

Court of King's Bench of Alberta

Citation: Cardston (Town) v Alberta (Municipal Affairs), 2022 ABKB 802

Date: 20221201
Docket: 2106 00406
Registry: Lethbridge

Between:

Town of Cardston

Applicant

- and -

Minister of Municipal Affairs of Alberta and Cardston County

Respondents

**Memorandum of Decision
of the
Honourable Justice J.C. Kubik**

I. Introduction

[1] Part 17.2 of the *Municipal Government Act*, RSA 2000, c M-26 [*Municipal Government Act*], requires municipalities which share common boundaries to enter into Intermunicipal Collaboration Frameworks [ICFs]. The Town of Cardston and Cardston County share a common boundary. They successfully collaborated as to the contents of an ICF with the exception of whether library services provided by the Town of Cardston Library would be included in the ICF. In an effort to resolve this dispute, the Town of Cardston sought to submit the matter to arbitration pursuant to section 708.34 of the *Municipal Government Act* and Cardston County

asked the Minister of Municipal Affairs [Minister] to intervene pursuant to section 708.412 of the *Municipal Government Act*.

[2] The Minister ultimately exercised his discretion pursuant to section 708.412, making an order to impose the ICF negotiated between the parties excluding library services: Ministerial Order No. MSD: 090/21.

[3] The issue before me is whether the Minister exercised his discretion in a reasonable manner when he determined that third-party services, such as libraries, are not included within the scope of services covered in an ICF.

[4] It is the position of the Town of Cardston that a large, liberal, and purposive interpretation of Part 17.2 includes, at its narrowest reading, library services, and at its broadest reading, any other third-party service shared by bordering municipalities.

[5] The Minister and Cardston County argue that the purpose of Part 17.2, its legislative history, the intent of the *Red Tape Reduction Implementation Act*, SA 2020, c 25 [*RTRIA*], which amended Part 17.2, and the provisions of the *Libraries Act*, RSA 2000, c L-11 [*Libraries Act*], which create libraries as autonomous entities, all point to a reading which excludes third-party services, including libraries, from ICFs.

II. Standard of Review and Principles of Statutory Interpretation

[6] Consistent with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the parties agree that the standard of review is reasonableness, such that the Minister's exercise of his discretion in issuing the ministerial order pursuant to section 708.412 must reflect a good faith discharge of his public duty and be consistent with the objects of the statute: *Roncarelli v Duplessis* [1959] SCR 121; *Vavilov*, at para 108.

[7] As the matter for judicial review involves statutory interpretation, I must analyze the Minister's decision, as a whole, to determine whether it reflects an interpretation of the statute consistent with modern principles of statutory interpretation, having regard to the text, context and purpose of the legislation: *Vavilov*, at paragraphs 115 and 116. While adjudicators are not required to "engage in formalistic statutory interpretation in every case", it is expected that they will interpret the law in a manner consistent with those principles: *Vavilov*, at paragraphs 119-121.

[8] Modern principles of statutory interpretation require courts (and administrative decision makers) "to take a unified, textual, contextual, and purposive approach to this task... a Court must consider not only the textual wording of the statutory provision in dispute, but also the purpose of that provision and all relevant context. That includes the legislative scheme of which the provision forms a part." (Ruth Sullivan, 6th Edition (Markham: LexisNexis Canada, 2014) [Sullivan] at 7-8; *Alberta v ENMAX Energy Corporation*, 2018 ABCA 147)

[9] The Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27, stated:
...statutory interpretation cannot be founded on the wording of the legislation alone. The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[10] This is consistent with the objects of sections 9 and 10 of the *Interpretation Act*, RSA 2000, c I-8.

[11] To assess the reasonableness of the Minister's decision, I have been provided with evidence as to the legislative history of Part 17.2, legislative debate surrounding the *RTRIA*, the text of the *RTRIA* and the *Libraries Act*, manuals created to assist municipalities in developing ICFs, and evidence of ICFs which include library services, as ratified by other municipalities.

[12] This evidence assists in my consideration of Part 17.2, the *RTRIA* and the *Libraries Act*, and the purpose and scope of the amendments to the *Municipal Government Act* brought about by the *RTRIA*. In addition, the legislative debate and policy manuals serve as useful interpretive aids to understanding legislative intent guiding ICFs, while the examples of other ICFs demonstrate the possible extent of collaboration between municipalities.

III. The Minister's Decision

[13] A review of the Minister's decision flows from his reasons which are encapsulated in his email dated May 4, 2021, stating the following:

I am encouraged to hear that you have made progress on your ICF; however, I am discouraged to learn it remains unrati ed due to the question of library service. I strongly believe it is important that your ICF be in place as quickly as possible to determine how services that benefit residents in both municipalities are provided and funded.

Municipal library boards, as separate autonomous corporations, are considered third parties. Library boards have full management and control of any public library services delivered in their jurisdiction. This includes securing sufficient funding for the service. A library board is empowered and responsible to negotiate with various entities where necessary to acquire funds, including with the town and the county. Each jurisdiction should be working directly with the library board to determine the appropriate funding for delivering the service to their rate payers.

My ministry has provided clear direction in numerous instances, including in letters from Deputy Minister Paul Wynnyk on September 22, 2020, and February 4, 2021, that third-party services such as incorporated library boards are not to be included in ICFs. As library boards are separate legal entities enacted through the *Libraries Act*, it is inappropriate for two municipalities to negotiate a funding agreement between each other for the service.

I trust that this information will enable your councils to move forward quickly with the ratification of the ICF and avoid an unnecessary and costly arbitration.

If the ICF is not passed by May 30, 2021, I expect your councils to notify me immediately.

Should this regrettable event occur, I am prepared to use my authority under section 708.412(1) of the *Municipal Government Act* to address the situation including establishing your ICF based upon your current agreement in principle, without the inclusion of library services

[14] The Minister's decision reflected three different points:

- That timely development of an ICF was necessary to ensure that services benefiting residents of both municipalities were being delivered and funded.
- That municipal library boards are creatures of statute, existing as separate, autonomous corporations responsible for negotiating and securing their own funding, and therefore third-party services.
- That the ministry had provided general guidance and direction to municipalities that library services were third-party services and not to be included in ICFs.

IV. Analysis

[15] The Minister's decision that library services are third-party services and are not intermunicipal services for the purpose of ICFs reflects a reasonable interpretation of Part 17.2 of the *Municipal Government Act*.

[16] A large and liberal interpretation is not simply the most expansive reading a statute can bear. It is constrained by the purpose, text and context of the legislation, as well as respect for legislative intent. In this case, the purpose, text and context of the legislation and the intent of the Legislature, supports a construction which excludes third-party services, and specifically libraries, from ICFs.

i. Purpose and Text of the Municipal Government Act and Part 17.2

[17] Broadly speaking, the *Municipal Government Act* recognizes the role of municipal governments in Alberta's larger economic, environmental and social prosperity. It pledges that the provincial government will work cooperatively and collaboratively with municipalities to meet the needs of Albertans at the local, intermunicipal, and regional level. Further, the *Municipal Government Act* recognizes the purpose of a municipality to provide good government, foster economic development, provide services necessary or desirable for all or part of a municipality, and to work collaboratively with neighbouring municipalities to plan, deliver, and fund intermunicipal services: section 3.

[18] Part 17.2 entitled "Intermunicipal Collaboration" continues this notion of collaborative partnerships, providing for ICFs between or amongst municipalities sharing common boundaries.

[19] The purpose of ICFs is defined in section 708.27 of the *Municipal Government Act*, specifically as follows:

708.27 The purpose of this Part is to provide for intermunicipal collaboration frameworks among 2 or more municipalities

- (a) to provide for the integrated and strategic planning, delivery and funding of intermunicipal services,
- (b) to steward scarce resources efficiently in providing local services, and

(c) to ensure municipalities contribute funding to services that benefit their residents.

[20] Section 708.29 addresses the required contents of ICFs, which must include a description of the services to be provided under the ICF, which are beneficial to residents in more than one of the municipalities that are parties to the framework: section 708.29(1); **and** an identification of which municipality will provide those services and how they will be delivered and funded: section 708.29(2).

[21] The terms “services”, “local services”, and “intermunicipal services” are not defined in the *Municipal Government Act*. The Minister’s interpretation of these terms is supported by their plain meaning within the text of the *Municipal Government Act* and specifically Part 17.2.

[22] Most significantly, an intermunicipal service would appear to be a service utilized by more than one municipality. This is supported by section 708.27(a) which requires 2 or more municipalities to integrate, and strategically plan, deliver, and fund intermunicipal services. It is also supported by sections 708.29(1) and (2) which speak directly to the services provided for in an ICF as those services provided by one municipality but benefiting residents in more than one municipality.

ii. Legislative History and Intent

[23] The Minister’s interpretation is also consistent with the purpose and intent of the legislation prior to the amendments brought about by the *RTRIA*, as well as the purpose and intent of the *RTRIA*. While the previous legislation did not define the term “services”, it did distinguish between intermunicipal, municipal, and third-party services, and provided that the scope of ICFs was in relation to the delivery and funding of intermunicipal services.

[24] In its original form, Part 17.2 required municipalities to create ICFs which identified all services used or enjoyed in each municipality and to categorize those services as one of three types: those provided by each municipality to its own residents; those shared on an intermunicipal basis; and those provided by third parties. In addition, municipalities were required to identify which of these services were best provided on a municipal, intermunicipal, or third-party basis: section 708.29. Despite this comprehensive listing of all service types, municipalities were only required to provide information about the manner of delivery and funding of intermunicipal services.

[25] The effect of the *RTRIA* was to narrow section 708.29 by removing the requirement to list third-party services and services provided by a municipality to its own residents. This limited the contents of an ICF to a description of, and delivery and funding model for, those services which were intermunicipal in nature. Legislative intent drawn from the previous iteration of the legislation, and legislative debate animating the goals and intent of the *RTRIA* demonstrate an intention that ICFs would reflect those municipal services shared between or amongst municipalities, provide delivery and funding models, and create a method for collaborative dispute resolution. There is no suggestion that the scope of ICFs was being broadened or limited, but the very goal of the *RTRIA* is the reduction of administrative cost and burden. This suggests a simplified approach to ICFs which dispensed with the need to list those services which were not intermunicipal in nature.

iii. Context

[26] While the term “services” is not defined in the *Municipal Government Act*, the purpose of Part 17.2 on its face is to provide for the identification, delivery and funding of intermunicipal services. A third-party service, by its very nature, is not a municipally or intermunicipally provided service. While municipalities might share the cost of third-party services, those services are neither delivered by municipalities nor are they exclusively funded by municipalities. Library services are unique third-party services because the municipal and intermunicipal board providing these services is, by virtue of the *Libraries Act*, a distinct autonomous corporate entity which controls its own budget and negotiates financial contributions directly with other funding partners, as well as the municipalities to which it provides services. The Minister’s interpretation reflects a harmonious reading of Part 17.2 and the *Libraries Act*, recognizes the arms length relationship between libraries and the municipalities in which they operate, and respects the autonomy granted to libraries by statute.

[27] Finally, the Minister’s interpretation is consistent with the policy guidance provided by the Ministry to municipalities from the inception of Part 17.2, which specifically noted that library services were in the nature of third-party services and were not the subject matter of ICFs. While it is true that some municipalities have negotiated ICFs which include library services, this does not change their fundamental character as third-party services. The evidence reflecting such mutual agreements between municipalities which are not a party to this dispute is of limited persuasive value, given my duty to apply the principles enunciated in *Vavilov*, as relates to a review of the Minister’s decision in this particular case.

V. Conclusion

[28] The Minister’s decision, which clearly articulated his reasons for initially directing the parties to enter into an ICF excluding libraires and ultimately resulted in his ministerial order, falls reasonably within a purposive, textual, and contextual interpretation of Part 17.2, reflects the goals and purposes of the *RTRIA*, and respects libraries as independent corporate entities at arms length from the municipalities to which it delivers services.

[29] Furthermore, the Minister’s exercise of discretion in issuing the ministerial order falls within the broad discretion conferred by section 708.412 of the *Municipal Government Act*, which allows the minister, at any time, to make an order they consider appropriate to further the development of a framework or impose a binding framework on municipalities. That broad power exists despite the arbitration provisions in Part 17.2. While this might seem contrary to the spirit of collaboration contemplated by Part 17.2, this section was created by the *RTRIA* and is consistent with its purpose and intent of reducing administrative cost and burden, including in the case of disputes between municipalities.

[30] Given that the Town and County had not agreed to an ICF prior to the May 30, 2021 deadline imposed by the Minister, and were locked in a dispute about third-party services, the imposition of the ICF otherwise agreed to between the parties but excluding library services, was a reasonable and good faith exercise of discretion to ensure that a mandatory ICF was created in a timely fashion, reflected only those matters which the parties were in agreement about and served to benefit the residents of each municipality in a manner consistent with the purpose of municipalities as defined by the *Municipal Government Act*.

[31] Accordingly, Ministerial Order No. MSD: 090/21 is upheld and the application for judicial review is dismissed.

[32] If the parties are unable to agree as to cost within 60 days of this decision, they may return the matter back to me for consideration.

Heard on the 16th day of September, 2022.

Dated at the City of Lethbridge, Alberta this 1st day of December, 2022.

J.C. Kubik
J.C.K.B.A.

Appearances:

Michael E. Swanberg – Reynolds Mirth Richards & Farmer LLP
for the Applicant

Peter Buijs – Alberta Ministry of Justice and Solicitor General, Civil Litigation Team
for the Respondent, Minister of Municipal Affairs

Michael Solowan & Rebecca Kos – Brownlee LLP
for the Respondent, Cardston County