

In the Court of Appeal of Alberta

Citation: Ross v Canmore (Town), 2026 ABCA 73

Date: 20260312
Docket: 2501-0148AC
Registry: Calgary

Between:

Stephen Ross, Leslie Skingle, Brian Talbot, David Taylor, Ralph Young, Devonian Development Corporation, and Three Sisters Mountain Village Properties Ltd.

Appellants

- and -

Town of Canmore

Respondent

The Court:

The Honourable Chief Justice Ritu Khullar*
The Honourable Justice Jolaine Antonio
The Honourable Justice Bernette Ho

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice C.D. Simard
Dated the 28th day of April, 2025
Filed on the 7th day of May, 2025
(2025 ABKB 258, Docket: 2501 01001)

* Chief Justice Khullar did not participate in the final disposition of the judgment.

Memorandum of Judgment

The Court:

[1] This appeal concerns the Town of Canmore’s enactment of a by-law creating a “Primary Residential” subclass within the residential property class, which is intended to allow the Town to impose a higher tax rate upon residential properties that are not used as a primary residence. In *Ross v Canmore (Town)*, 2025 ABKB 258 (the Decision), the chambers judge found most aspects of the bylaw were *intra vires*, as a reasonable exercise of the municipality’s authority under subsection 297(2) of the *Municipal Government Act*, RSA 2000, c M-26 [*MGA*], and other relevant statutory provisions.

[2] The appellants appeal, advancing two main grounds of appeal:

- (a) The chambers judge erred in law by concluding that there are no limitations on the power of the Town under section 297 of the *MGA* to establish assessment subclasses, without regard to the limitations imposed by the purpose, context and statutory authority granted by Parts 9 and 10 of the *MGA*; and
- (b) The chambers judge erred in law by concluding that the powers of enforcement and inspection of the assessor under Part 9 of the *MGA* can be delegated to the chief administrative officer.

[3] In considering the grounds of appeal, this Court must determine whether the Town of Canmore reasonably interpreted and implemented the statutory authority conferred on it by the Legislature. It is not the role of this Court to consider the policy choices made by the Town in the circumstances of this case.

[4] For the reasons outlined herein, the appeal is dismissed.

Standard of review

[5] In an appeal of a lower court’s judicial review of an administrative decision, the question is whether the lower court correctly identified and applied the standard of review. This Court effectively steps into the shoes of the lower court and reviews the administrative decision on a *de novo* basis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras 45-47; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 36; *Calgary Police Association v Calgary (City)*, 2025 ABCA 145 at para 17.

[6] Judicial review of subordinate legislation such as a municipal bylaw is presumptively conducted under the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10; *Auer v Auer*, 2024 SCC 36 at paras 24-28; *TransAlta Generation Partnership v Alberta*, 2024 SCC 37 at para 4.

[7] When applying the reasonableness standard to subordinate legislation, the fundamental issue is whether the subordinate legislator exercised its delegated authority in a manner that is reasonably consistent with the intentions of the enabling legislator in choosing to delegate that authority, having regard to the applicable factual and legal constraints: *Auer* at para 59, citing *Vavilov* at paras 105, 108. The analysis will typically be an exercise in statutory interpretation, based on the text, context, and purpose of the enabling legislation, and other relevant statutes and common law principles: *Auer* at paras 59-60; *TransAlta* at para 17; *Vavilov* at paras 117-124. Some distinct principles inform the reasonableness review:

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

Auer at para 3.

[8] It is not necessary for the subordinate legislation to be irrelevant, extraneous, or completely unrelated to the statutory purpose for it to be unreasonable. However, the presumption of validity means a party challenging the subordinate legislation bears the onus of demonstrating the subordinate legislation is unreasonable and that an interpretation that is consistent with the enabling legislation should be favoured where possible: *Auer* at paras 4, 37-39; *TransAlta* at paras 15-16.

Background

1. Enactment of the bylaw at issue

[9] In 2022, the Town's Council adopted a strategic plan that identified livability and affordability as a priority. In June 2023, Town staff presented materials to Council indicating that local housing costs were high relative to other areas in Alberta, in part because of the relatively high number of residences that were not being occupied on a full-time basis. A task force was created to investigate and propose potential solutions. The task force presented a report in January 2024 containing various recommendations, including a recommendation to create an assessment subclass for property used as a full-time residence. Council directed administration to create an implementation plan.

[10] In August 2024, a draft bylaw was presented to Council along with a report explaining that the bylaw was drafted to create a new assessment subclass. The bylaw was intended to give Council the discretion to apply preferential tax rates to property that is primarily used as a full-time residence in order to incentivize the full-time use of residential property and collect additional tax revenue that may be applied to housing affordability initiatives.

[11] The Town subsequently passed revised by-law No 2024-19, *Division of Class 1 Property Bylaw*, as amended (the Bylaw). The Bylaw creates a new “Primary Residential” assessment subclass within the “residential” property assessment class, among other subclasses. The Bylaw also creates a declaration and enforcement scheme to administer the Primary Residential subclass.

[12] Section 3 of the Bylaw establishes the residential subclasses for property assessment and taxation purposes. The subclasses include “Primary Residential” which generally excludes residential property that is not used or intended to be used as a “Primary Residence”. Council can apply different tax rates (also known as mill rates) to property qualifying as Primary Residential, as compared to other residential property.

[13] Section 4 of the Bylaw provides a property “shall” be classified as Primary Residential, in one of five specific circumstances. The first circumstance is satisfied if at least one dwelling unit on the property was used as a “Primary Residence” in the previous taxation year. Primary Residence is defined as the place where a person is ordinarily resident for a period of at least 183 cumulative days, including 60 consecutive days, each year: Bylaw, ss 2(j), 4. The other circumstances include the use of the property as an apartment building, employee housing, residential storage, or a residential parking stall.

[14] Section 5 of the Bylaw outlines circumstances where a property “may” be classified as Primary Residential even if the conditions in section 4 were not met in the previous taxation year. These circumstances generally reflect situations where a property could not be used as a Primary Residential property, including for example, where an individual was hospitalized or renovations prevented the occupation and normal use of the residence.

[15] To qualify under either section 4 or 5, a registered owner of the property is generally required to submit a specific declaration form relating to the previous taxation year.

[16] Section 6 provides a person shall not make a false or misleading statement in the declaration. It is an offence under section 7 to make a false or misleading statement to qualify a property for inclusion in the Primary Residential subclass, subject to the imposition of a monetary fine up to \$10,000. Section 8 authorizes the chief administrative officer to conduct an inspection to ensure compliance with the declaration at any time within three years after it was made or required to be made. Section 9 of the Bylaw (which has since been repealed) provides for the imposition of a retroactive tax assessment if the chief administrative officer subsequently

determines that a property fails to meet the criteria to be included in the Primary Residential subclass.

2. Statutory framework

[17] Municipal assessment and taxation of property is addressed in Parts 9 and 10 of the *MGA*, along with related enactments such as the *Matters Relating to Assessment and Taxation Regulation*, 2018, Alta Reg 203/2017 [*MRATR*]. Under this framework, the tax payable for each property is calculated by: (a) determining the assessed value of each property; and (b) multiplying the assessed value by the applicable tax rate (mill rate): *MGA*, s 356. The applicable tax rate for each assessment class and subclass is established each year in a property tax bylaw: *MGA*, ss 247, 353, 354. Property is then assigned to applicable classes and subclasses, which determines the tax rate that will be applied to the assessed value of specific property.

[18] Section 297 of the *MGA* states, in part:

297(1) When preparing an **assessment of property**, the assessor must assign one or more of the following **assessment** classes to the **property**:

- (a) class 1 - residential;
- (b) class 2 - non-residential;
- (c) class 3 - farm land;
- (d) class 4 - machinery and equipment.

(2) A council may by bylaw divide class 1 into sub-classes **on any basis it considers appropriate**, and if the council does so, the assessor may assign one or more sub-classes to property in class 1. [...]

[emphasis added]

[19] The statute provides definitions that guide how an assessor is to assign the four basic assessment classes. For example, “farm land” is defined as land that is “used for farming operations...”: *MGA*, s 297(4)(a). “Non-residential” is defined broadly, but the definition excludes “farm land or land that is used or intended to be used for permanent living accommodation”: *MGA*, s 297(4)(b). “Residential” is defined as “property that is not classed by the assessor as farm land, machinery and equipment or non-residential”: *MGA*, s 297(4)(c).

[20] For the purposes of Part 9 and 10 of the *MGA*, “property” is defined as: “(i) a parcel of land (ii) an improvement, or (iii) a parcel of land and the improvements to it”: *MGA*, s 284(1)(r). An “improvement” is further defined as: “(i) a structure, (ii) any thing attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure,

(iii) a designated manufactured home”: *MGA*, s 284(1)(j). “Assessment” is defined as “a value of property determined in accordance with this Part and the regulations”: *MGA*, s 284(1)(c).

[21] In addition to authorizing a council to divide the residential class into subclasses “on any basis it considers appropriate”, the *MGA* sets out rules that apply to the division of other assessment classes. For example, the “non-residential” class can be divided, but only into the three specific subclasses prescribed in the statute: *MGA*, ss 297(2.1), 297(3.1)-297(3.5).

[22] The *MGA* also contains provisions addressing a municipality’s chief administrative officer and assessors.

[23] Municipalities must establish the position of chief administrative officer by bylaw and appoint a chief administrative officer: *MGA*, ss 205, 1(1)(c). The chief administrative officer “is the administrative head of the municipality” and has various duties and functions, including those set out in the *MGA* and those assigned by council: *MGA*, ss 207(a), 208; 208.1. The chief administrative officer may delegate her powers, duties, and functions: *MGA*, s 209.

[24] Municipalities are also required to appoint a qualified municipal assessor to perform the functions, duties, and powers of a municipal assessor established in the *MGA*: *MGA*, ss 284.2, 284(1)(d), 284(1)(n.4); *Qualifications of Assessor Regulation*, Alta Reg 233/2005. Assessments for all residential property in a municipality must be prepared by a municipal assessor in accordance with the applicable principles: *MGA*, ss 289, 293, 284(1)(c); *MRATR*. Municipal assessors may inspect property and request documents and information to carry out their duties and responsibilities: *MGA*, ss 294, 295. Municipal assessors must assign one of the four statutory property assessment classes to property and may assign subclasses, such as the Primary Residential subclass, to residential property: *MGA*, s 297. A municipal assessor may delegate her powers and duties: *MGA*, s 284.2(2).

Analysis

[25] The appellants acknowledge at paragraph 42 of their factum that the chambers judge chose the proper standard of review, being reasonableness, but submit he erred in its application. They raise two primary arguments in support of their position. First, they argue that the ability to create residential assessment subclasses is limited to classifications that depend on the nature and characteristics of the property itself, rather than the owner’s use of that property. Second, they argue the Bylaw improperly delegates powers that are allocated to the municipal assessor under the statute to the Town’s chief administrative officer.

[26] We note that the Bylaw was amended by Bylaw 2025-19, *Division of Class 1 Property Amendment Bylaw 2024-19* after the Decision was released, which affected the scope of the appeal, as discussed below. There were two key changes. First, section 9 of the Bylaw was repealed in accordance with the chambers judge’s determination that it was *ultra vires* and is no longer subject

to appeal. Second, section 5 was amended to remove the phrase “and the chief administrative officer is satisfied” from a clause that addresses whether a property qualifies for inclusion in the Primary Residential subclass. This will be addressed in the discussion of the second ground of appeal.

Ground 1: The creation of the Primary Residential subclass

[27] The appellants submit that reasonably interpreted, the statutory power to create residential subclasses is limited to classifications of property based on the nature and characteristics of the property itself, not how frequently the owner chooses to use that property.

[28] To determine if the Town reasonably interpreted and implemented its authority, it is necessary to consider the text, context, and purpose of the enabling legislation: *TransAlta* at para 17; *Auer* at para 62; *Vavilov* at paras 117-124. The specific statutory provision in issue provides council can create residential assessment subclasses “on any basis it considers appropriate”: *MGA*, s 297(2). This is “broad, open-ended or highly qualitative language” that confers an equally broad scope of authority on the municipality: *Auer* at para 62. In the words of the chambers judge: “[i]t is hard to imagine a broader, more discretionary formulation”: Decision at para 17. However, that authority cannot be exercised arbitrarily, and must always be exercised in accordance with the purposes for which it was delegated: *Auer* at para 62; *Vavilov* at para 108, citing *Montréal (City) v Montreal Port Authority*, 2010 SCC 14 at paras 32-33.

[29] The appellants note the *MGA* provides council may divide the “non-residential” assessment class into specific subclasses including “small business property”, which is largely based on the use of the property: *MGA*, ss 297(1)(b), 297(2.1), 297(3.1), 297(3.3). The appellants rely on these provisions to submit that if the Legislature intended councils to be able to create use-based residential assessment subclasses, it would have done so expressly. We are not persuaded by this argument. The Legislature’s establishment of a highly constrained authority to divide the “non-residential” assessment class into prescribed subclasses in section 297, immediately adjacent to a relatively unconstrained power to create subclasses for the “residential” assessment class “on any basis it considers appropriate” suggests otherwise. Specifically, the Legislature turned its mind to constraints and applied them to non-residential assessment subclasses, but chose not to apply them to the authority to make residential subclasses.

[30] The appellants also rely on the definitions of “property” and “assessment” in the statute, and the use of these terms in section 297, to argue the Legislature intended to constrain the Town’s discretion to create subclasses. The appellants note that the statute contemplates assessors assigning subclasses to property, and the role of assessors is generally tied to objectively appraising the market value of property. Therefore, the appellants submit that these provisions, in combination with others, indicate that Council’s broad authority to create residential assessment subclasses is limited to distinctions based on the nature of the property alone. Effectively, the appellants’ position is that the only reasonable interpretation of the phrase “on any basis it

considers appropriate” in section 297(2) is to interpret it as reading “on any basis *related to property characteristics* it considers appropriate”.

[31] Again, we are not persuaded by this argument based on the definitions of the words “property” and “assessment”. The use of these terms in section 297 establishes the role of classes and subclasses in the assessment process, rather than constraining the subclasses that can be created and applied to property in the assessment process.

[32] Moreover, the concept of use is frequently employed in the *MGA* to distinguish between different classes of property. For example, the “residential” class is distinguishable from the “farm land” class on the basis that it is not used for farming operations: *MGA*, s 297(4)(a). The “residential class” is distinguishable from the “non-residential class” largely on the basis that the land “is used or intended to be used for permanent living accommodation”: *MGA*, s 297(4)(b). The way the concept of “use” is employed in defining and distinguishing property classes and subclasses in the enabling legislation supports the conclusion that it was reasonable for the Town to also employ the concept of use to delineate between different subclasses of residential property in its subordinate legislation.

[33] The appellants further submit that if the chambers judge’s interpretation of the Town’s discretion under section 297(2) is accepted, it would open the floodgates to municipalities across Alberta potentially creating all sorts of improper subclasses. The appellants raise the spectre of a municipality establishing property assessment subclasses based on the number of people who live in a residence, such as the number of children who reside there. In their factum, the appellants suggest rogue councils might use section 297(2) to impose steep tax rate hikes on groups that are “politically expedient” to tax, in a manner that undermines the regime established in the *MGA*. However, this appeal must focus on the reasonableness of the Bylaw in accordance with the framework established by *Vavilov*, *TransAlta* and *Auer*. Any future cases would be open to judicial review on their merits, where a fulsome analysis of the statute and purposes for which municipalities are delegated authority could be specifically considered. Administrative authority cannot be exercised arbitrarily and must always be exercised in accordance with the purposes for which it was delegated: *Auer* at para 62; *Vavilov* at para 108, citing *Montréal* at paras 32-33.

[34] In this case, the record supports the view that the Town created the Bylaw to address what it viewed as a genuine municipal concern, and it was reasonable for the Town to conclude that the *MGA* provides statutory authority to create the Primary Residential assessment subclass to address such concern. In addition, the Bylaw outlines a process that is reasonably consistent with the purpose of establishing a fair and equitable municipal assessment and taxation system that promotes transparency, predictability, and stability: *TransAlta Generation Partnership v Alberta (Minister of Municipal Affairs)*, 2022 ABCA 381 at paras 67, 84, *aff’d TransAlta*.

[35] Finally, the appellants briefly raised the argument that the Bylaw contravenes the common law rule against administrative discrimination in their factum: *TransAlta* at paras 40-44. For the

reasons provided by the chambers judge, we are not satisfied that this is the case: Decision at paras 65-72.

[36] Based on the foregoing, this ground of appeal is dismissed.

Ground 2: The enforcement provisions

[37] The appellants' second ground of appeal is that the Bylaw is unreasonable, because it delegates a municipal assessor's statutory authority to the Town's chief administrative officer in a manner that is inconsistent with the *MGA* and related regulations.

Mootness

[38] The respondent raises a narrow preliminary issue relating to section 5 of the Bylaw, which was amended after the Decision was released.

[39] When initially enacted, section 5 of the Bylaw addressed situations where a property was not used as a Primary Residence in the previous taxation year, but the chief administrative officer was "satisfied" that one or more specified conditions had been met so the property could nevertheless be placed in the Primary Residential subclass. The chambers judge upheld this language: Decision at paras 97-98. However, shortly after the Decision was released, the Town enacted Bylaw 2025-10, *Division of Class 1 Property Amendment Bylaw 2025*, which removed the reference to the chief administrative officer being "satisfied".

[40] The respondent submits that any issues raised by the appellants in relation to this language are moot. Conversely, the appellants maintain the Town could reintroduce the language, other municipalities might adopt similar formulations if this Court does not opine on it, and the removal of this language created an ambiguity regarding the practical operation of the Bylaw.

[41] The test for mootness is well established. First, the court must consider whether the issue is moot in the sense that there is no longer a concrete dispute between the parties on the point: *Borowski v Canada (Attorney General)*, 1989 CanLII 123 (SCC), [1989] 1 SCR 342 at 353-356. Second, the court must consider whether it should exercise its residual discretion to decide the issue having regard to factors including the presence of an adversarial context, judicial economy, and the adjudicative role of courts: *Borowski* at 358-363.

[42] Since the language in issue has been removed from the Bylaw and was never applied in a way that impacted the taxes payable by anyone, we conclude issues arising from the removed language are moot. There is a sufficient adversarial context, but judicial economy does not weigh in favour of opining on the language that no longer appears in section 5 of the Bylaw. The removed language had no practical effect on the rights of the parties. Further, there is no evidence suggesting another municipality in Alberta is considering using similar language in a similar context. In effect,

the appellants are requesting an advisory opinion in the abstract on a matter that is specific to the reasonableness of the Bylaw before this Court, and this does not fit well with the traditional adjudicative role of courts: *Taylor v Newfoundland and Labrador*, 2026 SCC 5 at paras 61-62. We decline to exercise our discretion to consider arguments related to the language removed from section 5 of the Bylaw relating to the chief administrative officer being “satisfied” that certain circumstances had been met by a declarant.

The role of assessors and chief administrative officers

[43] The appellants take issue with several aspects of the chief administrative officer’s role under the Bylaw, as currently drafted. The appellants submit that the Bylaw improperly delegates to the chief administrative officer: (i) the assessor’s role in assigning assessment classes and subclasses to property; and (ii) the assessor’s role in conducting inspections.

[44] A municipal assessor’s role can be understood as having two key parts: (a) performing a valuation of each property; and (b) assigning assessment classes and subclasses to each property: *Associated Developers Ltd v Edmonton (City)*, 2020 ABCA 253 at paras 28, 30-31.

[45] We do not agree that the Bylaw provides for any improper delegation to the Town’s chief administrative officer. The Bylaw does not delegate the task of assigning subclasses when the statute contemplates that task being performed by an independent assessment professional. Rather, the Bylaw establishes the parameters of the Primary Residential class and assigns certain roles to the chief administrative officer regarding the forms through which the declarations are submitted. It is ultimately left up to the assessor to assign the subclass based on these forms: Bylaw, ss 4, 5.

[46] Similarly, we reject the appellants’ assertion that the Bylaw improperly delegates the assessor’s powers to inspect property in relation to assessments. The Bylaw provides a person must not make a false or misleading statement in a declaration, makes it an offence to do so, and authorizes the chief administrative officer to conduct inspections to ensure compliance: Bylaw, ss 6-8. The chief administrative officer’s role is limited to ensuring that false or misleading statements are not made in the declaration forms. We are not satisfied that this is an unreasonable exercise of the Town’s authority to enact bylaws for the enforcement of other bylaws, which is expressly contemplated by the *MGA*: ss 7(i), 8.

[47] The appellants’ second ground of appeal is dismissed.

Conclusion

[48] The narrow issue considered in this decision is whether the appellants have demonstrated that the Bylaw is unreasonable based on the applicable principles established in *Auer* and *TransAlta*. For the reasons above, we agree with the chambers judge and conclude that the Bylaw is reasonable based on the existing statutory scheme and is therefore *intra vires*.

[49] The appeal is dismissed.

Appeal heard on December 8, 2025

Memorandum filed at Calgary, Alberta
this 12th day of March, 2026

Antonio J.A.

Ho J.A.

Appearances:

G.J. Stewart-Palmer, KC
Z. Gerard (no appearance)
for the Appellants

M.E. Swanberg
for the Respondent