LIDSTONE & COMPANY
ALBERTA MUNICIPAL LAW LETTER

Articles

Municipal Liability for Flooding

Introduction

Can municipalities be liable for their actions or inactions in protecting citizens from the consequences of flooding? The two main sources of potential liability are claims of negligence and nuisance. The probable success of any claim will need to be assessed in light of the details of the claim, including the pleadings' formulation of the specific causes of action and alleged facts.

With respect to negligence, a municipality does not owe a private law duty of care with respect to many potential claims of damage caused by flooding. As well, potential claims may also not succeed because of policy decisions made by municipalities which do not support tortious claims. In the narrow area of the decision to issue development permits, a duty of care has been found by the courts. However, in these circumstances a municipality that has properly issued permits in accordance with the provisions of its Land Use Bylaw will probably not be susceptible to successful clams against them. Furthermore, some potential claims are barred by sections 12 of the *Safety Codes Act* and section 28 of the *Emergency Management Act.*

Nuisance claims are barred by sections 527.2 and 528 of the *Municipal Government Act* (the "***MGA***"), which provide complete defences to any claims based in nuisance. The common law defence of statutory authority will further limit the municipality's risk of exposure under this particular cause of action.

Potential liability of Municipalities for Flooding

Potential liability may be raised in at least four different aspects of a municipality's actions or inactions with regards to flooding:

1. The adequacy of the municipality's flood mitigation infrastructure;
2. Floodproofing requirements in the municipality's land use bylaw;
3. The decision to issue development and building permits in floodplains; and
4. A municipality's actions in managing a state of local emergency.

For this article, we have identified potential causes of action and discussed their relative merits. However, the probable success of any claim will need to be assessed in light of the details of the claim, including the causes of action set out in the pleadings and the alleged facts.

A. Negligence

Negligence is a significant source of potential liability associated with flooding. As such, it is the focus of this article.

(1) Elements of Negligence

The law has evolved to recognize that municipalities may be liable for private law tort claims, including negligence. The basic elements required to establish liability in negligence are:

- there must be a duty of care owed by the municipality to the plaintiff;
- there must be a breach of that duty (i.e. the municipality's conduct must fall below the standard of care); and
- the breach of the duty must cause damage to the plaintiff.

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(a) *Duty of Care*

In terms of a municipality's actions in managing a state of local emergency, there is no precedent establishing a duty of care. A report from the University of Waterloo's Intact Centre on Climate Adaptation (see Natalia Moudrak and Dr. Blair Feltmate, *Weathering the Storm: Developing a Canadian Standard for Flood-Resilient Existing Communities* (University of Waterloo: Intact Centre on Climate Adaptation, 2019)) lists a number of flood related lawsuits in Canada. None of the lawsuits have reported decisions that would establish an existing duty of care with respect to the design standards of a municipality's flood mitigation infrastructure or regulation of land use planning through various bylaws or policies. The case of *Rashiq* v *Derrick Golf and Winter Club* also references a settlement between the City of Edmonton and the plaintiff, but the details of that settlement are also unknown. In that case, the plaintiff was ultimately unable to make out his claim for negligence.

(b) *Breach of Duty of Care*

Once it is determined that a duty of care is owed, to avoid liability a municipality must "exercise the standard of care…that would be expected of an ordinary, reasonable and prudent person in the same circumstances." The measure of what is reasonable in any given circumstance will depend on a variety of factors, including the likelihood of a known or foreseeable harm, the gravity of that harm, and the burden or cost which would be incurred to prevent injury.

(c) *Causation & Damages*

In our opinion, for all potential areas of liability there will be challenges with establishing causation. If a landowner is aware of a given risk, such as the risk of flooding, it may negate a causal connection between the plaintiff's losses and the municipality's actions or inactions.

B. Nuisance

The tort of nuisance is established where there is an unreasonable use of one's land resulting in interference with the use and enjoyment of the land of another. A potential claim would involve an allegation that municipal flood mitigation infrastructure or its approval of nearby developments displaced the flood waters or

altered the natural drainage patterns, thereby causing interference or damage to the affected properties.

A related source of liability is the strict liability doctrine—more commonly referred to as the rule in *Rylands v Fletcher*. This rule applies where a person makes a non-natural or special use of their land and brings something onto their land that is likely to do mischief if it escapes. If the substance does in fact escape and cause harm to persons or property on neighbouring lands, the person may be held strictly liable for that harm. In similar cases involving flooding from a natural watercourse, the courts have found the rule does not apply. (See *Stachniak* v *Thorhild (County No 7)*, 2001 ABPC 65 (CanLII)) It is possible that this cause of action may arise in the limited cases were the water that caused the damage was somehow impacted by the design of municipal infrastructure, for example by storing and directing water runoff in such a way that when the water was discharged it caused different damage than if the water had simply flowed onto the property.

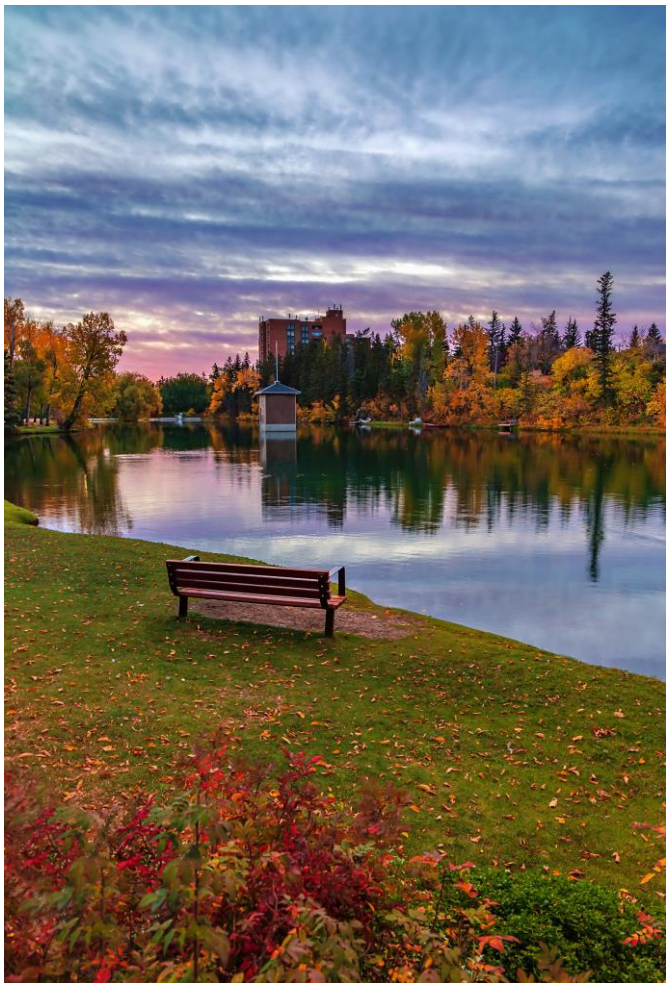
In our view, sections 527.2 and 528 of the *MGA* provide complete defences to any such claims based in nuisance. Furthermore, the common law defence of statutory authority will further limit the municipality's risk of exposure under this particular cause of action.

Common Law Defences

(a) *Contributory Negligence*

The common law doctrine of contributory negligence has been codified in the *Contributory Negligence Act*. This act allows for the apportionment of liability in proportion to degree to which each person was at fault. In *Papadopoulos* v. *Edmonton (City of),* the City of Edmonton was only found to be liable for 35% of the plaintiff's damages as a result of the plaintiffs' own contributory negligence.

With respect to any potential cause of action, there may be factors that could result in apportionment of liability between a municipality and others, including the plaintiff. For example, with respect to the potential liability for the issuance of development permits and building permits, where the current owner is the builder, they have built without any flood proofing, notwithstanding knowledge of the risks. Similarly, the Province of Alberta has chosen not to adopt any regulations pursuant to section 693.1 of the *MGA*.



(b) *Voluntary Assumption of Risk*

In cases where an owner has clear knowledge of flood risk, that knowledge may serve as a complete defence to any claim based on the legal principle of voluntary assumption of risk. In *Bowes,* the trial judge reduced the claim by 5% as a result of the landowners' voluntary assumption of risk given that the geotechnical report setting out potential issues with

subsidence was registered on title. Even though the appeal did not raise the issue of the finding of voluntary assumption of risk, Justice Côté in the dissenting decision at the Court of Appeal would have applied the principle voluntary assumption of risk as a complete defence to the tort claim. The majority confirmed that the trial judge was mistaken in apportioning liability under a voluntary assumption of risk but would have simply applied the same reduction under the principle of contributory negligence.

(c) *Statutory Authority*

With respect to potential nuisance claims, the Supreme Court of Canada has affirmed in *Tock* v. *St. John's Metropolitan Area Board* 1989 CanLII 15 (SCC), [1989] 2 SCR 1181 (*"Tock")* the principle that if the legislation imposes a duty and the nuisance is the inevitable consequence of discharging that duty, then the nuisance is itself authorized and there is no recovery in the absence of negligence. This defence will apply where the claims relates to diversion of water from the municipality's infrastructure.

Statutory Defences

(a) *Section 12 of the* Safety Codes Act

With respect to the issuance of building permits for structures that may be subjected to flood damage, section 12(1) of the *Safety Codes Act* provides:

> "No action lies against the Crown, the Council, members of the Council, employees or officers of the Council, safety codes officers, accredited municipalities or their employees or officers, accredited regional services commissions or their employees or officers, accredited agencies or their employees or officers or Administrators for anything done or not done by any of them in good faith while exercising their powers and performing their duties under this Act."

This section will provide the municipality with a complete defence with respect to any claims related to the decision to issue building permits.

(b) *Section 527.2 of the MGA*

Section 527.2 of the *MGA* states:

> "Subject to this and any other enactment, a municipality is not liable for damage caused by any thing done or not done by the municipality in accordance with the authority of this or any other enactment unless the cause of action is negligence or any other tort."

This section is a codification of the principle in *Tock* v. *St. John's Metropolitan Area Board.* This section of the *MGA* will provide a complete defence to any claims related to nuisance. Interestingly, this section has only been cited in a case involving the City of Calgary and an application to declare a well-known "sovereign citizen" type person a vexatious litigant (see *Chisan* v *Fielding*, 2017 ABQB 233 (CanLII)).

(c) *Section 528 of the MGA*

This section of the *MGA* prevents a municipality from being held liable in an action based on nuisance, or on any other tort that does not require a finding of intention or negligence, if the damage arises, directly or indirectly, from the operation or non-operation of a public utility, dike, ditch or dam. This section will bar any claims arising as a result of the operation of a municipality's flood mitigation infrastructure.

(d) *Section 530 of the MGA*

This section of the *MGA* bars any finding of liability, including negligence, against a municipality based on the municipality's system of maintenance and/or inspection, such as the municipal flood mitigation infrastructure.

(e) *Section 28 of the* Emergency Management Act

This section of the *Emergency Management Act* states:

> "No action lies against a local authority or a person acting under the local authority's direction or authorization for anything done or omitted to be done in good faith while carrying out a power or duty under this Act or the regulations including a power or duty under section 19(1)(g) or 19.1 or the exercise of the powers under section 24(1)(b) of this Act, during a state of local emergency."

Any claims related to a municipality's actions or inactions in managing a state of local emergency, including negligence, will be barred as a result of this provision. This provision will also inform the duty of care analysis as discussed in further detail earlier in this article.

(f) *Section 61(1)(c) of the Land Titles Act*

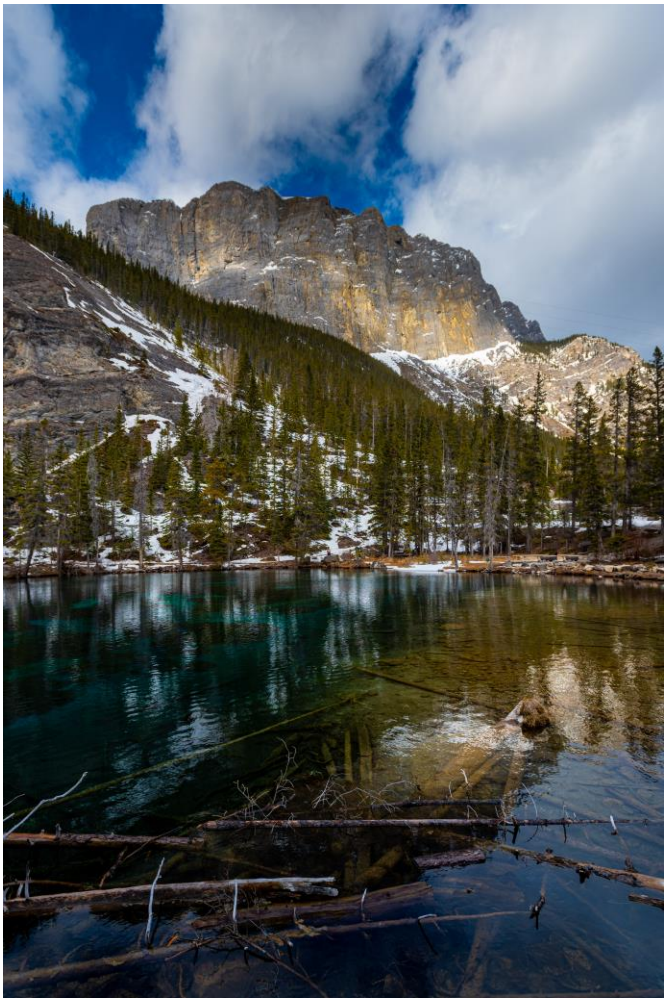
This section identifies that a certificate of title may be subject to a public easement by implication and without any special mention in the certificate of title. While this defence would only be available in very specific circumstances, it was pled by Rocky Mountain House as a defence to an action related to flooding of private property in *RVB Managements Ltd* v *Rocky Mountain House (Town),* 2014 ABQB 51 (CanLII). The Court of Queen's Bench confirmed that a ditch, culvert, and outflows dating from the 1960s on private property were protected by a public easement. The Court inferred the intention to dedicate the land because of "long, public use of land by a municipality for public benefit".

~ Don Lidstone, K.C. and Alison Espetveidt

Retention Periods for Data Backups

We are sometimes asked about the appropriate retention period for data backups. The responsibility for data backups is typically assigned to the IT Department which is required to maintain backup copies of digital records and restore backup copies or repair corrupted digital records as required.

It should be noted that there are several aspects to this question. There is the question of parameters of the obligations that the law requires with respect to the retention of data backups. There is also the question of whether there are any statutory or common law requirements regarding data backup retention periods.



There is also the question of the extent of the safety net that data backup provides. For some, this means that everything should be saved. However, if data backups are retained for too long a period, the haystack of data becomes so large and the needle so relatively small, that even if the data is retained, the cost of locating a particular data file becomes enormous , and ability to find that file becomes a herculean task.

There are a number of different types of backups that may be undertaken for data stored on a corporate system. The three primary types of backups are:

- Full Back Up – Every single file and folder in the system is backed up. This requires a lot of space.
- Incremental or Differential Backup – Only the initial backup is a full backup. Subsequent backups only store changes that were made since the previous backup.
- Mirror Backup – Creates an exact copy of the source data. The advantage of mirror backup as opposed to full, incremental or differential backups, is that you are not storing old, obsolete files. When obsolete files are deleted, they disappear from the mirror backup as well when the system backs up.

When Full Backups are combined with Differential or Incremental Backups, most organizations have different retention schedules for each type of backup. For example, weekly Full Backups might be overwritten quarterly while the daily Incremental or Differential Backups are overwritten on a shorter retention schedule. The purpose of the backups is important. Data backups are not undertaken to store primary data but rather are a source of recovery of data should some disaster occur to the primary data or should someone want to access data that was accidently deleted from a primary source. Backups are not permanent records.

Statutory Requirements

There are no statutory requirements setting out a retention schedule for data backups in the province of Alberta. The "*Retention and Scheduling of Municipal Records Guide*" was published by Alberta Municipal Affairs in 2014. The guide simply notes that section 214 of the *Municipal Government Act* provides authority for a council to pass a bylaw regarding the destruction of records and documents in the municipality. The only recommendation in the guide regarding data backups is that local governments should backup data in the case of the corruption or loss of their data. No guideline is provided or recommended as to the length of time that backups should be retained.

FOI Requirements

The question then becomes what are best practices of other local governments? In two recent cases the Alberta Information and Privacy Commissioner provided reasons that included consideration of data backup retention periods. In neither case was the data backup period central to the dispute before the Commissioner. However, in both cases, there was no criticism of the data backup practices of the organization. In one case, the organization was following an internal policy and in the other, there was no policy, but there was evidence of an established practice.

In *Order F20129-32; Municipal Affairs (Re), [2019] A.I.P.C.D. No. 37*, the issue before the Privacy Commissioner was whether Municipal Affairs had complied with the requirements of section 10(1) of the *Freedom of Information and Privacy Act* which states:

> "10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely."

The Commissioner was considering whether Municipal Affairs had completed an adequate search of its records and noted that the validly adopted records retention schedule was part of the evidence that was to be considered. Municipal Affairs had a policy that backup tapes were overwritten on a 30-day schedule. The Commissioner made no comment indicating that the 30-day retention schedule was either inadequate or failed to comply with any obligations under the Freedom of Information and Privacy Act.

Even when there is not a formal policy the Commissioner has not ordered against an organization when the search for records proved fruitless because older backup tapes had been overwritten. In Order P2014-01; *ATCO Electric Ltd. (Re)*, [2014] A.I.P.C. No. 16 the Commissioner was considering the adequacy of production of documents pursuant to s. 24(1) of the *Personal Information and Protection Act*. The organization in question did complete backups of its data but it did not have any formal policy regarding retention periods applicable to backup tapes.

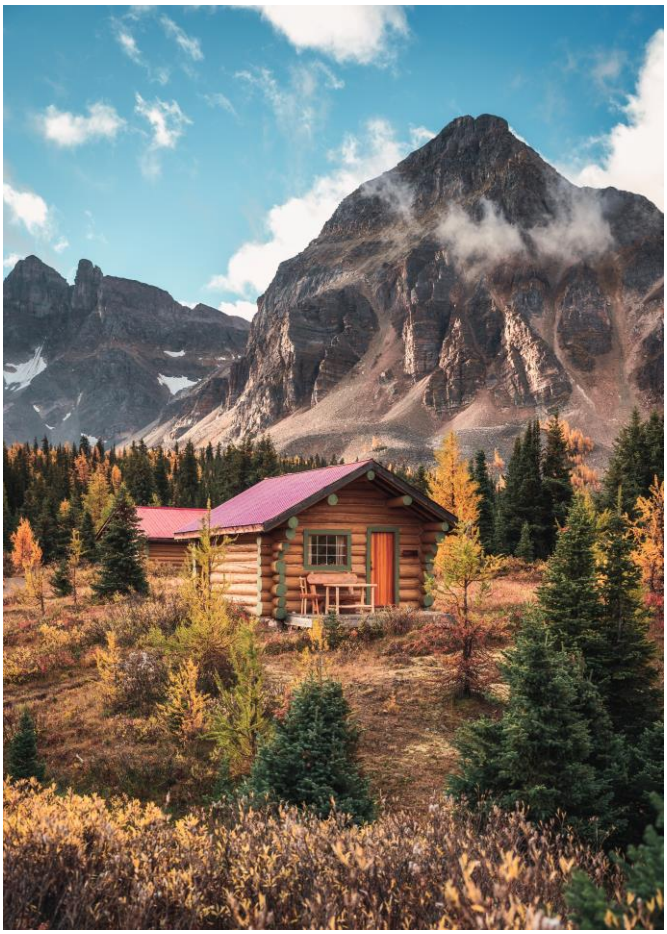
The evidence before the Commissioner was that the practice of the organization was to retain backups for 40 days after which time the storage media was re-used and any prior information was over-written. The Commissioner found that the emails in question which would have comprised the relevant records had been deleted in the ordinary course of the organization's practices. The Commissioner did not criticize the practices of the organization and found that the production was adequate.

It therefore appears that outside of the issue of legal holds, there is no obligation to go beyond the requirements for data backup retention that are set out in the relevant municipal bylaw.

Legal Holds

A legal hold of data should be instituted to preserve data when litigation has been initiated or is reasonably anticipated. Legal holds are an exception to an adopted document retention policy. In this regard, it is prudent for municipalities to create a legal hold policy which sets out the efforts that the municipality will undertake to preserve information that is relevant to specific and identifiable litigation and will set out the processes by which the information is identified, preserved, and maintained. A legal hold should not be interpreted so broadly as to impose an obligation to preserve all data backups as the hold is related to the primary documents, not all of the data backups.

Many municipalities use backup tapes as a litigation hold device and cease recycling backup tapes when a preservation request arrives. A best practices alternative is to pull specific backups (usually the earliest available backup relevant to the litigation in question and the backup from the day of a preservation request)



from the data retention system and set those tapes aside in response to the litigation hold. If the litigation hold was initiated as a result of a specific request or demand from opposing legal counsel, that counsel can be advised of the steps that have been taken. That advise should also indicate that the municipality will continue to implement its standard data backup procedures unless otherwise advised by counsel for the opposing party.

The specific backup data can then be preserved for the duration of the litigation or until litigation is no longer reasonably anticipated.

Standards Adopted Elsewhere

The other question that arises is what are the best practices for data retention? In many instances local governments have different practices for different backups. So, for example, the Regional Municipality of Niagara *Bylaw No. 63-2013* has a series of rolling backups and retention periods.

Backup Period	**Retention Period**
Daily	2 weeks
Weekly	8 weeks
Monthly	1 year
Yearly	5 years

At Metro Vancouver, backups are completed daily and then retained for one year. In Cold Lake the retention period for backups under their *Bylaw #594-AD-16* has different retention periods depending on the type of data that is being backed up.

Backup Type	**Retention Period**
Website Backup	Current plus 3 months
Archive Backup	Current plus 3 months
Exchange Server Backup	Current plus 3 months
Operational Backup-Servers	Current plus 1 month
Swipe and Alarm Logs	Current plus 3 months

Other municipalities, such as Sudbury and Mississauga Ontario retain data backups for a period of 2 years. Ultimately, it is for municipal councils to determine appropriate retention periods for data backups and we recommend enactment of a bylaw or at least a policy to ensure data is retained in an appropriate way.

~ Don Lidstone, K.C. and Ralph Hildebrand

Case Law

Remington Development Corporation v Canadian Pacific Railway Company, 2022 ABKB 692

Alberta Court of King's Bench awards over $163 million in damages against CPR and the Province for breach of land sales agreement. The enforceability of the agreement hinged on the City's subdivision approval of the lands.

Background

In 2002, Remington Development Corporation ("Remington") entered into land purchase agreements with the Canadian Pacific Railway ("CPR") to develop lands along the rail line for a mixed-use live/work comprehensive development. One of the agreements (the "Purchase Agreement") was in relation to purchasing a strip of land along 10th Ave (the "10th Ave Lands"). The Purchase Agreement was conditional, where the only portion of lands capable of being sold were "that portion CPR determined to be surplus to its operational requirements." The surplus 10th Ave Lands would have to be subdivided from CPR's land holdings to enable transfer.

In early 2006, CPR received subdivision approval from the City of Calgary for the 10th Ave Lands in accordance with the Purchase Agreement. However, unbeknownst to Remington, CPR decided to sell the 10th Ave Lands to the Province and informed Remington of the sale in late 2006.

Remington commenced a claim for damages against CPR for breach of the Purchase Agreement and against the Province for inducing

CPR's breach of the Purchase Agreement. It also claimed for specific performance to acquire the 10th Ave Lands.

Issues

1. Did CPR breach the Purchase Agreement?
2. Did the Province induce CPR's breach of the Purchase Agreement?
3. If so, what is the appropriate remedy?

Analysis

(1) CPR Breached the Contract

CPR claimed there was no breach of the Purchase Agreement, since it never formally declared the 10th Ave Lands "surplus to its operational requirements", so it was not obligated to sell the lands to Remington.

Applying principles of contractual interpretation, the court held that CPR had absolute discretion how much land was surplus to its operational requirements. This was to be determined through the subdivision application, where the amount of lands included in the subdivision application would be the lands available for sale to Remington. Accordingly, CPR surveying and including a portion of its lands in its subdivision application constituted a declaration that those lands were "surplus to its operational requirements". Even though the Purchase Agreement was not closed, as various documents needed to be finalized, the court was satisfied there was no uncertainty that closing would occur following subdivision.

When CPR told Remington it was selling the 10th Ave Lands to the Province, it communicated to Remington that it no longer intended to be bound by the Purchase Agreement and repudiated the contract. However, the court declined to find a breach of CPR's contractual duty of good faith, as there was not sufficient evidence to show the level of dishonesty required. To find a breach of good faith in this case risked making any deliberate breach of contract also a breach of the duty of good faith.

(2) The Province Induced Breach of Contract

The court was satisfied that the Province induced CPR's breach of the Purchase Agreement, since CPR would have closed the Purchase Agreement had the Province not approached them. The

Province was also wilfully blind to the fact that its agreement with CPR would result in a breach of CPR's agreement with Remington. The Province had a clear and explicit understanding that Remington had a legal interest in the 10th Ave Lands. There was a caveat on title to the 10th Ave Lands that stated Remington had an interest

in the lands pursuant to a purchase agreement and the surveys of the lands had Remington's logo on them. The Province made no attempts to make inquiries with Remington despite this knowledge.

Further, Remington did not waive its rights under the Purchase Agreement nor was it estopped from enforcing them. Remington communicated its opposition to CPR as soon as it was informed CPR was selling the 10th Ave Lands to the Province.

(3) Remedy

The court acknowledged an order of specific performance may be the fair and appropriate remedy in these circumstances. However, since the Province owns the 10th Ave Lands, specific performance is not available as the *Proceedings Against the Crown Act* bars a court from granting relief by way of specific performance against the Province.[1] It also found that Remington's subsequent actions following the sale of the 10th Ave Lands to the Province signified it accepted the repudiation. Remington accepted its deposit for the lands back, removed its caveat on title and failed to object to the repudiation in writing.

Decision

Ultimately, the court considered evidence of the appraised value of the 10th Ave Lands and Remington's development plans for lands, which would have substantially increased the land value, and awarded $163,707,836 in compensatory damages plus interest.

Howse v Calgary (City), 2022 ABKB 551

The Alberta Court of King's Bench finds that a restrictive covenant on some parcels of land to be in conflict with the City's zoning bylaws and discharges the restrictive covenant. However, on parcels of land where the zoning bylaw does not apply, there was no conflict between the redevelopment plan and the restrictive covenant so the application to discharge those restrictive covenants was dismissed.

Background

The parties in this litigation have substantially different visions for the future of Banff Trail, a residential neighbourhood in Calgary (the "Land"). The Land is made of various parcels of land including those owned by the Kudans (the "Kudan Lands"), Twenty3 Ltd. (the "Twenty3 Lands"), Twenty4 Ltd. (the "Twenty4" Lands"), Flosa Home Ltd (the "Flosa Lands") and Harvest Hills Professional Centre Ltd. (the "Harvest Hills Lands"). One group of litigants (the "Developers") seeks increased densification by building multi-family housing while the other group (the "Residents") opposes densification and wants the neighborhood to be comprised of primarily single-family detached homes.

The Lands are all subjective to the same restrictive covenant that only allows one single or two family dwelling houses to be built on each lot (the "Restrictive Covenant"). The Developers seek to discharge the Restrictive Covenant so they can build multi-family structures on the Land.

In June 1986, the City of Calgary passed the Banff Trail Area Redevelopment Plan (the "ARP"). In July 2021, the City passed bylaws (the "DCD Bylaws") to change the land use designation of the Kudan, Twenty3 and Twenty4 Lands to Direct Control Districts ("DCD"). The DCD bylaws impose minimum density requirements. The Flosa and Harvest Hill Lands were not affected by the DCD Bylaws.

Issues

The main issue is whether the Restrictive Covenants should be enforced or discharged? Pursuant to s. 48(4) of the Land Titles Act, RSA

[1] RSA 2000, c P-25 at s. 17.

2002, c L-4 (the "LTA"), a restrictive covenant can only be modified or discharged by the Court if it is satisfied that the modification will be beneficial to the persons principally interested in its enforcement or if the covenant conflicts with the provisions of a land use bylaw and the modification or discharge is in the public interest.

Analysis

A. Was the DCD Bylaw Invalid?

The Residents argue that there is no conflict as the DCD Bylaws are invalid. First, they argue that the City failed to balance private rights with long-term public interest and infringed upon individual rights more than necessary contrary to s. 617 of the MGA. After reviewing the records of a public hearing held on July 26, 2021, Justice Labrenz found that the Council was aware of the various interests at issue and had reasonably balanced those interests.

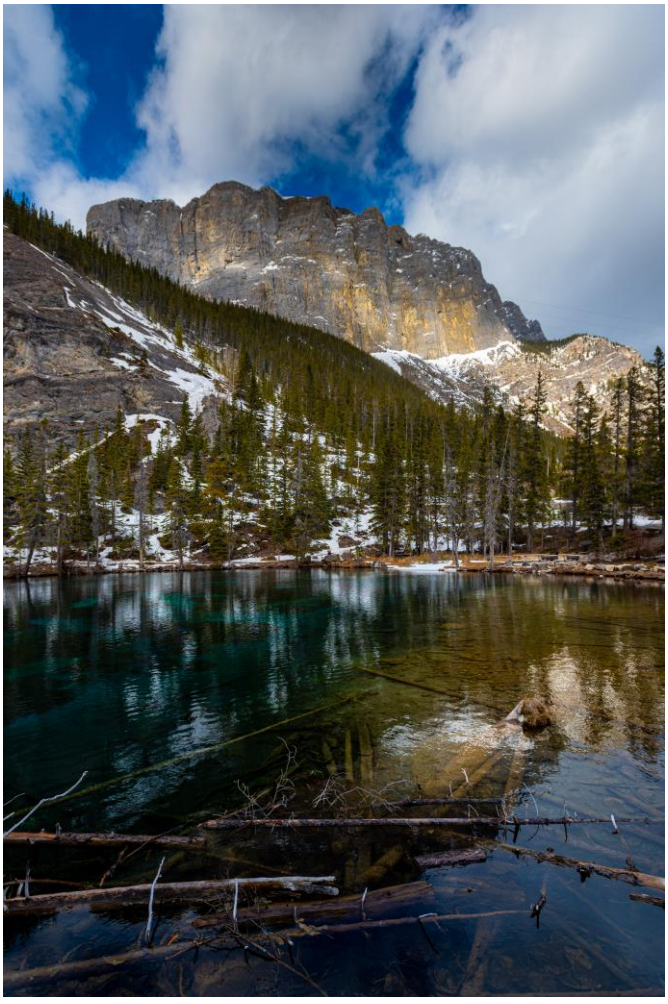
Second, the Residents argue that DCD may only be designated for developments that have unique characteristics, innovative ideas or unusual site constraints. They contend that the Restrictive Covenant should not be considered unusual or a site constraint. Justice Labrenz, however, found that site constraints can be non-physical. He found that the Restrictive Covenant at issue was an unusual site constraint because it directly impeded the implementation of Calgary's statutory planning goals.

Lastly, the Residents argue that the enactment of the DCD Bylaws was done in bad faith and lacked procedural fairness. They argue that the City enacted the Bylaws to influence the outcome of litigation rather than for a relevant planning purpose. The Residents also argue that the City had failed to provide sufficient notice of the proposed Bylaws to affected landowners and that the City should have provided written notification letters to every property owner whose land was encumbered by the Restrictive Covenant. Justice Labrenz found that the City had not acted in bad faith and that it would have been impossible to provide written notice to every property notice given that there were approximately 400 lots.

B. Was there conflict between…

i. …The DCD Bylaws and the Restrictive Covenant?

Justice Labrenz stated that restrictive covenants are in general not inconsistent with municipal planning statutes; however, the DCD Bylaws and the Restrictive Covenant at bar are in conflict because it is impossible to comply with both. The DCD Bylaws require a minimum density requirement that would exceed the maximum density allowed in the Restrictive Covenant.



ii. ... the ARP and the Restrictive Covenant?

The DCD Bylaws did not apply to the Flosa and Harvest Hill Lands so Justice Labrenz considered whether the ARP and the Restrictive Covenant were in conflict. He considered the language in the ARP which refers to goals and objectives that are "intended" to accommodate modest redevelopment. While Justice Labrenz found that the goals and objectives of the ARP and the Restrictive Covenant are fundamentally incompatible, impossibility was the test to determine whether a conflict exists and that was not met in the case at bar.

Decision

Justice Labrenz discharged the Restrictive Covenant against the Kunda, the Twenty3 and Twenty4 Lands. However, because he found that there was no conflict between the ARP and the Restrictive Covenant (and the DCD Bylaws did not apply), Justice Labrenz dismissed the application to discharge the Restrictive Covenants against the Flosa and Harvest Hills Lands.

He also declined to order a permanent injunction prohibiting the Developers from proceeding with the proposed developments because he did not think it was appropriate or necessary.

~ **Janae Enns**

Legislative Update

Bill 4, Municipal Government (Face Mask and Proof of COVID-19 Vaccination Bylaws) Amendment Act, 2022

The *Municipal Government (Face Mask and Proof of COVID-19 Vaccination Bylaws) Amendment Act, 2022* prohibits a municipal council from enacting a bylaw that (a) requires the wearing of face masks to prevent or limit the spread of a communicable disease or (b) requires people to show proof of vaccination against COVID-19 or a COVID-19 test to enter a premises. There is an exception where the Minister approves the bylaw, having considered the public interest and consulted with the Chief Medical Officer of Health. Any existing bylaws requiring face masks or proof of vaccination were automatically appealed when this *Act* came into force on April 21, 2022. This *Act* does not affect the enforcement efforts made pursuant to a bylaw at the time a bylaw was in force.

Bill 21, Red Tape Reduction Statues Amendment Act, 2022

The *Red Tape Reduction Statues Amendment Act, 2022* contains various amendments to the *Municipal Government Act*, including the following:

1) The purpose of a municipality now includes to "foster the economic development of the municipality" (s. 3(a.2)).
2) Two or more municipalities may, by bylaw adopted by the council of each participating municipality, establish an intermunicipal business licensing program (s. 8(1)). The Minister may make regulations respecting intermunicipal business licensing programs (s. 8(2)).
3) Before giving a second reading to a bylaw that would close a road, a council must hold a public hearing (s. 22(2)). This replaces a requirement that a bylaw closing a road must be advertised and council must hear any person who claims to be affected prejudicially by the bylaw before it can be passed.
4) There are some procedural changes around the formation, change of status, dissolution, amalgamation, and

annexation of a municipal government (Part 4).

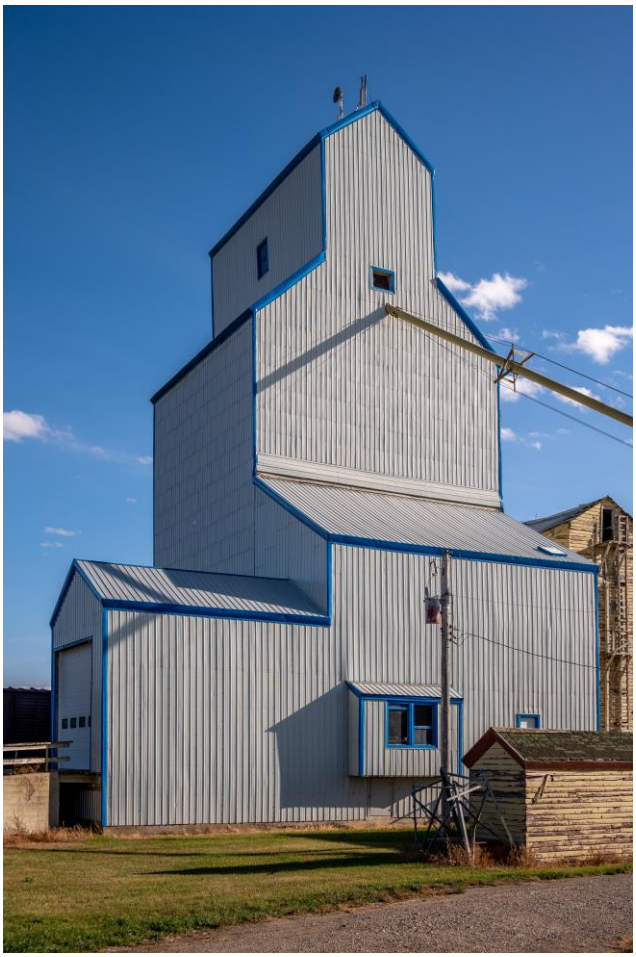
5) A council may by bylaw provide for council meetings or council committee meetings to be conducted by electronic means (s. 199(2)). , Among other things, the bylaw must specify the type or types of electronic means by which meetings are authorized to be held, require the identity of each councillor attending the meeting to be confirmed by a method authorized by the bylaw, and specify a method by which members of the public may access the meetings. The Minister may make regulations authorizing and respecting the use of electronic means to conduct meetings (s. 199(5).
6) The chief elected official is no longer automatically a member of all council committees and all bodies to which council has the right to appoint members (repeal of s. 154(2)).
7) A councillor or member of a council committee is deemed to have received sufficient notice of a council or council committee meeting if the notice was given by a method approved by the council (s. 196(1)). The public is deemed to have received sufficient notice of a council or council committee meeting if the notice was given by a method approved by the council (s. 196(2)).

News

Alberta's Designated Industrial Zones

The province has announced a regulatory framework to create a "Designated Industrial Zone" or "DIZ" to encourage jobs and investment in each DIZ. The regulations are intended to provide consistent, coordinated regulatory approvals, shared access to infrastructure and resources, and to minimize environmental impacts within the DIZ.

There are 6 requirements to create a DIZ consisting of:



1. DIZ proponents sign-off on an agreement to establish financial and human resource allocation, set timelines and notices for DIZ changes or adjustments, and schedule recurring agreement reviews;
2. Participating municipalities coordinate the DIZ by developing Area Structure Plans outlining the DIZ and heavy industrial sites, establishing master drainage plans and identifying environmentally sensitive areas and critical social and/or economic infrastructure;

3. An area designated as a DIZ must have sufficient land area for growth and enough facilities present to optimize cluster infrastructure;
4. An area being considered as a DIZ must have "cluster infrastructure" (meaning capacity within an area to develop infrastructure that supports industrial growth within approved transportation and utility right-of ways and sufficient human resources for cluster infrastructure development);
5. Participating municipalities in an area proposed for a DIZ must align requirements of development permits and reduce regulatory overlap with other jurisdictions, and dependencies with municipal regulatory decision making; and
6. DIZ proponents must commit to zone-specific environmental assessments, topsoil management guidelines, air emissions requirements, water quality management, and financial or human resources for implementing environmental management programs.

The first DIZ to be created is in the "Industrial Heartland" extending into five different municipalities including parts of the City of Fort Saskatchewan, the Counties of Lamont, Strathcona and Sturgeon and the City of Edmonton. More information is available at: https://www.alberta.ca/industrial-heartland-designated-industrial-zone.aspx

Province Releases Deployment Model for Proposed Alberta Provincial Police Service

The province has released a proposed deployment model for the proposed Alberta Provincial Police Service. The model, developed by PricewaterhouseCoopers (PwC) on behalf of the province, provides more information related to how officers would be deployed and detachments organized under the proposed Alberta Provincial Police Service (APPS) structure released earlier this year.

Significant aspects of the deployment model include the following:

- A hub policing model featuring 65 - 85 community detachments supported by 20 - 30 service hubs, which are further supported by three regional hubs.
- Community detachments would primarily provide "core" policing services, while service hubs would provide similar core services in addition to hosting certain specialized services available on a regional basis.
- Each community detachment and service hub would be supported by a minimum of 10 police officers plus administrative staff.
- Policing resources in rural communities would be increased through a combination of reducing the number of sworn officers currently in administrative roles into active-duty positions as well as shifting some officers currently in urban or suburban detachments into rural areas.
- Specialist services such as tactical teams, critical incident response, mental health and addictions response, forensic identification, canine units, and air support would be decentralized from large urban centres to locations across the province so that they are more accessible province-wide.

Rural Municipalities of Alberta ("RMA") has indicated that it is currently reviewing and analyzing the proposed model and has concerns about how effectively the deployment model will address municipal costs, rural service levels, and local input into policing. More information is available at: https://www.alberta.ca/provincial-police-service-engagement.aspx .