

Court of King’s Bench of Alberta

Citation: Canadian Constitution Foundation v Calgary (City), 2025 ABKB 519

Date: 20250910
Docket: 2301 06231
Registry: Calgary

Between:

Canadian Constitution Foundation

Applicant

- and -

The City of Calgary

Respondent

**Decision for Judicial Review
of the
Honourable Justice S.G. Parker**

Overview

[1] The Applicant, Canadian Constitution Foundation (“CCF”), is a national charity dedicated to defending the fundamental rights and freedoms of Canadians through public education, information, and litigation. They were contacted by concerned citizens after the City of Calgary (the “City”) passed Bylaw No 17M2023, *Safe and Inclusive Access Bylaw* (14 March 2023) (SIA Bylaw).

[2] The City passed the SIA Bylaw in response to encounters and growing unrest towards members of the 2SLGBTQIA+ community (“Pride Community”) at events hosted at the City’s public libraries and swimming pools. One of the functions was known as “Reading with Royalty”

where drag queens or kings read stories to children. The City argued that they have a positive duty under the *Alberta Human Rights Act*, RSA 2000, c A-25.5 to protect citizens from discrimination connected to the enumerated grounds and from the authority of the *Municipal Government Act*, RSA 2000, c M-26 [*MGA*] to provide safe access to their facilities and services.

[3] CCF sought judicial review pursuant to Part 3, Division 2 of the *Alberta Rules of Court*, Alta Reg 124/2010, and a declaration of invalidity with respect to the SIA Bylaw under section 536 of the *MGA*. Their claim is that the SIA Bylaw was passed outside of the permissible enabling sections under the *MGA*, the passing of the bylaw violated natural justice and was not only unreasonably passed, but that the bylaw itself is unintelligible.

[4] CCF applied to have the SIA Bylaw struck under the *Constitution Act, 1867*, *Canadian Charter of Rights and Freedoms*, and the *Alberta Bill of Rights*, RSA 2000, c A-14 too. However, in my oral ruling on February 25, 2025, I limited the CCF to only public standing and limited the issues that CCF could advance at this time, as there is an appeal being heard by our Court involving substantially the same Constitutional and *Charter* challenges for an individual charged with violating section 3 of the SIA Bylaw: see *R. v. Heather*, 2024 ABCJ 229. Since my ruling, CCF has been granted intervenor status in the *Heather* appeal.

[5] This application may be motivated along philosophical differences, but my decision centers on more mundane legal concepts of judicial review and statutory interpretation. For the reasons that follow, based on the written materials and oral arguments, I find that the City carefully crafted this bylaw for the competing interests of their citizens. Council reasonably followed statutory provisions and natural justice in enacting the SIA Bylaw. The City acted within the scope of its authority under the *MGA*. CCF has not discharged their onus to show that the SIA Bylaw is invalid. Pivotal to CCF's concerns, when key terms are properly defined in the context of the whole of its purpose, its wording is intelligible in accordance with the text, context, and purpose of the *MGA*.

Standard of Review

[6] The parties agree on the standard of review and the basic principle that municipalities are creatures of provincial legislation. The City may only pass bylaws in accordance with the *MGA* or other relevant statutes. Under the *MGA*, the City must comply with procedural requirements like mandated voting rules and notice provisions.

[7] In the companion cases *Auer v Auer*, 2024 SCC 36 and *TransAlta Generation Partnership v Alberta*, 2024 SCC 37, the Supreme Court affirmed that the reasonableness standard presumptively applies when reviewing the *vires* of subordinate legislation. In certain circumstances, the legislature may indicate that a different standard applies, or the rule of law may require a review on the correctness standard: *Auer* at para 24. Although a *vires* challenge involves questions of jurisdiction, questions of *vires* do not require a correctness standard of review unless the challenge is based on the division of powers between Parliament and provincial legislatures: *Auer* at paras 26–27.

[8] Section 539 of the *MGA* provides that no bylaw may be challenged on the ground that it is unreasonable. However, section 539 of the *MGA* addresses the grounds of challenge but does not articulate the standard of review and “[w]hether a bylaw is wise is for a municipal council to

decide, not the courts’’: *Koebisch v Rocky View (County)*, 2021 ABCA 265 at para 23. In this case, CCF’s arguments focused on the City’s authority under the *MGA*, not on the division of powers between Parliament and legislature. Thus, the presumptive starting point is reasonableness.

[9] A reasonableness review requires the reviewing court to 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’’: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99. Many of the principles from *Katz Group Canada Ltd v Ontario (Health and Long-term Care)*, 2013 SCC 64 continue to inform the reasonableness review of the *vires* of subordinate legislation and remain good law: *Auer* at paras 29, 32.

[10] The following principles continue to apply when conducting a *vires* review:

- 1) subordinate legislation must be consistent both with specific provisions of the enabling statute and with its overriding purpose or object;
- 2) subordinate legislation benefits from a presumption of validity;
- 3) the challenged subordinate legislation and the enabling statute should be interpreted using a broad and purposive approach to statutory interpretation; and
- 4) a *vires* review does not involve assessing the policy merits of the subordinate legislation to determine whether it is necessary, wise, or effective in practice: *Auer* at paras 3, 33 [citations omitted].

[11] However, the ‘irrelevant’, ‘extraneous’ or ‘completely unrelated’ threshold for invalidity no longer applies: *Auer* at para 32.

[12] The principle that subordinate legislation benefits from a presumption of validity has two aspects: (1) it puts the onus on challengers to demonstrate that the subordinate legislation is invalid; and (2) it favours an interpretive approach that construes the subordinate legislation in a manner which renders it *intra vires*: *Auer* at para 37. CCF seeks a declaration of invalidity. Thus, it bears the burden of proving that the bylaw is not reasonably within the scope of City Council’s authority: *Auer* at paras 39, 50, 59; *TransAlta* at para 62.

[13] Municipalities must make policy choices that involve balancing competing interests. Courts are to review only the legality or validity of municipal bylaws: *Auer* at 56. The scope of a statutory delegate’s authority is constrained by the governing statutory scheme, other statutory or common law and principles of statutory interpretation: *Auer* at para 60. Unless the enabling statute provides otherwise, delegates must adopt an interpretation of their authority that is consistent with other legislation and applicable common law principles: *Auer* at para 63.

[14] For questions of procedural fairness, the court determines whether the requisite standard of procedural fairness was met: *Penn v St Stephen’s College*, 2024 ABCA 99 at para 30.

[15] Both CCF and the City encouraged this court to follow applicable statements in *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2 where still consistent with *Vavilov*. Further, I should give the City deference when looking to the record to assess its interpretation of

its authority and whether the substance of the SIA Bylaw conforms to the rationale of the enabling statutory regime.

Procedural Irregularity or Fairness?

A. Position of the Parties

[16] CCF argued that the City failed to give proper notice and did not allow for consultation, including with disenfranchised people or supportive groups (i.e. Elizabeth Fry or the Drop-In Centre), civil liberty groups, or those directly impacted by the SIA Bylaw, like woman’s groups who advocate for survivors of violence who may have a position on males using female bathrooms. The City had a duty to consult, if not by statute, certainly under the common law. Lastly, the City acted in bad faith.

[17] The City countered that this substantive type of bylaw does not require public hearings, and that notice was given. The City relies on *Keefe v Clifton Corporation*, 2005 ABCA 144 for the proposition that no judicial intervention is warranted where no defect in the proceedings has been identified.

The Evidentiary Record

A. The Certified Record of Proceedings 2301 06231, including the Transcript of Council’s Debate

[18] The parties agreed upon the extrinsic evidence, and I accept that it discloses a substantial basis and rationale for enacting the Bylaw. The evidence is a complete record of Council’s process.

[19] The parties agreed to exhibit the Certified Record of Proceedings for 2301 06231 (“Certified Record”) that included the following:

1. The Revised Agenda for the Regular Meeting of Council on March 14, 2023, at 9:30 am (“Revised Agenda”), which included:
 - a. Special notes that encouraged the public to follow Council and Committee meetings using the live stream link and a link to a Public Submission Form for members of the public wishing to make written submissions (examples of public submissions reflecting support and opposition were included for Council at Tab 10 of the Certified Record);
 - b. Various items, including Administration Report 9.2.7, Revised Material for proposed bylaws 17M2023 (the Bylaw) and 18M2023; and
 - c. Emailed questions and answers were that distributed by the City General Manager for Community Services via a March 12, 2023, email.
2. The 5-page unrestricted Community Services Report to the Regular Meeting of Council on March 14, 2023, which included:

- a. Recommendations to Council to give three readings to the proposed Bylaw and the proposed amendments to the Public Behaviour Bylaw to be effective immediately; and
- b. Highlights and discussion which outlined:
 - i. The hate, transphobia and homophobia and recent protests targeting members of the 2SLGBTQIA+ community, which were impeding the City's ability to provide safe and inclusive access to its services;
 - ii. The City's lack of mechanisms to limit the time, manner and location of protests;
 - iii. The City's desire to balance the right to protest with safe and inclusive access to facilities;
 - iv. Nineteen planned protests identified between February 10, 2023, at Chinook Blast, ongoing protests at Canyon Meadows Aquatic and Fitness Centre since the 12th of February, and February 25 and March 3, 2023, protests at libraries targeting children attending "Reading with Royalty" held in partnership with Calgary Pride. The protesters on all occasions carried signs, yelled slurs with amplification, and by later protests there were physical and verbal confrontations. Staff and patrons feared the protesters, which resulted in calls to 911 or the non-emergency line for police;
 - v. Emails from citizens that complained of feeling de-humanized by the hatred directed at the Pride Community;
 - vi. Statistics of harassment and hate crimes disproportionality targeting the Calgary Pride Community gathered since 2022, showing that recent intimidation at recreation and library facilities was not isolated, elevating a need for the City to act;
 - vii. Dialogue with interested parties, and with the Gender Equity, Diversity and Inclusion Subcommittee who provided input to the report;
 - viii. The City's desire to manage the risk posed by the growing confrontations by restricting

the time, manner, and location of protests with the Bylaw, while amending the Public Behaviour Bylaw to include intimidation in the definition of harassment; and

- ix. Past bylaws covering the subject restrictions, as well as examples from other jurisdictions. I note that other jurisdictions include the verb “engage” in their bylaws, while others used, “repeated communication”, “interfere” or “obstruct”.
3. Aerial coverage maps showing the expanding radius of 50, 75, 100, 125 and 150 meters from entrances of proposed city facilities, including the New Central Library in the downtown core.

[20] Council directed a progress report for the April 25 Regular Meeting, and the motion carried that the SIA Bylaw be introduced and read for the first time. At the first reading, there was a proposed amendment to include “entrance of the complex” and to delete “library in 2(1)(g) and subsection 3(2)”, etc., and these amendments carried. The SIA Bylaw was read for a second time with amendments and a third time with no further amendments. The amended SIA Bylaw passed with three councillors opposed. There was no evidence presented by CCF of any irregularities in voting by Council. I have also reviewed the transcript of Council’s debate, which fails to disclose any issues raised with the debate, procedure or vote.

The City Did Not Violate Procedural Fairness

[21] The City submits that the SIA Bylaw is on the “legislative end of the spectrum of municipal decision making”, and I agree. CCF conceded that the SIA Bylaw is not quasi-judicial in nature and accepted that bylaws are a product of democratic institutions involving an array of social, economic, political and other non-legal considerations. As a general rule, the duty of procedural fairness does not apply to administrative decisions of a legislative nature: *Canadian Coalition for Firearm Rights v Canada (Attorney General)*, 2025 FCA 82 at paras 101–02 ; *Ingram v Alberta (Chief Medical Officer of Health)*, 2022 ABCA 97 at para 5; *Green v Law Society of Manitoba*, 2017 SCC 20 at paras 54–56; *Mavi v Canada (Attorney General)*, 2011 SCC 30 at para 38.

[22] Municipalities passing bylaws must adhere to a reasonable process. In *Catalyst* at paras 28–29, the Court stated:

In determining whether a particular bylaw falls within the scope of the legislative scheme, factors such as failure to adhere to required processes and improper motives are relevant. As Gonthier J stated for the Court in *Immeubles Port Louis Ltée v Lafontaine (Village)*, [1991] 1 S.C.R. 326, “[a] municipal act committed for unreasonable or reprehensible purposes, or purposes not covered by legislation, is void” (p. 349).

...process[es], like the range of reasonable outcomes, vary with the context and nature of the decision-making process at issue. Formal reasons may be required for decisions that involve quasi-judicial adjudication by a municipality. *But that*

does not apply to the process of passing municipal bylaws... The reasons for a municipal bylaw are traditionally deduced from the debate, deliberations and the statements of policy that give rise to the bylaw. [emphasis added]

[23] While *Baker v Canada (Minister of Citizenship and Immigration)* 1999 CanLII 699 (SCC) has been eclipsed by *Vavilov, Baker* described several non-exhaustive factors in assessing the scope of procedural fairness including the nature of the decision and the decision-making process, the nature of the statutory scheme, and the importance of the decision to the individuals affected, etc. *Vavilov* did not overrule *Baker* in the context of procedural fairness. The factors frame the contextual analysis of the SIA Bylaw.

[24] CCF's challenge is premised upon sections 537 and 538(a) of the *MGA*. Section 538 provides that "[d]espite section 537, a person may apply at any time (a) for a declaration that a bylaw is invalid if (i) the bylaw is require to be put to a vote...(ii) the bylaw is required to be advertised and it was not advertised, or (iii) *a public hearing is required to be held...*" [emphasis added]. Specifically, CCF emphasized that a public hearing was required in this case. No public hearing was held.

[25] CCF provided no legislation or common law to support the proposition that a bylaw of this topical nature necessitated wider notice or further public forums.

[26] The SIA Bylaw was listed on the Revised Agenda, and the public had an opportunity to submit comments on it and watch the meeting. Councillors could avail themselves of a report and memo. Council debated with questions to each other and directed questions to various City staff. The answers from staff disclosed wider consultation that they had with employees in the subject facilities, Calgary Police Service, and the gender equity subcommittee. The final version of the SIA Bylaw was passed after appropriate motions, amendments, debate and three readings.

[27] CCF has not cited any evidence of bad faith. The vote on the SIA Bylaw was open to the public for all three readings. The motivation for the City to propose the SIA Bylaw was the need to balance the right to protest with their duty to provide safe and inclusive facilities. The process reflects the City's understanding and motivation to protect citizens and still give an opportunity for discourse.

[28] In Alberta, each municipality may set their own policies governing public participation and the circumstances of hearings. The spectrum of public participation ranges from task forces or review panels actively consulting citizens to citizens simply being invited to watch council debates upon advertisement. By operation of section 216 of the *MGA* and its regulations, municipalities are to have public participation policies directed to the range of opportunities just listed.

[29] The City's Engage Policy CP2023-05 was adopted in 2013. The policy gives guidelines for the level of engagement with the public, involved interested parties, and includes a spectrum of four strategies to reach Calgarians. The SIA Bylaw is distinguishable from budgeting, taxation, street closures, changing boundaries of environmental reserves, planning, or zoning bylaws. For instance, planning and redevelopment are specified by section 692 of the *MGA* as requiring public input. Section 606 and 606.1 of the *MGA* provides requirements for advertising and establishes the timing, manner and content of notices for those subject areas.

[30] I agree with the City that the authority to pass the SIA Bylaw is of a general jurisdictional nature under section 7 of the *MGA*, and thus, does not require the holding of public hearings to solicit broader input.

[31] Groups can always argue that more consultation was needed. However, at the end of the day, the City was only required to afford a low level of procedural fairness. There is no legal requirement owed under statute or common law triggering the holding of public hearings for a bylaw of this nature.

[32] There were no defects in the procedure taken by the City in passing the SIA Bylaw. I agree with City's characterization that the process reflected "municipal democracy at work" and in keeping with a fair process, as I accept from the evidentiary record.

Intra Vires: Did the City's Decision Bear the Hallmarks of Reasonableness – Justification, Transparency and Intelligibility -Within the City's Scope of Authority Under the MGA?

A. Position of the Parties

[33] CCF's main argument is that the drafting of the SIA Bylaw is nonsensical and incoherent and as such, it captures conduct by everyday citizens that it was never intended to capture. Secondly, the SIA Bylaw did not meet its intended objectives of preventing *protests*. In fact, the SIA Bylaw did not include terms like "gathering", "planned protest", or any reference to more than one person like was done in provincial legislation during COVID lockdowns. Further, it does not include terms like hate, harassment, or discrimination.

[34] CCF argued that because the SIA Bylaw is unintelligible it leads to unintended consequences unrelated to the prescribed objectives such as:

- a. A person wearing a graphic T-shirt, such as a T-shirt with a Darwin fish (which may offend evolutionists), or a shirt with a message supporting or inflaming supporters of abortion or gender identity;
- b. A female warning an approaching woman with a child that a transgender male was using the female washroom. The verbal warning could trigger a violation even though it was not a protest in the everyday sense of the word;
- c. A vulnerable person in mental health or addiction crisis rambling to themselves using offensive content described in the SIA Bylaw inside the designated 100 m zone on the street may offend the bylaw. There is a greater chance of this happening as the Downtown Central Library is near facilities for the homeless;
- d. Two people simply walking along the street having a heated conversation between themselves but within the prohibited zone could be charged with a violation, yet they were not "protesting" or "gathering"; or
- e. The SIA Bylaw ignores protesters of environmental causes or unrelated political protest.

[35] CCF argues that the end result is that the bylaw is unreasonable, as it discriminates against unintended groups, and the City cannot pass discriminatory or unreasonable bylaws. Instead of using existing bylaws for harassment or applicable *Criminal Code* provisions, the City enacted this rushed provision.

[36] The City countered that the objective of the SIA Bylaw was to remove protesters from the entrances of, and within, their facilities to reduce confrontations. The bylaw was never intended to end all forms of protest; rather, it was intended to provide fair treatment for all citizens and tailored to address this situation.

[37] Further, the City argued that the situation demanded a response from Council as the number and volatility of the protests was increasing. The purpose was always to balance the right to protest with giving safety to all users of their facilities. The SIA Bylaw simply moved the protesters back from entry ways and the events taking place inside so that people did not have to “run the gauntlet” to enter the city’s libraries or recreation centers, minimizing people’s exposure to emotional and psychological harm. The City relies on *United Taxi Drivers’ Fellowship of Southern Alberta v Calgary (City)*, 2004 SCC 19 for the proposition that council possesses broad authority to pass bylaws under the *MGA*.

[38] The City reminded me that I am not to second guess the choices or consider alternatives that were not used, as that would be counter to the standard of review. I am to apply modern statutory interpretation using a reasonableness standard to review what was passed by Council through valid compliance with sections 3, 7 and 9 of the *MGA*. Finally, the City argued that Council had authority to enact the SIA Bylaw, and I should give wide deference to Council, for example, in their choice of 100 meters rather than 50, 75 or 150 meters from the front entrances.

[39] Neither party advanced any substantial statutory interpretation or definitions within their arguments.

The Safe and Inclusive Access Bylaw

[40] The salient parts of the SIA Bylaw as passed read (omitting part of the preamble at this stage of the analysis):

WHEREAS Council has considered report C2023-0279 and deems it necessary to enact a bylaw to ensure safe and inclusive access to recreation facilities and libraries...

AND WHEREAS Council policy CP2019-01 seeks to reduce barriers and continually improve delivery of services to all Calgarians, considering aspects of diversity;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF CALGARY ENACTS AS FOLLOWS:

...

2 (1)...

(e) “*publicly accessible property*” means all or any part of a building, structure, or parcel of land to which members of the public have access as of right or by express or implied invitation;

...

(g) “*specified protest*” means an expression of objection or disapproval towards an idea or action related to race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation by any means, including graphic, verbal, or written means, but does not include messaging at an event scheduled by a recreation facility.

...

PROHIBITIONS

3. (1) A person must not engage in *specified protest* on *publicly accessible property* within 100 metres of an entrance to a *recreation facility* or a *library*.

(2) A person must not engage in *specified protest* anywhere inside a *recreation facility*.

(3) A person must not physically impede or attempt to impede the passage of a person, to or from an entrance to a *recreation facility* or *library*.

...

5. Where a *recreation facility* or *library* is located in a building containing a complex of interlocking offices, stores or other facilities, the prohibitions in subsections 3(1) and 3(3) apply to the entrance of the complex and the entrance to the *recreation facility* or *library*, and the prohibition in subsection 3(2) applies to the area inside the *recreation facility* as a whole.

OFFENCES

6. (1) Any person who contravenes any provision of this Bylaw by doing any act or thing which the person is prohibited from doing, or by failing to do any act or thing the person is required to do, is guilty of an offence pursuant to this Bylaw.

(2) Any person who is convicted of an offence pursuant to this Bylaw is liable on summary conviction to a fine not exceeding \$10,000.00 or imprisonment for not more than one year, or both.

What is Not in Issue?

[41] Recall that a reasonableness review requires the reviewing court to 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”. I am to consider whether the SIA Bylaw is consistent with provisions of its enabling statute and with its purpose but does not involve assessing its policy merits. There is a presumption of validity. CCF has the onus of proving invalidity.

[42] I am to favour an interpretive approach that reconciles the SIA Bylaw with *MGA* so that, where possible, it is construed in a manner that renders it valid. To overcome the presumption of validity, CCF must establish that the bylaw does not fall within a reasonable interpretation of the City's authority under *MGA*. I am not deciding the reasonableness of the bylaw but rather, the reasonableness of the City's interpretation of its bylaw-making power. The enactment of the and the SIA Bylaw must also be consistent with other legislation and common law principles.

[43] There is little dispute that the purpose for passing the SIA Bylaw was to protect citizens that have characteristics protected under the provincial human rights legislation, specifically members of Calgary's Pride Community, confronted by protesters during scheduled events at the library and recreation facilities. The City acted because the protests were causing fear and intimidation. I find that there is evidence to ground the City's need to act.

[44] Likewise, CCF is not challenging Council's authority under the *MGA* to enact bylaws to address the confrontations such as those found under sections 3(b) to provide public facilities and 3(c) to maintain safe and viable communities; the general jurisdiction to pass bylaws under section 7 for the "safety, health and welfare of people and the protection of people and property"; and section 9, which allows councils to govern broadly to "respond to present and future issues in their municipalities". Nor does CCF oppose consideration of sections of the *Alberta Human Rights Act* in passing bylaws.

[45] I find that the SIA Bylaw is consistent with sections 3(b)–(c) and 7 of the *MGA*. The bylaw's purpose was justified on the evidentiary record. The preamble transparently stated its objectives that were consistent with the legal authority of the *MGA*. The true concern of CCF is its invalidity under an assessment of intelligibility.

A. Statutory Interpretation: Is the SIA Bylaw consistent with the text, context and purpose of the enabling statute?

[46] The strike zone in the interpretive exercise of alleged unintelligible bylaws is focused on validity. It favours an interpretive approach that construes the subordinate legislation in a manner which renders it *intra vires*.

[47] A provision is too vague if it does not provide an adequate basis for debate, insufficiently delineates risk so that a person does not have fair notice, leads to inevitable indiscriminate enforcement, or is "unintelligible": *R v Nova Scotia Pharmaceutical Society*, 1992 CanLII 72 (SCC); and see also Simard J, in *Ross v Canmore (Town)*, 2025 ABKB 258 at para 85.

[48] In *VIT Estates Ltd v New Westminster (City)*, 2023 BCCA 183 at para 23, the Court summarized some of the applicable principles when a municipal bylaw is challenged for vagueness or uncertainty, which include:

In the context of municipal bylaws, the test for assessing vagueness asks whether a reasonably intelligent person would be unable to determine the meaning of the bylaw and govern his or her actions accordingly. Mere difficulty in the interpretation of the bylaw is not sufficient...

A municipal bylaw is not necessarily void for uncertainty merely because its terms may be susceptible to more than one interpretation...

Municipal bylaws are to be interpreted benevolently and supported if possible...
[citations omitted]

[49] Further, determining vagueness involves assessing whether a law is capable of interpretation, which is distinct from actually interpreting how the law applies: *Kelowna Mountain Development Services Ltd v Central Okanagan (Regional District)*, 2014 BCCA 369 at para 18. Council is empowered to interpret the scope of its authority when passing bylaws, but that interpretation must be consistent with the text, context and purpose of the enabling statute: *Auer* at para 64.

[50] A *vires* review does not require a *de novo* analysis to determine the correct interpretation of the enabling statute: “[r]ather, the court ensures that the delegate’s exercise of authority falls within a reasonable interpretation of the enabling statute, having regard to the relevant constraints”: *Auer* at para 65. Courts interpret a bylaw by applying the “modern principle” of statutory interpretation. The words of a statute must 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”: *Rizzo & Rizzo Shoes Ltd (Re)*, 1998 CanLII 837 (SCC) at para 21, citing Elmer Driedger, *Construction of Statutes*, 2nd ed (1983) at 87. Courts must interpret legislation “according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole”: *Canada Trustco Mortgage Co v Canada*, 2005 SCC 54 at para 10; *R v Downes*, 2023 SCC 6 at para 24.

[51] Such an approach to statutory interpretation permits a glimpse into legislative intent by reading the language chosen by the legislature in light of the purpose of the provision and the entire relevant context: Ruth Sullivan, *The Construction of Statutes*, 7th ed (Toronto: LexisNexis Canada, 2022) at 8-9. Finally, the SCC in *Vavilov* at para 118 states:

Those who draft and enact statutes expect that questions about their meaning will be resolved by an analysis that has regard to the text, context and purpose, regardless of whether the entity tasked with interpreting the law is a court or an administrative decision maker. An approach to reasonableness review that respects legislative intent must therefore assume that those who interpret the law — whether courts or administrative decision makers — will do so in a manner consistent with this principle of interpretation.

Interpretation of the SIA Bylaw

[52] Central to the concerns of CCF is the definition of “specified protest” and the three ways to violate the SIA Bylaw.

A. Specified Protest

[53] It is a rather wordy definition that does not roll off the tongue.

[54] Again, read in full the provision states:

(g) “*specified protest*” means an expression of objection or disapproval towards an idea or action related to race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of

origin, marital status, source of income, family status or sexual orientation by any means, including graphic, verbal, or written means, but does not include messaging at an event scheduled by a recreation facility.

[55] First, given the phrase is “specified protest”, it does include the word “protest”. What does “protest” mean? Dictionary definitions include, “statement of dissent, disapproval, or complaint, or demonstration”: Katherine Barber, *The Canadian Oxford Dictionary* (2005)¹. This is consistent with the *Black’s Law* definition (a U.S. based source): see Bryan A. Garner, ed, *Black’s Law Dictionary*, 12th ed (St. Paul, MN: Thomson Reuters, 2024) *sub verbo* “protest”. This definition can apply to a single person or more than one protester. For instance, a single person holding placard. The definition of *protest* contemplates so called silent protests too.

[56] The SIA Bylaw narrowed the dictionary definition of protest. “Specified protest” continues the notion of “statement of disapproval” with “...an expression of objection or disapproval towards an idea or action related to...” They exchange “statement” from the dictionary definition with “expression”, making them synonymous in this context. The City refines the topic of disapproval with “related to”.

[57] What comes after “related to” are the grounds afforded protection under the *Alberta Human Rights Act*: “...race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation...” This long list of traits can be thought of as shortened to protests as related against enumerated grounds protected by the *Alberta Human Rights Act*.

[58] Breaking this down further, “specified protest” can be read as an expression of disapproval towards an idea or action related to an enumerated ground under human rights legislation “...by any means, including graphic, verbal, or written means...” By “any means” refers to the mode of expressing disapproval. This would include signage or oral communication.

[59] So far, after breaking down the components in the definition of specified protest, one has (a) the dictionary definition of “protest”; (b) as related to the enumerated grounds under human rights legislation, which would include the Calgary Pride Community; and (c) the mode or medium for the expression.

[60] CCF is quite correct that this definition would not capture political or environmental protests because it was never designed for that purpose and because that was never the City’s intentional response to the issue at hand.

[61] The City narrowed the topic of protest to protect a defined group of Calgarians who needed to have safe access to their facilities, as evidenced by the record.

[62] The narrowed definition drafted by the City is within their mandate under sections 3, 7 and 9 of the *MGA*, and in keeping with the preamble from the evidence of growing confrontations with a defined group, who were feeling intimidated.

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<oxfordreference.com/display/10.1093/acref/9780195418163.001.0001/m_en_ca0055458?rsk=EiGQ2j&result=55441>

[63] The last phrase, "...but does not include messaging at an event scheduled by a *recreation facility*" [emphasis in original], exempts expression at scheduled events. This is quite smart drafting. By including this exemption, the City is not policing expression within scheduled events. The narrowing/exemption of protest aims at the gravamen of the issue: confrontations between opposing views leading to intimidation and fear while citizens access facilities.

[64] CCF's argument misses the point and wrongly believes this exemption entitles employees to vet what events could be scheduled at libraries or recreation facilities. This definition does the opposite. There was no evidence cited by CCF that City staff engaged in discriminatory selection of groups or individuals scheduling events at the facilities. In other words, the definition of "specified protest" would not stifle expression.

[65] The definition is intelligible, as the City, under *MGA*, is empowered to enact bylaws for reasons of safety and access.

The Prohibitions Under Section 3 of the SIA Bylaw

A. Engage

[66] I now turn to truly the central argument of CCF that the interpretation is unintelligible and/or unreasonable. While the definition of specified protest is wordy, it is only when read in the context of the prohibition and enforcement does the concern need to be questioned for the unintended consequences raised by CCF.

[67] It is helpful to repeat the prohibitions:

3. (1) A person must not engage in *specified protest on publicly accessible property* within 100 metres of an entrance to a recreation facility or a library.

(2) A person must not engage in *specified protest* anywhere inside a *recreation facility*.

(3) A person must not physically impede or attempt to impede the passage of a person, to or from an entrance to a *recreation facility* or *library*. [emphasis added]

[68] Section 3(3) of the SIA Bylaw stands alone and is clear. The verb triggering the sanction is "impede." *Oxford Languages* defines "impede" as "delay or prevent by obstructing them, hinder," while *Merriam-Webster* defines it as "to interfere with or slow the progress of." Section 3(3) captures physical confrontations short of assaultive acts, as impedes necessitates an action by the impeder. The examples cited by CCF would not trigger a sanction under section 3(3).

[69] The unintended consequences raised as examples of concern by CCF are non-physical expressions. They are more passive forms of expression related to the enumerated grounds. The examples relate to sections 3(1) and 3(2). Sections 3(1) and 3(2) of the SIA Bylaw include "specified protest" within the geographical restrictions. CCF is less concerned with the geographical restrictions except for the downtown library.

[70] The life blood of interpreting offences focuses on the prohibited act-the *verb*.

[71] The analysis here turns on the verb/action to "engage."

[72] There are various definitions for “engage.” Some valid definitions are quite passive, like “to employ, or involve one’s self” in *Black’s Law*, or “occupy, attract or involve (someone’s interest or attraction),” or “take part in” in *Oxford Languages*. The City could have used synonyms for engage such as “occupy”, “take part” or “join”. They did not.

[73] The intent of the City was to create safe zones free from confrontation that created intimidation. Or as counsel for the City argued, so clients “did not have to run the gauntlet.” The passive dictionary definitions of engage, as cited above, do not comport with the intent and context of the SIA Bylaw. If these passive definitions were used, it would be contrary to the modern principles of interpretation I reviewed earlier. Remember, the Bylaw was in part to combat hatred by providing safe and accessible facilities for all Calgarians.

[74] Since the 17th century “engage” has also meant to “enter into a contest or battle with”: *Merriam-Webster*². Or “enter[ing] into conflict or combat with (an enemy)”: *Oxford Languages*. This definition connotes you are about to get into a conflict, which is in keeping with the activity the City is trying to prohibit.

[75] Using this definition of “engage” means that section 3(1) of the SIA Bylaw reads something stripped down like this: A person must not enter into conflict or contest by means of an expression of disapproval against a ground enumerated under the human rights act by any means.

[76] This definition of “engage” suggests an engagement with another person or directed at those individuals needing safe passage to use the facilities.

[77] Using this defined provision would move the aggressive protesters away from entering into conflict zones (under section 3(1), 100 m for entrances, or under section 3(2), inside the facility).

[78] Previously, I noted that the City staff gave Council copies of bylaws from other jurisdictions bylaws that included both the use of the verb “engage” as well as the verbs “repeated communication,” “interfere” or “obstruct.” These verbs used in other bylaws involve interaction with individuals who have characteristics that are protected under an enumerated ground.

[79] Using this definition of engage means the examples advanced by CCF, such as two people talking among themselves on the street, the female warning another patron that the washroom was being used, or the person in crisis muttering to themselves would not attract an offence under this bylaw.

[80] From CCF’s position, I am left to infer that they take “engage” to have one of the other dictionary definitions and that CCF ignored “protest” being part of the term “specified *protest*.” I disagree.

[81] The t-shirt example would be fact dependent as to whether the person could be convicted depending on the other evidence for the context of the level of engagement, or its conveying of an expression.

² “engage” (7 September 2025) online: <[merriam-webster.com/dictionary/engage](https://www.merriam-webster.com/dictionary/engage)>

[82] The definition for the “specified protest” with “engage” makes this bylaw different from other cited references by CCF or conduct criminalized under the *Criminal Code* like harassment.

[83] I find the definition is intelligible for both citizens and officials who must enforce it. My assessment is within the parameters for invalidity.

[84] The City’s decision bears the hallmarks of reasonableness in that the SIA Bylaw was justified in the circumstances and enacted within its authority under *MGA*’s purpose to provide safe and inclusive access to its facilities and is intelligible. CCF failed in its onus to prove invalidity of the SIA Bylaw.

B. Discretion to Enforce

[85] Not germane to my analysis but given the interest in this case and an argument advanced by the City, I did want to make clear that CCF was correct in regard to whether a bylaw should stand through hoped discretionary enforcement. Laws drafted that are unintelligible or unconstitutional cannot stand as lawful on review by relying on a case-by-case application by prosecutors or law enforcement: *R v Nur*, 2015 SCC 15 at para 91. A court cannot fix up bad law by hoping of the wiser discretion of enforcement or a prosecutor will prevail.

[86] I want to thank Counsel for their professional and articulate arguments.

Heard on the 25th day of February, 2025.

Dated at the City of Calgary, Alberta this 10th day of September, 2025.

S.G. Parker
J.C.K.B.A.

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