Federal Court of Appeal | Cour d'appel fédérale

Date: 20250723

Docket: A-146-24

Citation: 2025 FCA 138

CORAM: **WOODS J.A.**
BIRINGER J.A.
WALKER J.A.

BETWEEN:

CITY OF COLD LAKE

Appellant

And

ATTORNEY GENERAL OF CANADA

Respondent

And

FEDERATION OF CANADIAN MUNICIPALITIES

Intervener

Heard at Edmonton, Alberta, on May 6, 2025.

Judgment delivered at Ottawa, Ontario, on July 23, 2025.

REASONS FOR JUDGMENT BY: WOODS J.A.

CONCURRED IN BY: BIRINGER J.A.
WALKER J.A.

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REASONS FOR JUDGMENT

WOODS J.A.

Overview

[1] This is an appeal from a Federal Court judgment which dismissed the appellant's application for judicial review of a decision of the Minister of Public Services and Procurement Canada (Minister). The Minister's decision concerns the annual land values of 4 Wing Cold Lake Military Base (4 Wing) for the years 2013 to 2021 (Minister's Decision). The 4 Wing property is located within the City of Cold Lake (City) in northeastern Alberta.

[2] The land values determined by the Minister were to be used as the basis for calculating payments in lieu of taxes (PILT) to be provided to the City under the *Payments in Lieu of Taxes Act*, R.S.C. 1985, c. M-13 (Act). PILT are similar to municipal taxes which the Crown is constitutionally immune from paying. The range of values determined by the Minister is from $42,600,000 to $59,800,000.

[3] One key issue before the Minister was the interpretation of a statutory exclusion for water and sewer mains. In arriving at the aforementioned values, the Minister rejected the City's interpretation of the exclusion – an interpretation which, if adopted, may have yielded far greater PILT values. This issue was described in the record and in submissions as a "gate issue" and the parties frame the question as a matter of statutory interpretation.

[4] Notably, the gate issue does not involve determining whether or not 4 Wing water and sewer mains are subject to PILT. They are not. The issue is whether the Minister was required to find that the land to be valued had an enhanced value because it received water and sewer services. In other words: How does one value land that has water and sewer infrastructure, when that infrastructure itself is not to be valued for PILT purposes?

[5] After receiving the Minister's Decision, the City applied to the Federal Court for judicial review. Before the Federal Court, the City argued not only that the Minister erred with respect to the gate issue, but also that the Minister erred in her determination not to pay the City late payment supplements and that the Minister's Decision was procedurally unfair. The Federal Court dismissed the application for reasons (*per* Brown J.) cited as 2024 FC 432 (FC Decision). The City now appeals from the FC Decision to this Court and raises the same three issues. In addition, before this Court, the Federation of Canadian Municipalities was allowed to make submissions as an intervener.

[6] For the reasons that follow, I will explain why in the circumstances of this case I would allow the City's appeal.

Statutory scheme

[7] The general scheme of the Act is to provide a framework for voluntary payments to be made by the federal government to municipalities "in lieu of" municipal taxes. The leading cases that describe this framework are *Halifax (Regional Municipality) v. Canada (Public Works and Government Services)*, 2012 SCC 29 [*Halifax*] and *Montréal (City) v. Montreal Port Authority*, 2010 SCC 14. The scheme was also canvassed extensively in the FC Decision (see paras. 28-39). Accordingly, it is not necessary to describe the legislation in detail in these reasons. I will, however, highlight some pertinent features.

[8] The Act explicitly provides that it does not confer any right to a payment. It also states that the purpose of the legislation is to "provide for the fair and equitable administration of payments in lieu of taxes." The Supreme Court in *Halifax* elaborated on this statement: "[The statutory purpose] is accomplished by reconciling the objective of tax fairness for municipalities with the preservation of constitutional immunity from taxation …. The Act requires that property value and tax rates be calculated as if the federal property were taxable property belonging to a private owner …. Moreover, the Act and its schedules contain detailed lists of various types of property that are included in or excluded from this scheme" (at para. 51).

[9] When it comes to calculating PILT, the amount is determined annually, generally by multiplying the relevant municipal mill rate by the "property value" of "federal property", as those terms are defined in the Act.

[10] The term "federal property" broadly includes real property and immovables owned by the Crown. Notably, the definition of "federal property" does not include certain specified property. This appeal relates to an exclusion for water and sewer mains (the "statutory exclusion"), which is listed in Schedule II of the Act.

[11] The definition of "property value" requires that local assessment authority principles be applied to federal property. In particular, "property value" is "the value that, in the opinion of the Minister, would be attributable by an assessment authority to federal property … as the basis for computing … real property tax that would be applicable to that property if it were taxable property." Although the Minister has some discretion in determining property value, the

determination must be "consistent with the principles governing the application of the Act and with the Act's purposes" (*Halifax* at para. 43).

Procedural history

[12] As mentioned, this appeal concerns property valuations of 4 Wing and PILT due for the years 2013 to 2021, inclusive. The parties' dispute actually goes back to 2012 but the City eventually discontinued a judicial review for that year in order to proceed with challenging the annual PILT for 2013-2021. While both parties attempted to resolve the dispute during this time, these attempts were ultimately unsuccessful. In February 2022, the matter proceeded before a Dispute Advisory Panel (DAP, or 2022 DAP) which was tasked with providing advice to the Minister regarding the valuations and payments at issue.

[13] The DAP conducted a 12-day hearing and then issued its advice on July 20, 2022. The recommendations to the Minister were not unanimous – separate majority and minority reasons were provided by the three-member DAP panel ("Majority" and "Minority", respectively).

[14] A major point of difference between the DAP members was how the Minister should account for the statutory exclusion. The Majority recommended that the valuation exclude water and sewer mains for all purposes, including any positive impact their existence might have on the value of the land. It recommended annual values ranging from $42,600,000 to $59,800,000. The Minority advised that while the water and sewer mains themselves must be excluded, the valuation should not ignore any positive impact on the value of the land flowing from the

existence of the water and sewer mains. The Minority recommended annual values from $90,977,000 to $140,987,000.

[15] The Minister issued a decision in a two-page letter dated November 30, 2022. The decision agreed with the Majority that the water and sewer mains should be excluded for all purposes.

[16] Notably, the Minister adopted the Majority's reasons and supplemented them with reasons of her own, as follows:

(i) The values recommended in the Majority advice are "fair and reasonable" and "reflect the purpose of the [Act]";

(ii) The exclusion of water and sewer mains from the value of the lands "is consistent with the exemptions in Schedule II of the Act, which excludes water and sewer mains from the definition of federal property";

(iii) The Majority advice does not contradict advice from an earlier DAP panel which, in 2014, advised on values for 2012 (2014 DAP). In particular, the Minister stated that the values determined by the 2022 DAP Majority and the 2014 DAP for 2013 and 2012, respectively, each "represent fair and reasonable values that appropriately recognize the exemptions in the Act"; and

(iv) The Minority advice "does not fully account for the [water and sewer mains] as required by the Act."

[17] In addition to the statutory exclusion issue, the Minister also considered whether to issue late payment supplements for unreasonable delay in payment of PILT, and agreed with the Majority not to do so.

[18] Upon reviewing the Minister's Decision, the Federal Court concluded that the decision was reasonable, both with respect to the statutory exclusion and with respect to the late payment supplements. The Federal Court also found there was no procedural unfairness. The City appealed to this Court and, as I will explain below, I would allow the appeal. I will turn first to the standard of review and then to the issues raised in this appeal.

Standard of review

[19] The principles pertaining to the standard of review are described in the leading cases of *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 [*Agraira*] and *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*]. Essentially, this Court is to step into the shoes of the lower court so that the focus is on the Minister's Decision (*Agraira* at paras. 45-47).

[20] For the merits-based issues in this appeal, the question is whether the Minister's Decision is reasonable (*Vavilov* at paras. 10, 25). This requires that the decision be logical and coherent, and be tenable in light of the factual and legal constraints that bear on it (*Vavilov* at paras. 99, 101-103, 105). The burden is on the party challenging the decision to demonstrate that the decision is unreasonable (*Vavilov* at para. 100).

[21] Further, reasonableness review pertains not only to outcomes but also to the articulation of reasons (*Vavilov* at para. 86). In particular, for the Minister's Decision to be reasonable, the reasons provided must be responsive, meaning that they must meaningfully account for the central issues and concerns raised by the parties (*Vavilov* at para. 127). While administrative decision makers cannot be expected to respond to every argument or line of possible analysis, the failure to meaningfully address key issues or central arguments raised by the parties may call into question whether the decision maker was alert and sensitive to the matter before it (*Vavilov* at para. 128).

[22] It is important to keep in mind, however, that "administrative justice" will not always look like "judicial justice". The concepts and language employed by administrative decision makers may be specific to their fields of experience and may differ from those used by a lawyer or a judge. (See *Vavilov* at para. 92).

[23] Nor is the standard for reasons a standard of perfection (*Vavilov* at para. 91). Reasonableness review is not a "line-by-line treasure hunt for error" (*Vavilov* at para. 102). Where there is an omission, the key question is whether the omitted aspect of the analysis causes the reviewing court to lose confidence in the outcome reached (*Vavilov* at para. 122).

[24] As for issues relating to process, this Court must apply what is, in effect, a standard of correctness (*Oleynik v. Canada (Attorney General)*, 2020 FCA 5 at paras. 38-39). Accordingly, the Court will undertake its own analysis of these issues.

Issues

[25] The issues to be decided are:

A. Was the Minister's interpretation of the exclusion of water and sewer mains as meaning for all purposes reasonable?

B. Was the Minister's decision on late payment supplements reasonable?

C. Was the proceeding before the Minister procedurally fair?

Analysis

A. *Was the Minister's interpretation of the exclusion of water and sewer mains as meaning for all purposes reasonable?*

[26] As mentioned, *Vavilov* teaches that in order to be reasonable, the Minister's Decision must be justifiable and justified. It is not sufficient that the outcome is reasonable. The reasons given for the decision must also justify that outcome. In discussing the justification requirement, *Vavilov* instructs that an administrative decision maker must interpret a contested statutory provision in a manner consistent with the text, context and purpose, "applying its particular insight into the statutory scheme at issue" (at para. 121). The decision maker must also "meaningfully account for the central issues and concerns raised by the parties" (*Vavilov* at para. 127). Where the parties differ as to the meaning of a statutory provision, "the decision maker

must demonstrate in its reasons that it was alive to [the text, context and purpose of the provision]" (*Vavilov* at para. 120).

[27] In this case, the Minister's Decision fails to meaningfully account for two central concerns raised by the City. As will be seen, the concerns were raised in submissions made by the City directly to the Minister via letters sent after the DAP recommendations were issued. The City's letters are dated August 17, 2022, September 9, 2022, and October 19, 2022.

[28] The first troubling aspect of the Minister's Decision is the response given to the City's submission that the 2014 DAP advice contradicts the Majority advice. The 2014 DAP gave a unanimous recommendation to value 4 Wing for the 2012 year at an amount close to that recommended by the Majority for the 2013 year. While these sets of advice might seem consistent on their face, the City's submissions contrast the methodology adopted by the Majority with that used by the 2014 DAP. The City submitted that the Majority recommendation "departs significantly" from the 2014 DAP advice and noted that the 2014 DAP methodology was adopted by the Minority in the 2022 DAP.

[29] The City describes the difference in approach in its correspondence. The Majority concluded that the water and sewer mains should be excluded for all purposes. Essentially, the City argued, the land is valued "<u>as if no [water and sewer mains] exist at all</u>" (emphasis in original). The City points out, however, that the 2014 DAP concluded the opposite – "It is therefore the opinion of the Panel that the proper interpretation of the exclusion is that developed lands such as those in question are to be valued recognizing that certain portions of the land have

services available to them, but simply not placing any additional value on the actual service infrastructures themselves, such as the water mains and roads. The land, however, is not valued as if those services did not exist. The impact these services have on value cannot be excluded from the valuation if the panel is to adhere to the principle of highest and best use" (emphasis in original).

[30] I agree with the City that the Majority advice is a significant departure from that of the 2014 DAP in terms of methodology. Moreover, this difference goes to the issue at the very heart of this appeal: Should the valuation of the federal property take into account that the property is serviced? As evidenced above, the 2014 DAP concluded that the valuation should take the impact of water and sewer mains into account and the Majority concluded that it should not.

[31] In an important way, the Minister's Decision was not responsive to the City's submissions. While the Minister acknowledges that the City argued there is a contradiction between the 2014 DAP and the Majority, the Minister sidesteps the City's main argument by focussing on the similarity in the valuations recommended by the 2014 DAP and the Majority for the 2012 and 2013 years, respectively. The Minister states that these values are not only "fair and reasonable", but that they both "appropriately recognize the exemptions in the Act." This narrow focus on outcome, the values, fails to address the City's submissions about the approach to valuation, which differed significantly. In essence, the 2014 DAP and the Majority interpreted the statutory exclusion differently. It was incumbent on the Minister to grapple with the different approaches to the statutory exclusion in the 2014 DAP (and Minority) on the one hand, and the Majority on the other. Her failure to do so prevents her reasons from meeting *Vavilov's*

requirement that where a statutory provision is disputed the decision maker must demonstrate they are alive to the provision's text, context and purpose (at para. 120).

[32] In this Court, the respondent submits that the Minister was not obligated to say more. In particular, the Minister did not need to explain a departure from a previous PILT decision, was not bound to follow the analysis of the 2014 DAP, and did not depart from a longstanding practice warranting an explanation. Accordingly, the respondent argues, "nothing more was required in the Minister's reasons" to address the City's argument concerning the contradiction between the 2014 DAP and the Majority.

[33] I disagree. *Vavilov* informs us that, for a decision to be justified, the reasons given must meaningfully grapple with the key issues and central arguments raised by the parties (at paras. 127-128). Still more, while the respondent is right that reasonableness review is not a treasure hunt for error, the reasoning given must be both rational and logical and provide a line of analysis reasonably leading to the conclusion (*Vavilov* at para. 102). The Minister was required to address this central argument put forward by the City and her failure to do so undermines confidence in the outcome reached.

[34] Accordingly, whether or not the outcome is justifiable, as a result of this omission, the Minister's Decision is not properly justified and is, therefore, unreasonable. This omission alone is grounds to send the matter back for redetermination.

[35] The second troubling aspect of the Minister's Decision is problematic for similar reasons. In its correspondence, the City attempted to counter the Majority's view that its approach was fair to both parties while an alternative interpretation would create an unfair windfall for the municipality. The City responded to this by stating that it would not be fair or equitable to value the land as if it was unserviced and that the Majority view perpetuates inequity since the City receives substantially less in PILT payments for 4 Wing than it does in taxes from similar properties elsewhere within the City. The City also argued that there would be no windfall because water and sewer services in the municipality are funded through utility charges, and not through taxes. Accordingly, an approach to valuation that takes the existence of water and sewer mains into account, like the approach used by the Minority, "would not, therefore, result in an inequitable overpayment of PILT in that the PILT payments are not used to fund utility services, just as tax levies are not used by the City to fund utility services."

[36] These submissions were not adequately addressed in the Minister's Decision. As mentioned, the Minister states that the Minority view "does not fully account for the [water and sewer mains] as required by the Act." This statement does not meaningfully grapple with the City's submissions on the windfall issue and leaves the Minister's reasons regarding the interpretation of the statutory exclusion wanting.

[37] The respondent submits that it was not necessary for the Minister to grapple with this issue because the Majority never specifically found that there would be a windfall. I disagree. This was a central argument raised by the City, and accordingly the Minister had to meaningfully account for it. The inadequate response by the Minister on this point results in the decision being

unjustified, and therefore unreasonable. Like the first omission, this undermines confidence in the outcome reached and is grounds to send the matter back for redetermination.

[38] In sum, the aforementioned submissions by the City highlighted key issues and underscored its central arguments. They required a targeted response from the Minister in the circumstances of this case. The Minister's failure to do so results in a decision that is unreasonable in light of the teaching in *Vavilov*.

B. *Was the Minister's decision on late payment supplements reasonable?*

[39] Under the Act, the Minister may pay late payment supplements if, in the Minister's opinion, there has been an unreasonable delay in making the payments. As mentioned, in this case, the Minister exercised this discretion and concluded that there was no undue delay on the part of Public Services and Procurement Canada.

[40] The City submits that this decision was unreasonable because the Minister failed to comply with the requirements of the Act by making interim PILT payments based on annual valuations. Instead, throughout the period of the dispute, the Minister chose to make annual PILT payments based on the valuation of the property determined by the 2014 DAP for the 2012 year. This meant that during the period from 2013 to 2021 the valuations were never updated.

[41] The Minister's Decision accepted the Majority advice not to issue late payment supplements and explained her reasoning as follows: "I do not feel that the payments to the City

were unduly delayed by Public Services and Procurement Canada. The annual payments in lieu of taxes made to the City were based on the land values from the initial DAP advice for 2012, pending resolution of the dispute."

[42] This decision is largely fact-based. Although the Minister's reasoning is brief, it is clear that she chose to forego having annual valuations while the parties were in a dispute regarding the valuation and were trying to come to a resolution. I am not persuaded by the City's arguments that this was an unreasonable position for the Minister to take in the circumstances of this case. Accordingly, I conclude that the Minister's Decision is reasonable on this point.

C. *Was the proceeding before the Minister procedurally fair?*

[43] The City alleges procedural unfairness since the Minister received other materials after the DAP hearing, including a memorandum from a ministry official, 29 pages of redacted legal advice from unknown legal advisors, and a short briefing note, without notifying the City. The City only became aware of these materials after it filed for judicial review. This, the City alleges, gave rise to two different procedural fairness issues: (1) a breach of the *audi alteram partem* rule, and (2) concerns of bias. I will address each in turn.

[44] With regard to the first issue, the City alleges that it was procedurally unfair that it had no opportunity to make submissions to the Minister on some pieces of information contained in the aforementioned materials. The City focuses, in particular, on the information given in the short briefing note. The respondent agrees, in part, with the City's arguments and concedes that there

was procedural unfairness occasioned by two pieces of information in the briefing note. I will start by addressing these concessions and then turn to the City's additional arguments.

[45] The parties agree there was a breach of procedural fairness relating to two aspects of the briefing note. First, the note advised that accepting the Majority advice would not cause financial hardship on the City. Second, the briefing note communicated that, in a discussion, the Chairperson of the DAP (who was not on the 2022 DAP panel) expressed the view that, despite the likelihood of judicial review, a decision accepting the Majority advice would have less risk for the government in regard to PILT assessments and such a decision should be upheld if there were to be a judicial review. The Federal Court expressed concern regarding this position of the parties and ultimately concluded the briefing note was generated to provide political advice to the Minister and that the City, therefore, had no right to be informed of it (FC Decision at paras. 112, 119-123). Accordingly, the Federal Court concluded there was no procedural unfairness occasioned by the briefing note (FC Decision at para. 124).

[46] While I agree that no procedural unfairness was occasioned by the two aforementioned statements in the briefing note, I find the analysis of the Federal Court somewhat opaque and, in these circumstances, unnecessary. The City had the burden to show why the failure to share these pieces of information gave rise to unfairness. The fact the respondent conceded these two points did not obviate the need for the City to explain how and in what way the procedure was tainted. In my view, the City failed to meet this burden and so I reject the assertion that the failure to share these two pieces of information occasioned any unfairness. I note, however, that the City

also raises these same pieces of information in its submissions regarding bias, so I will address these arguments below when I turn to the second issue.

[47] As mentioned, the City raised additional arguments regarding the briefing note, insisting that other pieces of information, besides those conceded by the respondent, should also have been shared. First, the City argues it should have had a chance to respond to fresh evidence in the briefing note that the Majority advice was "consistent with all other Albertan military bases' land values." Second, the City claims it should have had a chance to address the briefing note's inaccurate characterizations of the dispute, which were in the respondent's favour.

[48] I am not persuaded by the City's additional arguments. I agree with the respondent that these two pieces of information in the briefing note did not need to be shared. In particular, I disagree with the City that this information either constitutes new evidence or mischaracterizes the dispute.

[49] I turn now to the City's second issue of procedural fairness, namely, bias. The City alleges that some of the aforementioned materials and the information they contain give rise to concerns of bias. To support this claim, the City says the "most significant" piece of evidence is that one of the Minister's officials had a discussion with the Chairperson of the DAP about the case and relayed the Chairperson's advice to the Minister via the briefing note before the Minister's Decision was issued. The City also points to the briefing note's advice that accepting the Majority advice would not cause financial hardship on the City, the internal memorandum to the Minister from a ministry official, and the lengthy written legal advice the Minister received

as being part of an "aggregate of … factors" showing that the materials given to the Minister after the DAP hearing raise concerns of bias.

[50] With respect to the allegation of bias resulting from the opinion given by the DAP Chairperson, conversations such as this between members of the DAP and the Minister about the merits of ongoing cases ought to be avoided. However, there is no evidence of bias in this case. I agree with the Federal Court when it stated that: "there is no evidence to suggest that the Minister had either a closed mind or that there was a hint or shadow of reasonable apprehension of bias" (FC Decision at para. 126).

[51] I am also not persuaded by the other factors the City identifies. As mentioned, the burden to show procedural unfairness rests on the City and the City simply has not discharged that burden in this case. The City has failed to show that any concerns of bias arise from the fact that the Minister received internal memoranda or legal advice.

[52] Accordingly, I conclude that the Minister's Decision is not tainted by any procedural unfairness.

Conclusion and disposition

[53] In the result, I have concluded that the Minister's Decision regarding the statutory exclusion is unreasonable due to the aforementioned omissions and the Federal Court erred when it found otherwise.

[54] It follows that I would allow the appeal, set aside the judgment of the Federal Court, and allow the application for judicial review in part. I would set aside the Minister's Decision as it relates to the statutory exclusion and remit the matter to the responsible Minister for redetermination in accordance with these reasons. Since the appellant was substantially successful on this appeal, pursuant to the appellant's request I would allow its costs of this appeal.

"Judith Woods"
J.A.

"I agree.
Monica Biringer J.A."

"I agree.
Elizabeth Walker J.A."

FEDERAL COURT OF APPEAL
NAMES OF COUNSEL AND SOLICITORS OF RECORD

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