# LIDSTONE & COMPANY
# ALBERTA MUNICIPAL LAW LETTER

*In this monthly issue*



## *Top 5 Procurement Lessons Learned from Prince George – George Street Parkade Project*

Back in 2017, a private developer, A & T Project Developments Inc. (the "Developer") announced plans with the City of Prince George (the "City") to build high-end condos (the "Housing Project") on City owned lands (the "Lands") adjacent to City Hall. The Housing Project was greeted as the "missing piece of the puzzle" for the City's downtown redevelopment plan, which had long called for people to live in the neighbourhood to help sustain more shops and restaurants. To make the Housing Project happen, the City entered into an agreement with the Developer for the City (the "Parkade Agreement") to assume the costs of building a 290-vehicle underground parkade for the condo (the "Parkade"), with 130 spots rented to developers at a reduced rate over 50 years and the remainder available to other customers. The Parkade Agreement was structured as a "cost plus" agreement whereby the City agreed to reimburse the Developer for its costs of building the Parkade, plus a specified percentage of those costs.

Cost overrun issues arose with respect to the building of the Parkade and the cost of the Parkade ballooned from an original budget of $12.6 million in 2018 to a projected $34.1 million in just over two years. Under the terms of the Parkade Agreement, the City was obligated to pay all of those additional costs. Legal counsel was retained to undertake a detailed independent review of the Parkade project (the "Review"). The Review provides lessons for all local governments in undertaking major construction projects.

The Review concluded that those major issues associated with the Housing Project and Parkade arose as a result of the City pressing forward without first having undertaken appropriate due diligence, both in terms of design for the Parkade and consideration of the appropriate allocation of risk – namely the cost of the project. The City's longstanding desire for the revitalization of the downtown, and its strong belief that the Housing Project and Parkade were much-needed development to spur on that revitalization, led the City to press forward with negotiations with the Developer, and enter into significant financial commitments, without having first undertaken sufficient design work to fully understand the costs associated with the commitments that the City was making in agreeing to pay the costs of construction of the Parkade and the costs of off-site works necessary

for the construction of the Parkade. While the costs incurred by the City were not necessarily unreasonable, the City did not do sufficient due diligence in advance of moving forward to fully understand the costs it agreed to incur, and the risks associated with moving forward in the proposed manner with the Parkade.

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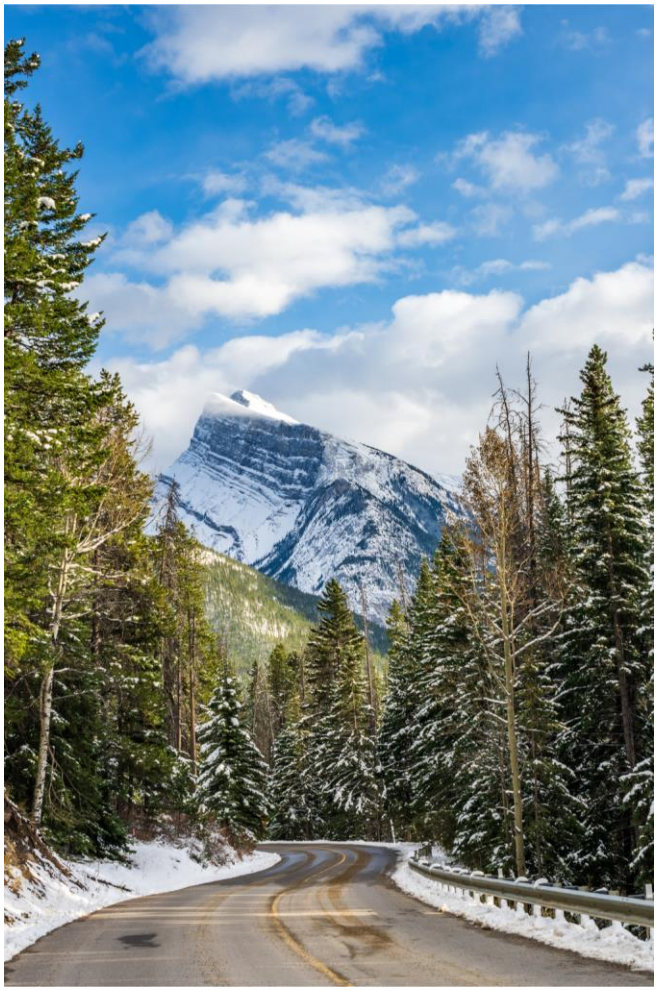
The Review also concluded that the City did not undertake any public competition to identify and evaluate possible partners for the Housing Project. A public competition would have provided the City with a better sense of potential design and cost alternatives and also provided more leverage to the City with respect to contract negotiations and award.

In addition, the Review concluded that the Parkade Agreement that the City executed with the Developer was a significant factor in the cost overrun problems that subsequently arose. The Parkade Agreement was a standard form CCDC3 2016 Costs Plus Contract. The Parkade Agreement was prepared by the Developer, was not vetted by City staff responsible for procurement matters and was not brought to the City Council for consideration or approval. Among other things, the Parkade Agreement provided a preliminary budget for the Parkade construction to be $12,012,054 but did not include any limit on the maximum amount payable by the City to the Developer, plus 5% profit and GST. The Parkade Agreement also obligated the City to pay to the Developer the actual costs of construction of the Parkade, plus 5% on account of the Developer's overhead costs, plus an additional 5% on account of profit.

Finally, the Review identified significant issues with council overview of the Parkade Agreement. Other than in a single staff report to the City's Finance and Audit Committee, at no time did staff bring the escalation in the costs of construction of the Parkade to the attention of City Council. In addition, to the extent that the costs escalation was, in part, reflected in the staff report, the report addressed a broad range of projects and the costs escalation for the Parkade was not expressly brought to the Committee's attention, nor was it readily apparent in the report. This lack of disclosure was addressed through the latest amendments to the City's Sustainable Finance Guidelines which now provides that the City manager may only approve budget amendments in a calendar year or transfers equal to the lower of 5% of the capital projects budget, or $100,000 per project and that budget amendments in a calendar year exceeding those amounts must be approved by Council. The Review concluded that the amended policy is consistent with other similarly sized local governments in British Columbia. While many local governments only provide for a single cap on the value of a budget amendment or transfer that may be approved by the chief administrative officer, a cap that is the lesser of a percentage of a particular capital project budget or $100,000.00 is prudent.

Lessons learned from this Review include the following:

1. Lesson 1: Always do your due diligence from a technical, financial and legal viewpoint before proceeding with any project. This is necessary in order to understand and address all potential risks associated with the project.
2. Lesson 2: Most projects and services should be procured through a public procurement project in accordance with applicable trade agreements (NWPTA and CFTA). The exceptions to this general rule may be in circumstances where the project is low value or an exception exists under the trade agreements, but in most cases, a public procurement process is recommended. There are several reasons for this, including the following:
    a. A public procurement process encourages transparency and value for money spent;
    b. A public procurement process enables the local government to draw on the expertise and creativity of proponents and identify a range of possible arrangements to complete the project. This is particularly advantageous when the project is complex and there are significant uncertainties.
    c. A public procurement process increases the number of options for delivering the project or services and increases the leverage of local governments with potential contractors;
    d. A public procurement process provides additional information to the local government with respect to technical, financial and legal issues; and
    e. A public procurement process will preclude a legal challenge under the trade agreements.
3. Lesson 3: Among other key provisions, contracts should always include provisions:
    a. that specify costs, or anticipated costs, including either stipulated or maximum costs. This would have provided the City with cost certainty and allocated risk to the Developer.;
    b. that enable the local government to review and scrutinize costs; and
    c. that shift risks of cost overruns to contractors or that enable the local government to amend or exit the contract if there are cost overruns.
4. Lesson 4: Understand the risk associated with different forms of contracts.



    a. Generally speaking, a cost plus contract (as was the type of contract used for the Parkade Agreement) will usually provide the lowest estimated price for a project; however, it will also impose the greatest risk on the local government with the

local government carrying the risk of higher than anticipated costs. In contrast, a stipulated price contract will provide higher specified costs, but the burden of cost overruns is shifted to the contractor.

5. Lesson 5: Local governments should undertake a detailed review of their project management processes, beginning with the planning/due diligence phase, through to procurement, and ending with the actual administration of the contract. A review should include consideration of the following issues:

    a. Ensuring a sufficient level of due diligence and identifying and addressing all issues before embarking on a project;

    b. Ensuring that all procurement is consistent with best practices and trade agreement requirements;

    c. Ensuring accountability by senior staff and council oversight, including requirements that all contracts, or at least those above a specified threshold are approved by council and that any changes in budget, or at least those above a specified threshold, are subject to council approval.

No local government wants to find itself in a similar situation and adopting these measures will help you prevent that from happening.

**~ Lindsay Parcells**

## *FOIP Redaction Process: Best Practices*

Local governments are frequently required to respond to requests for information under the Freedom of Information and Protection of Privacy Act ("FOIP"). Larger municipalities often have a dedicated FOIP department to respond to these requests, but in many cases, municipal staff may be called upon to respond. Provided a municipality (defined as a "public body" under FOIP) is complying with its statutory obligations under FOIP, the process it follows internally prior to disclosing records is a matter within its own discretion. This process will be informed by various legal and policy considerations.

There are some issues to consider when responding to FOIP requests and in particular, when multiple staff or departments are involved in the response. For example, when multiple staff or departments conduct a secondary review, it may be difficult for the municipality to comply with the statutory time limits for responding to requests. In addition, staff in other departments may not have in-depth knowledge of the mandatory and permissive exceptions to disclosure in the FOIP Act, such that they may not be well-placed to offer comments on the proposed redactions.

On the other hand, secondary review by another department may be prudent in certain circumstances depending on the subject matter of the request and the relevant facts. While FOIP staff likely have the most knowledge and expertise in determining whether an exception to disclosure may apply under the FOIP Act, staff in other departments may be better placed to offer insight about whether the discretion to withhold information should be exercised in a given case. For example, records may be considered sensitive because of a risk of litigation or because the municipality is in ongoing negotiations with a third party. Staff working on those matters in the requisite departments will likely have more in-depth knowledge of how disclosure of the records could impact the municipality's interests, particularly if there are nuances that are not apparent on the face of the records.

Further, even in cases where staff in the FOIP Unit do not think the Office of the Information and Privacy Commissioner ("OIPC") would ultimately agree that certain records can be withheld or redacted, the municipality may make a good-faith determination that it is prepared to defend its decision to withhold records in order to protect its interests. In such cases, the

municipality may reasonably decide to withhold records unless or until it is ordered by the OIPC to disclose them.

The mere fact of asking staff or a department outside the FOIP department to engage in secondary review of proposed redactions would not mean that the process is biased or that the discretion of the 'head' would be fettered, as that term is understood in the law. It is permissible for the 'head' to solicit feedback and recommendations from staff in the FOIP Unit and other departments prior to confirming a decision to withhold certain records.

As noted above, there is no express legal constraint on having staff outside of the FOIP Unit conduct secondary review of records that have been prepared for disclosure. However, there are legal and policy considerations that may inform the municipality's decision about the process it wishes to follow.

### 1. Time Limits

There is a thirty (30) day time limit on responding to requests, pursuant to s. 11 of the FOIP Act. Record retrieval, review, consultation with relevant departments, and preparation of the records for disclosure (including redaction/annotation) must all take place within this time period. Time limits can be extended in certain circumstances, including if a large number of records are requested or must be searched and responding within the 30-day time period would unreasonably interfere with the operations of the public body. Therefore, for complex matters involving lots of records, the municipality may be in a position to exercise its discretion to extend the time.

Ultimately, it is within the municipality's control in terms of how it ensures compliance with the time limits. If the municipality wants to have secondary review by other departments in every case, the time limits should be made clear in advance and other departments should be prepared to meet them.

### 2. Exercising Discretion to Withhold Records

There is a distinction between determining whether an exception to disclosure in the FOIP Act might apply and subsequently exercising the discretion to withhold or redact records. While a municipality's FOIP Unit will usually have the expertise in terms of the former issue (i.e. determining whether an exception applies), staff in other program areas may possess the background knowledge that is useful or necessary in deciding whether to exercise the discretion to withhold records or not.

The OIPC has recognised that knowledge and expertise of the substance of records is an important consideration in determining whether to withhold records. In *Calgary (City) (Re), 2014 CanLII 41748*, the City withheld a number of records on various discretionary grounds under the Act. The adjudicator ultimately decided to remit the matter back to the public body to make new decisions respecting its application of the discretionary sections rather than substituting their own decision, noting the following:

> "[para 11] In some instances, it seems clear from the records themselves that a particular exception applies to certain information; similarly, it seems likely that none of the exceptions cited by the Public Body apply to some of the information in the records. However, in many instances in the 373 pages of records, I lack the Public Body's particular knowledge and expertise regarding the substance of these records. As such, it is my view that the Public Body is in a better position to delineate what information in the records can be withheld under each of the exceptions, taking into account the guidance provided in this order."

The Adjudicator subsequently noted the factors a court will take into account in reviewing a head's exercise of discretion to withhold records:

> "[para 65] The Supreme Court of Canada confirmed the authority of the Information and Privacy Commissioner of Ontario to

quash a decision not to disclose information pursuant to a discretionary exception and to return the matter for reconsideration by the head of a public body. The Court also considered the following factors to relevant to the review of discretion:

- the decision was made in bad faith
- the decision was made for an improper purpose
- the decision took into account irrelevant considerations
- the decision failed to take into account relevant considerations."

The Adjudicator confirmed that the same approach applies to the review of a public body's exercise of discretion in Alberta.

It is clear from the factors above that a public body has fairly wide latitude in exercising its discretion to withhold records once it establishes that a permissive exception to disclosure applies. Exercising this discretion will necessarily require the public body to consult with those who have particular knowledge and expertise in relation to the records in question. Absent evidence of bad faith or improper motives (which is rarely established) or evidence that the public body failed to turn its mind to certain considerations, the OIPC is unlikely to overturn a public body's exercise of discretion.

One of the goals of staff in a municipality's FOIP Unit is to ensure that municipality does not redact more information than is necessary. This is consistent with one of the purposes of the FOIP Act, which is to allow a right of access to records, subject only to the limited and specific exceptions in the Act (s. 2). However, a determination of what is "necessary" to withhold can be nuanced and might reasonably require the 'head' to solicit feedback from staff in other departments. Provided the municipality is exercising its discretion to withhold records in accordance with the legal requirements, it is ultimately a policy decision as to whether the head seeks (and follows) the secondary input of staff outside the FOIP Unit.

### 3. Erring on the Side of Caution / Making novel arguments

It is not uncommon for a public body to take the position that an exception to disclosure applies out of an abundance of caution and/or to protect its legal interests. A public body may take such a position when it is possible that a mandatory exception to disclosure might apply (such as ss. 16 or 17) or when there is some possibility that its legal interests will be impacted if certain records are disclosed.

Making decisions in these circumstances may require more than just the expertise of staff in the FOIP Unit. As discussed above, it is often those with the best understanding of the subject matter of the records who can weigh in on the implications of disclosing certain records. Provided a decision to withhold records is reasonably supportable under one or more sections of the FOIP Act, and there is no evidence of bad faith or improper purposes, there may be good reasons to withhold records in certain cases (and therefore for the 'head' to request secondary review or comment from other departments).

It may also be the case that a public body is prepared to challenge the law or make a novel argument if it determines that the disclosure of records would impact its legal interests. In such circumstances, the public body would likely withhold records and be prepared to defend its decision in an inquiry before the OIPC. We acknowledge this is not something public bodies would do routinely (from a time and cost perspective), but there may be circumstances where the public body determines it is important to test or challenge a ruling in a particular area.

For example, until very recently in British Columbia, the OIPC did not recognize settlement privilege at common law as a basis for public bodies to withhold records from disclosure. It was only after the City of Richmond challenged an OIPC ruling before the BC Supreme Court that settlement privilege was acknowledged to be a lawful basis for public bodies to withhold

records from disclosure: *Richmond (City) v. Campbell*, 2017 BCSC 331. There may be compelling reasons that a public body is prepared to risk legal challenge in order to withhold records from disclosure. In such circumstances, it would be reasonable for the 'head' to request review and input from the FOIP Unit and other departments.

**4. Fettering of Discretion**

One of the purposes of a secondary review of proposed redactions is to allow further input and to ensure that the municipality's legal interests are protected. Put another way: the decision of the 'head' to withhold or disclose records is one that is informed by input solicited from both the FOIP Unit and, in certain circumstances, other departments. In these circumstances, the other departments should not have any veto power, such that the 'head' is constrained or fettered in ultimately exercising their authority under the FOIP Act.

Such a process of consultation within local governments is fairly common prior to making decisions. For example, a business licence inspector would likely solicit feedback from the planning department before cancelling a business licence on the basis that a business did not comply with the zoning. Provided the planning department did not exercise any veto power, it could not be said that the head's discretion is 'fettered' by consulting with other staff before making a decision. Similarly, the 'head' for the purposes of the FOIP Act may reasonably solicit feedback from departments other than the FOIP Unit prior to confirming a decision to withhold certain records. Unless the 'head' was bound by some internal policy to follow the recommendations of some other staff or person in the municipality, and therefore did not retain discretion to decide the matter, there would likely be no basis to conclude there is a fettering of discretion.

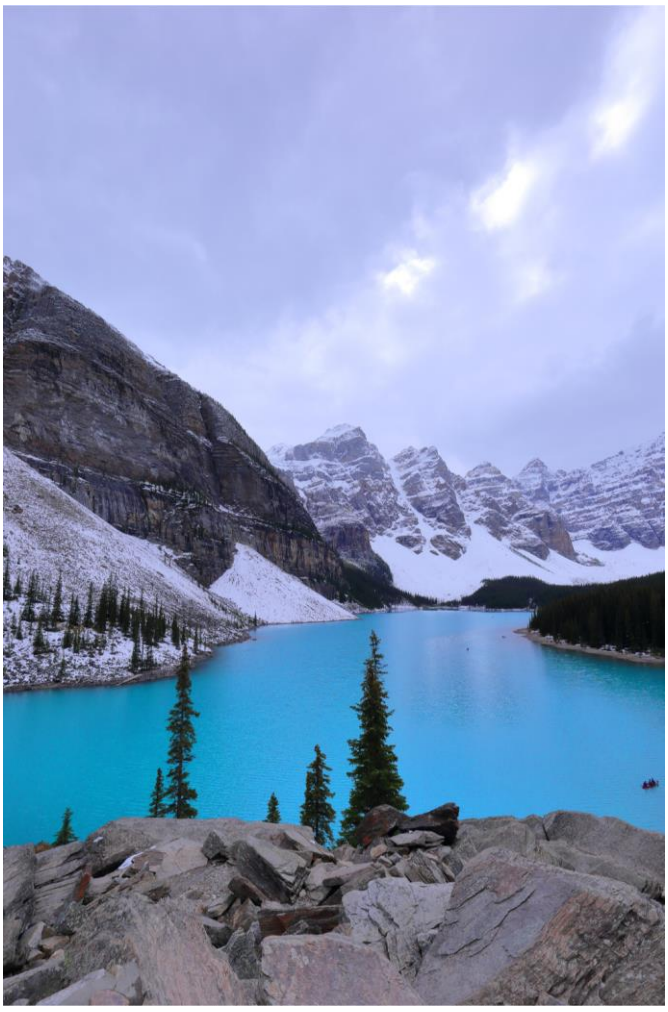
**~ Marisa Cruickshank**

# Case Law

## *Koebisch v. Rocky View (County) 2021 ABCA 265*

### Background

Four developers made applications to Rocky View County for land use re-designations from "Ranch and Farm District" to "Natural Resource Industrial District" to facilitate development of gravel (aggregate) extraction. Each application for re-designation was accompanied by a Master Site Development Plan ("MSDP") as required by



the county municipal development plan. The County municipal development plan also required the MSDPs to address, among other things, assessment of the cumulative aspects of the proposed extraction activities in the area. The County amended four bylaws for the re-designation. Three of the bylaws were passed in

July 2017 and the fourth bylaw was passed in April 2018. When the first three bylaws were passed, council did not approve the MSDPs submitted with the applications and instead passed motions directing county administration to collaborate with the developers to revise the MSDPs. Revised MSDPs were approved by council in September 2017 and the MSDP by-law was approved in April 2018.

The applicants opposed the bylaws on the basis that the developers failed to follow the County Plan because the MSDPs submitted in support of the re-designation applications were "woefully non-compliant" with County plan requirements and the County Council did not properly address cumulative aspects at the re-designation stage. Further, the applicants contended that Council treated them unfairly. The trial judge ruled in favour of the applicants finding that the County "proceeded on seriously and obviously deficient MSDPs and failed to consider cumulative aspects of extraction in the area. In doing so, Council undermined the purposes of the County Plan and acted contrary to the objectives of good government under the Act." The County appealed and the Alberta Court of Appeal allowed the appeal.

**Standard of Review and Reasonableness**

The Court of Appeal confirmed that s. 539 of the *Municipal Government Act* ("MGA") prevents challenges to by-law on ground of unreasonableness. In doing so, the Court of Appeal considered the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, 441 DLR (4th) 1, ("*Vavilov*"). As per the *Vavilov* decision, in most circumstances, the judicial review of local government decisions are conducted pursuant to the standard of reasonableness. Judicial review of local government decisions under the standard of reasonable means the Court will assess a decision of the local government to determine whether it generally fell within the range of reasonable outcomes rather than assessing whether the decision was the "correct" one.

*Vavilov* re-affirmed the court's earlier decisions in *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2, [2012] 1 SCR 5, where in the context of municipal bylaws, "reasonableness means courts must respect the responsibility of elected representatives to serve the people who elected them and to whom they are ultimately accountable" and that courts will not "overturn municipal bylaws unless they are found to be 'aberrant', 'overwhelming', or if 'no reasonable body' could have adopted them", paras 19, 20.

**Development Plans and Their Role in Approvals**

The Court of Appeal also considered the role that municipal development plans and master site development plans play in development approvals. As noted by the court, "municipal development plans provide broad direction and as statutory plans pursuant to s 616(dd) of the MGA, are policy documents which state goals but may not regulate in a prescriptive manner…. It is open to a reviewing court, therefore, to conclude that a certain development project is not illegal merely because it is at variance with a municipal development plan. However, this approach must not be taken too far lest statutory plans be ineffectualized…" (para. 26)

A Master Site Development Plan, on the other hand, "is a non-statutory plan which contains relevant planning considerations, while not having the status and legal effect of a statutory plan", however, "at all stages of its planning function, a municipal council continues to exercise discretion and to be bound by its overarching obligation to balance private rights and the long-term public interest within the municipality." (paras. 27-28)

In this case, the County's municipal development plan included mandatory actions which were required to be complied with, without discretion. The County's development plan further recognized that natural resource development,

and in particular aggregate (sand and gravel) extraction, "may have significant impact on adjacent land uses and the environment." With respect to aggregate extraction, the County's development plan imposed a mandatory requirement that applicants for aggregate extractions "shall include" a Master Site Development Plan. It also provided for other mandatory requirements. (paras 32-33).

As noted by the court, "while a municipal development plan generally is to be interpreted in a flexible, broad, and aspirational manner, where, as here, the County chose to impose certain mandatory requirements in its overarching municipal development plan, those requirements "must be complied with, without discretion." Given the County's self-imposed mandatory requirements in its development plan, in the context of approving a re-designation application relating to aggregate extraction… applying an unduly flexible approach to interpreting it would make it ineffectual."(para. 34)

The appeal court confirmed that the explicit language of the County plan "must properly be interpreted in the entire context of the MGA, in its grammatical and ordinary sense, harmoniously with its scheme, the object of the MGA, and the intention of the Legislature" (para 35) and on that basis concluded that the County reasonably followed the mandatory requirements of the County Plan. The appeal court then considered whether the County's decisions to enact the bylaws were "aberrant, overwhelming, or decisions that no reasonable municipality would have taken" and on those considerations decided they were not. In the court's view: "While the participatory interests of the respondents may have been better served had County Council withheld passage of the bylaws until approval of the related Master Site Development Plans, and arguably it was inappropriate sequencing for the Summit, McNair and Lafarge bylaws to pass before their Master Site Development Plans were approved, the requirements of the County Plan were met." (para. 40)

The judgement of the Alberta Court of Appeal in *Koebisch v. Rocky View (County)* 2021 ABCA 265 reaffirms that: 1) municipal decisions to enact bylaws and pass resolutions remain subject to judicial review on the standard of reasonableness (i.e. whether the decision to enact a bylaw or pass a resolution generally fell within the range of reasonable outcomes rather than assessing whether the decision was the "correct" one); and 2) the mandatory requirements of municipal development plans must be complied with.

**~ Katie Dakus**

## *University of Calgary v Alberta (Information and Privacy Commissioner), 2021 ABQB 795*

### Background

In October 2008, Ms. Jacqueline Ryrie ("applicant") filed an access to information request under the *Freedom of Information and Protection of Privacy Act* seeking records about herself in the possession of her former employer, the University of Calgary ("University"), that were created between August 2007 and October 2008. About the same time, the applicant sued the University for wrongful dismissal, filed a human rights complaint, and filed a complaint under FOIPP with the Office of the Information and Privacy Commissioner ("OIPC").

The University responded to the applicant's request for records in the wrongful dismissal litigation and in the access to information request. In the wrongful dismissal litigation, the University claimed solicitor-client privilege over all records arising from its communications with its in-house counsel and its external counsel. The applicant did not challenge the privilege claim in the civil action. The University similarly claimed solicitor-client privilege over the same records

as a bar to disclosure under section 27(1)(a) of FOIPP in the access to information request.

The applicant questioned the University's privilege claim and in March 2009 asked the OIPC to undertake an inquiry. The OIPC sought further information from the University to support its claim of solicitor-client privilege and in response, the University submitted further evidence. Dissatisfied with the University's response, OIPC" issued a Notice to Produce Records under section 56(2) of FOIP on the grounds that the University had failed to provide adequate evidence of its claim of solicitor-client privilege and that it was necessary for him to review the records to fairly decide the issue of whether the University had properly withheld those records under section 27(1). He ordered the University to produce to him for his review a complete copy of the records over which it claimed solicitor-client privilege.

In response to the OIPC order, the University applied for judicial review of the delegate's production order. The Court dismissed the University's application, concluding that the delegate had the authority to compel production under section 56. The University appealed that decision and the Alberta Court of Appeal allowed the appeal, holding that FOIPP did not give the delegate the power to compel production of records over which the University had asserted solicitor-client privilege. The Supreme Court of Canada ("SCC") upheld the Alberta Court of Appeal. The majority of the SCC concluded that FOIPP did not give the OIPC the power to compel the University to produce records over which it had claimed solicitor-client privilege.

Two months after the SCC's decision, the OIPC elected to continue the inquiry relying on section 72 of FOIPP. The OIPC took the position that the Notice to Produce was an interim order and that the substantive question remained undecided, namely, whether the University had properly withheld records that it claimed were subject to solicitor-client privilege. In the OIPC's view, the court had addressed only the question of whether a delegate could order the production of allegedly solicitor-client privileged records to determine the validity of the privilege claim; it had not decided the specific question of the validity of the privilege claim with respect to all the documents at issue in this case.

The University strongly objected to the continuation of the inquiry and argued that the access request had been fully adjudicated through the SCC's final decision in the judicial review proceedings. Notwithstanding the University's objections, the OIPC persisted with its investigation and concluded that the University had not proven its claim of solicitor-client privilege in relation to records, if any, that consisted of communications between the University and its in-house counsel that did not involve its external counsel and that predated the University's anticipation of the applicant's lawsuit. In consequence, the OIPC ordered the University to disclose certain records to the applicant. Following the OPIC's order, the University brought a further application for judicial review to quash the OIPC's order to disclose the records.

**Judgement**

The Court of Appeal concluded that the issue of solicitor-client privilege was previously settled by the SCC and doctrine of issue estoppel applied in this case. As such, the OIPC was not entitled to revisit these issues and its continued efforts to seek disclosure of University documents subject to solicitor-client privilege were improper. The court noted that "the three preconditions for the application of issue estoppel were set out in Danyluk v Ainsworth Technologies Inc., 2001 SCC 44 at para 25:

(i) that the same question has been decided;

(ii) that the judicial decision which is said to create the estoppel was final; and,

(iii) that the parties to the judicial decision or their privies were the same as the parties to the proceedings in which the estoppel is raised or their privies." (para. 60)

The court noted that "in three sets of reasons the Supreme Court commented on the validity of the privilege claim and concluded that there was no reason for the delegate to require production for review purposes in this case. Issue estoppel and its sister doctrine of res judicata apply "not only to points upon which the court was actually required by the parties to form an opinion and pronounce judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time": L'Hirondelle v Patenaude, 2019 ABQB 39 at para 52, citing Henderson v Henderson [1843-1860] All ER Rep 378 at 381-382." (para.62)

The court concluded that "in the circumstances of this case, it was unreasonable for the second delegate to have parsed the Supreme Court's reasons so as to reject its findings regarding the validity of the privilege."(para. 63)

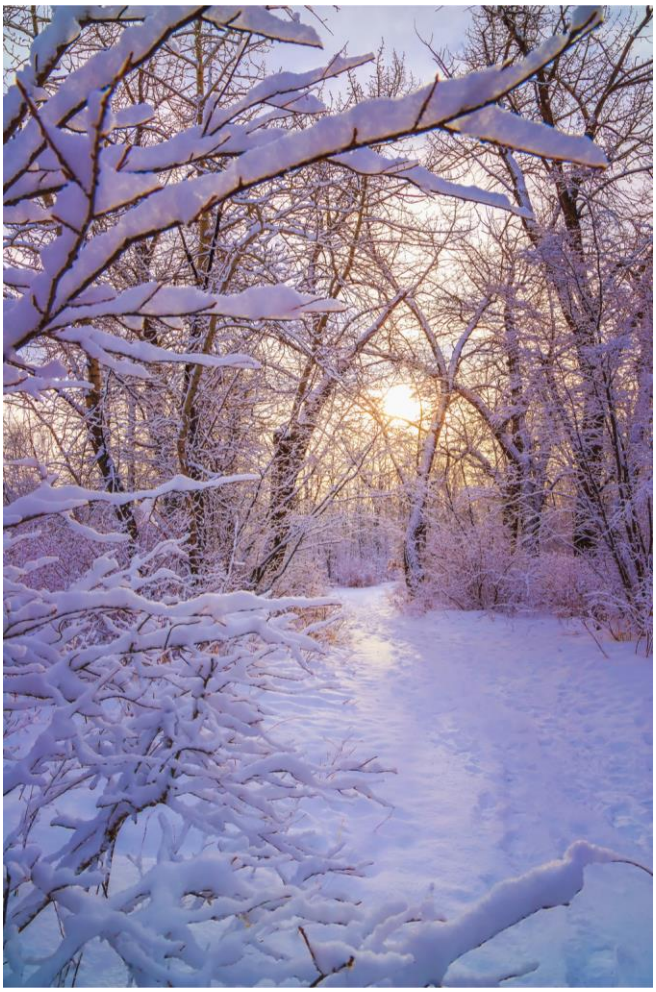
The Court of Appeal confirmed that administrative bodies such as the OIPC "must carefully consider whether adverse consequences may attach to its decision to do so." (para. 76). The court concluded that this was "an appropriate case to award costs against the Commissioner. The Commissioner did not take on a neutral role to speak to jurisdiction and standard of review in these proceedings. Rather, she threw herself into the ring as a strong partisan advocate of her delegate's decision. She was a formidable adversary. For this reason, she cannot escape the cost consequences associated with taking on such an adversarial role." (para. 78).

**~ Katie Dakus**

# News

## *New Minister of Municipal Affairs*

The province of Alberta has a new Minister of Municipal Affairs. The Honourable Ric McIver was sworn in as Minister of Municipal Affairs on January 4, 2021. Minister McIver was first elected to the Legislative Assembly of Alberta on April 23, 2012 as the MLA for Calgary-Hays. He was re-elected on May 5, 2015, and again on



April 16, 2019. Previously, McIver has served Albertans as Minister of Transportation, Infrastructure, and Jobs, Skills, Training and Labour.

Before his provincial political service, McIver served 3 terms on Calgary's City Council, serving on the Calgary Police Commission and as chair of the Calgary Housing Company.

## *Alberta Police Officers now able to offer immediate access to addiction treatment on an individual's arrest*

Albertans who are arrested by police and who have an opioid addiction will now have the ability to immediately start addiction recovery treatments voluntarily in municipal jails. The initiative will be created as a low barrier/harm

reduction division of the province's virtual opioid dependency program ("VODP"). This division will do rapid assessment and initiate treatment for those struggling with addiction and opioid use and will also provide enhanced case management for individuals after their release from custody.

Implementation of addiction treatment in municipal jails will begin with the Edmonton Police Service, the Calgary Police Service and at some rural locations with the RCMP. The voluntary service is available to Albertans who have been arrested for any offence starting immediately.

The VODP is administered by Alberta Health Services and is available throughout the province. People dependent on opioids are treated with opioid agonist therapy (OAT) drugs and provided with ongoing support and monitoring in an outpatient setting. The VODP can be accessed by calling 1-844-383-7688. The toll-free line is available seven days a week, from 8 a.m. to 8 p.m. daily. There is no waitlist for the program.

**~ Alison Espetveidt**

## *Introducing Rahul Ranade*

Rahul is licensed in British Columbia and Alberta and practices primarily in the areas of public infrastructure, environment, development and commercial contracts. He advises clients on a wide variety of transactions and contracts related to project financing, land development, sale/purchase of goods, professional services and construction. He also navigates clients through tendering and procurement processes. With 15 years of pre-law experience on infrastructure projects as an engineer, Rahul is well-versed with traditional design-bid-build as well as alternatives approaches to building infrastructure.

Also licensed as a professional engineer, Rahul is fluent with handling complex legal matters related to the environment including contaminated soils, surface and groundwater

diversion and use, drainage/flooding and water/wastewater treatment. He is a registered professional hydrologist and serves on the Board of Registration of the American Institute of Hydrology. In addition to his British Columbia and Alberta credentials, Rahul is licensed as an attorney and civil engineer in California and has previously practiced in both fields in the United States.

LIDSTONE & COMPANY acts primarily for local governments in Alberta and BC. The firm also acts for entities that serve special local government purposes, including local government authorities, boards, commissions, corporations, societies, or agencies, including police forces and library boards.