respect to a number of the alleged deficiencies, is that the petitioner has no standing to raise particular grounds of challenge. The respondent relies on Durayappah v. Fernando (1967) 2 A.C. 337, Bridgeland-Riverside Community Assn. v. Council of City of Calgary (1982), 19 Alta. L.R. (2d) 361 (Alta. C.A.) and Morishita v. Richmond (Township) (1990), 49 M.P.L.R. 161 (B.C.C.A.), in support of its proposition that the petitioner lacks standing to assert rights on behalf of unnamed persons who may have been prejudiced when the petitioner itself was not affected by non-compliance with statutory procedure.

45 In my view, there is no question but that the petitioner has standing to challenge both the issue of the improper delegation of the public hearing and the failure to specify the dates on which the proposed bylaw could be inspected. These statutory requirements are, in my opinion,

clearly intended for the protection of persons whose land might be affected by the bylaw. Just as clearly, the petitioner falls within this class of persons. I have not found it necessary to consider the issue of standing with respect to alleged defects which I have resolved in the respondent's favour.

ISSUE 2: LEGAL CONSEQUENCES

46 In defence of the OCP Bylaw, the respondent makes a number of arguments relating to the standard of review to be applied given that the petitioner is not seeking a statutory remedy but rather proceeding by way of judicial review. The respondent argues that many of the cases relied upon by the petitioner are distinguishable on this basis.

47 The respondent emphasizes the fact that the petitioner does not assert prejudice, that the challenge is purely technical in nature and argues that in all the circumstances, the petitioner's delay of over four years should disentitle it to relief. Since the respondent appears to have conceded that, at least with respect to the omission of dates in the OCP hearing notice, the statutory requisites were not met, the key issue is whether I should exercise my discretion to deny relief.

1. The Standard of Review

    i) Legal Principles

48 The legal consequences of procedural defects in the adoption of bylaws depend on whether the defects render the bylaw void or merely voidable. A bylaw is voidable if there has been non-observance of a statutory formality or a procedural irregularity in its adoption. This can be distinguished from more serious cases where a municipal body failed to comply with statutory prerequisites and thus acted outside the scope of its jurisdiction in subsequently adopting the bylaw. A bylaw enacted without jurisdiction is void ab initio. The line between a void and voidable bylaw is not always easy to draw.

49 Courts have discretion as to whether to quash a voidable bylaw. The presence of minor, technical defects which are formal in nature do not necessarily result in a declaration of invalidity where there has been substantial compliance with the statutory scheme.

50 However, where certain statutory preconditions must be met before a municipality can adopt a bylaw affecting private rights, courts have generally required strict compliance. If these preconditions are not met, then the municipality acts outside of its jurisdiction in adopting the bylaw, rendering it void.

51 In Bay Village Shopping Centre Ltd. v. Corporation of City of Victoria [1973] 1 W.W.R. 634, our Court of Appeal considered the effect of the failure to fulfil a statutory notice requirement. The City had held a public hearing into the merits of a proposed amending zoning bylaw. All the statutory requirements were met and then a motion to adopt the bylaw put and lost. A few weeks later, the council received a brief from the representative of a company which was promoting the bylaw and reconsidered. The bylaw was then passed. No notice was given to interested parties that the bylaw was being reconsidered and there was no hearing.

52 In response to the City's argument that the failure to publish notice was a mere irregularity and no one was prejudiced, Mr. Justice Robertson stated that, given that the City had failed to fulfil a statutory prerequisite, it was immaterial whether or not anyone had been prejudiced and the Court had no discretion but to quash. Mr. Justice Nemetz (as he then was) said he was generally in agreement with Mr. Justice Robertson but added the following comments at pp. 642-43:

> In my respectful view Robertson J.A. was right in holding that subss. (1), (3), (4) and (5) of s. 566 ... of the Vancouver Charter ... formed a "code of procedure which must be followed and observed in every respect whenever it is proposed to amend a zoning bylaw". It is my opinion that the apposite provisions of the Municipal Act ... also constitute a code of procedure which must be followed strictly where it is intended to amend a zoning bylaw. In the circumstances of this case the bylaw was adopted illegally because the prescribed procedure was not followed.

53 In Little v. Cowichan Valley Regional District (1978), 8 B.C.L.R. 369, the Court of Appeal upheld the quashing of a bylaw on the ground that notice of the public hearing was published in a newspaper which was not a newspaper within the meaning of the Interpretation Act (then 1974, S.B.C., c. 42). The municipality argued that the requirements of the statute had been substantially complied with because the newspaper in which the notice was published had a wider readership than any other newspaper in the area. Citing Bay Village, the Court held that strict compliance with notice requirements is a condition precedent to the legality of a bylaw.

54 The "substantial compliance" argument was also rejected in Blair v. West Vancouver, supra, on the ground that there is no room for a substantial compliance doctrine where there is non-performance of a statutory obligation.

55 Finally, in Costello v. City of Calgary (1983), 143 D.L.R. (3d) 385, the Supreme Court of Canada considered an application for a declaration that an expropriation bylaw was void. Only one of two owners was served with notice of the municipality's intention to pass the bylaw, the other owner having been served outside the statutory time limit. One of the owners had, in fact, attended the public hearing at which the bylaw was introduced and spoke to it. Three years passed before the validity of the bylaw was challenged.

56 The respondent in Costello argued that the owner had, in fact, been served and any deficiency in time, at most, made the bylaw voidable, not void. The Court rejected this argument, holding that the failure to serve notice as required by the Alberta Municipal Government Act (then R.S.A. 1970, c. 246) rendered the bylaw void. In rejecting the argument that the error was a small and insignificant one, Mr. Justice McIntyre stated at p. 395:

> But then the question arises: how far should the courts go in relieving municipalities from following mandatory provisions regarding service where the interest of private citizens is threatened? If an error of three days is forgivable, then what about one of four, or five, or ten days? Surely, the line must be drawn somewhere to give the citizen any protection. In my view, the line should be drawn where the Legislature

chose to put it and not where individual judicial discretion may fix it on a case-by-case basis.

ii) Discussion

57 In my view, the respondent in this case failed to follow statutory procedure in adopting the OCP bylaw in three ways: improper delegation of the public hearing, failure to specify dates in the notice and failure to refer the bylaw to adjoining districts after the first reading.

58 With respect to the failure to follow referral requirements, I have already indicated that I am satisfied that failure to refer the OCP Bylaw to adjoining municipalities was a procedural irregularity only and did not affect the jurisdiction of the Board to adopt the OCP bylaw. Given that there was substantial compliance with the statutory scheme, I would not hold the bylaw invalid on this basis.

59 However, I conclude that the OCP Bylaw is void on the ground of non-compliance with the statutory notice and hearing requirements, specifically the improper delegation of a public hearing and the failure to specify dates for inspection in the public hearing notice. Due to its failure to comply with these statutory requisites, the respondent acted outside of its jurisdiction in adopting the OCP Bylaw, rendering it void ab initio.

60 I agree with the petitioner's submission that the delegation of public hearings should be tightly circumscribed since they amount to a statutory limit on the principle that one is entitled to be heard by the administrative body determining his or her rights. Given that the holding of a public hearing is a statutory precondition to the Board's power to adopt the bylaw, I find that as the hearing requirements were not complied with, the Board acted without jurisdiction in subsequently adopting the bylaw. Improper delegation of the public hearing did not amount to a mere formal defect. It was a precondition to the Board's jurisdiction to enact the OCP bylaw that it either hold a hearing or properly delegate the holding of a hearing.

61 The respondent has essentially conceded that the failure to publish the dates on which the bylaw could be inspected amounted to non-compliance with mandatory statutory notice requirements rendering the bylaw void. This was the conclusion of the B.C. Court of Appeal in Blair v. West Vancouver, supra.

2. The Discretionary Nature of Judicial Review

i) Legal Principles

62 The respondent relies heavily on the fact that the petitioner is not seeking a statutory remedy as the time limit has expired, but rather is proceeding by way of judicial review. The respondent argues that judicial review is, by its very nature, discretionary and that I should exercise my discretion not to grant relief even if the OCP Bylaw is found to be void ab initio.

63 The respondent cites the decision of Mr. Justice Bouck in Jericho Area Citizens' Association v. City of Vancouver (1979), 12 B.C.L.R. 313. In that case, the plaintiffs brought an action, in April 1978, for a declaration setting aside a zoning bylaw passed in September, 1976, on the

ground that the notice was insufficient. The plaintiffs cited Bay Village in support of their application.

64 The holding in Bay Village was distinguished by Mr. Justice Bouck on the ground that the bylaw at issue was being challenged by way of statutory motion. He stated that the reason for the time limit on such statutory remedies was to ensure that questions of validity could be promptly considered and, after the expiration of the time for challenge, the validity of the bylaw could be relied upon. As a result, Mr. Justice Bouck held that a wider discretion vests in a Court considering an application for declaratory relief. At p. 316, he concluded:

> Because of the lateness of this action and because third parties have bona fide acted upon the legality of the bylaw and because the complaint is more of a technical nature than one of substance, I decline to grant a declaratory judgment in favour of the plaintiffs.

65 This decision was disapproved of by the Court of Appeal in Hornby Island Trust Committee v. Stormwell (1988), 30 B.C.L.R. (2d) 383. At issue there was the validity of a zoning bylaw which was adopted by the Regional District in 1974 without the advertisement of a synopsis as required by the Municipal Act. In 1986, the appellant Committee sought a declaration that the respondent's operation of a campground on his property was not permitted under the bylaw.

66 The Court held that a bylaw adopted without observance of a necessary statutory precondition is wholly void from the outset and not merely voidable. Mr. Justice Lambert, with whom Mr. Justice Hutcheon concurred, held that the discretionary power referred to by Mr. Justice Bouck in Jericho Area could not apply to bylaws which were wholly void from their inception, but rather should be restricted to cases where the bylaw is merely voidable. In a concurring judgment, Mr. Justice Macdonald also disapproved of Mr. Justice Bouck's decision in Jericho Area and stated at p. 397:

> It is my opinion that the discretion which may be involved in the grant of declarations is not available to the court when a defendant pleads and proves that a statutory prerequisite to the adoption of the by-law was not fulfilled.

67 The respondent argues that this decision ignores the fact that the inherent jurisdiction of the Court to make declarations and orders as part of its judicial review function has always been discretionary. In support of this argument, the respondent cites Homex Realty and Development Co. Ltd. v. Village of Wyoming (1981), 116 D.L.R. (3d) 1 (S.C.C.). In Homex, a developer and the village entered into a subdivision agreement under which the developer undertook financial responsibility for work and services on his property. Before the services were installed, he sold the land to Homex who challenged the obligations undertaken by the previous owner. Without notice to Homex, the village passed a bylaw which deemed the land bought by Homex not to be a registered plan of subdivision. The Court held that while the failure to give notice and provide a hearing breached the rules of natural justice, the application to quash should be denied. The Court pointed out that relief by way of judicial review is discretionary and that the conduct of Homex, in seeking to avoid the burden associated with the subdivision, disentitled it to relief.

68 The respondent also says that the Supreme Court of Canada's decision in Les Immeubles

Port Louis Ltee. v. Corporation municipale du Village de Lafontaine (1991), 78 D.L.R. (4th) 175, implicitly overrules Hornby v. Stormwell and confirms the law as set out in Jericho Area. The facts in Immeubles are as follows: Between 1969 and 1978 the municipality enacted a number of borrowing bylaws imposing local improvement charges and charging the costs against the benefiting land owners. The appellant purchased its land in 1977 and paid the local charges from 1978 to 1983. It then brought a direct action in nullity under art. 33 of the Civil Code to quash the bylaw and recover the charges that had been paid on the ground that the statutory notice requirements were not met as the property was not described. The direct action in nullity is unique to Quebec but, like prerogative writs, it comes within the inherent review power of the Superior Courts and has its origin in the common law.

The appellant in Immeubles argued that, in that the matter involved an absolute nullity, the role of the Court was limited to finding that a nullity existed and there was therefore no discretion but to quash. The Court rejected this argument. Mr. Justice Gonthier, who gave judgment for the Court, said at p. 201:

> Such an assertion fails to appreciate the bases of the superintending and reforming power and underestimates the essentially discretionary nature of the exercise by the Superior Court of its power. In response to this argument I would cite the following passage from H.W.R. Wade (Administrative Law, 6th ed. (Oxford: Clarendon Press, 1988), at p. 695-6):
>
> > When the remedy lies ex debito justitiae, as in these cases, this means that the court will normally exercise its discretion in the applicant's favour; it does not mean that the court has no discretion to withhold the remedy, for example, where there has been undue delay.

69 At p. 202, he went on to cite the following passage from Wade:

> Such a discretionary power may make inroads upon the rule of law, and must therefore be exercised with the greatest of care. In any normal case the remedy accompanies the right. But the fact that a person aggrieved is entitled to certiorari ex debito justitiae does not alter the fact that the court has power to exercise its jurisdiction against him, as it may in the case of any discretionary remedy. This means that he may have to submit to some administrative act which is ex hypothesi unlawful. For, as has been observed earlier, a void act is in effect a valid act if the court will not grant relief against it.

70 The Court held that the appellant's direct action in nullity was well founded because the municipality acted ultra vires and its actions went beyond mere irregularity or formal defect. However, since the municipality did have the power to enact such bylaws, but exercised its powers defectively, the court in its judicial review jurisdiction (which it exercises under art. 33) had the discretion to refuse relief. In this case, the Court held that there was no reason to interfere with the trial judge's decision not to grant relief on the ground that the applicant had delayed in bringing action and that its conduct in undertaking to pay the taxes for several years amounted to a presumption of knowledge.

71 The Court stated that the following factors must be taken into account in determining

whether to grant relief: the nature of the disputed act, the nature of the illegality committed, the causes of the delay in bringing the action, the nature of the right relied upon and the plaintiff's conduct (p. 210).

ii) Discussion

72 Both the respondent and the petitioner appear to agree that the court has a discretion in exercising its inherent power of judicial review to grant a remedy. The parties differ, however, on how this discretion should be exercised.

73 The respondent argues that the Supreme Court of Canada's decision in Immeubles dictates that the court should deny relief when there is undue delay in bringing an application for review and the infringement is a technical one. The respondent points out that it took the petitioner four years to bring the challenge, that the defects alleged are technical ones and there is no allegation of actual prejudice, and that the petitioner is collaterally attacking the OCP Bylaw as a way of getting at the rezoning bylaw. In addition, says the respondent, setting aside the OCP Bylaw would not only affect the rezoning bylaw at issue, but also invalidate numerous other bylaws passed and development permits issued in reliance on the OCP's validity.

74 The petitioner says that the court may take into account the following factors in exercising its overriding discretion: the nature of the disputed act, the nature of the illegality and the cause of delay. However, the petitioner says that the factor to be given the greatest weight is the rule of law. The petitioner argues that the discretion to deny relief should be exercised in narrow circumstances, such as when the applicant comes to court with unclean hands (Homex). The petitioner further points out that courts have repeatedly held that municipalities must strictly follow statutory requirements in enacting bylaws which affect private property. The petitioner says there is no reason to depart from this principle in this case since the effect of the bylaw was to impose onerous development permits which interfered with the ability of the petitioner to subdivide its land.

75 With respect to the issue of delay, the petitioner argues that it should not be disentitled to relief because of the four years that has passed since the enactment of the OCP Bylaw. The petitioner says it delayed in bringing action because it was unaware that its land was subject to the OCP and rezoning bylaws. The petitioner says this is not a case, like Immeubles, where the bylaw relates to the raising of monies for works and which significant monies have already been expended to the benefit of the applicant and others.

76 Thus while the petitioner appears to accept that in exercising its discretion, the court can take into account the factors listed by the Supreme Court of Canada in Immeubles, it argues that none of these factors dictate the denial of relief in this case.

77 In approaching this problem in the manner suggested by Mr. Justice Gonthier in Immeubles, I conclude that the deficiencies complained of by the petitioner are of a somewhat technical nature. However, they are matters of considerable importance in the process laid down by the Municipal Act. They are far from being inconsequential. Both the petitioner and respondent face hardship, depending on the exercise of my discretion. Should the bylaws be upheld, the

petitioner faces a loss of freedom to subdivide its property unaffected by a bylaw of which it did not receive proper notice as required by the Municipal Act. If the bylaws are set aside, the respondent faces the hardship of the fact that it has passed a number of bylaws in reliance on the OCP Bylaw.

78 While I agree that there was some delay on the part of the petitioner in bringing these proceedings, I am satisfied that this delay was not significant in the context of the flow of events. I would not characterize the petitioner's conduct as blameworthy in this regard.

79 The factor to which I give the greatest weight is the rule of law. The law has traditionally required municipalities to strictly comply with statutory hearing and notice requirements when they enact bylaws which affect private interests. Courts should be slow to make inroads on the rule of law when such interests are at stake and, in my view there is no reason in this case to deviate from the normal rule that the remedy follows the right. As I have already stated, this is not a case of a petitioner coming to court with unclean hands (as in Homex), nor has the petitioner derived benefit from the impugned bylaw for a number of years before bringing a challenge (as in Immeubles).

80 While the defects in this case may appear technical, I am satisfied that the legislature has determined that certain statutory notices and hearing requirements must be met before a municipality lawfully exercises its power to enact bylaws. These requirements do not, in my view, place an undue burden on the municipality. Assuming that I have a discretion to refuse the relief the petitioner seeks, I would not exercise that discretion in favour of the respondent on the above tests.

CONCLUSION:

The OCP Bylaw should be set aside. As it is conceded by the respondent that this renders the zoning bylaw invalid, that bylaw should also be set aside. Orders accordingly.

COSTS:

Costs will follow the event.

MELNICK J.

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CARSWELL

The Law of CANADIAN MUNICIPAL CORPORATIONS

Second Edition

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Volume 1

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§63.5 Delegation of Powers

§63.51 *General*

A municipality, being a corporation, must perform its functions through agencies appointed or elected to govern it. The governing body of a municipality is not the corporation itself, but the council which is merely the agency through which powers committed to the corporation are exercised(x). As a general rule, whenever any power is conferred by the legislature on the corporation and no officer or other body is expressly clothed with such power, then it is to be exercised by the common council whose acts are those of the corporation respecting a matter over which it has jurisdiction(x1). Only rarely does a power remain in the corporation at large(y). Where the statute empowers a council to set a tax rate by by-law, the council does not have the power to redelegate to itself authority to fix the rate by resolution(z).

The maxim delegatus non potest delegare is generally applicable to any form of sovereign power and operates to prevent one government body endowed with legislative functions by the state from transferring its deliberative functions to another body or official. Phrased conversely, it means that political power can be exercised only by those who are responsible in law for its execution. In terms of municipal law this means that, in the absence of express statutory authority, a municipal council, as the recipient of delegated authority itself, cannot assign to an official or any other agency any legislative or discretionary power vested in it(a). A by-law allowing a private business to provide metered parking spaces for customers and imposing fines for violations was void since it amounted to improper delegation of the city's authority to manage parking lots(b). Moreover, it cannot deprive itself of a power conferred on it by requiring by by-law, as a preliminary step

(x) *Waterous Engine Works Co. v. Palmerston (Town)* (1892), 21 S.C.R. 556 (S.C.C.), affirming 19 O.A.R. 47 (Ont. C.A.).

(x1) For example, see the Vancouver Charter (B.C.), s.145, which confers all of the City's powers on council except where otherwise provided.

(y) See *R. v. Patterson* (1894), 33 N.S.R. 425 (N.S. T.D.).

(z) *Air Can. v. Dorval (Cité)* (1985), 13 Admin. L.R. 42, 59 N.R. 177, 19 D.L.R. (4th) 401 (S.C.C.), reversing 21 M.P.L.R. 66 (C.A. Que.).

(a) *Forst v. Toronto (City)* (1923), 54 O.L.R. 256 at 275 (Ont. C.A.); *Murphy v. Toronto (City)* (1918), 41 O.L.R. 156 at 176 (Ont. H.C.), affirmed 43 O.L.R. 29 (Ont. C.A.); *Hall v. Moose Jaw (City)* (1910), 12 W.L.R. 693, 3 Sask. L.R. 22 (Sask. K.B.).

"Powers which are given to a council constituted to act as one deliberative body to the end that the members may assist each other by their united wisdom and experience cannot even by vote be delegated to the mayor alone": per Dennistoun J.A. in Re By-law No. 92, *Winnipeg Beach (Town) By-Law No. 92, Re*, [1919] 3 W.W.R. 696 at p. 699, 30 Man. R. 192, 50 D.L.R. 712 (Man. C.A.). See also *Municipal Parking Corp. v. Toronto (City)* (2009), 2009 CarswellOnt 7282, 314 D.L.R. (4th) 642, 66 M.P.L.R. (4th) 76 (Ont. S.C.J.), in which the Court upheld the City's only by-law, allowing the Municipal Parking Corporation to enforce parking violations on private parking lots where such lots had been licensed. The Court rejected the Municipal Parking Corporation's argument that the City Council had not considered relevant policy matters in enacting its by-law. It is not for the Court to usurp the legislative function of the municipality or to challenge policy decisions of council.

It is for a utility commission and not its staff to exercise the discretion about what it is a "reasonable" deposit and this cannot be delegated to non-elected officials: *Clark v. Peterborough Utilities Comm.* (1995), 24 O.R. (3d) 7 (Ont. Gen. Div.).

(b) *Grande Prairie (City) v. Orr* (1989), 94 A.R. 30 (Alta. Q.B.).