

Court of King's Bench of Alberta

Citation: Enterprise Properties Ltd v Flagstaff (County), 2026 ABKB 94

Date: 20260211
Docket: 2101 12946
Registry: Calgary

Between:

Enterprise Properties Ltd.

Applicant

- and -

Flagstaff County

Respondent

**Reasons for Decision
of the
Honourable Justice D.J. Reed**

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I. Introduction

[1] This is an application for judicial review. The Applicant, Enterprise Properties Ltd. (“EPL”), challenges the *vires* of portions of the 2021 and 2022 property tax bylaws (Property Tax Bylaw 04/21 and Property Tax Bylaw 03/22) (“**2021 Bylaw**” and “**2022 Bylaw**”, collectively, the “**Bylaws**”), along with portions of the annual operating and capital budget for 2022 and the 2022-2024 Business Plan (passed under Resolution FC 20210922.1002) (collectively, the “**Budget**”) of the Respondent, Flagstaff County (“**Flagstaff**”).

[2] The main ground of challenge by EPL is this: to the extent Flagstaff relied on the Bylaws and Budget to collect, under the auspices of property tax, funds which are then transferred to Flagstaff’s municipal reserve funds for use beyond its fiscal budget year, the Bylaws and Budget are beyond Flagstaff’s jurisdiction under the *Municipal Government Act*, RSA 2000, c M-26 (“*MGA*”). It also argues that the Bylaws and Budget are discriminatory.

[3] EPL seeks to have the portion of the Bylaws and the Budget relating to the collection and transfer of tax revenue to municipal reserve quashed, and to have its proportion of taxes paid for that purpose during the relevant time frame refunded.

[4] Flagstaff argues that the *MGA* permits it to collect property taxes and then allocate a proportion of the taxes collected to its municipal reserve fund.

II. Procedural Background

[5] This application is a consolidation of three separate applications. The first, filed under Court File No. 2101-12946, challenges the 2021 Bylaw. The second, filed under Court File No. 2201-03343, challenges the Budget. The third, filed under Court File No. 2201-08129, challenges the 2022 Bylaw. The matters were consolidated by order of this Court under File No. 2101-12946. There is no challenge to Flagstaff's 2021 operating or capital budget, or related capital plan, before the Court, although EPL argues that the Bylaws must be read in conjunction with their budgets.

[6] A Certified Record of Proceeding was filed in each action (collectively referred to as the "CROP").

[7] The Applicant, without consent or leave of the Court, filed and served an affidavit of Neha Desilets, sworn on February 2, 2024, ("**Desilets Affidavit**") to "provide context and background on the Application." The admissibility of the Desilets Affidavit is in issue.

III. Issues

[8] While the Originating Applications seek a variety of relief, the relief EPL sought in argument was much more focussed. EPL quite properly conceded that the relief sought all falls within the scope of the latter of the two issues articulated below. Having reviewed the arguments of the parties and the Originating Applications that constitute this matter, the issues to be determined are as follows:

- (a) Is the "expert report" filed by EPL admissible in this judicial review?
- (b) Are the Bylaws and Budget *ultra vires* to the extent they permit the collection of property taxes for the purpose of payment into Flagstaff's reserve funds for use outside of its fiscal budget year?
- (c) Is the above effect of the Bylaws and Budget discriminatory as against EPL?

[9] Flagstaff tried to argue that the Originating Applications focussed on the scale of Flagstaff's tax rates, and not the power to allocate funds to the reserves. I do not agree with that argument. The wording on the face of the Originating Applications also calls into question the *vires* of the Bylaws and the Budget, among other things.

[10] However, I agree with Flagstaff that to the extent EPL attempted to broaden the scope of its application in its written submissions and argument to more general questions applicable to other municipalities than Flagstaff, and to seek repayment of taxes paid to any ratepayer in Flagstaff County if successful, that relief cannot be contemplated on this Judicial Review. At this time, this Court has been asked to review the Bylaws and the Budget and to consider any relief to be afforded to EPL. EPL conceded as much in the oral hearing.

IV. Summary Conclusion

[11] After a thorough review of the CROP, the law, and the submissions of the parties, for the reasons articulated below EPL's application is dismissed for the reasons set out in this decision.

V. Standard of Review

[12] As noted in *Koester v Wheatland County*, 2025 ABCA 308 [*Koester CA*], at common law, the merits of subordinate legislation are not subject to judicial review. Subordinate legislation can only be reviewed for *vires*, that is for whether the decision maker’s interpretation of its authority to make the subordinate legislation was reasonable, regardless of the decision maker’s place in the governmental hierarchy. The restriction covers review of municipal bylaws: para 35.

[13] A brief mention of s 539 of the *MGA* is required, which states that “no bylaw or resolution may be challenged on the ground that it is unreasonable.” The law is clear that this section speaks to the ground of challenge and not the standard of review: *Koester CA* at paras 39-40. This judicial review does not attack the Bylaws or the Budget on the basis they are unreasonable. It questions their *vires*.

[14] The parties agree that the standard of review to be applied on this judicial review, which engages a review of the *vires* of subordinate legislation, is reasonableness per the Supreme Court of Canada’s decisions in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] and *Auer v Auer*, 2024 SCC 36 at paras 3-4, 21-28 [*Auer*].

[15] In *Auer*, the Supreme Court of Canada reaffirmed the “robust” reasonableness standard articulated in *Vavilov*. It also indicated at para 3 that some of the principles from the Court’s earlier decision in *Katz Group Canada Inc v Ontario (Health and Long-Term Care)*, 2013 SCC 64 [*Katz Group*] “continue to inform” such a reasonableness review, including:

- (a) subordinate legislation must be consistent both with specific provisions of the enabling statute and with its overriding purpose or object;
- (b) subordinate legislation benefits from a presumption of validity;
- (c) the challenged subordinate legislation and the enabling statute should be interpreted using a broad and purposive approach to statutory interpretation; and
- (d) 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.

[16] The Court in *Auer* also found that “for subordinate legislation to be found *ultra vires* on the basis that it is inconsistent with the purpose of the enabling statute, it no longer needs to be ‘irrelevant’, ‘extraneous’ or ‘completely unrelated’ to that statutory purpose. Continuing to maintain this threshold from *Katz Group* would be inconsistent with the robust reasonableness review detailed in *Vavilov* and would undermine *Vavilov*’s promise of simplicity, predictability and coherence”: para 4.

[17] *Auer* noted that “in exceptional cases, a *vires* review may engage a question that the rule of law requires be reviewed for correctness. In such cases, the presumption of reasonableness review may be rebutted. For example, a challenge to the validity of subordinate legislation on the basis that it fails to respect the division of powers between Parliament and provincial legislatures would require that the correctness standard be applied”: para 27. The parties agree this is not one of those cases. I also agree.

[18] The Supreme Court stated at para 62 of *Auer* that:

The language chosen by the legislature in an enabling statute describes the limits and contours of a delegate's authority (*Vavilov*, at para. 110). The legislature may use precise and narrow language to delineate the power in detail, thereby tightly constraining the delegate's authority. Alternatively, the legislature may use broad, open-ended or highly qualitative language, thereby conferring broad authority on the delegate (*ibid.*; see also Keyes (2021), at pp. 195-96). Statutory delegates must respect the legislature's choice in this regard. They "must ultimately comply 'with the rationale and purview'" of their enabling statutory scheme in accordance with its text, context and purpose (*Vavilov*, at para. 108, citing *Catalyst Paper*, at paras. 15 and 25-28, and *Green*, at para. 44).

[19] The scope of a statutory delegate's authority may also be constrained by other statutes or the common law. Unless the enabling statute provides otherwise, when enacting subordinate legislation, statutory delegates are required to adopt an interpretation of their authority that is consistent with other legislation and applicable common law principles: *Auer* at para 63, citing various authorities.

[20] Statutory delegates are empowered to interpret the scope of their authority when enacting subordinate legislation. Their interpretation must, however, be consistent with the text, context and purpose of the enabling statute. They must interpret the scope of their authority in accordance with the modern principle of statutory interpretation. The words of the enabling 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": *Auer* at para 64.

[21] In conducting a *vires* review, a court does not undertake a *de novo* analysis to determine the correct interpretation of the enabling statute and then ask whether, on that interpretation, the delegate had the authority to enact the subordinate legislation. 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, outlined above: *Auer* at para 65.

[22] The parties agree that as the applicant, EPL bears the burden on this application: see *Auer* at para 50, citing *Vavilov* at paras 100 and 109.

VI. Law and Analysis

A. Admissibility of the Desilets Affidavit

a) Arguments of the Applicant, EPL

[23] EPL assumed it could simply file and rely on the Desilets Affidavit in its application without prior application and approval of the Court. It made no formal written submissions on this point, other than citing two cases in a footnote which I address below. In oral argument, EPL argued that while an expert report, the Desilets Affidavit provided helpful background and context for the Budget and the Bylaws.

b) Arguments of the Respondent, Flagstaff

[24] Flagstaff argues that the Court should not consider the Desilets Affidavit because it includes new information not before Flagstaff when the impugned decisions were made, and there was no application to admit such evidence. It notes that judicial review applications are generally on the record, and that if a party desires to lead additional evidence, an application is

required. The party seeking to lead such evidence must demonstrate that it fits within narrow exceptions, which this evidence does not.

[25] Flagstaff notes that the Desilets Affidavit and the report appended to it contain data and information about other municipalities. EPL has not shown a valid basis regarding why this Court should have regard to that data and information. Further, the Desilets Affidavit is in essence an expert opinion. Ms. Desilets was asked to provide an opinion on the reasonableness of the surplus reserve funds Flagstaff accumulated, which is not within the scope of this judicial review.

[26] Flagstaff also argues that even if the substance of the Desilets Affidavit is considered, it does not support EPL's position and is largely irrelevant.

c) Analysis

i. Contents and Substance of the Desilets Affidavit

[27] Neha Desilets is the Principal in the Accounting & Assurance and Consulting & Special Projects Practice areas of the firm Kingston Ross Pasnak LLP. She is not personally involved in any of the matters in issue in this case. The Desilets Affidavit is, in form and substance, an expert report. It states who she is, attaches her CV, and appends an "expert" report which she authored, which contains the substance of her opinion evidence. She expressly states in her affidavit that she is an expert witness and confirms her duty to the Court as such.

[28] Ms. Desilets was asked to answer the following questions:

1. What can a municipality reasonably expect to use its reserves for?
2. What are the reserve fund needs for this Respondent [Flagstaff]?
3. Is the reserve fund in excess of the Respondent's needs?

[29] The report in the Desilets Affidavit looks at Flagstaff's reserves and compares them to the reserves of sixty-three other municipalities in Alberta. The Desilets Affidavit opines on the lack of any planned major infrastructure projects in the County's 2023-2027 capital plan. It notes that most projects are currently funded with minimal transfers from the reserves, that Flagstaff falls 59 out of 63 for its reserve funding (at the high end) and that based on Ms. Desilets calculations and assumptions, it could take 400 years for Flagstaff to use its reserves.

ii. Admissibility of the Desilets Affidavit

[30] As noted, EPL assumed it could simply file and rely on the Desilets Affidavit in its application. That position is incorrect.

[31] Rule 3.22 of the *Alberta Rules of Court*, Alta Reg 124/2010 states:

3.22 When making a decision about an originating application for judicial review, the Court may consider the following evidence only:

- (a) the certified copy of the record of proceedings of the person or body that is the subject of the application, if any;
- (b) if questioning was permitted under rule 3.21, a transcript of that questioning;

- (b.1) if the originating application is for relief other than an order in the nature of certiorari or an order to set aside a decision or act, an affidavit from any party to the application;
- (c) anything permitted by any other rule or by an enactment;
- (d) any other evidence permitted by the Court.

[32] The default is that a judicial review is conducted on the record of proceedings filed by the public body. The use of affidavits is exceptional. Affidavit evidence is generally not introduced to alter or supplement the factual record used by the decision maker to decide the issue on its merits. The role of the court is not to decide the matter anew, nor does the use of additional affidavit evidence by the applicant entitle the applicant to a *de novo* hearing: *Alberta Liquor Store Association v Alberta (Gaming and Liquor Commission)*, 2006 ABQB 904 at para 40; *University of Alberta v Alberta (Information and Privacy Commissioner)*, 2011 ABQB 699 at para 14; *Bergman v Innisfree (Village)*, 2020 ABQB 661 at para 41; *Northern Air Charters (PR) Inc v Alberta Health Services*, 2023 ABCA 114 at para 8; *Koester v Wheatland County*, 2024 ABKB 103 at para 34 [*Koester KB*], *aff'd* on other grounds, 2025 ABCA 308.

[33] There are limited exceptions to the default rule. As I noted at paras 37-38 of *Koester KB*:

[37] There are limited circumstances where the court can consider additional evidence. The rationale for limiting the evidence to be considered by the Court on judicial review is as articulated by Slatter J (as he then was) in *Alberta Liquor* the Court stated at para 42:

As a general rule ... evidence that was not before the tribunal and that relates to the merits of the decision is not permitted on judicial review. The law is summarized in S. Blake, *Administrative Law in Canada*, (4th ed.), at pg. 198:

Only material that was considered by the tribunal in coming to its decision is relevant on judicial review. It is not the role of the court to decide the matter anew. The court simply conducts a review of the tribunal decision. For this reason, the only evidence that is admissible before the court is the record that was before the tribunal. Evidence that was not before the tribunal is not admissible without leave of the court. If the issue to be decided on the application involves a question of law, or concerns the tribunal's statutory authority, the court will refuse leave to file additional evidence. Evidence challenging the wisdom of the decision is not admissible. The tribunal's findings of fact may not be challenged with evidence that was not put before the tribunal. Fresh evidence, discovered since the tribunal made its decision, is not admissible on judicial review ... (footnotes omitted).

[38] Nonetheless, there are exceptions to this general rule. The court can allow supplementary evidence in the following limited circumstances:

- (a) To show bias or a reasonable apprehension of bias, where the facts in support of the allegation do not appear on the record.
- (b) To demonstrate breaches of the rules of natural justice which are not apparent from the record.
- (c) Background information for other issues such as standing.
- (d) When the administrative decision maker makes no record, or an inadequate record.

See: *Northern Air* at para. 9; *Bergman* at para. 45, citing *Alberta Liquor* at para 41; *University of Alberta* at para 15; also, on the point of bias and breach of natural justice, see *Lethbridge and District Pro-Life Association v Lethbridge (City)*, 2020 ABQB 654 (Alta. Q.B.) at paras. 19-20.

[34] In this case, EPL sought to primarily rely on *Lethbridge and District Pro-Life Association v Lethbridge (City)*, 2020 ABQB 654 and *Alberta's Free Roaming Horses Society v Alberta*, 2019 ABQB 714 [*Alberta's Free Roaming Horses*].

[35] I have addressed the former case, and it does not assist EPL here.

[36] In *Alberta's Free Roaming Horses Society*, Millar, J. exercised his discretion under Rule 3.22(d) to admit an affidavit from one of the applicants. Evidence was admitted because no actual reasons existed for the Minister's decision to make public land designations and issue licenses under the *Stray Animals Act*, RSA 2000 c S-20 and the *Horse Capture Regulation*, Alta Reg 59/1994. The affidavit tendered by the individual applicant, Mr. Ticknor, contained significant information related to the Minister's designation in issue, including background and context to the legislation and how it had been implemented. This included Hansard excerpts, requests to the province relating to land designations and correspondence with Alberta Environment and Parks. The Court went on to find the following at paragraphs 25 and 26:

[25] Although the Province is correct that affidavit evidence is usually not admissible on a judicial review, I find that the Applicants submissions on why I should use my discretion under rule 3.22 (d) to be persuasive. This is not a typical judicial review case where the Record of Proceedings shows the materials submitted and considered by a tribunal, along with their reasons for decision. The question here is whether the Minister properly exercised his jurisdiction in making the land designation. The Record of Proceedings contains only the decision (the Order) and the briefing note and memorandum. No actual reasons from the Minister exist. This is similar to one of the exceptions mentioned in *Alberta Liquor and Gaming*, namely where the decision maker makes no record of, or an inadequate record of, its proceedings.

[26] Without the Ticknor Affidavit, the background and context necessary to understand the Application would be absent. It would also be challenging to understand the effect of a declaration without the material explaining the licensing system in place. The material in the Ticknor Affidavit assists the court and is not akin to admitting new evidence on the merits of the decision. Therefore, for the

purpose of providing context to the Application, the Ticknor Affidavit is admissible on this judicial review.

[37] Quite simply put, that is not the case before me. The Desilets Affidavit is expert opinion evidence, and nothing more. There is absolutely no authority for the admission of expert opinion evidence on a judicial review. EPL did not seek to have Ms. Desilets qualified as an expert. None of the above noted exceptions apply, and the Desilets Affidavit is inadmissible in this judicial review.

[38] In addition, even if the Desilets Affidavit were admissible, it is irrelevant. The opinion evidence proffered therein does not cover any areas or issues that this Court can consider on this judicial review.

[39] As a result, the Desilets Affidavit is inadmissible and struck from the record. Even if it were admissible, I would give it no weight and have no regard to it as it is irrelevant to the matters I must determine.

B. Are portions of the Budget and Bylaws *ultra vires*?

a) Arguments of the Applicant, EPL

[40] EPL argues that the Bylaws and the Budget raise a substantial tax for the purpose of transferring the money to Flagstaff's reserve funds for a future non-defined use without statutory authorization. As a result, it argues that the taxes are unlawful under the governing statutes.

[41] EPL states that the law in Canada is that legislatures are presumed not to delegate taxation authority, unless such authority is expressly granted. It argues that the *MGA* provides no authority for Flagstaff to levy taxes outside of its budgeting requirements for their operating and capital budgets for that year, and that raising taxes to enrich Flagstaff's reserve funds for an undefined future purpose falls outside of its statutory authorization. It says that there is neither express nor necessarily incidental authorization for Flagstaff to do what it has been doing.

[42] EPL points out that taxes for reserves are the second largest line item in the Budget, at 14%. It notes that the amount held in the reserve funds has grown to over \$75,000,000 and far exceeds Flagstaff's annual needs. EPL says this places an undue financial burden on it, as a party who is subject to the highest tax rates in Flagstaff.

[43] EPL frames the issue as this: the legality of the Bylaws must begin and end with an assessment of whether the Legislature granted Flagstaff authority to tax for the purpose of growing reserve funds. This is based on the fundamental propositions that Flagstaff, as a creature of statute, only has jurisdiction over a subject matter if the province delegates it via legislative enactments: citing *Auer* and *114957 Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town)*, 2001 SCC 40.

[44] Further, EPL argues that jurisdiction is more difficult to delegate where no express power is granted and where the authority sought to be implied is significant. In support of this proposition, it relies on *Canadian Natural Resources Limited v Fishing Lake Metis Settlement*, 2024 ABCA 131 at para 70 [CNRL], where the Court of Appeal addressed whether the *Metis Settlements Act* permitted the General Council to pass taxation bylaws which discriminated against the applicant based on their settlement status.

[45] EPL argues that there are high standards of interpretation when determining when the power to tax individuals has been delegated. It relies on the decisions in *Gruen Watch Co of*

Canada Ltd v Attorney-General of Canada, 1950 CanLII 77 (ON SC) at 438 [*Gruen Watch*] and *Ontario English Catholic Teachers' Assn v Ontario (Attorney General)*, 2001 SCC 15 at para 77 [*Ontario Teachers*]. It points to the result in *Van Raay Paskal Farms Ltd v County of Lethbridge*, 2017 ABQB 274 [*Van Raay Paskal*], aff'd 2019 ABCA 19, leave to appeal to SCC refused, 38557 (8 August 2019), where in interpreting Part 5 of the *MGA*, this Court found a proposed special tax by the County *ultra vires*.

[46] EPL focuses on Parts 8 and 10 (financial administration and taxation) of the *MGA*. It argues that when the budgetary sections (ss 242, 243, 245, 247 and 248) are analysed, the ability to tax for prospective municipal reserves is not clearly delegated. Section 353, the provision related to property tax bylaws, reinforces this conclusion. Further, it notes that other provinces have enacted more express provisions for municipalities to establish and maintain reserve funds, such as British Columbia, Manitoba, Nova Scotia, Prince Edward Island, New Brunswick and Ontario. These provinces, it says, strictly control the use of reserve funds, constraining them to specific purposes for which the municipality already has authorization to act upon within the enabling legislation.

[47] At the heart of EPL's argument lies the proposition that in examining the rationale of the taxation scheme set out in the *MGA*, it is apparent that the Legislature circumscribes the authority of municipalities to levy taxes to anticipated expenditures, transfers and requisition set out in an annual budget. It further argues that the limitations are evidenced in the wording of section 353(1), which specifically authorizes the raising of "revenue to be used toward the payment of" expenditures, transfers and requisitions set out in the budget. It notes that "expenditures" is not defined in the *MGA* but argues that a plain meaning of that word is "an outlay of money" which it interprets as money spent on something. "Transfer" is also not defined, but can be understood, in its view, in the context of municipal finance, which involves intergovernmental transfers along with transfers between operating to capital budgets.

[48] EPL's interpretation of the *MGA* contemplates that operating and capital budgets, which must be passed annually, may only set out expenditures that are budgeted for that fiscal year. It argues that municipalities, such as Flagstaff, may only operate based on anticipated yearly needs, not unknown or prospective needs. According to EPL, a "general power to collect taxes for an unknown or unplanned future contingency cannot be said to be incidental to this purpose."

[49] EPL says that this conclusion is reinforced by the presence of the special tax bylaw powers contained in Division 5 of Part 10 of the *MGA*. It argues that had the Legislature intended to grant the power it says is being exercised by Flagstaff in this case, it would have passed provisions similar to those found in Division 5 with respect to municipal reserves. Because the central function for reserve funds is that money is being held beyond the needs of the fiscal taxation year, and because the *MGA* does not expressly contemplate such a circumstance, the Budget and the Bylaws are *ultra vires*.

[50] In support of this, EPL cites case law that it argues shows that municipal statutes are generally interpreted to limit prospective taxation powers. It relies heavily on the decision in *Paul's Restaurant Ltd v Victoria (Corporation of City)*, 1991 CanLII 322 (BC SC) [*Paul's Restaurant*] and a case that follows it.

[51] When the Budgets and Bylaws are analysed, according to EPL, the reserve funds are a prospective tax meant to grow Flagstaff's reserve funds for future contingencies. It notes that the Bylaw budgeted \$3,757,050 for the purpose of placing this revenue into reserves, describing

them as “budgeted expenditures”, with no description of the purpose of the reserve fund or when the funds would be expended.

[52] EPL argues that these funds are being placed in reserve funds “for a non-defined future use without any plan whatsoever”, are not incidental to expenditures or raised for capital budget requirements. It says these funds cannot be said to be a “transfer” within the meaning that it asserts should be attributed to that word under the *MGA*. Any other interpretation, EPL states, would bestow endless taxation authority so long as a municipality transfers the money in some fashion. It distinguishes this from capital budgeting, and from a municipality’s ability to budget for future expenditures for projects not anticipated to be completed in a fiscal year, but for which it is committed to paying.

[53] EPL concedes that there is a permissible reserve fund power under the *MGA*, which is necessarily incidental to the purpose of taxation powers. That is the ability of a municipality to transfer “true surplus” revenues that exist after all expenditures, transfers and requisitions are made for a given year, citing *Telus Communications Inc v Opportunity (Municipal District No 17)*, 1998 ABQB 895 at paras 38-43 [*Telus*]. This is to be distinguished, it says, from the Bylaws and Budget, which levy taxes designed to produce a surplus for future expenditures.

b) Arguments of the Respondent, Flagstaff

[54] Flagstaff argues that the reasonableness standard of review requires judicial restraint and deference. Municipal bylaws benefit from a presumption of validity, and the burden is on EPL to show that the Bylaws and the Budget are not reasonably within the scope of Flagstaff’s authority under the *MGA*.

[55] The governing statutory scheme is usually the most salient aspect of the legal context relevant to a particular decision. The statute and case law show that the authority to allocate funds for municipal reserves is either express or necessarily implied throughout the *MGA*. Flagstaff argues that in the *MGA*, the Legislature has given municipalities broad authority to raise funds to pay for any program or policy approved by Council, which can certainly include allocating funds to reserves to deal with future contingencies and infrastructure outlays. It points to s 243(2)(h) in this regard, which it says explicitly refers to reserve funds and mandates municipalities to include transfers from reserves in their operating budget.

[56] Flagstaff strongly resists the argument that it has raised funds for an “undefined purpose” via its reserve fund allocations. It indicates that it has been clear about the purposes for its reserves, passing a Reserve Policy in 2021 (“**Reserve Policy**”).

[57] The Reserve Policy sets out the various reserves created, and procedures governing allocating funds to reserves or drawing from them. Flagstaff also argues that the Budget and related documents explain the purposes of the reserves, which it says align with proper municipal principles set out in the *MGA*. It also argues that in approving the Bylaws and the Budget, it relied on documents, such as the Rural Municipalities of Alberta document, *Understanding Municipal Reserves*, November 2019 (“**RMA UMR**”), which explain that reserves are essential for proper municipal fiscal planning, given that municipalities like Flagstaff are required to develop multi-year operating and capital plans.

[58] Flagstaff argues that as a starting point, the *MGA* must be interpreted in the context of the principles elucidated in the case law along with the purposes stated in s 3 of the *MGA*. It states

that “so long as reserves are raised for proper municipal objectives, they are within the municipality’s jurisdiction.”

[59] Flagstaff interprets s 243 of the *MGA* as requiring it to budget and raise revenue for any policy or program requiring funding. It points to its Reserve Policy, which contemplates the creation and allocation of funds to reserves so long as they are for certain purposes. It also argues that EPL’s casting of s 243 as narrowly prescribing items that may be included in an operating budget is inaccurate and is an unreasonable reading of the *MGA*.

[60] As noted, Flagstaff also points to s 243(2)(h), which specifically states that an operating budget must include the estimated amount of each of the enumerated sources of revenue and transfers, which includes transfers from the municipality’s accumulated surplus funds or reserves. This section, it argues, proves its power to establish and transfer funds into reserves. Flagstaff points out that accepting EPL’s interpretation of the *MGA*, and particularly this section, requires the Court to ascribe the same meaning to “reserves” and “accumulated surplus”, which violates the presumption against tautology. It would render the word “reserves” superfluous or meaningless. It notes that if an operating budget must include particulars of any transfers out of reserves to pay for things, a municipality must be permitted to pay funds into those reserves in the first place. This is not the same thing as an accumulated surplus.

[61] Flagstaff also argues that EPL’s proposed interpretation of s 248 of the *MGA* is incorrect. On the express wording of the section, municipalities are not limited to expenditures contained in a budget but can make expenditures “otherwise approved by council” as well as for an emergency or that are legally required to be paid. This means not only can it approve expenditures that are not contained in a budget by resolution, but also that those expenditures could be paid out of reserves. Otherwise, municipalities would have no way to cover unexpected expenses as they arise. In addition, it notes that the reserve transfers which EPL complains of are authorized in the Budget.

[62] Section 283.1 of the *MGA* requires Flagstaff to develop long term financial and capital plans. From this, Flagstaff indicates that it is reasonable to imply that councils can also raise funds for reserves to pay for long term expenses, including long term capital expenses. This, it says, is supported by the text of the RMA UMR.

[63] Section 353 of the *MGA* requires municipalities to pass a property tax bylaw each year. Flagstaff argues the text of this provision authorizes councils to generate revenue to pay for expenditures and transfers in the budget and requisitions. Because the transfers to reserves are in the Budget, they are authorized by the *MGA*. Flagstaff points out that other sections of the *MGA* show that where the broad power of taxation under s 353 is intended to be limited, the *MGA* specifically speaks to those limitations, relying on ss 354, 357.1 and 358.1(2).

[64] Flagstaff relies on its Reserve Policy to explain the various purposes for which reserves may be used. Namely, the Reserve Policy aligns with the *MGA* and sets out purposes for reserve funds which are consistent with the *MGA*’s intent and purpose ((i.e. to save for future infrastructure, equipment, and other requirements; to provide a degree of financial stability by reducing the temporary impact of unforeseen, non-reoccurring, emergent events and to stabilize the effect of tax and utility rate increases).

[65] Flagstaff also takes issue with EPL’s suggestion that the reserves in question are collected and allocated without any legal or regulatory oversight, noting that they are collected

pursuant to the Budget and Bylaws passed by elected officials who are accountable to their electorate. Flagstaff argues that *Bergman v Innisfree (Village)*, 2018 ABQB 326 [*Bergman 2018*] clearly illustrates municipalities' broad authority with respect to property taxes and points out that the tax rates in this case are not as high as those in *Bergman 2018*, which were found to "fall within a reasonable range of outcomes": para 60. EPL, it says, takes issue with the fact that it must pay property taxes that may be indirectly used to fund municipal reserves. This, at base level, is a disagreement with the policy basis, rationale and justification for the rates and is not appropriate for judicial review.

[66] Flagstaff factually takes issue with EPL's allegation that the reserves are for "undefined purposes", pointing to the Budget and other financial evidence in the CROP that shows that:

- (a) There are capital reserves for items such as bridges, relating to estimated bridge and culvert replacement forecasts which extend as far as 2077;
- (b) There is a ten-year water infrastructure reserve to be phased in over that time period to properly fund water infrastructure;
- (c) Transfers are made to the Mill Rate stabilization reserve, due to Flagstaff's anticipation, based upon reporting, that there would be significant volatility and risk in property tax revenue in the future, beginning with decline in 2021; and
- (d) Other purposes stated in the materials include replenishing Fire Capital, which had been completely drawn down, Flagstaff's broadband internet project, general equipment, and other public works;

all of which are proper municipal purposes articulated in s 3 of the *MGA*.

[67] Overall, Flagstaff argues that reserves serve an important contingency purpose in the event of an unforeseen infrastructure failure or emergency, and they are an important alternative to debt. Compared to debt, which incurs interest charges, reserves generate revenue via earned interest until they are used.

[68] When the entire CROP and legislative context are considered, Flagstaff argues that EPL has failed to show that its interpretation and implementation of the *MGA* was unreasonable in enacting the Bylaws and approving the Budget.

c) Analysis

[69] I am extremely cognizant of this Court's role in this review, as set out in this decision. The Court must not step into the domain of the legislative branch of government, even at the municipal level, on a judicial review of *vires*. In that sense it is not my role to assess whether the consequences of the Bylaws and Budget are necessary, desirable or wise: *Auer* at para 58. It is my role to assess whether, based on the standard of review set out above, the Bylaws and Budget fall within a reasonable interpretation of the *MGA* with respect to Flagstaff's ability to collect property taxes and allocate a portion of the taxes collected to reserves.

i. Relevant Provisions of the *MGA*

[70] I start first with the relevant provisions of the *MGA*. To assist in understanding the legislative framework, s 3 sets out the purposes of the municipality, which inform all municipal functions. That section indicates that the purposes are:

- (a) to provide good government,

- (a.1) to foster the well-being of the environment,
- (a.2) to foster the economic development of the municipality (I note that this subsection was added May 31, 2022 when the *Red Tape Reduction Statutes Amendments Act, 2022*, SA 2022 c 16 (“*RTRSAA*”) was declared in force.),
- (b) to provide services, facilities or other things that, in the opinion of council, are necessary or desirable for all or a part of the municipality,
- (c) to develop and maintain safe and viable communities, and
- (d) to work collaboratively with neighbouring municipalities to plan, deliver and fund intermunicipal services.

[71] Further, s 5 indicates that the powers, duties and functions of a municipality include not only those in the *MGA*, but also those set out in other enactments. A municipality has natural person powers except as limited by the *MGA* or any other enactment: s 6.

[72] Section 7 of the *MGA* is the base section for the power to pass bylaws in furtherance of its municipal purposes. EPL does not challenge the right of Flagstaff to pass the Bylaws; it challenges those portions of the Bylaws that purport to collect, as property tax, amounts allocated to reserves.

[73] Section 242 of the *MGA* now requires Flagstaff to adopt an operating budget by January 1 of each calendar year:

- 242(1) Each council must adopt an operating budget for each calendar year by January 1 of that calendar year.
- (2) A council may adopt an interim operating budget for part of a calendar year.
- (3) An interim operating budget for a part of a calendar year ceases to have any effect when the operating budget for that calendar year is adopted.

[74] Section 242(1) was amended slightly by the *RTRSAA*. Prior to May 31, 2022, that section stated “[e]ach council must adopt an operating budget for each calendar year.”

[75] Section 243 sets out the mandatory contents of an operating budget:

243(1) An operating budget must include the estimated amount of each of the following expenditures and transfers:

- (a) the amount needed to provide for the council’s policies and programs;
- (b) the amount needed to pay the debt obligations in respect of borrowings made to acquire, construct, remove or improve capital property;
 - (b.1) the amount of expenditures and transfers needed to meet the municipality’s obligations as a member of a growth management board;
- (c) the amount needed to meet the requisitions or other amounts that the municipality is required to pay under an enactment;

- (c.1) the amount of expenditures and transfers needed to meet the municipality's obligations for services funded under an intermunicipal collaboration framework;
 - (d) if necessary, the amount needed to provide for a depreciation or depletion allowance, or both, for its municipal public utilities as defined in section 28;
 - (e) repealed 2022 c16 s9(54) (this is the *RTRSAA*);
 - (f) the amount to be transferred to the capital budget;
- (2) An operating budget must include the estimated amount of each of the following sources of revenue and transfers:
- (a) property tax;
 - (b) business tax;
 - (c) business improvement area tax;
 - (c.1) community revitalization levy;
 - (d) special tax;
 - (e) well drilling equipment tax;
 - (e.1) clean energy improvement tax;
 - (f) local improvement tax;
 - (f.1) community aggregate payment levy;
 - (g) grants;
 - (h) transfers from the municipality's accumulated surplus funds or reserves;
 - (i) any other source.

[76] I pause here to again mention the *RTRSAA*. Neither party argued the contents of the *MGA* as they existed at the time the Bylaws or Budget were passed. Of course, the reasonableness review I undertake in relation to the Bylaws and Budget must be in relation to the statute as it stood at the time Flagstaff brought them into force, and not as it stands today. Section 243(1)(e) of *MGA* was repealed by the *RTRSAA* when it was proclaimed in force on May 31, 2022. However, prior to that date, that subsection stated "(e) the amount to be transferred to reserves."

[77] The 2021 budget (which has not been formally challenged in this judicial review) was passed by Flagstaff via resolution FC20210127.1002 on January 27, 2021. The 2021 Bylaw was passed on April 28, 2021. The Budget was passed via resolution FC20210922.1002 on September 22, 2021. The 2022 Bylaw was passed on April 27, 2022. Therefore, when the Bylaws and Budget at issue were approved by Flagstaff, the now repealed section 234(1)(e) was in force (this is so for all other amendments made to the *MGA* by the *RTRSAA*). This subsection required Flagstaff to specifically outline in its operating budget the amount "to be transferred to reserves."

[78] Like operating budgets, a municipality such as Flagstaff is required to adopt a capital budget for the year by January 1 of that calendar year: *MGA*, s 245. This section was also amended by the *RTRSAA*. Prior to May 31, 2022, it stated: “[e]ach council must adopt a capital budget for each calendar year.”

[79] Section 246 of the *MGA* sets out the contents of the capital budget:

246 A capital budget must include the estimated amount for the following:

- (a) the amount needed to acquire, construct, remove or improve capital property;
- (b) the anticipated sources and amounts of money to pay the costs referred to in clause (a);
- (c) the amount to be transferred from the operating budget.

[80] Section 247 stipulates that no municipality may pass a property tax bylaw or business tax rate bylaw in respect of a year unless the operating and capital budget for that year have been adopted by council or established by the Minister under s 244.

[81] Section 248 outlines when a municipality may make an expenditure. That section states in part:

248(1) A municipality may only make an expenditure that is

- (a) included in an operating budget, interim operating budget or capital budget or otherwise authorized by the council,
- (b) for an emergency, or
- (c) legally required to be paid.

(2) Each council must establish procedures to authorize and verify expenditures that are not included in a budget.

[82] Councils can adopt an annual budget in a format consistent with their financial statements: *MGA*, s 248.1.

[83] Municipalities are also obligated to prepare a written plan regarding anticipated financial operations and capital property additions over the next three and five financial years, respectively: *MGA*, s 283.1.

[84] Section 353 addresses the requirement of a municipality to pass a property tax bylaw annually. That section states in part:

353(1) Each council must pass a property tax bylaw annually.

(2) The property tax bylaw authorizes the council to impose a tax in respect of property in the municipality to raise revenue to be used toward the payment of

- (a) the expenditures and transfers set out in the budget of the municipality, and
- (b) the requisitions.

[85] I find further guidance from Part 15.1 of the *MGA* “Regional Services Commissions”, which was not raised by the parties. This Part was added to the *MGA* in 2020. It permits two or

more municipal authorities to jointly establish a commission by passing resolutions. Commissions are corporations governed by a board: *MGA*, ss 602.05, 602.06.

[86] The *MGA* sets out the rights and powers of commissions, including financial matters. The sections largely mirror the sections that apply to municipalities. However, one important difference is that commissions do not have powers of taxation under the *MGA*.

[87] For example, s 602.23 requires a commission to adopt an operating budget. It states:

602.23(1) A commission must adopt an operating budget for each calendar year.

(2) An operating budget must include the estimated amount of each of the following expenditures and transfers:

- (a) the amount needed to enable the commission to provide its services;
- (b) the amount needed to pay the debt obligations in respect of borrowings made to acquire, construct, remove or improve capital property;
- (c) if necessary, the amount needed to provide for a depreciation or depletion allowance, or both, for any public utility the commission is authorized to provide;
- (d) the amount to be transferred to reserves;
- (e) the amount to be transferred to the capital budget;
- (f) the amount needed to recover any shortfall as required under section 602.24.

(3) An operating budget must include the estimated amount of each of the following sources of revenue and transfers:

- (a) fees for services provided;
- (b) grants;
- (c) transfers from the commission's accumulated surplus funds or reserves;
- (d) any other source of revenue.

(4) The estimated revenue and transfers under subsection (3) must be at least sufficient to pay the estimated expenditures and transfers under subsection (2).

(5) The Minister may make regulations respecting budgets and that define terms used in this section that are not defined in section 602.01.

[88] Section 602.25 of the *MGA* addresses capital budgeting for commissions and expressly states that ss 245 and 246 apply to commissions. Annual budgets are dealt with in a similar fashion to municipalities: *MGA*, s 602.27.

[89] Section 602.23(2)(d) has not been repealed in the same fashion as s 243(1)(e). At the time of this decision, it remains in the *MGA*. There is no doubt that as respects commissions, both transfers in and out of reserves are mandatory items in a commission's operating budget.

ii. Reasonableness Analysis of the Bylaws and the Budget

[90] EPL only takes issue with Flagstaff's ability, via the Bylaws and Budget, to collect funds to be transferred to reserves under the auspices of its powers of property taxation under the *MGA*.

[91] The *MGA* requires municipal councils, in this case Flagstaff, to pass budgets and property tax bylaws. While the *MGA* prescribes the way property taxes are to be structured and levied, the *uses* to which property taxes collected under s 353(1) of the *MGA* may be put are very broad. Section 353 clearly indicates that property taxes, once collected, are to be used towards the payment of "the expenditures and transfers set out in the budget of the municipality" and "the requestions". This is critical, because, as I note below, EPL seems to conflate the structure and collection of property tax under the *MGA* (which it has not challenged) with the uses to which collected property taxes may be put.

[92] As noted, EPL's argument focussed on the definitions of "expenditures" and "transfers" in s 353(2)(a). It argued that "expenditure", on a plain meaning, means "an outlay of money", citing *Kelly v Pritpal Dillon & Rons Backhoe Ltd*, 1999 CanLII 6398 (BCSC) at para 10. This is a reasonable interpretation, which I accept, when considered in the context of the *MGA* and is consistent with the definition ascribed in major dictionaries: see e.g. *Merriam-Webster Dictionary* (online), *sub verbo* "expenditure"; *Cambridge Dictionary* (online), *sub verbo* "expenditure".

[93] However, it attempted to argue a narrow interpretation of the word "transfers" as involving only intergovernmental transfers along with transfers between operating and capital budgets. This interpretation is too narrow and tautological. It is also tied to EPL's tautological interpretation of s 243(2)(h) of the *MGA*. It fails to provide meaning to Flagstaff's ability to transfer funds into, and out of, reserves, which is something expressly contemplated by the *MGA*.

[94] Reading the words in their entire context and in their grammatical and ordinary sense harmoniously with the *MGA*'s scheme and object, and the Legislature's intention, the common meaning and definition of transfers must be applied to give proper meaning to the relevant provisions of the *MGA*. The common meaning of transfers is "to convey from one person, place, or situation to another" or "to move someone or something from one place, vehicle, person, or group to another": *Merriam-Webster Dictionary* (online), *sub verbo* "transfer"; *Cambridge Dictionary* (online), *sub verbo* "transfer".

[95] I also agree with Flagstaff that to give meaning to s 243(2)(h), a different interpretation must be given to the words "surplus" and "reserves". They are not the same thing, and the Legislature is presumed to have included both words for a reason.

[96] Surplus funds must mean those funds that are not actually required in the fiscal year for the line items allocated to them in the operating or capital budgets. This is also consistent with a plain meaning interpretation of surplus, which means "the amount that remains when need or use is satisfied" or "(an amount that is) more than is needed": *Merriam-Webster Dictionary* (online), *sub verbo* "surplus"; *Cambridge Dictionary* (online), *sub verbo* "surplus".

[97] Patrice C Noe & Allan C Ross, *The Law of Municipal Finance* (LexisNexis, 2004) at 4 states that reserve funds are "segregated special purpose funds established either by council or required by provincial legislation, to isolate and account for moneys related to specified restricted uses. These funds also extend beyond one fiscal year."

[98] This is broadly consistent with the dictionary definition of “reserve”: see *Merriam-Webster Dictionary* (online), *sub verbo* “reserve”; *Cambridge Dictionary* (online), *sub verbo* “reserve”.

[99] It also accords with the purposes of municipal reserves set out in the RMA UMR document, which notes at 2 that:

- Municipalities are not permitted to run deficit budgets, so reserves allow municipalities to save money for major infrastructure projects while abiding by their legislated financial management requirements;
- While municipalities can finance capital projects through debt, the amount of debt municipalities may incur is limited. Additionally, due to interest requirements, debt results in higher costs for municipalities and less efficient use of tax dollars; and
- Municipalities are required to develop three-year operating and five-year capital plans. The development of long-term planning requires that municipalities have the ability to set aside funds for use on major projects in future years.

[100] The RMA UMR also goes on to explain that:

Because municipalities have limited revenue sources (primarily property taxes/user fees and grants provided by other levels of government), and limited ability to take on debt to finance large-scale projects (municipalities are limited to accumulating debt in the amount of 1.5 times their revenue), a common approach for municipalities to finance large-scale projects is to gradually set aside a small portion of their revenues over multiple years to pay for major infrastructure projects. This approach minimizes the use of financing, which allows municipalities to stay within debt limits and ultimately saves municipal taxpayers money by reducing interest costs. In a municipal context, funds set aside for such projects are known as “reserves.”

Put simply, financial reserves are a means to pay for the construction or purchase of assets in the future, and to fund asset depreciation to ensure aging infrastructure can be maintained to continue providing necessary levels of service. The *Municipal Government Act* (MGA) does not specify any requirements or restrictions related to accumulating or managing reserves. Basically, municipal councils may set aside whatever proportion of revenues they choose as reserves for whatever purpose they see fit. Municipalities will often pass a council policy establishing what types of reserves may be established, how reserve creation, funding and withdrawals are to occur, if and how reserve funds can be redesignated, and other related administrative processes.

[101] On balance, I agree that EPL’s proposed interpretation violates the presumption against tautology. To accept EPL’s argument would render the word “reserves” superfluous or meaningless and is inconsistent with the legislative taxation scheme and purpose of the *MGA*. I find that the use of the word “reserves” in the *MGA*, and in particular s 243(2), indicates those funds allocated as such in the required financial and other documents (such as the Bylaws and the Budget in this case) are to be held for a particular purpose as needed at a particular time by the municipality, in this case, Flagstaff.

[102] In addition to the power to raise property taxes set out in s 353(1), s 243 clearly contemplates the transfer of revenues to reserves and the transfers from reserves in operating budgets. It expressly required Flagstaff to include transfers to and from reserves in its operating budget.

[103] Flagstaff reasonably interpreted and complied with the legislation. Its operating budget set out the allocations to be directed both to and from reserves. It collected property taxes in accordance with the statute and allocated a portion of those tax revenues to reserves as set out in the Budget. It has a policy in place for the management of reserves (the Reserve Policy).

[104] This result is only reinforced by the other extant provisions in the *MGA*, and the entire structure and plain reading of the sections I have outlined above. In particular, it is reinforced by Flagstaff's ability to discharge its functions under s 3, its ability to authorize expenditures under s 248 and the requirement to engage in longer term financial and capital planning under s 283.1. This interpretation is also consistent with the provisions related to commissions, which are constituted by municipal authorities.

[105] I believe the authority to do that which Flagstaff has done in the Bylaws and Budget seems plain on the face of the legislated provisions in the *MGA*. If I am wrong on that point, Flagstaff's authority arose by necessary implication because where a statute permits something, it impliedly permits all the necessary powers to perform that act: *CNRL* at para 64. This of course attracts a high threshold. It cannot be done on a judicial whim. The test to be met before provisions may be added requires so strong a probability of intention that an intention contrary to that which is imputed by the statute can not be supposed: *CNRL* at para 65, citing *R v RJH*, 2000 ABCA 111 at para 27. I find that to be the case before me. The entire framework of the *MGA* and the admissible evidence before me support such an interpretation. The opposite result would render the express wording of the statute meaningless.

[106] This case is unlike *Telus*, relied on by EPL, where, on its face, the bylaw in issue resulted in the municipality collecting more revenue than necessary for its budget. The Court in *Telus* noted at paras 42-43 that:

[42] Budgets are estimates only, and it is inevitable that actual revenues and expenditure will never precisely match the estimates for reasons such as the non collection of taxes due to default or appeals, final grant monies received and final expenditures being often different from estimates, etc.

[43] Accordingly, implicit contingencies and reserves are inherent factors within the estimates as a prudent and common budgeting practice. This is consistent with s. 243(3) of the *Municipal Government Act* which provides that the revenue portion of the operating budget must be "at least sufficient" to pay the estimated expenditures, simply a common sense requirement.

[107] This reasoning is not inconsistent with my reasoning and the outcome in this case, even though it was decided on different facts and a different version of the *MGA*.

[108] I note that while EPL pointed to the statutes in other provinces and what their legislatures have done with respect to reserves, I am called upon here to interpret the *MGA* in accordance with the applicable standard of review. The contents of the other statutes referred to do not change my decision in this regard.

[109] As I have noted, EPL at times conflated the ability to *collect* property taxes with the ability to *allocate* property taxes to purposes or uses, such as reserves. There is no doubt that the *MGA* expressly permits Flagstaff to collect property taxes. To the extent specific delegation of the taxation power is in issue, that requirement is met by s 353 of the *MGA*. This finding is consistent with cases relied on by EPL such as *Gruen Watch* at 438, cited approvingly in *Ontario Teachers* at para 77; *Steam Whistle Brewing Inc v Alberta Gaming and Liquor Commission*, 2019 ABCA 468 at para 116; *JTI-MacDonald Corp v Alberta*, 2016 ABCA 28 at para 19.

[110] The power to allocate some of the revenues from those taxes to reserves is expressly indicated in the *MGA*, via the operation of the sections outlined in this decision. It also arises by necessary implication. The crux of EPL's argument is not that there is no power to collect the tax; it is that there is no power to allocate the revenue in the way Flagstaff has. These are different things, and in any event, are permitted by the statute.

[111] *Van Raay Paskal*, the pre-*Vavilov* and *Auer* case relied on by EPL, does not assist it. In fact, in that case, one of the issues was whether the municipality had properly assessed the ability to issue business taxes in accordance with the *MGA*. The Court, using many of the same interpretation principles which I have applied here, found it did. That portion of the decision was upheld by the Court of Appeal. In that sense, *Van Raay Paskal* confirms the result here.

[112] The remainder of *Van Raay Paskal* was not appealed. That is the portion relied on by EPL. It concerned only the specific tax that was proposed under the special tax provisions in the *MGA*. The special tax bylaw did not comply with how the taxation power was delegated in the *MGA*. The *ratio* on this issue is found at para 52 of *Van Raay Paskal*. It notes that the special tax bylaw in issue was not valid because it does not reflect the specific service or purpose the County was trying to accomplish using the special taxing provisions. That is quite simply not this case.

[113] EPL also relies on *Paul's Restaurant*, which is fully distinguishable, legally and factually. In that case, the petitioners sought declaratory relief related to the City of Victoria purporting to exercise its power of taxation for the 1994 Commonwealth Games. In 1990, Victoria raised \$300,000 for expenditures required in 1994 for the Games. The main complaint was that a portion of the funds raised by the City in the 1990 taxation year was for the purpose of meeting the City's share of the costs of running the Games in 1994. They argued this portion constituted a prospective tax and was therefore unlawful.

[114] Two important propositions were undisputed by any of the parties in that case. First, the City of Victoria cannot raise taxes prospectively, or retrospectively. Second, any excess in revenues over expenditures for a taxation year is to be carried forward as general revenue for the following year.

[115] In *Paul's Restaurant*, the Court interpreted the *Municipal Act*, RSBC 1979 c 290, which is a very different statute than the *MGA*. Relying on the provisions in the *Municipal Act*, the undisputed concessions by the parties, and authority from 1852 regarding retrospective and prospective taxation (*Hawkins v The Municipal Council of Huron, Perth, and Bruce*, (1852) 2 UCCP 72 at 113) the Court found that “[u]ncollectable and uncollected taxes are the only surplus items that the City may plan and budget for.”

[116] *Paul's Restaurant* was decided over 30 years ago. It interprets a completely different statutory regime, in a different province, at a very different time. It is of little assistance to this Court as to whether the *MGA* can reasonably be interpreted as allowing Flagstaff to collect funds to transfer to reserves as a part of its power to collect property taxes. *Re Finlay Forest Industries Ltd*, 1991 CanLII 462 (BCSC), relied on by EPL, is distinguishable for the same reasons. The *MGA* operates in a different time and space.

[117] Considering the broader legislative scheme, the *MGA*'s intent and purposes, and the applicable standard of review, Flagstaff reasonably interpreted the *MGA* as enabling it to allocate portions of collected property taxes to reserve funds in the Bylaws and Budget, and I will not interfere with its decisions in that regard. Nor do I agree that this interpretation means that Flagstaff is collecting taxes for an "unknown and unplanned future contingency" as argued by EPL. The CROP before me shows that in addition to the statutorily required financial documents set out in the *MGA*, Flagstaff has a framework built around its reserve funds and has clearly and transparently delineated how these funds are intended to be used, transparently reporting to its electorate.

[118] Flagstaff adopted an interpretation of their authority that is consistent with other legislation and applicable common law principles: *Auer* at para 63. Its interpretation is consistent with the text, context and purpose of the enabling statute. Flagstaff interpreted the scope of its authority in accordance with the modern principle of statutory interpretation: *Auer* at para 64.

[119] It is not lost on the Court that the relief EPL seeks would have the effect of turning municipal finance, funding, and strategic planning for Flagstaff (and potentially other municipalities in this province) on its head. In the absence of the requisite legal grounds for this Court to intervene, that is not the Court's role. That is within the Legislature's jurisdiction.

[120] Although not directly relevant to this judicial review, I provide some brief comments on the repeal of section 243(1)(e) of the *MGA* by the *RTRSAA*. The amendment, contained in a statute aimed at the removal of red tape in enactments, simply removes the requirement for the municipality, after May 30, 2022, to specifically include in its operating budget "the amount to be transferred to reserves". The amendment, in my view, does not bar the use of reserves by municipalities in Alberta, and does not impact my analysis. While no longer mandatory in an operating budget under section 243 (i.e. in years where no transfers to reserves are contemplated), an operating budget must nonetheless include particulars of any anticipated transfers in (or out) of reserves to comply with s 353(2).

[121] If this amendment had been in place at the time the Budget and Bylaws were enacted, my interpretation, and the outcome of this case, would have been the same.

[122] This ground of review is dismissed.

C. Do the Bylaws and the Budget discriminate against EPL?

a) Argument of the Applicant, EPL

[123] EPL also argues that it is subject to the highest tax rate in Flagstaff. As the owner of property falling under the non-residential and machinery and equipment class, it argues that the reserve scheme is supported and largely enabled by the tax burden imposed on it and others in the same tax class. As a result, the Bylaws and the Budget are unduly discriminatory.

b) Argument of the Respondent, Flagstaff

[124] Flagstaff, on the other hand, counters that it is not discriminatory for it to establish different tax rates for different classes of assessable property. It points out that s 297(1) of the *MGA* creates four classes of assessable property. Residential and non-residential classes may be divided into subclasses per ss 297(2) and 297(2.1), and s 354(3) expressly permits Flagstaff to set different tax rates for each assessment class. This, Flagstaff argues, is not discriminatory. In relation to EPL, Flagstaff notes that it pays the same tax rate as all other similarly situated properties within the county. Flagstaff states that it has a high degree of democratic and public accountability, via the records contained in the CROP and as required by the *MGA*, and that at base, EPL's arguments are not properly subject to judicial review as they are within the purview of the electorate in Flagstaff.

c) Analysis

[125] EPL did not press this point too firmly. There is good reason for that. EPL is not discriminated against vis-à-vis other property holders in the same class. It does not contest that Flagstaff, under the *MGA*, can establish different tax rates for different classes of assessable property, which it has done. It seems to be arguing that because non-residential machinery and equipment classed property owners are subject to higher tax rates than owners of other classes of assessable property in the municipality, they end up paying a greater proportion of the amounts of the collected property tax and thereby pay a greater proportion of the amounts transferred by Flagstaff into its reserves. It may be that because of the amount of property it owns and the way it is classed for taxation purposes, it pays the highest dollar value in property tax. However, as noted by Flagstaff, this is something that is expressly authorized by the *MGA*. I agree.

[126] There is no doubt that regulatory distinctions must be authorized by statute, either expressly or by necessary implication: *Forget c Québec (Procureur général)*, [1988] 2 SCR 90 at 106-107, cited in *Katz Group* at para 47. Further, *CNRL*, relied on by EPL, states the following at paras 22-23:

[22] Administrative discrimination is fundamentally different than discrimination in a human rights context. It is concerned with unequal effects of subordinate or delegated legislation as between persons who are similarly situated: John Mark Keyes, *Executive Legislation*, 3rd ed (Toronto: LexisNexis Canada, 2021) at 371; *TransAlta Generation Partnership v Alberta (Minister of Municipal Affairs)*, 2022 ABCA 381 [*TransAlta*] at para 86, leave to appeal to SCC granted, 40570 (26 October 2023). As explained by Beetz J in *Montréal v Arcade Amusements Inc*, 1985 CanLII 97 (SCC), [1985] 1 SCR 368 [*Arcade Amusements*] at 406, “discrimination” is meant “in the nonpejorative [and] most neutral sense of the word”—discrimination encompasses distinctions, even if they are “perfectly rational or reasonable in the ... political sense, and [were] conceived and imposed in good faith, without favouritism or malice”.

[23] Delegated or subordinate legislation will be *ultra vires* not simply because it is discriminatory, but because such discriminatory distinctions have not been authorized by the empowering statute. The central question therefore is whether the discrimination is within the ambit of the delegated power provided by the enabling statute....

[127] *CNRL* is of no assistance to EPL here. There is no discrimination against EPL in the manner addressed in the case law.

[128] Flagstaff does not discriminate against EPL, or any owner of property of the class owned by EPL, by allocating funds from property tax paid to reserve funds. Flagstaff is entitled, on the face of the *MGA*, to tax different classes of property at different rates. There is nothing discriminatory about the Budget or the Bylaws and the way EPL is treated as a ratepayer for the class of property it owns. It is treated the same as other ratepayers of the same class of property. The allocation of tax revenues to reserves, and EPL's higher contribution due to its property class, is insufficient to establish discrimination for the purposes of challenging the Bylaws and the Budget.

[129] EPL's argument is merely a disagreement with the amounts collected and their allocation to reserves for potential future expenditures, something which I have found is a reasonable interpretation of the *MGA*.

[130] In the absence of any ascertainable discrimination, EPL's argument amounts to asking the Court to assess whether the Budget and Bylaws are necessary, desirable or wise, which is an inappropriate inquiry: *Auer* at paras 56-58.

[131] This ground of review is dismissed.

VII. Conclusion

[132] EPL's application is dismissed.

[133] As the substantially successful party, Flagstaff is presumptively entitled to its costs: *Alberta Rules of Court*, Rule 10.29.

[134] If the parties cannot agree on the appropriate quantum of costs, they have leave, within 30 days of the date of issuance of this decision, to provide me with three-page written costs briefs (plus authorities, if any) setting out their position on quantum, and I will issue a costs endorsement.

[135] I thank counsel for their able submissions.

Heard on the 17th day of December, 2025.

Dated at the City of Calgary, Alberta this 11th day of February, 2026.

D.J. Reed
J.C.K.B.A.

Appearances:

Jeffery Talbot
for the Applicant

Michael Swanberg
for the Respondent