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JUDICIAL CENTRE	EDMONTON
APPLICANT	WOODLANDS COUNTY
RESPONDENT	TOWN OF WHITECOURT
DOCUMENT	**LEGAL BRIEF OF THE RESPONDENT, TOWN OF WHITECOURT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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INTRODUCTION

1. Woodlands County (the "**County**") seeks a stay pending a judicial review of an arbitration award (the "**Award**") pertaining to the Intermunicipal Collaboration Framework ("**ICF**") between itself and the Town of Whitecourt (the "**Town**"). The Town opposes the County's application for a stay of the Award, as implementing the Award would not give rise to irreparable harm, nor does the balance of convenience favour imposing a stay.

2. At a high level, ICFs are binding frameworks which govern the planning, delivery and funding of intermunicipal services between two or more municipalities. If two municipalities cannot agree on any aspect of their ICF, Division 2 of Part 17.2 of the *MGA* requires the parties to submit to binding arbitration to resolve those issues. ICFs are mandated by statute, and all municipalities that share borders (as the Town and County do) are required to implement ICFs unless those municipalities are already members of a growth management board (which is inapplicable here).

3. After a lengthy arbitration process, the arbitrator issued the Award dealing with all matters in dispute between the parties. The Award allows the parties to finalize their ICF, which would be retroactive to January 1, 2020, and would continue to govern the planning, delivery and funding of intermunicipal services between them going forward (with the first review of the ICF to take place starting April 1, 2026). The Town continues to provide the services governed by the ICF as determined through the Award, despite the County having failed to pay the amounts owing pursuant to the Award.

4. While the Town will not argue that the County's application for judicial review of the Award is frivolous or vexatious, the County has failed to demonstrate that it would experience any irreparable harm in the absence of a stay, or that the balance of convenience favours granting the stay.

5. To the contrary, if this Court grants a stay of the Award, that would leave the parties without an ICF for an extended period of time (noting that the judicial review is not scheduled to be heard until June 2023). This would leave both parties in a state

of uncertainty regarding their mutual obligations with respect to intermunicipal services. What is certain is that the parties will eventually be subject to an ICF retroactive to January 1, 2020 regardless of the outcome of the judicial review, as that is statutorily mandated by the *MGA*. The real question in this application is whether the Award ought to be implemented now (which would establish a binding ICF on the parties now), or whether these matters should be left in a state of uncertainty for an extended period of time. The balance of convenience clearly favours providing certainty to both parties pending the judicial review application.

6. Further, the County's evidence falls far short of demonstrating irreparable harm. In the event the County's application for judicial review is successful in whole or in part, that would potentially result in some retroactive changes to the ICF. Those retroactive changes can easily be addressed through returning funds paid, and that is certainly preferable to leaving the parties with no ICF for an extended period. The law is clear that monetary harm almost never constitutes irreparable harm, and that is certainly the case here.

7. Other types of "irreparable harm" cited by the County are either unsubstantiated or are not truly irreparable. Implementing the ICF in accordance with the Award will provide the parties with a dispute resolution mechanism and an ICF Committee to deal with future issues regarding intermunicipal services. Implementing these mechanisms now cannot possibly cause either party irreparable harm.

8. Lastly, the evidence proffered by the County to show irreparable financial ramifications for implementing the Award falls far short of demonstrating irreparable harm. As is demonstrated by the County's own 2021 Financial Statements, the County had surplus assets over liabilities as of December 31, 2021 (even after considering significant accrued liabilities to the Town for cost-sharing retroactive to 2020). Further, the "cash flow analysis" prepared by the County to support its contention that it will experience irreparable harm is seriously flawed and differs in material respects from the County's 2022 budget.

9. In any case, if the County is ultimately required to pay more to the Town than it has budgeted, the County has many mechanisms at its disposal to fund those

contributions, including by taking on debt, increasing taxes, drawing on reserves, or reallocating funds from other budget items (or some combination thereof). The County's evidence falls far short of demonstrating irreparable harm.

BACKGROUND FACTS

A. General Background on Intermunicipal Collaboration Frameworks

10. Intermunicipal Collaboration Frameworks ("ICFs") are a recent creation of the Legislature under Part 17.2 of the *MGA*. ICFs are mandatory for all municipalities which share common boundaries unless those municipalities are already members of a growth management board.[1] The purposes of ICFs are addressed in section 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.*[2]

11. ICFs are intended to govern the planning, delivery and funding of intermunicipal services between two or more municipalities, and one of the central aims of ICFs is to ensure that municipalities fairly contribute to funding intermunicipal services that benefit their residents.

12. Originally, municipalities had until April 1, 2020 to finalize their ICFs, but this deadline was extended a further year by Ministerial Order due to the COVID-19 pandemic.[3] Municipalities that were unable to agree to ICFs by the deadline were required to submit to the arbitration process set out in Division 2 with respect to any issue remaining in dispute.[4] Under Division 2, arbitrators are given broad

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[1] *MGA*, s 708.28. **[Volume of Authorities, TAB 1]**
[2] *MGA*, s 708.27. **[Volume of Authorities, TAB 1]**
[3] *MGA*, s 708.28(1). **[Volume of Authorities, TAB 1];** Ministerial Order No. MSD: 019/20. **[Volume of Authorities, TAB 2]**
[4] *MGA*, s 708.34(a). **[Volume of Authorities, TAB 1]**

authority to make awards that resolve all issues in dispute between the municipalities, and upon issuing an award, the municipalities are bound to adopt an ICF in accordance with the arbitrator's award within 60 days.[5]

B. The ICF Between the Town and County

13. While the Town and County engaged in lengthy negotiations over many months regarding the contents of their ICF, they were unable to agree to any aspect of their ICF prior to the deadline of April 1, 2021. Accordingly, the parties were statutorily required to proceed to arbitration under Division 2 of Part 17.2 of the *MGA*. The arbitration hearing took place between August and September 2021, and the parties called 18 witnesses (both fact and expert) and filed 41 exhibits, including many hundreds of pages of sworn witness statements.

14. On February 3, 2022, the arbitrator issued the Award.[6] The Award is 172 pages long and covers all issues in dispute between the parties. The County filed for judicial review of the Award on March 4, 2022.

15. The parties are statutorily required to adopt an ICF in accordance with the Award.[7] The Minister of Municipal Affairs issued a Ministerial Order extending the parties' deadline to conclude their ICF in accordance with the Award to July 4, 2022.[8]

16. Staying the implementation of the Award would prevent the parties from complying with the *MGA* and the Ministerial Order to conclude their ICF. If this application is granted, the parties will be noncompliant with Part 17.2 of the *MGA* until the Court renders its decision on the substantive judicial review application, and they will be left without an ICF to govern the planning, delivery and funding of intermunicipal services between them until the judicial review application is decided.

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[5] *MGA*, s 708.36, 708.4. **[Volume of Authorities, TAB 1]**
[6] Arbitration Award dated February 3, 2022, Questioning of Alicia Bourbeau at Exhibit 1.
[7] *MGA*, s 708.4. **[Volume of Authorities, TAB 1]**
[8] Ministerial Order No. MSD: 037/22. **[Volume of Authorities, TAB 3]**

ISSUES

17. The sole issue to be decided in this application is whether an interim stay should be granted preventing the implementation of an ICF between the Town and County in accordance with the arbitrator's Award until the County's application for judicial review is decided, likely some time after the scheduled hearing date in June 2023.

LAW AND ANALYSIS

A. Test for a Stay Pending Judicial Review

18. The tripartite test for an interim stay of a decision pending a Court's determination of the merits of an appeal or judicial review of that decision is well-established; the applicant bears the burden of proof to demonstrate the following:

    1. There is a serious question to be determined;
    2. The applicant will suffer irreparable harm if the stay is not granted;
    3. The balance of convenience favours granting the stay.[9]

19. Further, Rule 3.23 of the *Alberta Rules of Court* confirms that a Court may order a stay of a decision or act sought to be set aside under an originating application for judicial review pending final determination of the originating application, but the Court must not do so if the Court's opinion is that the stay would be detrimental either to the public interest or to public safety.[10]

20. Overall, the fundamental question the Court must answer is whether granting a stay is just and equitable in all the circumstances.[11]

B. Serious Question to be Tried

21. The first branch of the tripartite test (serious question to be tried) is satisfied on a low threshold – the applicant must demonstrate that the judicial review is neither

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[9] ***RJR-MacDonald Inc. v. Canada (AG)*****,** [1994] 1 SCR 311 at 334 **[*RJR*] [Volume of Authorities, TAB 5]**; ***Musaskapeo v. Alberta (Director of SafeRoads)*****,** 2021 ABQB 1018 at paras 10-14 [***Musaskapeo***] **[Volume of Authorities, TAB 6]**; ***Denis v. Sauvageau***, 2022 ABCA 166 at para 17 [***Denis***] **[Volume of Authorities, TAB 7]**.

[10] *Alberta Rules of Court*, Alta Reg 124/2010, R. 3.23. **[Volume of Authorities, TAB 4]**

[11] ***Musaskapeo*** at para 14. **[Volume of Authorities, TAB 6]**

frivolous nor vexatious.[12] The Court generally should not undertake an extensive analysis of the strength of the underlying judicial review, provided the Court is satisfied that this low threshold has been met. As stated by the Supreme Court of Canada in *RJR-Macdonald:*

> *Once satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests, even if of the opinion that the plaintiff is unlikely to succeed at trial.* ***A prolonged examination of the merits is generally neither necessary nor desirable****.*[13]

22. In this case, the Town concedes that the County has met the low threshold to satisfy the first branch of the tripartite test, in that the underlying application for judicial review is not frivolous or vexatious. Given this, the Town submits that the Court, on this stay application, should not review the merits of the underlying judicial review application in any detail. This stay application ought to be decided on the basis of the remaining two stages of the tripartite test.

C. Irreparable Harm

23. The County has failed to demonstrate that it will suffer irreparable harm in the absence of a stay. In the event the judicial review application is decided in the County's favour, that would result in a re-hearing of the arbitration, which could come to the same or a similar result. If, at the end of this process, a different award is issued which results in lower ICF payments retroactive to 2020 from the County to the Town, then the difference can simply be returned and does not constitute irreparable harm. The ICF ought to be implemented in accordance with the Award to provide certainty, at least in the interim, on the amounts to be paid to the Town for intermunicipal services, and for the planning and delivery of those intermunicipal services, and if the County's judicial review application results in any aspect of the ICF being modified, that can easily be addressed through a return payment from the Town to the County.

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[12] ***Denis*** at para 18. **[Volume of Authorities, TAB 7]**; ***Musaskapeo*** at para 21. **[Volume of Authorities, TAB 6]**

[13] ***RJR*** at 337-338 [emphasis added] **[Volume of Authorities, TAB 5]**; see also ***Musaskapeo*** at para 21. **[Volume of Authorities, TAB 6]**

24. A difficulty with the present application is that the actual ICF between the Town and County has not been agreed to or finalized. The arbitrator reserved jurisdiction to deal with matters relating to the implementation of the Award.[14] The Town drafted an ICF based on the Award which it first provided to the County, and it then sought clarification from the arbitrator on several matters which is necessary to finalize the ICF. The Minister of Municipal Affairs has issued a Ministerial Order extending the timeframe for the Town and County to finalize their ICF to July 4, 2022.[15] To date, the actual ICF has not been finalized, and so it is not possible for the Town to provide a definitive answer on how much the County would owe to the Town for intermunicipal services under the ICF going back to 2020, and this was communicated to the County.[16]

25. In general, the case law is clear that monetary harm will generally not constitute irreparable harm, since monetary harm can generally be "repaired" through a damages award.[17] In some narrow circumstances, courts have recognized that certain forms of monetary harm can be considered "irreparable harm", such as the loss of security to pay a potential judgment after a successful appeal,[18] or if enforcement of a judgment would cause irreparable disruption to the applicant's business.[19] In this application, the County has failed to demonstrate that it will suffer irreparable harm if the ICF is implemented in accordance with the Award.

a. The History of Cost Share Payments to the Town Shows No Irreparable Harm

26. Prior to January 1, 2020, the County made payments to the Town for intermunicipal services for many years. These payments are summarized in a table appended to the affidavit of Alicia Bourbeau affirmed on April 14, 2022.[20] In questioning on

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[14] Arbitration Award dated February 3, 2022 at para 643, Exhibit 1 to Questioning on Affidavit of Alicia Bourbeau **[PDF page 247 of 423].**
[15] Ministerial Order No. MSD: 037/22. **[Volume of Authorities, TAB 3]**
[16] Affidavit of Alicia Bourbeau affirmed on April 13, 2022 at paras 5-6; Exhibit C; Questioning of Alicia Bourbeau dated May 3, 2022 at pages 10-11.
[17] See ***RJR*** at 341. **[Volume of Authorities, TAB 5]**
[18] ***TAQA Drilling Solutions Inc. v. Yar Holdings Inc.***, 2021 ABCA 300 at para 16. **[Volume of Authorities, TAB 8]**
[19] ***Knelsen Sand & Gravel Ltd. v. Harco Enterprises Ltd.***, 2021 ABCA 362 at paras 54-59. **[Volume of Authorities, TAB 9]**
[20] Affidavit of Alicia Bourbeau affirmed on April 14, 2022 at Exhibit I **[PDF page 75 of 154].**

that affidavit, Ms. Bourbeau confirmed that the chart shown at page 75 of her affidavit (Exhibit I) was prepared by staff within the County's corporate services department, and it accurately reflects amounts paid by the County to the Town over the years shown. Ms. Bourbeau also confirms that the County paid at least $2 million per year for cost shared services from 2011 to 2019, and more than $2.7 million per year from 2014 to 2019.[21]

27. Despite acknowledging that the County has paid the Town these amounts for many years, Ms. Bourbeau's evidence is that the County only budgeted $1.4 million to be paid to the Town for cost shared services in 2020, 2021 and 2022.[22] This is despite the fact that the County's budget documents for 2020 to 2022 include much higher amounts for intermunicipal cost sharing. For instance:

- The County's budget for 2020 includes a budgeted expense for "Intermunicipal Sharing" of $2,870,088;[23]
- The County's budget for 2021 includes a budgeted expense for "Intermunicipal Sharing" of $2,870,088;[24] and
- The County's budget for 2022 includes a budgeted expense for Intermunicipal Sharing (now under the heading "General Operations") in the amount of $2,800,000.[25]

28. When questioned about this discrepancy, Ms. Bourbeau explained that the amounts budgeted for Intermunicipal Sharing include other amounts which do not represent payments to the Town for cost shared services, including for police services, revenue sharing and costs related to the arbitration and court applications related to the ICF between the Town and County.[26] Responses to undertakings asking for clarification on these amounts were largely non-

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[21] *Ibid*; Questioning Transcript of Alicia Bourbeau on May 3, 2022 at pages 14-15.
[22] Questioning Transcript of Alicia Bourbeau on May 3, 2022 at pages 18-28.
[23] "2020 Woodlands County Budget," Exhibit 2 to Questioning on Affidavit of Alicia Bourbeau **[PDF page 262 of 423].**
[24] "2021 Woodlands County Budget," Exhibit 3 to Questioning on Affidavit of Alicia Bourbeau **[PDF page 273 of 423].**
[25] "2022 Woodlands County Budget," Exhibit 4 to Questioning on Affidavit of Alicia Bourbeau **[PDF page 281 of 423].**
[26] Questioning on Affidavit of Alicia Bourbeau at pages 17-18

responsive. Indeed, the response to Undertaking #3 suggests that there was still over $2 million available in the budget for Intermunicipal Sharing in 2021 after taking away police, legal and arbitration costs.[27]

29. Assuming Ms. Bourbeau is correct that the County has only budgeted $1.4 million to be paid to the Town for cost shared services in 2020, 2021 and 2022, that does not represent irreparable harm to the County. The County's own evidence clearly demonstrates that the amounts paid to the Town prior to 2020 for cost-shared services significantly exceeded $1.4 million each year since 2010. This demonstrates that the County has failed to properly budget for intermunicipal services, and that cannot constitute a sufficient basis to claim "irreparable harm." The County's own evidence also shows that its estimate of $2.8 million for anticipated amounts to be paid under the ICF is prudent, given the fact that amount is more in line with amounts historically paid to the Town since 2015 that would have built into the tax rate previously paid by County residents.

30. Indeed, one of the central purposes of ICFs is to ensure that municipalities contribute funding to services that benefit their residents,[28] and the arbitration process under Part 17.2 gives the arbitrator the jurisdiction to make awards concerning the equitable sharing of costs for intermunicipal services between municipalities.[29] Since the arbitrator's award is final and binding on the municipalities, it follows that the arbitrator could require a municipality to pay more for intermunicipal services than originally budgeted.

31. Indeed, it would frustrate the intent of Part 17.2 if it were otherwise, as that would allow the "paying" municipality to artificially restrict the amount they will pay by budgeting for an unreasonably low amount. The fact that the implementation of the Award might require the County to pay the Town more for cost-shared services than it budgeted does not constitute irreparable harm, and the past history of cost share payments from the County to the Town demonstrates that the County can

[27] Answers to Undertakings of Alicia Bourbeau at undertakings 1, 2, and 3.
[28] *MGA*, s 708.27(c). **[Volume of Authorities, TAB 1]**
[29] *MGA*, s 708.38(1)(c). **[Volume of Authorities, TAB 1]**

afford payments much higher than the $1.4 million it apparently budgeted in 2020, 2021 and 2022.

b. The County's 2021 Financial Statements Show it will Not Suffer Irreparable Harm

32. The County's most recent financial statements from 2021 also comment on accrued liabilities payable to the Town for cost sharing arrangements:

> *The County is committed to sharing the capital and operating costs for certain functions with the Town of Whitecourt (the "Town") on a pro-rated per capita basis, calculated on the current population of the Town and the County. The County's commitment under these cost-sharing arrangements varies from year to year. The County's cost sharing payments to the Town for the year ended December 31, 2021 was $3,129,753 (2020 - $2,924,418).*[30]

33. In questioning, Ms. Bourbeau confirmed that the draft financial statements included in Exhibit 5 to her questioning accurately represented the County's financial position as at December 31, 2021, and that the draft financial statements were approved by County Council.[31] Accordingly, as at December 31, 2021, the County's financial statements clearly show a budgeted liability to the Town of over $6 million reflecting payments by the County to the Town for cost shared services. How this reconciles with Ms. Bourbeau's testimony that only $1.4 million was budgeted for cost sharing payments to the Town in 2020 and 2021 remains unclear (and she was unable to provide any clarity on that when questioned on it).[32]

34. The 2021 financial statements clearly show that the County's net financial assets after all liabilities are accounted for (including the over $6 million in liabilities to the Town) were positive by approximately $3.2 million at the end of 2021.[33] This clearly demonstrates that the County has sufficient assets to pay ~$6 million in liabilities owing to the Town, and still have in excess of $3 million in assets left over after those are accounted for. The County will suffer no irreparable harm if it is required

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[30] Woodlands County Draft Financial Statements Year Ended December 31, 2021 at page 22, Questioning on Affidavit of Alicia Bourbeau at Exhibit 5 **[PDF page 391 of 423].**
[31] Questioning on Affidavit of Alicia Bourbeau at **page 58 of 423**.
[32] Questioning on Affidavit of Alicia Bourbeau at **page 60 of 423**.
[33] Woodlands County Draft Financial Statements Year Ended December 31, 2021 at page 22, Questioning on Affidavit of Alicia Bourbeau at Exhibit 5 **[PDF page number 373 of 423].**

to pay $2.8 million per year retroactive to 2020, which is also in-line with historical payments made to the Town going back to 2015.

c. The 2020 Municipal Indicator Results Report Does Not Show Irreparable Harm

35. The County points to a report published by Municipal Affairs which highlighted several concerns regarding the County's financial position in 2020, including:

- Under the heading "Tax Collection Rate", it is noted that the County collected 85.21% of outstanding taxes in 2020, which was below the target threshold of 90%;[34]
- Under the heading "Investment in Infrastructure", it is noted that the County's capital spending is less than the depreciation of its assets;[35] and
- Under the heading "Infrastructure Age", it is noted that the County's net book value of tangible capital assets is less than 40% of their original cost.[36]

36. This report is based on outdated data, reflective of the County's financial position in 2020. As indicated above, the County's own financial statements for the 2021 fiscal year demonstrate a much-improved fiscal situation.

37. In any event, with respect to the tax collection rate, the County's own evidence demonstrates that this situation has materially improved since 2020. The Financial Indicators Report expressly indicates that:

> *Year to date collections for 2020 have increased due in part to the County's vigilance to secure payment agreements through the courts. Additionally, some linear accounts have been written off to enable the County to apply for the PERC program. Remaining 2020 uncollected amounts before PERC application is $1,814,357/$25,921,529 = 7% of uncollected and 2020 uncollected after PERC write off is $1,017,115/$25,921,529 = 4% of uncollected.*[37]

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[34] Municipal Affairs, "2020 Municipal Indicator Results" (January 2022), Affidavit of Gordon Frank affirmed April 13, 2022 at Exhibit F, page 14 **[PDF page 67 of 195]**.
[35] *Ibid* at page 25 **[PDF page 78 of 195]**.
[36] *Ibid* at page 28 **[PDF page 81 of 195]**.
[37] *Ibid* at page 14 **[PDF page 67 of 195]**.

38. Further, Mr. Frank confirms in his affidavit that the Alberta government has recently passed legislative amendments which are designed to make it easier for municipalities to collect unpaid tax liabilities.[38] The existence of $1,017,115 in unpaid tax liabilities from 2020 (which could be less given further collections efforts by the County) does not constitute a financial emergency such that the County would suffer irreparable harm if the ICF was implemented in accordance with the Award.

39. With respect to the comments made regarding the County's investment in infrastructure, and infrastructure age, the County's 2022 budget shows the following:

- The County has budgeted $2,640,627 to be transferred to operating reserves;
- The County has not budgeted any transfers to its capital reserves; and
- The County has budgeted $4,335,000 for capital projects.[39]

40. The County has put forward no evidence to demonstrate that it will be unable to fund these budgeted amounts in the event the ICF is implemented.

41. The County largely relies on a cash flow analysis prepared by Ms. Bourbeau to demonstrate that it cannot meet obligations under the ICF without compromising its ability to fund its own infrastructure needs as addressed in the Financial Indicators Report. As the section below demonstrates, Ms. Bourbeau's cash flow analysis is flawed and ought not be relied on, and in any event, does not demonstrate the County will suffer irreparable harm if the Award is implemented.

d. The County's Cash Flow Analysis Ought Not be Relied On, and Does Not Demonstrate Irreparable Harm

42. The cash flow analysis prepared by Ms. Bourbeau purports to show that the County has insufficient cash flow to fund increased liabilities to the Town, beyond

[38] Affidavit of Gordon Frank affirmed April 13, 2022 at para 28 **[PDF page 5 of 195]**.
[39] "Woodlands County 2022 Budget", Questioning of Alicia Bourbeau at Exhibit 4 **[PDF page 288 of 423]**

the $1.4 million already budgeted.[40] This cash flow analysis is flawed and ought to be disregarded, and in any event falls far short of demonstrating that the County will suffer irreparable harm if a stay is not granted.

43. First, the cash flow analysis fails to account for all of the revenue the County budgeted for in 2022. For instance, the cash flow analysis anticipates $180,000 to be received in 2022 for "other revenue (leases and rentals)," and $300,000 for "user fees and services" for a total of $480,000 in 2022.[41] The County's 2022 budget includes a line item for "other revenue, own sources" in the amount of $1,206,955, and revenues of $230,049 for the "sale of goods and services". In her answers to undertakings, Ms. Bourbeau provided a document which breaks down the amount budgeted for "other revenue, own sources", and it shows this amount includes revenues for "penalties", "licenses and permits", "interest income", gravel levies" and other sums. She also confirms that the $317,916 in revenues for "cost recovery" are offset by equivalent expenditures in the same area, which leaves $889,039 in the County's budget for "other revenue, own sources", which itself does not include the $230,049 in revenues budgeted for "sale of goods and services." In reviewing the cash flow analysis, it is clear that not all of these sums have been accounted for, and revenues are underreported.

44. Similarly, the 2022 budget estimates grant funding in the amount of $4,042,724, while the cash flow statement only includes $824,500 for grant funding. When questioned on why the cash flow analysis estimates much less revenue for grants than the 2022 budget, Ms. Bourbeau explained:

> *At the time the budget … document was prepared, that was our estimated grant. Some of this refers to disaster recovery monies that we are still in the process of collecting from the province for our 2018 ice jams. So that makes up more than half of the $4 million noted there. And that … it's just some of that work is just being undertaken or is close to being finished.*[42]

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[40] "Cash Flow Schedule", Affidavit of Alicia Bourbeau affirmed on April 13, 2022 at Exhibit E **[PDF page 49 of 154]**

[41] *Ibid*. Questioning Transcript of Alicia Bourbeau at pages 46-48.

[42] Questioning Transcript of Alicia Bourbeau at page 45.

45. Ms. Bourbeau then confirmed that her cash flow analysis only included anticipated MSI funding.[43] There is no principled basis upon which the County can elect to only include certain revenues budgeted for in 2022, and not others, in its cash flow analysis, especially since Ms. Bourbeau confirmed that other grant funding pertaining to the 2018 ice jams had yet to be received. The cash flow analysis does not account for all anticipated revenues in this area.

46. The cash flow analysis also underestimates the amount of anticipated taxation revenue for 2022. The amount of taxation revenue estimated (including requisitions) is $25,689,564, and this is offset by a $840,000 adjustment to account for monthly tax installment payments at $70,000 per month, leaving the net amount of taxation revenue for the year (inclusive of requisitions) at $25,689,564.[44] The County's 2022 budget estimates taxation revenue at $26,843,213.[45] Once again, the estimated revenues anticipated in the cash flow analysis are less than what is provided for in the County's budget.

47. In addition to understating anticipated revenues, the cash flow analysis also overstates budgeted expenses. In particular, the transfers to operating and capital reserves referenced in the cash flow analysis are far greater than what the County budgeted for in 2022. The cash flow analysis estimates that $500,000 will need to be transferred to capital reserves *per month*, with $84,000 being transferred to operating reserves *per month* (for an annual total of $7,008,000).[46] The cash flow statement identifies these transfers to reserves as separate from spending on capital projects, which was estimated at an additional $3 million per year. As noted above, the County's 2022 budget estimates $2,640,627 will be transferred to operating reserves, nothing will be transferred to capital reserves, and $4,335,000 will be spent on capital projects.[47]

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[43] *Ibid.*
[44] "Cash Flow Schedule", Affidavit of Alicia Bourbeau affirmed on April 13, 2022 at Exhibit E **[PDF page 49 of 154]**
[45] "Woodlands County 2022 Budget," Questioning Transcript of Alicia Bourbeau at pages 45-48; "*ibid* at Exhibit 4 **[PDF page 280 of 423].**
[46] "Cash Flow Schedule", Affidavit of Alicia Bourbeau affirmed on April 13, 2022 at Exhibit E **[PDF page 49 of 154];** Transcript from Questioning of Alicia Bourbeau at page 41**.**
[47] Questioning Transcript of Alicia Bourbeau at pages 45-48; Exhibit 4 **[PDF page 288 of 423].**

48. In questioning, Ms. Bourbeau confirmed that the amounts budgeted in 2022 for transfers to reserves reflect the amounts Council has approved for transfers to reserves.[48] There is no basis for the cash flow analysis to estimate a far higher level of transfers to reserves than the County has budgeted for, and this has the effect of significantly overstating the cash shortfall identified in the report. The cash flow analysis is unreliable and should be disregarded for this reason.

49. Further, the cash flow analysis is misleading in that it treats allocations to operating reserves and capital reserves as amounts which reduce the cash available to the County to cover expenses. In questioning, Ms. Bourbeau confirmed that "allocations to reserves" simply means transferring funds from one bank account controlled by the County to another.[49] Such funds can therefore be used to cover operating and capital expenses as necessary, so the inference that transfers to capital or operating reserves would require the County to go into debt to service ongoing obligations based on this analysis is incorrect. Further, if any retroactive adjustments to the ICF lead to the Town returning money to the County at some point in the future, the County could elect to deposit those amounts back into reserves.

50. Overall, the cash flow analysis prepared by Alicia Bourbeau, and which the County relies on to demonstrate irreparable harm, is flawed and no weight ought to be placed on it. It underreports anticipated revenues, and with respect to expenses, it forecasts much higher transfers to reserves than the County budgeted for. Ms. Bourbeau argues that the transfers reflected in her cash flow analysis are necessary to address the concerns raised by the Province with respect to the County's infrastructure deficit – even if that is true, the fact remains that the County itself has not budgeted for the amounts shown in the cash flow analysis. Accordingly, this cash flow analysis does not reflect reality, and does not demonstrate irreparable harm.

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[48] Questioning Transcript of Alicia Bourbeau at page 33.
[49] Questioning Transcript of Alicia Bourbeau at pages 33-34.

e. There are Many Tools in the County's Toolbox to Fund ICF Contributions

51. With respect to "irreparable harm", even if the County takes on additional debt to service some or all amounts owed to the Town under the ICF, that also does not constitute irreparable harm. The County's 2021 financial statements, which Ms. Bourbeau was questioned on and confirmed were passed by Council in April 2022 at her recommendation, show that the County currently has $31,719,844 in unused debt limits as at the end of 2021.[50] Accordingly, the County has the ability to take on additional debt if that is what it chooses to do to fund cost sharing contributions under the ICF.

52. Further, if the County is required to raise additional revenues to fund past or future cost sharing contributions under the ICF, it has many options at its disposal to increase revenues. Part 10 of the *MGA* gives municipalities powers of taxation using a variety of methods, including property taxes and business taxes. Accordingly, unlike other corporations, municipalities have the statutory power to quickly increase revenues if there is a need to do so. Although the evidence does not suggest any tax increase would necessarily be required, the County has failed to demonstrate that it is unable to increase revenues to account for any additional payments that the County may end up owing under the ICF.

53. In fact, the County's own evidence suggests that even in the worst-case scenario it presents, the tax increase for residential ratepayers in the County will still result in the County's residential ratepayers paying less property tax than Town residents. According to Ms. Bourbeau, County ratepayers will need to bear a 31% tax increase to provide the County with sufficient revenue to contribute to its operating and capital reserves and to fund estimated cost sharing at $2.8 million per year.[51] Ms. Bourbeau determined that this increase would result in the County's residential mill rate increasing from 3.1164 in 2021, to 4.0824.[52]

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[50] "Woodlands County 2021 Financial Statements", Questioning of Alicia Bourbeau, Exhibit 5 at page 201 **[PDF page 389 of 423].**
[51] Affidavit of Alicia Bourbeau at para 17(d)(ii); Exhibit I **[PDF page number 67 of 154]**; Questioning of Alicia Bourbeau at pages 36, 67-68.
[52] Affidavit of Alicia Bourbeau at Exhibit I **[PDF page number 69 of 154].**

54. Ms. Bourbeau's affidavit includes a chart prepared by Colette Miller, an expert retained and relied on by the County in the arbitration, which compares municipal tax rates between the Town and County.[53] That chart shows that the Town's residential mill rate in 2021 is 6.0705. Accordingly, even in the County's worst-case scenario as described by Ms. Bourbeau, the County's residential ratepayers would still end up paying a lower mill rate than residential ratepayers in the Town. If the County decided to raise its residential mill rate even further than Ms. Bourbeau suggests up to the Town's mill rate, that could mitigate other increases to the non-residential mill rate, or to business taxes.

55. Ultimately, how the County chooses to finance its cost contributions under its ICF with the Town is up to the County to decide. For the purpose of this application, it is sufficient that the County has many tools in its toolbox to fund contributions under the ICF, whether by increasing municipal taxes, reallocating funds from other areas of its budget, drawing on reserves, taking on additional debt, or some combination thereof. None of this demonstrates irreparable harm – if, at the end of this process, it turns out that the County has paid more than it should have under the ICF, it would be a simple matter for the Town to return those funds.

56. The Applicant's Brief at paragraph 47 suggests that if a municipality is required to increase its taxes as a result of an arbitration award under Part 17.2, that is somehow contrary to section 708.36 of the *MGA*. The Applicant's interpretation of this section is incorrect – section 708.36(7) lists a number of areas over which an arbitrator does not have jurisdiction, including any order "that directs a municipality to raise revenue by imposing a specific tax rate, off-site levy or other rate, fee or charge."

57. The Award does not direct the County to raise any specific tax or impose any specific fee. How the County deals with its obligations under the ICF are up to it, and the Award does not purport to constrain the County's discretion in that regard. Section 708.36(7) cannot be interpreted as restricting the arbitrator to only issuing awards that would never require any municipality to modify their budget, as that

[53] See Affidavit of Alicia Bourbeau at Exhibit I **[PDF page 72 of 154]**.

would be contrary to the purpose of ICFs, and the purpose of the arbitration provisions in Division 2.

D. Balance of Convenience

58. The Town submits that the balance of convenience clearly favours allowing the ICF to be implemented in accordance with the Award.

a. Staying the Award Would Leave the Parties in an Uncertain and Untenable Position on Intermunicipal Services

59. First, as noted above, ICFs are mandatory under Part 17.2 of the *MGA*, and all municipalities that share borders and are not otherwise members of a growth management board are required to enter into an ICF by April 1, 2021, or failing that, proceed to arbitration. The Award that is subject to judicial review in this matter is the result of that process. If a stay were granted in this case, the Town and County, alone among municipalities required to implement ICFs under Part 17.2, would not have a governing ICF between them for a lengthy period of time, given that the judicial review is scheduled for June 2023 and it can be reasonably assumed that the Court will reserve its decision.

60. This would leave the Town and County in an untenable position, as neither party would be able to estimate their entitlements and obligations that will eventually be determined on a final basis. It is a certainty that the Town and County will ultimately be subject to an ICF that is retroactive to January 1, 2020, the only question in this stay application is whether the current arbitration Award should be implemented into a binding ICF, or if that should be stayed until the judicial review is heard. Implementing the current arbitration award now would clearly provide the parties with greater certainty with respect to their ICF obligations until the judicial review is heard and decided.

61. The Legislature has also directed that parties adhere to their mutual obligations under ICFs while disputes are resolved.[54] Accordingly, it would be consistent with the Legislature's intent to allow the ICF to be implemented in accordance with the

[54] *MGA*, s 708.471. **[Volume of Authorities, TAB 1]**

Award, as that would allow for the parties to adhere to their mutual obligations under the ICF while the present dispute is resolved.

62. The fact of the matter is that the arbitrator found that many intermunicipal services provided by the Town benefit County residents both retroactive to January 1, 2020, and on an ongoing basis. For example, with respect to recreation and culture, the arbitrator found:

> *For over 30 years Woodlands has recognized that Whitecourt provides recreation services that benefit Woodlands' residents. Its own documents from as recent as 2016 and 2019 confirm the benefit. Woodlands bears the evidentiary onus to establish that those recreation services are now limited to the indoor pool and ice arena or has been reciprocated by relatively equal services it provides. The evidence does not support Woodlands' position. The recreation services provided by Whitecourt are not limited to the indoor pool and ice arenas. Whitecourt's 2020 statistics show Woodlands' residents are still accessing broader recreation services offered by Whitecourt.*[55]

63. Similarly, with respect to Family and Community Support Services ("FCSS"), the arbitrator found that "[t]he evidence indisputably shows Whitecourt provides FCSS programming and activities that Woodlands' residents access and benefit from" and the Town has in fact done so for over 30 years."[56] This is a similar theme that runs throughout the Award – the Town has provided services that are accessed by and benefit County residents, and that is the basis upon which the arbitrator determined that the County ought to contribute to the funding of those services.

64. The County has not provided any evidence to show that its residents do not actually access or benefit from the services provided by the Town as identified in the Award (and in any case, these matters have already been decided by the arbitrator). Accordingly, implementing a stay would leave the Town in an impossible position where it would either need to unilaterally cut off County access to its services, or to continue allowing County residents to access services while it, in essence, finances that access. This would be unfair to the Town, and also to County residents. Implementing the Award would result in a binding ICF between

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[55] Arbitration Award dated February 3, 2022 at para 393 [Questioning of Alicia Bourbeau, Exhibit 1]
[56] *Ibid* at para 449.

the Town and County that would provide certainty for how intermunicipal services between the two are to be funded, and that outcome is the most fair and equitable to all parties – even if aspects of the ICF are retroactively changed at some future date.

65. Further, as is demonstrated by the County's own evidence, they appear to have unilaterally budgeted for $1.4 million to pay to the Town for cost-shared services in 2020 and 2021, despite the fact that actual payments to the Town for cost shared services significantly exceeded that amount for ten years prior to 2020. Implementing a stay of the Award would leave the parties with no mechanism to determine the County's cost sharing obligations, and gives rise to the risk that the County will continue to unilaterally set the amount it is willing to pay (at far less than it has historically paid).

66. This is contrary to the purpose of ICFs, which is to provide frameworks governing the equitable sharing of costs between municipalities for services that benefit their residents. The Award contains specific direction for how cost sharing amounts are to be calculated for different intermunicipal services, and the balance of convenience clearly favours allowing that framework to be implemented instead of leaving the parties with no framework at all (and therefore allowing one party to unilaterally set the amount to be paid).

67. If any aspect of that Award is ultimately altered at some future date, it would be a relatively straightforward matter to calculate the impact of that and resolve the impact through an equalization payment. When weighed against the significant negative consequences of implementing a stay as noted above, the balance of convenience clearly favours allowing the Award to be implemented.

68. Further, it is important to recognize that ICFs do more than determine cost sharing contributions – they also are intended to provide frameworks for the *planning and delivery* of intermunicipal services, as well as to resolve disputes.[57] The Award contains important direction regarding how the municipalities are to address future

[57] *MGA*, ss 708.27, 708.29. **[Volume of Authorities, TAB 1]**

and ongoing intermunicipal services, including by establishing an ICF Committee tasked with carrying out the ICF, and by establishing a dispute resolution clause.[58]

69. If a stay of the arbitration award were implemented, which would result in there being no ICF between the parties, then these provisions would also not be implemented, leaving the parties without an effective framework to deal with ongoing issues related to intermunicipal services and to resolve future disputes. Again, the balance of convenience clearly favours allowing the Award to be implemented to allow for these important aspects of the Award to be implemented as well, since the alternative would leave neither party with the ability to resort to the dispute resolution mechanism or to bring matters to the ICF Committee for consideration.

70. The County's evidence suggests that the existing framework directs the County to pay certain infrastructure costs in accordance with the Award, referencing "minutes" from a Joint Liaison Committee meeting which took place on March 28, 2022.[59] However, despite the reference in Mr. Frank's affidavit, there are no minutes from the March 28 Joint Liaison Committee meeting included with the affidavit. There was no direction from the Joint Liaison Committee to require the County to pay for infrastructure costs of any sort. This was an item for discussion at the Joint Liaison Committee, as suggested by the Request for Direction included in the affidavit.

71. In any case, the Award creates mechanisms for the Town and County to negotiate and discuss both present and future intermunicipal services, including infrastructure projects such as the Municipal Centre, and if there is a dispute between them regarding whether one party ought to be required to participate, the Award provides for a dispute resolution process. Clearly, the balance of convenience favours implementing the Award to give the parties a framework to address new intermunicipal services and costs related thereto.

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[58] Arbitration Award dated February 3, 2022, Questioning of Alicia Bourbeau at Exhibit 1, Appendices D and E.
[59] Affidavit of Gordon Frank at paras 30-31; Exhibit C.

b. The Public Interest Favours Implementing the Award

72. As noted above, Rule 3.23 requires the Court to consider the public interest in applications to stay decisions pending judicial review. In this case, the public interest clearly favours allowing the Award to be implemented. It would be contrary to the public interest and detrimental to residents in both the Town and County to stay implementation of the Award and leave the Town and County without an ICF for an extended period of time.

73. The Legislature has clearly decided to require municipalities sharing borders to enter into ICFs by a specified deadline, failing which the ICF is to be implemented following arbitration. This Legislative intent is further reinforced by the recent Ministerial Order which sets a deadline of July 4, 2022 to implement this ICF.[60] Staying the Award would be contrary to the Legislature's intent, and contrary to the public interest. Residents in the Town and County ought to benefit from the certainty the ICF provides with respect to the planning, delivery and funding of intermunicipal services – leaving them without an ICF by imposing a stay would disadvantage ratepayers in both municipalities.

74. The arbitrator made several comments about the public interest that are particularly salient to this application. At paragraph 217 of the Award, the arbitrator noted the following:

> *The MGA requires each municipality to contribute funding towards the intermunicipal services that benefit its residents. This also serves the public interest. Contributions to intermunicipal services introduces an element of fairness between municipalities. It is in the public interest that the parties know the amount of funding each party will contribute to the other for the intermunicipal services their respective residents receive. It is also in the public interest that both parties are able to plan and budget with certainty. Public interest requires that one municipality is not required to subsidize another municipality to a greater extent than the subsidizing municipality can agree or the law requires. However, the funding contribution must be transparent so as to prevent future intermunicipal disputes.*[61]

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[60] Ministerial Order MSD: 037/22. **[Volume of Authorities, TAB 3]**
[61] Arbitration Award dated February 3, 2022, Questioning of Alicia Bourbeau at Exhibit 1, para 217.

75. The arbitrator also further elaborated on how ICFs are intended to achieve equity between the municipalities with respect to the funding of services that benefit their residents:

> *Affordability is less applicable when determining the cost share because evidence about the service and benefit will influence that calculation, not whether, in hindsight, one municipality has the ability to pay or wishes to pay for the services. As Ms. Miller said, once the cost share is determined, the contributing municipality may have to increase revenues or cut costs in other areas to meet its funding obligation. In her words, "Financial difficulties too will pass. The parties are in it together and need to solve it together".*[62]

76. The reality is that the Town and County cannot avoid collaborating on intermunicipal services. They share a border, have cooperated for many years in funding and delivering intermunicipal services that benefit their residents, and Part 17.2 of the *MGA* *requires* them to work together going forward with respect to intermunicipal services. Allowing the ICF to be implemented serves the public interest by providing these parties with a framework to govern the planning, delivery and funding of intermunicipal services, instead of leaving them without such a framework for an extended period of time.

77. The implementation of the ICF assists in avoiding any potential duplication of services, or the risk of safety issues arising from uncertainty over the interim responsibility for issues such as the maintenance of certain roads addressed through the ICF.

78. The benefits of allowing the Award to be implemented through a binding ICF clearly outweigh any detriments highlighted by the County.

E. The Alternative Relief Requested in the Applicant's Brief is Improper

79. While this was not pled in the County's stay application, the County's brief suggests that the Court could, in the alternative, only impose a stay on certain portions of the Award in accordance with a draft ICF appended to the Affidavit of Haven Eboni Edwards affirmed on June 15, 2022 at Exhibit 16. Aside from the

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[62] *Ibid* at para 220.

fact that this alternative ground of relief was not pled (the application seeks to stay the entire Award), it would be improper for the Court to entertain this suggestion.

80. First, it is important to note that the first time the Town saw the draft ICF included in the County's evidence was when the Town was served with Ms. Edwards' affidavit on June 16, 2022. This draft ICF is irrelevant to the matters before the Court in this application, and it ought not be considered. The Minister has extended the parties' deadline to finalize their ICF to July 4, 2022, and the Town asked clarification questions to the arbitrator in accordance with paragraph 643 of the Award, for which the Town is awaiting a response. It would be improper and unnecessary for the Court to opine on the draft ICF included in the County's evidence.

81. The County asks this Court to impose and ICF which is expressly inconsistent with the arbitrator's Award, contrary to the requirements of the MGA including section 708.4(1) which requires the parties to "adopt a framework in accordance with the award."

82. The County's alternate ground of relief for a "partial stay" would in effect require this Court to usurp the role of the arbitrator and unduly parse the Award and the merits of the judicial review application in a fashion that is inconsistent with the Court's role in an interim stay application. The Court's role on this application is not to determine what the content of the ICF should be, as that has already been determined by the arbitrator. The only thing the Court can do on this application is either stay the Award or not.

83. Paragraph 57 of the Applicant's brief suggests that a partial stay could be imposed "only in relation to those portions of the Award that are challenged and will cause irreparable harm." It is unclear what this is referring to – the Applicant's Originating Application for judicial review pleads wide-ranging "breaches of natural justice" and allegations of a "reasonable apprehension of bias" regarding the *entire* Award, and the relief requested seeks to quash the Award *in its entirety* and remit the matter back to a different arbitrator. Given the pleadings, it is not possible to identify

"those portions of the Award that are challenged", because it is the *entire* Award that is being challenged.

84. If the County's alternative request for relief is to only stay portions of the Award which they allege were outside the arbitrator's jurisdiction, that is also improper. The County contends that certain areas were "clearly" or "conspicuously" outside the arbitrator's jurisdiction, and that justifies imposing a more limited stay on those areas.[63]

85. As the Supreme Court of Canada noted in *RJR-Macdonald*, the Court should generally refrain from conducting an extensive analysis of the merits of the underlying application in the context of an application for an interim stay.[64] That is precisely what the County is inviting this Court do in claiming that certain areas were "clearly" or "conspicuously" beyond the arbitrator's jurisdiction.

86. It is only in rare and exceptional circumstances that the Court may apply a more relaxed evaluation of the tripartite test if it determines that the Applicant's underlying claim is disproportionately stronger on the merits than the Respondent's.[65] That appears to be what the Applicant is suggesting when they say the jurisdictional questions posed in their application are "clear" and "conspicuous." Those exceptional circumstances do not exist in this case, and this Court ought not engage in a lengthy analysis of the Record or of the arguments the Applicant intends to advance in the judicial review.

87. Notably, all of the arguments raised by the Applicants pertaining to the arbitrator's jurisdiction were decided by the arbitrator.[66] In the judicial review application, the arbitrator's decision regarding the jurisdictional questions before her will be entitled to deference under the "reasonableness" standard of review. As such, it cannot be said that the Applicant's case will clearly succeed on judicial review, since the

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[63] Applicant's Brief at paras 6, 37.
[64] ***RJR*** at 337-338. **[Volume of Authorities, TAB 5]**
[65] See ***Musaskapeo*** at paras 21-23; 30-37 **[Volume of Authorities, TAB 6]**; ***LPI v 000 Alberta Ltd.***, 2005 ABCA 23 at para 7. **[Volume of Authorities, TAB 10]**
[66] See Arbitration Award dated February 3, 2022 at paras 89-201, Questioning of Alicia Bourbeau at Exhibit 1.

standard of review calls for the Court to show deference to the arbitrator and only intervene if her decision was unreasonable.

88. While arbitrations under Part 17.2 of the *MGA* are governed by the *Arbitration Act*,[67] some aspects of the *Arbitration Act* are inapplicable. In particular, the "leave to appeal" provisions in the *Arbitration Act* are supplanted by sections 708.48(5) and (6):

> *(5) An award of an arbitrator may be reviewed by the Court of Queen'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.*
>
> *(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.*[68]

89. Since arbitrations under Part 17.2 of the *MGA* are subject to applications for judicial review, the law regarding the standard of review for administrative action will apply in this case. In *Vavilov*, the Supreme Court of Canada found that a strong presumption exists that the "reasonableness" standard of review will apply in judicial reviews, and the less deferential "correctness" standard only applies to a few narrow categories:

- 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.[69]

90. Only a small subset of the issues raised in the County's application could potentially fall into one of these categories. Determining whether or not certain areas of the Award are to be included in the parties' ICF does not constitute a "question regarding the jurisdictional boundaries between two or more

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[67] *MGA*, s 708.35(6). **[Volume of Authorities, TAB 1]**
[68] *MGA*, s 708.48(5) – (6). **[Volume of Authorities, TAB 1]**
[69] ***Canada (Minister of Citizenship and Immigration) v. Vavilov***, 2019 SCC 65 at paras 53-64 [***Vavilov***]. **[Volume of Authorities, TAB 11]**

administrative bodies." There is no other "administrative body" in question here – the Applicant's main question is whether or not ICFs under Part 17.2 can include provisions regarding capital/infrastructure costs, or intermunicipal services funded by municipalities but run by third parties. Neither of these scenarios engage a situation where one administrative body is potentially intruding on the jurisdiction of another.

91. In only a few narrow instances could it be said that the judicial review engages issues concerning the boundaries between different decision-makers (i.e. whether the award impinges on the Alberta Energy Regulator's jurisdiction), but these issues are minor and tangential to the main thrust of the application which concerns the scope and purpose of ICFs generally.

92. In *Vavilov*, the Supreme Court of Canada expressly found that "jurisdictional questions" <u>*are not*</u> a distinct category which attracts the correctness standard of review, overruling its previous decision in *Dunsmuir* on that point.[70] Instead, the Supreme Court confirmed that applications for judicial review which question whether or not the decision-maker acted within their statutory scope of authority will be reviewed on the more deferential "reasonableness" standard of review:

> *… 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 that we describe below. Reasonableness review is both robust and responsive to context. 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 conduct a preliminary assessment regarding whether a particular interpretation raises a "truly" or "narrowly" jurisdictional issue and without having to apply the correctness standard.*
>
> *Reasonableness review does not give administrative decision makers free rein in interpreting their enabling statutes, and therefore does not give them licence to enlarge their powers beyond what the legislature intended. Instead, it confirms that the governing statutory scheme will always operate as a constraint on administrative decision makers and as a limit on their authority. Even where the reasonableness standard is applied in reviewing*

[70] *Ibid* at para 65.

> *a decision maker's interpretation of its authority, precise or narrow statutory language will necessarily limit the number of reasonable interpretations open to the decision maker — perhaps limiting it one.* ***Conversely, 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.***[71]

93. The highlighted quote above is particularly germane to the County's application for judicial review – there are many express indications in Part 17.2 that arbitrators are to be given broad authority to decide all matters in dispute between the parties *including* jurisdictional questions posed to the arbitrator. Indeed, sections 708.48(2) and (3) expressly confer this power on arbitrators:

> *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.*[72]

94. This is an express indication that arbitrators can and must decide on whether their jurisdiction extends to making decisions in different areas, which would include all "jurisdictional questions" raised before the arbitrator in this matter. These decisions are subject to only a limited right of judicial review (not a statutory appeal, which would attract a lower level of deference for questions of law), and section 708.48(6) confirms that arbitrators are to be considered experts for all matters within their jurisdiction to decide.[73] Since the scope of the arbitrator's jurisdiction is itself something that falls within the arbitrator's jurisdiction to decide, all of these indicia point to the Legislature intending for arbitrators to have broad discretion to determine their jurisdiction with only limited review by the courts in those decisions.

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[71] *Ibid* at paras 67-68 [emphasis added.].
[72] *MGA*, ss 708.48(2) – (3). **[Volume of Authorities, TAB 1]**
[73] *MGA*, s 708.48(6). **[Volume of Authorities, TAB 1]**

95. Accordingly, the County's substantive judicial review application which addresses jurisdictional questions that were first determined by the arbitrator will be decided under the deferential "reasonableness" standard of review. It cannot be said, in these circumstances, that it is "clear" the County will succeed on the jurisdictional questions posed in its Originating Application.

96. The Court ought not parse the Award and issue a more limited stay of only a portion of it. The County has, at best, an arguable case on judicial review. There is no basis in these circumstances for the Court to consider the alternative relief requested by the County.

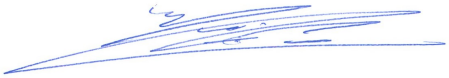
97. In any event, as demonstrated above, the County has failed to demonstrate irreparable harm with respect to any aspect of the Award, and the balance of convenience favours implementing the entire Award. For those same reasons, the County's new "alternative" relief ought to be denied.

RELIEF SOUGHT

98. The Town asks that the County's application for a stay pending judicial review to be dismissed, with costs to the Town.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 22nd DAY OF JUNE, 2022.

REYNOLDS MIRTH RICHARDS & FARMER LLP

Per: 
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Sean Ward / Michael Swanberg
Counsel for the Town of Whitecourt

TABLE OF STATUTORY PROVISIONS AND AUTHORITIES

Statutes

1. *Municipal Government Act*, RSA 2000, c M-26
2. *Ministerial Order* No. MSD: 019/20
3. *Ministerial Order* No. MSD: 037/22
4. *Alberta Rules of Court*, Alta Reg 124/2010, R. 3.23

Cases

5. *RJR-MacDonald Inc. v. Canada (AG)*, [1994] 1 SCR 311
6. *Musaskapeo v. Alberta (Director of SafeRoads)*, 2021 ABQB 1018
7. *Denis v. Sauvageau*, 2022 ABCA 166
8. *TAQA Drilling Solutions Inc. v. Yar Holdings Inc.,* 2021 ABCA 300
9. *Knelsen Sand & Gravel Ltd. v. Harco Enterprises Ltd.,* 2021 ABCA 362
10. *LPI v 000 Alberta Ltd.,* 2005 ABCA 23
11. *Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65*