COURT OF APPEAL FILE NUMBER	2501-0148AC
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REGISTRY OFFICE	CALGARY
APPLICANTS	**STEPHEN ROSS, LESLIE SKINGLE, BRIAN TALBOT, DAVID TAYLOR, RALPH YOUNG, DEVONIAN DEVELOPMENT CORPORATION, and THREE SISTERS MOUNTAIN VILLAGE PROPERTIES LTD.**
STATUS ON APPEAL:	APPELLANTS
RESPONDENT:	**TOWN OF CANMORE**
STATUS ON APPEAL:	RESPONDENT
DOCUMENT	**FACTUM OF THE APPELLANTS STEPHEN ROSS, LESLIE SKINGLE, BRIAN TALBOT, DAVID TAYLOR, RALPH YOUNG, DEVONIAN DEVELOPMENT CORPORATION, and THREE SISTERS MOUNTAIN VILLAGE PROPERTIES LTD.**

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"As creatures of statute, however, municipalities must stay within the powers conferred on them by the provincial legislature."[1]

INTRODUCTION

1. Council of the Town of Canmore (the "Town") adopted Bylaw 2024-19, the Division of Class 1 Property Bylaw (the "Bylaw"). The Bylaw divides residential property in Canmore into two sub-classes:[2] Residential and Primary Residential, based on frequency of conduct of daily affairs at the property. Primary Residential property is treated more favourably and will benefit from a lower tax rate. The effect is that the residential property tax system in Canmore discriminates based on frequency of occupation of a residence. The approach taken by the Council is not authorized under the Municipal Government Act[3] (the "MGA").

2. In adopting the Bylaw, the Council:

   a. ignored the Supreme Court of Canada's determination in *Transalta*[4] that the assessment and taxation system under the MGA has two overarching objectives:

      i. "to establish and maintain a property assessment system that fairly and equitably distributes taxes, and promotes transparency, predictability and stability for municipalities and taxpayers. . . ; and
      ii. "to ensure that assessments are 'current, correct, fair and equitable'. . .".[5]

   b. disregarded the essential connection between the assessment of property under Part 9 of the MGA and the taxation of that property under Part 10 of the MGA and authorized a sub-class of assessed property based on frequency of occupation, where frequency of occupation is not an authorized basis for discriminating in municipal property taxation; and

   c. delegated powers to determine the sub-class assigned to a property to a Town employee (the Town's Chief Administrative Officer ("CAO")), contrary to the express requirement in the MGA that the assignment of sub-classes is reserved to a municipal assessor with expertise in determining the value of property.

[1] *Nanaimo (City) v. Rascal Trucking Ltd*., 2000 SCC 13 (CanLII), [2000] 1 SCR 342, at para 27, citing Sopinka. J in *Shell Canada Products Ltd. v. Vancouver (City),* 1994 CanLII 115 (SCC), [1994] 1 S.C.R. 231 at p. 273. **Appellants' Authorities Tab 2.**
[2] The Bylaw creates 5 sub-classes, of which 3 are not relevant to this appeal.
[3] RSA 2000, c.M-26. **Appellants' Authorities Tab 1.**
[4] *TransAlta Generation Partnership v. Alberta*, 2024 SCC 37 (CanLII) **Appellants' Authorities Tab 3.**
[5] *TransAlta Generation Partnership v. Alberta*, 2024 SCC 37 (CanLII), at para 55. **Appellants' Authorities Tab 3.**

3. The Appellants challenged the Bylaw. In his decision upholding the Bylaw, the Chambers Justice:

a. failed to have proper regard of the direction of the Supreme Court of Canada in *Transalta*;

b. erred in concluding that Council was authorized to establish an assessment sub-class based upon frequency of occupation under s. 297(2) of the MGA. His decision disregards the essential connection between the assessment of property and the taxation of that property. If the Chambers Justice's interpretation stands, municipal councils throughout Alberta will be able to create assessment sub-classes unrelated to property and effectively facilitate taxation of use of property (which is not authorized by the legislative scheme). If frequency of occupation is an acceptable criterion for assessment sub-classes as found by the Chambers Justice, the decision would permit a municipal council to establish an assessment sub-class based upon factors wholly unrelated to property, such as the number of family members residing in a house or whether the residents are working full-time, part time or retired and then impose "meaningful"[6] taxes on the sub-class, which could be as high as 5 times[7] that for the Primary Residential sub-class;

c. erred in concluding that the powers of enforcement and inspection of the assessor under Part 9 of the MGA[8] could be delegated by Council to its CAO and granting the CAO the power to assign properties to a sub-class when that power is reserved to the municipal assessor in the MGA.

4. The Appellants ask this Court to grant the appeal and to quash Bylaw 2024-19.

[6] Certified Record, page 137 and **EKE page 36.**
[7] Section 358.1(2) of the MGA requires that the ratio of the highest non-residential tax rate to the lowest residential tax rate can be as high as 5:1. The Town could set the Residential tax rate at the same level as the highest non-residential tax rate.
[8] RSA 2000, c.M-26. **Appellants' Authorities Tab 1.**

PART I. STATEMENT OF FACTS

A. Statutory Scheme-MGA Part 9 (Assessment of Property) and Part 10 (Taxation)

5. In Alberta, municipalities are authorized to tax real property under the MGA.[9] While the Legislature has the power to tax *individuals*, it has not delegated this power to municipalities. Municipalities have no authority to impose income taxes or poll (head) taxes.

6. The purpose of the assessment and property tax system is the fair and equitable distribution of the property tax burden.[10]

7. A municipal council passes an annual property tax bylaw which authorizes the council to impose a tax on property within a municipality for the purposes of raising revenues.[11] The council uses those revenues to pay for the items set out in the municipality's budgets and to pay requisitions.[12]

8. The assessment of that property is inextricably linked with taxation of property. Municipalities determine the value of property through assessment in order to tax that property. Part 9 of the MGA provides for the assessment of property; Part 10 provides for the taxation of that property.

9. The taxes imposed on a property are calculated by multiplying the assessment for the property by the tax rate for the applicable assessment class or assessment sub-class assigned to that property.[13]

MGA, Part 9 Assessment of Property (s. 289)		**MGA Part 10 Taxation (s. 354(2)**		**MGA s. 356**
Assessment ($ value of *property*) Based on the characteristics and physical condition of the *property* on December 31 of the year prior	Multiplied by	Tax Rate for applicable Assessment Class or Assessment sub-class (i.e., *property)*	=	**Taxes payable for property**

[9] RSA 2000, c.M-26. **Appellants' Authorities Tab 1.** Municipalities are also able to tax businesses under Part 10, Division 3 of the Municipal Government Act, RSA 2000, c.M-26, but the business taxing power is not at issue in this appeal.
[10] *TransAlta Generation Partnership v. Alberta,* 2024 SCC 37 (CanLII), at para 55. **Appellants' Authorities Tab 3.**
[11] MGA, s 353. **Appellants' Authorities Tab 1.**
[12] For example, the requisition for education under the Education Act.
[13] MGA, s 356. **Appellants' Authorities Tab 1.**

10. To establish the tax rate, a municipal council determines the amount of revenue required and then divides that amount by the total assessment of all property on which that tax rate is to be imposed.[14] A municipal council must set a tax rate for each assessment class or assessment sub-class referred to in s. 297 of the MGA.[15]

Assessment of Property

11. Part 9 of the MGA provides for the assessment of property. "Assessment" is defined in the MGA as "a value of property determined in accordance with this Part [9] and the regulations."[16]

12. Part 9 of the MGA:

a. requires an assessor to assess property in accordance with the MGA and the applicable regulations;

b. requires an assessor to assign an assessment class to property;

c. enables a council to create assessment sub-classes for residential property (Class 1)[17] in accordance with the MGA; and

d. requires an assessor to assign sub-classes to property in Class 1, once an assessment sub-class is created.

13. "Property"[18] is defined in the MGA. It is limited to a "parcel of land", an "improvement", or a "parcel of land and the improvements to it". Significantly, the definitions of "parcel of land" and "improvement" refer solely to the land or improvement, without reference to use, occupation or frequency of occupation of the land or improvement:

> (1)(1)(v) "Parcel of land" means:
>
> (i) where there has been a subdivision, any lot or block shown on a plan of subdivision that has been registered in a land titles office;

[14] MGA, s 355. **Appellants' Authorities Tab 1.**
[15] MGA, s 354. **Appellants' Authorities Tab 1.**
[16] MGA, s 284(1)(c). **Appellants' Authorities Tab 1.**
[17] A municipal council may pass a bylaw dividing non-residential property into sub-classes s. 297(2.1), but those sub-classes are prescribed by the MGA (s. 297(3.1)).
[18] MGA, s 284(1)(r). **Appellants' Authorities Tab 1.**

(ii) where a building affixed to the land that would without special mention be transferred by a transfer of land has been erected on 2 or more lots or blocks shown on a plan of subdivision that has been registered in a land titles office, all those lots or blocks;
(iii) a quarter section of land according to the system of surveys under the *Surveys Act* or any other area of land described in a certificate of title;

284(1)(j) "improvement" means

(i) a structure,
(ii) any thing attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure,
(iii) a designated manufactured home,
(iii.1) linear property, and
(iv) machinery and equipment.

14. As noted above, s. 297(1) of the MGA requires municipal assessors to assign one or more assessment classes to property:[19]

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

(a) class 1 - residential;
(b) class 2 - non-residential;
(c) class 3 - farm land;
(d) class 4 - machinery and equipment.

15. It is to be noted that the words of s. 297(1) refer to "**assessment** class", not just class. Since "assessment" is defined as the valuation of property, the use of the phrase "assessment class" is therefore the equivalent of a "valuation class", i.e., a class relating to the determination of the value of land.

16. Municipalities are able to divide Class 1 (residential) into assessment sub-classes:

297(2) A council may by bylaw divide class 1 into sub-classes on any basis it considers appropriate, and if the council does so, the assessor may assign one or more sub-classes to property in class 1.

. . .

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

[19] MGA, s. 297(1). **Appellants' Authorities Tab 1.**

Appointment of Assessor

17. A municipality must appoint a qualified person to the position of designated officer to conduct the functions, duties and powers of a municipal assessor.[20] The assessor must be qualified under the *Qualifications of Assessor Regulation*[21] and must annually declare to the Minister their qualifications to carry out their duties and responsibilities.[22]

18. Assessors are regulated professionals[23] who conduct the "practice of assessment"[24].

> 1(j) "practice of assessment" means specialized consulting services in real property appraisal, assessment administration and tax policy and, without limitation, includes the following:
>
> (i) preparing property and business assessment using legislative mass appraisal and single property appraisal standards, policies and procedures;
>
> . . .

19. Assessment of property under market value:

a. must be prepared using "mass appraisal" [25];

b. must be an estimate of the value of the fee simple estate in the property; and

c. must reflect typical market conditions for properties similar to that property.[26]

20. A municipal assessor may delegate the powers or duties conferred or imposed on the municipal assessor by the MGA.[27] Town Council cannot delegate those powers or duties.

[20] MGA, s 284.2 **Appellants' Authorities Tab 1**, Designated Officers Bylaw 2014-17, s. 10.2. **Appellants' Authorities Tab 4.**
[21] MGA, s. 284.2(1). **Appellants' Authorities Tab 1.**
[22] *Qualifications of Assessor Regulation*, AR 233/2005, s. 3. **Appellants' Authorities Tab 5.**
[23] *Professional and Occupational Associations Registration Act*, RSA 2000, c. P-26, *Municipal Assessor Regulation*, Alta Reg 347/2009. **Appellants' Authorities Tab 6.**
[24] *Municipal Assessor Regulation*, Alta Reg 347/2009, s 1. **Appellants' Authorities Tab 6.**
[25] Mass appraisal is defined in the *Matters Related to Assessment and Taxation Regulation*, AR 203/2017, s. 1(g):
> 1(g) "mass appraisal" means the process of preparing assessments for a group of properties using standard methods and common data and allowing for statistical testing;

Appellants' Authorities Tab 7.
[26] *Matters Relating to Assessment and Taxation Regulation*, *2018*, Alta Reg 203/2017, s 5. **Appellants' Authorities Tab 7.**
[27] MGA, s 284.2(2). **Appellants' Authorities Tab 1.**

21. There has been no delegation of the powers and duties of the assessor to the Town's CAO by the Town's assessor.

22. The Town's CAO is not an assessor.[28]

Role of Assessor

23. When preparing an assessment, the assessor must, in a fair and equitable manner, apply the valuation and other standards set out in the regulations, and follow the procedures set out in the regulations.[29] Assessors are permitted to assess only *property*. In doing so, assessors must follow s. 289 of the MGA:

> **289(1)** Assessments for all property in a municipality, other than designated industrial property, must be prepared by the municipal assessor.
>
> **(2)** Each assessment must reflect
>
> (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and
>
> (b) the valuation and other standards set out in the regulations for that property. (emphasis added)

24. The assessor evaluates the "characteristics and physical condition of the property" to determine "market value" — the amount that a property might be expected to realize if it is sold on the open market by a willing seller to a willing buyer.[30]

25. An assessor considers the attributes of a property which affect "market value". The assessor considers property characteristics such as:

a. overall quality;
b. architectural attractiveness;
c. age;
d. size;
e. amenities such as garages, swimming pools;
f. functional utility, for example architecture and appearance, layout and equipment; and

[28] *Chief Administrative Officer Bylaw*, Bylaw 01-2012. **Appellants' Authorities Tab 8.**
[29] MGA, s. 293(1). **Appellants' Authorities Tab 1.**
[30] MGA, s. 1(1). **Appellants' Authorities Tab 1.**

g. physical condition, for example physical deterioration, maintenance and modernization.[31]

26. The powers and duties of an assessor under Part 9 include:

a. assessing property to reflect the characteristics and physical condition of the property – s. 289[32];

b. applying in a fair and equitable manner the valuation standards to parcels of land[33] and parcels of land and improvements[34] – s. 293[35];

c. entering on and inspecting property for the purpose of carrying out the duties of the assessor under Parts 9-12 and the regulations, including requesting documents to be produced – s. 294[36];

d. requiring a person to provide any information necessary to carry out the duties and responsibilities of an assessor under Parts 9-12 and the regulations – s. 295[37];

e. placing property into the assessment class or assessment sub-class – s. 297[38]; and

f. recording and reporting property information[39].

B. Facts

27. Council passed the Bylaw on August 20, 2024.[40] The Bylaw established 5 assessment sub-classes for Class 1 Property (residential property). For the purposes of this appeal the relevant two sub-classes are: "Residential" and "Primary Residential". The increase in taxes for "Residential" property not qualifying for the "Primary Residential" sub-class is intended to be "meaningful".[41] The change is intended to shift taxes to the "Residential" class, with the

[31] *Property Assessment Valuation, 2d,* International Association of Assessing Officers, page 98 and 99. **Appellants' Authorities, Tab 9.**
[32] MGA, s. 289. **Appellants' Authorities Tab 1.**
[33] *Matters Relating to Assessment and Taxation Regulation*, *2018*, Alta Reg 203/2017, s 7. **Appellants' Authorities Tab 6.**
[34] *Matters Relating to Assessment and Taxation Regulation*, *2018*, Alta Reg 203/2017, s 9. **Appellants' Authorities Tab 6.**
[35] MGA, s. 293. **Appellants' Authorities Tab 1.**
[36] MGA, s. 294. **Appellants' Authorities Tab 1.**
[37] MGA, s. 295. **Appellants' Authorities Tab 1.**
[38] MGA, s. 297. **Appellants' Authorities Tab 1.**
[39] *Matters Relating to Assessment and Taxation Regulation, 2018*, Alta Reg 203/2017, s 16 -18 **Appellants' Authorities Tab 6.**
[40] The Bylaw was amended on November 19, 2024 to add an additional sub-class. Certified Record, page 419 **EKE page 52.**
[41] Certified Record, page 137 **Appellants' Extracts of Key Evidence (EKE), page 36**.

potential for average municipal taxes for those properties remaining in the "Residential" sub-class to see a 300% increase.[42]

28. In the Bylaw, the default category is "Residential" as each year a property owner must prove that they meet certain criteria to be placed in the Primary Residential sub-class.

29. "Primary Residential" is a sub-class into which Class 1 Property is to be placed if it is not a "Tourist Home" or vacant land and meets one of five criteria:

a. the property contains one or more Dwelling Units and at least one owner registered on title, or their Agent attests by December 31 of the Previous Taxation Year, in a form approved by the chief administrative officer, declaring that during the Previous Taxation Year, at least one Dwelling Unit on the property was occupied as the Primary Residence of a registered owner of that property or another occupant who was leasing that Dwelling Unit,

b. the property was an Apartment Building in the Previous Taxation Year,

c. the property was an Employee Housing unit in the Previous Taxation Year,

d. the property was a separately titled Residential parking stall in the Previous Taxation Year, or

e. the property was a separately titled Residential storage unit in the Previous Taxation Year

30. The Bylaw defines "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 is addressed and delivered,

[42] Certified Record, page 339 **EKE page 46.**

iii) the physical address to which most of the person's mail is addressed and delivered;

31. Section 4 of the Bylaw requires the assessor to place a Residential property into the Primary Residential sub-class if it meets the Bylaw's criteria for Primary Residential.

32. Section 5 of the Bylaw provides that Residential property may be placed into the Primary Residential sub-class upon the CAO being satisfied of one of a number of conditions, *the majority of which do not relate to the physical conditions or characteristics of the property* but rather relate to the duration of occupancy of the property.

33. Section 6 of the Bylaw establishes an offence for false or misleading information on a declaration and s. 7 of the Bylaw establishes a fine up to a maximum of $10,000.

34. Section 8 of the Bylaw provides that the Town's CAO is authorized to conduct an inspection to ensure compliance with any declaration submitted to qualify for taxation under the Primary Residential sub-class at any time for a period of up to three years after the property declaration was made, or required to be made, whichever is later.

35. Council did not provide reasons for their decision. The material before Council:

a. States that the first intention of the Primary Residence Tax Program is to incentivize long term, full-time occupancy of residential properties; and

b. referenced the ability of municipalities in British Columbia and Ontario to pass vacancy tax bylaws. The legislation in these provinces[43] contains specific statutory authority for municipalities to pass vacancy tax bylaws. The MGA does not have this express authority. Town Administration did not highlight this distinction in the material before Council.[44]

36. On January 20, 2025, the Appellants applied for judicial review of the Bylaw.

[43] *Vancouver Charter,* SBC 1953 c. 55 at ss. 615 to 622. **Appellants' Authorities Tab 9.** *Municipal Act, 2001*, SO 2001, c 25, ss. 338.1 **Appellants' Authorities Tab 10**; *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A ss. 302.1 and following **Appellants' Authorities Tab 11.**

[44] Certified Record, page 337-338, **EKE pages 44-45.**

37. The application for judicial review was heard on April 15, 2025 by the Chambers Justice. On April 28, 2025, the Chambers Justice issued his Reasons for Decision finding:

a. with the exception of s. 9, Bylaw 2024-19 is *intra vires* Canmore's authority, and that frequency of occupation reasonably falls within the concept of property use for residential property;
b. s. 9 is *ultra vires* and was severed and struck from Bylaw 2024-19; and
c. the Bylaw had an improper retrospective effect with respect to the 2025 tax year, and therefore the Town of Canmore could only apply and enforce Bylaw 2024-19 with respect to the 2026 tax year, and all subsequent tax years.[45]

PART II. GROUNDS OF APPEAL

38. The Appellants appeal the decision of the Chambers Justice on the following grounds:

a. The Chambers Justice erred in law by concluding that there are no limitations on the power of the Town under s. 297 to establish assessment sub-classes, without regard to the limitations imposed by the purpose, context and statutory authority granted by Parts 9 and 10 of the MGA;[46] and
b. The Chambers Justice erred in law by concluding that the powers of enforcement and inspection of the assessor under Part 9 of the MGA,[47] could be delegated to the CAO.

PART III. STANDARD OF REVIEW

39. The Chambers Justice chose the proper standard of review, that of reasonableness.[48] A reasonableness review is not less robust when no reasons have been provided, like the case here, where Council did not provide reasons for passing the Bylaw. Rather, the review takes a different shape.[49]

[45] Ross v Canmore (Town), 2025 ABKB 258 ("KB Decision"), at para 111. **Appeal Record page 61.**
[46] RSA 2000, c M-26. **Appellants' Authorities Tab 1.**
[47] RSA 2000, c M-26. **Appellants' Authorities Tab 1.**
[48] KB Decision at para 9 **Appeal Record page 39.**
[49] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653, at para 138 **Appellants' Authorities Tab 12.**

40. A reasonableness review needs to consider whether the exercise of authority was made for an improper purpose.

> [137] . . . . . 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*.[50]

41. As noted in *Auer:*

> [54] Even where such sources are not available, "it is possible for the record and the context to reveal that a decision was made on the basis of an improper motive or for another impermissible reason, as, for example, in *Roncarelli* [*v. Duplessis*, 1959 CanLII 50 (SCC), [1959] S.C.R. 121]" (*Vavilov*, at para. 137). However, importantly, as I explain below, the issue of whether the regulations is a reasonable decision depends on whether the regulations are justifiably (or reasonably) within the scope of the authority delegated by the enabling legislation.[51]

42. Although the Chambers Justice selected the appropriate standard of review (reasonableness), he erred in its application.

43. The Court of Appeal's review of the Chambers Justice's decision regarding the application of the selected standard is a question of law, subject to the correctness standard of review.[52]

44. The Chambers Justice's decision was "fundamentally an exercise in statutory interpretation".[53] Since the decision was essentially a pure question of law, the standard of review in this appeal is correctness. The Court of Appeal is free to replace the opinion of the Chambers Justice with its own.[54]

45. The correctness standard is applied to questions of law so that:

a. The same legal rules are applied in similar situations (the principle of

[50] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653, at para 137 **Appellants' Authorities Tab 13.**
[51] *Auer v. Auer*, 2024 SCC 36 (CanLII), at para 54. **Appellants' Authorities Tab 13.**
[52] *College of Pharmacists v Sobeys West Inc*, 2017 ABCA 306 (CanLII), at para 34. **Appellants' Authorities Tab 14.**
[53] KB Decision para 9, **Appeal Record, pages 39-40**.
[54] *Housen v. Nikolaisen*, 2002 SCC 33 (CanLII), [2002] 2 SCR 235, at para 8. **Appellants' Authorities Tab 15.**

universality); and

b. There is a recognition of the law-making role of appellate courts.[55]

46. The principle of universality is particularly applicable in this appeal, since there are approximately 324 municipalities in Alberta,[56] all subject to the MGA. It would be undesirable for different municipalities to take different approaches to their powers under a single legislative provision on the basis that opposite approaches could theoretically both be "reasonable".

PART IV. ARGUMENT

47. In November, 2024, the Supreme Court of Canada[57] provided clear direction as to the purposes of the MGA in relation to assessment and taxation, namely:

a. "to establish and maintain a property assessment system that fairly and equitably distributes taxes, and promotes transparency, predictability and stability for municipalities and taxpayers" (*Guide*, at p. 2); and

b. "to ensure that assessments are 'current, correct, fair and equitable'" (*Capilano*, at para. 46, quoting *Army & Navy*, at para. 114).[58]

48. The Chambers Justice erred in law in his conclusion regarding Council's ability to establish an assessment sub-class under s. 297(2) and his conclusion regarding Council's delegation of powers, duties and functions of the assessor to the Town's CAO.

A. The Chambers Justice erred in his Statutory Interpretation of s. 297(2)

49. In concluding that frequency of occupation was sufficient to establish an assessment sub-class, the Chambers Justice's interpretation of s. 297(2) failed to have regard for the words in s. 297(2), failed to have proper regard for the context of the section and failed to properly consider the recent pronouncement from the Supreme Court on the purpose of the assessment and property tax provisions of the MGA.

50. It is well established that: "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of

[55] *Housen v. Nikolaisen*, 2002 SCC 33 (CanLII), [2002] 2 SCR 235, at para 9. **Appellants' Authorities Tab 15.**
[56] https://www.alberta.ca/types-of-municipalities-in-alberta. **Appellants' Authorities Tab 16.**
[57] *TransAlta Generation Partnership v. Alberta*, 2024 SCC 37 (CanLII). **Appellants' Authorities Tab 3.**
[58] *TransAlta Generation Partnership v. Alberta*, 2024 SCC 37 (CanLII), at para 55. **Appellants' Authorities Tab 3.**

the Act, and the intention of Parliament".[59] Statutory interpretations should not result in a conclusion which is incompatible with other provisions of the Act, or with the object of the legislative enactment.[60] Interpretations which defeat the purpose of a statute can be labelled "absurd", which is contrary to the principle of statutory interpretation that the Legislature does not intend to produce absurd consequences.[61]

51. A purposive reading of s. 297(2) shows that although the Legislature gave municipalities the power to establish assessment sub-classes for Class 1 residential property, the assessment sub-classes must relate only to *property* (i.e., the land and improvements).

52. The Chambers Justice erred in his interpretation of the text of s. 297(2) by failing to have regard to the full text of s. 297(2), specifically the second half of that subsection which refers to "property".

53. This failure runs afoul of recent Supreme Court of Canada direction that statutory interpretation must be consistent with the text, context and purpose of the enabling statute, with text providing the "anchor of the interpretive exercise".

> However, just as the text must be considered in light of the context and object, the object of a statute and that of a provision must be considered with close attention always being paid to the text of the statute, which remains the anchor of the interpretive exercise. **The text specifies**, among other things**, the means chosen by the legislature to achieve its purposes**. These means "may disclose qualifications to primary purposes, **and this is why the text remains the focus of interpretation**"[62] (emphasis added)

54. Section 297(2) in its entirety states:

> 297(2) A council may by bylaw divide class 1 into sub-classes on any basis it considers appropriate, and if the council does so, the assessor may assign one or more sub-classes to **property in class 1**. (emphasis added)

[59] *Rizzo v Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), 1998 1 SCR 27 at para 21. **Appellants' Authorities Tab 17.**
[60] *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27, at para 27. **Appellants' Authorities Tab 17.** *Pepa v. Canada (Citizenship and Immigration),* 2025 SCC 21 (CanLII), at para 102. **Appellants' Authorities, Tab 18.**
[61] *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27, at para 27. **Appellants' Authorities Tab 17.**
[62] *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A,* 2024 SCC 43 (CanLII), at para 24. **Appellants' Authorities Tab 19.**

55. In the Reasons for Decision, the Chambers Justice focuses on the first half of s. 297(2): "A council may by bylaw divide class 1 into assessment sub-classes on any basis it considers appropriate". In his Reasons for Decision, the Chambers Justice references the first half of s. 297(2) 10 times,[63] but references the definition of "property" (i.e., land and improvements) only once – and then not in the context of s. 297(2), but when addressing the role of the assessor to value property under s. 289.[64] This reflects the Chambers Justice's failure to have accorded appropriate importance to the use in s. 297(2) of "property", including the MGA's definition of that word.

56. In the table below, s. 297(1) and 297(2) are shown, with the definitions of the words "assessment" and "property" shown. When the below exercise is conducted, the necessary link between "property" and "assessment" is clearly seen.

284(1)(c) "assessment" means a value of property determined in accordance with this Part and the regulations of property	**297(1)** When preparing an assessment of property, the assessor must assign one or more of the following assessment classes to the property: (a) class 1 - residential; (b) class 2 - non-residential; (c) class 3 - farm land; (d) class 4 - machinery and equipment. **(2)** A council may by bylaw divide class 1 into sub-classes on any basis it considers appropriate, and if the council does so, the assessor may assign one or more sub-classes to property in class 1.	284(1)(r) "property" means (i)a parcel of land, ii) an improvement, or (iii) a parcel of land and the improvements to it.

57. At no point in his analysis of the text of s. 297(2) does the Chambers Justice engage in an analysis of the definition of property (i.e., land and improvements) and how it relates to the ability of the Town to create a sub-class based upon use, occupancy or frequency of occupancy. The error is manifest at paragraph 18. The Chambers Justice notes that "*how a residential property is used* as a basis for creating sub-classes falls well within a reasonable interpretation of the ordinary and grammatical meaning of the words 'any basis [Canmore] considers appropriate'

[63] See KB Decision at para 16, para 18, para 20, para 21, para 37, para 45, para 51, para 71, para 82, and para 98. **Appeal Record pages 43, 44, 46, 48, 49, 52 and 54.**
[64] See KB Decision at para 26. **Appeal Record page 45.**

in section 297(2)". However, his analysis is devoid of consideration of "land and improvements", which is the foundation of "property".

58. The Chambers Justice centres on "property use",[65] where "property" is an adjective and "use" is the focus of the analysis. The error is that in s. 297, as well as throughout Part 9, "property" is a noun – defined in s. 284(1)(r) as "land and improvements". The Chambers Justice fails to engage in any analysis of the meaning of property in his examination of s. 297(2).

59. What s. 297(2) allows is the creation of an assessment sub-class based on property, not an assessment sub-class based on use. The Chambers Justice has conflated property with use. They are not the same in the meaning of the words or in the statutory context.

60. The Chambers Justice has failed to provide any or adequate reasoning as to how there is any distinction, let alone one that is a fair and equitable basis for the potential tripling of the taxes,[66] between a residential *property* (the parcel of land and improvements) which is occupied 182 days (or less) a year and a residential *property* (the parcel of land and improvements) occupied 183 days (or more) a year. The Chambers Justice fails to identify how Council is authorized under s. 297(2) to establish an assessment sub-class that differentiates between *property* (i.e., land and improvements) occupied for 182 days or less a year and *property* (i.e., land and improvements) occupied for 183 days or more.

61. The Appellants assert that there is no difference in the property. Property (the land and improvements) is the same whether a single family home is occupied 180 days a year or 365 days a year. The Chambers Justice erred by failing to engage in this critical element of s. 297(2). Part 9 deals with "assessment" – the value of property. The Reasons for Decision reflect no evaluation of how the valuation of property is affected by what could be as little as one day difference in occupancy.

62. At paragraph 71, the Chambers Justice states that "frequency of occupation reasonably falls with the concept of property use". However, the text of s. 297(2) references "property" -

[65] KB Decision at para 19, para 55 and para 71 **Appeal Record pages 43, 50 and 52.**
[66] Certified Record, page 339 **EKE page 46.**

clearly defined as the "land and improvements". The Chambers Justice erred in focussing on the "use", and ignoring the legislative authority granted only via the definition of "property". The result is improper discrimination in the administrative law context.[67]

63. Moreover, the Chambers Justice has failed to address how frequency of occupancy relates to or affects "market value" – which is what the assessment of property is meant to establish.

64. Regardless of any interpretation of the text, it is necessary to conduct a contextual analysis.

> 48 Court has stated on numerous occasions that the grammatical and ordinary sense of a section is not determinative and does not constitute the end of the inquiry. The Court is obliged to consider the total context of the provisions to be interpreted, no matter how plain the disposition may seem upon initial reading . . . I will therefore proceed to examine the purpose and scheme of the legislation, the legislative intent and the relevant legal norms.[68]

65. In relation to the error in the contextual analysis, the Chambers Justice reviewed the role of the assessor in assessing property and assigning an assessment class to the property. However, the analysis should have considered the reason why Council would be creating an assessment sub-class. Council should be creating assessment sub-classes for characteristics relating to the property, such as vacant land, or commercial tourist home. An assessor whose role is to "prepare *property* ... assessment using legislative mass appraisal and single property appraisal standards, policies and procedures"[69] could not assess the value of property based on frequency of occupation because frequency of occupation would not fall within a market value analysis as required by the MGA and the regulations. An analysis which would permit the assessor to assign an assessment sub-class devoid of a link to the property or its assessment ignores the fact that the entirety of Part 9 relates to assessment of property.

[67] TransAlta Generation Partnership v. Alberta, 2024 SCC 37 (CanLII), at para 42. **Appellants' Authorities Tab 3.**
[68] *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board),* 2006 SCC 4 (CanLII), [2006] 1 SCR 140, at para 48. **Appellants' Authorities Tab 20.** See also *Pepa v. Canada (Citizenship and Immigration)*, 2025 SCC 21 (CanLII), at para 91 **Appellants' Authorities Tab 18.**
[69] *Municipal Assessor Regulation*, Alta Reg 347/2009. **Appellants' Authorities Tab 6.**

66. The unifying theme of Part 9 is the valuation of property, and its necessary link to the taxation of that property. Frequency of occupation of property is not part of that unifying theme, and is contrary to the presumption that the assessment sub-class forms part of a rational, internally consistent framework.[70]

67. The Legislature did not prescribe the assessment sub-classes for Class 1 Residential property in the same manner it did for non-residential sub-classes in s. 297(3.1). Section 297(3.1) empowers a municipality to set a non-residential assessment sub-class for "small business property". The definition for "small business property" in s. 297(3.3) expressly authorizes a municipality to consider factors other than the characteristics and physical condition of the property. It provides a statutory exception to the general rule requiring a municipality to create assessment sub-classes based on "property" alone as necessitated by the language of s. 297(2). The Chambers Justice held that the language of ss. 297(3.1) and (3.3) limited the authority of council. However, in relation to the question at issue in this appeal, they should be read to provide Council with the express authority to examine factors not limited to property – which authority is lacking in s. 297(2).

68. In analyzing the discretion given to Council under s. 297(2), the Court must have regard for the language used because Council's authority is based on the language set out in that subsection.

69. It is an error to state that there were no limits imposed on Council regarding the creation of the assessment sub-classes for Class 1 Residential Property. The limits are clearly stated in s. 297(2) when read in its entirety. The legislative intent is that the assessment sub-class must be linked to property, and not use or the frequency of occupation.

70. Had the Legislature intended an assessment sub-class to be decoupled from property (i.e., land and improvements), it would have said so expressly, or would not have used the word "property" in s. 297(2).[71] The Legislature did not need to prohibit "Canmore from creating

[70] *Pepa v. Canada (Citizenship and Immigration)*, 2025 SCC 21 (CanLII), at para 107. **Appellants' Authorities Tab 18.**
[71] *Telus Communications Inc. v. Federation of Canadian Municipalities*, 2025 SCC 15 (CanLII), at para 55, **Appellants' Authorities Tab 21**.

residential sub-classes based on how owners use their property"[72]. It signalled the legislative intent of the necessary link to property by:

a. including express reference to "property" within s. 297(2),
b. the context of s. 297(2) in a section referencing "assessment classes of property"; and
c. placing s. 297 in the context of Part 9 which deals wholly and solely with the assessment of *property*.

The expression of legislative intent could not be more clear.

71. Had the Legislature meant to expand the definition of property to include use or frequency of use or intensity of use, it could have done so. It did not. In "reading in" these terms to the meaning of "property", the Chambers Justice erred.

72. The "broad language"[73] in s. 297(2) cannot be said to authorize Council by necessary implication to ignore the anchor of "property" found in that subsection. There is no rational connection between the ability to establish an assessment sub-class of property (i.e., land and improvements) and frequency of occupation nor does an assessment sub-class based on frequency of occupation link to the purpose of Parts 9 and 10 (see para 47a above) articulated by the Supreme Court. The admonition in *Roncarelli v. Duplessis* that discretion must not be exercised capriciously and must have regard for the nature and purpose of the statute[74] has been ignored.

> *74* . . . [I]t is clear that the doctrine of jurisdiction by necessary implication will be of less help in the case of broadly drawn powers than for narrowly drawn ones. Broadly drawn powers will necessarily be limited to only what is rationally related to the purpose of the regulatory framework. This is explained by Professor Sullivan, at p. 228:
>
> > . . . Narrowly drawn powers can be understood to include "by necessary implication" all that is needed to enable the official or agency to achieve the purpose for which the power was granted. Conversely, broadly drawn powers are understood to include only what is rationally related to the purpose of the power. In this way the scope of the power expands or

[72] KB Decision at para 45 **Appeal Record page 48.**
[73] KB Decision at para 45 **Appeal Record page 48.**
[74] *Roncarelli v. Duplessis*, 1959 CanLII 50 (SCC), [1959] SCR 121 at page 140. **Appellants' Authorities Tab 22.**

> contracts as needed, in keeping with the purpose. [Emphasis added.][75] (emphasis in original)

73. It is foundational to the ability of municipal councils to impose a property tax that there be distinctions of "property" as defined by the MGA. The Legislature did not provide municipal councils with an ability to impose income taxes or poll taxes. Where a municipal council may impose other forms of taxes based on foundations other than property, it is expressly provided for in different divisions of Part 10 (Divisions 3 – 7.1).[76] But under s. 297(2) and its link to s. 354(2), the legislative intention is that the assessment sub-class and the resulting tax rate must relate to property, and only property as defined.

74. The impact of the decision of the Chambers Justice is illustrated by noting that the Chambers Justice has concluded that frequency of occupation falls within the concept of property use for residential property. Another descriptor for frequency of occupation is intensity of use.

75. If the decision of the Chambers Justice were allowed to stand, intensity of use would also fall within the concept of property for residential property under s. 297(2).

76. The impact of such a conclusion is that a Council would be able to pass an assessment sub-class bylaw distinguishing upon the number of people who live in a residence, or the number of children who live in a residence, or the number of visitors who come to a residence, because these would fall within intensity of use. None of these relate to the land or improvements. None of these affect market value of the property itself. In each of the above cases, the ostensible "assessment sub-class" would be a subterfuge for a poll (head) tax. Whether a poll tax may be good policy or may be bad policy, it is not permitted under the MGA.

77. If the decision is undisturbed on appeal, municipalities could impose taxes on any basis they consider politically expedient or palatable to their electorate, creating a system of taxes outside that which the Legislature created: a *property* tax system.

[75] *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4 (CanLII), [2006] 1 SCR 140, at para 74. **Appellants' Authorities Tab 20.**

[76] Division 3 - Business Tax, Division 4 - Business Improvement Area Tax, Division 4.1 - Community Revitalization Levy, Division 5 –Special Tax, Division 6 Well Drilling Equipment Tax, Division 6.1 Clearn Energy Improvement Tax and Division 7 – Local Improvement Tax.

78. Alberta's MGA is unlike the legislation in British Columbia and Ontario, which provides statutory authority to impose taxes based upon frequency of use.

79. The Chambers Justice also erred in his regard for the purpose of Parts 9 and 10 of the MGA. These parts, read together, provide for the system of assessing property and imposing taxes on property and the Supreme Court spoke to the purpose of the MGA in relation to assessment and property taxes as noted in paragraph 47a, above.

80. The Chambers Justice distinguished *Transalta* and failed to consider the principle of having a property assessment system that distributes taxes fairly and equitably. The Appellants assert that the Chambers Justice's assumption that s. 297(2) allows the Town to allocate assessment sub-classes in any way it sees fit must also meet the test of fairness and equity, or the "property assessment system" will be subject to misuse for reasons of political expediency. Such a conclusion in relation to one this sub-clause of the MGA could be used by rogue councils to negate the intent of the Alberta property assessment and taxation regime and to impose potentially swingeing taxes on those politically expedient sub-classes.[77]

81. The Chambers Justice failed to address how an assessment sub-class based upon frequency of use would distribute taxes fairly and equitably, particularly because frequency of use is not linked to the definition of property (i.e., land or improvements) and the result is Council being able to set a tax rate which Council contemplated could triple the amount of taxes payable by Residential properties[78] as compared to the taxes imposed on Primary Residential properties.

82. There was no discussion of how a property assessment system where the differential treatment of similar properties with similar physical characteristics would promote transparency, predictability and stability for municipalities and taxpayers, particularly where Council drew an arbitrary delineation between assessment sub-classes with occupancy less than 183 days a year being a different assessment sub-class than one with 183 days occupancy.

[77] See Footnote 7.
[78] Certified Record, page 339 **EKE page 46.**

83. The Chambers Justice held that the assessments are "current, correct, fair and equitable" because the valuation of the property itself would be conducted using appropriate property assessment techniques. However, the creation of the assessment sub-class is an integral part of the property assessment system. The creation of assessment sub-classes without regard for the property – essentially creating different sub-classes for similar property and imposing different tax rates on each – does not meet the purpose of ensuring "current, correct, fair and equitable" assessments. On the one hand, the Chambers Justice recognizes that "[p]art 9 and 10 of the MGA work together to create a harmonious and integrated regime for the assessment and taxation of property in municipalities."[79] On the other hand, the Chambers Justice parses and conflates assessment, sub-classes and taxation while ignoring the purpose of the property assessment system as a whole.

84. In concluding that *TransAlta* provided only a direct interpretation of s. 322 and 322.1 of the MGA rather than a purposive statement of principle regarding the *MGA's* property tax regime, the Chambers Justice ignored the Supreme Court's statements of principle in relation to the Alberta assessment and tax regime as a whole. The Supreme Court conducted a statutory interpretation of ss. 322 and 322.1 of the MGA, which fell within Part 9. While the Court's analysis was not specifically in relation to s. 297(2) of the MGA, the Court did analyze the context of the sections within Part 9, and the scheme and purposes of the MGA in relation to assessment and taxation. It is an error to suggest that the Supreme Court's analysis of the scheme and purpose of the "property assessment system" does not apply to the current exercise of statutory interpretation of s. 297(2). Section s. 297(2) falls within Part 9 of the MGA and is inextricably linked to taxation of property as provided for in Part 10. The Appellants assert that it would be an error to suggest that some other purpose for the assessment and property tax system should be created in the face of clear direction from the Supreme Court.

85. The Supreme Court in *Auer* confirmed that subordinate legislation must be consistent both with specific provisions of the enabling statute and with its overriding purpose or object.[80]

[79] KB Decision at para 35 **Appeal Record page 46.**
[80] *Auer v. Auer*, 2024 SCC 36 (CanLII), at para 3. **Appellants' Authorities Tab 13.**

The primary intention of the Primary Residence Tax program was not to create a "property assessment system that fairly and equitably distributes taxes", but rather to "incentivize long-term, full-time occupancy of residential properties"[81] through the imposition of "meaningful"[82] taxes.

> [37] In assessing whether a municipality has acted within their statutory authority, it is necessary to have regard both to the stated purpose and actual substance of the impugned instrument. This point was made by Doherty J.A. in Barrick Gold Corp. v. Ontario (Minister of Municipal Affairs and Housing) . . . at para. 59:
>
> > Municipalities must, however, do more than conform with the strict letter of the law in order to remain within the boundaries of their lawmaking powers. As indicated in R. v. Greenbaum, supra, the purpose of the provincial enabling legislation also constrains the municipal lawmaking power. In Rogers, The Law of Canadian Municipal Corporations, supra at 1021, it is put this way:
> >
> > A by-law which is ostensibly within the authority of a council to enact may be set aside or declared invalid if its real purpose and attempt is to accomplish by indirect means an object which is beyond its authority . . . Hence, the court must always 'in examining a by-law, see that it is passed for the purpose allowed by a statute and that such purpose is not resorted to as a pretext to cover an evasion of a clear statutory duty'. (emphasis in the original)[83]
>
> [72] . . . As noted above, "[a] by-law which is ostensibly within the authority of a council to enact may be set aside or declared invalid if its real purpose and attempt is to accomplish by indirect means an object which is beyond its authority": Barrick Gold, at para. 59. . . . Allowing the Town to achieve indirectly what it is forbidden to do directly would be contrary to the legislator's intention expressed at s. 11(8)5 of the Municipal Act. (emphasis added)[84]

86. This Court in *Tegon Development* confirmed that the exercise of power must be for the purpose for which it is given and not a purpose outside the statutory purpose, even if that purpose is laudable.

> [16] The power given to the Council of the City of Edmonton must be exercised for the purpose for which it is given. It is not a valid exercise of the power to use it to preserve historical sites and to induce others to advance money to preserve

[81] Certified Record, pages 38, 39, 43, 44- 45, and 336 **EKE pages 16-17, 21-23 and 43.**
[82] Certified Record, page 126, 137 **EKE 32 and 36**. See Footnote 7.
[83] *Clublink Corporation ULC v. Oakville (Town),* 2019 ONCA 827 (CanLII), at para 37. **Appellants' Authorities Tab 23.**
[84] *Clublink Corporation ULC v. Oakville (Town),* 2019 ONCA 827 (CanLII) at para 72. **Appellants' Authorities Tab 23.**

> historical sites. This division recently reviewed the authorities in respect of the right of the Executive Council of the Province of Alberta to exercise a power given to it by the Legislature of the Province for a purpose not coming within the statute *(Heppner v. The Minister of the Environment of the Province of Alberta,* as yet unreported 16 September, 1977). The court has the right and the duty to ascertain if the power given was used for a proper purpose. Here the material before the Council of the City of Edmonton, as produced in the Affidavit filed on behalf of the City, clearly establishes the purpose. It was not a planning purpose.[85]

87. The Chambers Justice's interpretation defeats the purpose of the MGA as identified by the Supreme Court. For the above reasons, the Appellants ask this Court to grant this appeal and strike Bylaw 2024-19.

B. The Chambers Justice erred in his conclusion that Council can delegate Town Assessor Authority to the Town's Chief Administrative Officer (CAO)

88. The Chambers Justice erred in his conclusion that Council is able to delegate the Assessor's statutory functions to the Town's CAO. Town Council is not empowered to delegate the powers or duties of the assessor.

89. The Chambers Justice's finding that Council's delegations to the CAO are permissible rests upon his conclusion that the "parallel scheme" is authorized because of the broad language in the first half of s. 297(2). The Appellant's position is that the principle of necessary implication as discussed in Part A of this Factum cannot be used to justify the delegation of the assessor's powers and duties to the CAO because of the explicit language in the MGA.

90. The MGA does not authorize Council to delegate the powers and duties of the assessor as Council purported to do in ss. 4, 5 and 8 of the Bylaw. In fact, the language of s. 284.2(2) of the MGA authorizes only the municipal assessor as being able to delegate the powers or duties conferred or imposed on the assessor by the MGA. The clear language of s. 284.2(2) precludes Council from delegating the powers of the assessor. To conclude that Council may delegate powers and duties of the assessor in the face of this section is an error of law.

[85] *Tegon Developments Ltd. (Egon P. Tensfeldt Development Consultants Ltd.) v. Edmonton (City),* 1977 ALTASCAD 304 (CanLII), at para 16 **Appellants' Authorities Tab 24;** affirmed *Edmonton (City of) v. Tegon Developments Ltd. et al.,* 1978 CanLII 156 (SCC), [1979] 1 SCR 98.

91. Contrary to the Chambers Justice's conclusion that the CAO's determination of assessment sub-class does not intrude on the role of the assessor in determining property value, the MGA assigns both tasks to the municipal assessor. The Legislature intended that the municipal assessor assign the sub-class. The language illustrates that the decision is one to be made by a regulated professional with expertise in the valuation of property, and not a municipal employee investigating the extent of its use, with its attendant risk of political direction.

92. The Town's assessor did not delegate any powers or duties to the CAO. In particular, the Town's assessor did not delegate the assessor's duty to assign assessment classes or sub-classes (s. 297), which Council delegated in ss. 4 and 5 of the Bylaw. The Town's assessor did not delegate the assessor's authority to conduct inspections (s. 294), which Council delegated in s. 8 of the Bylaw.

93. The doctrine of jurisdiction by necessary implication does not support a conclusion that Council can delegate assessor's functions for the following reasons.

94. In concluding that s. 4 and s. 5 do not improperly subdelegate assessor's powers, the Chambers Justice stated that:

a. s. 4 simply addresses the requirement for a declaration. Section 4 of the Bylaw provides that upon the completion of a declaration, the property *shall* be placed in the Primary Residential sub-class.[86]
b. s. 5 requires the CAO to be "satisfied of the contents of the declaration" and once the CAO is satisfied, the assessor would still be the person assigning a sub-class to a property.[87] In essence, the assessor would be carrying out the decision of the CAO regarding the appropriate assessment sub-class.

95. The Chambers Justice ignored the fact that in passing ss. 4 and 5 of the Bylaw, Council has usurped the role of the assessor who, under ss. 297(1) and s. 297(2), must be satisfied about

[86] KB Decision at paras 95-97 **Appeal Record page 57-58.**
[87] KB Decision at para 99 **Appeal Record page 58.**

which assessment class or sub-class applies and then is to assign the assessment classes or applicable sub-classes to the property.

96. In s. 297, the assessor retains discretion regarding the choice of assessment class or assessment sub-classes that may be assigned to a property and is not fettered by a singular option mandating the assessment of a class. Because s. 4 creates an automatic placement of the affected property into the Primary Residential sub-class, s. 4 effectively eliminates the role of the assessor in assigning the assessment sub-class, and eliminates the assessor's exercise of discretion in assigning the assessment sub-class to the property. Simply put, s. 4 of the Bylaw improperly fetters the discretion of the assessor to select the appropriate assessment sub-class.

97. In concluding that s. 5 of the Bylaw is simply the CAO's "[satisfaction] with the contents of the declaration" and that "the rule does not intrude on the assessor's authority"[88], the Chambers Justice has:

a. ignored the language of s. 297 specifying that it is the assessor's duty to assign the appropriate assessment classes or sub-classes to the property;
b. overlooked the requirement that the functions of the assessor must be undertaken by a qualified person under the Qualifications of Assessor Regulation, AR 233/2005. The CAO is not qualified under the above regulation;
c. created a new legislative scheme by which the CAO effectively makes the determination of the appropriate assessment class or sub-class for the property, with the assessor acting as an administrative assistant, marking the assessment class based on the determination of the CAO. The decision of the Chambers Justice has the assessor implementing the decision of the CAO, rather than making an independent determination as a regulated professional.

98. The Chambers Justice erred in concluding that s. 8 of the Bylaw does not improperly delegate the assessor's authority on the basis that "the MGA expressly contemplates different kinds of inspections, by different officers, for different purposes". The purposes of the property assessment and tax system are the dual purposes noted by the Supreme Court and referenced in

[88] KB Decision at para 98 **Appeal Record page 58.**

para 47a above – and in this aspect means the establishment and maintenance of a property assessment and tax system that fairly and equitably distributes taxes, and promotes transparency, predictability and stability for municipalities and taxpayers. Moreover, the statutory system ensures regulated professionals conduct inspections, minimizing any risk of claims of unreasonable searches under the MGA or the Charter.

99. The decision of the Chambers Justice effectively authorizes the creation of a different legislative regime which inserts a non-trained, non-regulated person into it, which has the effect of removing the impartiality and absence of political expediency which the assessment and taxation system is meant to provide.

100. The Chambers Justice's conclusion that the absence of any statutory prescriptions authorizes Council to create an assessment sub-class scheme based on frequency of use and the accompanying enforcement regime found in the Bylaw is predicated on an assumption that the power of Council to do so is found in s. 297(2) by necessary implication. As noted above in paragraphs 68-73, the Appellants assert that the authority is not provided by necessary implication, and therefore the enforcement scheme is also outside the authority of Council.

101. The Chambers Justice's reasoning ignores the fact that there is only one legislative regime for assessment and taxation and that regime is found in Parts 9 and 10 of the MGA.

> 49 The provisions at issue are found in statutes which are themselves components of a larger statutory scheme which cannot be ignored:
>
> > As the product of a rational and logical legislature, the statute is considered to form a system. Every component contributes to the meaning as a whole, and the whole gives meaning to its parts: "each legal provision should be considered in relation to other provisions, as parts of a whole" . . . .
> > (P.-A. Côté, The Interpretation of Legislation in Canada (3rd ed. 2000), at p. 308)
>
> As in any statutory interpretation exercise, when determining the powers of an administrative body, courts need to examine the context that colours the words and the legislative scheme. The ultimate goal is to discover the clear intent of the legislature and the true purpose of the statute while preserving the harmony, coherence and consistency of the legislative scheme (Bell ExpressVu, at para. 27;

> see also Interpretation Act, R.S.A. 2000, c. I-8, s. 10 (in Appendix)). "[S]tatutory interpretation is the art of finding the legislative spirit embodied in enactments": Bristol-Myers Squibb Co., at para. 102.[89]

102. Section 297 does not require declarations by landowners. Rather, it relies solely upon the skill and expertise of a trained, regulated professional to review the property and assign the appropriate assessment class or sub-class. By concluding that there is a different kind of inspection, by different officers and for a different purpose, the Chambers Justice has ignored the fact that there is only one system and in that system, the assessor has statutory functions, duties and powers, which are only delegable by the assessor.

103. The Chambers Justice finds authority for the inspection powers granted under s. 8 of the Bylaw in s. 7(i)(viii) of the MGA. This conclusion is not found in the express language of s. 294. It is also not found in s. 296 of the MGA which provides that the remedy for refusal to allow inspection or to produce documents is to make an application to the Court of King's Bench. Due to the express statutory language of these sections, the Chambers Justice's conclusion cannot be justified by necessary implication.[90]

104. Despite a complainant's right to appeal an assessment sub-class under s. 460(5)[91] of the MGA, neither the Bylaw, nor s. 460(5) gives the complainant the right to challenge the mandatory exclusion from the Primary Residential sub-class if the declaration is not made in accordance with s. 4 of the Bylaw or if the CAO is not satisfied that the property meets one or more of the listed criteria in s. 5 of the Bylaw.

105. The CAO's "satisfaction" referenced in s. 5 of the Bylaw is insulated from review under s. 460(5). The complaint process in the MGA provides for the review of an assessor's decision; there is no statutory appeal from the decision of the CAO under the MGA, nor is there an appeal mechanism found in the Bylaw. If a person attempted to use the statutory appeal mechanism in s. 460(5), the Assessor can defend the sub-class assignment merely by saying "that decision is

[89] *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board),* 2006 SCC 4 (CanLII), [2006] 1 SCR 140, at para 49 **Appellants' Authorities Tab 20.**
[90] *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board),* 2006 SCC 4 (CanLII), [2006] 1 SCR 140, at para 50. **Appellants' Authorities Tab 20.**
[91] MGA, s 460. **Appellants' Authorities Tab 1.**

not part of this regime". The landowner's right to challenge the assessment sub-class is subverted.

106. In coming to his conclusion about the ability to use the general bylaw making powers found in Part 1 of the MGA (s. 7), the Chambers Justice ignored the principle of statutory interpretation that "the specific overrides the general".[92] The specific provisions dealing with the powers of the assessor in Part 9 (particularly ss. 294 to 296) override the application of the general bylaw passing powers in s. 7 of the MGA.[93]

107. In drawing his conclusion regarding the use of s. 7 of the MGA to justify the enforcement powers in s. 8 of the Bylaw, the Chambers Justice failed to consider the direction in *Telus Communications Inc. v. Opportunity (Municipal Dist. No. 17)*[94] where the Court rejected the municipality's argument that s. 8 of the MGA provided justification for the discriminatory bylaw which was the subject of that cases:

> [36] So, pursuant to Sections 10(2) & (3), the right to discriminate granted in such Section 8(b) is restricted by conditions set out in other divisions of the *Municipal Government Act*. Since Section 297(2)(b) only allows a municipality by bylaw to create two (2) sub-classes to the non-residential class, Section 8 cannot be used to create further sub-classes.
> Sections 8(b), 10(1), (2), (3) and 279(2)(b) of the *Municipal Government Act*
>
> [37] Rooke, J. in *United Taxi Drivers et al. v. the City of Calgary*, *supra*, held that the general discrimination provisions of the *Municipal Government Act* cannot be interpreted as allowing discrimination interclass.[95]

108. In concluding that the powers of inspection given to the assessor can be exercised by the CAO to "ensure compliance with any declaration made under ss. 5 or 6 of the Bylaw", the Chambers has ignored the express language of s. 284.2(2), has ignored the context of s. 297 and has ignored the purpose of Parts 9 and 10 – effectively creating a separate regime or system. The effect of the Chambers Justice decision is to create a parallel system to the one created by the Legislature. This is contrary to the legislative direction of Parts 9 and 10 which is to "establish

[92] *Aubin v Condominium Plan No 862 2917*, 2025 ABCA 248 (CanLII), at para 28. **Appellants'Authorities Tab 25.**
[93] MGA, s. 7. **Appellants' Authorities Tab 1.**
[94] *Telus Communications Inc. v. Opportunity (Municipal Dist. No. 17),* 1998 ABQB 884. **Appellants' Authorities Tab 26.**
[95] *Telus Communications Inc. v. Opportunity (Municipal Dist. No. 17),* 1998 ABQB 884 (CanLII), at para 36 to para 37. **Appellants' Authorities Tab 26.**

and maintain **a** property assessment system" and where the single system intended to accomplish:

a. the fair and equitable distribution of taxes;

b. the promotion of transparency, predictability and stability for both municipalities and taxpayers; and

c. to ensure assessments are current, correct, fair and equitable.

109. The Appellants assert that there has been an improper delegation of the assessor's functions, duties and powers in ss. 4, 5 and 8 of the Bylaw. These sections offend the principles against improper delegation. The Appellants ask this Court to strike the offending bylaw.[96]

PART V. RELIEF REQUESTED

110. The Appellants ask that this Court:

a. grant this appeal and set aside the decision of the Chambers Justice; and

b. grant an order quashing Bylaw 2024-19 or in the alternative, a declaration that Bylaw 2024-19 is invalid and of no force or effect; and

c. award costs of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31st day of July, 2025

Shores Jardine LLP

Per: _____
G.J. Stewart-Palmer, KC

Per: _____
Zachary Gerard

Estimated time for the oral argument: 45 minutes.

[96] *Saint John (City) v. Crowe's Place Ltd.*, 2000 NBPC 3 (CanLII) **Appellants' Authorities Tab 27**; *Cenam Construction Ltd. v. Valley*, 1992 CanLII 401 (BC SC) **Appellants' Authorities Tab 28**.

TABLE OF AUTHORITIES

Tab	Authority
1.	*Municipal Government Act*, RSA 2000, c.M-26 s. 1(1) s.7 s 284(1)(c). s 284(1)(r) s. 284.2(1) s 284.2(2) s. 289 s. 293(1) s. 294 s. 295 s. 297 s. 297(1) s. 353 s. 354 s.355 s 356 s. 358.1 s. 460
2.	*Nanaimo (City) v. Rascal Trucking Ltd.,* 2000 SCC 13 (CanLII), [2000] 1 SCR 342, at para 27, citing Sopinka. J in *Shell Canada Products Ltd. v. Vancouver (City),* 1994 CanLII 115 (SCC), [1994] 1 S.C.R. 231 at p. 273
3.	*TransAlta Generation Partnership v. Alberta*, 2024 SCC 37, at para 55
4.	*Qualifications of Assessor Regulation*, AR 233/2005, s. 3
5.	*Municipal Assessor Regulation*, Alta Reg 347/2009, s 1
6.	*Matters Related to Assessment and Taxation Regulation,* AR 203/2017, s. 1(g), s 5, s 7, , s 9, s 16-18
7.	*Property Assessment Valuation* 2d, International Association of Assessing Officers, pages 98 and 99
8.	*Chief Administrative Officer Bylaw*, Bylaw 01-2012
9.	*Vancouver Charter,* SBC 1953 c. 55 at ss. 615 to 622

Tab	Authority
10.	*Municipal Act, 2001*, SO 2001, c 25, ss. 338.1
11.	*City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A ss. 302.1 and following
12.	*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653, para 137 and para 138
13.	*Auer v. Auer*, 2024 SCC 36. at para 3, para 26, para 33, para 46, para 50, para 53, para 54, para 59 and para 63
14.	*College of Pharmacists v Sobeys West Inc*, 2017 ABCA 306 (CanLII), at para 34
15.	*Housen v. Nikolaisen*, 2002 SCC 33 (CanLII), [2002] 2 SCR 235, at para 8 and para 9
16.	https://www.alberta.ca/types-of-municipalities-in-alberta
17.	*Rizzo & Rizzo Shoes Ltd. (Re),* 1998 CanLII 837 (SCC), [1998] 1 SCR 27, at para 21 and para 27
18.	*Pepa v. Canada (Citizenship and Immigration),* 2025 SCC 21 (CanLII), at para 102 and para 107
19.	*Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A,* 2024 SCC 43 (CanLII), at para 24
20.	*ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board),* 2006 SCC 4 (CanLII), [2006] 1 SCR 140, at para 48 , para 49 and para 74
21.	*Telus Communications Inc. v. Federation of Canadian Municipalities,* 2025 SCC 15 (CanLII), at para 55
22.	*Roncarelli v. Duplessis*, 1959 CanLII 50 (SCC), [1959] SCR 121, at page 140
23.	*Clublink Corporation ULC v. Oakville (Town),* 2019 ONCA 827 (CanLII), at para 37 and para 72
24.	*Tegon Developments Ltd. (Egon P. Tensfeldt Development Consultants Ltd.) v. Edmonton (City)*, 1977 ALTASCAD 304 (CanLII), at para 16; affirmed

Tab	Authority
25.	*Aubin v Condominium Plan No 862 2917*, 2025 ABCA 248 (CanLII), at para 28
26.	*Telus Communications Inc. v. Opportunity (Municipal Dist. No. 17),* 1998 ABQB 884 (CanLII), at para 35 , para 36 and para 37
27.	*Saint John (City) v. Crowe's Place Ltd*., 2000 NBPC 3 (CanLII)
28.	*Cenam Construction Ltd. v. Valley*, 1992 CanLII 401 (BC SC)

Authorities – Tab 9

Property Assessment Valuation

Second edition

International Association
of Assessing Officers

The Sales Comparison Approach to Value

6

The sales comparison approach uses the market to estimate value by comparing the subject to similar properties that have recently sold. When comparing the sold properties to the subject being appraised, the assessor must consider similarities and differences that affect value. Financing terms, market conditions, location, and physical characteristics are items that must be considered when making adjustments to the sales prices of the comparable properties for their differences from the subject.

The sales comparison approach relies on the economic principles of supply and demand, substitution, and contribution. The interaction of supply and demand factors determines property prices. One factor affecting demand is the cost of substitutes. The principle of substitution states that a prudent buyer will pay no more for a property than for a comparable property with similar utility. The principle of contribution as applied to the sales comparison approach means the value of a property component is measured by its contribution to the whole rather than by its cost.

The basic steps in the sales comparison approach are (1) defining the appraisal problem, (2) collecting and analyzing the data, (3) selecting appropriate units of comparison, (4) making reasonable adjustments based on the market, and (5) applying the data to the subject of appraisal. However, defining the appraisal problem is the most critical step, because the nature of the problem determines the sources of information, the methods of comparable selection, and the adjustment techniques.

Thus, a thorough familiarity with the property being appraised is essential. The description and classification of the subject property, knowledge of its highest and best use, and awareness of the purpose and function of the appraisal help to establish the framework for obtaining comparative sales data.

Analysis of Subject Property

Classification and Description

The attributes that describe a property are observed during an inspection and are usually recorded on the assessor's property record form or on a work sheet. In order to classify the property, the assessor considers a complete physical description of the site and improvements, along with the nature of the neighborhood. The classifications discussed in this chapter include residential property, commercial property, industrial property, and agricultural land.

The elements of comparison (property characteristics) for improvements include the following:

- overall quality
- architectural attractiveness
- age
- size (for example, square footage, stories, number of units, and number of bedrooms and baths)
- amenities (for example, special-purpose rooms, garage, swimming pool, and parking)
- functional utility (for example, architecture and appearance, layout, and equipment)
- physical condition (for example, physical deterioration, maintenance, and modernization, including remodeling and additions)

Highest and Best Use

Frequently, the present use of an improved property is its highest and best use. A search for the typical buyer will lead the assessor, in most cases, to the highest and best use for the sub-

ject property. It is nearly impossible to determine a highest and best use for a property if there are no potential buyers who will base purchase decisions on such use. The determination of highest and best use, therefore, is market-oriented. An error in the selection of highest and best use for the subject property will eventually lead the assessor to misleading comparable data.

If an old, vacant, and obsolete multistory industrial property is the subject of appraisal, the estimation of highest and best use is extremely critical. Who are the typical buyers of such properties? What are the uses of the property? Does the improvement contribute any value to the site? Does the improvement detract from the value of the site? A misdetermination of highest and best use certainly will lead to an erroneous value conclusion.

In the comparison of single-family residences, the estimate of highest and best use of the subject property may be, for example, a modest starter home for a young couple that has children. This residence must be compared with sold properties having similar appeal to the same type of family grouping. It should not be compared with custom-built residences that would be in demand by buyers wanting a more prestigious neighborhood. Typical buyers and their motives lead the assessor to the highest and best use.

Purpose and Function of the Appraisal

Almost exclusively, the purpose of the appraisal for the assessor is market value. Does the property being appraised lend itself to an indication of value using the sales comparison approach to value? What do the statutes say about using market data as indicators of value? If the subject property is classified as one that is normally traded in the real estate market, it is generally best to use the sales comparison approach. For the assessor, the function of the appraisal is for ad valorem tax purposes, to establish a basis for assessment and, ultimately, for distribution of the property tax burden.