

101

| | |
|--------------------------------|---------------------|
| FEDERAL COURT COUR FÉDÉRALE | |
| FILE | DEC 22 2022 |
| D | CHARLOTTE TORGERSON |
| EDMONTON, AB | |

Court File No: T-2700-22

FEDERAL COURT

BETWEEN:

THE CITY OF COLD LAKE

Applicant

and

HIS MAJESTY THE KING, as represented by THE MINISTER OF PUBLIC SERVICES AND PROCUREMENT and by THE DEPARTMENT OF PUBLIC SERVICES AND PROCUREMENT CANADA

Respondent

APPLICATION FOR JUDICIAL REVIEW UNDER section 18.1 of the *Federal Courts Act*, R.S. C. 1985, c. F-7

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard in Edmonton, Alberta.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a Notice of Appearance in Form 305 prescribed by the

Federal Courts Rules and serve it on the Applicant's solicitor, or where the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this Notice of Application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Dated at Edmonton, Alberta, this 22 day of December, 2022

Issued by: _____

ORIGINAL SIGNED BY
CHARLOTTE TORGERSON
A SIGNÉ L'ORIGINAL

Federal Court
Rice Howard Place
10060 Jasper Avenue
Tower 1, Suite 530
Edmonton, AB T6J 3R8
780-495-4651
1-800-663-2096
Fax: 780-495-4681

TO: The Honourable Helena Jaczek, MP
Minister of Public Services and Procurement
Place du Portage, Phase III, Room 18A1
Gatineau, QC K1A 0S5

AND TO: Regional Manager, Western Region, Payment in Lieu of Taxes Program
Public Services and Procurement Canada
ATB Place North Tower
5th Floor, Room 1000
10025 Jasper Avenue
Edmonton, AB T5J 1S6

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of _____
filed in the Court on the _____

DEC 22 2022

day of _____ A.D. 20 _____

Dated this _____ day of DEC 22 2022 20 _____

AND TO: Attorney General of Canada
Prairie Regional Office – Edmonton
Department of Justice Canada
10423 101 Street
3rd Floor, EPCOR Tower
Edmonton, AB T5H 0E7

Gorgerson
CHARLOTTE TORGERSON
REGISTRY OFFICER
AGENT DU GREFFE

APPLICATION

This is an application for judicial review in respect of a decision of the Minister of Public Services and Procurement (the “Minister”) respecting the land valuation of the 4 Wing Cold Lake Military Base (the “Subject Property”) for the purposes of payments in lieu of taxes (“PILT”) to be made by the Minister, through Public Services and Procurement Canada (“PSPC”), pursuant to the *Payments in Lieu of Taxes Act*, R.S.C. 1985, c. M-13 (the “*PILT Act*”) for the 2013-2021 taxation years.

The City of Cold Lake (the “City”) made an application for review by the Dispute Advisory Panel (the “Panel”) pursuant to section 11.1(2) of the *PILT Act*, because the City disagreed with the valuation of the land component of the Subject Property applied by the Minister in determining the appropriate amount of PILT to be provided to the City. The Panel conducted a hearing between February 28 and March 15, 2022.

On July 20, 2022, the Panel issued its recommendations to the Minister, consisting of two separate sets of Advice: the “Majority Advice” written by two members of the Panel, and the “Minority Advice” written by a third member. The disagreement between these two sets of Advice was largely regarding how water and sewer infrastructure serving the Subject Property should be treated for assessment purposes under the *PILT Act*.

The Majority Advice held that such infrastructure should not be considered for any purpose, and that the Subject Property should be valued as an entirely unserviced parcel. Consequently, it recommended assessed values for the Subject Property in a range of between \$42,600,000 and \$59,800,000 for the 2013-2021 tax years.

The Minority Advice disagreed. It held that while no value should be placed on the servicing infrastructure itself, the Subject Property should not be valued as if it is simply unserviced. The Minority Advice accordingly recommended assessed values in a range of between \$90,977,000 and \$140,987,000 for the 2013-2021 tax years.

In a letter dated November 30, 2022, received by the City on this same date, the Minister informed the City that it had decided to accept the Majority Advice and its reasoning, and issue PILTs based on the recommendations in the Majority Advice (the “Decision”).

The Applicant makes application for:

1. An order quashing and setting aside the Decision of the Minister;
2. An order referring this matter back to the Minister and directing that a new decision be made regarding the land component of the Subject Property that is in conformity with the determinations of this Court, the *PILT Act*, the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the "*MGA*"), the assessment regulations thereunder, and the existing jurisprudence;
3. Costs of this application; and
4. Such further and other relief as counsel may advise and this Court may permit.

The grounds for the application are:Errors in the Majority Advice

1. The Minister's choice to accept and adopt the Majority Advice was unreasonable, as in so doing, the Minister:
 - a. Failed to determine the property value of the land component of the Subject Property in accordance with the *PILT Act*, the *MGA*, the assessment regulations thereunder, and the applicable jurisprudence, as required;
 - b. Adopted a valuation methodology that is not used in the assessment of any property in the City, nor in any other municipality in Alberta, nor in any other known assessment jurisdiction in Canada, contrary to the requirements of the applicable legislation and jurisprudence;
 - c. Misinterpreted Schedule II of the *PILT Act* as requiring that federal properties must be valued as if they are unserved, even when such properties are, in fact, serviced through water and sewer infrastructure;
 - d. Adopted a broad and expansive, rather than a narrow and restrained, interpretation of the exclusions in Schedule II of the *PILT Act*, contrary to established principles of statutory interpretation and the applicable jurisprudence;

- e. Assented to an unreasonable description of the *PILT Act* as voluntary in nature, thereby incorrectly implying that the Minister has complete discretion to make any payment of PILT it wants, divorced from any consideration of the *PILT Act's* objectives, applicable assessment principles, or tax fairness for municipalities;
- f. Adopted Majority Advice recommendations that failed to appropriately consider:
 - i. Evidence that utility assets, including water and sewer infrastructure, are separate and distinct from the land they service;
 - ii. Evidence that the operation and maintenance of utility systems in the City are not funded through property taxes, but through utility charges that are separate and apart from taxes;
 - iii. The assessment principles espoused by the Panel in its previous advice respecting the 2012 assessed value of the Subject Property (the "2014 Advice");
 - iv. Evidence that the assessed value recommended in the 2014 Advice was premised on a perceived utility servicing liability of \$114 million that, as was recognized in the Minority Advice, has since be rectified; and
 - v. Evidence that the Subject Property will likely continue as a military base for at least another 68 years, and will most likely be the last air force base in Canada to ever face closure.
- g. Adopted unreasonable conclusions of the Majority Advice that were made with no basis in fact or in law, including that:
 - i. There is no distinction between the cost of installing water and sewer infrastructure and the value of said infrastructure;
 - ii. The testimony and expert evidence of the City's assessor are unreliable and of limited value because the assessor did not consider himself bound by the 2014 Advice, even though such decisions and advice are not binding at law;

- iii. The testimony and expert evidence of the City's assessor is unreliable and of limited value because the assessor adopted certain conclusions of the 2014 Advice and departed from the 2014 Advice in other respects, even though the Majority Advice treated the 2014 Advice in a similar manner;
- iv. It was not open to the City's assessor to reconsider historical approaches to the valuation of the Subject Property, and the fact that the City's assessor changed the assessment methodology shows that the assessor was seeking to maximize the assessed value of the Subject Property rather than value it accurately;
- v. The Subject Property cannot be valued on the basis that the existing use as a military base will continue;
- vi. The Subject Property must be valued based on a hypothetical future where it is decommissioned and then privately owned; and
- vii. In the hypothetical future where the Subject Property is decommissioned and then privately owned, the application of provincial and municipal laws would mean that the water and sewer infrastructure would not benefit the Subject Property, or would need to be removed in their entirety, as the Subject Property would receive no protection as a legal non-conforming use;

and

- h. Refused to grant late payment supplements to the City on the basis of untenable reasons from the Majority Advice, specifically that:
 - i. The 2014 Advice settled the issue of the Subject Property's value, and so in submitting to the Minister assessed values higher than the value calculated in the 2014 Advice, the City's conduct warranted the denial of late payment supplements, notwithstanding that:
 - 1. PILTs are applied for and paid on an annual basis;

2. There is an annual right to request advice from the Panel under the *PILT Act*;
3. Neither the factual nor the legal determinations made by the Panel in its Advice in one year are binding in future years, and the 2014 Advice in no way purported to establish, and did not establish, a baseline assessed value for all future years; and
4. The 2014 Advice received and considered only minimal evidence on the issue of how the water and sewer infrastructure impacted the assessed value of the Subject Property.

Errors in the Decision

2. Additionally, the Minister's Decision itself is unreasonable because it:
 - a. Accepted the Majority Advice, and rejected the Minority Advice, for untenable reasons, including that:
 - i. Only the Majority Advice recommends "to exclude the servicing infrastructure from the value of the base lands", when in fact, the Minority Advice made this same recommendation, and all parties presented valuation evidence that accomplished this; and
 - ii. Only the Majority Advice considers "how the market would address the existing liability and ongoing maintenance costs related to the servicing infrastructure", when in fact, the values recommended by the Minority Advice were explicitly calculated with reference to this issue;
 - b. Accepted the Majority Advice on the basis of irrelevant and improper considerations, including the proximity between the Majority and Minority's recommended assessed values and the 2012 assessed value recommended by the Panel in the 2014 Advice;
 - c. Improperly treated the 2014 Advice as setting a precedent with respect to valuation for future years, contrary to assessment principles and the scheme of

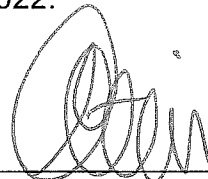
the *PILT Act*, while also, at the same time, contradicting the 2014 Advice with respect to the assessment principles that were used to arrive at that valuation;

- d. Unjustifiably determined that the values recommended by the Majority Advice:
- i. Are “equitable with other military bases in Alberta”, despite the Majority Advice making no finding to this effect, and despite evidence to the contrary before the Panel; and
 - ii. Are “comparable to how assessment authorities value other military bases in Alberta”, despite evidence, as noted by the Minority Advice, that there is no consistent approach, that different valuation methodologies are applied to different military bases all across Canada, and that values are typically set through negotiated agreements between municipalities and PSPC;
- and
- e. Unjustifiably refused to grant late payment supplements to the City pursuant to section 3(1.1) of the *PILT Act*, based on:
- i. An unreasonable conclusion that PILT payments to the City were not unreasonably delayed, despite nearly \$1 million in payments, some dating as far back as 2013, being delayed until after the Minister’s Decision;
 - ii. A failure to consider that this delay was caused by PSPC’s failure to make a determination regarding the valuation of the Subject Property on an annual basis, as it was required to do under the *PILT Act*;
 - iii. An incorrect understanding that PSPC did not have to determine the value of the Subject Property annually, but was entitled to simply carry forward the 2012 assessed value for the Subject Property for all subsequent years even though this resulted in underpayments each year, even compared to the values recommended by the Majority Advice; and
 - iv. A failure to consider that the City attempted to have the Panel hear this matter sooner, but the Panel and PSPC resisted these efforts.

This application will be supported by the following material:

1. Such affidavit evidence as may be filed by the City.
2. The evidentiary record and written submissions that were before the Panel at the February 28, 2022 – March 15, 2022 hearing, and any transcripts of the hearing.
3. The Majority Advice and Minority Advice of the Panel, and the 2014 Advice.
4. Submissions made to the Minister, and to the Minister's predecessor, by the City following the issuance of the Majority Advice and the Minority Advice of the Panel.
5. Such further and other material as Counsel may advise and this Court may permit.
6. Pursuant to rule 317 of the *Federal Courts Rules*, the applicant requests the Minister to send a certified copy of the following material that is not in the possession of the applicant, but is in the possession of the Minister, to the applicant and to the Registry: all materials that informed and briefed the Minister and that the Minister considered and relied on in rendering the Decision.

Dated at Edmonton, Alberta this 22nd day of December, 2022.



ALVIN R. KOSAK
Brownlee LLP
2200 Commerce Place
10155 – 102 Street
Edmonton AB T5J 4G8
Phone: 780-497-4800
Fax: 780-424-3254
Counsel for the Applicant