Court of King's Bench of Alberta

Citation: Woodlands (County) v Whitecourt (Town), 2024 ABKB 388

Date:
Docket: 2203 03834
Registry: Edmonton

Between:

Woodlands County

Applicant

- and -

Town of Whitecourt

Respondent

Reasons for Decision
of the
Honourable Justice W.N. Renke

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[1] On February 3, 2022, Deborah Howes (the Arbitrator) issued an Award respecting the Intermunicipal Collaboration Framework between Woodlands County (the County) and the Town of Whitecourt (the Town). The Award was issued under Part 17.2 of the *Municipal Government Act* (MGA).

[2] The County sought judicial review of the Award and declarations that the Arbitrator erred in finding certain matters to be "intermunicipal services" and that those determinations fell outside the Arbitrator's jurisdiction, and an order setting aside the material portions of the Award. The Town resisted the application.

[3] For the reasons that follow, the County's application is dismissed. The Award stands, with one minor exception.

[4] I will consider the background to the application, the standard of review, and features of reasonableness review, then assess the impugned Award determinations.

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I. Background

A. Legislation

[5] The legislative context for this application is Part 17.2 of the MGA. At this point, only an overview of the legislation is provided. Details will be considered with specific issues. Unless otherwise indicated, statutory references are to the MGA.

[6] Under s 708.27, the purpose of Part 17.02 is to provide for intermunicipal collaboration frameworks among two or more municipalities:

> (a) to provide for the integrated and strategic planning, delivery and funding of intermunicipal services,
>
> (b) to steward scarce resources efficiently in providing local services, and
>
> (c) to ensure municipalities contribute funding to services that benefit their residents.

[7] Section 708.28(1) provides that "[m]unicipalities that have common boundaries must create a framework with each other by April 1, 2020 unless they are members of the same growth management board." Under s 708.28(5), the Minister "may by order exempt, on any terms and conditions the Minister considers necessary, one or more municipalities from the requirement to create a framework."

[8] Section 708.29 describes the contents of a framework (ICF), including the following:

> (1) A framework must describe the services to be provided under it that benefit residents in more than one of the municipalities that are parties to the framework.
>
> (2) In developing the content of the framework required by subsection (1), the municipalities must identify which municipality is responsible for providing which services and outline how the services will be delivered and funded.

[9] If bordering municipalities cannot agree on an ICF, pursuant to ss 708.34 and 708.35, "the municipalities must refer the matter to an arbitrator." Under s 708.35(2), "[t]he arbitrator must be chosen by the municipalities or, if they cannot agree, by the Minister." Section 708.36(1) provides that if a dispute is referred to an arbitrator under section 708.35, "the arbitrator must make an award that resolves the issues in dispute among the municipalities."

[10] Under s 708.38(1), in resolving a dispute, an arbitrator may have regard to

> (a) the services and infrastructure provided for in other frameworks to which the municipalities are also parties,
>
> (b) consistency of services provided to residents in the municipalities,
>
> (c) equitable sharing of costs among municipalities,
>
> (d) environmental concerns within the municipalities,
>
> (e) the public interest, and
>
> (f) any other matters that the arbitrator considers relevant.

B. Facts

[11] I will use the following additional abbreviations: County Brief (CB), Town Brief (TB).

[12] The Town is located in Woodlands County. The Town and the County have common boundaries. The County has ICFs with seven other municipalities. The Town's only ICF is with the County (CB para 16).

[13] The Town has about 10,000 residents, the County about 4,800 (Award para 15). Eighty percent of the County's population lives within 20-30 km of the Town (Award para 15).

[14] The County is in financial recovery. "The County was the only Municipal District/County in 2019 and one of two in 2019 and 2020 deemed 'at risk' for three consecutive years by Municipal Affairs" (CB para 14, CB Appendix C, Award para 19).

[15] The parties are not members of the same growth management board. The Minister has not exempted either party from the requirement to create an ICF.

[16] The parties have "a demonstrated history of collaborative relationships," having "received accolades and awards for their collaborative efforts" (Award para 18, CB para 17).

[17] However, since 2018, the collaborative relationship has suffered (see CB Appendix B, statement of Gordon Frank). The parties were not able to negotiate their ICF (Award paras 3, 20-21). The deadline to finalize the ICF was extended for a year by Ministerial Order due to Covid (TB para 12).

[18] The Arbitrator was appointed under s 708.35. The parties agreed that the Arbitrator had the authority to decide the matters in dispute (Award para 4).

[19] Following the arbitration process, the Award was issued on February 3, 2022.

C. The Award

[20] The Award covered a host of issues, including

- Interpretative Questions raised by the parties
- Water and Wastewater
- Solid Waste Management and Recycling
- Fire Services
- Whitecourt Airport
- Recreation, Arts, and Culture
- Ancillary Police Services
- Forest Interpretive Centre
- Family and Community Support Services
- Library Services
- Cemetery Services
- Fringe Roads
- Rail Crossings
- Transit
- Ecole St Joseph School
- Municipal Centre
- Dispute Resolution Provisions.

[21] Some elements of the Award were not challenged. The challenged elements of the Award related to the interpretation of the term “intermunicipal services” and concerned directions involving

- capital costs and other non-operating costs relating to services provided by the Town
- services the Town does not provide but third parties provide, such as library, police, rail, and recreation services
- services solely located in the Town and whether the proper test was used to determine whether County residents benefited from those services.

D. The Record

[22] The Town urged that I disregard two affidavits referred to in the County's submissions, attached as Appendix D. These affidavits had been filed in support of an interim injunction application. The affidavits were not filed in either the arbitration or the judicial review itself (PTB paras 78-80).

[23] Rule 3.22 provides as follows:

> 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.

[24] The Appendix D affidavits were not part of the certified copy of the record of proceedings under para (a). Neither was the application before me for relief other than "an order in the nature of *certiorari* or an order to set aside a decision" under para (b.1). No application was made for admitting the evidence in this application under para (d).

[25] I cannot consider the Appendix D affidavits, or any factual representations based on those affidavits and I have not done so. See ***Edmonton Police Service v Alberta (Information and Privacy Commissioner)***, 2021 ABCA 428, Watson JA at para 19; ***Oleynik v University of Calgary***, 2023 ABKB 43, Hollins J.

E. Consequences

[26] I understand and appreciate the County's financial difficulties and the economic and political difficulties of the Award for the County.

[27] There may be post-Award processes that will permit these concerns to be addressed.

[28] My role, however, is limited to applying the law governing the judicial review of the Award.

II. Standard of Review

[29] Three questions must be addressed:

- Does *Vavilov* apply to the review of the Award?
- What is the scope of review of the Award?
- Is the standard of review reasonableness or correctness?

No breach of natural justice or breach of the duty of procedural fairness was at issue.

A. Application of *Vavilov*

[30] The Award is a decision of an arbitrator. Does ***Canada (Minister of Citizenship and Immigration) v Vavilov***, 2019 SCC 65 apply to the decision of an arbitrator under Part 17.2 of the MGA?

[31] The parties agreed that ***Vavilov*** applies (CB para 27, TB para 58). Nonetheless, the Court is responsible for determining the standard of review: ***Monsanto Canada Inc v Ontario (Superintendent of Financial Services)***, 2004 SCC 54, Deschamps J at para 6 ("the standard of review is a question of law, and agreement between the parties cannot be determinative of the matter"); ***1010805 Alberta Ltd v Sundial Growers Inc***, 2024 ABKB 173, DB Nixon ACJ para 20.

[32] I'll review the statutory framework for arbitration under Part 17.2 of the MGA and the implications of that framework for the application of ***Vavilov***.

1. Arbitration Provisions

[33] The *Arbitration Act* applies to an arbitration under Part 17.2, but this matter does not come to this Court through an appeal under that Act.

(a) Application of the *Arbitration Act*

[34] The *Arbitration Act* applies to this arbitration, under s 708.35:

> 708.35(6) The *Arbitration Act* applies to an arbitration under this Division except to the extent of any conflict or inconsistency with this Division, in which case this Division prevails.
>
> (7) No municipality may, by means of an intermunicipal collaboration framework or any other means, vary or exclude any provision of the *Arbitration Act* and, for greater certainty, section 3 of the *Arbitration Act* does not apply in respect of an arbitration under this Division.
>
> (8) An arbitrator chosen by the Minister is not subject to challenge or removal under the *Arbitration Act* by the parties or any court, but any party may request the Minister to remove and replace the arbitrator and the Minister may do so if the Minister considers it appropriate after considering the reasons for the request and any response by the other parties and the arbitrator.
>
> (9) Section 42(2)(b) of the *Arbitration Act* does not apply in respect of an arbitration under this Division but the Minister may, at the Minister's discretion or at the request of any party or the arbitrator, terminate the arbitration and make an order under section 708.412.
>
> (10) For greater certainty, nothing in this Division applies to an arbitration that occurs under the dispute resolution terms of a framework before the expiry of the year referred to in section 708.34(c)(iii).

(b) Arbitrator's Jurisdiction

[35] An arbitrator's jurisdiction under Part 17.2 includes the matters set out in s 708.48(2):

> (2) An arbitrator acting under this Part may make a determination
>
> (a) on a matter of process,

(b) on the arbitrator's jurisdiction,

(c) on a matter of law, and

(d) on any other matter ancillary to a matter referred to the arbitrator.

(3) The arbitrator must make the findings and determinations the arbitrator determines to be necessary to decide the matters referred to the arbitrator.

[36] The arbitrator does not have jurisdiction respecting the following, as provided under s 708.36(7):

(7) An arbitrator must not make an award

(a) that has the effect of granting, varying or otherwise affecting any licence, permit or approval that is subject to this Act or any other enactment,

(b) on any matter that is subject to the exclusive jurisdiction of the Land and Property Rights Tribunal,

(c) that is contrary to the Alberta Land Stewardship Act or an ALSA regional plan,

(d) that is contrary to an intermunicipal development plan under Part 17 or a growth plan,

(e) that directs a municipality to raise revenue by imposing a specific tax rate, off-site levy or other rate, fee or charge, or

(f) that directs a municipality to transfer revenue to another municipality, unless

(i) the revenue transfer is directly related to services provided by a municipality that the revenue-transferring municipality derives benefit from, and

(ii) the arbitrator considers it equitable to do so.

(c) Privative Clause and Statutory Review

[37] The appeal provisions of the *Arbitration Act* do not apply: s 708.35(6).

[38] Section 708.48(4) sets out a full privative clause:

708.48(4) Except as provided in this Part, every award of an arbitrator is final and binding on all parties to the award and shall not be questioned, reviewed or restrained by any proceeding in the nature of an application for judicial review or otherwise in any court.

[39] This clause is followed in s 708.48(5) by a restricted right of review to this Court on a question of jurisdiction only:

(5) An award of an arbitrator may be reviewed by the Court of King's Bench on a question of jurisdiction only and the application for judicial review must be made within 60 days after the award is made.

Section 708.48(6) adds:

(6) For the purposes of a judicial review, the arbitrator is considered to be an expert in relation to all matters over which the arbitrator has jurisdiction.

2. Assessment of Application of *Vavilov*

[40] The Supreme Court has not yet worked out the application of ***Vavilov*** to arbitrations: ***Wastech Services Ltd v Greater Vancouver Sewerage and Drainage District***, 2021 SCC 7, Kasirer J at paras 45-46.

[41] There is Alberta authority applying ***Vavilov*** to set the standard of review for arbitration appeals: see ***Esfahani v Samimi***, 2022 ABKB 795, Marion J at paras 74-77; ***Sundial Growers*** at paras 20-24; ***Lesenko v Wild Rose Ready Mix Ltd***, 2024 ABKB 333, Feasby J at para 68; ***Northland Utilities (NWT) Limited v Hay River (Town of)***, 2021 NWTCA 1, Bielby JA at paras 20-44.

[42] But if ***Vavilov*** should be applied to set the standard of review for arbitration appeals, the argument for its application respecting the review of the Award is stronger. The Award comes before this court not as an appeal and not under the *Arbitration Act*, but as a judicial review under Part 17.2 of the MGA. The parties did not choose the arbitration process (as the County emphasized). Rather, the process is imposed by statute (see ***Sattva Capital Corp v Creston Moly Corp***, 2014 SCC 53, Rothstein J at para 104). The issues are not private or commercial law issues, involving the municipal parties as corporate entities only and turning on (e.g.) contract, tort, or restitutionary law. Rather, the Award concerned public law. The Award concerned the relationship between the parties as political entities and has implications for their legislative and executive powers and their relationships with residents.

[43] The Town rightly observed that the Legislator might have established an administrative tribunal to hear disputes concerning ICFs or turned over this task to a pre-existing administrative tribunal (TB paras 58, 59; as an example, the Land and Property Rights Tribunal, as under s 631(6) of the MGA). The Arbitrator was functionally in the position of an administrative tribunal.

[44] I find that ***Vavilov*** applies to set the standard of review for the Award.

B. Scope of Review

[45] There was no challenge to the validity of the privative clause and judicial review provision.

[46] The judicial review provision is clear. Review is permitted on a question of "jurisdiction" only: s 708.48(5); see ***Dunsmuir v New Brunswick***, 2008 SCC 9, Bastarache and LeBel JJ at para 31, TB paras 4, 53, 55.

C. Reasonableness or Correctness?

[47] Is the standard of review of for any questions of jurisdiction arising from the Award reasonableness or correctness? I'll consider the relevant statutory language, the effect of ***Vavilov***, and whether the correctness standard is engaged in the circumstances.

1. Statutory Language

[48] ***Vavilov*** emphasized that legislated standards of review should be given effect. A reviewing court "must, to the extent possible, respect clear statutory language that prescribes the applicable standard of review:" ***Vavilov*** at para 34.

[49] It is true, as the County observed, that Part 17.2 does not expressly specify the standard of review for arbitrator's decisions. In contrast, the standard of review for decisions of the Land and Property Rights Tribunal is expressly established by s 19 of the *Land and Property Rights Tribunal Act*:

> 19 On an application for judicial review of or leave to appeal a decision or order of the Tribunal or on an appeal of a decision or order of the Tribunal, the standard of review to be applied is reasonableness.

[50] The absence of an express standard of review clause does not create a presumption that the standard of review is correctness. Rather, the standard of review must be determined as a matter of statutory interpretation.

[51] I agree with the Town that the statutory language strongly suggests a deferential and therefore reasonableness standard of review (TB paras 54, 56).

[52] Under s 708.48(1)(b), an arbitrator may make a determination on the arbitrator's jurisdiction.

[53] Section 708.48(4) sets out a strong privative clause, with subsection (5) permitting judicial review on a question of jurisdiction only. The MGA does not permit an appeal of an award.

[54] Under s 708.48(6), "[f]or the purposes of a judicial review, the arbitrator is considered to be an expert in relation to all matters over which the arbitrator has jurisdiction." From a pre-***Vavilov*** perspective, the deemed expert designation would attract deferential review and so reasonableness review: see ***Dunsmuir*** at paras 35, 36, 55. Under ***Vavilov***, "expertise is no longer relevant to a determination of the standard of review as it was in the contextual analysis." Rather, "[t]his consideration is simply folded into the new starting point," the presumption of reasonableness: ***Vavilov*** at para 31.

[55] One might argue that since ss 708.48(4)-(6) betray a ***Dunsmuir*** perspective, then as in ***Dunsmuir***, questions of jurisdiction should be subject to a correctness standard. However – and I'll return to this point – that standard of review was a judicial determination and ***Vavilov*** has re-written that rule: ***Vavilov*** at para 65 ("We would cease to recognize jurisdictional questions as a distinct category attracting correctness review").

[56] In addition, under s 708.38(1), in resolving a dispute, an arbitrator may have regard to

> (a) the services and infrastructure provided for in other frameworks to which the municipalities are also parties,
>
> (b) consistency of services provided to residents in the municipalities,
>
> (c) equitable sharing of costs among municipalities,
>
> (d) environmental concerns within the municipalities,
>
> (e) the public interest, and
>
> (f) any other matters that the arbitrator considers relevant. [emphasis added]

Vavilov commented at para 110 on the flexibility and therefore the broad nature of a decision-maker's jurisdiction signalled by the "public interest" language:

> [110] Whether an interpretation is justified will depend on the context, including the language chosen by the legislature in describing the limits and contours of the decision maker's authority. If a legislature wishes to precisely circumscribe an administrative decision maker's power in some respect, it can do so by using precise and narrow language and delineating the power in detail, thereby tightly constraining the decision maker's ability to interpret the provision. Conversely, where the legislature chooses to use broad, open-ended or highly qualitative language — for example, "in the public interest" — it clearly contemplates that the decision maker is to have greater flexibility in interpreting the meaning of such language. Other language will fall in the middle of this spectrum ....

[57] I find that the foregoing statutory factors support reasonableness review for the Arbitrator's determination of her jurisdiction and for the questions of jurisdiction respecting the Award. See ***Vavilov*** at para 68: "... where the legislature has afforded a decision maker broad powers in general terms — and has provided no right of appeal to a court — the legislature's intention that the decision maker have greater leeway in interpreting its enabling statute should be given effect."

2. Decided by *Vavilov*

[58] The most straightforward answer to the standard of review question is that this issue was expressly decided by ***Vavilov***. This was one of ***Vavilov*'s** innovations. The Supreme Court had previously stated that the standard of review for questions of jurisdiction was correctness. ***Vavilov*** rejected that jurisprudence and held that the standard of review for questions of jurisdiction is reasonableness, subject to any legislative provisions to the contrary and subject to the inapplicability of a narrow set of exceptions. We read the following at paras 65 and 67:

> [65] We would cease to recognize jurisdictional questions as a distinct category attracting correctness review. The majority in ***Dunsmuir*** held that it was "without question" (para. 50) that the correctness standard must be applied in reviewing jurisdictional questions ....
>
> [67] In *CHRC*, the majority ... left the question of whether the category of true questions of jurisdiction remains necessary to be determined in a later case. After hearing submissions on this issue and having an adequate opportunity for reflection on this point, we are now in a position to conclude that it is not necessary to maintain this category of correctness review. The arguments that support maintaining this category — in particular the concern that a delegated decision maker should not be free to determine the scope of its own authority — can be addressed adequately by applying the framework for conducting reasonableness review .... A proper application of the reasonableness standard will enable courts to fulfill their constitutional duty to ensure that administrative bodies have acted within the scope of their lawful authority ... without having to apply the correctness standard. [emphasis added]

[59] ***Vavilov*** tells us that the standard of review for questions of jurisdiction is reasonableness. The MGA does not alter the presumptive standard of review.

3. Boundary between Two Administrative Tribunals?

[60] ***Vavilov***, however, recognized some exceptions to reasonableness as the standard of review. A limited number of issues are subject to review on a correctness standard. We read the following at para 53:

> [53] In our view, respect for the rule of law requires courts to apply the standard of correctness for certain types of legal questions: constitutional questions, general questions of law of central importance to the legal system as a whole and questions regarding the jurisdictional boundaries between two or more administrative bodies. The application of the correctness standard for such questions respects the unique role of the judiciary in interpreting the Constitution and ensures that courts are able to provide the last word on questions for which the rule of law requires consistency and for which a final and determinate answer is necessary: ***Dunsmuir***, at para. 58.

[61] The County argued that one of these exceptions was engaged in the present circumstances. The County argued that the Award concerned "the jurisdictional boundaries between two or more administrative bodies" (CB para 28). "The present case deals with the jurisdictional boundaries between the Arbitrator and the municipalities" (CB para 29). The County continued as follows:

> Section 708.36 of the MGA ... provides the Arbitrator with the authority to make directions binding on the municipalities with respect to the delivery of and payment for intermunicipal services. This authority effectively overrides the jurisdiction to make their own decisions with respect to provision of services that are found to be intermunicipal services.

The real question, according to the County, is jurisdictional: Which body has the jurisdiction to make decisions for the municipality? The County claimed that the standard of review, then, is "correctness."

[62] I reject the County's argument. It rests on a category mistake.

[63] It is true that both the Arbitrator and the County are administrative bodies. The decisions of both may be subject to judicial review.

[64] But the jurisdictional boundary issue concerns which of two administrative bodies has the authority to decide a type of issue.

[65] The County has no authority to decide disputes relating to ICFs under ss 708.34 and 708.35.

[66] The County and the Town were parties to ICF disputes. The Arbitrator had authority to decide the disputes relating to the ICF between the County and the Town.

[67] It is not as if, once the Town and County reached an impasse, there were a question whether the next step would be arbitration or a decision on the matter by the County.

[68] ***Vavilov*** says the following about the type of boundary disputes that attract the correctness standard at para 64:

> [64] Administrative decisions are rarely contested on this basis. Where they are, however, the rule of law requires courts to intervene where one administrative body has interpreted the scope of its authority in a manner that is incompatible with the jurisdiction

> of another. The rationale for this category of questions is simple: the rule of law cannot tolerate conflicting orders and proceedings where they result in a true operational conflict between two administrative bodies, pulling a party in two different and incompatible directions .... Members of the public must know where to turn in order to resolve a dispute. [emphasis added]

The County and the Town knew where to take their dispute. They appointed the Arbitrator.

[69] The jurisdictional boundary exception to reasonableness review was not engaged.

4. Residual Category of Correctness Review

[70] The Supreme Court allowed that there could be types of issues attracting correctness review not specifically identified in ***Vavilov***. See para 70:

> [70] However, we would not definitively foreclose the possibility that another category could be recognized as requiring a derogation from the presumption of reasonableness review in a future case .... [T]he recognition of any new basis for correctness review would be exceptional and would need to be consistent with the framework and the overarching principles set out in these reasons .... [T]he recognition of a new category of questions requiring correctness review that is based on the rule of law would be justified only where failure to apply correctness review would undermine the rule of law and jeopardize the proper functioning of the justice system in a manner analogous to the three situations described in these reasons.

[71] The County did not argue that is circumstances fell into this residual correctness review category, but I shall nonetheless consider this possibility.

[72] The County's concern was that the effect of the Award was to impose costs on its residents that they had not had the chance to approve through a vote. The County's share of expenses for services included in the ICF pursuant to the Award would become expenses borne by its ratepayers. Those expenses would be imposed not by the democratically elected representatives of the ratepayers but by an unelected arbitrator. The unelected arbitrator has forced the expenses on the County and its residents. One might say, No taxation without Representation.

[73] The County stated the following in its brief and repeated the sentiments throughout the brief (CB paras 1 and 2):

> It will determine the extent to which an unelected arbitrator can force the elected representatives of a municipality to obtain and pay for certain services provided by another municipality without regard to the wishes or priorities of the residents of that municipality. In short, the issue is how far an unelected arbitrator can go in removing decision making authority regarding certain municipal services from the elected representatives of a municipality and granting that authority to another municipality.
>
> The authority granted to an unelected arbitrator to override the decisions of the elected representatives of a municipality and provide directions regarding delivery of and payment for certain services is extraordinary. In light of this, … the arbitrator's jurisdiction must be strictly construed and limited to exactly what is set out in Part 17.2 of the MGA.

At CB para 59, the County queried whether "the Arbitrator has jurisdiction to force one municipality to pay for infrastructure in another municipality, particularly where the first municipality had no say in the funding of the infrastructure and no ownership interest."

[74] The County's circumstance do not attract the residual correctness review category.

[75] First, the fact that the issues are a matter of public concern, not only for the County's governance but its residents, does not itself attract the residual exception. The Supreme Court commented as follows in ***Vavilov*** at para 61:

> [61] We would stress that the mere fact that a dispute is "of wider public concern" is not sufficient for a question to fall into this category — nor is the fact that the question, when framed in a general or abstract sense, touches on an important issue: see, e.g., *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34, [2013] 2 S.C.R. 458, at para. 66; *McLean*, at para. 28; *Barreau du Québec v. Quebec (Attorney General)*, 2017 SCC 56, [2017] 2 S.C.R. 488, at para. 18.

[76] Second, the "failure to apply correctness review" would *not* "undermine the rule of law and jeopardize the proper functioning of the justice system in a manner analogous to the three situations described in [***Vavilov***]." Those three situations are, in reverse order, questions regarding the jurisdictional boundaries between two or more administrative bodies, general questions of law of central importance to the legal system as a whole, and constitutional questions: ***Vavilov*** at para 53. I've just denied the applicability of the "jurisdictional boundaries" exception.

[77] Examples of general questions of law of central importance to the legal system as a whole were described in ***Vavilov*** at para 60:

> [60] …. when an administrative proceeding will be barred by the doctrines of *res judicata* and abuse of process (*Toronto (City)*, at para. 15); the scope of the state's duty of religious neutrality (*Saguenay*, at para. 49); the appropriateness of limits on solicitor-client privilege (*University of Calgary*, at para. 20); and the scope of parliamentary privilege (*Chagnon*, at para. 17).

The County's circumstances are not analogous to these examples.

[78] Constitutional questions include "[q]uestions regarding the division of powers between Parliament and the provinces, the relationship between the legislature and the other branches of the state, the scope of Aboriginal and treaty rights under s. 35 of the *Constitution Act, 1982*:" ***Vavilov*** at para 55. The County's difficulty is that its legislative and executive authority are not constitutionally protected matters. Unlike the federal State or the Provinces, municipalities have no constitutional status. The County referred to ***Pacific National Investments Ltd v Victoria (City)***, 2000 SCC 64, LeBel J at paras 55 and 56, but this case does not establish any constitutionally protected or specially-legally-protected core of municipal jurisdiction. The case concerns municipalities fettering legislative authority by contract.

[79] This is precisely the County's difficulty. The Province is entitled to legislate concerning municipalities under s 92(8) of the *Constitution Act, 1867* ("Municipal Institutions in the Province"). The Provincial Legislature, whose members are democratically elected, has so legislated, through the MGA generally and Part 17.2 in particular. It may be that before the enactment of Part 17.2 municipalities had greater autonomy than they have now and could not be

"forced" into intermunicipal arrangements contrary to municipal will (or at least they could not be "forced" into ICFs). It may also be that the governance ecosystem where the County now finds its place has supra-municipal features that did not exist in the past.

[80] Municipal autonomy has been limited by the democratic determinations of the Province, rather than by an "unelected arbitrator."

[81] The Arbitrator was not some unelected interloper who imposed her will on the County. The Arbitrator's authority and powers were established by statute, just as the authority and powers of the County Mayor and Councillors are established by statute.

[82] On the issue of "forcing" a municipality to pay for infrastructure, the answer lies in s 708.4(1): "Where an arbitrator makes an award respecting a framework, the municipalities are bound by the award …."

[83] The County's concerns are fundamentally political, not concerns going to the proper functioning of the justice system.

[84] The residual exception to reasonableness review was not engaged.

D. Conclusion

[85] ***Vavilov*** applies to determine the standard of review. The Arbitrator's decisions in the Award are reviewable only insofar as those decisions raise questions of jurisdiction. The standard of review for questions of jurisdiction is reasonableness. Statutory language and ***Vavilov*** establish that the Arbitrator's decisions about her jurisdiction and any questions of jurisdiction are reviewed on the reasonableness standard. No exception to the presumption of reasonableness was engaged.

III. Features of Reasonableness Review

[86] Justice Rowe observed in ***Canada Post Corp v Canadian Union of Postal Workers***, 2019 SCC 67 at para 29 that "***Vavilov*** provides guidance for conducting reasonableness review that upholds the rule of law, while according deference to the statutory delegate's decision …. [D]eferential review has never meant showing 'blind reverence' to statutory decision makers …." As the majority said in ***Vavilov*** at para 68, "[r]easonableness review does not give administrative decision makers free rein in interpreting their enabling statutes." See also ***Suncor Energy Inc v Unifor Local 707A***, 2017 ABCA 313 at para 36-37.

[87] This stance towards interpretation preserves the rule of law by confining statutory authority to the reasonable meaning of the statute, to the meaning of the legislation itself, not simply to the interpretation of the tribunal. Were a tribunal not constrained by reasonableness in interpretation, it would in effect become the legislator. Without reasonableness constraint, there would be, in effect, an improper subdelegation of rule-making authority to the tribunal. A tribunal should not take on authority not supported by the language of legislation. See ***Vavilov*** at para 110:

> [110] .... All of this is to say that certain questions relating to the scope of a decision maker's authority may support more than one interpretation, while other questions may support only one, depending upon the text by which the statutory grant of authority is made. What matters is whether, in the eyes of the reviewing court, the decision maker has properly justified its interpretation of the statute in light of the surrounding context. It

> will, of course, be impossible for an administrative decision maker to justify a decision that strays beyond the limits set by the statutory language it is interpreting.

A. Restraint

[88] ***Vavilov*** directs that reasonableness review be approached by the courts with restraint, respect, and deference. But reasonableness review is still grounded in and circumscribed by statute. The Supreme Court wrote as follows at paras 13 and 14:

> [13] Reasonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers. However, it is not a "rubber-stamping" process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review.
>
> [14] On the one hand, courts must recognize the legitimacy and authority of administrative decision makers within their proper spheres and adopt an appropriate posture of respect. On the other hand, administrative decision makers must adopt a culture of justification and demonstrate that their exercise of delegated public power can be "justified to citizens in terms of rationality and fairness": the Rt. Hon. B. McLachlin, "The Roles of Administrative Tribunals and Courts in Maintaining the Rule of Law" (1998), 12 C.J.A.L.P. 171, at p. 174 (emphasis deleted); see also M. Cohen-Eliya and I. Porat, "Proportionality and Justification" (2014), 64 U.T.L.J. 458, at pp. 467-70.

B. Focus on Reasons

[89] "Reasons," wrote the majority in ***Vavilov*** at para 81, "are the primary mechanism by which administrative decision makers show that their decisions are reasonable." At para 79, the Court stated that

> [79] …. Reasons explain how and why a decision was made. They help to show affected parties that their arguments have been considered and demonstrate that the decision was made in a fair and lawful manner. Reasons shield against arbitrariness as well as the perception of arbitrariness in the exercise of public power …. And as Jocelyn Stacey and the Hon. Alice Woolley persuasively write, "public decisions gain their democratic and legal authority through a process of public justification" which includes reasons "that justify [the] decisions [of public decision makers] in light of the constitutional, statutory and common law context in which they operate": "Can Pragmatism Function in Administrative Law?" (2016), 74 S.C.L.R. (2d) 211, at p. 220.

[90] Reasonableness review focuses on both the decision-maker's reasoning process, the decision-maker's rationale, and the outcome, decision, or conclusion. The focus is *not* on the conclusion alone: ***Vavilov*** at paras 83, 86. A principled approach to reasonableness review "puts reasons first:" at para 84. The reviewing court is to pay "respectful attention" to the reasons and to seek to understand the reasoning process that led to the conclusion. The reasons must justify the decision. At para 87 we read that

> [87] This Court's jurisprudence since ***Dunsmuir*** should not be understood as having shifted the focus of reasonableness review away from a concern with the reasoning process and toward a nearly exclusive focus on the *outcome* of the administrative

> decision under review. Indeed, that a court conducting a reasonableness review properly considers both the outcome of the decision and the reasoning process that led to that outcome was recently reaffirmed in *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, [2018] 1 S.C.R. 6, at para. 12. In that case, although the outcome of the decision at issue may not have been unreasonable in the circumstances, the decision was set aside because the outcome had been arrived at on the basis of an unreasonable chain of analysis. This approach is consistent with the direction in ***Dunsmuir*** that judicial review is concerned with *both* outcome *and* process. To accept otherwise would undermine, rather than demonstrate respect toward, the institutional role of the administrative decision maker.

[91] A reviewing court should not supply its own reasons to support a conclusion that was not supported by reasons discernable on the record. Paragraph 96 of ***Vavilov*** reads as follows:

> [96] Where, even if the reasons given by an administrative decision maker for a decision are read with sensitivity to the institutional setting and in light of the record, they contain a fundamental gap or reveal that the decision is based on an unreasonable chain of analysis, it is not ordinarily appropriate for the reviewing court to fashion its own reasons in order to buttress the administrative decision. Even if the outcome of the decision could be reasonable under different circumstances, it is not open to a reviewing court to disregard the flawed basis for a decision and substitute its own justification for the outcome: *Delta Air Lines*, at paras. 26-28. To allow a reviewing court to do so would be to allow an administrative decision maker to abdicate its responsibility to justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion. This would also amount to adopting an approach to reasonableness review focused solely on the outcome of a decision, to the exclusion of the rationale for that decision ….

C. Considerations in the Assessment of Reasonableness

[92] Reasonableness requires justification, transparency, and intelligibility in the reasoning process: ***Vavilov*** at paras 86, 99, 100.

[93] At para 85, ***Vavilov*** confirms that "…. a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker."

[94] What is reasonable in a given situation will depend on the "constraints" imposed by the "legal and factual context of the particular decision under review:" ***Vavilov*** at para 90. "These contextual constraints dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt:" at para 90.

[95] ***Vavilov*** identified two types of "fundamental flaws," grounds for a finding of unreasonableness at para 100. "The first is a failure of rationality internal to the reasoning process. The second arises when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it."

1. Internal Rationality

[96] With respect to internal rationality, a reasonable decision is based on coherent reasoning. It cannot be the product of logical fallacies. The conclusion must follow from the reasons. The reasoning must be intelligible and rational. Reasons must lead from the evidence and law to the conclusions: ***Vavilov*** at paras 102-104.

2. Contextual Consistency

[97] With respect to contextual consistency (one might say "external" rationality), a reasonable decision is justified in light of its legal and factual constraints. ***Vavilov*** identified some of these constraints, without providing a full catalogue, at para 106:

- the governing statutory scheme
- other relevant statutory or common law
- principles of statutory interpretation
- the evidence before the decision-maker
- the submissions of the parties
- past practices and decisions of the decision maker
- the potential impact of the decision on the individual to whom it applies.

Because the statutory scheme and statutory interpretation were involved in all the challenges to the Award, I will consider these constraints last.

(a) Evidence Before the Decision Maker

[98] The courts will generally not interfere with a decision-maker's factual findings. A decision, though, must be reasonable on the record before the decision-maker (keeping in mind restrictions on the scope of judicial review). See ***Vavilov*** at paras 125 and 126:

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; ***Dunsmuir***, at para. 53.
>
> [126] That being said, a reasonable decision is one that is justified in light of the facts: ***Dunsmuir***, at para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it ….

(b) Submissions of the Parties

[99] A decision-maker must take the parties' submissions into account. ***Vavilov*** stated the following at paras 127 and 128:

> [127] The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. The principle that the individual or individuals affected by a decision

should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard: *Baker*, at para. 28. The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually listened to the parties.

[128] Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (*Newfoundland Nurses*, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para. 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.

(c) Past Practices/Past Decisions

[100] The Supreme Court commented in ***Vavilov*** at para 112 that:

> [112] Any precedents on the issue before the administrative decision maker or on a similar issue will act as a constraint on what the decision maker can reasonably decide. An administrative body's decision may be unreasonable on the basis that the body failed to explain or justify a departure from a binding precedent in which the same provision had been interpreted. Where, for example, there is a relevant case in which a court considered a statutory provision, it would be unreasonable for an administrative decision maker to interpret or apply the provision without regard to that precedent ….

[101] I was directed to no other ICFs or arbitrator decisions about ICFs. ICFs are a recent statutory innovation and the terms of ICFs and any arbitrator decisions concerning ICFs would likely be highly dependent on the particular circumstances of party municipalities.

[102] I was directed to Justice Kubik's decision in ***Cardston (Town) v Alberta (Minister of Municipal Affairs)***, 2022 ABKB 802, which concerned a Ministerial intervention respecting an ICF between Cardston Town and Cardston County. The extent to which this decision acts as a constraint on what the Arbitrator could reasonably decide will be discussed below. I was directed to no other judicial review decisions concerning ICFs.

(d) Impact of the Decision on the Affected Individual

[103] ***Vavilov*** confirmed that the potential "adverse impact" of a decision on a party is an important contextual factor, writing at para 133 that

> [133] It is well established that individuals are entitled to greater procedural protection when the decision in question involves the potential for significant personal impact or harm: *Baker*, at para. 25. However, this principle also has implications for how a court conducts reasonableness review. Central to the necessity of adequate justification is the perspective of the individual or party over whom authority is being exercised. Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes. The principle of responsive justification means

> that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention. This includes decisions with consequences that threaten an individual's life, liberty, dignity or livelihood.

[104] In my opinion, the adverse impact of the Award on the County and its residents both financially and as regards County legislative and executive autonomy should be considered a contextual constraint on the reasonableness of the Arbitrator's decisions in the Award.

3. Statute and Statutory Interpretation

(a) Statutory Scheme

[105] ***Vavilov*** offered the following respecting the statutory scheme in which the decision-maker's decision is embedded:

> [108] Because administrative decision makers receive their powers by statute, the governing statutory scheme is likely to be the most salient aspect of the legal context relevant to a particular decision. That administrative decision makers play a role, along with courts, in elaborating the precise content of the administrative schemes they administer should not be taken to mean that administrative decision makers are permitted to disregard or rewrite the law as enacted by Parliament and the provincial legislatures. Thus, for example, while an administrative body may have considerable discretion in making a particular decision, that decision must ultimately comply "with the rationale and purview of the statutory scheme under which it is adopted": *Catalyst*, at paras. 15 and 25-28; see also *Green*, at para. 44 ….

But working out that rationale and purview of the statutory scheme requires statutory interpretation.

(b) Statutory Interpretation

[106] ***Vavilov*** describes the set of principles of statutory interpretation as a constraint on reasonableness. That of course is true. But from another perspective, many features of reasonableness review, particularly the resolution of questions of jurisdiction, are folded into statutory interpretation.

[107] In ***UES, Local 298 v Bibeault***, [1988] 2 SCR 1048, Justice Beetz wrote as follows at para 120:

> 120 The chief problem in a case of judicial review is determining the jurisdiction of the tribunal whose decision is impugned. The courts, including this Court, have often remarked on the difficulty of the task. I doubt whether it is possible to state a simple and precise rule for identifying a question of jurisdiction, given the fluidity of the concept of jurisdiction and the many ways in which jurisdiction is conferred on administrative tribunals. De Smith points out:
>
> > In approaching the solution to a particular case [on judicial review], the crucial questions will often be: What are the context and purpose of the legislation in question? What significance is to be attributed to the language in which a grant of statutory power is worded? <u>To a large extent judicial review of administrative action is a specialized branch of statutory interpretation</u>. (S. A. de Smith,

> *Constitutional and Administrative Law* (4th ed. 1981), at p. 558) [Emphasis added by Beetz J]

[108] One aspect of the specialized nature of statutory review in the judicial review of administrative action is that presumptively the reasonableness standard applies. ***Vavilov*** cautioned at para 116 that in reasonableness review,

> [116] …. the reviewing court does not undertake a *de novo* analysis of the question or "ask itself what the correct decision would have been": *Ryan*, at para. 50. Instead, just as it does when applying the reasonableness standard in reviewing questions of fact, discretion or policy, the court must examine the administrative decision as a whole, including the reasons provided by the decision maker and the outcome that was reached.

[109] The Arbitrator's decisions under review involved statutory interpretation. The principles governing statutory interpretation were common ground among the Arbitrator, the County, and the Town.

[110] The Arbitrator correctly set out the applicable principles of statutory interpretation (Award paras 90-95, TB paras 21-22).

(i) Modern Principle of Statutory Interpretation

[111] The MGA must be interpreted in accordance with the modern principle of interpretation, set out in ***Bell ExpressVu Limited Partnership v Rex***, 2002 SCC 42, Iacobucci J at para 26:

> 26 In Elmer Driedger's definitive formulation, found at p. 87 of his *Construction of Statutes* (2nd ed. 1983):
>
> > Today there is only one principle or approach, namely, the words of an Act are to 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.
>
> Driedger's modern approach has been repeatedly cited by this Court as the preferred approach to statutory interpretation across a wide range of interpretive settings ….

The modern approach is "buttressed" by s 10 of the *Interpretation Act* (see ***Bell ExpressVu*** at para 26):

> 10 An enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects.

See ***Vavilov*** at paras 117-121.

[112] By way of elaboration, the Arbitrator referred to ***British Columbia Human Rights Tribunal v Schrenk***, 2017 SCC 62, Rowe J at paras 45-46 and 50:

> [45] The requirement to read the legislative text "harmoniously with the scheme of the Act" reinforces the broad interpretation of s. 13(1)(b) I propose (Driedger, at p. 87). Guided by the modern principle, courts must not construe particular provisions in isolation; rather, individual provisions must be considered in light of the act as a whole, with each provision informing the meaning given to the rest (see Sullivan, at §13.3). This rule ensures that statutes are read as coherent legislative pronouncements. In this regard,

> "[i]t is presumed that the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain" (ibid., at §8.23).
>
> [46] This presumption must play a role in our interpretation so as to ensure that no provision of the Code is "interpreted so as to render it mere surplusage" (*R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61, at para. 28) ….
>
> [50] The modern principle of interpretation requires that courts approach statutory language in the manner that best reflects the underlying aims of the statute. This follows from the obligation to interpret the words of an Act harmoniously with the object of the Act and the intention of Parliament. As Professor Sullivan notes, "[i]n so far as the language of the text permits, interpretations that are consistent with or promote legislative purpose should be adopted, while interpretations that defeat or undermine legislative purpose should be avoided" (§9.3).

(ii) Legislative History

[113] Legislative history had an important role in the statutory interpretation bearing on the Arbitrator's jurisdiction.

[114] The Arbitrator referred again to ***Shrenk*** at para 60:

> [60] It is well established that the legislative history of statutes can be relied on to guide the interpretation of statutory language (*Gravel v. City of St-Léonard*, [1978] 1 S.C.R. 660; see also *R. v. Ulybel Enterprises Ltd.*, 2001 SCC 56, [2001] 2 S.C.R. 867, at para. 33). The legislative evolution of an enactment forms part of the "entire context" to be considered as part of the modern approach to statutory interpretation (*Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771*, 2005 SCC 70, [2005] 3 S.C.R. 425, at para. 28) ….

and to ***Canada (Canadian Human Rights Commission) v Canada (Attorney General)***, 2011 SCC 53, LeBel and Cromwell JJ at paras 43-44:

> [43] The legislative evolution and history of a provision may often be important parts of the context to be examined as part of the modern approach to statutory interpretation: *Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771*, 2005 SCC 70, [2005] 3 S.C.R. 425, at para. 28, per Binnie J.; *Hills v. Canada (Attorney General)*, [1988] 1 S.C.R. 513, at p. 528, per L'Heureux-Dubé J.; *Hilewitz v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 57, [2005] 2 S.C.R. 706, at paras. 41-53, per Abella J. Legislative evolution consists of the provision's initial formulation and all subsequent formulations. Legislative history includes material relating to the conception, preparation and passage of the enactment: see Sullivan, at pp. 587-93; P.-A. Côté, with the collaboration of S. Beaulac and M. Devinat, *Interprétation des lois* (4th ed. 2009), at pp. 496 and 501-8.
>
> [44] We think there is no reason to exclude proposed, but unenacted, provisions to the extent they may shed light on the purpose of the legislation. While great care must be taken in deciding how much, if any, weight to give to these sorts of material, it may provide helpful information about the background and purpose of the legislation, and in some cases, may give direct evidence of legislative intent: Sullivan, at p. 609; Côté, at p. 507; *Doré v. Verdun (City)*, [1997] 2 S.C.R. 862, at para. 37. This Court, in *M. v. H.*,

> [1999] 2 S.C.R. 3, has held that failed legislative amendments can constitute evidence of Parliamentary purpose: paras. 348-49, per Bastarache J.

(iii) Legislative History and Hansard

[115] Later in her reasons (Award paras 136-137), the Arbitrator addressed principles respecting the use of Hansard in interpreting legislation, referring to ***Canadian National Railway Co v Canada (Attorney General)***, 2014 SCC 40, Rothstein J at para 47:

> [47] This Court has observed that, while Hansard evidence is admitted as relevant to the background and purpose of the legislation, courts must remain mindful of the limited reliability and weight of such evidence (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 35; *R. v. Morgentaler*, [1993] 3 S.C.R. 463, at p. 484; Sullivan, at pp. 608-14). Hansard references may be relied on as evidence of the background and purpose of the legislation or, in some cases, as direct evidence of purpose (*Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471, at para. 44, per LeBel and Cromwell JJ.). Here, Hansard is advanced as evidence of legislative intent. However, such references will not be helpful in interpreting the words of a legislative provision where the references are themselves ambiguous (*Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, 2006 SCC 20, [2006] 1 S.C.R. 715, at para. 39, per LeBel J.) ….

and referring to ***Atlantic Lottery Corp Inc v Babstock***, 2020 SCC 19, Brown J at para 46:

> [46] While this Court has recognized that the statements of particular Members of Parliament cannot necessarily be taken as expressing the intention of Parliament as a whole (*R. v. Heywood*, [1994] 3 S.C.R. 761, at pp. 788-89), the statements recounted here were made by those directly responsible for introducing the three-card monte prohibition, and as such provide relevant evidence of legislative purpose ….

See also CB paras 30-33.

IV. Decisions under Review

[116] I do not consider there to have been any support for a claim of insufficiency of reasons. The reasoning in the Award was thorough and clear.

[117] There was no suggestion that the Award strayed from the Arbitrator's jurisdiction to an area foreclosed from arbitral competence under s 708.36(7).

A. Questions of Jurisdiction?

[118] As indicated, the County challenged directions in the Award involving

- capital costs and other non-operating costs relating to services provided by the Town
- services the Town does not provide but third parties provide, such as library, police, rail, and recreation services
- services solely located in the Town and whether those services met the standard of benefiting County residents.

The County characterized these as jurisdictional issues. As regards services solely located in the Town, the jurisdictional issue was the threshold for a finding that the services benefitted residents of the other municipality, not the location of service delivery.

[119] The Town agreed that the first two issues were jurisdictional, but not the issues relating to services solely within the Town (TB paras 81-82).

[120] What is a question of jurisdiction, as opposed, for example, to a question of law or mixed fact and law made within a tribunal's jurisdiction? And were the issues raised by the County "jurisdictional"?

1. The Nature of Jurisdictional Questions

[121] ***Vavilov*** has reduced the importance of the jurisdictional vs. non-jurisdictional questions distinction by assimilating the standard of review for jurisdictional questions to that of non-jurisdictional questions, but the identification of what counts as a jurisdictional question remains important when dealing with review statutorily confined to questions of jurisdiction.

[122] At para 66, ***Vavilov*** confirmed the difficulty in distinguishing jurisdictional questions from questions of law or mixed law and fact or fact alone:

> [66] As Gascon J. noted in *CHRC*, the concept of "jurisdiction" in the administrative law context is inherently "slippery": para. 38. This is because, in theory, any challenge to an administrative decision can be characterized as "jurisdictional" in the sense that it calls into question whether the decision maker had the authority to act as it did: see *CHRC*, at para. 38; *Alberta Teachers*, at para. 34; see similarly *City of Arlington, Texas v. Federal Communications Commission*, 569 U.S. 290 (2013), at p. 299. Although this Court's jurisprudence contemplates that only a much narrower class of "truly" jurisdictional questions requires correctness review, it has observed that there are no "clear markers" to distinguish such questions from other questions related to the interpretation of an administrative decision maker's enabling statute: see *CHRC*, at para. 38. Despite differing views on whether it is possible to demarcate a class of "truly" jurisdictional questions, there is general agreement that "it is often difficult to distinguish between exercises of delegated power that raise truly jurisdictional questions from those entailing an unremarkable application of an enabling statute": *CHRC*, at para. 111, per Brown J., concurring ….

Justice Dickson, as he then was, made similar observations some 40 years earlier in ***CUPE v NB Liquor Corporation***, [1979] 2 SCR 227. At 233, Justice Dickson cautioned that

> The question of what is and is not jurisdictional is often very difficult to determine. The courts, in my view, should not be alert to brand as jurisdictional, and therefore subject to broader curial review, that which may be doubtfully so.

[123] "True questions of jurisdiction" are rare. In ***Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association***, 2011 SCC 61 at para 33, Justice Rothstein observed that "[e]xperience has shown that the category of true questions of jurisdiction is narrow indeed. Since ***Dunsmuir***, this Court has not identified a single true question of jurisdiction:". I note Justices Brown and Rowe's comment in their minority decision in ***Quebec (Attorney General) v Guérin***, 2017 SCC 4 at para 68: "we maintain that the mere fact that this Court has not discerned a question of jurisdiction since *Dunsmuir* does not mean that such

questions have ceased to exist, nor that we should be blind to one when it clearly manifests itself."

[124] We obtain some guidance for identifying jurisdictional questions in ***Dunsmuir*** at para 59:

> [59] .... "Jurisdiction" is intended in the narrow sense of whether or not the tribunal had the authority to make the inquiry. In other words, true jurisdiction questions arise where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter. The tribunal must interpret the grant of authority correctly or its action will be found to be *ultra vires* or to constitute a wrongful decline of jurisdiction ....

[125] Jurisdiction has three aspects. First, it is the authority to hear a matter. In ***CUPE*** at 234, Justice Dickson referred to "jurisdiction in the narrow sense of authority to enter upon an inquiry," citing ***Service Employees' International Union v Nipawin Union Hospital***, [1975] 1 SCR 382 at 389. The issue is whether "whether the case before them was one of the kind upon which the empowering statute permitted entering an inquiry:" ***CUPE*** at 235.

[126] Second, it is the authority to decide. In ***Bibeault*** at para 124, Justice Beetz quoted de Smith: "Jurisdiction means authority to decide," and at para 125 stated that "[j]urisdiction *stricto sensu* is defined as the power to decide." Justice Beetz continued:

> The importance of a grant of jurisdiction relates not to the tribunal's capacity or duty to decide a question but to the determining effect of its decision. As S. A. de Smith points out, the tribunal's decision on a question within its jurisdiction is binding on the parties to the dispute. In the exercise of its superintending and reforming power, a superior court must not limit its inquiry to identifying the questions to be dealt with by the tribunal. The true problem of judicial review is to discover whether the legislator intended the tribunal's decision on these matters to be binding on the parties to the dispute, subject to the right of appeal if any.

[127] Third, jurisdiction concerns decision-making that remains within the confines of the statutory authorization, decision-making that neither exceeds nor falls short of statutory authorization. In ***Bibeault*** at para 114, Justice Beetz quoted his decision in ***Syndicat des employés de production du Québec v CLRB***, [1984] 2 SCR 412 at 420, referring to "a provision which confers jurisdiction, that is, one which describes, lists and limits the powers of an administrative tribunal, or which is [*translation*] "intended to circumscribe the authority" of that tribunal, as Pigeon J. said in *Komo Construction Inc. v. Commission des relations de travail du Québec*, [1968] S.C.R. 172 at p. 175." [emphasis added] At para 117 of ***Bibeault***, Justice Beetz commented that "any grant of jurisdiction will necessarily include limits to the jurisdiction granted, and any grant of a power remains subject to conditions." As the Court stated in ***Vavilov*** at para 68, "the governing statutory scheme will always operate as a constraint on administrative decision makers and as a limit on their authority." The Court continued:

> Without seeking to import the U.S. jurisprudence on this issue wholesale, we find that the following comments of the Supreme Court of the United States in *Arlington*, at p. 307, are apt:
>
> > The fox-in-the-henhouse syndrome is to be avoided not by establishing an arbitrary and undefinable category of agency decision-making that is accorded no deference, but by taking seriously, and applying rigorously, in all cases, statutory

> limits on agencies' authority. Where [the legislature] has established a clear line, the agency cannot go beyond it; and where [the legislature] has established an ambiguous line, the agency can go no further than the ambiguity will fairly allow. But in rigorously applying the latter rule, a court need not pause to puzzle over whether the interpretive question presented is "jurisdictional".

2. The Issues as Jurisdictional

[128] To begin with the decision-making authority of the Arbitrator, s 708.4(1) provides as follows:

> 708.4(1) Where an arbitrator makes an award respecting a framework, the municipalities are bound by the award and must, within 60 days after the date of the award, adopt a framework in accordance with the award.

[129] An award concerns a "framework." Under s 708.26(1)(b), "'framework' means an intermunicipal collaboration framework entered into between 2 or more municipalities." Under s 708.27(a), "[t]he purpose of this Part is to provide for intermunicipal collaboration frameworks among 2 or more municipalities ... to provide for the integrated and strategic planning, delivery and funding of intermunicipal services." Under s 708.29(1), "[a] framework must describe the services to be provided under it that benefit residents in more than one of the municipalities that are parties to the framework." Under s 708.29(2), "the municipalities must identify which municipality is responsible for providing which services and outline how the services will be delivered and funded."

[130] The Arbitrator was empowered to bind the parties respecting the responsibility for providing intermunicipal services, the delivery of intermunicipal services, and the funding of intermunicipal services, as these services fall within a framework. The essence of the Arbitrator's authority to bind was the Arbitrator's authority to make determinations concerning "intermunicipal services."

[131] In my opinion, the issues of the scope of "intermunicipal services" and the funding of "intermunicipal services" go to the Arbitrator's jurisdiction. I agree with the County's submission that "the [A]rbitrator's authority to make such directions should be strictly limited to exactly what is set out in Part 17.2 of the MGA" (CB paras 42, 62).

[132] The Arbitrator's jurisdiction respecting "intermunicipal services" and funding for these services are constrained by the statutory limits of Part 17.2 read in conjunction with the remainder of the MGA.

[133] It follows that the issues of whether

- an award may allocate responsibility for capital expenditures and other non-operational expenses as well as operational expenses related to facilities and infrastructure, and
- services delivered by third parties, not parties to the ICF, may be "intermunicipal services"

are jurisdictional issues. See CB paras 35, 26, 106; TB paras 6, 7, 8-9.

[134] As regards services delivered in one municipality, I will consider below whether the Arbitrator committed jurisdictional error by not imposing a threshold test on whether residents of

the non-delivering municipality received benefits sufficient to warrant financial contributions by the non-delivering municipality.

B. Intermunicipal Services, Infrastructure, and Capital Costs

1. The County's Position

[135] The County contended that the Arbitrator erred by declining to adopt a definition of "intermunicipal services" that "excluded facilities, infrastructure and /or capital costs associated with the delivery of those services." The County contended that "[c]apital costs related to facilities and infrastructure are not 'intermunicipal services' and should not be included in the 'funding' for intermunicipal services" (CB para 38 and heading 5.C). The County sought to deploy a form of "definitional stop" argument to preclude responsibility for certain types of expenses related to "intermunicipal services" as a matter of definition, of statutory interpretation alone (see H.L.A. Hart, "Prolegomenon to the Principles of Punishment," *Proceedings of the Artistotelian Society*, New Series, Vol 60 (1959-1960), 1-26, p 5).

[136] The County therefore challenged the following elements of the Award designating Town infrastructure and facilities as "intermunicipal services" and directing the County to contribute to capital-related expenses (CB para 40):

- maintenance and capital costs, including those for equipment and facilities, related to fire services (Award, para 321)
- maintenance and capital costs related to recreation, arts, and cultural facilities and buildings (Award, paras 398-399)
- maintenance and capital costs relating to "the facility" (the RCMP Detachment) for police services (Award paras 418, 421-422)
- maintenance and capital costs related to the Forest Interpretive Centre building and grounds owned by and located in the Town (Award para 436)
- maintenance and capital costs for FCSS buildings owned by the Town (Award para 452)
- maintenance and capital costs related to the Town's library building (Award paras 468, 471-472)
- all capital costs to maintain, repair, replace, expand or improve the Town's cemetery (Award para 488)
- 80% of the cost of constructing and maintaining certain roads located within the Town (Award paras 507-509)
- 50% of the maintenance and capital costs for rail crossings located within the Town (Award paras 525-526).

[137] The County also challenged the Arbitrator's finding that the Town's proposed performing arts centre "has the potential to become an intermunicipal service" (Award para 601) and the Arbitrator's similar finding relating to the Town's proposed new library (Award para 602), and the Arbitrator's direction to include the funding of infrastructure and construction costs as matters for future planning under the ICF (CB para 41).

[138] The County clarified that (CB para 43)

> The County accepts that costs relating to ongoing repair and maintenance of infrastructure and facilities used in the delivery of a particular service can constitute part of the cost of delivering the service.

But

> The Arbitrator in this case went much further and included the capital costs of Town infrastructure and facilities as intermunicipal services, and then went further to identify future facilities that the Town is planning to construct, as having the potential to become intermunicipal services.

The Arbitrator commented that the County sought "to limit its funding obligation to only the direct operating costs of services. It [sought] to exclude all costs related to capital, debt obligations for capital, infrastructure, life cycle planning (maintenance), administrative overhead, indirect costs, planning costs, construction costs, and accounting costs" (Award para 184).

[139] In my opinion, the County's definitional approach to "intermunicipal services" was partly correct but incorrect in the aspect that matters most to the County. Further, in my opinion, the Arbitrator's definition of "intermunicipal services" was not only reasonable but correct.

2. General Features of Intermunicipal Services

[140] None of the terms "intermunicipal," "services," or "intermunicipal services" are defined by the MGA or the *Interpretation Act* (Award para 101, CB para 74, TB para 26).

[141] Section 708.27 describes the purpose of Part 17.2 and by implication describes features of "intermunicipal services." While relevant to the meaning of the term "intermunicipal services" these features do not define the term by providing necessary and sufficient conditions for the application of the term. Section 708.27 provides as follows:

> 708.27 The purpose of this Part is to provide for intermunicipal collaboration frameworks among 2 or more municipalities
>
> > (a) to provide for the integrated and strategic planning, delivery and funding of intermunicipal services,
> >
> > (b) to steward scarce resources efficiently in providing local services, and
> >
> > (c) to ensure municipalities contribute funding to services that benefit their residents.

In addition, ss 708.29(1)-(3) provide as follows:

> 708.29(1) A framework must describe the services to be provided under it that benefit residents in more than one of the municipalities that are parties to the framework.
>
> (2) In developing the content of the framework required by subsection (1), the municipalities must identify which municipality is responsible for providing which services and outline how the services will be delivered and funded.
>
> (3) Nothing in this Part prevents a framework from enabling an intermunicipal service to be provided in only part of a municipality.

[142] The Arbitrator properly teased out the definition-relevant features of ss 708.27 and 708.29 (Award para 99). Intermunicipal services

- can be planned, delivered, and funded
- must benefit the residents of more than one of the municipalities party to the ICF
- may be provided in only part of a municipality
- must be the responsibility of a municipality
- "must be capable of being described concerning how they will be delivered and funded."

[143] The term "intermunicipal services" has two elements, "intermunicipal" and "services."

3. "Intermunicipal" Services

[144] As a matter of plain or ordinary meaning, "intermunicipal" denotes (in context) a service between or among municipalities, carried on between municipalities, occurring between municipalities, or shared by municipalities (Award para 105). Consistently, the County submitted that "'intermunicipal' means between two or more municipalities" (CB para 75).

[145] Further, intermunicipal services are funded by a municipality. This "accounts for the public nature of the services" (Award para 100).

[146] As the Arbitrator found – and this is an implication s 708.27(c) – an "intermunicipal service" does not benefit the municipalities as such, but the residents of the municipalities (Award para 106).

[147] The nature of "services" was in dispute.

4. Intermunicipal "Services"

[148] The Arbitrator, the County, and the Town looked to the ordinary meaning of "services," as well as legislative context, legislative history, and the purpose of Part 17.2 to work out the meaning of "services."

(a) Ordinary Meaning

(i) Common Features

[149] The Arbitrator found, and I agree, that the ordinary meanings of "service" or "services" proposed by both the County and the Town began with similar explications, essentially in the form arrived at by the Arbitrator. The Arbitrator arrived at a "broad meaning" for the term "intermunicipal services," as

> things the public needs, public activities or commodities (often intangible and consumable), delivered by or on behalf of one municipality that benefits the residents of one or more other municipalities.

See Award para 96, 110, 111, 181; CB para 45; TB paras 24, 29, 30. (I'll address the "by or on behalf issue" separately below.)

[150] One might usefully add to "activities and commodities" as types of services, privileges or permissions (e.g. to use a swimming pool or arena).

[151] The fundamental idea supporting the idea of "services" is that members of the public, residents of municipalities, have "needs." I recognize that identifying what constitutes a "need" may be difficult and variable. See William Leiss, *The Limits of Satisfaction: An Essay on the Problem of Needs and Commodities* (Toronto: University of Toronto Press, 1976) 49-71.

Further, the issues of who decides what constitutes a need and the distinctions between needs that are or should be addressed by a public body like a municipality as opposed to needs that should be addressed by others, are also difficulty and variable matters. Part 17.2 assumes that there are such things as "needs" to be addressed by municipalities. In part, the ICF process promotes the identification (or rejection) of needs and means of addressing those needs.

[152] "Services" are identified by the purposes "served" by the "activities or commodities." A service must have a use directed to some purpose.

[153] A "service" must "serve" its purpose. It must promote the satisfaction of the purpose, address or at least partially fulfill the purpose. One might say that a service must be rationally connected with accomplishing its purpose.

[154] It must also be observed that the proposed definition of "intermunicipal services" is highly abstract, highly general.

(ii) County's Position

[155] The County advocated the addition of an exclusion to the definition. A clause would be added to the definition to the effect that "intermunicipal services" does not include infrastructure or capital costs (Award para 110, CB para 46).

[156] The County's proposed addition to the definition of "intermunicipal service" has both accurate and inaccurate aspects.

[157] It is true that the ordinary meaning of services does not import a reference to infrastructure or capital costs. The Arbitrator agreed: "There is nothing in the ordinary meaning of the phrase which imports the concept of contributions, funding, or costs" (Award para 112).

[158] The difficulty is that acceptance of this point does not take the County where it wants to go. The acceptance of this point does not mean that issues of infrastructure or capital costs are excluded from consideration in an ICF.

[159] It is not true that services do not involve infrastructure or capital costs. The question of what constitutes an "intermunicipal service," the definition of an "intermunicipal service," is one thing. How a service is to be provided, how a service is to "serve" the public need, what concrete mechanisms should be employed to accomplish what the service is to do, is another. Again, the definition of "intermunicipal services" is abstract, general. The definition does not specify how particular services will accomplish their goals, whether that will be by words alone (the provision of advice or counselling), by providing consumable commodities (such as water), by physical activities (such as fighting fires, which also requires equipment), or by making physical locations available (such as an arena).

[160] The County has sought to mix into the definitional question a position on the scope of funding for services. On the level of the definition of services, funding is irrelevant. As the Arbitrator said (Award para 112),

> services are different than the contributions for funding for those services .... Only after the municipalities or an arbitrator determine a proposed service meets the tests of being an intermunicipal service that benefits the residents in more than one municipality does the question of funding contributions arise.

The County's exclusionary clause was not an answer to the question of "what is the definition of an 'intermunicipal service'?" It was an answer to the question of "what is the scope of financial responsibility for an intermunicipal service?" The County sought to limit the definition of "intermunicipal services" by including non-definitional considerations.

(iii) Conclusion Respecting Ordinary Meaning

[161] In my opinion, the Arbitrator's determination of the meaning of "intermunicipal services," the broad meaning or "common features" definition provided above (Award para 111), was reasonably and correctly supported by the ordinary meaning of "service." The Arbitrator's definition of "intermunicipal services" was similar to the Town's. No exclusionary clause relating to funding should be added.

[162] Is this ordinary meaning supported by legislative context?

(b) Legislative Context

(i) Section 3(b)

[163] The County looked to s 3(b) of the MGA:

> 3 The purposes of a municipality are …
>
> > (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.

[164] Section 3(b) contrasts "services" with "facilities." Otherwise, the term "facilities" would be redundant. Services, then, "cannot be read to include facilities" (CB para 48).

[165] There are three responses to this contention.

[166] First, it is true that facilities may not have a service-provision role. There could be municipal buildings or parts of buildings, for example, that are at least not directly connected to providing services to the public. Also, the delivery of some services may not require any "facilities."

[167] Second, again, there is a distinction between the notion of providing services and the means by which services are provided, which may be by way of "facilities" (keeping in mind that not all facilities may be implicated in service provision). The term "facilities" is not rendered redundant just because it may have some conceptual or practical overlap with "service" provision. I note that para (c), "to develop and maintain safe and viable communities" may well involve the provision of services. Further, para (a) "to provide good government" may itself embrace the provision of services, since providing good government is a service to citizens, and part of good government will involve making decisions about services. There is doubtless practical overlap between the paras (a)-(c). So long as the terms are emphasizing different aspects of municipal purposes, the terms are not redundant.

[168] Third, and this was the approach of the Arbitrator, the full context of this section must be considered. Paragraph (d) reads as follows:

> > (d) to work collaboratively with neighbouring municipalities to plan, deliver and fund intermunicipal services.

The Arbitrator's definition of "intermunicipal services" (without the express exclusion of infrastructure or capital costs) may be used in para (d). Paragraph (b) concerns services within

only one municipality. Paragraph (d) concerns joint service provision with other municipalities. The planning, delivery, and funding of such services is to be a product of collaboration. What that "planning, delivery, and funding" would look like in terms of actual provision of intermunicipal services is left general (Award para 115). Planning, delivery, and funding may or may not involve facilities. Again, "services are different than the contributions for funding those services" (Award para 112).

(ii) Section 3(d)

[169] The County, though, observed respecting s 3(d) that there is no reference to "facilities," "capital projects," or "capital funding." The MGA refers elsewhere to capital costs including capital property (s 254), capital improvements (s 27.2), capital budgets (ss 75.1, 246), capital plans (s 283.1), and capital costs of a growth management board (s 708.24(1)). "Had the Legislature intended to include capital costs in the definition of intermunicipal services, it would have used the term as it had done elsewhere in the MGA" (CB para 49). "Without any reference to capital costs in s 3(d) or part 17.2 of the MGA, the inclusion of capital costs cannot be read into the legislation governing ICFs" (CB para 49).

[170] The response is to repeat that the cost issue is not a definitional issue. The issue of the cost of intermunicipal services is different than the issue of what counts as an intermunicipal service (Award para 112). The issue of "funding" is distinguished from "intermunicipal services" themselves in ss 3(d), 708.27(a), and 708.29(2) (Award para 112).

[171] The use in s 3(d) of the term "to fund" does not restrict the costs of delivering services to operating costs only (Award para 196).

[172] How intermunicipal services are to be delivered and how these services are to be funded are left to be determined by actual service-delivery requirements, negotiation or, failing resolution, arbitration.

(iii) Section 243

[173] Section 243 sets out the contents of an operating budget, including the following:

> 243(1) An operating budget must include the estimated amount of each of the following expenditures and transfers: …
>
> > (b) the amount needed to pay the debt obligations in respect of borrowings made to acquire, construct, remove or improve capital property; …
> >
> > (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; …
> >
> > (f) the amount to be transferred to the capital budget ….

[174] The County referred to the differentiation between "expenditures and transfers needed to meet the municipality's obligations for services funded under an intermunicipal collaboration framework" ((c.1)) and "the amount needed to pay the debt obligations in respect of borrowings made to acquire, construct, remove or improve capital property" ((b)). This differentiation suggests that debt to acquire capital is not contemplated by para (c.1). "If amounts needed to pay

debt obligations in respect of borrowings made to acquire, construct, remove or improve capital property were intended to be included in ICFs, they would not be treated separately for the purposes of municipal budgeting" (CB para 50).

[175] The Arbitrator reasonably and correctly responded to the County's arguments, writing as follows at paras 119-121:

> [119] …. When Part 17.2 was added to the MGA, the Legislature clearly intended the municipalities to adjust their budgets for the ICF funding obligations ….
>
> [120] …. Debt obligations in section 243(1)(b) refers to the municipality's own debt obligations ….
>
> [121] On the other hand, section 243(c.1) aligns with the municipal purpose in section 3(d) and requires the municipality to disclose and budget its obligations under an ICF ….

[176] That is, s 243(1) identifies how various municipal expenses are recorded. Some entries concern a municipality's own (intramunicipal) obligations. Paragraph (c.1) concerns obligations under an ICF, whatever those obligations might be. Section 243 does not restrict the arrangements necessary for funding elements of an ICF (Award paras 119-121, TB para 31).

[177] Section 243(1)(b) is not rendered redundant if a municipality has an expense, a contribution by funding, "that indirectly recognizes the capital costs of the services being delivered" (Award para 196; TB para 129).

[178] It is not necessary that ICF expenses be squeezed into the categories of pre-ICF budgeting. "[T]he Legislature ... intended to facilitate a change in [municipalities'] budget disclosure" (Award para 196).

(iv) Section 708.38(1)(a)

[179] Section 708.38(1) provides as follows:

> 708.38(1) In resolving a dispute, an arbitrator may have regard to
>
> > (a) the services and infrastructure provided for in other frameworks to which the municipalities are also parties ….

[180] Paragraph (a) refers to "other frameworks" and to "services and infrastructure provided for" in these other frameworks.

[181] Section 708.38(1), then, clearly contemplates that ICFs may concern both services and infrastructure (TB para 128).

[182] The County might counter that infrastructure could be voluntarily covered in an ICF. The fact of coverage in an ICF does not mean that binding directions concerning infrastructure fall within an arbitrator's jurisdiction.

[183] The response to the counter would be that if infrastructure coverage were voluntary, that would not be of much use to an arbitrator in resolving a dispute between other parties.

[184] Be all this as it may, this provision was not relied on by the Arbitrator in her jurisdictional assessment, so I attach no weight to it respecting the question of jurisdiction.

(v) Conclusion Respecting Legislative Context

[185] In my opinion, the legislative context does not dislodge the ordinary meaning of "intermunicipal services" arrived at by the Arbitrator. The ordinary meaning is consistent with other provisions of the MGA. Other provisions of the MGA do not preclude an arbitrator from obligating a municipal party to an ICF from funding both operational and non-operational costs of providing a service, including capital costs.

[186] Is the ordinary meaning supported by legislative purpose?

(c) Legislative Purpose

[187] Section 708.27 provides as follows:

> 708.27 The purpose of this Part is to provide for intermunicipal collaboration frameworks among 2 or more municipalities
>
> > (a) to provide for the integrated and strategic planning, delivery and funding of intermunicipal services,
> >
> > (b) to steward scarce resources efficiently in providing local services, and
> >
> > (c) to ensure municipalities contribute funding to services that benefit their residents.

(i) County's Position

[188] The County referred to the Arbitrator's observations about the broad meaning of "intermunicipal services" (Award para 153, CB para 52). The broad meaning of intermunicipal services

- harmonizes with the Legislature's intent to give municipalities wide flexibility about how to plan, deliver or fund these services
- promotes the stewarding of scarce resources by enabling municipalities to explore a variety of ways to provide local services
- gives the municipalities wide latitude to discuss funding contributions which enhances their fiscal stewardship
- supports local cooperation while retaining local authority
- promotes relationships with the principle of fiscal accountability for services.

[189] The County hotly disputed the Arbitrator's conclusions (CB para 53):

> It is impossible to reconcile this finding with the Award itself. Forcing the County to pay for the capital costs of Town infrastructure and facilities does not, in any way, align with the stated purposes of s 17.2 of the MGA as found by the Arbitrator. The Arbitrator's direction effectively authorizes the Town to force the County to contribute to the Town's infrastructure and facilities, which is entirely at odds with the purposes of Part 17.2 of the MGA.

(ii) Arbitrator's Response

[190] The Arbitrator answered the County's concerns. Limiting types of costs falling within ICFs would, in practice, limit the types of services that would be included in ICFs. Flexibility and the scope for integrated and strategic service delivery would be reduced.

[191] Importantly, the Arbitrator observed that "[l]imiting the scope of either the services or the funding from the outset would favour those municipalities whose residents are benefitting from the services by artificially limiting the content of the ICF" (Award para 154). In economic terms, the County's residents would be free-riders as regards the benefits provided by the Town. Town residents would be forced to pay for services enjoyed by County residents.

[192] The limitations on costs would discourage the provision of intermunicipal services, which is what Part 17.2 is to promote, and would leave municipalities to fund their own services. This would result in duplication of costs, a lack of stewardship of scarce resources, and a lack of integrated and strategic funding and delivery of services, precisely what Part 17.2 discourages (Award para 154; TB paras 35-36).

[193] The Arbitrator referred to ss 708.27(a) ("funding of intermunicipal services") and (c) ("municipalities contribute funding to services") as well as 708.29(2):

> (2) In developing the content of the framework required by subsection (1), the municipalities must identify which municipality is responsible for providing which services and outline how the services will be delivered and funded. [emphasis added by Arbitrator]

[194] The Arbitrator stated that "funding" "means the money to be contributed for the particular purpose of having another municipality provide services that benefit the [recipient] municipality's residents" (Award para 187).

[195] The Arbitrator observed, reasonably and correctly, that the provision of services by a municipality "does not occur in a vacuum." There are material prerequisites to providing a service, depending on the nature of the service, that include personnel, the organization of personnel, and the physical plant, the infrastructure, that supports providing the service (Award para 188). The Arbitrator provided examples respecting the supply of an activity (Award para 189), the delivery of products or commodities (Award paras 190), the provision of public skating or recreational swimming opportunities (Award paras 191, 193), and fire suppression services (Award para 192). The material prerequisites to providing services are not free to the municipality that provides the service. All the material prerequisites to providing a service come at a cost. The parties to an ICF should each bear a fair share of the cost, of all the cost, of providing a service.

[196] The Arbitrator referred to s 708.38(1)(c):

> (1) In resolving a dispute, an arbitrator may have regard to …
>
> (c) equitable sharing of costs among municipalities ….

[197] "Costs" is not a defined term. The Arbitrator stated, and I agree, that "[a]n ordinary meaning of 'costs to provide a service' would be the amount of money required or regularly spent to provide that service. This ordinary meaning of 'costs' harmonizes with the ordinary meaning of 'funding' in section 708.27 and 708.29" (Award para 197). It is not equitable for one municipality to pay for services enjoyed by residents of another municipality.

[198] The Arbitrator observed, reasonably and correctly in my view, that ss 708.27 and 708.29(2) do not specify "what inputs (costs or revenues) form the foundation of the funding decisions included in the ICF" (Award para 187).

[199] The Arbitrator concluded, with one qualification, that funding should concern "all the costs involved in providing the intermunicipal services. The MGA does not restrict the costs except that they must relate to the services provided" (Award para 198, TB paras 46-51, 121-122).

[200] The qualification was that the Arbitrator did not include administrative overhead costs as costs of providing services. Essentially, the monetary and resource costs associated with tracking overhead data, asymmetries between the parties' accounting practices, and adverse impacts on collaborative efforts create negativities that exceed the benefits of including this aspect of overhead as part of the costs of services to be shared (Award para 199). This struck me as a sensible exclusion from total service-provision costs. Neither party challenged this exclusion from costs of providing services.

(iii) Conclusion Respecting Legislative Purpose

[201] I find that the Arbitrator's conclusion that the ordinary meaning of intermunicipal services, the broad meaning of intermunicipal services without the exclusionary clause proposed by the County, aligns better with the purpose of the legislation than the County's proposed definition.

[202] In my opinion, the Arbitrator's conclusion respecting the costs of services and the lack of restriction on funding those costs is both reasonable and correct, in light of the purpose of s 17.2.

[203] But is this opinion affected by the legislative history of Part 17.2?

(d) Legislative History

[204] The legislative history assessment has four components, amendments to Part 17.2, the Red Tape Reduction legislation, Hansard, and the ICF Workbook. I will review the relevant texts before turning to the County's argument and my assessment of the Award.

(i) Amendments to Part 17.2

[205] There were amendments to both Part 17.2 and the regulations relating to Part 17.2 in late 2019. I will provide a side-by-side reproduction of the statutory provisions referred to by the Arbitrator then reproduce the pre-December 5, 2019 regulatory provisions.

Part 17.2 Pre-December 5, 2019	**Current Part 17.2**
708.27 The purpose of this Part is to require municipalities to develop an intermunicipal collaboration framework among 2 or more municipalities ….	708.27 The purpose of this Part is to provide for intermunicipal collaboration frameworks among 2 or more municipalities ….
708.28(1) Subject to subsection (4), municipalities that have common boundaries must, within 2 years from the coming into	708.28(1) Municipalities that have common boundaries must create a framework with each other by April 1, 2020 unless they are

force of this section, create a framework with each other.	members of the same growth management board.
708.29(1) A framework (a) must list (i) the services being provided by each municipality, (ii) the services being shared on an intermunicipal basis by the municipalities, and (iii) the services in each municipality that are being provided by third parties by agreement with the municipality, at the time the framework is created, (b) must identify (i) which services are best provided on a municipal basis, (ii) which services are best provided on an intermunicipal basis, and (iii) which services are best provided by third parties by agreement with the municipalities, (c) for services to be provided on an intermunicipal basis, must outline how each service will be (i) intermunicipally delivered, including which municipality will lead delivery of the service, (ii) intermunicipally funded, and (iii) discontinued by a municipality when replaced by an intermunicipal service, (d) must set the time frame for implementing services to be provided on an intermunicipal basis, (e) may contain any details required to implement services on an intermunicipal basis including details in respect of planning for, locating and developing infrastructure to support the services,	708.29(1) A framework must describe the services to be provided under it that benefit residents in more than one of the municipalities that are parties to the framework.

(f) may contain (i) provisions for the purposes of developing infrastructure for the common benefit of residents of the municipalities, and (ii) any other provisions authorized by the regulations, (g) must meet the requirements of Division 4, and (h) must meet any other requirements established by the regulations.	
(2) With respect to the requirements of subsection (1)(b), each framework must address services relating to (a) transportation, (b) water and wastewater, (c) solid waste, (d) emergency services, (e) recreation, and (f) any other services, where those services benefit residents in more than one of the municipalities that are parties to the framework.	(2) In developing the content of the framework required by subsection (1), the municipalities must identify which municipality is responsible for providing which services and outline how the services will be delivered and funded.
(3) Nothing in this Part prevents a framework from enabling an intermunicipal service to be provided in only part of a municipality.	(3) Nothing in this Part prevents a framework from enabling an intermunicipal service to be provided in only part of a municipality.
	(3.1) Every framework must contain provisions establishing a process for resolving disputes that occur while the framework is in effect, other than during a review under section 708.32, with respect to (a) the interpretation, implementation or application of the framework, and (b) any contravention or alleged contravention of the framework.
(4) No framework may contain a provision that conflicts or is inconsistent with a growth plan established under Part 17.1 or with an ALSA regional plan.	(4) No framework may contain a provision that conflicts or is inconsistent with a growth plan established under Part 17.1 or with an ALSA regional plan.

(5) The existence of a framework relating to a service constitutes agreement among the municipalities that are parties to the framework for the purposes of section 54.	(5) The existence of a framework relating to a service constitutes agreement among the municipalities that are parties to the framework for the purposes of section 54.

[206] The current legislation

- simplified ICF content, requiring reference only to intermunicipal services (see former s 708.29(1)(a))
- removed the discretionary inclusion of details respecting implementation of services on an intermunicipal basis including details in respect of planning for, locating and developing infrastructure to support the services (see former s 708.29(1)(e))
- removed the discretionary inclusion of provisions for the purposes of developing infrastructure for the common benefit of residents of the municipalities (see former s 708.29(1)(f)(i))
- removed the requirement of addressing transportation, water and wastewater, solid waste, emergency services and recreation services (see former s 708.29(2)(a)-(e)).

[207] The *Intermunicipal Collaboration Framework Regulation*, Alta Reg 191/2017 provided (in part) as follows:

> 1(c) "service" includes any program, facility or infrastructure necessary to provide a service.
>
> 4(1) When a party proposes that a framework address a service referred to in section 708.29(2)(f) of the Act, the party must provide to the other parties a rationale as to why that service has a benefit to residents in the affected municipalities.
>
> (2) In providing a rationale under subsection (1), the party must have regard to Part 17.2 of the Act.

This regulation was repealed by Alta Reg 188/2019. The regulation has not been replaced.

(ii) Red Tape Reduction Legislation

[208] Part 17.2 was amended through the "red tape reduction" legislative package. The package included the *Red Tape Reduction Act*, SA 2019 c R-8.2 (RTRA), the *Red Tape Reduction Implementation Act*, 2019, SA 2019, c 22 (RTRIA, 2019), *Red Tape Reduction Implementation Act, 2020*, SA 2020, c 25 (Bill 22), *Red Tape Reduction Implementation Act, 2020 (No. 2)*, SA 2020, c 39 (Bill 48). (The *Red Tape Reduction Implementation Act, 2021* and the *Red Tape Reduction Implementation Act, 2021 (No 2)* did not affect the present matters.)

[209] The Preamble to the RTRA was as follows:

> WHEREAS the Government of Alberta recognizes that a consistent, transparent and efficient system of regulatory and administrative requirements is necessary to protect the public interest, including health, safety, the environment and fiscal accountability
>
> WHEREAS some regulatory and administrative requirements result in unnecessary costs for Albertans in terms of time, money or other resources, putting burdens on businesses and non-profit and public sector organizations and threatening jobs

> WHEREAS addressing the requirements that cause these burdens will enable economic growth, innovation and competitiveness and facilitate a strong investment climate in Alberta, getting Albertans back to work and making life better for Albertans
>
> WHEREAS the Government of Alberta is committed to acting deliberately and expeditiously to eliminate and prevent unnecessary regulatory and administrative requirements by establishing strategies and initiatives based on the principles of necessity, effectiveness, efficiency and proportionality, including moving from a process-based to an outcome-based regulatory approach
>
> WHEREAS the Government of Alberta will strive to ensure that these strategies and initiatives meet a standard of excellence that citizens can rely on and taxpayers can afford, with no net increase in regulatory or administrative burdens[.]

[210] Part 17.2 was amended by the RTRIA, 2019, ss 10(27)-(57).

(iii) Hansard

[211] The Arbitrator relied on comments recorded in Hansard from the Honourable Grant Hunter, Associate Minister of Red Tape Reduction (Award para 138; Alberta Hansard, 30th Leg, 1st Sess, 26 November 2019 (Morning) at 2527)):

> …. Generally speaking, the changes proposed by Bill 25 can fit into three themes: to encourage investment by speeding up regulatory approvals, to reduce regulatory burden for municipalities and other government partners, and to eliminate or modernize outdated and redundant rules ….
>
> Moving on to our next theme, to reduce regulatory burden for municipalities and other government partners, Bill 25 proposes an amendment to the *Municipal Government Act* to streamline provisions that hamper administrative efficiencies for municipalities ….

(iv) ICF Workbook

[212] The County referred to the *ICF Workbook: Resource Guide for Municipalities*, Version 3, February 2020. The County asserted that the Workbook distinguished between services and infrastructure (pp v, 2, 11).

[213] Page v, under the heading "Asset Management," referred to "[t]he process of making decisions about the use and care of infrastructure to deliver services …."

[214] Page 2, under the heading 1.2 (What is an IDP?) referred to "the criteria for infrastructure and services" and the ICF as assessing "the infrastructure and services elements of the IDP."

[215] Page 11, under the heading "Impacts of Growth on Service Delivery," stated that growth:

> drives the demand for pipes, roads, facilities and other assets that provide key services. While the capital cost of development seems high, it only represents approximately 20% of the total costs. The remaining 80% of costs are in operation, maintenance, and eventual replacement.

The Workbook also stated that:

> Servicing plans and land use plans should include an assessment of the life-cycle cost of required infrastructure and facilities ….

(v) County's Argument

[216] The County's argument was that the inferences to be drawn from these "extrinsic aide" inquiries supports the conclusion that the Part 17.2 amendments were substantive (CB para 56). The amendments demonstrate that "infrastructure is no longer contemplated as part of the now mandatory ICF scheme" (CB para 57). The County contended that "[t]he exclusion of 'infrastructure' from the current provision supports the inference that ICF frameworks are no longer intended to include costs for the construction of infrastructure" and "services do not include infrastructure" (CB para 58). The Arbitrator acknowledged the County's contention that the amendments changed the substance of the law and removed "facilities, capital and infrastructure from the meaning of [intermunicipal services]" (Award para 126).

[217] The County argued that the Arbitrator erred by finding that the amendments to the MGA were "not intended to actually mean anything" (CB para 55). The Arbitrator's interpretation of legislative history was incorrect or fell outside the scope of reasonable interpretation.

(vi) Assessment

[218] In my opinion, the Arbitrator's assessment of legislative history was both reasonable and correct.

Inferences from the History of Part 17.2

[219] What the changes to s 708.29 demonstrate is an intent to simplify the reporting features for an ICF, to reduce the need to report unhelpful and unnecessary information. This reduction in reporting requirements is precisely in line with *RTRA* objectives as set out in its preamble: "eliminate and prevent unnecessary regulatory and administrative requirements." The Arbitrator referred to other amendments to the MGA and Part 17.2 in particular that increased flexibility and decreased administrative burdens (Award para 140).

[220] To support its theory of substantial change by legislative amendment, the County looked to the former s 708.29(1)(e) and (f):

> (e) may contain any details required to implement services on an intermunicipal basis including details in respect of planning for, locating and developing infrastructure to support the services,
>
> (f) may contain
>
> > (i) provisions for the purposes of developing infrastructure for the common benefit of residents of the municipalities, and
> >
> > (ii) any other provisions authorized by the regulations[.] [emphasis added]

Both provisions began with "may," a permissive not imperative term: *Interpretation Act*, s 28(2)(c). The County made two claims. First, "[t]he removal of these provisions supports the inference that infrastructure is no longer contemplated as part of the now mandatory ICF scheme" (CB para 57). Second, "[t]he scope of the voluntary ICFs cannot be carried forward without clear and specific language to the new mandatory framework" (CB para 57).

[221] As the prior s 708.27 stated (set out above), "[t]he purpose of this Part is to require municipalities to develop an intermunicipal collaboration framework." [emphasis added] ICFs were mandatory before the red tape reduction amendments to Part 17.2. What I understood the County's point to have been was that under the former legislation, provision for infrastructure

was voluntary (hence the permissive "may" language) and provision for infrastructure under the current legislation should not be considered mandatory without express language signaling the change.

[222] The amended s 708.29(1) does remove references to infrastructure. But the current s 708.29(2) requires municipalities to "identify which municipality is responsible for providing which services and outline how the services will be delivered and funded." Delivery and funding implicates infrastructure and costs, including capital costs (see Award paras 142, 147). Formerly, the prerequisites for service delivery were a mandatory part of an ICF under s 708.29(1)(c). The Arbitrator adequately addressed the County's first claim. In essence, it is false that the removal of ss 708.29(1)(e) and (f) supports the inference that infrastructure is no longer contemplated as part of the mandatory ICF scheme.

[223] As for the County's second claim, again, the current Part 17.2 provisions clearly address "how the services will be delivered and funded." An "outline" suffices. Details are not required now and were not required under the earlier version of s 708.29 – hence the permissive language. The discretionary nature of reporting "details" under the prior legislation did not establish that, as the County assumed, binding directions concerning infrastructure and other non-operational costs were not contemplated by the prior version of Part 17.2.

[224] The Arbitrator correctly observed that the removal of express references in s 708.29 to transportation, water and wastewater, solid waste, emergency services, and recreation could not and did not mean that these types of services could no longer form part of an ICF. Rather, the amendments reduced municipalities' administrative burden "by not requiring municipalities to spend the time or resources preparing an ICF with an arbitrary list of subjects only because the statute said they had to address them …." (Award para 143).

[225] In my opinion, the Arbitrator's conclusion that the legislative amendments did not make a change in substance to the notion of "intermunicipal services" or to what might be involved in the delivery and funding of these services was both reasonable and correct. See the decision of Justice Kubik in ***Cardston*** at para 25: "There is no suggestion that the scope of ICFs was being broadened or limited, but the very goal of the *RTRIA* is the reduction of administrative cost and burden. This suggests a simplified approach to ICFs which dispensed with the need to list those services which were not intermunicipal in nature" (see TB para 34).

Inferences from the Repeal of the ICF Regulation

[226] I agree with the Arbitrator that the repeal of the ICF Regulation and s 1(c) of that Regulation has no effect on the meaning of "intermunicipal services." The language of s 1(c) was inclusive. "'[S]ervice' includes any program, facility or infrastructure necessary to provide a service." The Arbitrator correctly pointed out that this list (program, facility or infrastructure) was illustrative only and not exhaustive, as "all things operational" must be discussed in relation to the delivery of intermunicipal services, including "people, products, equipment, or background support" (Award para 145). In any event, s 1(c) sought to pull two distinct subjects within the reference of the term "service" – "service" itself, which was undefined, and the list of things "necessary to provide a service." Section 1(c) was not a definition of service, since if it were, the repetition of the term "service" in the "necessary to provide" list would require that iteration of the term to be defined by s 1(c), which would result in an infinite regress of definitions. One might speculate that the Legislator felt that s 1(c), while a well-intentioned

reminder that services require material prerequisites for delivery, caused excessive conceptual difficulties.

[227] In any event, whether or not there is a regulation that purports to "include" "necessary to provide" matters as "services," service delivery does require material prerequisites ("the systems or things making a service possible" (Award para 145)), whatever those may be, and those material prerequisites come at a cost, which the ICF is to share between party municipalities.

ICF Workbook

[228] The County's reliance on the Workbook repeats its erroneous approach to intermunicipal services. The Workbook correctly distinguishes infrastructure and services. The Workbook correctly delineates the relationship between the two: "infrastructure to deliver services," "facilities and other assets that deliver services," "infrastructure and facilities" required for services.

[229] Intermunicipal services are not infrastructure but intermunicipal services require infrastructure to be delivered, to be more than an idea or aspiration.

[230] I will return below to the weight of the Workbook on statutory interpretation.

Fettering Discretion

[231] The County added to the "extrinsic context" argument an argument that an ICF would illegitimately "fetter the discretion" of the County, referring to ***Pacific National Investments v Victoria*** at paras 55-56.

[232] An ICF imposed through arbitration would indeed constrain or limit the discretion of the County but, assuming that the arbitration award were otherwise lawful, the constraint or limitation would follow from the application of statute and would not amount to improper "fettering" of discretion. The County's discretion is "fettered" by statute, or more precisely, the County's discretion is already limited and circumscribed by statute. An ICF only expresses the pre-existing limitations on municipal authority built into the MGA. The County's "fettering" claim does not touch the reasonableness of the Award.

Conclusion Respecting Legislative History

[233] I discern nothing in the legislative history referenced by the County that shows the unreasonableness of or any error in the Arbitrator's conclusions about the meaning of the term "intermunicipal services" and the arbitrator's authority to bind parties to an ICF respecting the costs of intermunicipal services, including capital and non-operational costs. An arbitrator has the jurisdiction to direct payment of infrastructure and other costs required to deliver an intermunicipal service.

(e) Elements of the Award

[234] The Award directed payment of maintenance and capital costs by the County for the following intermunicipal services:

- fire services, "all direct operation, maintenance and capital costs to provide the services, including those for equipment and facilities" (Award, para 321)
- recreation, arts, and cultural facilities and buildings, "all net direct costs of providing the services including maintenance and capital costs as set out in the respective life cycle

plans for any facilities or buildings owned by the respective party," offset by revenues (Award, paras 398-399)

- "ancillary police services" at the RCMP Detachment in the Town, "all direct costs related to providing the services, including maintenance and capital costs," including the costs relating to the "detachment building" (Award paras 418, 421-422)
- Forest Interpretive Centre, with the County to contribute 50% of the net costs of operating and maintaining the FIC and grounds, including costs related to Heritage Park, and costs to include capital costs (Award para 436)
- FCSS, respecting buildings owned by the Town used to deliver the service, "all net direct costs of providing the services including maintenance and capital costs as set out in the respective life cycle plans for any buildings owned by [the Town]" (Award para 452)
- library services, "all costs of providing and maintaining [the Town's] library building," including operational-maintenance costs and capital costs (Award paras 468, 471-472)
- the Town's cemetery, "all operating costs and call capital costs to maintain, repair, replace, expand or improve the cemetery and its services" (Award para 488)
- 80% of the cost of constructing and maintaining certain roads located within the Town (Award paras 507-509)
- 50% of the maintenance and capital costs for rail crossings located within the Town (Award paras 525-526).

[235] I will not review the particular awards relating to these services. These awards were, I have found, within the Arbitrator's jurisdiction as concerns the interpretation of "intermunicipal services" – as that term has been investigated to this point - and within the Arbitrator's jurisdiction respecting awards concerning the overall costs of the services. Since the awards were made within the scope of the Arbitrator's jurisdiction, those awards would raise no question of jurisdiction, and I would not have jurisdiction to review those awards.

[236] This conclusion does not mean that the questions of jurisdiction raised by the County are exhausted and that at least some of these awards may not still be questioned on other jurisdictional grounds.

[237] The County did not argue that even if the Arbitrator correctly defined "intermunicipal services" and her authority extended to binding the ICF parties respecting overall costs of services, some determinations were so unreasonable that the determinations exceeded her jurisdiction.

[238] The County did argue that "intermunicipal services" does not include "third party services" and the Arbitrator therefore had no authority to make any award respecting third party services. This would include, for example, the awards respecting library and policing services.

[239] The County also argued that a finding that a municipal service has benefitted residents of the other party to the ICF and so amounts to an "intermunicipal service" requires satisfaction of threshold or standard and the Arbitrator failed to apply this threshold or standard in her determinations, resulting in her failure to abide by the terms of her jurisdiction. This argument would concern, for example, the road service and rail crossing service awards and an award respecting the Town's transit system.

[240] In the next two sections I will turn to these two remaining jurisdictional challenges advanced by the County.

C. Intermunicipal Services and Third-Party Delivered Services

[241] The County argued that the Arbitrator erred by finding that "intermunicipal services" included services provided by third parties (CB para 63). This included

- library services (Award paras 177, 459, 461-462, 466)
- ancillary police services (Award paras 180, 411-414, 420-421)
- rail crossing services (Award paras 514-515, 518)
- recreation services provided by third parties (Award paras 368-369, 371, 395).

[242] The assessment of this issue requires consideration of Justice Kubik's ***Cardston*** decision.

[243] The Award was issued February 2, 2022. ***Cardston*** was issued December 1, 2022. The Arbitrator did not have the benefit of ***Cardston*** when deciding the third-party delivery issue.

[244] I'll begin with some observations.

[245] First, a judicial decision on a relevant issue is an external constraint against which reasonableness is gauged. "Any precedents on the issue before the administrative decision maker or on a similar issue will act as a constraint on what the decision maker can reasonably decide .... Where, for example, there is a relevant case in which a court considered a statutory provision, it would be unreasonable for an administrative decision maker to interpret or apply the provision without regard to that precedent:" ***Vavilov*** at para 112.

[246] Second, the fact that the judicial decision was released after the decision under review does not entail, in my opinion, that the judicial decision can be ignored in the reasonableness assessment. Under s 9 of the *Interpretation Act*, "[a]n enactment shall be construed as always speaking and shall be applied to circumstances as they arise." The judicial interpretations of statutory provisions are, in my view, always speaking, just as the common law – as reflected in judicial decisions – is always speaking: ***Amato v The Queen***, [1982] 2 SCR 418, Estey J (dissenting) at 443.

[247] Third, insofar as Justice Kubik's decision concerned an issue substantially before me, I would be bound by comity or "horizontal *stare decisis*" not to depart in this case from her views. "I have no power to overrule a [judicial colleague], I can only differ ..., and the effect of my doing so is not to settle but rather to unsettle the law, because, following such difference of opinion, the unhappy litigant is confronted with conflicting opinions emanating from the same Court and therefore of the same legal weight. This is a state of affairs which cannot develop in the Court of Appeal:" ***Re Hansard Spruce Mills Ltd***, 1954 CanLII 253, [1954] 4 DLR 590 (BCSC), Wilson J at para 223; see ***R v Scrivens***, 2018 ABQB 1027 at para 36; ***R v Sullivan***, 2022 SCC 19, Kasirer J at paras 73-78.

[248] The Town stated that comity applies only if a coordinate Court "has ruled on the exact same legal issue previously" (TB para 86). Justice Kasirer in ***Sullivan*** at para 44, I note, refers to how "courts of coordinate jurisdiction in the province should decide future cases raising the same issue." [emphasis added] ***Sullivan*** concerns comity respecting legal decisions. The doctrines of *res judicata* and issue estoppel are not engaged. The governing doctrine is *stare decisis*: ***Sullivan*** at paras 67-68. We read the following at para 64 of ***Sullivan***:

> [64] …. Precedent requires judges to examine prior judicial decisions, examine the *ratio decidendi* in order to determine whether the *ratio* is binding or distinguishable and, if binding, whether the precedent must be followed or departed from …. Adherence to precedent furthers basic rule of law values such as consistency, certainty, fairness, predictability, and sound judicial administration …. It helps ensure judges decide cases based on shared and general norms, rather than personal predilection or intuition ….

[249] I add that fairness to litigants also inclines the court to comity, since results should not depend on the contingency of judicial assignments. The fairness point goes to the County's complaint that the Award could create "disparities among municipalities …. While the County is bound by the Award to include third party services in the ICF, future arbitrators will be bound by the Court's ruling in Cardston Library and exclude third party services from ICFs" (CB para 71).

[250] These observations lead to the following questions:

- What did ***Cardston*** decide?
- What services are third-party services?
- Does Part 17.2 contemplate intermunicipal services that involve third parties in service delivery?
- Did the challenged decisions in the Award concern third-party services of the type figuring in ***Cardston***?

1. What did *Cardston* decide?

[251] The facts and issue in ***Cardston*** were as follows, at paras 1-3:

> [1] …. The Town of Cardston and Cardston County share a common boundary. They successfully collaborated as to the contents of an ICF with the exception of whether library services provided by the Town of Cardston Library would be included in the ICF. In an effort to resolve this dispute, the Town of Cardston sought to submit the matter to arbitration pursuant to section 708.34 of the *Municipal Government Act* and Cardston County asked the Minister of Municipal Affairs [Minister] to intervene pursuant to section 708.412 of the *Municipal Government Act*.
>
> [2] The Minister ultimately exercised his discretion pursuant to section 708.412, making an order to impose the ICF negotiated between the parties excluding library services: Ministerial Order No. MSD: 090/21.
>
> [3] The issue before me is whether the Minister exercised his discretion in a reasonable manner when he determined that third-party services, such as libraries, are not included within the scope of services covered in an ICF.

(a) The Issue that Might Have Been

[252] The Town contended that ***Cardston*** "considered the narrow issue of whether it was reasonable for the Minister of Municipal Affairs to impose an ICF on the Town of Cardston and Cardston County that excluded consideration of library services provided by the Town of Cardston Library Board" (TB para 85). ***Cardston*** was not a judicial review under s 708.48 (true) and "it did not consider the same legal issues that are before this Court" (TB para 86).

[253] ***Cardston*** need not have concerned third-party delivery, but could have focused on the Minister's powers under s 708.412(1):

> 708.412(1) Despite this Division or any arbitration occurring under this Division, the Minister may at any time make any order the Minister considers appropriate to further the development of a framework among 2 or more municipalities to carry out the purpose of this Part, including, without limitation, an order establishing a framework that is binding on the municipalities.

The "Division" is Division 2 (Arbitration) of Part 17.2.

[254] The Minister has wide powers. The Minister "may at any time make any order the Minister considers appropriate to further the development of a framework."

[255] Given those wide powers, given that Cardston Town and Cardston County had a deal but for library services, and given that the Minister "strongly believe[d] it is important that [their] ICF be in place as quickly as possible to determine how services that benefit residents in both municipalities are provided and funded" (***Cardston*** at para 13), a reasonable decision available to the Minister may well have been to impose the ICF *sans* library services *even if* library services were "intermunicipal services" within the meaning in Part 17.2. In other words, the "library services as 'intermunicipal services'" issue may have been of only secondary evidential relevance, and the real issue would have been whether the Minister had other good reasons for imposing the ICF.

[256] A technical issue would have been whether the Minister's authority that operated despite Division 2 gave the Minister authority to override or disregard the provisions of Division 1 (Intermunicipal Collaboration Framework) of Part 17.2.

[257] If ***Cardston*** had been resolved primarily on the basis of the scope of the Minister's discretion alone, ***Cardston*** would have "considered the narrow issue of whether it was reasonable for the Minister of Municipal Affairs to impose an ICF on the Town of Cardston and Cardston County that excluded consideration of library services provided by the Town of Cardston Library Board," and ***Cardston*** would not constrain the scope of reasonableness of the relevant elements of the Award. Neither would the decision attract comity in this judicial review.

[258] However, the Minister's discretion *per se*, considered by itself, was not the issue in ***Cardston***. Third-party delivery issues were the focus in ***Cardston*** as argued.

(b) The Actual Issue

[259] Again, at para 3, Justice Kubik stated that the issue was whether "the Minister exercised his discretion in a reasonable manner <u>when he determined that third-party services, such as libraries, are not included within the scope of services covered in an ICF.</u>" [emphasis added]

[260] Cardston Town argued (at para 4) that "a large, liberal, and purposive <u>interpretation of Part 17.2 includes</u>, <u>at its narrowest reading, library services</u>, and <u>at its broadest reading, any other third-party service</u> shared by bordering municipalities." The Minister and Cardston County argued that (para 5) "the purpose of Part 17.2, its legislative history, the intent of the [*RTRIA*] … and the provisions of the *Libraries Act* …, which create libraries as autonomous entities, all point to a reading <u>which excludes third-party services, including libraries, from ICFs</u>." I note that the Minister was represented in this application by counsel from the Alberta Ministry of Justice and Solicitor General, Civil Litigation Team.

[261] The Minister's decision focused on third-party services as falling outside ICFs. At para 13 the Minister was quoted as saying the following in an e-mail to the parties:

> Municipal library boards, as separate autonomous corporations, are considered third parties. Library boards have full management and control of any public library services delivered in their jurisdiction. This includes securing sufficient funding for the service. A library board is empowered and responsible to negotiate with various entities where necessary to acquire funds, including with the town and the county. Each jurisdiction should be working directly with the library board to determine the appropriate funding for delivering the service to their rate payers.
>
> My ministry has provided clear direction in numerous instances, including in letters from Deputy Minister Paul Wynnyk on September 22, 2020, and February 4, 2021, that third-party services such as incorporated library boards are not to be included in ICFs. As library boards are separate legal entities enacted through the *Libraries Act*, it is inappropriate for two municipalities to negotiate a funding agreement between each other for the service. [emphasis added]

[262] Justice Kubik found the following at paras 21, 23, 25-27 (emphasis added):

> [21] The terms "services", "local services", and "intermunicipal services" are not defined in the *Municipal Government Act*. The Minister's interpretation of these terms is supported by their plain meaning within the text of the *Municipal Government Act* and specifically Part 17.2.
>
> [23] The Minister's interpretation is also consistent with the purpose and intent of the legislation prior to the amendments brought about by the *RTRIA*, as well as the purpose and intent of the *RTRIA*. While the previous legislation did not define the term "services," it did distinguish between intermunicipal, municipal, and third-party services, and provided that the scope of ICFs was in relation to the delivery and funding of intermunicipal services.
>
> [25] The effect of the *RTRIA* was to narrow section 708.29 by removing the requirement to list third-party services and services provided by a municipality to its own residents. This limited the contents of an ICF to a description of, and delivery and funding model for, those services which were intermunicipal in nature ….
>
> [26] While the term "services" is not defined in the *Municipal Government Act*, the purpose of Part 17.2 on its face is to provide for the identification, delivery, and funding of intermunicipal services. A third-party service, by its very nature, is not a municipally or intermunicipally provided service. While municipalities might share the cost of third-party services, those services are neither delivered by municipalities nor are they exclusively funded by municipalities. Library services are unique third-party services because the municipal and intermunicipal board providing these services is, by virtue of the *Libraries Act*, a distinct autonomous corporate entity which controls its own budget and negotiates financial contributions directly with other funding partners, as well as the municipalities to which it provides services. The Minister's interpretation reflects a harmonious reading of Part 17.2 and the *Libraries Act*, recognizes the arms length relationship between libraries and the municipalities in which they operate, and respects the autonomy granted to libraries by statute.

> [27] Finally, the Minister's interpretation is consistent with the policy guidance provided by the Ministry to municipalities from the inception of Part 17.2, which specifically noted that library services were in the nature of third-party services and were not the subject matter of ICFs. While it is true that some municipalities have negotiated ICFs which include library services, this does not change their fundamental character as third-party services. The evidence reflecting such mutual agreements between municipalities which are not a party to this dispute is of limited persuasive value, given my duty to apply the principles enunciated in ***Vavilov***, as relates to a review of the Minister's decision in this particular case.

[263] Justice Kubik concluded at para 28 that:

> [28] The Minister's decision, which clearly articulated his reasons for initially directing the parties to enter into an ICF excluding libraries and ultimately resulted in his ministerial order, falls reasonably within a purposive, textual, and contextual interpretation of Part 17.2, reflects the goals and purposes of the *RTRIA*, and respects libraries as independent corporate entities at arms length from the municipalities to which it delivers services.

Therefore, Ministerial Order No. MSD: 090/21 was upheld and the application for judicial review dismissed.

[264] The issue in ***Cardston*** was the issue articulated by the Minister and Justice Kubik: whether "third-party services," such as libraries, are not included within the scope of services covered in an ICF.

(c) Immateriality of Other ICFs Including Library Services

[265] The Town pointed to Justice Kubik's disinterest in other ICFs that included library services (at para 27). What other municipalities did was of no account. Municipalities may have included library services on a voluntary basis. Municipalities may have included library services based on an unreasonable interpretation of "intermunicipal services." Repetition of error does not make error truth.

(d) Application to the Current Proceedings

[266] In my opinion, ***Cardston*** directly involved a ruling on third-party service provision as falling outside "intermunicipal services." The *ratio* turned on this issue. ***Cardston*** is directly relevant to the present proceedings.

[267] Library services, then, as provided by an independent library board, fall outside the scope of "intermunicipal services" and so fall outside the scope of an arbitrator's directive authority.

[268] I would go farther. "Third-party services" with the same characteristics as library services fall outside the scope of "intermunicipal services" and so fall outside the scope of an arbitrator's directive authority.

[269] The ruling in ***Cardston*** applies to the Award and the ICF between the County and the Town.

[270] The Arbitrator cannot be faulted for not anticipating the result in ***Cardston***, but I take that case to have imposed a constraint on the scope of reasonable interpretation of "intermunicipal services."

[271] Two further issues emerge, though.

[272] First, what services are "third-party services" with the same characteristics as library services?

[273] Second, did the Award concern "third-party services" with the same characteristics as library services?

2. What services are third-party services?

[274] I must tread carefully respecting this question, since I cannot supply reasons for the Arbitrator. The Arbitrator could not have reflected on ***Cardston*** since it had not been decided when she was deciding the Award.

[275] Nonetheless, if ***Cardston*** is deployed to judge the Award, it would be fair for the reviewing judge to consider the scope of ***Cardston***.

[276] I accept that library services are third-party services and that there are other services that may be similarly classified as third-party services.

[277] How do we know when we are dealing with a "third-party service?"

[278] The crucial passage in ***Cardston*** is para 26:

> [26] While the term "services" is not defined in the *Municipal Government Act*, the purpose of Part 17.2 on its face is to provide for the identification, delivery, and funding of intermunicipal services. A third-party service, by its very nature, is not a municipally or intermunicipally provided service. While municipalities might share the cost of third-party services, those services are neither delivered by municipalities nor are they exclusively funded by municipalities. Library services are unique third-party services because the municipal and intermunicipal board providing these services is, by virtue of the *Libraries Act*, a distinct autonomous corporate entity which controls its own budget and negotiates financial contributions directly with other funding partners, as well as the municipalities to which it provides services. The Minister's interpretation reflects a harmonious reading of Part 17.2 and the *Libraries Act*, recognizes the arms length relationship between libraries and the municipalities in which they operate, and respects the autonomy granted to libraries by statute.

[279] By virtue of s 12.4 of the *Libraries Act*,

> 12.4 A municipal library board or an intermunicipal library board, subject to any enactment that limits its authority, has full management and control of the municipal library established by the board and shall, in accordance with the regulations, organize, promote and maintain comprehensive and efficient library services in the municipality or municipalities it serves and may cooperate with other boards and libraries in the provision of those services.

[280] A library board is a "unique" library service provider since by statute library services are provided by library boards. That is, by statute, a particular type of service is assigned to a particular service provider. Library services are not provided by municipalities themselves or by private actors (setting aside the issue of whether Internet services have functions similar to library services). If there are to be library services for a municipality or for municipalities, a

library board must be engaged to provide the services. The municipality or municipalities may pay for the services, but the services are provided by the library board.

[281] There are doubtless other "unique" service providers, who, by statute, are assigned the sole task of providing the specific services. RCMP services may be another example (without considering complications discussed below). The RCMP is governed by its own statute, the *Royal Canadian Mounted Police Act*. Municipalities may enter into contracts with the RCMP to provide policing (under s 22(3) of the *Police Act*), but municipalities only pay for their share of policing. The policing service itself is delivered by the RCMP. A municipality cannot itself provide RCMP services (although it may provide policing services itself if it constitutes a police service under municipal authority). Perhaps railway services are another example.

[282] To anticipate, the Workbook gets this point right: "library boards and RCMP services are provided by a third party and therefore would not need to be identified in an ICF" (p 1). The Workbook continues, correctly in my view as well: "However, an intermunicipal police service operated by a municipality, such as a peace officer service, would need to be identified."

[283] I suggest that the uniqueness of library services and similar services lies not only in autonomous corporate status (since that could describe any private corporation) or controlling its own budget (since that too is true of any private corporation), or even in negotiation with funders (since that is also true of any private corporation). The critical necessary condition for third-party service provider status is, as Justice Kubik identified, statutorily exclusive delivery of the service by the autonomous corporate entity.

[284] An implication of this line of reasoning is that third-party services, akin to library services, are not identified just because of the involvement of a non-municipal third-party in the delivery of the services. It is not simply third-party involvement in service delivery that attracts classification as a "third party service" as referred to by the Minister or as figuring in ***Cardston***, but the exclusive dedication of the type of service to a particular service provider, that is not a municipality. A further implication is that if a service is not a service "uniquely" or exclusively assigned to the service provider, it is not a service falling within the contemplation of the third party services figuring in ***Cardston***.

[285] In argument, the Town gave the following example. A municipality may provide arena or artificial ice surface services. That is certainly a potential municipal service and not a service uniquely offered by an autonomous corporation. The municipality, though, may contract out Zamboni services. The third-party involvement would not make the service less municipal.

[286] Another example: A municipality might take on responsibility for some other service – e.g., the provision of a ski-hill, a service enjoyed by residents of another municipality – with the ski-hill located on land owned or leased by the municipality, supported by equipment funded by the municipality, with the ski-hill open to the public but run by a third-party organization rather than by municipal employees. Providing ski-hill services is not the exclusive province of some autonomous corporation. Would that service not be a municipal service, just because of third-party operation of the ski-hill?

[287] I suggest that intuitively, as a matter of ordinary meaning or plain meaning, the ski-hill would be a municipal service, not a third-party service, despite the intervention of a third-party in the service delivery.

[288] Does Part 17.2 support what I have claimed is the intuitive or ordinary meaning of municipal service, or, if residents of another municipality benefit from the service, intermunicipal service, despite the involvement of a third-party in service delivery?

3. Does Part 17.2 contemplate intermunicipal services that involve third parties in service delivery?

[289] While the Arbitrator did not and could not have engaged in the parsing of ***Cardston*** that I have laid out, the Arbitrator did expressly engage with the issue of whether Part 17.2 contemplates intermunicipal services that involve third parties in service delivery.

[290] Relevant statutory interpretation considerations include Part 17.2 and the statute as a whole, legislative history, and the ICF Workbook.

(a) The MGA

[291] The Arbitrator correctly observed that the MGA does not define "third party" and "third party" is not a term used in the MGA (Award para 171).

[292] The Arbitrator correctly observed that Part 17.2 does not refer to services being provided by a municipality directly (Award para 169). Part 17.2 does not, then, expressly exclude the interpretive possibility that a third party might provide a service on behalf of a municipal party to an ICF. Neither is the absence proof of inclusion of delivery through third parties, but the possibility is left open.

[293] The Arbitrator pointed to s 708.29(2). The parties to an ICF "must identify which municipality is responsible for providing which services." [emphasis added] The Arbitrator observed that (Award para 169):

> The ordinary meaning of "responsible for" is not restricted to "by the municipality" or "provided directly by." Being "responsible for" suggests a broader meaning that includes both doing it directly or overseeing someone else who does it for the municipality. In either case, the ordinary meaning of "responsible for" suggests decision making over and accountability for the service.

[294] It is true that being "responsibility for" a service may not require direct provision of the service (TB paras 41, 94a).

[295] Further, as the Town submitted, s 708.27(b) requires municipalities to steward scare resources efficiently (TB para 103). That may be accomplished by not providing a service directly but through a third party.

[296] Under s 7(f), "a council may pass bylaws for municipal purposes respecting … services provided by or on behalf of the municipality." At least for "municipal purposes," s 7(f) countenances bylaws approving services provided "on behalf of the municipality," which, if not provided by the municipality, would have to be provided by third parties (see Award para 171, TB paras 42, 94b). Authorization of third-party delivery for "municipal purposes" though does not, by itself, indicate authorization of third-party delivery for intermunicipal purposes.

[297] But is this textual possibility rendered unlikely by other textual considerations?

(b) Inter-Municipal

[298] The County returned to the "intermunicipal" aspect of intermunicipal services. "Intermunicipal" means "between two or more municipalities, in this case between the Town and the County" (CB para 75). The County continued at para 76: "There is no plain meaning of 'intermunicipal' that would include 'third parties' …." The County's point was not that third parties could not deliver services, or that municipalities could not *agree* that third parties could deliver services, but that third-party delivered services were not "intermunicipal services" and so could not be imposed on a recipient municipality through arbitration.

[299] The difficulty with the County's position is that it side-steps the issue of whether a service may be delivered by a municipality, even though a third party is involved in the delivery of the service. The County begged the question. It is not enough to assert that services delivered through third parties cannot be intermunicipal services. It must be shown why that cannot be.

[300] If a municipality is responsible for a service, if (e.g.) it owns the land and the building and funds delivery of the service, even if the service is delivered through a third-party, there is no need for the third party to be involved in the intermunicipal collaboration framework. The responsibility remains municipal. The cost must remain reasonable. How exactly the service should be delivered would be a matter for discussion, negotiation, or arbitration. It may well be that it is in the economic interests of the parties to the ICF that particular intermunicipal services be provided through third parties.

(c) Section 708.321

[301] Statute does expressly permit the involvement of specified third parties in service delivery. Under s 708.321, not referred to by either party, "[m]unicipalities that are parties to a framework may invite an Indian band or Metis settlement to participate in the delivery and funding of services to be provided under the framework."

[302] I do not view this clause as precluding the involvement of other third parties in intermunicipal service delivery. The clause is permissive, and the clause does not suggest exclusivity.

(d) Legislative History

[303] As discussed earlier, the prior version of s 708.29(1) provided as follows:

> 708.29(1) A framework
>
> (a) must list
>
> (i) the services being provided by each municipality,
>
> (ii) the services being shared on an intermunicipal basis by the municipalities, and
>
> (iii) the services in each municipality that are being provided by third parties by agreement with the municipality,
>
> at the time the framework is created ….

[304] The current s 708.29(1) requires only the description of "the services to be provided under it that benefit residents in more than one of the municipalities that are parties to the

framework." A fair interpretation of the change to s 708.29(1) was that only the subparagraph (a)(ii) services were carried over for description under the current s 708.29(1).

[305] The former ss (ii) and (iii) contrasted "services being shared on an intermunicipal basis by the municipalities" and "the services in each municipality that are being provided by third parties."

[306] This contrast could be argued, as by the County, to show that "services shared on an intermunicipal basis" do not involve services provided by third parties.

[307] Once again, the difficulty with this approach is that it does not address the criteria for determining whether services are "provided by third parties by agreement with the municipality" and whether and to what extent that excludes third party involvement in service delivery.

[308] The red tape reduction amendments, as the Arbitrator found, did not effect substantive change. But the distinction between third party services akin to library services and services delivered by third parties – if such a distinction is viable – was one that preceded the red tape reduction amendments.

(e) ICF Workbook

[309] On p 1 of the Workbook, we read the following:

> In determining which services are of benefit to residents in more than one municipality, it is helpful to determine whether a service is provided by a third party. For example, library boards and RCMP services are provided by a third party and therefore would not need to be identified in an ICF ….

[310] On its face, this passage is consistent with the view that third-party delivered services and intermunicipal services are different, as reflected in the former s 708.29(1).

[311] Further, this passage is consistent with the views of the Minister in ***Cardston*** at para 13: "third-party services such as incorporated library boards are not to be included in ICFs." It is also consistent with the views of Justice Kubik at paras 23 and 25:

> [23] …. While the previous legislation did not define the term "services", it did distinguish between intermunicipal, municipal, and third-party services, and provided that the scope of ICFs was in relation to the delivery and funding of intermunicipal services.
>
> [25] The effect of the *RTRIA* was to narrow section 708.29 by removing the requirement to list third-party services and services provided by a municipality to its own residents. This limited the contents of an ICF to a description of, and delivery and funding model for, those services which were intermunicipal in nature ….

[312] The Arbitrator commented that the Workbook provided no explanation for the quoted statement. This is true. The Arbitrator claimed that the quoted statement contains an ambiguity. The statement "may refer to the fact that ICFs no longer need to list services provided by third parties" (Award para 174, TB para 43). That fact is true. More important than whether the Workbook is ambiguous is the Arbitrator's implicit contrast between services a municipality is responsible for but uses a third-party to deliver, and the third party services that no longer require reporting. Even if there is no ambiguity in the Workbook passage, that distinction is not addressed by the Workbook and not collapsed or eliminated by the Workbook.

[313] Essentially, the Workbook statement can be true, without affecting the distinction between what it is talking about, and what the Arbitrator was talking about in the Award.

[314] I accept that the Workbook was just a workbook and not a formal analysis of the Part 17.2 provisions. Nonetheless, it was some indication of governmental understanding of the legislation. This would have at least some relevance to legislative intention, given the links between the Legislator and the executive. As the County put it, the Workbook was not determinative or binding, but a relevant policy document prepared by a responsible department.

[315] The Town spent some time undermining the weight of the Workbook, as the legal opinion of civil servants respecting statutory interpretation (TB paras 107, 108-111), referring to ***R v Comeau***, 2018 SCC 15 at para 40; ***R v GS***, 1988 CarswellOnt 822, 1988 CanLII 191, 67 OR (2d) 198 (CA), Lacourciere JA, leave app SCC dismissed 1990 CanLII 6986 at para 29 (CarwellOnt); ***Guenette Estate v Miller***, 1995 ABCA 49 paras 8-10. That demolition of the Workbook is unnecessary, if the Workbook is understood as being true so far as it goes, recognizing that it does not go to all issues. The demolition might be necessary if the ***Cardston*** issues were being re-litigated but I have accepted that I am bound through comity by the *ratio* of that decision.

(e) Conclusion

[316] I accept that ***Cardston*** not only binds me as a matter of comity but was correctly decided. That case constrains the interpretation of Part 17.2 of the MGA. I have kept in mind that Part 17.2 must be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects. I have considered the language of Part 17.2 of the MGA read in its entire context and its grammatical and ordinary sense harmoniously with the scheme and object of Part 17.2 and the Legislature's intention. I have concluded that "intermunicipal services" should be interpreted to include services for which a municipality is responsible even though a third party is involved in the delivery of the service to the residents of the municipalities party to the ICF, so long as the service is not one that is "uniquely" and autonomously provided by a third party.

[317] The Arbitrator's interpretation of the legislation as regards third-party delivered services was reasonable and correct, except as regards library services and services akin to those services (e.g., Award paras 176-180, 464), despite ***Cardston*** not having been available to her.

4. Did the challenged decisions in the Award concern third party services of the type figuring in *Cardston*?

[318] Most of the challenged decision in the Award did not concern third party services of the type figuring in ***Cardston***.

(a) Library Services and Library-Related Services

(i) Library Services

[319] At para 466 of the Award, the Arbitrator directed that the parties include library services in the ICF. I accept that this direction fell outside the Arbitrator's jurisdiction and should be quashed.

[320] However, the Arbitrator did not make a direction respecting the County's responsibility for funding library services (Award para 467). The Arbitrator referred to the County having committed to provide funding for library services and the Arbitrator "[accepted] this funding

arrangement would meet the expressed purposes in Part 17.2 and may be a form of contribution funding for operating costs" (Award para 467, see TB para 90).

[321] The Arbitrator stated that if the County does not honour its commitment, the Arbitrator reserved jurisdiction "to hear from the parties about the contribution funding for library services and decide the matter" (Award para 467).

(ii) The Library Building

[322] A library, though, exists and has existed in the Town.

[323] Part of the costs for library services are capital costs, as for constructing a library building. See s 7(1) of the *Libraries Act*:

> 7(1) When money is required for the purpose of acquiring real property for the purposes of a building to be used for the provision of public library services or for erecting, repairing, furnishing or equipping a building to be used for the provision of public library services, the council of the municipality may, at the request of the municipal library board, take all necessary steps to furnish the money requested or the portion of it that the council considers expedient.

[324] County residents receive and have received library services through the library located in the Town. The parties have a history of cost sharing relating to the library building (Award para 469). That does not transform voluntary into mandatory but is evidence that County residents were receiving a benefit recognized by the County payments. There is no question of directing or ordering the County to receive library services. County residents in fact received those services.

[325] As the Arbitrator observed, "[w]ithout the library building, the Library Board would be unable to provide the library services benefiting residents of both municipalities" (Award para 468).

[326] In my opinion, the provision of this physical space amounts to an intermunicipal service. Library services cannot be directed to form part of an ICF, but the fact that library services are in fact delivered cannot be ignored. The service is the delivery of the space where library services are delivered. The Town is paying for the physical space where library services are in fact delivered and both Town and County residents benefit. It would not be "equitable" (s 708.38(1)(c)) for the County residents to take this benefit without the County contributing to the cost of the benefit. For the County residents to take this benefit without financial contribution by the County would be contrary to one of the purposes of ICFs, "to ensure municipalities contribute funding to services that benefit their residents:" s 708.27(c). This was the conclusion the Arbitrator arrived at in Award para 468 and in my opinion that conclusion is reasonable and correct.

[327] It follows that the Arbitrator's direction at para 471 of the Award was appropriate and within her jurisdiction:

> I therefore direct the parties to include the services of providing and maintaining the library building in the ICF as an intermunicipal service. [The Town] is the municipality responsible for providing the service.

(b) Police Services and Ancillary Police Services

[328] Under s 2 of the *Police Funding Regulation*, AltaReg 7/2020,

> 2 Pursuant to section 4(1) of the [*Police Act*], each municipality shall, subject to section 4(3) of the Act, pay a cost in each fiscal year for receiving general policing services provided by the provincial police service in an amount determined by the Minister in accordance with this Regulation.

Responsibility for the cost of "general policing services" then is covered outside Part 17.2 and ICF (see Award para 411).

[329] As respecting library services, the Town provides the detachment building that supports the provision of RCMP services (Award paras 411, 413). The Town receives rent from the Province. The rent reflects only maintenance and operating costs. Capital costs are excluded (Award para 415).

[330] The Town and the County receive policing services additional to "general policing services." These include:

- a community liaison/school resource officer, focusing on crime prevention within schools and crime prevention initiatives in the detachment's service area (Award para 412)
- a half-time crime prevention coordinator (Award para 413)
- support staff at the detachment who provide ancillary services including criminal record checks, civil fingerprinting, vulnerable sector screening, fines and fees collections, recovered property, and security clearances services (Award para 414).

The Town funds and provides these services (to be referred to globally as Ancillary Services; see CB Appendix B, statement by Doug Tymchyshyn).

[331] Three time periods are relevant to the Arbitrator's Awards. First, the period covered by the 2013 Cost Sharing Agreement between the parties ending December 31, 2019. Second, the period between January 1, 2020 and March 31, 2020. Third, the period commencing April 1, 2020.

(i) 2013 Cost Sharing Agreement – to December 31, 2019

[332] The first period has evidential significance. Under the 2013 Cost Sharing Agreement, one of the services provided by the Town was "policing services, including, without restriction, Victims Services and Crime Prevention Services" within defined areas. The County paid a share of costs (Award para 410). The Arbitrator found that the 2013 agreement was evidence that the services benefitted County residents (Award para 416). This agreement ended December 31, 2019.

(ii) January 1, 2020 to March 31, 2020

[333] There was no change to change to policing services after December 19, 2019. The Arbitrator inferred that "the same [policing] benefit extended into the first quarter of 2020" (Award para 416). Because of the continuity of service, it could not be said that the services were foisted on the County. The County did not pay its share of these costs.

[334] The Arbitrator found that the Town provided policing services to the County and those services benefitted County residents. These were intermunicipal services (Award para 416).

[335] The Arbitrator therefore directed the parties to include in the ICF policing services to the County, "including victim services, crime prevention services and ancillary services for the

period January 1 to March 31, 2020." The Town was responsible for providing the services (Award para 417). Funding included maintenance and capital costs (Award para 418).

[336] It is true that the RCMP was not a municipal police service. The RCMP provided at least the general policing services.

[337] But over the January 1 to March 31, 2020 period the Town paid for policing services and the County did not pay for the policing services its residents received.

[338] The circumstances are analogous to the library circumstances. Again, there is no issue of directing or ordering the County to receive the services. But the services were actually received. Benefit was actually provided to County residents. The benefit persisted over time, including over times when the County can be inferred to have acknowledged the benefit and the County's responsibility for paying its share for the benefit. The County did not submit that the services were not needed or wanted by County residents. The Town paid the costs of the benefit and the County did not. It would be contrary to the purposes of Part 17.2 for the County to have received the benefit without contributing its fair share of its costs.

[339] In the circumstances, the Town did provide the policing services to the County by paying for those services. Further, in the circumstances, the Arbitrator's inclusion of the Town's delivery of policing services over the period in question in the ICF and the Arbitrator's direction concerning the County's requirement to pay for those services were both reasonable and correct.

[340] The Arbitrator's determinations were not simply an application of "fairness logic." Rather, I have found that the Arbitrator reasonably and correctly applied the terms of the Act, specifically relating to intermunicipal services, in confirming the County's responsibility for payment for the benefits its residents received.

(iii) Services From April 1, 2020

[341] The services provided from April 1, 2020 do not include "general policing services." The Town and the County will pay for those services directly.

[342] The services do include the Ancillary Services and providing the detachment building (Award para 420).

[343] The Arbitrator found that County residents benefit from these services and have historically benefited from these services. Subject to my comments below respecting the threshold or standard for determining "benefit," these determinations fell within the Arbitrator's exercise of her jurisdiction (Award para 421).

[344] Provision of the detachment building is distinct from "general policing services." It is a necessary part of the infrastructure for the delivery of policing services. This service remains an intermunicipal service and does not fall within any exclusion of third-party policing services from the scope of intermunicipal services. The Arbitrator properly directed that maintenance and capital costs be contributed to by the County under the ICF (Award para 422). The Arbitrator's determinations were both reasonable and correct.

[345] The Town provides and pays for support staff who deliver Ancillary Services other than the community liaison officer and crime prevention coordinator services and provides and pays for the crime prevention coordinator position. The Arbitrator found that these staff provide services to County residents. The County should pay its fair share for these services (see Award

paras 413, 414, 420). These services and contributions for these services properly fall within the ICF. The Arbitrator's determinations were both reasonable and correct.

[346] The community liaison officer/school resource officer is a police officer. On the evidence, this position was not included in general policing services. The Arbitrator found that the position was created in 2012 "after discussions at the joint liaison committee for the two parties." The position then has an historical foundation in the consent of the parties. The position was not foisted on the County (Award para 412). Since this position is an add-on to general policing services and it was added through the consent of the parties, and since the Arbitrator found that County residents have benefitted from this specific type of policing service and continue to benefit from this service, this service is within the scope of intermunicipal services. The Arbitrator's determination that this service is an intermunicipal service (Award para 421) and that the County shall contribute to the costs of this service (Award paras 422-423) were both reasonable and correct.

(c) Rail Crossing Services

[347] The issue at this point is whether CN and not the Town was providing the relevant benefits to County residents. Another jurisdictional issue will be considered below.

[348] The County contended that the Arbitrator found County residents' benefits based on a rail line provided by CN, rather than on a rail crossing provided by the Town (CB paras 97-98). I find that the County's claim is inaccurate. The Arbitrator clearly focused on the benefits provided by rail crossings to County residents and on the increased rail crossings costs borne by the Town because of County use of the rail line (Award at para 525).

[349] The County certainly receives benefits from CN. "Businesses in [the County] use the rail line to transport … gravel and sand from the gravel pit located in [the County] …. [The County] obtains levy revenue from the businesses who use the rail line" (Award para 525, see para 523).

[350] Railway services are one thing. Railway crossing services are another. The rail line by itself does not provide a mechanism for vehicles to get across the tracks. The Town has responsibilities for (at the time of the arbitration) three rail crossings. These crossings (Award para 525)

- permit the Town's fire department to access locations in the County fire service area
- permit County residents to access Town schools and the Town hospital
- permit County residents to access businesses and other services in the Town.

[351] The Crown is responsible for the maintenance of the rail crossings and is "required to respond to new infrastructure obligations imposed by Transport Canada" (Award para 515). The Town's costs include both maintenance and capital costs (Award para 517). See CB Appendix B, statement by Peter Smyl.

[352] The Arbitrator added that on the evidence, County businesses use the rail line "four times more than businesses in [the Town]" (Award para 526). County businesses, then, disproportionately contribute to the wear and tear on rail crossings and so disproportionately contribute to the costs of maintenance of the crossings and for the need for infrastructure improvements to manage vehicle and pedestrian traffic at crossings (Award paras 517, 521). The

Town conducts annual inspection and maintenance of road surfaces, vegetation, and drainage. The Town is billed for CN's monthly signal and gate maintenance.

[353] Rail crossing services are definitely a Town-provided service not a third-party provided service. The Arbitrator's finding that "the maintenance of the rail crossings at local roads is an intermunicipal service provided by [the Town] that benefits the residents and businesses in [the County]" is both reasonable and correct (Award para 525).

(d) Recreation Services

[354] The County argued that recreation services provided by third parties fell outside "intermunicipal services" and therefore awards respecting these services fell outside the Arbitrator's jurisdiction. If ***Cardston*** imposed a broad exclusion of third-party delivered services from intermunicipal services, the County's position would be supported.

[355] I did not read ***Cardston*** as imposing a broad exclusion of third-party delivered services from intermunicipal services.

[356] I do not consider the participation of third-parties in the delivery of recreational services to remove these services from the scope of intermunicipal services.

[357] The Award and the parties' submissions did not disclose that the Millar Centre, Scott Safety Centre, Carlan Services Community Resource Centre, River Boat Park, the Arts and Crafts Building, Whitecourt Rotary Park, or Graham Acres, or were operated by third parties (see, respectively, Award paras 372, 373, 374, 375, 376, 377). Neither did the Award or submissions indicate that school sites (sports fields and outdoor rinks) were operated by third parties (Award para 378). The County's submissions did not single out these service providers as involving third party delivery.

[358] The County referred to the Whitecourt and District Agricultural Society as a suspect third party service provider (CB paras 22(d), 64(d)). However, the Arbitrator included this society as a *County* service provider for ICF purposes (Award para 396). I will treat the services provided through this society as being outside the County's jurisdictional challenge.

[359] I'll review the third-party services at issue and the Arbitrator's findings, then provide my assessment.

(i) Mountain Bike Park

[360] The land for this park is leased from the Province. In 2015 and 2018 the County contributed capital costs for the park. In 2016 and 2017, the County agreed to contribute to operating costs. The Mountain Bike Association (the MBA) operates the park, under an agreement with the Town. The Town provides annual funding grants to the MBA (Award para 368). Funding for the park is from municipal sources, particularly from the Town. Use of the park is open for Town and County residents and residents of both municipalities benefit from it (Award paras 368, 379, 380).

(ii) Eastlink Park

[361] The land for this park is owned or leased by the Town. The Town owns the building and equipment (Award para 369). The Town and County paid the capital costs to construct the park. The Town and County had funded operations costs, with the larger percentage funded by the Town. The town incurred costs for maintenance of equipment and the lodge (Award para 370).

The Town owns the building and equipment. The Winter Recreation Park Society operates the park. The park is used by residents of the Town and the County (Award para 379).

(iii) Curling rink

[362] The Town owns the facility but leases it to the Whitecourt Curling Club. In 2011 and 2012, the County and the Town shared renovations costs. The Club is responsible for all facility operating costs except "lifecycle costs related to the building envelope." Historically the County shared the costs of repairs to the building envelope (Award para 371).

(iv) Arbitrator's Findings

[363] County residents benefit from recreation services provided by the Town (Award para 393-395).

[364] The Arbitrator found that Mountain Bike Park, Eastlink Park, the Curling Rink, and the Arts and Crafts Building, as well as the Millar Centre, Scott Safety Centre, River Boat Park, Rotary Park, and Carlan Services Community Resource Centre, in addition to Graham Acres and school facilities, were intermunicipal services. These are recreation and arts and culture services that benefit County residents (Award para 395). The Arbitrator directed the parties to include these services in the ICF. The services to maintain the services are also intermunicipal services and should be included in the ICF (Award para 398). Financial contributions concern the direct costs of providing the services including maintenance and capital costs, offset by revenues (Award para 399).

(v) Assessment

[365] In none of the instances just reviewed are the services statutorily assigned to any specific type of autonomous service provider. All are services that the Town could deliver directly, without relying on a third party.

[366] The Town owns the land for Mountain Bike Park and Eastlink Park and owns the Curling Rink building.

[367] The funding for Mountain Bike Park is from municipal sources, particularly the operating grant provided by the Town. Capital costs for Eastlink Park were municipally funded. The Town and the County have been responsible for the Curling Club building envelope.

[368] The services are available to the public, to residents of the Town and County.

[369] In my opinion, the services I have addressed are all services that the Town is responsible for, not only in the sense of being accountable for the services, but in the sense of concretely delivering the services through providing land or facilities and maintaining facilities, and in the Mountain Bike Park and Eastlink Park instances, by providing operating funds.

[370] The presence of third-party operators only removed from the Town the need for further employees and further expenses to deliver the services. The operators bring no particular or peculiar statutorily-recognized expertise to the operation of these services.

[371] I do not consider these services to be analogous to the "unique" services provided by libraries or policing services.

[372] I do not consider the participation of third-parties in the delivery of the recreational services to remove these services from the scope of intermunicipal services. The Arbitrator's determinations respecting these services were both reasonable and correct.

(e) Conclusion

[373] Except for her determinations respecting library services which were overtaken by ***Cardston***, the Arbitrator's determinations respecting services involving third-party delivery stand.

D. Services Offered Within Only One Municipality

[374] The County made a series of arguments unified in concerning services (or purported services) physically located in the Town. The arguments concerned:

- three roads located in the Town (Award paras 507-509)
- rail crossings in the Town (Award para 525)
- the Town's transit system (Award para 535).

[375] The Town cautioned that the Award was reviewable on questions of jurisdiction only.

1. Unavailing Arguments

(a) Roads as Infrastructure

[376] Respecting the roads, the County claimed that these were infrastructure and therefore could not be services (CB para 91). I have addressed the County's position above. The roads may be infrastructure, but that does not mean that the roads cannot be used to provide services or that costs relating to the roads should not be borne by the County because of benefits of the roads to County residents. I will not address this County argument further.

(b) Statutory Responsibility for Roads

[377] The County claimed that making the County responsible for constructing and maintaining roads within the Town was contrary to ss 18 and 532 of the MGA and the Arbitrator did not have authority under Part 17.2 to make directions contrary to these provisions of the MGA (CB para 94).

[378] Under s 18(1), "[s]ubject to this or any other Act, a municipality has the direction, control and management of all roads within the municipality." Under s 532(1) and (2),

> 532(1) Every road or other public place that is subject to the direction, control and management of the municipality, including all public works in, on or above the roads or public place put there by the municipality or by any other person with the permission of the municipality, must be kept in a reasonable state of repair by the municipality, having regard to
>
> (a) the character of the road, public place or public work, and
>
> (b) the area of the municipality in which it is located.
>
> (2) The municipality is liable for damage caused by the municipality failing to perform its duty under subsection (1).

[379] The Award does not assign responsibility for road maintenance to the County. The Award was clear that the roads are in the Town and the Town "is the municipality responsible for providing the service" (Award para 508). The County had a "funding contribution," not responsibility for the roads (Award para 509).

[380] The Award respecting the roads was based on no illegal re-allocation of responsibility for roads.

(c) Location of Service Delivery

[381] Common to this group of challenged services was that the location where services were delivered was the Town alone. There was a suggestion that the County's position was that an ICF cannot include services offered only within the boundaries of one municipality (TB para 37). The County clarified in oral submissions that this was not the County's position. Nonetheless, I will address the "location of service delivery" issue to ensure that this issue is covered.

[382] If a service is delivered solely in a service-providing municipality, that might seem to be a municipal service only, not an intermunicipal service. However, a service may "benefit residents in more than one of the municipalities" because residents of the recipient municipality travel to the providing municipality to obtain the service.

[383] The Arbitrator correctly observed that

- a municipality may extend the range of its services into another municipality, whether by agreement with the recipient municipality or pursuant to an ICF (see s 54(5) of the MGA) (Award paras 157-159)
- an intermunicipal service may be offered in only one part of a recipient municipality – the Arbitrator referred to fire services provided by the Town within only a defined service area in the County (Award para 160)
- an intermunicipal service may be offered in only one part of a providing municipality – the Arbitrator referred to swimming and skating facilities in the Town, and airport services offered by the County in the County (Award para 160)
- an intermunicipal service may be offered in both municipalities (Award para 161).

The Arbitrator concluded – and in my opinion both reasonably and correctly – that Part 17.2 imposes no limitation "on the geographic location of intermunicipal services." In particular, there is no requirement for an intermunicipal service to be offered in more than one municipality (Award para 161). This would be, as the Arbitrator reflected, contrary to the statutory direction to steward scarce resources: s 708.27(b), TB para 38.

[384] The location of service provision as between municipal parties to an ICF has no jurisdictional significance.

2. Benefit Threshold

[385] An argument common to the "service located in the Town" concerns of the County was that to meet the definition of an "intermunicipal service," there must be some non-vague standard or threshold of benefit received by residents of the non-providing municipality. The benefit received must be "demonstrable" for the non-providing municipality to be responsible for making cost contributions (CB para 103, 98, 100, 102). The threshold issue is a question of jurisdiction.

[386] The Arbitrator was accused of relying on "too low a threshold" (CB para 104).

[387] The result was that occasional use by residents of the non-providing municipality would attract financial responsibility (CB paras 98, 104, 105). Virtually all the services offered by the providing municipality would attract financial support based on occasional use (CB para 93).

[388] In my opinion, this argument does not raise any question of jurisdiction.

[389] First, the statute does not impose a normative standard that must be satisfied for services to meet the definition of intermunicipal services. The County offered no statutory interpretation argument that would support reading-in a normative standard. Further, just what the language of that normative standard would be was not specified. And further again, it is not clear that imposing the normative standard would make applications of the legislation more certain or less controversial than applications of the legislation without that standard.

[390] Imposing a normative standard would require the judicial amendment of the legislation. Imposing a more certain standard would require evidence and argument that were not before me and would properly be considered by the Legislator.

[391] Judges might be accustomed to reading-in as a *Charter* remedy, but the *Charter* does not apply here. See, e.g., ***Schachter v Canada***, [1992] 2 SCR 679, Lamer CJC. There are instances when a sort of interpretive reading-in replaces the actual text of a statute, as in the case of what is now s 9(1) of the *Canada Evidence Act*: see ***Hanes v Wawanesa Mutual Insurance Co***, 1961 CanLII 28, [1963] 1 CCC 176 (ON CA), Porter CJO. Such circumstances are rare and this type of judicial redrafting of the statute was not raised by the County.

[392] Second, the argument raises, in effect, a question of mixed fact and law, a question of the application of the statute to the facts. Applying the statute to the facts is a task assigned to an arbitrator in the exercise of the arbitrator's jurisdiction. No extricable error of law (particularly relating to a judge-imposed normative standard) has been identified. And for that extricable error of law to be relevant to this review, the error would have to be jurisdictional, and it is not.

[393] Third, I accept that there are real issues about whether County residents' benefits from Town-supplied services are significant enough to attract County responsibility to contribute to the costs of providing the services, and even if there is some County responsibility, the quantification of the costs contribution. But again, working out these issues is the Arbitrator's statutorily-assigned task. In coming to her conclusions, the Arbitrator could take into account the following considerations, under s 708.38(1):

> 708.38(1) In resolving a dispute, an arbitrator may have regard to
>
> (a) the services and infrastructure provided for in other frameworks to which the municipalities are also parties,
>
> (b) consistency of services provided to residents in the municipalities,
>
> (c) equitable sharing of costs among municipalities,
>
> (d) environmental concerns within the municipalities,
>
> (e) the public interest, and
>
> (f) any other matters that the arbitrator considers relevant.

Of these, consistency of services and equitable sharing would be particularly relevant. Quantity of use by residents of the non-providing municipality would be a factor to be considered under para (f).

[394] The County has not shown that the Arbitrator committed error going to her jurisdiction by failing to apply a threshold or standard that was not shown to be supported by the legislation.

3. Evidence Considered

[395] As regards the roads ("specific collector and arterial roads"), the County contended that the Arbitrator considered an irrelevant matter or a matter with insufficient weight to carry the Arbitrator's conclusion, a public highway agreement (CB para 92). I consider the Arbitrator's focus to have been on evidence of the conduct of the County and its residents over a 20 year period, conduct that in my opinion was relevant and probative on the issue of the benefits of these roads to County residents (Award para 507).

[396] As regards transit services, the County contended that the Arbitrator lacked sufficient evidence to find that residents of the County benefited from the Town's transit services (CB para 100; see Award paras 535, 536). I note that the Arbitrator set the initial contribution by the County at less than 5% of net costs, by way of a "nominal lump sum" (Award para 539).

[397] These are questions of evidence and fact-finding that fall within the jurisdiction of the Arbitrator to consider. The Arbitrator was entitled to consider "any other matters that the arbitrator considers relevant" (708.38(1)(f)). These are not questions of jurisdiction.

[398] I observe that under s 708.35(6), "[t]he *Arbitration Act* applies to an arbitration under this Division except to the extent of any conflict or inconsistency with this Division, in which case this Division prevails." Under s 21(1) of the *Arbitration Act*, "[t]he arbitral tribunal is not bound by the rules of evidence or any other law applicable to judicial proceedings and has power to determine the admissibility, relevance and weight of any evidence." [emphasis added]

4. Conclusion

[399] None of the County's arguments relating to roads in the Town, rail crossings, or Town transit have merit. The Arbitrator's findings stand.

V. Overall Conclusions and Costs

[400] By way of summary,

- the analysis of standards of review in ***Vavilov*** applies to this judicial review even though the decision-maker was an arbitrator
- the Arbitrator's Award was reviewable on questions of jurisdiction only
- the standard of review for questions of jurisdiction relating to the Award was reasonableness not correctness
- the Arbitrator's "broad definition" of "intermunicipal service" was reasonable and correct
- the Arbitrator's determinations and directions that the County was responsible for both operational and non-operational costs of intermunicipal services, including infrastructure or capital costs, were reasonable and correct

- the Arbitrator's direction that "library services" be included in the ICF conflicted with ***Cardston*** and this specific direction must be quashed
- notwithstanding ***Cardston***, the Arbitrator's determinations and directions respecting intermunicipal services delivered by the Town ancillary or supplemental to or supportive of library services or police services were reasonable and correct
- notwithstanding ***Cardston***, the Arbitrator's determinations and directions respecting recreational and cultural services that involved third parties in the delivery of services were reasonable and correct
- the Arbitrator did not fall into jurisdictional error by failing to impose a standard or threshold for County residents' benefit because that standard or threshold is not found in the legislation.

[401] With the exception that the direction to include library services in the ICF must be quashed (and no financial contribution direction was imposed on the County), the County's application is dismissed.

[402] If the parties cannot agree on costs, written submissions on costs may be provided by September 6, 2024. I will respond in writing.

Heard on the 23rd day of June, 2023.
Dated at the City of Edmonton, Alberta this 27th day of June, 2024.

W.N. Renke
J.C.K.B.A.

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