Federal Court  Cour fédérale

Date: 20240318

Docket: T-2700-22

Citation: 2024 FC 432

Ottawa, Ontario, March 18, 2024

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

THE CITY OF COLD LAKE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application by the City of Cold Lake [the City] for judicial review under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 [*Federal Courts Act*] of a decision dated November 30, 2022 [Decision] of the Minister of Public Services and Procurement Canada [Minister] pursuant to the *Payments in Lieu of Taxes Act*, RSC 1985, c M-13 [*PILT Act*]. The Decision determined the property value of the 4 Wing Cold Lake Military Base in Alberta [the

Property] for the purpose of calculating payments in lieu of taxes [PILT] by Public Services and Procurement Canada [PSPC] to the City for the 2013-2021 tax years.

[2] The City submits the Decision is unreasonable because the Minister undervalued the Property based on an untenable interpretation of the *PILT Act*, and because she refused to make late payment supplements (interest payments), both resulting in lowered PILT to the City.

[3] The Applicant further submits issues of procedural fairness, which in some respects the Respondent concedes while others are disputed. The Respondent moved to have the Applicant's application granted and the case remanded for redetermination on procedural fairness grounds, but the motion was dismissed by Justice Favel because it would have left the PILT issue unresolved.

[4] The Respondent's position is the Minister's Decision is reasonable and in accordance with the *PILT Act*.

II. Background and History

A. *Valuation dispute*

[5] This Application arises from a dispute between the City and the Minister over the value of the Property for *PILT Act* purposes. The Property is an active Canadian military air force base which provides combat-ready and deployable fighter aircraft along with tactical fighter force training with its airport runways, hangars, headquarters, administrative buildings, military housing, social and utility support infrastructure all owned by the federal Crown. The Property

lies entirely within the City of Cold Lake. The Property is self-sustaining in the sense that it provides its own water, sewer and servicing infrastructure including power, roads, and sidewalks.

[6] Under the *PILT Act*, PILT is calculated based on the value of the relevant federal property for the year as determined by the Minister, to which applicable municipal mil rates are applied.

[7] At issue is the treatment of onsite "Water mains, sewer mains" which are not included in the definition of federal property for valuation purposes under the *PILT Act*. Canada constructed and maintains the water mains and sewers and the City does not carry their servicing burdens.

B. *Hearings before the Dispute Advisory Panel in 2014 and 2022*

[8] Previously, the parties disputed the value of the Property for the 2012 taxation year. A hearing was held in 2014 that resulted in an opinion to the Minister [2014 Advice] from a Dispute Advisory Panel [DAP] established pursuant to subsection 11.1(2) of the *PILT Act*:

> **11.1 (2)** The advisory panel shall give advice to the Minister in the event that a taxing authority disagrees with the property value, property dimension or effective rate applicable to any federal property, or claims that a payment should be supplemented under subsection 3(1.1).

[9] The DAP's 2014 Advice recommended the Property 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." The 2014 Advice determined the Property should not be valued "as if those services did not exist."

[10] The DAP's 2014 Advice for the 2012 taxation year noted the infrastructure was old, was in the process of upgrades, and would cost approximately $114,000,000 to upgrade. The DAP accounted for this cost by determining the upgrade costs would reduce the market value of the Property by $114,000,000, resulting in a value for the 2012 tax year of approximately $44 million, lower than what would have otherwise been set (approx. $158 million).

[11] The Minister accepted the 2014 Advice for the 2012 tax year. Since then the Minister has made annual PILT payments to the Applicant, but without regular annual adjustments.

[12] The Applicant applied for judicial reviews of the 2014 Advice and Minister's decision regarding the year 2012. On consent of both parties, the application was placed in abeyance for some 6 years while the parties attempted to resolve their dispute over federal property and the value of the Property for PILT purposes.

[13] Every year from 2013 forward, the City requested a DAP to review the annual PILT. Eventually DAP advised it would not consider the City's requests to review PILT for tax years after 2012 until judicial reviews were concluded.

[14] The Applicant discontinued its application for judicial review December 13, 2018.

[15] The Applicant proceeded before the DAP regarding PILT for taxation years 2013 to 2021.

[16] As of the start of this proceeding, all issues before the DAP were resolved between the parties leaving only the "gate" or threshold issue of federal property and how to value the Property given water mains and sewer mains are not included in the definition of federal property under the *PILT Act.*

[17] In February 2022, the matter proceeded before a different three-member panel of the DAP to provide advice to the Minister in respect of PILT payments for the 2013-2021 tax years.

C. *2022 DAP recommendation: Majority Advice and Minority Advice*

[18] The DAP held a 12-day virtual hearing. It considered the evidence of 11 experts on property values and assessments, five of whom gave oral testimony. After consideration, the DAP panel issued its advice to the Minister on July 20, 2022, [2022 Advice]. The three person DAP had split two to one. Its advice therefore consisted of two sets of reasons, the "Majority Advice" and the "Minority Advice."

[19] The Majority Advice agreed with the expert recommendations of Mr. Hofer who was PSPC's expert, finding that the water mains and sewer mains should be excluded *for all purposes*, and valued the Property "as an 8533-acre parcel of land with services coming to, but not inside, its boundaries." This resulted in values for the 2013 to 2021 tax years in the early years being set close to the 2012 value determined by the DAP's 2014 Advice.

[20] At paragraph 114 of the Majority Advice the two Panel members notes the different evaluations of the different agreed upon experts. They chose that of Mr. Hofer:

> 114. We heard testimony from five acknowledged expert valuation witnesses. Mr. Lennie relied on the DAP 1 value of $44,775,126. The other four witnesses began with valuations, before any deductions for servicing and infrastructure ranging from $129 million to $185 million with an average at $147 million:

Birtles	$185,275,954
Hofer	$139,602,500
Beatty	$135,312,500
Gettel	$128,856,345

[21] The Minority Advice relied on the expert opinions of the City's expert Mr. Birtles who advanced the City's position that the Property should not be valued as an unserviced parcel. While the Minority also held the costs for maintaining water and sewer infrastructure should be deducted from the Property's value, rather than simply deducting $114,000,000 from the value as Mr. Hofer and the Majority did, the Minority Advice used a maintenance/amortization model representing an annual allowance for maintenance costs. This resulted in property values lower than what the City requested, but higher than both PSPC's requested value and the 2012 value accepted by the Minister in 2014.

[22] Both the Majority and Minority Advice recommended higher PILT amounts than what the Minister actually had been paying between 2013 and 2021. These would normally have resulted in late payment supplements (i.e., interest) unless the Minister was of the view the matter had been unreasonably delayed.

[23] With respect to late payment supplements, the Majority and Minority Advice differed on whether they should be paid to the Applicant. The Majority Advice recommended against supplementary payments, while the Minority Advice recommended some should be paid.

[24] After the DAP decision, the Applicant wrote four letters to the Minister between July 20, 2022 and the issuance of the Minister's Decision November 30, 2022. The Applicant asked the Minister to adopt the Minority Advice.

[25] On October 26, 2022, the Deputy Minister sent a Memorandum to the Minister, which included the 2022 Advice, 2014 Advice, all correspondence from the Applicant, legal advice, and a recommendation to the Minister to accept the Majority Advice for the reasons provided for in the Majority Advice, and draft reasons.

[26] The Minister also considered a briefing note titled "Advice to Minister" containing political and other advice. It included information not before the DAP. The briefing note was not provided to the Applicant, therefore the City did not have an opportunity to respond to it.

[27] On November 30, 2022, the Minister issued her Decision which was to "accept the majority recommendation with respect to the land values and late payment supplements, for the reasons outlined in the Majority's DAP advice of July 20, 2022." The two-page Decision states:

> The City of Cold Lake (the City) requested a review by the Payments in Lieu of Taxes Dispute Advisory Panel (DAP) of the payments in lieu of taxes established by Public Services and Procurement Canada for the years 2013 to 2021. The purpose of this request was to review the land value used in the calculations of the payments for Canadian Forces Base (CFB) Cold Lake.

The review was completed by the DAP following a hearing held between February 28 and March 15, 2022. The advice was then issued to the City and to my predecessor on July 20, 2022. It is based on evidence presented at the hearing by the City and the Department, as well as oral and written submissions from both parties. The advice was not unanimous and included two recommendations: a majority (two DAP members) and a minority (one DAP member).

After careful consideration of this matter, I have decided to accept the majority recommendation with respect to the land values and late payment supplements, for the reasons outlined in the majority's DAP advice of July 20, 2022. Therefore, the land values for CFB Cold Lake for the calculation of payments in lieu of taxes for the years 2013 to 2021 are those defined on page 11 of the DAP advice. The majority recommendation represents fair and reasonable land values for CFB Cold Lake that reflect the purpose of the Payments in Lieu of Taxes Act (the Act).

The majority's recommendation to exclude the servicing infrastructure from the value of the base lands is consistent with the exemptions in Schedule II of the Act, which excludes water and sewer mains from the definition of federal property. In addition, the Act requires that the relevant provincial assessment legislation be considered when determining the property value of federal property. The standard in Alberta is market value. Accordingly, the majority recommends values that contemplated how the marketplace would view the lands in their current use and condition as an operational military base, and how the market would address the existing liability and ongoing maintenance costs related to the servicing infrastructure that is owned and maintained by the owner of the property.

Furthermore, I accept the majority's advice not to issue late payment supplements. 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.

Following the issuance of the DAP advice, you wrote a letter to my predecessor on August 17, 2022, and to me on September 9, 2022. In these letters, you note that the majority's advice erred in describing how federal property is to be assessed for payments in lieu of taxes purposes and that the majority took the view of hypothetical future uses when valuing the land. I have thoroughly considered both the DAP advice and your letters, and I note that

> the DAP majority considered the highest and best use of the property to be an operational air force base with supporting residential, commercial and industrial uses, and determined the market value of the lands based on the marketplace in its current condition for each year of the review. The land value was then adjusted to reflect the fact that the serving infrastructure is exempt under the Act. This is comparable to how assessment authorities value other military bases in Alberta.
>
> In your letter, you also reference the previous DAP advice and conclude that it contradicts the 2022 majority advice. The DAP advice for 2012 recommended a land value of $44 million, and the 2022 DAP majority recommended $48 million for 2013. I believe that these represent fair and reasonable values that appropriately recognize the exemptions in the Act, respect the principles of market value as defined in the assessment legislation and are equitable with other military bases in Alberta. The minority advice recommends a land value of $115 million for 2013 and does not fully account for the servicing infrastructure as required by the Act and appraisal principles. This is a marked departure from the other DAP findings.
>
> For the reasons outlined above, I will be instructing departmental officials to make the necessary changes to the payments in lieu of taxes calculations for all years based on the DAP majority advice and to issue the corresponding payments. Officials from Public Services and Procurement Canada's Western Region will contact the City to consult on the details of the payments.
>
> The Government of Canada remains committed to ensuring fair and predictable payments in lieu of taxes to all stakeholders.

III. Statutory and constitutional scheme

[28] Federal property is constitutionally exempt from taxation under section 125 of the *Constitution Act, 1867*, 30 & 31 Vict, c 3 [*Constitution Act, 1867*]. The *PILT Act* is a legislated and discretionary regime enacted by Parliament essentially to authorize the Minister to make grants to municipalities to compensate them for the taxes that they might otherwise have levied on federal property. It recognizes some federal properties have no equivalent in the private, municipal and or provincial sectors, such as the military air force base in the matter at hand.

[29] PSPC administers the *PILT Act* program for federal properties under the direction of the Minister.

[30] The purpose of the *PILT Act* is set out in section 2.1: “the purpose of this Act is to provide for the fair and equitable administration of payments in lieu of taxes.”

[31] Pursuant to the *PILT Act*, municipalities may be eligible on application for PILT in respect of federal property located within their boundaries. Federal property is a term defined by Parliament, and is subject to the exclusions in subsection 2(3) of the *PILT Act* and *Payment in Lieu of Taxes Regulations*, SOR/81-29.

[32] Federal property is defined in subsection 2(1):

> ***federal property*** means, subject to subsection (3),
>
> (a) real property and immovables owned by Her Majesty in right of Canada that are under the administration of a minister of the Crown,
>
> (b) real property and immovables owned by Her Majesty in right of Canada that are, by virtue of a lease to a corporation included in Schedule III or IV, under the management, charge and direction of that corporation,
>
> (c) immovables held under emphyteusis by Her Majesty in right of Canada that are under the administration of a minister of the Crown,
>
> (d) a building owned by Her Majesty in right of Canada that is under the administration of a minister of the Crown and that is situated on tax exempt land owned by a person other than Her Majesty in right of Canada or administered and controlled by Her Majesty in right of a province, and

> (e) real property and immovables occupied or used by a minister of the Crown and administered and controlled by Her Majesty in right of a province.
>
> [Emphasis added]

[33] Paragraph 2(3)(a) sets out what is not included in the definition of federal property:

> **Property not included in the definition federal property**
>
> **(3)** For the purposes of the definition federal property in subsection (1), federal property does not include
>
> (a) any structure or work, unless it is
>
> (i) a building designed primarily for the shelter of people, living things, fixtures, personal property or movable property,
>
> (ii) an outdoor swimming pool,
>
> (iii) a golf course improvement,
>
> (iv) a driveway for a single-family dwelling,
>
> (v) paving or other improvements associated with employee parking, or
>
> (vi) an outdoor theatre;
>
> (b) any structure, work, machinery or equipment that is included in Schedule II;
>
> [Emphasis added]

[34] Notably for the purposes of this application, paragraph 2(3)(b) just quoted provides that federal property "does not include… any structure, work, machinery or equipment that is included in Schedule II."

[35] Section 13 of *Schedule II* establishes that federal property for the purposes of the *PILT Act* specifically does not include "water mains" and "sewer mains". *Schedule II* in full provides:

> **SCHEDULE II**
>
> **(Section 2)**
>
> **1** Canal structures — walls and locks
>
> **2** Conveyor belts and conveyance systems other than elevators and escalators, letter sorting equipment, computers, built-in cranes, lathes, drills, printing presses and weigh scales
>
> **3** Docks, wharves, piers, piles, dolphins, floats, breakwaters, retaining walls, jetties
>
> **4** Drydocks
>
> **4.1** (1) Fortifications including, without limiting the generality of the foregoing, improvements such as ramparts, retaining walls, stockades and outerworks composed of Redan, Salient, Bastion, Demi-Bastion, Tenaille, Curtain and similar elements
>
> **(2)** For the purpose of this item, the following are components of fortifications: escarp walls, courtyard walls, postern tunnels, sallyports, underground tunnels, underground magazines, earth ramparts, gun emplacements, parapets, banquettes, fraises, terre-plein, drawbridges, entrance gates, guérite, machicolation, musketry galleries, ditches, moats, counterscarp galleries, caponniers, mine galleries, glacis, ravelin, reverse fire galleries, entrance cuttings, stockades, embrasures, barbettes, casemates, demi-casemates and lunettes
>
> **5** Gasoline pumps
>
> **6** Gun butts
>
> **7** Monuments
>
> **8** Penitentiary walls, fencing
>
> **9** Pole lines, transmission lines, light standards, unenclosed communications towers, unenclosed lighthouses and range lights
>
> **10** Reservoirs, storage tanks, fish-rearing ponds, fishways
>
> **11** Roads, sidewalks, aircraft runways, paving, railway tracks

> **12** Snow sheds, tunnels, bridges, dams
>
> **13** Water mains, sewer mains
>
> [Emphasis added]

[36] A central concept in this case is the "property value" of the federal property. The *PILT Act* requires the Minister to determine the "property value" of federal property, which is then used as the basis for computing the amount of municipal property tax levied by municipality which commonly levy taxes based on a municipal mil rate. Simply put and generally speaking, PILT is determined by multiplying the federal property value by the municipal mil rate. Property value is defined by subsection 2(1):

> ***property value*** means the value that, in the opinion of the Minister, would be attributable by an assessment authority to federal property, without regard to any mineral rights or any ornamental, decorative or non-functional features thereof, as the basis for computing the amount of any real property tax that would be applicable to that property if it were taxable property.
>
> [Emphasis added]

[37] Section 3 of the *PILT Act* gives the Minister the discretion to make PILT payments, and where they are unreasonably delayed, the Minister may make late payment supplements per subsection 3(1.1):

> **Authority to make payments**
>
> **3 (1)** The Minister may, on receipt of an application in a form provided or approved by the Minister, make a payment out of the Consolidated Revenue Fund to a taxing authority applying for it
>
> (a) in lieu of a real property tax for a taxation year, and
>
> (b) in lieu of a frontage or area tax

> in respect of federal property situated within the area in which the taxing authority has the power to levy and collect the real property tax or the frontage or area tax.
>
> **Delayed payments**
>
> **(1.1)** If the Minister is of the opinion that a payment under subsection (1) or part of one has been unreasonably delayed, the Minister may supplement the payment.
>
> **Maximum payable**
>
> **(1.2)** The supplement shall not exceed the product obtained by multiplying the amount not paid by the rate of interest prescribed for the purpose of section 155.1 of the Financial Administration Act, calculated over the period that, in the opinion of the Minister, the payment has been delayed.

[38] Section 15 of the *PILT Act* expressly states there is no right conferred:

> **No right conferred**
>
> **15** No right to a payment is conferred by this Act.

[39] Subsection 11.1(1) of the *PILT Act* authorizes the Governor in Council to appoint members to the DAP and a Chairperson, a panel created by the legislation tasked with providing advice to the Minister. Taxing authorities, such as municipalities, may request a review from the DAP in the event there is a disagreement respecting the property value, dimension, effective rate applicable, or to claim a payment should be supplemented:

> **11.1 (1)** The Governor in Council shall appoint an advisory panel of at least two members from each province and territory with relevant knowledge or experience to hold office during good behaviour for a term not exceeding three years, which term may be renewed for one or more further terms. The Governor in Council shall name one of the members as Chairperson.

IV. Issues

[40] The Applicant puts in issue:

1. Whether the Ministers Decision to value the Property as an unserviced parcel is unreasonable, and more specifically, whether it was reasonable for the Minister to interpret the *PILT Act* as requiring that federal properties be valued as unserviced;

2. Whether it was reasonable to refuse to grant late payments supplements; and

3. Whether the Minister afforded the City appropriate procedural fairness.

[41] The Respondent raises the following:

1. Who is the proper respondent;

2. Did the Minister breach procedural fairness in rendering the Decision?

3. Is the Minister's Decision reasonable?

4. If the Court is satisfied that the Decision was unreasonable or made in breach of procedural fairness, or both, what is the appropriate remedy?

[42] Respectfully, the issue is whether the Decision is reasonable, and in accordance with procedural fairness.

V. Submissions of the parties and analysis

A. *Standards of review*

(1) Reasonableness

[43] The Applicant submits the Minister adopted the reasons of the Majority Advice in her Decision and offered her own reasons, such that both should be considered on a reasonableness review. I will consider them as one.

[44] The parties agree, as do I, that the standard of review is reasonableness. With regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
>
> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*,

> at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
>
> [Emphasis added]

[45] In the words of the Supreme Court of Canada in *Vavilov*, a reviewing court must be satisfied the decision-maker's reasoning "adds up":

> [104] Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up".
>
> [105] In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision: *Dunsmuir*, at para. 47; *Catalyst*, at para. 13; *Nor-Man Regional Health Authority*, at para. 6. Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers.
>
> [Emphasis added]

[46] The Supreme Court of Canada in *Vavilov* at paragraph 86 states, "it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision-maker to those to whom the decision applies." *Vavilov* provides further guidance that a reviewing court decide based on the record before them:

> [126] That being said, a reasonable decision is one that is justified in light of the facts: *Dunsmuir*, para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in

> light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it. In *Baker*, for example, the decision maker had relied on irrelevant stereotypes and failed to consider relevant evidence, which led to a conclusion that there was a reasonable apprehension of bias: para. 48. Moreover, the decision maker's approach would *also* have supported a finding that the decision was unreasonable on the basis that the decision maker showed that his conclusions were not based on the evidence that was actually before him: para. 48.
>
> [Emphasis added]

[47] Furthermore, *Vavilov* makes it abundantly clear the role of this Court is not to reweigh and reassess the evidence unless there are "exceptional circumstances". The Supreme Court of Canada instructs:

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
>
> [Emphasis added]

[48] The Federal Court of Appeal confirms in *Doyle v Canada (Attorney General)*, 2021 FCA 237 [*Doyle*] that the role of this Court is not to reweigh and reassess the evidence unless there are fundamental errors:

> [3] In doing that, the Federal Court was quite right. Under this legislative scheme, the administrative decision-maker, here the Director, alone considers the evidence, decides on issues of admissibility and weight, assesses whether inferences should be drawn, and makes a decision. In conducting reasonableness review of the Director's decision, the reviewing court, here the Federal Court, can interfere only where the Director has committed fundamental errors in fact-finding that undermine the acceptability of the decision. Reweighing and second-guessing the evidence is no part of its role. Sticking to its role, the Federal Court did not find any fundamental errors.
>
> [4] On appeal, in essence, the appellant invites us in his written and oral submissions to reweigh and second-guess the evidence. We decline the invitation.

[49] *Vavilov* requires reviewing courts to assess whether the decision is subject to judicial review meaningfully grapples with the key issues:

> [128] Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (*Newfoundland Nurses*, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.
>
> [Emphasis added]

[50] *Laval (Ville) v Canada (Attorney General)*, 2019 FC 1481 [*Laval*] confirms deference must be shown when reviewing whether the *Schedule II* exceptions in the *PILT Act* have been reasonably interpreted. At paragraph 17, Justice Martineau states:

> [17] Therefore, this is a case where the Court must show deference. The PILTA provides a plethora of terms in Schedule II and of more detailed definitions in subsection 2(3), which could easily inspire any lawyer to get creative. It is true that some administrative determinations made on behalf of the Minister by the decision-maker could never be reasonable. For example, in *Montreal Port Authority*, the Supreme Court determined that a grain silo simply could not be considered a "reservoir" under section 10 of Schedule II. That said, the decision-maker must have some flexibility in interpreting the exclusions without this Court's substituting its own interpretation *(Canada (Attorney General) v Heffel Gallery Limited*, 2019 FCA 82 at paras 45–53).

(2) Correctness

[51] Questions of procedural fairness are reviewed on the correctness standard: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, per Binnie J at paragraph 3 and see *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship*), 2020 FCA 196 per de Montigny JA (as he then was) [Near and LeBlanc JJA concurring]:

> [35] Neither *Vavilov* nor, for that matter, *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, have addressed the standard for determining whether the decision-maker complied with the duty of procedural fairness. In those circumstances, I prefer to rely on the long line of jurisprudence, both from the Supreme Court and from this Court, according to which the standard of review with respect to procedural fairness remains correctness.

[52] I also understand from the Supreme Court of Canada's teaching in *Vavilov* at paragraph 23 that the standard of review for procedural fairness is correctness:

> [23] Where a court reviews the merits of an administrative decision (i.e., judicial review of an administrative decisions <u>other than a review related to a breach of natural justice and/or the duty of procedural fairness</u>), the standard of review it applies must reflect

> the legislature's intent with respect to the role of the reviewing court, except where giving effect to that intent is precluded by the rule of law. The starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness.
>
> [Emphasis added]

B. *Reasonableness of valuation of the Property*

(1) The *PILT Act* and tax fairness

[53] The Applicant submits the Majority Advice misunderstands the purpose of the *PILT Act* as a balancing exercise as tax fairness between municipalities and Canada, whereas the *PILT Act* is intended to ensure tax fairness *as between municipalities*. The Applicant submits this is to ensure that such municipalities are not advantaged or disadvantaged based on the proportion of federal Crown property within their boundaries.

[54] In this the Applicant relies on *Halifax v Canada*, 2012 SCC 29 [*Halifax*], where Justice Cromwell writing for the Supreme Court of Canada at paragraph 10 states:

> [10] Under s. 125 of the *Constitution Act, 1867*, the Federal Crown is exempt from provincial and municipal taxes. This constitutional exemption has the potential to cause unfair adverse effects to municipal revenue — unfairness that Parliament has attempted to mitigate with the Act. As stated in s. 2.1, the purpose of the Act "is to provide for the fair and equitable administration of payments in lieu of taxes". Paragraph 3(1)(a) of the Act provides that the Minister "may" make payments "in lieu of a real property tax for a taxation year". The amount of this payment shall not exceed the amount determined by multiplying the "property value" by the applicable "effective rate" of taxation: s. 4(1).
>
> [Emphasis added]

[55] The Applicant submits fairness and equity under the *PILT Act* is not achieved by balancing, but rather through valuation decisions that reflect the assessed value of the property as the same as if it were not owned by the federal Crown. The Applicant submits this would ensure parity between federal and non-federal property.

[56] The Applicant submits the Minister erred in accepting the Majority Advice on PILT, because the Majority Advice stated it viewed fairness and equity under the *PILT Act* "as a middle of the road concept that excludes extremes" and selected property values that "were the median values derived from the reports of the five experts who testified." This approach, the Applicant submits, is inconsistent with the statutory scheme and the principle discussed at paragraph 40 of *Halifax*:

> [40] The Minister's role under the Act is not to review the assessment authority's assessment; the Minister's function with respect to the value of the property is to reach an opinion about the value that would be attributed by an assessment authority. This is done in the context of exercising the discretion to make a PILT that must not exceed the product of the effective rate and the property value. While the view of an assessment authority is an important reference point for the Minister, I nonetheless agree with Evans J.A. that in reaching his or her opinion, the Minister is entitled to make an independent determination of the value that would be attributed to the federal property by an assessment authority.

[57] The definition of federal property is a constraint on the Minister's discretion for the purpose of setting property value for PILT. The Applicant further relies on the Supreme Court of Canada in *Montréal (City) v Montreal Port Authority*, 2010 SCC 14 [*Montreal*], where Justice Lebel for the Court at paragraph 40 states:

> [40] However, there is a fundamental flaw in this interpretation and application of the PILT Act and the Regulations. As I have indicated, the two corporations certainly have a discretion. It is

> clear from the definition of "effective rate" that Crown corporations have to decide on the appropriate tax rate. However, they cannot base their calculations on a fictitious tax system they themselves have created arbitrarily. On the contrary, those calculations must be based on the tax system that actually exists at the place where the property in question is located. The PILT Act and the Regulations require that the tax rate be calculated as if the federal property were taxable property belonging to a private owner. In s. 2 of the Regulations and the corresponding provision of the PILT Act, it is assumed that the corporations begin by identifying the tax system that applies to taxable property in the municipality in order to establish the property value and effective rate of tax. They cannot do so on the basis of a system that no longer exists.
>
> [Emphasis added]

[58] The Respondent submits that the *PILT Act* is designed to provide tax fairness and equity for municipalities and the federal government alike. The Respondent relies on *Halifax* at paragraph 41:

> [41] This conclusion finds support in the functional and practical considerations which LeBel J. identified in *Montreal Port Authority*, at paras. 34-35. The calculation of PILTs is not limited to a mechanical application of municipal assessments and tax rates. It must be adaptable to the various locations in which federal properties are situated, and to those properties' circumstances. This is especially so in view of the diverse and sometimes unique nature of federal properties. We need look no further than the Citadel site, 48 acres of 19th-century fortification sitting in the middle of a modern city, for an obvious example. Assessment principles are not self-applying. Legitimate disagreements about how they apply in a particular case are to be expected. There will often be no one, "right" answer. Moreover, the Minister is not in the same situation as an ordinary taxpayer. Where disagreements about an assessment of federal property arise, the Minister cannot take advantage of the assessment appeals processes that would be available to taxpayers subject to particular municipal or provincial regimes. Finally, it makes sense that within this highly discretionary regime of PILTs — a regime that explicitly preserves the Federal Crown's constitutional immunity from provincial and municipal taxation (s. 15) — the Minister would be armed with ways to protect federal

> interests against over-zealous assessment authorities should the need arise.
>
> [Emphasis added]

[59] In this connection, the Respondent also relies on *Montréal (City) v Old Port of Montréal Corporation Inc*, 2021 FC 806 [*Montreal FC*], where Justice Pamel at paragraph 158 states:

> [158] It bears remembering that the PILT Act must be interpreted in accordance with its purpose, which is "the fair and equitable administration of payments in lieu of taxes" (section 2.1 of the PILT Act). Its interpreter must not attempt to minimize PILTs by desperately hunting for exclusions with a magnifying glass. Nor is it acceptable to exploit "ambiguities", "gaps" or "double meanings" to maximize exclusions (or, on the contrary, to minimize them). The interpreter's mission is to find a fair and equitable interpretation of the texts on the basis of their plain and ordinary meaning, without engaging in acrobatics or exaggeration.
>
> [Emphasis added]

[60] With respect, I am not persuaded by the Applicant's submissions. It seems to me the Minister's position in this regard is reasonable in that it is in accord with the intention of the legislature, and is also supported by the record.

[61] In my view, Parliament describes the purpose of the *PILT Act* in broad, flexible and general terms, namely "to provide for the fair and equitable administration of payments in lieu of taxes." I am unable to read into this statement of purpose the distinction sought to be drawn by the Applicant. Nor am I able to rewrite the legislation to restrict its purpose to ensuring tax fairness *as between municipalities*, that is, without regard to the fair and equitable administration of PILT in relation to the Government of Canada and other interests that might be relevant in the circumstances. Nor do I see a reviewable error in the Minister endorsing a middle of the road

resolution through selecting property values that "were the median values derived from the reports of the five experts who testified."

[62] A second aspect of the Applicant's submission in this regard is that the Minister's Decision is flawed because it does not follow the assessment practice in Alberta, namely section 289 of the *Municipal Government Act*, RSA 2000, c M-26 which requires an assessment to reflect the characteristics and physical condition of the property. The Applicant submits the same error occurred but was corrected in *Halifax*, where the Supreme Court of Canada held it was unreasonable for the Minister to value the Citadel – a 48-acre historic site in the centre of downtown Halifax - as valueless. In this case, the Applicant argues ignoring the water mains and sewer mains servicing the Property and treating the Property as simple a parcel of land- and not an active military base- is inconsistent with the property assessment scheme in Alberta.

[63] With respect, I again disagree. In my view this argument if flawed because it puts the cart before the horse. While I agree the central issue in this case is to determine what is and what is not federal property and thus whether to treat the Property as serviced or unserviced land, and while I agree the matter will involve considerations of principles of municipal tax assessment, the starting point of any determination of PILT is to determine what is and what is not federal property. That is determined when federal property is reasonably identified, which determination must consider the statutory definition of federal property and its exclusions. It is only after federal property has been reasonably determined that principles of provincial or municipal land assessment become relevant; they are applied to whatever federal property is determined by the Minister in the manner just set out. With respect, this interpretation is required by the *PILT Act*,

the definitions and exclusions relating to federal property, and the definition of property value for the purposes of the *PILT Act* is defined in subsection 2(1) as:

> ***property value*** means the value that, in the opinion of the Minister, would be attributable by an assessment authority to federal property, without regard to any mineral rights or any ornamental, decorative or non-functional features thereof, as the basis for computing the amount of any real property tax that would be applicable to that property if it were taxable property.

(2) Interpretation of the *PILT Act*

[64] The "gate" or threshold issue between the parties concerns the exclusion from federal property of water mains and sewer mains for the purposes of determining what constituted federal property, and thus the impact of the exclusion municipal assessment purposes. The DAP Majority Advice and Respondent take the position that "the water and sewer mains should not be considered *for any purpose* with the result that the impact, either positive or negative, on the value of the land they serve if any should be ignored when valuing federal property for PILT purposes" [emphasis added]. See paragraph 58 of the Majority Advice. The relevant federal property is therefore treated as unserviced land.

[65] To the contrary, the Applicant submits federal property must be valued as it exists, as serviced land, because of the existence of the water mains and sewer mains. The Applicant agrees that while the value of the water mains and sewer mains itself does not form part of the value of federal property, the fact federal property is serviced contributes to its value such that the relevant federal property should be treated as serviced land. This view was rejected by the Majority Advice, and it seems to me properly so because it unreasonably ignores the definition

of and exclusions from “federal property” which constitute constraining law from Parliament in this regard.

[66] The Applicant submits the Majority Advice’s interpretation of the *PILT Act* does not accord with the modern principle of statutory interpretation. The City relies on *Montreal FC,* in which Justice Pamel explains at paragraph 158:

> [158] It bears remembering that the PILT Act must be interpreted in accordance with its purpose, which is “the fair and equitable administration of payments in lieu of taxes” (section 2.1 of the PILT Act). Its interpreter must not attempt to minimize PILTs by desperately hunting for exclusions with a magnifying glass. Nor is it acceptable to exploit “ambiguities”, “gaps” or “double meanings” to maximize exclusions (or, on the contrary, to minimize them). The interpreter’s mission is to find a fair and equitable interpretation of the texts on the basis of their plain and ordinary meaning, without engaging in acrobatics or exaggeration.

[67] The Applicant submits the Minister did not take this approach, but instead departed from the modern principle of statutory interpretation by interpreting the *PILT Act* as requiring that water mains and sewer mains are excluded *for all purposes*, applying an unreasonably broad interpretation to the *Schedule II* exclusion from the definition of federal property. The Applicant submits this approach is not in accordance with Justice Pamel’s guidance in *Montreal FC*.

[68] With respect, I am not persuaded the Minister’s acceptance of the Majority Advice is in any manner an attempt to minimize PILT by desperately hunting for exclusions with a magnifying glass. Nor is it accurate or reasonable to describe the Minister’s approach as an effort to exploit “ambiguities”, “gaps” or “double meanings” to maximize exclusions.

[69] Indeed, in my respectful view the Majority Advice and the Minister's approach to the interpretation of the legislation is just what Justice Pamel called for (and what the *PILT Act* calls for), namely a fair and equitable interpretation of the legislation without engaging in acrobatics or exaggeration.

[70] Importantly, the DAP's approach to determination of the appropriate approach as to what is and what is not federal property is constrained not only by the legislation and in particular the exclusions in *Schedule II*, but is constrained by the expert and other evidence put before it. Notably, the DAP held 12 days of virtual hearings in this case, the central issue being the determination of a reasonable approach to federal property and its exclusions, and as a result, whether the Property should be assessed as serviced or unserviced land.

[71] The DAP had before it the considered views of no less than 11 agreed experts in the field. As noted, five of these acknowledged and accepted valuation and assessment experts testified orally over the course of the 12-day hearing:

Called by the City (Applicant):

Witness	**Oral Evidence**	**A-Agreed Expertise**	**B-Panel Observations**
Troy Birtles	Yes	Qualified to give expert evidence respecting Municipal assessment.	AMAA, Appraisal and Assessment diploma, 1993 – Assessor, 1993 – present for multiple municipalities, Member, Alberta Assessors Association
Brian Gettel	Yes	Qualified to give expert	B. Comm. 1994 AACI, 1981 Extensive appraisal

		evidence in valuation of real estate (from both an appraisal and an assessment perspective)	experience 1981 – present
Blair Hurt	No	Qualified to give expert evidence respecting Municipal assessment	AAMA 1971, Extensive experience as Property Assessor and Consultant in Alberta
Steven Engman	No	Qualified to give expert evidence in the costing and installation of Municipal services and infrastructure	P. Tech (Eng.), Extensive technical experience
Russ Bell	No	Qualified to give expert evidence respecting utility rate making, and the valuing of utilities and utility assets for the purposes of sale and purchase	B. Comm, CPA, Extensive experience advising the utility industry

Called by PSPC (Respondent):

Witness	**Oral Evidence**	**Agreed Expertise**	**Panel Observations**
Keith Lennie	Yes	Qualified to give expert evidence respecting the assessment and valuation of federal property for PILT purposes	Graduate, Property Assessment & Appraisal Program, Loyalist College, 1990 Certificate, Real Property Assessment, UBC, Sauder School of Business, 2000 Additional CPD courses, UBC, Sauder School of Business to present

			Extensive PILT experience 1990 – present
Jacob Hofer	Yes	Qualified to give expert evidence on market value appraisal and related valuation analysis (from both an appraisal and assessment perspective)	AACI, P. App, MRICS Extensive appraisal experience 1989 – present
Allan Beatty	Yes	Qualified to give expert evidence on market value appraisal and related valuation analysis (from both an appraisal and assessment perspective)	AACI, 1988, P. App. Extensive appraisal experience 1988 – present Extensive/Impressive contribution to Appraisal Institute of Canada, National President, 1996-1997
Stephen Cook	No	Qualified to give expert evidence respecting the valuation of property for assessment purposes in the Province of Alberta	Extensive experience with the Alberta Assessment Appeal Board
Larry Kennedy	No	Qualified to give expert evidence respecting the valuation, depreciation and regulation of utility properties in Alberta	Extensive experience as an energy advisor to the utility industry

David Crane	No	Qualified to give expert evidence in the costing of site servicing and related projects in the Province of Alberta	MRICs, PQS, extensive experience in construction cost estimating

[72] Notably, the DAP heard the evidence of Mr. Hofer as well as that of Mr. Birtles. Mr. Hofer supported excluding the water mains and sewer mains for all purpose such that the Property would be assessed as unserviced land, and gave expert evidence for the federal government. Mr. Birtles for the City advanced the serviced land approach.

[73] The DAP not only had their written reports (along with 9 others); the DAP also had the benefit of hearing their *viva voce* evidence over this 12-day hearing.

[74] In this, in my view the DAP having heard the oral evidence in addition to the expert reports, had a most considerable benefit over this Court in its weighing and assessing the competing expert evidence. Notably, both the Supreme Court of Canada and the Federal Court of Appeal instruct this Court to decline an invitation to reweigh and reassess the evidence unless there are exceptional circumstances, none of which I am persuaded of here: see *Vavilov* at paragraph 125 and *Doyle* at paragraphs 3-4.

[75] In addition to being better placed than a reviewing court to weigh and assess conflicting oral and written evidence, it is settled jurisprudence the DAP's must be shown deference in considering federal property and its exclusions. *Laval* confirms deference must be shown when reviewing whether the *Schedule II* exceptions in the *PILT Act* have been reasonably interpreted.

The DAP and Minister must have some flexibility in interpreting the exclusions without this Court substituting its own interpretation for that of the experts. At paragraph 17 of *Laval*, Justice Martineau states:

> [17] Therefore, this is a case where the Court must show deference. The PILTA provides a plethora of terms in Schedule II and of more detailed definitions in subsection 2(3), which could easily inspire any lawyer to get creative. It is true that some administrative determinations made on behalf of the Minister by the decision-maker could never be reasonable. For example, in *Montreal Port Authority*, the Supreme Court determined that a grain silo simply could not be considered a "reservoir" under section 10 of Schedule II. That said, the decision-maker must have some flexibility in interpreting the exclusions without this Court's substituting its own interpretation *(Canada (Attorney General) v Heffel Gallery Limited*, 2019 FCA 82 at paras 45–53).
>
> [Emphasis added]

[76] In addition, in my respectful view the Majority Advice (and the Minister who relied on it) transparently and intelligibly explains why it preferred Mr. Hofer's evidence and expert opinions advanced by PSPC at the 12-day hearing. The Majority Advice likewise explains and in my view reasonably justifies its rejection of the opinions of both Mr. Birtles and Mr. Gettel (called by the City).

[77] In this respect, I am not persuaded there is any reviewable error. It is worth noting that Mr. Birtles returned an original 2012 assessment at $44,121,784, and later (based upon his perceived positive influence on the value of the existing sewer and water mains) filed an updated report indicating the market value was $197,254,500, an increase of approximately 447%. Indeed the Majority Advice found the City's 447% increase in valuation hinted of the 'acrobatics' DAP and Ministers properly deprecated by Justice Pamel in *Montreal FC* at paragraph 158:

> [158] It bears remembering that the PILT Act must be interpreted in accordance with its purpose, which is "the fair and equitable administration of payments in lieu of taxes" (section 2.1 of the PILT Act). Its interpreter must not attempt to minimize PILTs by desperately hunting for exclusions with a magnifying glass. Nor is it acceptable to exploit "ambiguities", "gaps" or "double meanings" to maximize exclusions (or, on the contrary, to minimize them). The interpreter's mission is to find a fair and equitable interpretation of the texts on the basis of their plain and ordinary meaning, without engaging in acrobatics or exaggeration.

[78] In my view the Majority Advice was fully entitled to accept the expert evidence and opinions of Mr. Hofer over those of Mr. Birtles and Mr. Gettel: in essence the DAP's job in this case was to weigh and assess the competing evidence of these land value and assessment experts. The Majority Advice provided reasons for doing each – for why it accepted the evidence of Mr. Hofer, and for why it rejected the evidence of Mr. Birtles.

[79] In doing so, the DAP in my respectful opinion performed the function it was mandated to do, namely to instruct itself on the constraining law (which it did quite fulsomely, and both reasonably and correctly), and then consider the several competing opinions of the duly qualified experts, and then weigh and assess the evidence for and against, and come to conclusions supported by reasons that are intelligible, transparent and justified. That is what *Vavilov* and *Canada Post* teach. And with respect that is what I find the Majority Advice reasonably reflects.

[80] Lastly, the Applicant submits the Minister's interpretation that the federal Crown owns and takes on the costs of the servicing of its own properties, therefore justifying a corresponding reduction in PILT is unreasonable. The Applicant submits three supporting arguments, 1) property taxes are not a fee for water service, 2) section 7 of the *PILT Act* allows for the Minister

to reduce PILT if the taxing authority is unable or unwilling to provide service to the federal property, and 3) not all federal property are self-serviced by the Crown.

[81] The Respondent submits this argument is erroneous, and ignores the uniqueness of the Property, that being the extent of the self-servicing infrastructure. The Respondent asserts the evidence before the DAP showed that other military bases in Alberta are assessed by assessment authorities with an adjustment for servicing infrastructure or an unserviced land rate is applied.

[82] The Respondent relies again on *Laval* where Justice Martineau states at paragraph 8:

> [8] In this case, the decision-maker determined that the Laval Complex tunnels are excluded from the definition of "federal property" under paragraph 2(3)(b) of the PILTA because they are works specifically mentioned in section 12 of Schedule II to the PILTA ("Snow sheds, tunnels, bridges, dams") [emphasis added]. <u>For the reasons that follow, the applicant did not satisfy me that the decision to exclude the Laval Complex tunnels is unreasonable.</u>
>
> [Emphasis added]

[83] In my view, the Minister's decision to accept the Majority Advice that the *Schedule II* items must be excluded for all purposes is a reasonable interpretation of the *PILT Act*, consistent with the plain language of the Act, the purpose of the Act's exclusions, and Act's objectives. Here, the *PILT Act* as already noted is the relevant constraining federal legislation governing this dispute, and it specifies what "federal property" is, and what it does not include. All parties agree that water mains and sewer mains are not federal property. The only issue was whether the exclusion is *for all purposes*. Based on the expert evidence the DAP choose to accept, namely that of Mr. Hofer, the Majority Advice is reasonable because it is grounded in the expert evidence and opinions of Mr. Hofer, an agreed upon and acknowledged expert witness.

[84] The Majority Advice outlines many reasons for concluding *Schedule II* items must be excluded for all purposes and should not therefore influence the assessment of the value of the federal property. It held this approach is consistent with the approach the Applicant took to other *Schedule II* items, including roads, sidewalks, aircraft runways, and paving excluded "for all purposes." In my respectful view, the Applicant invites the Court to engage in the reweighing and reassessing of the expert and other evidence before the DAP. This, as *Doyle* notes, forms no part of the role of this Court on judicial review: I respectfully decline that invitation.

[85] More specifically, I conclude the Majority Advice in this respect is reasonable and justified:

> **Federal Property**- *if/whether/how to consider the value of services* that serve 4 Wing
>
> 80. We have concluded that because the services included in Schedule II are excluded from the definition of federal property, they should be excluded for all purposes.
>
> 81. We would value the federal lands for PILT purposes as an 8,533-acre parcel of land with services coming to, but not inside, its boundaries (subject to the last sentence of paragraph 118).
>
> 82. All parties concede that Schedule II excludes *Water mains* and *sewer mains* from the definition of federal property and accordingly the cost of installation is exempt from PILT. Because they exist, the City's expert witnesses, Mr. Birtles and Mr. Gettel believe the impact that their presence has must be considered in determining the value of the lands they serve.
>
> 83. We do not agree. We arrive at this conclusion for many reasons:
>
> > a. We are satisfied that the exclusion for all purposes of those improvements listed in Schedule II satisfies the requirement in the Interpretation Act for a fair, large and liberal interpretation of the PILT Act. This best ensures the attainment the purpose of the PILT Act, that being *to provide for*

the fair and equitable administration of payments in lieu of taxes.

b. This is also consistent with the assessor's treatment of *Roads, sidewalks, aircraft runways, paving* that are also excluded by Schedule II, Section 2, para 9. Mr. Birtles testified that he ignored these features for all purposes, while considering the existence of the water mains and sewer mains as having a positive impact on the value of the lands they serve. Consistency is one of the pillars of any assessment system, yet Mr. Birtles proposes to treat Schedule II exclusions in an inconsistent manner.

c. If we were to speculate (something we prefer to avoid), it is conceivable that a potential future use of a portion of the land could be as a local airport, yet there is no evidence considering the impact of the runway. It is illogical and inconsistent to treat some assets in Schedule II one way and others in the antithetical way. Of the two possibilities, we believe that the approach that excludes the Schedule II features for all purposes best achieves *the fair and equitable administration of payments in lieu of taxes.*

d. There is no evidence before us that the impact of Schedule II exclusions is considered in respect of Canada properties anywhere in Canada. The only testimony we heard was from Mr. Lennie, who testified that he is unaware of similar treatment elsewhere in Canada, and from his personal knowledge such treatment does not occur in respect of any of the properties for which he is directly responsible in the course of his work.

e. To value the positive impact of services assumes that all the uses will continue after the base is decommissioned. As we illustrate in the HABU section of this Advice, this is not a conclusion we can support. 4 Wing developed over a very long period and subject to no provincial planning controls. Immediately upon sale to a third party, provincial planning controls are in effect. There is no evidence that what exists at 4 Wing will be approved by provincial/municipal planning

> authorities. This, like the Highest and Best Use (*HABU*) challenge with 4 Wing, is highly speculative and a conclusion that is not supported by the evidence before us.
>
> f. Moreover, must of the infrastructure, and all of the residential infrastructure, was installed some 70 years ago. We heard no evidence supporting a conclusion that the composition, location, condition, size, etc. of this infrastructure would meet even the most minimal of current municipal/provincial standards. It is even possible that the cost to cute deficiencies would be far in excess of the value of the materials in the ground. We do not agree that speculation of this nature could possible achieve *the fair and equitable administration of payments in lieu of taxes*.
>
> **Highest and Best Use (*HABU*)**
>
> 84. We find that, subject to the reservations, and for the reasons expressed below, the Highest and Best use of 4 Wing is as a Department of National Defense Air Force Base with supporting residential, commercial, and industrial infrastructure.

[86] With respect, the Minister's Decision and Majority Advice regarding the interpretation of the "gate" or threshold issue is consistent with section 7 of the *PILT Act*, which allows PILT payments to be reduced where a municipality cannot or will not provide a federal property with services. Section 7 also provides a mechanism through which PILT may be adjusted to account for federal expenditures on which it would be unfair for the federal government to be taxed. In this connection section 7 of the *PILT Act* provides:

> **Deductions**
>
> **7** In determining the amount of a payment for a taxation year under paragraph 3(1)(a), there may be deducted
>
> > (a) if there is in effect a special arrangement for the provision or financing of an educational service by Her Majesty in right of Canada, the amount established by that arrangement;

> (b) if there is in effect a special arrangement for an alternative means of compensating a taxing authority, or a body on behalf of which the authority collects a real property tax, for providing a service, the amount established by that arrangement;
>
> (c) if a taxing authority, or a body on behalf of which the authority collects a real property tax, is, in the opinion of the Minister, unable or unwilling to provide federal property with a service, and no special arrangement exists, an amount that, in the opinion of the Minister, does not exceed reasonable expenditures incurred or expected to be incurred by Her Majesty in right of Canada to provide the service; and
>
> (d) an amount that, in the opinion of the Minister, is equal to any cancellation, reduction or refund in respect of a real property tax that the Minister considers would be applicable to the taxation year in respect of federal property if it were taxable property.

(3) Departing from past decisions and failures of reasoning

[87] The Applicant submits the Minister unreasonably departed from the 2014 Advice because it did so without explanation. The Applicant says the Majority Advice did not state that its valuation recommendation were in direct conflict with the 2014 Advice. Subsequently, the Applicant argues that the Minister did not address this departure, and instead states:

> In your letter, you also reference the previous DAP advice and conclude that it contradicts the 2022 majority advice. The DAP advice for 2012 recommended a land value of $44 million, and the 2022 DAP majority recommended $48 million for 2013. I believe that these represent fair and reasonable values that appropriately recognize the exemptions in the Act, respect the principles of market value as defined in the assessment legislation and are equitable with other military bases in Alberta. The minority advice recommends a land value of $115 million for 2013 and does not fully account for the servicing infrastructure as required by the Act

> and appraisal principles. This is a marked departure from the other DAP findings.
>
> [Emphasis added]

[88] The Applicant submits this response from the Minister does not address how the 2014 Advice and the Majority Advice from 2022 reached opposite conclusions on how the service infrastructure should be valued.

[89] In my view, the Minister is not bound by previous decisions and must retain flexibility to ensure the purposes of the legislation are achieved as different cases arise at different times in different circumstances. On application by a taxing authority, each case should be considered by members of the DAP who then make recommendations to the Minister based on their judgment and their weighing and assessing the expert and other evidence given in writing and orally.

[90] Upon receipt of that recommendation (or two as in this case), the Minister must determine what constitutes federal property and property value to which the mil rate will be applied. If Parliament had intended DAP recommendations to be simply approved without more it could have said so, but did not. The Minister is certainly left with the final decision, and may for that purpose consider the recommendations along with such other factors as they consider relevant including treatment under the *PILT Act* of other federal properties and matters of more general importance.

[91] In my view, to the extent the Minister paid deference to the 2014 Advice there is no reviewable error, rather it is valuation of the character described in *Bank of Montreal v Canada (Attorney General)*, 2020 FC 1014, by Justice Walker (as she was then) at paragraph 158:

> [158] In light of the SCC's emphasis on justification in administrative decisions, it would have been preferable for the Minister to state why she would not follow the deferral route for FY 2018. However, I find that her omission to explain in the Decision a different resolution than that in 2017 does not rise to the level of a sufficiently serious shortcoming that requires redetermination (*Vavilov* at para 100).
>
> [Emphasis added]

(4) Evidence before the Minister

[92] The Applicant submits there was evidence from a utilities consultant before the DAP to rebut the position that the cost of maintaining and repairing the water and sewer infrastructure reduces the value of the Property, and that this was not considered. It is trite on judicial review that decision makers such as the DAP are deemed to have considered all the material before them, and to reinforce this *Vavilov* at paragraph 91 confirms reasons need not explicitly address every piece of evidence. There is no reviewable error in the Majority Advice not discussing this matter, and relying instead on Mr. Hofer's recommendations.

(5) Evidence not before the Minister

[93] The Applicant submits the Majority Advice, and subsequently the Minister, concluded the Property cannot be valued based on its existing use but rather on a hypothetical future used as decommissioned privately owned land. The Applicant submits there was no evidence before the DAP, and rather, that all witnesses including PSPC's, spoke to the highest and best use of the Property as an existing, operational military base. The Applicant submits the Minister's Decision is confused on this point made in the Majority Advice because the Decision states:

> Following the issuance of the DAP advice, you wrote a letter to my predecessor on August 17, 2022… In these letters, you note… that the majority took the view of hypothetical future uses when valuing the land. I have thoroughly considered both the DAP advice and your letters, and I note that the DAP majority considered the highest and best use of the property to be an operational air force base with supporting residential, commercial and industrial uses…
>
> [Emphasis added]

[94] It seems to me that the Majority Advice concludes the highest and best use of the Property was as a defence air force base with supporting residential, commercial, and industrial infrastructure. This Minister noted this in her reasons regarding the Property's value. There is no merit in this submission.

C. *Reasonableness of decision on late payment supplements*

[95] The Applicant submits the Minister's refusal to make late payment supplements is an attempt to punish the Applicant for exercising their rights under the legislation. In this regard, subsection 3(1.1) of the *PILT Act* authorizes the Minister to pay a municipality or other taxing authority supplementary (i.e., interest) payments in the event of unreasonable delay:

> Delayed payments
>
> (1.1) If the Minister is of the opinion that a payment under subsection (1) or part of one has been unreasonably delayed, the Minister may supplement the payment.

[96] In this respect, the Majority Advice recommended against supplementary payments at paragraphs 73-74:

> When the DAP 1 panel concluded, following a full hearing, that the original assessment of $44,121,784 "is a reasonable estimate of

> current value and should be the basis on which the Payments in Lieu of Taxes (are) made" and after the Minister accepted that Advice, Mr. Birtles consistently returned significantly higher assessments for the years now before us, even after the City abandoned its JRs of the 2012 PILT value.
>
> In our view, the issue had been fully litigated and "a reasonable estimate of current value" was identified by the DAP 1 panel. Despite this, Mr. Birtles persisted returning inflated values for 2013-2021 inclusive. Therefore, we do not recommend that supplementary payments be paid.

[97] The Minister adopted the Majority Advice in the Decision:

> I have decided to accept the majority recommendation with respect to the land values and late payment supplements, for the reasons outlined in the majority's DAP advice of July 20, 2022.

[98] The Applicant submits the *PILT Act* does not allow the Minister to withhold payments for seeking assessed values that they consider to be excessive, and the DAP does not have the authority to award costs for a hearing. The only consideration outlined in the legislation is whether the Minister is of the opinion that a payment, or part of a payment has been unreasonably delayed. I note at the outset on this point that is what occurred here: the Minister formed that opinion.

[99] In this the Applicant relies on *Montreal (City) v Montreal Port Authority*, 2011 FC 937 [*Montreal Port Authority*], where Justice Martineau sets out the purpose of late payment supplements at paragraph 15:

> [15] Because of property assessment cycles and disputes over rates and values, some municipalities did not always receive payment in full by the due dates, which created an inequitable situation by depriving these municipalities of the portions for which payment was outstanding and, financially speaking, denying them equal footing with other municipalities for whom full payment was not

> delayed. The solution was therefore to grant late payment supplements. Late payment supplements are calculated objectively according to the interest rate applied on the unpaid amount over the period that it is late. See Public Works and Governments Services Canada (PWGSC), *Late Payment Supplements (LPS) Procedure - PILT*, at paragraph 3 (the PWGSC Policy).
>
> [Emphasis added]

[100] As the Applicant notes, the Minister paid PILT essentially based on $44,121,784 between 2013 and 2021 such that the municipality received less, and sometimes substantially less PILT than the Minister ultimately determined in 2022 by accepting the Majority Advice:

Taxation Year	**Recommended Value**
2013	$48,700,000
2014	$54,600,000
2015	$59,800,000
2016	$59,200,000
2017	$54,100,000
2018	$49,800,000
2019	$45,500,000
2020	$44,100,000
2021	$42,600,000

[101] In my view the delay in payment resulted in part from the Minister's and PSPC's decision to use the 2012 assessed value of the Property at $44,121,784 as outlined in the 2014 Advice, for the tax years that followed namely 2013-2021. It is also the case that both the Majority and Minority Advice recommended values higher than the 2012 assessed value over this same period. This resulted in the net underpayment to the Applicant. The Minister acknowledged this aspect of the delay in accepting the Majority Advice:

> Furthermore, I accept the majority's advice not to issue late payment supplements. I do not feel that the payments to the City were unduly delayed by Public Services and Procurement Canada.
> Furthermore, I accept the majority's advice not to issue late payment supplements. 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.
>
> [Emphasis added]

[102] That said, I see no reviewable error in the Minister concluding the delay in this case was caused, certainly in large part, by the fact the parties were in litigation or settlement discussions between 2013 and December 2018, and thereafter it seems the parties were in preparation for the present judicial review. It is also the case that the DAP Majority Advice took a very dim view of Mr. Birtles' evidence and opinions which were fulsomely rejected by the Majority. As noted above his valuation increased by some 447% without adequate explanation at least insofar as the DAP Majority was concerned.

[103] It seems settled that late payment supplements are made where the Minister caused the delay. See Justice Martineau in *Montreal Port Authority* at paragraph 17:

> [17] Regarding department properties, the PWGSC Policy establishes a procedure and lists criteria for the application and administration of LPS applications to ensure that they are processed in a fair, equitable and predictable manner. An "unreasonably delay" is defined as a delay in making a PILT, either in part or in full, beyond the payment due date established under the PWGSC Policy for that payment, where the reason for the delay is a result of an action or inaction on the part of the federal government.
>
> [Emphasis added]

[104] I do not see that the Minister caused the delay. I am not satisfied the Minister's determination is unreasonable in that it accords with the legislation, jurisprudence and record in this case.

D. *Procedural fairness*

[105] The Applicant submits several instances where the City was allegedly not afforded procedural fairness.

[106] First, the Applicant submits it had no notice or awareness of a memorandum sent to the Minister prepared by the PSPC Deputy Minister, outlining what is now known to be the draft Decision. The Applicant submits the fact that a representative of PSPC, the party adverse to the Applicant City during the DAP hearing, drafted the Minister's Decision is itself problematic and creates a reasonable apprehension of bias.

[107] There is no merit in this submission. The complete answer is that courts have recognised that there is nothing improper in a Minister relying on departmental staff preparing a file for review and determination, as was done here. In *Violator no. 10 v Canada (Attorney General)*, 2018 FCA 150 [*Violator no. 10*], Justice de Montigny (as he then was) states that forcing a decision-maker, like the Minister, to perform all tasks personally would cause chaos, be inefficient and lead to interminable delays:

> [42] In a modern and complex state like ours, as the Supreme Court reiterated more than forty years ago in *Harrison*, it is unreasonable to expect that the person designated in the legislation to perform certain duties will perform all of them personally. Such a requirement would cause chaos, lead to interminable delays and be inefficient. Justice Rothstein (then of the Federal Court) stated the following in *Armstrong v. Canada (Commissioner of the Royal Canadian Mounted Police)*, 1994 CanLII 3459 (FC), [1994] 2 FC 356 at paragraph 59, 73 F.T.R. 81 (affirmed by this Court in 1998 CanLII 9041 (FCA), [1998] 2 FC 666):
>
> > Fourth, it is not realistic for the Commissioner to make appeal decisions in discharge matters without

> delegating to his subordinates some of the work involved in preparing the material in a manner to enable him to expeditiously perform his function. In this case, Sgt. Swann states, in her affidavit, that she spent approximately 250 hours reviewing and preparing the résumé. It is to be expected that the Commissioner of the RCMP would require such assistance, it not being practical for him to expend that amount of time reviewing the material in discharge, grievance or disciplinary matters appealed to him. Such delegation does not, of itself, imply that the Commissioner did not put his mind, independently, to the decision-making process.

[108] It is also noteworthy that the Supreme Court of Canada in *Halifax*, Justice Cromwell implicitly endorsed the proposition that it is expected and procedurally fair for a Minister in considering DAP advice to accept and adopt conclusions on the basis of a (four-page) memorandum from their Deputy Minister:

> [29] <u>On the basis of a four-page memorandum from the Deputy Minister, the Minister adopted the report's conclusions.</u> To the Panel's final value the Minister added an amount to account for the value of the eligible improvements and the value of the 19,050 square feet of land under them. The latter value was calculated using the per-square-foot value the Panel had set for the land under the casemates and demi-casemates: July 29, 2008 letters from the Minister to the Mayor of Halifax and the Chief Administrative Officer of Halifax, A.R., vol. I, at pp. 22-23; Report to the Minister, A.R., vol. I, at p. 30. The Minister made additional PILTs for 1997 to 2007 on the basis of the newly accepted valuation of the site.
>
> [Emphasis added]

[109] Furthermore, the Applicant submits the contents of the memorandum contains logical errors, the same found in the Decision itself. The memorandum forms part of the Certified Tribunal Record [CTR], and at page 082 states:

> The DAP Advice issued in 2014 recommended a land value of $44 million for 2012 and that advice was accepted by the then Minister of Public Works and Government Services. The 2022 DAP majority aligns with the previous DAP advice and recommends $48 million for 2013. In a marked departure, the minority advice recommends a land value of $115 million for 2013.

[110] In this respect the memorandum distilled information on the record. That is proper and expected in such advice. While the Applicant disagrees with the Decision, this aspect of the memorandum does not breach procedural fairness.

[111] More generally, I also agree the Applicant was provided notice of the case to be met and an opportunity to provide submissions. There is no unfairness that arose from the Memorandum to the Minister drafted by the Deputy Minister with a recommendation and draft reasons.

[112] Secondly, the Applicant submits it had no knowledge of a briefing note the Minister considered titled “Advice to Minister”. This briefing note includes information not before the DAP. The briefing note was not provided to the Applicant, therefore the City did not have an opportunity to respond or make submissions on its content. In my view this briefing note was obviously generated to provide political advice to the Minister. It is not on the record whether the briefing note came from a member of the political staff of the Minister or of some another Minister, a House of Commons staffer or otherwise.

[113] Labelled “CONFIDENTIAL Advice to the Minister” the one-page briefing note addresses Key Issue, Departmental Recommendation, Background & Context, Stakeholder Considerations, Key Political Considerations, Additional Caucus Considerations, Political

Considerations & Next Steps. It was included in the Minister's CTR filed with the Court, although it is not known whether it would be accessible under the *Access to Information Act*, RSC 1985, c A-1.

[114] The Applicant alleges it contains evidentiary statements that do no reflect the evidence before the DAP, or part of the DAP's findings:

> i. "accepting the majority advice will not cause financial hardship on the city – from an accounting perspective, they have been prepared for either decision." Neither the Majority nor the Minority made a finding regarding financial impact. There was only a statement in Ms. Isert's Witness Report to the effect that the dispute "has a significant financial consequence for the City".
>
> ii. "the majority advice received from the DAP… is… consistent with all other Albertan military bases' land values." The Majority did not make a finding on this point. The Minority made findings inconsistent with Ms. Vincent's statement. In particular, the Minority noted that: "The final property values are typically agreements, negotiated by different PSPC valuators and different assessors, subject to different base years of assessment, and reflecting the different land values evident in the different geographical locations."

[115] The briefing note offers the following summary of the Majority and Minority Advice:

> The two values differ due to the issue of whether the water and sewer mains should be part of the definition of federal property or not. PSPC/majority asserts that because these services are excluded from Schedule II in the PILT Act, they should not be considered for any purpose; however, the City/minority believes that these services should be factored in the assessed value of the land. The City/minority's argument is based off of the provincial government's own procedure, despite CFC Cold Lake being federally-owned land.

[116] The Applicant submits this characterization of the differences between the Majority and Minority Advice is incorrect, giving rise to its belief the Minister herself was unaware of the

actual difference. The Applicant submits there was agreement that water and sewer mains are not federal property. Rather, the divergence is in the Minority Advice holding the view that *the fact that the Property is serviced* should be considered in determining its value. The Applicant submits this is not unique or subject to a procedure within Alberta, but rather on a differing interpretation of the *PILT Act*.

[117] Finally, the briefing note includes the following comment, suggesting a DAP official of higher status opined privately to the Minister as to which advice should be accepted, which further breached procedural fairness:

> After discussion with the PILT DAP Chairperson Gordon Daman, he highlighted that despite the likelihood of judicial review, accepting the majority recommendation has far less risk of negative repercussions for the Government of Canada in regard to PILT assessments compared to accepting the minority recommendation. He showed confidence that following a judicial review, the presiding judge would agree with the federal priority in PILT assessments.

[118] The Respondent concedes the briefing note breached procedural fairness because it includes statements of which the City was not given notice or an opportunity to respond, although the Decision does not refer to these statements and the DAP Chairperson was not on the hearing panel that provided the advice. Otherwise, the Respondent says there was no breach of procedural fairness. As noted the Respondent unsuccessfully attempted to have the matter remanded on this basis, but Justice Favel dismissed the motion given the lack of consent and the fact the valuation matter was a live issue.

[119] I am concerned with the position of both parties on procedural fairness, as discussed at the hearing. The Decision in this matter is delegated by Parliament to the Minister, who is a political actor and politician, both of which are necessary for the proper functioning of Canadian democracy.

[120] The final decision is not delegated to the DAP. Nor is the authority to decide delegated, as so often is the case, to the public service.

[121] It seems to me Ministers in their capacity as politicians require and are entitled to receive and consider political advice, otherwise decision-making would have been left with non-political entities such as the public service or the DAP or another quasi-judicial entity.

[122] I therefore am of the view that the same reasoning set out by Justice de Montigny (as he then was) in *Violator no. 10* approving the receipt by Ministers of advice from public servants applies to Ministers receiving political advice, because it is unreasonable to expect Ministers to perform their political functions personally:

> [42] In a modern and complex state like ours, as the Supreme Court reiterated more than forty years ago in *Harrison*, it is unreasonable to expect that the person designated in the legislation to perform certain duties will perform all of them personally. Such a requirement would cause chaos, lead to interminable delays and be inefficient. Justice Rothstein (then of the Federal Court) stated the following in *Armstrong v. Canada (Commissioner of the Royal Canadian Mounted Police)*, 1994 CanLII 3459 (FC), [1994] 2 FC 356 at paragraph 59, 73 F.T.R. 81 (affirmed by this Court in 1998 CanLII 9041 (FCA), [1998] 2 FC 666):
>
> > Fourth, it is not realistic for the Commissioner to make appeal decisions in discharge matters without delegating to his subordinates some of the work

> involved in preparing the material in a manner to enable him to expeditiously perform his function.

[Emphasis added]

[123] Moreover, the jurisprudence does not support the contention that the City has the right to be informed of political advice a Minister receives. Ministers receive political advice daily on a host of issues. I am unable to differentiate between written advice and what advice colleagues, constituents or others give Ministers in personal discussions. Failure to share that information does not constitute procedural unfairness. See: *Taseko Mines Limited v Canada (Environment),* 2017 FC 1100, where Justice Phelan discusses procedural fairness at paragraphs 66-68:

> [66] Taseko's central complaint is that it should have been informed of any submissions received by the Minister in opposition to the Project, and that it should have been afforded an opportunity to respond prior to the final decision. This is arguably grounded in the principle of audi alteram partem. The events at issue are therefore the October 8, 2013 meeting between the TNG and the Minister, and the Minister's receipt of the January 9, 2014 submissions.
>
> > In *Canadian Cable Television Assn v American College Sports Collective of Canada*, Inc, 1991 CanLII 13580 (FCA), [1991] 3 FC 626 at 639, 81 DLR (4th) 376 (CA) [Canadian Cable], MacGuigan JA for the Federal Court of Appeal defined the principle of *audi alteram partem* thus:
>
> The common law embraces two principles in its concept of natural justice, both usually expressed in Latin phraseology: audi alteram partem (hear the other side), which means that **parties** must be made aware of the case being made against them and given an opportunity to answer it.
>
> [67] In my view, Taseko was aware of the case being made against it and was given an opportunity to answer it, both before the Panel and by making written submissions to the Minister. The jurisprudence does not support the contention that Taseko had the right to be informed of any and all meetings with the Minister or the TNG's submissions to the Minister.

> [68] Taseko has not identified any information submitted by the TNG to the Minister as being new or different from that which was previously before the Panel (and to which Taseko had the opportunity to respond).
>
> [Emphasis added]

[124] With respect, the briefing note did not breach procedural fairness.

E. *Bias*

[125] Finally, the Applicant alleges bias. There is no merit in this submission. In my respectful view, the Applicant has not met the high burden of establishing bias, which is a very serious allegation that should never be made lightly. In this I rely on *Arthur v Canada (Attorney General)*, 2001 FCA 223, where Justice Létourneau states at paragraph 8:

> [8] It seems to me that the applicant's counsel has confused the *audi alteram partem* rule with the right of his client to a hearing by an impartial tribunal. An allegation of bias, especially actual and not simply apprehended bias, against a tribunal is a serious allegation. It challenges the integrity of the tribunal and of its members who participated in the impugned decision. It cannot be done lightly. It cannot rest on mere suspicion, pure conjecture, insinuations or mere impressions of an applicant or his counsel. It must be supported by material evidence demonstrating conduct that derogates from the standard. It is often useful, and even necessary, in doing so, to resort to evidence extrinsic to the case. That is why such evidence is admissible in derogation of the principle that an application for judicial review must bear on the matter as it came before the court or tribunal.
>
> [Emphasis added]

[126] In my view there is no evidence to suggest the Minister had either a closed mind or that there was hint or shadow of reasonable apprehension of bias in this case: see *Canadian Arab*

Federation v Canada (Citizenship and Immigration), 2013 FC 1283 per Justice Zinn at paragraphs 71-75:

> [71] The test to be applied in determining whether an administrative decision-maker is biased will vary depending on the nature of the decision-making body: *Newfoundland Telephone Co v Newfoundland (Board of Commissioners of Public Utilities*, 1992 CanLII 84 (SCC), [1992] 1 SCR 623 at 637-640 [Newfoundland Telephone].
>
> [72] The Ontario Court of Appeal in *Davis v Guelph (City)*, 2011 ONCA 761 at para 71, 345 DLR (4th) 1, summarized how to determine the appropriate test for bias:
>
> > At the adjudicative end of the spectrum, the traditional "reasonable apprehension of bias" test will apply in full force. At the other end of the spectrum, however - where the nature of the decision is more of an administrative, policy or legislative nature - the courts have held that a more lenient test, known as the "closed mind" test is applicable. [references omitted]
>
> [73] Additionally, the Supreme Court of Canada stated in *Imperial Oil Ltd v Quebec (Minister of the Environment)*, 2003 SCC 58 (CanLII), [2003] 2 SCR 624 at 646-647 that:
>
> > The appellant's reasoning thus treats the Minister, for all intents and purposes, like a member of the judiciary, whose personal interest in a case would make him apparently biased in the eyes of an objective and properly informed third party. This line of argument overlooks the contextual nature of the content of the duty of impartiality which, like that of all of the rules of procedural fairness, may vary in order to reflect the context of a decision-maker's activities and the nature of its functions. [emphasis added]
>
> [74] CAF submits, without analysis, that the appropriate standard is a reasonable apprehension of bias and not the closed mind test. The Minister says that this was a policy driven decision - he exercised a broad discretion, weighed competing interests, and made a decision respecting a commercial relationship - and therefore the higher standard of a closed mind is appropriate.

> [75] I agree with the Minister that the closed mind test is the appropriate standard by which to judge his decision because the Minister is a democratically elected official and this particular decision comes in the context of the administration of the Act. The question to be asked is whether the Minister had prejudged the matter "to the extent that any representations at variance with the view, which has been adopted, would be futile:" *Old St Boniface Residents Assn Inc v Winnipeg (City)*, 1990 CanLII 31 (SCC), [1990] 3 SCR 1170 at 1197. For the following reasons, I find that the Minister's mind was closed.

VI. Conclusion

[127] For the foregoing reasons, judicial review will be dismissed.

VII. Costs

[128] The Applicant asked for $6,770.00 all inclusive costs if successful. The Respondent requested $4,050.00 all inclusive costs including a deduction for their costs payable to the Applicant under Justice Favel's Order. Since the Respondent has succeeded and since I find the sum reasonable, the Court will order the Applicant to pay $4,050.00 as the Respondent's all inclusive costs.

VIII. Style of cause

[129] The style of cause is amended effective immediately such that the Attorney General of Canada is the sole Respondent.

JUDGMENT in T-2700-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review dismissed.
2. The Applicant shall pay to the Respondent their all inclusive costs in the amount of $4,050.00.
3. The style of cause is amended effective immediately such that the Attorney General of Canada is the sole Respondent.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2700-22
STYLE OF CAUSE:	THE CITY OF COLD LAKE v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HELD BY WAY OF ZOOM VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 28, 2024
JUDGMENT AND REASONS:	BROWN J.
DATED:	MARCH 18, 2024

APPEARANCES:

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