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| COURT FILE NUMBER | 2501 01001 |
| COURT | 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 | **LEGAL BRIEF OF THE RESPONDENT FOR THE SPECIAL CHAMBERS HEARING SCHEDULED FOR APRIL 15, 2025** |

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## INTRODUCTION

1. On August 20, 2024, the Council of the Town of Canmore (the "**Town**") passed the Division of Class 1 Property Bylaw #2024-19 (the **"Sub-class Bylaw**"), which created several new assessment sub-classes under the "residential" assessment class. This included creating a new "Primary Residential" sub-class which will allow the Town to set a different tax rate for properties that are used as primary residences during the assessment year. The Town's authority to pass this bylaw is found in section 297(2) of the *Municipal Government Act* (the "***MGA***"),[1] which allows Council to divide the "Residential" assessment class into sub-classes "on any basis it considers appropriate."

2. Despite this broad grant of authority, the Applicants submit that the Town exceeded its jurisdiction in passing the Sub-class Bylaw. The Applicants claim that the Sub-class Bylaw improperly discriminates between different properties based on the characteristics of the owner of the property, instead of the characteristics of the property itself. They also claim that the bylaw has an improper prejudicial retrospective effect for the 2025 taxation year, that it improperly delegates the assessor's responsibilities to the Town's Chief Administrative Officer ("**CAO**"), and that certain provisions are void for vagueness and uncertainty.

3. While the Applicants correctly summarize the law regarding the reasonableness standard of review, their approach is, effectively, a correctness review characterized as reasonableness review. The Supreme Court of Canada and the Alberta Court of Appeal have recently confirmed that municipal councils are given broad flexibility under the *MGA* to pass bylaws that respond to new and pressing municipal issues, and the Court must show deference to Council's bylaw-making authority, including on questions of *vires*.

4. The Applicants' approach interprets the *MGA* in a narrow and restrictive fashion that is inconsistent with the modern method of statutory interpretation, and with the broad delegation of authority granted to the Town under the *MGA*. The Sub-class Bylaw was passed to address pressing municipal objectives that have been studied in a careful and considered fashion by Council over the last number of years. A broad, purposive and

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[1] *Municipal Government Act,* RSA 2000, c M-26 [*MGA*] **[Respondent's Volume of Legislation ("RVOL") Tab 1]**.

contextual interpretation of the *MGA* clearly demonstrates that the Sub-class Bylaw was within Council's jurisdiction to pass, especially considering the deferential standard of review which applies.

5. The Town submits that the application for judicial review should be dismissed, with costs to the Town.

## BACKGROUND

6. The Sub-class Bylaw represents the culmination of a significant amount of work undertaken by the Town's Council and Administration over the last three years to investigate options to deal with housing affordability and livability issues in Canmore. This was identified as one of Council's core priorities shortly after the 2021 municipal election, and the Sub-class Bylaw represents one of several policies that Council has implemented to address these pressing municipal issues.

7. The Record of Proceedings outlines the various decisions made and reports considered by Council which led to the enactment of the Sub-class Bylaw. The following is a high-level summary of key documents in the Record of Proceedings which demonstrate that the Sub-class Bylaw was passed to further a valid municipal purpose, and after careful and thoughtful consideration.

### A. Council's 2023-2026 Strategic Plan

8. The current Council was elected in the Fall of 2021. In June 2022, Council approved its 2023-2026 Strategic Plan, which would guide Council's and Administration's legislative and policy priorities over the next four years (the "**Strategic Plan**").[2]

9. The Strategic Plan approved by Council identified three equally important policy goals: Livability, Environment, and Relationships.[3] Under the "Livability" goal, Council identified the following desired outcomes, among others:

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[2] Town of Canmore Agenda, June 7, 2022, item F(1) **[Record of Proceedings ("ROP") at 016]**; Town of Canmore Minutes, June 7, 2022, item H(1) **[ROP at 032].**

[3] Town of Canmore 2023-2026 Strategic Plan at page 3 **[ROP at 024].**

- *Municipal initiatives and services are designed to increase affordability*

  *…*

- *Municipal programs, facilities, and services help to attract and retain families and support community diversity.*[4]

10. Further, the Strategic Plan highlighted that:

> *The provision of affordable and accessible services is vital to our community. This includes a commitment to a range of underserved housing options, a focus on increasing affordable and convenient options to encourage more trips by fare-free transit, foot, or bicycle, and support of meaningful employment opportunities so our residents can flourish.*[5]

11. Accordingly, the Strategic Plan demonstrates that one of Council's central policy goals for its term was to increase housing affordability and create policies and programs that attract and retain families to build stronger communities. The Sub-class Bylaw represents one of several policy initiatives which was designed to help achieve this overarching policy goal.

### B. The Housing Accelerator Fund Action Plan

12. In June 2023, Council approved a Housing Accelerator Fund Action Plan which highlighted some of the acute challenges the Town is facing with housing affordability and attracting full-time residents (the "**Action Plan**").[6]

13. The Action Plan highlighted statistics which underscored some of the acute housing challenges Canmore was facing:

- *A growing proportion of non-owner-occupied dwellings – substantially higher than provincial average. Statistics Canada data indicates 8% of homes in Alberta are non-owner occupied compared to 26% of homes in Canmore being non-owner occupied.*

- *An increased proportion of households renting versus owning from 29% in 2011 to 34% in 2021.*

- *An increased proportion of housholds spending more than 30% of income on shelter costs.*

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[4] Town of Canmore 2023-2026 Strategic Plan at page 4 **[ROP at 025].**
[5] *Ibid*.
[6] Town of Canmore Agenda, June 6, 2023, item H(1) **[ROP at 038]**; Town of Canmore Minutes, June 6, 2023, item H(1) **[ROP at 092].**

- *Monthly shelter costs have increased by 65% since 2006 and are 37% higher than the Alberta average. Shelter costs for owners include mortgage payments, property tax, and utilities and for renters include rent and utilities.*

- *Average property values have increased by 80% since 2006 and are twice as high as the Alberta average.*[7]

14. The Action Plan identified several recommended policy initiatives to help address the Town's housing affordability and livability issues. One of those recommended policy initiatives was to "investigate tax structures to incentivize full-time / long-term occupancy of residential units":

> *Canmore has some of the highest housing costs in Canada. Increasing property values are contributing to rental housing demand as fewer full-time households can afford to purchase a home and turn to the rental market. Empty homes and homes that are infrequently occupied further contribute to the housing crisis by removing market opportunities for local residents. Incentives to occupy housing units long-term rather than keep them vacant can help with our housing crisis directly, by encouraging full-time occupancy. Administration is recommending that property tax structures that would create a surcharge for vacant or underoccupied properties should be investigated. Such a program would support provision of housing as it is recommended that additional taxes levied on those who choose to keep their homes vacant or underoccupied would be directed to the provision of affordable/attainable housing for long-term occupancy. This approach could include incentivizing the development of vacant lots/land.*[8]

15. In response to this specific policy proposal, Council unanimously approved a resolution which directed Administration to return to Council with a report on recommendations for property tax policy options to "incentivize purpose-built rentals and full-time and long-term occupancy of residential units."[9]

### C. The Livability Task Force

16. On September 5, 2023, Council approved establishing a "Livability Tax Policy Task Force" to investigate different tax policy options to address housing affordability issues.[10] The Task Force's mandate included investigating and reporting on options for tax

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[7] Housing Accelerator Fund Action Plan at page 3 **[ROP at 041].**
[8] Housing Accelerator Fund Action Plan at page 6 **[ROP at 044]**.
[9] Town of Canmore Council Meeting Minutes, June 6, 2023, item H(1) **[ROP at 092].**
[10] Town of Canmore Agenda, September 5, 2023, item H(1) **[ROP at 102];** Town of Canmore Meeting Minutes, September 5, 2023, item H(1) **[ROP at 113].**

policies to incentivize long-term occupancy of residential units in Canmore.[11] Town Council approved the terms of reference for the Livability Tax Policy Task Force with minor amendments.[12]

17. On September 19, 2023, Town Council voted to rename the Livability Tax Policy Task Force to the "Livability Task Force."[13]

18. The membership of the Livability Task Force included representation from a broad array of interested parties in the community, including:

(1) three members of Town Council;

(2) one representative from Tourism Canmore Kananaskis;

(3) one representative from a local developer of tourist/visitor properties;

(4) one representative from the Canmore real estate industry;

(5) one representative from a Canmore rental/residential property management company; and

(6) one representative from the Canmore Community Housing Corporation.[14]

19. The Livability Task Force met four times in October and November 2023.[15] To support its mandate, the task force retained the services of Ben Brunnen at Verum Consulting.[16]

20. At a meeting of Town Council on January 9, 2024, the Livability Task Force presented Town Council with its report on tax policy options to incentivize full-time/long-term occupancy of residential units (the "**Report**").[17] The Report recommended imposing

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[11] Request for Decision for Meeting of Town Council on September 5, 2023 **[ROP at 106–107]**.
[12] Minutes of Regular Meeting of Town Council on September 5, 2023 **[ROP at 113]**.
[13] Minutes of Special Meeting of Town Council on September 19, 2023, item F(1) **[ROP at 119]**.
[14] Request for Decision for Meeting of Town Council on September 5, 2023 **[ROP at 107]**; Minutes of Regular Meeting of Town Council on September 5, 2023 **[ROP at 113]**; Minutes of Regular Meeting of Town Council on September 19, 2023 **[ROP at 119]**; Request for Decision for Meeting of Town Council on December 5, 2023 **[ROP at 147]**.
[15] Request for Decision for Meeting of Town Council on December 5, 2023 **[ROP at 148]**; Request for Decision for Meeting of Town Council on January 9, 2024 **[ROP at 256]**.
[16] Request for Decision for Meeting of Town Council on December 5, 2023 **[ROP at 130, 144]**.
[17] Request for Decision for Meeting of Town Council on December 5, 2023 **[ROP at 125–126, 135–137, 144, 176–187, 224–232]**.

a higher tax rate on vacant or underoccupied residential properties. The key features of this plan involved:

- Implementing a new “primary residence rebate” program by creating and administering a new “primary residence” sub-class for residential properties;
- Assigning residential properties to the “primary residence” sub-class if the owner and/or at least one occupant resides in a dwelling unit on the property for a longer period of time in a calendar year than any other place;
- Imposing meaningfully higher taxes for residential properties that do not qualify for the “primary residence” sub-class;
- Requiring property owners to elect to be classified in the “primary residence” sub-class annually to exempt them from higher taxes on the default “residential” sub-class; and
- Using additional tax revenues to increase supply of non-market housing, fund affordability programs in the community, incentivise development of accessory buildings or dwelling units, incentivise purpose-built rental development, etc.[18]

21. To inform its recommendations, the Livability Task Force considered efforts to impose higher levels of taxation on vacant and underoccupied residential units in the City of Vancouver, the City of Toronto, and the Province of British Columbia.[19] According to the Report, vacant properties in Vancouver fell significantly after the imposition of an annual vacancy tax.[20]

22. On January 9, 2024, Town Council accepted the Report’s recommendations as presented and directed administration to develop a plan to implement them.[21] On May 7, 2024, it approved an additional $550,000 in funding to implement initiatives aimed at increasing housing affordability.[22]

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[18] Request for Decision for Meeting of Town Council on December 5, 2023 **[ROP at 126, 136–137, 185–186]**.
[19] Request for Decision for Meeting of Town Council on December 5, 2023 **[ROP at 125, 179, 230, 232]**.
[20] Request for Decision for Meeting of Town Council on December 5, 2023 **[ROP at 179]**.
[21] Minutes of Regular Meeting of Town Council on January 9, 2024 **[ROP at 277]**.
[22] Minutes of Regular Meeting of Town Council on May 7, 2024 **[ROP at 310]**.

## D. The Assessment Sub-class Policy Option

23. To implement the Report's recommendations, the Town engaged its municipal assessors and its Finance, Planning and Development, Economic Development, Municipal Enforcement, and Information Technology, and Communications departments.[23] Council determined that the preferred method of effecting higher taxes on vacant or underused residential properties was to create a new assessment sub-class for residential properties that serve as the primary residence of their owners or occupants.[24]

24. For context, section 297(1) of the *MGA* sets out four main assessment classes for property subject to municipal taxation:

- Class 1 – residential;
- Class 2 – non-residential;
- Class 3 – farm land; and
- Class 4 – machinery and equipment.

25. In relation to Class 1, section 297(2) provides that "[a] council may by bylaw divide class 1 into sub-classes on any basis it considers appropriate." Where Class 1 property is divided into sub-classes, section 354(3) of the *MGA* permits a council to set different tax rates for each sub-class in its annual property tax bylaw.[25]

26. To help incentivize full-time and long-term occupancy of residential property, the Town proposed creating a new "Primary Residential" assessment sub-class for Class 1 property. From there, Town Council could impose higher tax rates on properties in the default "Residential" sub-class and lower tax rates on properties in the "Primary Residential" sub-class, incentivizing full-time/long-term occupancy in Canmore.

27. In addition to the "assessment sub-class" policy option, the Town also considered some other taxation-related options to achieve the same objectives. Ultimately, the

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[23] Request for Decision for Meeting of Town Council on August 20, 2024 **[ROP at 340]**.
[24] Briefing for Committee of the Whole on June 18, 2024 **[ROP at 322–325]**; Request for Decision for Meeting of Town Council on August 20, 2024 **[ROP at 334–340]**.
[25] *MGA*, s 297 **[RVOL Tab 1, Page 021]**.

Town determined that its "assessment sub-class" policy option was superior to the other options considered, for the following reasons:

- The assessment sub-class option would impose fewer administrative burdens, as it would allow the Town to issue tax notices with the final taxes owing without requiring Town Council to pass an annual rebate bylaw and issue amended tax notices;
- The assessment sub-class option would be less likely to cause confusion over taxes owing, as it would not require Town Council to retroactively refund taxes;
- Section 297(2) of the *MGA* provides Town Council with broad discretion to create assessment sub-classes for residential properties; and
- The assessment sub-class option would use the existing assessment review process to hear appeals and would not require the creation of a new appeal process.[26]

28. Accordingly, Town administration indicated that it would develop and present Town Council with a rewritten assessment sub-class bylaw by the fall of 2024.[27]

### E. The Sub-class Bylaw

29. Town Administration presented the Sub-class Bylaw to Town Council on August 20, 2024.[28] It received all three readings and came into force that same day.[29]

30. On the date it was passed, the Sub-class Bylaw divided class 1 property into four sub-classes: (1) "Residential"; (2) "Tourist Home"; (3) "Primary Residential"; and (4) "Residential Vacant Serviced Land."[30] Under section 4(a) of the Sub-class Bylaw, a residential property was to be placed in the "Primary Residential" sub-class for a given

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[26] Briefing for Committee of the Whole on June 18, 2024 **[ROP at 323–324]**; Request for Decision for Meeting of Town Council on August 20, 2024 **[ROP at 337]**.
[27] Briefing for Committee of the Whole on June 18, 2024 **[ROP at 323–324]**.
[28] Request for Decision for Meeting of Town Council on August 20, 2024 **[ROP at 334–345]**.
[29] Request for Decision for Meeting of Town Council on August 20, 2024 **[ROP at 345]**; Minutes of Regular Meeting of Town Council on August 20, 2024 **[ROP at 350]**; *MGA* s 189 **[RVOL Tab 1, Page 009]**.
[30] Request for Decision for Meeting of Town Council on August 20, 2024 **[ROP at 342–343]**.

taxation year if, during the previous calendar year, at least one dwelling unit on the property was occupied as the primary residence of a registered owner or their lessee(s).

31. In addition, section 5 of the Sub-class Bylaw lists several situations in which a residential property could be placed in the "Primary Residential" sub-class for a given taxation year despite it *not* being occupied as a primary residence during the previous calendar year. Under section 5, a residential property could be placed in the "Primary Residential" sub-class for a given taxation year if, during the previous calendar year:

- The owner died, was hospitalized, or was placed in a long-term care facility;
- The property was newly constructed, normal occupation was not possible, and the property would be used as a primary residence once completed;
- The property was impacted by a catastrophic event, was undergoing permitted repairs or renovations, or was subject to a written order that precluded occupancy; or
- The property was sold to an arm's length transferee and the purchaser or a tenant immediately occupied the property with the intention that it be their primary residence.

In such situations, imposing the higher tax rate for properties in the default "Residential" sub-class would not further the policy objectives of the Sub-class Bylaw (i.e., incentivizing owners to either live in their residences full-time/long-term or lease those properties to someone who will).

32. To determine whether residential property should be placed in the "Primary Residential" sub-class, rather than the default "Residential" sub-class, the Sub-class Bylaw largely relies on a system of self-reporting. Under sections 4(a) and 5 of the Sub-class Bylaw, a property could be placed in the "Primary Residential" sub-class in a given taxation year if, by December 31 of the previous calendar year, at least one registered owner declared that the use of the property fit the characteristics described in those sections.

33. That said, the decision of which sub-class to assign a residential property to did not depend solely on the content of any declaration by a registered owner. Section 9 of

the Sub-class Bylaw provided that if a property did not meet the criteria for inclusion in the "Primary Residential" sub-class in a given taxation year, it could be assigned to the "Residential" sub-class notwithstanding the owner's declaration.

34. There were also some situations in which a residential property could be included in the "Primary Residential" sub-class without the need for a declaration by a registered owner. Sections 4(b) to (e) of the Sub-class Bylaw provided that, for a given taxation year, properties would be placed in the "Primary Residential" sub-class if they were classified as apartment buildings, employee housing units, or individually-titled residential parking stalls or storage units in the previous calendar year.[31]

35. Sections 6 to 8 of the Sub-class Bylaw aim to ensure the accuracy of any declaration submitted to include a property in the "Primary Residential" sub-class. Section 8 empowers the Town's CAO to inspect a property to ensure the accuracy of any such declaration. If the CAO determines that a declaration is false or misleading, sections 6 and 7 provide that the declarant could be charged with an offence and made liable to pay a fine of up to $10,000.00.

36. Since the Sub-class Bylaw was passed, Town Council has amended it twice to add clarity and ensure greater fairness in distinguishing between different types of residential properties. On November 5, 2024, Town Council voted to amend the Sub-class Bylaw to add a "Residential Vacant Unserviced Land" sub-class.[32] The purpose of the addition was to ensure that vacant unserviced land — which cannot be developed — would not be subject to the higher tax rate for properties in the "Residential" sub-class.[33]

37. On November 19, 2024, Town Council added an additional paragraph to section 5 of the Sub-class Bylaw to address the situation where it was a *developer* who owned and constructed a residential property during the previous taxation year.[34]

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[31] Request for Decision for Meeting of Town Council on August 20, 2024 **[ROP at 336]**.
[32] Request for Decision for Meeting of Town Council on August 20, 2024 **[ROP at 356–367]**; Minutes of Regular Meeting of Town Council on November 5, 2024 **[ROP at 404–405]**.
[33] Request for Decision for Meeting of Town Council on August 20, 2024 **[ROP at 359]**.
[34] Request for Decision for Meeting of Town Council on November 19, 2024 **[ROP at 409–417]**; Minutes of Regular Meeting of Town Council on November 19, 2024 **[ROP at 419]**.

## F. The Livability Tax Program

38. The Sub-class Bylaw was part of a broader strategy — called the "Livability Tax Program" — to enhance housing affordability in Canmore. Under its amended Property Tax Policy FIN-005, Town Council confirmed that additional tax revenue would be collected from higher tax rates on properties in the "Residential" and "Residential Vacant Serviced Land" sub-classes.[35] That additional revenue would go into the Town's "Livability Reserve." According to Town Council's amended Reserves Policy FIN-007,[36] funds in the Livability Reserve could be used to:

- Increase purpose-built rental development;
- Increase non-market housing, including the purchase of related land or property;
- Support infrastructure for non-market housing;
- Fund community affordability programs;
- Incentivize additional accessory buildings or dwelling units;
- Provide grants to non-profit housing providers who operate or deliver affordable housing to low-income households;
- Fund the cost of administering the program and implementing the initiatives; and/or
- Preserve existing affordable rental housing.[37]

For example, Town Council could direct that funds from the Livability Reserve be used to purchase affordable properties that are at risk of being converted to market housing.

39. As the Record of Proceedings demonstrates, the Sub-class Bylaw represents the culmination of a significant amount of work undertaken by Council and Administration to identify policy options to address a pressing municipal objective – dealing with housing affordability and long-term occupancy issues in the Town. At a high level, the Legislature has conferred broad jurisdiction on municipal councils to pass bylaws to respond to

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[35] Request for Decision for Meeting of Town Council on November 5, 2024 **[ROP at 356–360, 368–373]**; Minutes of Regular Meeting of Town Council on November 5, 2024 **[ROP at 405]**.
[36] Request for Decision for Meeting of Town Council on November 5, 2024 **[ROP at 374–397]**; Minutes of Regular Meeting of Town Council on November 5, 2024 **[ROP at 406]**.
[37] Request for Decision for Meeting of Town Council on November 5, 2024 **[ROP at 375–376, 385, 397]**.

present and future issues in their municipalities,[38] and the Sub-class Bylaw is an excellent example of Council using the tools available to it under the *MGA* to craft creative and thoughtful policy solutions to address pressing municipal issues.

## ISSUES

40. The Applicants allege that the Sub-class Bylaw should be quashed because it:

a) is improperly discriminatory;

b) operates retrospectively;

c) improperly delegates the assessor's authority to the Town's CAO; and

d) is void for vagueness and uncertainty.

## STANDARD OF REVIEW

41. Overall, the Town broadly agrees with the description of the standard of review which applies to this application for judicial review found at pages 13 to 15 of the Applicants' legal brief. The Town agrees that the reasonableness standard of review applies to this application for judicial review, and questions regarding the *vires* of municipal bylaws are to be assessed on a deferential standard. That said, the Town submits that the Applicants' approach in applying the reasonableness standard of review is flawed, and in fact represents a correctness review characterized as reasonableness review.

42. The following section summarizes the law regarding the standard of review which applies to judicial reviews of municipal bylaws enacted under the *MGA*, and it specifically highlights how recent decisions from the Supreme Court of Canada, and the Alberta Court of Appeal, have consistently confirmed that a high level of deference is to be shown to municipalities when the *vires* of a bylaw is reviewed by courts.

### A. Municipal bylaws are reviewed on a reasonableness standard

43. In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, the Supreme Court of Canada held that reasonableness is the presumptive standard for reviewing the

[38] *MGA*, s 9 **[RVOL Tab 1, Page 007]**.

exercise of delegated authority.[39] The reasonableness standard presumptively applies even when a court is reviewing the *vires* of subordinate legislation such as regulations and municipal bylaws.[40]

44. The presumption of reasonableness review will be rebutted where the Legislature has indicated that it intends for a different standard of review to apply or where the rule of law requires that the court apply a correctness standard.[41] Neither exception to the presumption of reasonableness review applies here (which is conceded by the Applicants).

45. Some Alberta courts have interpreted section 539 of the *MGA* as prescribing the standard to be applied in a challenge to a municipal bylaw or resolution.[42] Section 539 of the *MGA* provides that "[n]o bylaw or resolution may be challenged on the ground that it is unreasonable." However, it is now settled that section 539 prevents challenges to a bylaw on the *ground* of unreasonableness and does not articulate the standard of review.[43]

### B. Reasonableness review in municipal bylaw challenges

46. Under the *Vavilov* framework, "[r]eviewing 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."[44] Importantly, subordinate legislation benefits from a presumption of validity: the party challenging the

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[39] 2019 SCC 65 at para 16 [*Vavilov*] **[Respondent's Volume of Authorities ("RVOA") Tab 1, Page 006]**.
[40] *Auer v Auer*, 2024 SCC 36 at para 23 [*Auer*] **[RVOA Tab 2, Page 039]**; *TransAlta Generation Partnership v Alberta*, 2024 SCC 37 at para 14 [*TransAlta*] **[RVOA Tab 3, Page 076]**; *Westcan Recyclers Ltd v Calgary (City)*, 2025 ABCA 67 at para 59 [*Westcan*] **[RVOA Tab 4, Page 100]**.
[41] *Vavilov* at para 17 **[RVOA Tab 1, Page 006]**.
[42] See e.g. *Kozak v Lacombe (County)*, 2017 ABCA 351 at para 19 **[RVOA Tab 5, Page 107]**; *Brodylo Farms Ltd v Calgary (City)*, 2019 ABQB 123 at para 47 **[RVOA Tab 6, Page 133]**; *Kissel v Rocky View (County)*, 2020 ABQB 406 at paras 43–44 **[RVOA Tab 7, Page 140]**.
[43] *Koebisch v Rocky View (County)*, 2021 ABCA 265 at para 23 [*Koebisch*] **[RVOA Tab 7, Page 150]**; *Westcan* at para 59 **[RVOA Tab 4, Page 100]**; *Terrigno v Calgary (City)*, 2021 ABQB 41 at paras 33–49 [*Terrigno*] **[RVOA Tab 9, Pages 161-165]**.
[44] *Auer* at para 59 **[RVOA Tab 2, Page 056]**, citing *West Fraser Mills Ltd v British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 at para 23 [*West Fraser Mills*] **[RVOA Tab 10, Page 175]**.

subordinate legislation has the burden of showing that it is not reasonably within the scope of the delegate's authority.[45]

47. The reasonableness of a decision is coloured by its surrounding context. The context "constrains what will be reasonable for an administrative decision maker to decide in a given case."[46] The governing statutory scheme is usually "the most salient aspect of the legal context relevant to a particular decision."[47] As the Supreme Court of Canada explained in *Auer*:

> *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).*[48]

48. Unless the enabling statute says otherwise, delegates must also interpret their authority in a manner consistent with other legislation and applicable common law principles.[49] This includes the modern principle of statutory interpretation, which requires the words of a statute 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."[50]

49. Where the *vires* of a municipal bylaw is subject to challenge, three main contextual factors must inform the court's approach to reasonableness review.

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[45] *Vavilov* at para 100 **[RVOA Tab 1, Page 017]**; *Auer* at para 50 **[RVOA Tab 2, Page 052]**.
[46] *Vavilov* at para 89 **[RVOA Tab 1, Page 012]**; *Coldwater First Nation v Canada (Attorney General)*, 2020 FCA 34 at para 30 **[RVOA Tab 11, Page 179]**.
[47] *Auer* at para 61 **[RVOA Tab 2, Page 056]**; *Vavilov* at para 108 **[RVOA Tab 1, Pages 020-021]**.
[48] *Auer* at para 62 [emphasis added] **[VOA Tab 2, Pages 056-057]**.
[49] *Ibid* at para 63 **[RVOA Tab 2, Page 057]**; *Vavilov* at para 111 **[RVOA Tab 1, Pages 022-023]**.
[50] *Auer* at para 63 **[VOA Tab 2, Page 057]**; *Vavilov* at paras 118, 120–121 **[RVOA Tab 1, Pages 025-026]**.

50. First, judicial review of municipal bylaws must reflect the broad and purposive approach that courts have embraced when interpreting municipal powers. In *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, Bastarache J highlighted that:

> *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. … 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.*[51]

Alberta's *MGA* follows this modern method of drafting municipal legislation.[52] According to section 9 of the *MGA*:

> ***Guides to interpreting power to pass bylaws***
>
> ***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.*

51. This is further supported by section 10 of the *Interpretation Act*, which confirms that enactments generally shall be given a large and liberal construction and interpretation to best ensure the attainment of their objects:

> *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.*[53]

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[51] 2004 SCC 19 at para 6 [*United Taxi*] [emphasis added] **[RVOA Tab 12, Page 182]**.
[52] *Ibid* at para 7 **[RVOA Tab 12, Page 182]**.
[53] *Interpretation Act*, RSA 2000, c I-8, s 10.

52. The breadth of the powers that legislatures have conferred on modern municipalities has resulted in a flexible form of reasonableness review for municipal bylaws. In *Catalyst Paper Corp. v. North Cowichan (District)*, McLachlin CJ explained that:

> *[19] The case law suggests that review of municipal bylaws must reflect the broad discretion provincial legislators have traditionally accorded to municipalities engaged in delegated legislation. Municipal councillors passing bylaws fulfill a task that affects their community as a whole and is legislative rather than adjudicative in nature. Bylaws are not quasi-judicial decisions. Rather, they involve an array of social, economic, political and other non-legal considerations. … In this context, reasonableness means courts must respect the responsibility of elected representatives to serve the people who elected them and to whom they are ultimately accountable.*
>
> *[20] The decided cases support the view of the trial judge that, historically, courts have refused to overturn municipal bylaws unless they were found to be "aberrant", "overwhelming", or if "no reasonable body" could have adopted them. …*
>
> ***. . .***
>
> *[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. …*
>
> *[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.*[54]

*Vavilov* has not ousted this flexible approach to reviewing exercises of municipal powers.[55]

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[54] 2012 SCC 2 at paras 19–20 [*Catalyst Paper*] [emphasis added] **[RVOA Tab 13, Pages 193-194]**. See also *West Fraser Mills* at para 9 **[RVOA Tab 10, Page 173]**: "… this Court has adopted a flexible standard of reasonableness in situations where the enabling statute grants a large discretion to the subordinate body to craft appropriate regulations."

[55] *Koebisch* at paras 18–20 **[RVOA Tab 8, Page 149-150]**; *Terrigno* at para 62 **[RVOA Tab 9, Page 169]**; *Canadian Natural Resources Limited v Fishing Lake Métis Settlement*, 2022 ABQB 53 at para 140 **[RVOA Tab 202, Page 204]**.

53. Second, reasonableness review is not an examination of council's policy choices. In *Auer*, Côté J affirmed that assessing the *vires* of subordinate legislation "does not involve assessing the policy merits of the regulations to determine whether they are 'necessary, wise, or effective in practice'."[56] This is wholly consistent with section 539 of the *MGA*, which confirms that "[n]o bylaw … may be challenged on the ground that it is unreasonable." Hence, as the Court of Appeal recently explained in *Howse v. Calgary (City)*, "[w]hether a bylaw is wise is for a municipal council to decide, not the courts."[57] It is not the role of the Court to weigh the policy choices or social, economic, or political factors that were before a municipal council.[58]

54. Finally, municipal bylaws are usually unaccompanied by any formal reasons. *Vavilov* offers the following guidance for conducting reasonableness review in this context:

> *Admittedly, applying an approach to judicial review that prioritizes the decision maker's justification for its decisions can be challenging in cases in which formal reasons have not been provided. … However, even in such circumstances, the reasoning process that underlies the decision will not usually be opaque. It is important to recall that a reviewing court must look to the record as a whole to understand the decision, and that in doing so, the court will often uncover a clear rationale for the decision: Baker, at para. 44. For example, as McLachlin C.J. noted in Catalyst, "[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. In that case, not only were "the reasons [in the sense of rationale] for the bylaw . . . clear to everyone", they had also been laid out in a five-year plan: para. 33. Conversely, even without reasons, 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.*[59]

55. In *Westcan*, which was released on February 27, 2025, the Alberta Court of Appeal succinctly summarized the standard of review which applies when the Court is reviewing the *vires* of a municipal bylaw passed under the *MGA*:

> *… After the chambers decision was issued, the Supreme Court released its decision in Auer v Auer, 2024 SCC 36 [Auer] which establishes that the*

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[56] *Auer* at paras 29, 32, **[RVOA Tab 2, Pages 042, 044]** citing *Katz Group Canada Inc v Ontario (Health and Long-Term Care)*, 2013 SCC 64 at para 27 [*Katz Group*] **[RVOA Tab 15, Page 208]**.
[57] 2023 ABCA 379 [*Howse*] at para 20 **[RVOA Tab 16, Page 212]**.
[58] *Koebisch* at para 42 **[RVOA Tab 8, Page 153]**.
[59] *Vavilov* at para 137 **[RVOA Tab 1, Pages 033-034]**.

> *vires of subordinate legislation must be assessed on a reasonableness standard. The assessment must be informed by subordinate legislation's "presumption of validity" and by considering whether the subordinate legislation is consistent "with specific provisions of the enabling statute and with its overriding purpose or object", interpreted using a broad and purposive approach. Reasonableness review does not consider the policy merits of the impugned subordinate legislation; it does not consider whether it is "necessary, wise, or effective in practice": Auer at paras 3, 23, 27, 32-36. In this sense, the "reasonableness" review in Auer accords with the statutory direction provided by section 539 of the MGA, which specifically precludes a by-law being "challenged on the ground that it is unreasonable".*[60]

56. This framework applies the Supreme Court of Canada's guidance in *Catalyst Paper, Vavilov, TransAlta* and *Auer*, and confirms that, generally speaking, municipalities are afforded a high level of discretion to enact bylaws for proper municipal purposes.

## ARGUMENT

### A. The Sub-class Bylaw is not improperly discriminatory

57. The Applicants argue that the Sub-class Bylaw improperly discriminates between different sub-classes of residential property on the basis of the characteristics of the owner, instead of the characteristics of the property. The Applicants claim this is improper, and that any sub-class passed under section 297(2) can only draw distinctions based on the condition of the property itself.

58. The Applicants' interpretations of section 297(2) of the *MGA*, and of the Sub-class Bylaw itself, are not in accordance with the modern method of statutory interpretation, which calls for statutes to be interpreted broadly, purposively, and contextually. Contrary to the Applicants' assertion otherwise, the Sub-class Bylaw does not draw a distinction based on the "characteristics of the owner" of the property – it draws a distinction based on the *use* of the property.

59. A broad, contextual, and purposive interpretation of both section 297(2) of the *MGA*, and the Sub-class Bylaw, confirms that the distinctions drawn in the bylaw – which are based on the *use* of the property – are well within Council's jurisdiction to enact.

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[60] *Westcan* at para 59 **[RVOA Tab 4, Page 100]**.

### a. Municipalities have broad authority to differentiate between properties for assessment purposes

60. In the municipal context, a bylaw can be said to discriminate if it treats different classes of persons or things differently. However, a bylaw will not be *ultra vires* solely because it discriminates. In *Shell Canada Products Limited v. City of Vancouver*, McLachlin J (dissenting, but not on this point), explained that municipal discrimination is concerned solely with the ambit of delegated power:

> *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.*[61]

61. The *MGA* grants municipalities broad authority to discriminate between properties for valid municipal purposes. Section 297(2) of the MGA expressly empowers Council to divide Class 1 – residential property into sub-classes "*on any basis it considers appropriate*" (emphasis added). The entire purpose of an assessment class or sub-class is to enable municipalities to set different tax rates for those classes; accordingly, section 297(2) confers broad jurisdiction on Council to "discriminate" between different sub-classes of residential property, and to set different tax rates for those sub-classes.

62. In drafting section 297(2) in this fashion, the Legislature could not have been any clearer that it intended for municipalities to have broad authority to create residential sub-classes based on *any distinction they deem appropriate*. This would, of course, be subject to the requirement that sub-class bylaws be passed to further a valid municipal objective, and any constitutional restrictions. Notably, the Applicants have not challenged the Sub-class Bylaw on the basis that it does not further a valid municipal objective, or that it violates the Constitution.

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[61] [1994] 1 SCR 231 at 259 **[RVOA Tab 17, Page 215]**.

### b. The Sub-class Bylaw differentiates between properties based on their use, not their users

63. The Applicants claim that the Sub-class Bylaw is impermissibly discriminatory because it differentiates between properties in the "Residential" and "Primary Residential" sub-classes based on the characteristics of the owner or occupant of the property and not the characteristics of the property itself.

64. In fact, a purposive reading of the Sub-class Bylaw demonstrates that the distinction drawn is based on the *use* of the property – namely, the extent to which the property is occupied as a primary residence in the assessment year. The differentiation is intended to exclude properties that are used as secondary residences or vacation homes, and that are not otherwise being used as Tourist Homes. These distinctions are all based on what the property is being used for, and they are not dependent on the identities of the actual users of the property.

65. Indeed, the main assessment classes under section 297 distinguish between properties on the basis of "use." This is confirmed in the Province's *Guide to Property Assessment and Taxation in Alberta* which states that, for assessment classes, "[p]roperty is classified according to its *actual use*."[62] For instance, the "farm land" assessment class pertains to "land *used for* farming operations as defined in the regulations."[63] The "non-residential" assessment class pertains to "property on which industry, commerce *or another use* takes place or is permitted to take place…".[64]

66. Accordingly, the concept of drawing distinctions between different types of property on the basis of their "use" is integral to determining assessment classes under section 297 of the *MGA*. It follows that any residential sub-class bylaw passed under section 297(2) of the *MGA* which also draws distinctions on the basis of use will be well within the broad delegation of authority granted to Council under that subsection.

67. At this stage, it also bears repeating that judicial review of municipal bylaws does not involve an examination of policy merits. Hence, it is not the court's role to assess

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[62] Municipal Affairs, *Guide to Property Assessment and Taxation in Alberta* at page 15 **[RVOL Tab 8, Page 128].**
[63] *MGA*, s 297(4)(a) **[RVOL Tab 1, Page 022]**.
[64] *MGA*, s 297(4)(b) **[RVOL Tab 1, Pages 022-023]**.

whether the basis on which the Sub-class Bylaw differentiates between properties is necessary, advisable, or will actually help achieve the Town's long-term livability goals. It is enough to conclude that the manner in which the Sub-class Bylaw differentiates between properties was reasonably within the broad scope of Town Council's authority.

### c. Parts 9 and 10 of the *MGA* permit municipalities to discriminate between properties based on the use of the property or the characteristics of its owner or occupant

68. As stated, the Sub-class Bylaw does not assign properties to the "Residential" or "Primary Residential" sub-class based on the characteristics of its owner or occupant. Rather, it draws distinctions based on the use of the property.

69. That said, even if the Sub-class Bylaw did discriminate between properties based on the characteristics of their owner or occupant, it would not necessarily follow that the bylaw is *ultra vires*. The language of section 297(2) of the *MGA* is broad enough to allow for an assessment sub-class bylaw to distinguish between properties on this basis, provided it is for a valid municipal purpose and is otherwise compliant with any constitutional limits. Indeed, in several places in Parts 9 and 10 of the *MGA*, the Legislature has expressed a desire to afford differential tax treatment to properties based primarily or in part on the characteristics of the owner or occupant.

70. For example, section 362(1) of the *MGA* sets out a list of properties that are exempt from property taxation based primarily or in part on the characteristics of their owners or occupants. For instance:

a) Subsection (k) exempts property held by a religious body and used chiefly for divine service, public worship, or religious education;

b) Subsection (n)(ii) exempts property "held by a non-profit organization and used solely for community games, sports, athletics or recreation for the benefit of the general public" (provided it meets the qualifications in the regulations); and

c) Subsection (n)(iii)(B) exempts property "used for a charitable or benevolent purpose that is for the benefit of the general public, and owned by … a non-profit organization" (provided it meets the qualifications in the regulations).[65]

[65] *MGA*, ss 362(1)(k), (n)(ii), (n)(iii)(B) **[RVOL Tab 1, Pages 070, 071]**.

71. As a further example, section 9(1)(b) of the *Community Organization Property Tax Exemption Regulation* confirms that a property seeking an exemption under section 362(1)(n)(ii) will not qualify for an exemption if the property is:

> *… used solely for community games, sports, athletics or recreation, if, for more than 40% of the time that the property is in use, the majority of those participating in the activities held on the property are 18 years of age or older.*[66]

72. These provisions highlight that, in the Legislature's view, it is appropriate to differentiate between properties for assessment and taxation purposes at least in part based on the characteristics of who is using the property.[67]

73. Notably, the property tax exemption provisions cited above also make distinctions based on the *use* of the property, which is the same type of distinction being made in the Sub-class Bylaw, and in section 297 more generally with respect to the four main assessment classes. This further underscores that distinctions based on the use of the property are an integral part of Alberta's property tax and assessment regime.

74. Making distinctions based on the "use" of the property is not limited to the exemption provisions in Part 10, Division 2 of the *MGA*, or *COPTER*. For example, the Legislature has also given municipalities the jurisdiction to create sub-classes under the "non-residential" assessment class, but that jurisdiction is much narrower than the jurisdiction given under section 297(2) for the residential class. Despite the narrower delegation of authority to create sub-classes under the "non-residential" class, one of the prescribed sub-classes makes distinctions based on the use of the property, and the characteristics of the user.

75. Section 297(3.1)(b) prescribes "small business property" as a sub-class that a municipality may enact by bylaw under the "non-residential" assessment class.[68] A property will qualify as "small business property" for a given taxation year if it is owned

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[66] Alta Reg 281/1998, s 9(1)(b) [*COPTER*] **[RVOL Tab 2, Page 085]**.
[67] Alberta, Municipal Affairs, "Property Tax Exemptions in Alberta: A Guide" (Edmonton: Municipal Affairs, 1 January 2005) at 3, online: <link> **[RVOA Tab 5, Page 094]**.
[68] *MGA*, s 297(3.1)(b). Note that, at the time the Sub-class Bylaw was passed, provisions allowing for the creation of the "small business" sub-class were found in the *Matters Relating to Assessment Sub-classes Regulation*, Alta Reg 202/2017 **[RVOL Tab 4, Pages 91-92]**. That regulation was repealed effective January 1, 2025, and the "small business" sub-class provisions were moved to section 297(3.1)(b) of the *MGA* effective that same date **[RVOL Tab 1, Page 021]**.

or leased by a business that had less than 50 employees on December 31 of the previous calendar year. This basis for differentiating "small business property" from other non-residential property is not based on the characteristics of the property. Instead, it reflects a policy decision to afford preferential tax treatment to small enterprises to support local economies and encourage entrepreneurship.[69]

76. The Applicants' proffered interpretation of section 297(2) is unsustainable given the existence of the "small business property" sub-class in section 297(3.1)(b). Again, the Legislature has conferred a much narrower jurisdiction on municipalities to create only certain, prescribed types of sub-classes under the "non-residential" assessment class. One of those prescribed sub-classes draws distinctions based on the characteristics of the user of the property, and the use of the property. Despite the much broader scope of the Legislature's delegation of authority under section 297(2), the Applicants suggest that it should be interpreted in a fashion that would exclude the types of distinctions being drawn under section 297(3.1)(b). This interpretation does not accord with the modern method of statutory interpretation, which requires enactments to be interpreted broadly, contextually, and purposively.

77. In sum, the Sub-class Bylaw does not differentiate between properties based on the characteristics of its owner or occupant. However, even if it did, it would not necessarily be *ultra vires* provided it serves a legitimate municipal purpose and complies with any constitutional requirements.

### B. The Sub-class Bylaw is not invalid due to retrospectivity

78. The Applicants argue that, for the 2025 taxation year, the Sub-class Bylaw imposes prejudicial consequences retrospectively because it was passed on August 20, 2024. The Applicants speculate that affected taxpayers may not have had sufficient time before the end of the 2024 calendar year to meet the use requirements in the bylaw to qualify a property for inclusion in the "Primary Residential" sub-class in 2025.

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[69] See *MGA*, s 354(3.1)(b) (provides that the tax rate set for small business property must not be greater than the tax rate set for other non-residential property) **[RVOL Tab 1, Page 061]**.

79. The Town submits that the Sub-class Bylaw does not violate the common law "presumption against retrospectivity" cited by the Applicants. First, the *MGA* gives municipalities the authority to pass sub-class bylaws that are retrospective in nature. Hence, the Sub-class Bylaw is fully consistent with the assessment and taxation scheme set out in the *MGA*. Second, the creation of a "Primary Residential" sub-class does not create any prejudicial effects which would trigger the presumption against retrospectivity. Instead, it confers a tax *benefit* on identified properties that fall under the "Primary Residential" sub-class.

### a. Retroactivity vs. retrospectivity in Canadian law

80. Canadian law distinguishes between enactments that are "retroactive" and those that are "retrospective." In *Benner v. Canada (Secretary of State)*, the Supreme Court of Canada approved the following concise definitions of these terms:

> *A retroactive statute is one that operates as of a time prior to its enactment. A retrospective statute is one that operates for the future only. It is prospective, but it imposes new results in respect of a past event. A retroactive statute operates backwards. A retrospective statute operates forwards, but it looks backwards in that it attaches new consequences for the future to an event that took place before the statute was enacted. A retroactive statute changes the law from what it was; a retrospective statute changes the law from what it otherwise would be with respect to a prior event.*[70]

81. As a general rule, municipal bylaws cannot be retroactive.[71] There is no similar statutory prohibition for municipal bylaws that are retrospective in nature. However, such bylaws are subject to a common law "presumption against retrospectivity." As applied to subordinate legislation, the presumption against retrospectivity provides that: (1) subordinate legislation is presumed to apply prospectively only; and (2) subordinate

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[70] *Benner v Canada (Secretary of State),* [1997] 1 SCR 358 1997 CanLII 376 at para 39 **[RVOA Tab 18, Page 218]**, citing Elmer A. Driedger, "Statutes: Retroactive Retrospective Reflections" (1978) 56:2 Can Bar Rev 264 at 268–69, online: <https://canlii.ca/t/smpj> **[RVOL Tab 6, Pages 100-101]**. See also *Épiciers Unis Métro-Richelieu Inc, division Éconogros v Collin*, 2004 SCC 59 at para 46 **[RVOA Tab 19, Pages 223-224]**.

[71] *MGA*, s 190(3) **[RVOL Tab 1, Page 009]**.

legislation that purports to apply retrospectively is invalid unless the legislature has expressly or impliedly provided otherwise.[72]

### b. The assessment regime in Part 9 of the *MGA* allows for assessment sub-class bylaws to be retrospective

82. The assessment regime created by Part 9 is expressly retrospective in nature. Section 302(1) of the *MGA* states that "[e]ach municipality must prepare annually, not later than February 28, an assessment roll for assessed property in the municipality." The assessment roll must show, among other things, the assessment value and assessment class(es) of each assessed property.[73] The amount of property tax to be imposed in respect of a property in a given taxation year is based on the information contained in the assessment roll.

83. Importantly, an assessment of property for a given taxation year must take into account past circumstances. Section 289(2)(a) of the *MGA* provides that each assessment must reflect "the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed." In addition, each assessment must be an estimate of the value of a property on July 1 of the year prior to the taxation year.[74] This ensures that all properties are valued based on the market conditions in effect as of the same date.[75]

84. Alberta's property assessment and taxation regime necessarily involves attaching legal consequences to past circumstances in relation to properties subject to municipal taxation. By assigning residential properties to sub-classes for a given taxation year based on the use of the property during the previous calendar year, the Sub-class Bylaw is consistent with this scheme.

85. Further, the power to make bylaws under section 297(2) of the *MGA* allows municipalities to create sub-classes that are retrospective in effect, including in situations

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[72] Ruth Sullivan, *The Construction of Statutes*, 7th ed (Markham: LexisNexis Canada, 2022) at §25.13[1] **[RVOL Tab 7, Page 111]**.
[73] *MGA* ss 303(e)–(f) **[RVOL Tab 1, Page 031]**.
[74] *Ibid*, ss 293(1), 289(2)(b) **[RVOL Tab 1, Pages 018, 015-016]**; *Matters Relating to Assessment and Taxation Regulation, 2018*, Alta Reg 203/2017, ss 1(e), 6 **[RVOL Tab 3, Pages 089-090]**.
[75] Alberta, Municipal Affairs, *Guide to Property Assessment and Taxation in Alberta* (Edmonton: Municipal Affairs, January 2018) at 12, online: <link> **[RVOL Tab 5, Page 095]**.

where doing so may cause certain properties to be subject to a higher tax rate than they otherwise would be. Contrary to the Applicants' assertion otherwise, there is no requirement in section 297(2) or elsewhere in the *MGA* for a sub-class bylaw to only be passed after affected taxpayers are notified, or to only come into effect at some later point in the future.

86. The default rule is that bylaws shall come into force "at the beginning of the day that it is passed unless otherwise provided in this or any other enactment or in the bylaw."[76] There are no special or specific rules which prescribe that a sub-class bylaw passed under section 297(2) must come into force at some future date. If the Legislature had intended to constrain the municipality's bylaw-making authority in this fashion, it would have said so.

87. For example, the Legislature did precisely that in respect of the municipality's jurisdiction to pass supplementary assessment bylaws under Part 9, Division 4 of the *MGA*. Section 313(3) confirms that "[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." The Legislature did not pass any similar restriction in respect of bylaws passed under section 297(2). Accordingly, the default rule applies, and sub-class bylaws come into force and are effective at the beginning of the day they are passed.

88. The only temporal limitation on *when* a sub-class bylaw can be passed is that it must be passed before the assessment is prepared and taxation notices are sent out to taxpayers for it to apply to that taxation year. Section 329 confirms that the municipality's tax roll must specify the "tax rate" which applies to each property, and section 334 confirms that this information must be included on the tax notices sent to ratepayers.[77] The tax rate itself is determined by the municipality's property tax bylaw, wherein the municipality has the jurisdiction to assign different tax rates to "each assessment class or sub-class referred to in section 297."[78] Accordingly, the sub-class bylaw must come into force before the municipality passes its property tax bylaw – otherwise it would not be possible to assign different tax rates to the sub-classes created in the sub-class

[76] *MGA,* s 190(1) **[RVOL Tab 1, Page 009]**.
[77] *MGA,* s 329(d), 334(1)(a) **[RVOL Tab 1, Pages 052, 055]**.
[78] *MGA,* s 353, 354(2), (3) **[RVOL Tab 1, Pages 061]**.

bylaw. Once tax notices have been sent to ratepayers, the municipality cannot amend its property tax bylaw, unless an error or omission is discovered.[79]

89. Accordingly, provided a sub-class bylaw is passed before the property tax bylaw is passed in a given taxation year, all procedural requirements will have been met for the sub-class bylaw to be effective. There is nothing in the *MGA* which would sustain an interpretation that would also require a sub-class bylaw under section 297(2) to come into force at some later date to allow ratepayers to do something to change the sub-class they may fall into. Instead, as stated above, the entire assessment regime in the *MGA* is designed to be retrospective. It follows that sub-class bylaws can (and must) also be retrospective, in that they must provide for the assignment of properties to different sub-classes based on the "characteristics and physical condition" of the property as of December 31 of the previous year.[80]

90. Similarly, there is no procedural requirement in the *MGA* for sub-class bylaws passed under section 297(2) to be passed only after affected taxpayers are given notice of them. In some cases, the Legislature has imposed notice requirements for other types of bylaws. For example, under section 363, municipalities have the power to pass bylaws to make certain types of properties that are exempt from taxation taxable, but if they do so, the municipality must advise affected taxpayers in writing of that bylaw.[81] Those bylaws also cannot come into force until one year has passed from the day Council passes the bylaw.[82]

91. Section 297(2) does not contain any similar requirement. Accordingly, the Applicants' assertion that affected taxpayers had to be notified of the sub-class bylaw a specified period of time before it came into effect is not sustainable – if the Legislature had intended to impose these procedural requirements on municipalities, it would have done so expressly.

92. Further, as stated previously, the *MGA* confers broad authority on municipalities to assign different tax rates to different assessment classes and sub-classes in its tax

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[79] *MGA,* s 354(4) **[RVOL Tab 1, Page 062]**.
[80] *MGA,* s 289(2)(a) **[RVOL Tab 1, Page 016]**.
[81] *MGA,* s 363(4) **[RVOL Tab 1, Page 073]**.
[82] *MGA,* s 363(5) **[RVOL Tab 1, Page 073]**.

rate bylaw.[83] This exercise is necessarily retrospective, since assessment classes and sub-classes are assigned based on the characteristics and condition of the property as of December 31 of the previous year, and property tax bylaws are passed in the year that the tax is imposed. This further underscores that the actual setting of municipal tax rates, by necessity, attaches future consequences to past circumstances, including in respect of tax rates assigned to different assessment sub-classes.

93. In sum, the entire property assessment regime in Alberta is retrospective in nature, including sub-class bylaws passed under section 297(2). Accordingly, the Legislature gave express authority to pass retrospective bylaws under section 297(2), which rebuts the common law presumption against retrospectivity (to the extent it applies). If the Legislature had intended for affected ratepayers to be given notice before a sub-class bylaw comes into effect, or for sub-class bylaws to come into force at some future date, it would have passed provisions to that effect. Accordingly, since the Legislature did not pass any provisions of that nature, the default rule that bylaws come into force on the day they are passed must apply, and the procedural restrictions advanced by the Applicants cannot be "read in" to section 297(2).

### c. The Sub-class Bylaw does not impose new prejudicial consequences on taxpayers

94. Further, an enactment that attaches new consequences to past circumstances will not always trigger the presumption against retrospectivity. According to Prof. Driedger:

> *… it is obvious that not all retrospective statutes attract the presumption; only those … that 'create a new obligation, or impose a new duty or attach a new disability in respect to transactions or considerations already passed'."*[84]

In other words, the presumption against retrospectivity applies only to enactments that are prejudicial, not those that are beneficial.

95. In *Tran v Canada (Public Safety and Emergency Preparedness)*, the Supreme Court of Canada confirmed that the purpose of the presumption against retrospectivity

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[83] *MGA,* s 354(3) **[RVOL Tab 1, Page 061]**.
[84] Driedger at 276 **[RVOL Tab 6, Page 108]**.

is only to prevent a change in the law attaching new *prejudicial* consequences to a completed transaction.[85]

96. That said, the Sub-class Bylaw does not create any new prejudicial consequences for taxpayers. It does not create a new penalty, impose a new duty, or attach a new disability. Its function is to create different sub-classes to which an assessor may assign Class 1 – residential property. It does not, in itself, set any differential tax rates for affected properties. That will happen once the Town passes its property tax bylaw for 2025, but again, the Town can only do that *in 2025*.[86]

97. Further, as the Record of Proceedings demonstrates, the new sub-class created by the Sub-class Bylaw – "Primary Residential" – is intended to confer a tax *benefit* on properties which fall into that sub-class. While it is true that properties in other "residential" sub-classes may pay higher taxes relative to the Primary Residential sub-class, that will always be the case every time a municipality creates sub-classes, and assigns different tax rates to those sub-classes. Once again, the *MGA* requires municipalities to pass property tax bylaws that are retrospective in nature, so it cannot be said that doing so is invalid, as suggested by the Applicants.

98. In sum, the Primary Residential sub-class does not create any prejudicial effect which would trigger the common law presumption against retrospectivity, because it confers a benefit on the properties which fall under that sub-class, and it does not itself assign differential tax rates to any properties.

### C. The Sub-class Bylaw does not improperly delegate the assessor's responsibilities to the Town's CAO

99. The Sub-class Bylaw contemplates involvement by the Town's CAO in a few limited respects to help ensure the proper operation of the bylaw and the attainment of its objectives. Under sections 4 and 5 of the Sub-class Bylaw, the CAO has authority to approve of the form of the declaration used to obtain reliable information that will be used by the assessor to assign a property to the "Primary Residential" sub-class for a given

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[85] *Tran v Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50 at para 43 **[RVOA Tab 20, Page 229]**.
[86] *MGA,* s 353 **[RVOL Tab 1, Page 061]**.

taxation year. Under section 8, the CAO may undertake inspections to ensure the accuracy of any declaration submitted to qualify for classification under the "Primary Residential" sub-class. If it is discovered that the declaration was false or misleading, the declarant may be found guilty of an offence, liable to pay a fine, and liable to pay taxes at the rate approved for the "Residential" sub-class for the current taxation year.

100. The Applicants argue that the provisions referencing the Town's CAO are *ultra vires* because they improperly delegate responsibilities to the CAO that are normally performed by the municipal assessor.

101. The Sub-class Bylaw does not improperly delegate any of the assessor's functions to the CAO. Rather, the CAO's role is complementary to the assessor's role, and they operate in tandem. The Sub-class Bylaw establishes an innovative and practical self-reporting scheme to collect an accurate and reliable body of information regarding the use of residential properties in Canmore. The role of the Town's CAO in administering this scheme is consistent with the *MGA* and complements the function of the Town's municipal assessor.

### a. Municipalities have the authority under section 297(2) to require assessed persons to provide declarations

102. Under the *MGA*, 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."[87] The municipal assessor's role is to annually prepare an assessment for each property in the municipality (other than non-assessable property and designated industrial property).[88] In preparing an assessment, a municipal assessor must determine the property's assessed value in accordance with the valuation and other standards set out in the *Matters Relating to Assessment and Taxation Regulation, 2018*.[89] In addition, they must assign one or more assessment classes or sub-classes to the property.[90] The assessment class(es) or sub-class(es) for

[87] *MGA,* s 284.2 **[RVOL Tab 1, Page 015]**.
[88] *Ibid,* s 285, 289(1) **[RVOL Tab 1, Page 015]**.
[89] *MGA*, s 289(2)(b) **[RVOL Tab 1, Page 016]**.
[90] *MGA*, ss 297(1)–(2) **[RVOL Tab 1, Page 021]**.

each property are then recorded in the municipal assessment roll, and on assessment notices sent to taxpayers.[91]

103. In preparing an assessment, a municipal assessor has the power to inspect properties and request information from taxpayers. Section 294(1) of the *MGA* empowers assessors to "enter on and inspect property" and "request anything to be produced" for the purposes of carrying out their duties. Section 295(1) states that "[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." An assessor may use any information they receive under sections 294 and 295 to inform their decision on which assessment class and sub-class to assign a property to. However, 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."[92]

104. While the assessor is given certain inspection and information-gathering powers under the *MGA*, that does not preclude the assessor from relying on other information obtained from other sources to prepare assessments. The assessor's core responsibility is to *prepare the assessment*, which can include relying on information obtained from other sources beyond the assessed persons themselves.

105. Again, section 297(2) of the *MGA* gives the Town broad jurisdiction to divide the residential assessment class into sub-classes "on any basis it considers appropriate." In this case, the Town decided to exercise its broad jurisdiction to incorporate a declaration requirement as part of the eligibility criteria for a property to be placed in the Primary Residential sub-class. Ultimately, the assessor is responsible for preparing the assessment and assigning properties to the correct class/sub-class, but the Town does clearly have jurisdiction to set parameters for how a property will qualify for a particular classification.

106. The declaration requirement provides a clear, transparent, and easy-to-administer self-reporting mechanism to determine whether a particular property qualifies for

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[91] *MGA*, ss 303, 308, 309 **[RVOL Tab 1, Pages 031, 038, 039]**.
[92] *MGA*, s 295.1 **[RVOL Tab 1, Page 019]**.

inclusion in the Primary Residential sub-class. Again, this does not derogate from the assessor's function to ultimately assign properties to different classes/sub-classes – this simply demonstrates a reasonable exercise of the Town's broad jurisdiction under section 297(2) to craft a sub-class "on any basis it considers appropriate." Since the declaration requirement is outside the assessor's normal duties, it is entirely appropriate and proper that the Town's CAO be given a role in administering those declarations.

107. Notably, the "small business property" sub-class also allows the municipality to create procedures independent from the information-gathering powers of the assessor to gather information to determine and count the number of full-time employees at a business:

> *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.*[93]

108. Once again, the Legislature's delegation of authority to create sub-classes under the "non-residential" assessment class is much narrower and more prescriptive than the delegation of authority to create sub-classes under the "residential" assessment class. The Applicants' proffered statutory interpretation would suggest that the broader delegation of authority under section 297(2) should be read down such that it would not allow the municipality to do something that another narrower delegation of authority under section 297(3.5) expressly allows for. This is illogical, and does not conform to the modern method of statutory interpretation.

109. Further, the municipality's general jurisdiction to pass bylaws gives the Town the power to create systems of inspections and approvals to achieve municipal objectives. Section 7(i)(vii) confirms that municipalities have the power to pass bylaws "providing for inspections to determine if bylaws are being complied with",[94] and section 8(1)(c) allows municipalities to pass bylaws which "provide for a system of licenses, permits or approvals."[95] These powers are complementary to the broad delegation of authority granted under section 297(2), and expressly allow for municipalities to create "systems

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[93] *MGA*, s 297(3.5) **[RVOL Tab 1, Page 022]**.
[94] *MGA*, s 7(i)(vii) **[RVOL Tab 1, Page 005]**.
[95] *MGA*, s 8(1)(c) **[RVOL Tab 1, Pages 006-007]**.

of inspection" – including creating declaration forms – that are part of the eligibility criteria for a sub-class bylaw. Again, this does not derogate, frustrate, or interfere with any powers exercised by the municipal assessor. The assessor's responsibilities are restricted to preparing the assessment in accordance with any applicable sub-class bylaw passed by the Town.

110. The Applicants' argument invites an interpretation of the Sub-class Bylaw that conflicts with the function of the Town's municipal assessor. However, based on the principles of statutory interpretation, it is presumed that the provisions of legislation are meant to work together to form a rational, internally consistent framework.[96] Here, it is possible to interpret the Sub-class Bylaw in a manner that complements and is consistent with the function of a municipal assessor under the *MGA*. That is the interpretation of the Sub-class Bylaw that should be adopted.

**b. The CAO's role is necessary to allow the offence provision to operate**

111. Section 7 of the Sub-class Bylaw creates a statutory offence connected with the self-reporting declaration provision:

> *If a person, either themselves or through their Agent, makes a false or misleading statement to the Town to qualify a property for inclusion in the Primary Residential sub-class, that person shall be guilty of an offence and is liable for a fine up to a maximum of $10,000.00.*

112. The CAO's functions which supervise the declaration process, and administer the inspection process, are directly tied to the enforcement of the offence provision. Municipal assessors have no authority or jurisdiction to do anything in respect of statutory offences. Accordingly, the declaration and inspection powers granted to the CAO under the Sub-class Bylaw are properly connected to a matter which is beyond the assessor's jurisdiction, which is to enforce a statutory requirement connected to a specified penalty.

113. The authority of the Town's CAO in administering the Sub-class Bylaw's self-reporting scheme is consistent with the *MGA*. Section 7(i) of the *MGA* empowers a council to pass bylaws respecting the enforcement of bylaws, including by "providing for inspections to determine if bylaws are being complied with," creating offences, and "for

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[96] Sullivan at §11.01[1] **[RVOL Tab 7, Pages 109-110]**.

each offence, imposing a fine not exceeding $10 000 or imprisonment for not more than one year, or both." The declaration requirement is consistent with the inspection powers granted under section 7, and with the intent of the modern *MGA* to "enhance the ability of councils to respond to present and future issues in their municipalities" for proper municipal purposes.[97]

114. Ultimately, in light of the flexible standard applied to judicial reviews of municipal bylaws, it was reasonable for Town Council to conclude that its broad authority under the *MGA* included the power to create the self-reporting scheme contained in the Sub-class Bylaw.

### D. The Sub-class Bylaw is not void for vagueness or uncertainty

115. The Applicants claim that the definition of "Primary Residence" is void due to vagueness and uncertainty. For convenience, section 2(j) of The Sub-class Bylaw contains the following definition of "Primary Residence":

> *j) "Primary Residence" means the usual place where a person is ordinarily resident, conducts their daily affairs for a period of at least 183 cumulative days in a calendar year, of which at least 60 of those days were continuous, and does not otherwise meet the definition of a Tourist Home. A person may only have one Primary Residence, but a Residential property may be the Primary Residence of more than one person. Some indicia of a Primary Residence include:*
>
> *i. the physical address shown on the 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,*
>
> *ii. the physical address to which the person's income tax correspondence addressed and delivered,*
>
> *iii. the physical address to which most of the person's mail is addressed and delivered;*

116. The Applicants also point to the various exceptions under section 5 of the Sub-class Bylaw, and claim that they are vague and uncertain. In support, the Applicants rely on several hypothetical fact scenarios.

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[97] *Ibid*, s 9(b) **[RVOL Tab 1, Page 007]**.

117. Courts should be wary about deciding applications for judicial review on the basis of hypothetical fact scenarios not grounded in the Record. Rather, the Court should evaluate whether it is possible for the ultimate decision-maker (in this case, the Assessment Review Board) to interpret the Primary Residential definition using the modern method of statutory interpretation, such that the Board would be capable of making a reasoned and principled decision on whether any property qualifies for inclusion in that sub-class. The Town submits that the Sub-class Bylaw easily meets that threshold.

### a. Municipal bylaws can only be invalidated for "vagueness" or "uncertainty" in rare circumstances

118. A municipal bylaw can be annulled because it is too vague and uncertain.[98] However, the law is clear that it does not take much for an enactment to surpass this threshold.

119. Mere difficulties in interpreting a bylaw or uncertainty as to its scope will not suffice to make it void.[99] In *R. v. Nova Scotia Pharmaceutical Society*, the Supreme Court of Canada offered the following explanation of when a provision will be impermissibly vague:

> *A vague provision does not provide an adequate basis for legal debate, that is for reaching a conclusion as to its meaning by reasoned analysis applying legal criteria. It does not sufficiently delineate any area of risk, and thus can provide neither fair notice to the citizen nor a limitation of enforcement discretion. Such a provision is not intelligible, to use the terminology of previous decisions of this court, and therefore it fails to give sufficient indications that could fuel a legal debate. It offers no grasp to the judiciary.*[100]

While that decision considered vagueness in the context of a *Charter* application, it has been applied when determining if a municipal bylaw is void for vagueness.[101]

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[98] *Montréal v Arcade Amusements Inc*, [1985] 1 SCR 368 at 400, 1985 CanLII 97 [*Arcade Amusements*] **[RVOA Tab 21, Page 240]**.
[99] *Ibid* at 400 **[RVOA Tab 21, Page 240]**; Ian MacFee Rogers, *Law of Canadian Municipal Corporations* (Toronto: Thomson Reuters Canada, 1988) (loose-leaf updated January 2025, release 1) at §24:44 **[RVOL Tab 9, Pages 143-146]**.
[100] *Nova Scotia Pharmaceutical,* [1992] 2 SCR 606 at 639–640, 1992 CanLII 72 [emphasis added] **[RVOA Tab 22, Pages 252-253]**.
[101] *Brown v Alberta Dental Association*, 2002 ABCA 24 at para 37 **[RVOA Tab 23, Page 260]**.

120. To determine if a provision is intelligible and provides an adequate basis for legal debate, a court must "engage in the interpretive process."[102] This involves an "analysis of considerations such as the purpose, subject matter and nature of the impugned provision, societal values, related legislative provisions, and prior judicial interpretations of the provision."[103] If the interpretative process reveals that a provision is capable of being given a "sensible or ascertainable meaning," it will not be void for vagueness or uncertainty.[104]

121. Supreme Court of Canada jurisprudence reveals the willingness of courts to uphold provisions notwithstanding considerable ambiguity. In *Arcade Amusements*, the Court considered a definition of "amusement machines" in a municipal bylaw that excluded from its ambit "an apparatus designed to amuse or entertain young children." The party challenging the bylaw argued that the concept of "young children" was so vague that an ordinary person could not know what was being prohibited. However, notwithstanding the ambiguity in this phrase, the Supreme Court held that its meaning was nevertheless intelligible and ascertainable.[105]

122. In *Canadian Foundation for Children*,[106] the Supreme Court considered a provision which allowed persons in authority to "[use] force by way of correction toward a pupil or child … who is under his care, if the force does not exceed what is reasonable under the circumstances."[107] To ascertain whether this provision was hopelessly vague, the Court considered the words of the provision and court decisions interpreting those words. Notwithstanding the obvious difficulty in interpreting the phrase "what is reasonable in the circumstances," the Court held that implicit limitations added sufficient precision to uphold the provision.

123. In *Nova Scotia Pharmaceutical*, the Supreme Court of Canada cited two decisions from the United States Supreme Court which struck down subordinate legislation due to

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[102] *Ontario v Canadian Pacific Ltd*, [1995] 2 SCR 1031 at para 47, 1995 CanLII 112 **[RVOA Tab 24, Page 264]**.
[103] *Ibid* at para 47 **[RVOA Tab 24, Page 264]**. See also *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, 2004 SCC 4 at para 20 **[RVOA Tab 25, Page 268]**.
[104] *Brown v Alberta Dental Association* at para 38 **[RVOA Tab 23, Page 260]**.
[105] *Arcade Amusements* at 401–403 **[RVOA Tab 21, Page 241-243]**.
[106] *Supra* note 103.
[107] *Criminal Code*, RSC 1985, c C-46, s 43.

vagueness and uncertainty. In *Kolender v. Lawson*, the Court struck down a law that allowed police to demand that "loiterers" and "wanderers" provide "credible and reliable" identification.[108] In *Papachristou v. City of Jacksonville*, the Court struck down a local vagrancy ordinance that restricted activities like "loafing," "strolling," or "wandering around from place to place."[109] In both cases, the Court held that the laws in question failed to provide fair notice to individuals about what conduct was forbidden by the law and encouraged arbitrary arrests and convictions. These cases help demonstrate the high level of ambiguity that is needed to declare a municipal bylaw void for vagueness.

124. In sum, a provision of a municipal bylaw will not be declared void by reason of vagueness or uncertainty unless it is incapable of interpretation. This is an extremely high bar that is only met in rare circumstances. In essence, to be struck for vagueness or uncertainty, it must be impossible for a trier of fact to properly interpret the bylaw in a principled manner, which would offend the rule of law.

### b. The definition of "Primary Residence" in the Sub-class Bylaw is not vague or uncertain

125. Regarding section 2(j) of the Sub-class Bylaw, that provision contains an intelligible definition of "Primary Residence" that provides an adequate basis for legal debate. Under section 2(j), a property qualifies as someone's "Primary Residence" in a given year if:

1. It was the usual place where the person was ordinarily resident;
2. It was the usual place where the person conducted their daily affairs for at least 183 cumulative days of the year (i.e., more than half of the year);
3. Of the total number of days in the year in which the person usually conducted their daily affairs there, at least 60 of those days formed a continuous streak; and
4. The property does not fit the definition of a "Tourist Home" as defined in section 13.2 of the Town's "Revised Land Use Bylaw 2018-22."

126. As for the first element of the definition, it clearly provides an adequate basis for legal debate. For one, the phrase "ordinarily resident" has a well-understood grammatical meaning. That is, one's ordinary residence is not simply where they stay temporarily.

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[108] 461 US 352 (1983), cited in *Nova Scotia Pharmaceutical* at 635-636 **[RVOA Tab 22, Pages 248-249]**.
[109] 405 US 156 (1972), cited in *Nova Scotia Pharmaceutical* at 635 **[RVOA Tab 22, Page 248]**.

Rather, it is a place where a person makes their home and has a regular, habitual presence. Factors relevant to determining whether a person is ordinarily resident at a property include the amount of time they spend there, their personal ties to the property, and their intent to remain there.

127. To improve clarity further, section 2(j) of the Sub-class Bylaw provides several indicia that typically correspond with the place at which a person ordinarily resides. This includes the address shown on the person's government-issued ID, the address to which their income tax correspondence is addressed, and the address to which most of their mail is sent.

128. Moreover, many federal and provincial statutes use the phrase "primary residence," "principal residence," or "ordinary residence," often without defining it.[110] As a result, there exists a significant amount of relevant judicial and other commentary to help define the contours of the phrase "ordinarily resident" in the Sub-class Bylaw. These sources inform the interpretive process and help give section 2(j) of the Sub-class Bylaw an ascertainable meaning.

129. The second and third elements of the definition of "Primary Residence" also provide an adequate basis for legal debate. Those elements set out a specific number of days (i.e., at least 183, 60 or more of which must be continuous) that a property must serve as the usual place at which a person conducts their daily affairs. The 183-day requirement provides an objective benchmark against which a property owner can measure their use of a property.

130. Read in context, the phrases "daily affairs" and "usual place" have plain, ordinary, and non-technical meanings that any reasonable person can comprehend. In relation to a residence, "daily affairs," would include things like sleeping, cooking, bathing, getting ready, watching TV, working/studying, and any other activities that a person would typically do in their home. The phrase "usual place" identifies a location where a person

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[110] See e.g. *ATB Financial Act*, RSA 2000, c A-45.2, s 4(1); *Expropriation Act*, RSA 2000, c E-13, s 47(1); *Civil Enforcement Act*, RSA 2000, c C-15, ss 88(f)–(g); *Wildlife Act*, RSA 2000, c W-10, s 1(1)(bb); *Loan and Trust Corporations Act*, RSA 2000, c L-20, s 103(1); *Insurance Act*, RSA 2000, c I-3, s 314(1)(b)(ii); *Election Act*, RSA 2000, c E-1, s 1(2); *Wills and Succession Act*, SA 2010, c W-12.2, s 77(6); *Canada Elections Act*, SC 2000, c 9, s 8; *Income Tax Act*, RSC 1985, c 1 (5th Supp), ss 40(2)(b)–(c). (Not reproduced in the Respondent's Volume of Authorities).

carries out such activities regularly, with a degree of permanence and continuity. It also clarifies that an owner or occupant of a property may count temporary absences (i.e., days spent on vacation, visiting family, working away, etc.), towards the 183-day requirement, provided their property remains the "*usual* place" where they conduct their daily affairs during those absences.

131. The "usual place" at which a person conducts their daily affairs also shares obvious parallels with the concept of ordinary residence. Accordingly, factors relevant to determining one's ordinary residence will also be relevant to determining "the usual place where a person … conducts their daily affairs." This includes relevant judicial and other commentary as well as the indicia of primary residency listed in section 2(j) of the Sub-class Bylaw. Collectively, these sources help give the phrase "usual place" a sensible and ascertainable meaning.

132. Finally, the fourth element of the above definition is also sufficiently intelligible. Section 13.2 of the Town's land use bylaw includes the following definition of "Tourist Home":

> ***Tourist Home*** *means a Dwelling Unit operated as a temporary place to stay, with or without compensation, and includes all vacation rentals of a Dwelling Unit. The characteristics that distinguish a Tourist Home from a Dwelling Unit used as a residence may include any of the following:*
>
> *a. The intent of the occupant to stay for short-term vacation purposes rather than use the property as a residence; and/or*
>
> *b. The commercial nature of a Tourist Home; and/or*
>
> *c. The management or advertising of the Dwelling Unit as a Tourist Home or "vacation property"; and/or*
>
> *d. The use of a system of reservations, deposits, confirmations, credit cards or other forms of electronic payment.*
>
> *These examples do not represent an exhaustive list of operating practices that may constitute a Tourist Home.*

This definition provides a number of clear indicia that sufficiently delineate an area of risk for dwelling units that are used as a temporary place for guests to stay.

133. The various exceptions in section 5 of the bylaw are also clearly drafted, and are capable of interpretation using the modern method of statutory interpretation. The

Applicants have not identified any basis to justify striking any of these provisions as being impermissibly vague or uncertain.

### c. Conclusion on vagueness and uncertainty

134. In sum, considering the plain and ordinary meaning of words, the context and purpose of the Sub-class Bylaw, and existing judicial and other commentary regarding similar language, the provisions of the Sub-class Bylaw are capable of being given a sensible and ascertainable meaning.

135. Put another way, the Assessment Review Board, which has jurisdiction to hear complaints regarding which class or sub-class a property should be assigned to,[111] is well-positioned to interpret this bylaw. The Assessment Review Board would hear evidence from the property owner and municipality and would apply any findings of fact derived from that evidence to the provisions of this bylaw. In doing so, the Assessment Review Board would use the modern method of statutory interpretation to inform its interpretation of any applicable statutory provisions.

136. The Applicants have not demonstrated that the Assessment Review Board would be incapable of performing these functions in respect of the Sub-class Bylaw. Accordingly, this bylaw (or any part of it) cannot be struck on the basis that it is vague or uncertain.

## E. Any remedy granted by this Court must be minimally impairing

137. The Applicants have failed to show that any provision of the Sub-class Bylaw exceeded the Town's authority or was impermissibly vague. That said, to the extent the Court is prepared to grant a remedy in this case, it does not follow that the entire bylaw must be struck immediately if any defect is found in it. Under the rule of severability:

> *If … a by-law is illegal in part only and that which is legal can be separated from that which is illegal, the court will separate the good from the bad and preserve the former.*[112]

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[111] *MGA*, s 460(5)(d) and (e) **[RVOL Tab 1, Page 083]**.
[112] Rogers at §24:52 **[RVOL Tab 9, Pages 147-150]**.

138. Notably, section 10 of the Sub-class Bylaw directs that "[i]f any clause in this bylaw is found to be invalid, it shall be severed from the remainder of the bylaw and shall not invalidate the whole bylaw."[113]

139. Whether severance would be appropriate in the circumstances will depend on whether it is possible to sever the offending provisions, leaving a coherent bylaw remaining that is capable of enforcement. If this is not possible, the Court should suspend the effect of its order to give the municipality an opportunity to pass an amended version of the bylaw which addresses any deficiencies identified by the Court.

140. This approach was favoured by the Alberta Court of Appeal in *United Taxi Drivers*, wherein the majority concluded that it would be appropriate to suspend the declaration of invalidity to give the municipality sufficient time to pass amended legislation which corrected the specific defects identified by the Court.[114] This approach shows respect for the statutory authority granted to the municipality, and preserves the rule of law.

141. The Town submits that, in the event this Court finds any provision of the Sub-class Bylaw is invalid, any declaration of invalidity should be suspended for a period of six months to give the Town sufficient time to pass a revised bylaw which addresses any deficiencies identified by the Court.

## CONCLUSION

142. The Applicants have failed to demonstrate that the Sub-class Bylaw is *ultra vires*. Recent appellate-level case law, and the text of section 297(2) of the *MGA*, confirm that municipalities' jurisdictions to pass sub-class bylaws must be interpreted broadly, to allow the municipality to respond to new issues and circumstances. That is precisely what the Town did in passing the Sub-class Bylaw – housing affordability and livability were identified as key priorities in the Town's Strategic Plan, and this bylaw was passed to address those key priorities. Section 297(2) was drafted broadly, and the interpretation

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[113] See also *MGA*, s 13: "If there is a conflict or inconsistency between a bylaw and this or another enactment, the bylaw is of no effect to the extent of the conflict or inconsistency." **[RVOL Tab 1, Page 008]**

[114] ***United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)***, 2002 ABCA 131 at paras 171-172 **[RVOA Tab 26, Pages 272-273]**. Note that this decision was overturned by the Supreme Court of Canada, but not on this point (see 2004 SCC 19) **[RVOA Tab 27]**. See also: ***R v. Debaji Foods Ltd.***, 1981 ABCA 109 at paras 15-17 **[RVOA Tab 28, Page 291]**.

proffered by the Applicants unduly and unreasonably restricts that broad delegation of authority in a way that is inconsistent with the modern method of statutory interpretation.

143. The Sub-class Bylaw, properly interpreted, is harmonious with the assessment and taxation provisions in the *MGA*. Alberta's assessment and taxation regime frequently draws distinctions on the basis of the use (and the user) of a property, and it is designed to be retrospective. The role assigned to the Town's CAO in the Sub-class Bylaw is complementary to the function played by the assessor, and no improper sub-delegation has occurred. The bylaw is sufficiently clear to allow assessors and the Assessment Review Board to properly discharge their functions.

**RELIEF SOUGHT**

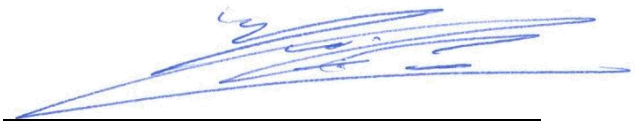
144. The Town respectfully requests:

a. That the Originating Application be dismissed; and

b. That it be awarded costs.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 7th DAY OF APRIL, 2025.**

**REYNOLDS MIRTH RICHARDS & FARMER LLP**

Per: 

Michael E. Swanberg
Counsel for the Town of Canmore

Per: 

Trevor J. Sullivan
Counsel for the Town of Canmore

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