In the Court of Appeal of Alberta

Citation: Southpoint Landing JV Inc v Camrose (City), 2025 ABCA 330

Date: 20251001
Docket: 2403-0099AC
Registry: Edmonton

Between:

Southpoint Landing JV Inc

Appellant

- and -

The City of Camrose

Respondent

The Court:

The Honourable Justice Michelle Crighton
The Honourable Justice Alice Woolley
The Honourable Justice Tamara Friesen

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice J.S. Little
Dated the 10th day of April, 2024
Filed on the 30th day of April, 2024
(2024 ABKB 207, Docket: 2303 00880)

Memorandum of Judgment

The Court:

I. Introduction

[1] In 2022 the respondent City of Camrose passed bylaws 3219-22 and 3220-22, establishing off-site levies payable in respect of developed or subdivided land in the City (Off-site Levy Bylaws). Off-site levy bylaws allow municipalities to recover capital costs associated with new or expanded facilities for water, sewage, roads, recreation and other infrastructure required to support new development in the municipality: *Municipal Government Act*, RSA 2000, c M-26, s 648. The off-site levies payable by a developer cannot exceed the developer's "proportional benefit" from the infrastructure funded by the levy: *Off-site Levies Regulation*, Alta Reg 187/2017, s 3(4). The respondent's Off-site Levy Bylaws replaced its 2017 off-site levy bylaws, significantly increasing the amounts payable by developers like the appellant Southpoint Landing JV Inc who apply for a development permit or subdivision approval.

[2] The *Municipal Government Act* requires municipalities to advertise certain bylaws prior to passing them, including off-site levy bylaws; it permits municipalities to advertise in a variety of ways, including as provided for by advertising bylaws adopted by a municipality: *Municipal Government Act*, ss 606, 606.1, 648(6). The respondent adopted an advertising bylaw in 2018: City of Camrose, bylaw No 3005-18, *Public Notification Bylaw* (7 August 2018) [*Advertising Bylaw*].

[3] The appellant asserts that the respondent did not advertise the Off-site Levy Bylaws as required by the *Municipal Government Act*. It brought an originating application pursuant to section 536 of the *Municipal Government Act* seeking a declaration that the Off-site Levy Bylaws were invalid. The chambers judge refused the application. He found the respondent's advertising complied with its *Advertising Bylaw* and the *Municipal Government Act* and, if it did not, the deficiencies were merely technical and not sufficient to justify invalidating the Off-site Levy Bylaws: *Southpoint Landing JV Inc v Camrose (City)*, 2024 ABKB 207 [*Chambers Decision*].

[4] The appellant appeals the *Chambers Decision* on the basis that the chambers judge erred by finding the advertising for the Off-site Levy Bylaws complied with the requirements of the *Municipal Government Act*, and by finding that any deficiencies in the respondent's advertising were not sufficient to declare the Off-site Levy Bylaws invalid.

[5] For the reasons that follow, the appeal is dismissed.

II. Did Camrose's Advertising for the Off-site Levy Bylaws Comply with the *Municipal Government Act*?

Background Facts

[6] As noted, the *Municipal Government Act* requires bylaws establishing off-site levies to be advertised: *Municipal Government Act*, s 648(6). The advertisement may be accomplished in one of several ways, including through the methods established by a municipality's advertising bylaw: *Municipal Government Act*, ss 606, 606.1 The advertisement for a proposed bylaw must include a statement of its general purpose, the address where a copy of it may be inspected and the "procedure to be followed by anyone wishing to file a petition in respect of it": *Municipal Government Act*, s 606(6). Notice of a bylaw must be provided prior to its second reading, and notice "of a meeting, public hearing or other thing" must be provided at least five days before the "meeting, public hearing or other thing" occurs: *Municipal Government Act*, ss 606(3), 606(5).

[7] The respondent's *Advertising Bylaw* permits advertising "2.2 electronically by posting the notice prominently on the City of Camrose official website: www.camrose.ca... and/or 2.3 electronically by posting the notice prominently on the City of Camrose Facebook page and the City of Camrose Twitter account... and/or 2.4 electronically by posting on the City of Camrose electronic bulletin board": *Advertising Bylaw*, ss 2.2-2.4.

[8] On June 16, 2022, the respondent electronically published notice of the June 20 meeting, at which the Off-site Levy Bylaws were to be considered, along with a link to the meeting agenda. The linked meeting agenda listed the proposed bylaws, included copies of them, and had a statement of their general purpose. However, the electronic notice only indicated that a meeting was taking place on June 20. It did not identify the bylaws being considered at the meeting, and did not provide any details about the bylaws' purpose or substance; a person who saw the electronic notice would only obtain information about a proposed bylaw if they clicked the link.

[9] Also on June 16, 2022, the respondent published a post on Facebook about the June 20, 2022 meeting. The Facebook post explicitly identified the two Off-site Levy Bylaws as matters on the meeting agenda and included a link through which people could view the full agenda. The full agenda included copies of the Off-site Levy Bylaws and a statement of their purpose, but the Facebook post itself did not.

[10] The respondent did not post information about the Off-site Levy Bylaws on Twitter prior to the June 20 meeting. On the day of the meeting, it posted the following to its Twitter account: "Council's first two items are related to the new Off Site Levy model. This project is in collaboration with Camrose County for coordinated service areas. The County approved first reading of the same bylaw at their meeting last week."

Decision Below

[11] The chambers judge found the cumulative effect of the *Advertising Bylaw* and the *Municipal Government Act* was that the respondent was required to advertise the Off-site Levy Bylaws before their second reading, through one or more of the methods set out in the *Advertising Bylaw*, and in a format that included a statement of the general purpose of the bylaws and an address of the place where a copy of it could be inspected. The requirement in section 606(6)(c) that the notice include an outline of the procedure for a person to file a petition in respect of the bylaw did not apply since a petition was not an available remedy for someone wishing to challenge an off-site levy bylaw: *Chambers Decision* at paras 6, 8.

[12] He found that while the screenshot provided by the respondent did not include the address www.camrose.ca, he was satisfied that the screenshot was from "the webpage for the City and/or its bulletin board as required by subsections 2.2 and/or 2.4 of the Advertisement Bylaw". He also was satisfied the notice was posted on June 16, prior to the meeting: *Chambers Decision* at paras 19-20.

[13] He rejected the appellant's position that the digital page itself must contain the information about a bylaw's purpose and where it can be inspected as required by section 606(6) of the *Municipal Government Act*. In his view, a link containing that information is sufficient to satisfy the obligations under the *Municipal Government Act* and is a format consistent with modern electronic capabilities and practices: *Chambers Decision* at para 24.

[14] He found the electronic posting was sufficient to comply with the method specified in subsections 2.2 or 2.4 of the *Advertising Bylaw* which, as noted, permits advertisement "electronically by posting the notice prominently on the City of Camrose official website: www.camrose.ca... and/or electronically by posting on the City of Camrose electronic bulletin board": *Chambers Decision* at para 26.

[15] He agreed with the appellant that, because the respondent posted the notice on Facebook in advance of the meeting, but did not post on Twitter until the day of the meeting, it had not followed the method specified in subsection 2.3 of the *Advertising Bylaw*. That subsection requires the advertisement be published on both Facebook *and* Twitter: *Chambers Decision* at para 25.

Issues

[16] The appellant submits that in concluding the respondent's advertising complied with the *Advertising Bylaw* and the *Municipal Government Act*, the chambers judge erred by:

(a) Interpreting section 606(6) of the *Municipal Government Act* to permit an advertisement to provide the necessary information about a bylaw in a link rather than in the text of the advertisement itself;

(b) Finding the respondent's electronic notice was given in accordance with a method specified in the *Advertising Bylaw*; and

(c) Interpreting sections 606(3) and (5) of the *Municipal Government Act* so that an advertisement of a bylaw may be published less than five days before the meeting at which a bylaw is to be considered, so long as it is published prior to the second reading of the bylaw (i.e., by applying only section 606(3) to bylaw advertisements).

Standard of Review

[17] The chambers judge did not address the standard of review applicable to the respondent's decision to advertise the Off-site Levy Bylaws in the manner it did. Specifically, he did not address whether the respondent's interpretation of the *Municipal Government Act* and the *Advertising Bylaw*, as reflected by its approach to advertising the Off-site Levy Bylaws, was entitled to deference.

[18] If the provisions of the *Advertising Bylaw* and the *Municipal Government Act* at issue established the substantive authority of the respondent to enact the Off-site Levy Bylaws, the respondent's interpretation of that authority would be reviewed on a standard of reasonableness: *Auer v Auer*, 2024 SCC 36 at paras 3, 27, 114. However, the appellant does not challenge the *vires* of the bylaws. Nor does the appellant assert a breach of the common law duty of procedural fairness.

[19] Instead, the appellant alleges the respondent breached procedural requirements set out in the *Municipal Government Act* and *Advertising Bylaw*. It applied for relief under sections 536 to 538 of the *Municipal Government Act*. While those provisions do not afford a statutory right of appeal, they do contemplate an application to the court for a "declaration that a bylaw is invalid" due to a breach of statutorily specified procedural requirements. In this context, the standard of review is non-deferential. The question is whether the respondent's interpretation of the procedural requirements imposed by the statute achieved the "appropriate level of fairness", having regard to the context: *Dugandzic v Alberta (Law Enforcement Review Board)*, 2024 ABCA 125 at para 15; *Yee v Chartered Professional Accountants of Alberta*, 2020 ABCA 98 at para 29(d); see also *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 at paras 27-30, 179; *Mission Institution v Khela*, 2014 SCC 24 at para 79.

Analysis

[20] The chambers judge erred in finding the respondent's advertising provided the information required by the *Municipal Government Act*.

[21] The plain and ordinary meaning and purpose of the advertising provisions of the *Municipal Government Act* is to ensure that municipalities provide effective notice to the public when they take steps, such as the enactment of a bylaw, that are subject to advertising requirements:

Municipal Government Act, ss 606, 606.1; *Telus Communications Inc v Federation of Canadian Municipalities*, 2025 SCC 15 at paras 30, 32 [*Telus*]; *Piekut v Canada (National Revenue)*, 2025 SCC 13 at paras 42-49; *Rizzo & Rizzo Shoes Ltd (Re)*, [1988] 1 SCR 27 at para 21 [*Rizzo*].

[22] The *Act* directs the municipality to publish the notice in local newspapers, to mail or deliver the notice to every residence in the affected area, or to comply with its own enacted methods for advertising: *Municipal Government Act*, s 606(2). When enacting its own methods, council must be satisfied those methods are "likely to bring proposed bylaws... to the attention of substantially all residents in the area to which the bylaw... relates": *Municipal Government Act*, s 606.1(2). The *Act* directs the municipality to provide the notice in advance of the step being taken and directs that the notice set out the facts necessary to ensure the reader is informed about what the municipality is considering doing: *Municipal Government Act*, ss 606(3)-(6). Further, it empowers the court "at any time" to invalidate bylaws where "the bylaw is required to be advertised and it was not advertised": *Municipal Government Act*, s 538(a)(ii).

[23] The respondent's advertising for the Off-site Levy Bylaws did not ensure effective notice. The notice on its website or electronic bulletin board only stated that a meeting was being held on June 20, 2022 and provided a link to the meeting agenda. It did not set out any information about what would be discussed at the June 20 meeting. It did not indicate what was contained in the meeting agenda. An affected person viewing the website or electronic bulletin board, who did not already know the Off-site Levy Bylaws were in the process of being enacted, would not know there was information about the bylaws accessible by clicking the link.

[24] Where a municipality's advertising bylaw permits electronic advertising, a hyperlink may be an option for communicating the information required by the *Municipal Government Act*. For example, a bylaw's statement of purpose, and the bylaw itself, could be made accessible through a link, so long as the electronic notice itself provided sufficient information about what the link contains, such as a brief description of the bylaw and a statement that by clicking the link a person can access the bylaw's statement of purpose and review its proposed content. Appropriate procedural fairness under the *Municipal Government Act* and *Advertising Bylaw* requires the respondent to do more than publish information that a meeting is being held with a link to the meeting agenda.

[25] With respect to the *Advertising Bylaw*, the chambers judge properly determined that by only publishing information on Facebook, but not on Twitter, the respondent did not follow the method specified in subsection 2.3 which required an advertisement to be posted on both platforms. We have, however, some reservations with the chambers judge's conclusion that the respondent satisfied the requirements of the *Advertising Bylaw* by publishing the notice prominently on its website (subsection 2.2) or on an electronic bulletin board (subsection 2.4). The chambers judge needed to determine whether the screenshot in evidence was of the website www.camrose.ca or whether it was of an electronic bulletin board. In particular, if finding the information was on the website, the chambers judge needed to assess whether the information was

there "prominently" as required by subsection 2.2. In our view, information about a meeting with a link, and nothing more, cannot be said to provide the necessary information "prominently".

[26] The chambers judge did not err in finding the terms of the *Municipal Government Act* only required notice of the Off-site Levy Bylaws to be given prior to second reading. Section 606(3) provides explicit direction as to the timing requirements for advertising a bylaw: "A notice of a proposed bylaw must be advertised under subsection (2) before second reading". The general guidance applicable to an "other thing" in section 606(5) does not additionally apply in light of the legislature's specific guidance for bylaw advertising. Section 606(1) lists "a bylaw, resolution, meeting, public hearing or something else" as matters to which the advertising requirements may apply. Section 606(3) sets the deadline for advertising a "bylaw", section 606(4) for advertising a "resolution", and section 606(5) for advertising a "meeting, public hearing or other thing". It is clear from the structure of these provisions that only section 606(3) deals with bylaws.

[27] Nonetheless, while the advertising was done within time, it did not satisfy the advertising obligations set out in the *Municipal Government Act* because it did not contain the information required to be provided in such advertisements. It did not ensure effective notice.

III. Do the deficiencies in the respondent's advertising warrant a declaration that the Off-site Levy Bylaws are invalid?

Background Facts

[28] The *Municipal Government Act* empowers municipalities to enact off-site levy bylaws to recover the capital costs associated with constructing and expanding the infrastructure necessary for development. An off-site levy allows a municipality to recover capital costs related to building or expanding facilities for water treatment and transmission, sanitary sewage, storm sewer drainage, roads and highways, recreation, police stations, fire halls and libraries: *Municipal Government Act*, ss 648(2), 648(2.1). Each levy established by a municipality must be accounted for separately from other levies, and "must be used only for the specific purpose… for which it is collected or for the land required for or in connection with that purpose": *Municipal Government Act*, s 648(5).

[29] A municipality may not require an applicant for a development permit or subdivision approval to pay for the capital costs of facilities or infrastructure "beyond the applicant's proportional benefit": *Off-site Levies Regulation*, Alta Reg 187/2017, s 3(4). The *Municipal Government Act* constrains the methodology that can be used to calculate an offsite levy: *Municipal Government Act*, s 648.2. It requires the municipality to publicly disclose "any information or data the municipality relied upon and any assumptions the municipality made in calculating the levy… the calculations that were performed in order to determine the amount of the levy [and] anything else that would be required in order to replicate the determination of the levy": *Municipal Government Act*, ss 648.2(6)(a)-(c). The *Act* also requires the municipality to consult with affected stakeholders in good faith "before making a final determination on defining

and addressing existing and future infrastructure, transportation infrastructure and facility requirements, and… when determining the methodology on which to base an off-site levy": *Municipal Government Act*, s 648.3(1).

[30] A person may appeal any of the provisions of an off-site levy bylaw to the Land and Property Rights Tribunal on a variety of grounds, including that it will not benefit future occupants of the land or that it goes beyond the proportional benefit to the applicants: *Municipal Government Act*, s 648.1. The Tribunal has held its jurisdiction includes issues related to the adequacy of disclosure provided by a municipality, but not issues related to the adequacy of consultation: *Three Sisters Mountain Village Properties Ltd v Town of Canmore*, 2025 ABLPRT 373 at paras 71, 94 [*Three Sisters*]. In the Tribunal's view, a challenge based on deficient consultation must be brought to the court pursuant to section 537 of the *Municipal Government Act*, which allows declarations of invalidity to be sought based on failure to comply with procedural requirements of the *Act*: *Three Sisters* at para 75.

[31] The appellant has not advanced legal proceedings before the Land and Property Rights Tribunal or the court to challenge the information disclosure or consultation undertaken by the respondent, or to dispute the substantive validity of the Off-site Levy Bylaws.

[32] The respondent produced a copy of an e-mail from its Manager of Planning and Development, Aaron Leckie, dated May 11, 2022, that indicated it was sent by "bcc" to "active and recent developers" in Camrose. The e-mail explained the process through which the new levy rates were identified and also identified what the new off-site levy rates would be for each of the 140 off-site levy areas in Camrose. It invited a "continuing... conversation through the month of May" and said the city and council "intend[ed] to commence the Bylaw process in June".

[33] On May 12, the appellant's Manager of Development, Will Adam, responded to the e-mail and expressed concern over the off-site levy rate increase:

> Current OSL rates for Valleyview West (Area #89) is $25,946/ha
> Proposed OSL rate for Area #89 is… $186,821/ha?
>
> I am not sure if I am reading this correctly, there are no units provided on the proposed rates. Highlighted side by side on the attached, if these are in the same units of division this is a massive increase to levies, specifically for water and sanitary.
>
> We can maybe discuss this also on our call tomorrow.

Also on May 12th, Mr. Leckie replied and provided detailed information to Mr. Adam about the basis for the change to the off-site levy rates, and confirmed they would be speaking that afternoon. The parties exchanged further e-mails discussing the substance of the change.

[34] At a meeting of council on June 6, 2022, council received a presentation which provided detailed information regarding the proposed Off-site Levy Bylaws, including about a workshop and consultation that had taken place with respect to the bylaws. The presentation indicated that all three readings of the bylaws would take place on June 20, 2022. The presentation indicated that one developer was opposed to the off-site levies proposed.

[35] The administrative report attached to the agenda for the June 20 meeting, available at the link posted by the respondent electronically, also indicated that all three readings of the bylaw would be considered at the June 20 meeting.

[36] On July 8, 2022, Mr. Adam sent a letter on behalf of the appellant to the respondent with detailed feedback on the calculation of the off-site levy. The letter identified the appellant's particular concern with the infrastructure plans on which the levy was based, and made suggestions for change, including the adoption of a "phased approach". On July 14, 2022, Mr. Leckie responded saying the bylaws had already been enacted. He confirmed that the appellant's concerns were noted, but stated council was aware of the substantial increase and had nevertheless confirmed the revised off-site levies. He advised he would "bring… up the content of your letter internally next week when a couple of key staff have returned from planned vacation. Following the internal meeting, I'll reach out to you directly". Mr. Adam responded to Mr. Leckie by e-mail, stating that the passage of the bylaw was "extremely surprising" and indicating that his understanding had been that the off-site levy model was being presented to council for review, following which there would be additional consultation. Mr. Adam suggested that doing three readings at one meeting was inconsistent with the passage of the 2017 bylaw, where the first reading had been done in June, but the third reading had not been completed until September 18, 2017. He emphasized:

> The 2022 OSL Bylaw had first, second, and third reading on June 20, 2022 and was brought in effect on July 1, 2022? For such an important bylaw that contains substantial changes to have a tiny window of light in the public forum is not commensurate to the impact this specific bylaw has on the community in the long term. This is the single most important bylaw in relation to new investment and growth of the community and growing the City's tax base. Railroading this through instead of ensuring those most impacted were tangibly involved and that adequate consultation with the community was completed is reckless.

[37] On October 12, 2022, the mayor of Camrose wrote to Mr. Adam and advised that at the October 3, 2022 meeting of the Committee of the Whole Council, council had reviewed the appellant's concerns regarding the Off-site Levy Bylaws. The mayor advised, "Council has not directed administration to take any further action". The letter also noted that the off-site levies would be reviewed on an annual basis.

Decision Below

[38] The chambers judge acknowledged that municipal bylaws must strictly comply with procedural requirements in certain circumstances, such as when the subject matter of the bylaw is taxation or expropriation, or results in interference with other private rights: *Chambers Decision* at paras 30-31. He concluded, however, that the Off-site Levy Bylaws did not fit into any of those categories. The Off-site Levy Bylaws do not expropriate property. They do not raise funds for general revenues. They fit within the description of a regulatory charge, not taxation: "They are charged by and collected in order to finance services required to be constructed to facilitate the development proposed on a piece of land". The Off-site Levy Bylaws do not interfere with other private rights and are not an exercise of extraordinary powers: *Chambers Decision* at paras 33-44, 52.

[39] The chambers judge distinguished cases relied on by the appellant, which dealt with taxation or changes in electoral boundaries. In his view, "The 2022 Bylaws are not concerned with taxation, and the fact that there is a regulatory regime for the imposition and administration of off-site levies which, further, are not payable except by a party which chooses to develop, in my view militates against them being concerned extraordinary": *Chambers Decision* at para 41.

[40] Having so characterized the Off-site Levy Bylaws, the chambers judge held that, even if he had found technical non-compliance with the notice requirements, he would not invalidate them. He emphasized the actual notice received by the appellant and its ability to provide its position on the proposed bylaw to the respondent. In his view, "the City's offer of consultation, together with the participation of Southpoint in that consultation process, militates against a finding that the process of enacting the 2022 Bylaws was 'dramatically devoid of the appearance of fairness'": *Chambers Decision* at para 50, 45. He considered the rights given to the appellant to appeal the substance of the Off-site Levy Bylaws to ensure their compliance with the requirements of the *Municipal Government Act* and the applicable regulations. He found, "Because an affected stakeholder may pursue other recourse for an off-site bylaw perceived as unfair, mere technical non-compliance with notice provisions is not fatal to the validity of an offsite levy bylaw": *Chambers Decision* at para 49.

Issues

[41] The appellant submits that the chambers judge erred by:

(a) Mischaracterizing the Off-site Levy Bylaws by failing to identify them as taxation bylaws or an interference with private rights requiring strict compliance with the procedural requirements of the *Municipal Government Act*; and
(b) Not invalidating the Off-site Levy Bylaws regardless of their characterization.

Standard of Review

[42] The chambers judge's characterization of the Off-site Levy Bylaws is a question of law reviewable for correctness. If he did not err in his characterization of the Off-site Levy Bylaws, his decision not to invalidate them is a question of mixed fact and law reviewable only for palpable and overriding error: *Housen v Nikolaisen*, 2002 SCC 33 at paras 8, 27, 28, 36.

Analysis

[43] The procedural requirements set out in sections 606(2) and 606(6) of the *Municipal Government Act* are imperative; they "must" be complied with. However, invalidity does not follow automatically from a finding of non-compliance. This Court has long rejected the proposition that procedural errors necessarily create "nullities": *Chandos Construction Ltd v Deloitte Restructuring Inc*, 2024 ABCA 403 at para 21; *Gates v Standard (Village)*, 2021 ABCA 299 at paras 28-29; *Keefe v Clifton Corporation*, 2005 ABCA 144 at paras 29-30; *Bridgeland Riverside Community Association v Calgary (City)*, 1982 ABCA 138 at paras 29-30 [*Bridgeland*].

[44] In *Costello and Dickhoff v Calgary*, [1983] 1 SCR 14 at 22 [*Costello*], the Supreme Court held that a "provision in a statute enacting a formality attached to the exercise of a grant of authority by by-law must be examined in each instance to determine whether it is mandatory or merely directory and accordingly whether a by-law is void or only voidable for non-compliance therewith". The Court has subsequently expressed doubt about the usefulness of the "mandatory/directory distinction" (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 74); however, its observation that courts only require "strict compliance with enabling legislation that authorizes municipalities to exercise extraordinary powers or pass by-laws concerning taxation, expropriation, or other interference with private rights" remains valid: *Costello* at 21. Ultimately, the effect of non-compliance "is informed by the usual process of statutory interpretation": *British Columbia (Attorney General) v Canada (Attorney General)*, [1994] 2 SCR 41 at 123 [*Vancouver Island Railway*].

[45] Here, the words of the legislation "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" the legislature (*Rizzo* at para 21), do not suggest that every failure to properly advertise a proposed off-site levy bylaw ought to result in the bylaw being void. It does not make a declaration of invalidity imperative: *Municipal Government Act*, ss 536-538; *M & D Farm Ltd v Manitoba Agricultural Credit Corp*, [1999] 2 SCR 961 at para 44.

[46] The chambers judge considered whether the Off-site Levy Bylaws fell within the categories identified in *Costello* requiring strict compliance. He concluded they did not – the Bylaws were a regulatory charge, not a tax.

[47] The chambers judge did not err in so concluding. The primary purpose of a tax is "to raise revenue for general purposes", whereas the purpose of a regulatory charge is to further a regulatory

scheme. A regulatory charge is normally imposed "in relation to rights or privileges awarded or granted by the government", including to defray the costs associated with the regulatory scheme: *620 Connaught Ltd v Canada (Attorney General)*, 2008 SCC 7 at paras 17, 20 [*Connaught*]. Indicia of a regulatory scheme include the presence of "a complete, complex and detailed code of regulation", "the presence of actual or properly estimated costs of the regulation", and the existence of "a relationship between the person being regulated and the regulation, where the person being regulated either benefits from, or causes the need for, the regulation": *Connaught* at paras 25-27; *Westbank First Nation v British Columbia Hydro and Power Authority*, [1999] 3 SCR 134 at paras 24, 44.

[48] Off-site levies defray the costs associated with a regulatory scheme. The *Municipal Government Act* and the associated regulations create a detailed scheme through which municipalities construct the infrastructure and facilities necessary for new development, while developers like the appellant pay their development's proportionate share of the costs of that infrastructure. The amount to be paid is calculated based on the infrastructure built, using information, data and assumptions made available to developers, so they can replicate the calculations. The need for infrastructure arises from the activities of developers and its construction ensures their developments have the infrastructure they require; the off-site levy flows from the activities of the developers and the infrastructure construction those activities require. Thus, "there is a regulatory scheme", it is "relevant to the person being regulated", and "there is a relationship between the levy and the scheme itself": *Connaught* at para 28.

[49] As a regulatory charge, the updated calculation for the off-site levy does not fall within *Costello*'s listed categories of "by-laws concerning taxation, expropriation or other interference with private rights". It also does not represent another type of extraordinary exercise of municipal power. Setting the amount of an off-site levy is constrained by decisions about infrastructure construction and expansion made separately, by legislative restrictions on calculating the levies, and by oversight from the Land and Property Rights Tribunal. The determination of the quantum of an off-site levy is specific, and factually and legally restricted, as well as being subject to regulatory oversight; it is not an extraordinary exercise of a municipality's delegated authority.

[50] That being said, compliance with statutory procedures is not optional, and a failure to do so necessarily calls the validity of the resulting bylaw into question. Section 537 of the *Municipal Government Act* expressly contemplates applications for a bylaw to be "declared invalid" for failure to comply with statutory procedural requirements, and section 538 allows those applications to be made "at any time" if "the bylaw is required to be advertised and it was not advertised". Once an applicant establishes a municipality has failed to comply with its legislated procedural obligations, the municipality bears the onus of persuading a court that it ought not to issue a declaration of invalidity. Sometimes, as held by the Supreme Court in *Costello*, the declaration of invalidity follows automatically from the failure to comply. But in every case, a declaration of invalidity is a plausible consequence of the municipality's failure to do what the legislature directed it to do. We do not agree with the chambers judge that the proposition from *Bridgeland*

at para 30, that a procedural defect must be "so dramatically devoid of the appearance of fairness that the administration of justice is brought into disrepute", usefully informed the decision about whether to issue a declaration of invalidity in this case. The respondent needed to establish on the facts that a declaration was unwarranted or inappropriate, taking into account the seriousness of the municipality's failure to comply with required statutory procedures and the failure's impact on the procedural entitlements of the parties affected by the municipality's decision.

[51] In this case, the respondent's advertising materially deviated from its legislative obligations in a way that is hard to understand. The respondent enacted its own *Advertising Bylaw*, and the guidance given by the *Municipal Government Act* as to what needs to be included in an advertisement is straightforward. The respondent advertised on Facebook but not on Twitter, even though it had an active Twitter account and its *Advertising Bylaw* required the advertisement to be on both. It provided specifics about what was being considered at the meeting on Facebook but did not include the same information on its other electronic sites. It provided the chambers judge with a screenshot, but no clear indication of whether the screenshot was from its bulletin board or its website. If the screenshot was from its website, there was nothing to indicate that the information was displayed on the website prominently, as the *Advertising Bylaw* required.

[52] Nonetheless, the chambers judge made no reviewable error in deciding not to declare the bylaws invalid in this case. The appellant was notified the bylaws were being considered, and that the bylaw process would commence in June. That specific information supplemented the respondent's advertising. It alerted the appellant of the need to monitor the respondent's activities, including its social media and electronic postings, and made it much less likely the appellant would miss the information about the meeting to consider the Off-site Levy Bylaws, even if the information was not provided in the proper format or as clearly as it should have been. Everything the appellant needed to know, including the proposal to do all three readings on June 20, was on the agendas made available electronically and through Facebook, had the appellant been monitoring those sites. The appellant and other affected developers were not solely dependent on the respondent's advertising to learn about the off-site levies, or that they were being considered by the respondent in June.

[53] The correspondence from July 8, 2022 may suggest the appellant assumed, in part based on what it understood to be the respondent's past practices, that the process in June would not be conclusive, and on that basis did not view attention to the municipality's June activities to be essential. The past practices of the respondent certainly heighten the problems with the deficiency in its advertising; however, any such assumptions by the appellant would not be entirely the fault of the respondent given the information it previously provided to the appellant and the information the respondent made publicly available, including that it planned to consider all three readings of the bylaw on June 20.

[54] Even if the appellant had known to attend the June 20 meeting, it had no procedural entitlements in relation to council's consideration of the Off-site Levy Bylaws; the meeting was

not a public hearing, and the appellant could have asked to speak but had no right to do so. At the same time, and as previously outlined, the appellant enjoyed other procedural entitlements. It had a statutory right to be given information and to be consulted, the sufficiency of which it has not challenged. Nor has it appealed the substance of the Off-site Levy Bylaws to the Land and Property Rights Tribunal, although it could have done so. The letter the appellant submitted following the June 20 meeting was considered at a full meeting of council on October 3, 2022, and the appellant was advised of council's response.

[55] We also note the public importance of the Off-site Levy Bylaws. The dramatic increase in the levies from 2017 was unsurprisingly concerning to the appellant. Yet, considering that the substantive validity of that increase has not been disputed, that increase reflects significant cost burdens on the municipality. Invalidating the Off-site Levy Bylaws would have meaningful adverse consequences for other residents and taxpayers within the municipality. That adverse impact would not on its own justify a court in disregarding the respondent's procedural deficiencies, but it is part of the overall context of the assessment of whether a declaration of validity ought to be issued.

[56] On these facts, we are satisfied the chambers judge made no reviewable error in deciding that procedural deficiencies in the respondent's advertising do not warrant invalidating the Off-site Levy Bylaws. The deficiencies did not materially prejudice the appellant, and do not impugn the legitimacy of the levies enacted by the respondent.

IV. Conclusion

[57] The appeal is dismissed.

Appeal heard on September 4, 2025

Memorandum filed at Edmonton, Alberta
this 1st day of October, 2025

Authorized to sign for: Crighton J.A.

Woolley J.A.

Friesen J.A.

Appearances:

R. Harrison
for the Appellant

D. Young
for the Respondent