Federal Court  Cour fédérale

Date: 20210506

Docket: T-1124-19

Citation: 2021 FC 405

Ottawa, Ontario, May 6, 2021

PRESENT: The Honourable Mr. Justice Manson

Docket: T-1124-19

BETWEEN:

THE CITY OF COLD LAKE

Applicant

and

HER MAJESTY THE QUEEN, AS REPRESENTED BY THE MINISTER OF PUBLIC SERVICES AND PROCUREMENT CANADA AND BY THE DEPARTMENT OF PUBLIC SERVICES AND PROCUREMENT CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is a consolidated application (T-1124-19 and T-785-20) for judicial review of two Decisions, dated June 11, 2019 and July 21, 2020 [the "Decisions"], of Public Services and

Procurement Canada [Procurement Canada]. The Decisions denied eligibility of the Cold Lake Golf Course and Winter Club [the "Golf Course"] for payments in lieu of taxes for the 2019 and 2020 taxation years, respectively, pursuant to the *Payments in Lieu of Taxes Act*, RSC 1985, c M-13 [the "*PILT Act*"].

[2] For the reasons that follow, I would grant the application and remit the matter for re-determination.

II. Background

[3] The Applicant is the City of Cold Lake, a municipality and taxing authority pursuant to the *PILT Act*. The Respondent, Procurement Canada, administers the Payments in Lieu of Taxes Program [the "Program"] and is also the federal department that issued the Decisions under review.

[4] The Golf Course is located within the boundaries of the City of Cold Lake, Alberta, on the Canadian Forces Base Cold Lake [the "Canadian Forces Base"]. The Canadian Forces Base is operated by the Royal Canadian Air Force unit 4 Wing Cold Lake [4 Wing] and is property belonging to Her Majesty the Queen in Right of Canada [the "Crown"].

[5] The Golf Course is a recreational facility and a longstanding morale and welfare program of the Crown with respect to military personnel. It covers approximately 454.4 acres, and includes an 18-hole golf course, a club house, curling rink, maintenance and storage buildings and forested land.

[6] The Golf Course is subject to a Concession Agreement between the parties as of December 18, 2012. Under the Concession Agreement, the Applicant assumes certain day-to-day operations of the Golf Course. The Crown, as represented by the Wing Commander, 4 Wing, maintains certain responsibilities, outlined in section 6 of the Concession Agreement, including routine security patrols, various inspections, maintenance and major repairs. Subsection 6(e) specifically provides that the Wing Commander agrees "to make all payment in lieu of taxes".

[7] As of 2012, the Applicant has applied for payments in lieu of taxes for the subject property, including the Golf Course. Such payments were made by the Respondent for each taxation year until 2019.

[8] In 2017, Procurement Canada reviewed the Golf Course's eligibility for payments in lieu of taxes. This review was prompted by a change in the tax coding for the Golf Course improvements.

[9] On January 21, 2019, the Respondent sent a letter notifying the Applicant that in light of the Concession Agreement, it would not be issuing payments in lieu of taxes for listed components related to the Golf Couse commencing in the 2019 taxation year [the "2019 Notice Letter"]:

> …We have been advised by the Payment in Lieu of Tax (PILT) legal department referencing precedent and the PILT Act that the golf course lands along with improvements cited in the agreement, are not federal property as defined in the PILT Act under S.2(3)(h)…
>
> …While it is acknowledge that 5.6(e) of the agreement states that it is the Wing Commander's responsibility to make all payment in

> lieu of taxes, a contract of this nature cannot change the applicable law, in case the PILT Act.

[10] The 2019 Notice Letter indicated that the Applicant could contact the Program directly to discuss the matter or ask any questions. The Respondent characterizes this letter as a "procedural fairness letter". I do not find it to be so on a purposive or contextual level based on the record as a whole.

[11] The Applicant did not directly contact the Program, however it raised its concerns in a letter to 4 Wing. On May 31, 2019, the Applicant applied for payments in lieu of taxes in respect of the subject property, including the Golf Course for the 2019 tax year [the "2019 Application"]. The 2019 Application did not include submissions or information in response to the 2019 Notice Letter.

[12] On June 11, 2019, the Respondent issued its decision [the "2019 Decision"], advising the Applicant of the final payment in lieu of taxes that would be made and the associated calculations in respect of the 2019 Application. The appended "Schedule of Federal Property Values and Final PILT Calculations" to the 2019 Decision indicates that the Golf Course components are "part of the Concessions Agreement for City of Cold Lake to operate the golf & winter club; not eligible for PILT". The Golf Course components are listed as individual line items and include the 18-hole golf course improvements, the golf clubhouse storage building, the golf course storage building, the golf club storage building and the Cold Lake Golf & Winter Club. For this same reason, the 454.44 acres of 4 Wing Remote Land was also designated as ineligible.

[13] This 2019 Decision, which found the Golf Course components ineligible for payments in lieu of taxes, is the first decision under review in this application.

[14] On June 4, 2020, the Applicant submitted its application for payments in lieu of taxes in respect of the subject property, including the Golf Course for the 2020 taxation year [the "2020 Application"]. Appended to the 2020 Application was additional information to support the Applicant's position that the Golf Course was eligible for payments in lieu of taxes. This included information respecting the operation of the Golf Course and negotiations between the Applicant and the Wing Commander that led to the Concession Agreement. The Applicant also included a cover letter, which explained the relevance of the additional materials.

[15] In its cover letter, the Applicant further made additional requests of the Respondent:

> Given the substantial financial implications of this decision for the City, we expect that in considering this documentation provided, PSPC [Procurement Canada] will provide us with an appropriate degree of procedural fairness. Specifically, we ask that PSPC provide the City with copies of any and all documents referred to or considered by PSPC in respect to this matter and ask that the City have an opportunity to provide a fulsome submission to PSPC in support of our position prior to PSPC reaching a decision in respect to the eligibility of the Golf Course.
>
> Further, once PSPC issues its eligibility decision with respect to the Golf Course for the 2020 tax year, we ask and expect that PSPC provide detailed reasons for the decision.

[16] The Respondent issued its decision [the "2020 Decision"] in a letter dated June 23, 2020, in which the Respondent informed the Applicant of the 2020 final payments in lieu of taxes amount and calculations for the subject property, which continued to exclude the Golf Course components. A "Schedule of Federal Property Values and Final PILT Calculations" was

appended in a similar manner as the 2019 Decision. The Respondent did not comply with the requests of the Applicant, as stated in the cover letter of its 2020 Application.

[17] This 2020 Decision, whereby the Golf Course components were again found ineligible for payments in lieu of taxes, is the second decision under review in this application.

[18] As of 2012, the Respondent and the Applicant have also been engaged in disputes with respect to the valuation of certain aspects of the subject property for the purposes of calculating the payments in lieu of taxes. The disputes were in relation to the valuation of the Golf Course, not its eligibility as federal property.

[19] In July of 2020, the Applicant became aware of e-mail correspondence taking place between representatives of Procurement Canada and the Department of National Defence [National Defence] on behalf of 4 Wing [the "DND Emails"]. They have now been included as part of the record before this Court.

[20] On September 30, 2020, the Concession Agreement was terminated. As a result of the termination, the Respondent provided the Applicant with a payment in lieu of taxes for the remaining portion of 2020. As described in the Reply Affidavit of Linda Mortenson, the General Manager of Corporate Services, of the City of Cold Lake, "the land and buildings associated with the agreement have reverted back to being 'federal property' eligible for payment as defined in the [*PILT*] *Act*".

[21] The Applicant is seeking a declaration that the Golf Course is considered federal property and is therefore eligible for payments in lieu of taxes for the purposes of the *PILT Act* and an order quashing and setting aside the Decisions. In the alternative, the Applicant requests that the matter be referred back to the Respondent for reconsideration. The Applicant further seeks costs of the Application.

III. Decisions Under Review

[22] As part of the appended "Schedule of Federal Property Values and Final PILT Calculations" to the 2019 and 2020 Decisions, the Golf Course components are listed as ineligible for payments in lieu of taxes, for example: "Building is part of Concessions Agreement for the City of Cold Lake to operate the golf & winter club; not eligible for PILT".

[23] From the 2019 Notice Letter, it is possible to discern that the Golf Course was considered not to be federal property, in light of the Concession Agreement and under subsection 2(3)(h) of the *PILT Act*. Further, the Respondent found it was not bound by the contractual promise, as set out in subsection 6(e) of the Concession Agreement, whereby the Wing Commander would be responsible for making all payments lieu of taxes.

IV. Issues

[24] There are two issues:

i. Did the Respondent provide the Applicant with adequate procedural fairness in rendering the 2019 and 2020 Decisions?

ii. Are the 2019 and 2020 Decisions – that the Golf Course components are ineligible for payments in lieu of taxes under the *PILT Act* – reasonable?

V. Standards of Review

[25] The parties are in agreement on the standards of review. The first issue, a question of procedural fairness, is reviewed on the standard of correctness. The second issue is reviewed on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

VI. Relevant Provisions

[26] The relevant provisions of the *PILT Act* include subsection 2(3)(h):

Property not included in the definition federal property **(3)** For the purposes of the definition *federal property* in subsection (1), federal property does not include **(h)** unless otherwise prescribed, any real property or immovable leased to or occupied by a person or body, whether incorporated or not, that is not a department.	**Exclusions: propriété fédérale** **(3)** Sont exclus de la définition de *propriété fédérale* au paragraphe (1): **h)** les immeubles et les biens réels pris à bail ou occupés par une personne ou par un organisme autre qu'un ministère, constitué ou non en personne morale, sauf exception prévue par règlement du gouverneur en conseil.

VII. Analysis

A. *Legal Framework and Payments in Lieu of Taxes Procedure*

[27] The *PILT Act* upholds the federal government's immunity from municipal taxation, grounded in section 125 of the *Constitution Act*, whereby no lands or property belonging to Canada shall be liable to taxation (*The Constitution Act, 1867*, 30 & 31 Vict, c 3, s 125).

[28] The *PILT Act* further provides a system to compensate taxing authorities, such as a municipality. It recognizes that the property of the federal government nonetheless forms part of the fabric of provinces and municipalities and receives a range of services therefrom (*Montréal (City) v Montreal Port Authority*, 2010 SCC 14 at paras 13-14 [*Montréal*]). The purpose of the *PILT Act* is to provide for the fair and equitable administration of payments to a "taxing

authority", such as a municipality, in lieu of taxes (*PILT Act*, s 2.1). It encourages administrators and agents of the federal government to act as "good residents of municipalities where federal property is located" (*Montréal*, above at paras 13-14; *Halifax (Regional Municipality) v Canada (Public Works and Government Services)*, 2012 SCC 29 at para 57).

[29] This federal legislative scheme does not provide for a right to payments in lieu of taxes (*PILT Act*, s 15; *Montréal* at paras 19-22). The taxing authority must apply annually.

[30] The *PILT Act* does not prescribe a process, nor a timeline for reviewing and deciding applications. The Respondent may make payments in lieu of taxes to a municipality for a "federal property" situated within the taxation jurisdiction, as defined in subsection 2(1) of the *PILT Act*, subject to exclusions in subsection 2(3), for example subsection 2(3)(h) provides:

Property not included in the definition federal property	**Exclusions: propriété fédérale**
(3) For the purposes of the definition federal property in subsection (1), federal property does not include	**(3)** Sont exclus de la définition de *propriété fédérale* au paragraphe (1):
(h) unless otherwise prescribed, any real property or immovable leased to or occupied by a person or body, whether incorporated or not, that is not a department.	**h)** les immeubles et les biens réels pris à bail ou occupés par une personne ou par un organisme autre qu'un ministère, constitué ou non en personne morale, sauf exception prévue par règlement du gouverneur en conseil.

[31] Federal property includes most real property and improvements owned by the Crown, under the administration of a Crown Minister. The exceptions generally relate to properties for which the Crown has given up control or stopped using. This includes property that is "leased to or occupied by" non-Crown entities, as provided for in subsection 2(3)(h)of the *PILT Act*.

B. *Procedural Fairness*

[32] The Applicant submits that a moderately high level of procedural fairness was required in this case. The Applicant argues that it was entitled to put forward written submissions and to receive some form of written reasons with respect to how the Respondent arrived at the Decisions. The Respondent allegedly failed to inform the Applicant that there was a case to be met and failed to provide reasons for its eligibility determinations in relation to both the 2019 and 2020 Decisions.

[33] It is the Respondent's position that the Decisions both met the requirements of procedural fairness. The Respondent provided the Applicant with notice of the case to be met through the 2019 Notice Letter, which constitutes effective notice in relation to both the 2019 and 2020 Decisions. The Applicant had the opportunity to present its case when it applied for payments in lieu of taxes for both the 2019 and 2020 taxation years. The Applicant was further entitled to a low level of procedural fairness, requiring notice and a meaningful opportunity to submit relevant evidence.

[34] The duty of procedural fairness is flexible and variable, drawing upon the context of a particular statute and the rights affected (*Baker v Canada (Minister of Citizenship and Immigration)*, 1999 SCC 699 at para 22 [*Baker*]). Where a decision-making context gives rise to a duty of procedural fairness, the content of that duty in a particular case is informed with reference to the non-exhaustive list of Baker factors (*Vavilov*, above at para 77). Both parties provided submissions on the *Baker* factors, including: (a) the nature of the decision; (b) the

statutory scheme; (c) the importance of the decision to the individuals affected; (d) the legitimate expectations of the party challenging the decision; and (e) respect for the agency's choice of procedure.

[35] In this case, I find several of these considerations to be particularly relevant. An overriding consideration was the alleged legitimate expectation of the Applicant. Since 2012, the Applicant had received payments in lieu of taxes in respect of the Golf Course. While I agree the Applicant cannot contract around the statutory payments in lieu of taxes regime, the Concession Agreement, particularly subsection 6(e), reflects the Applicant's legitimate expectations in its relationship with the Crown. It understood the Wing Commander would be responsible for making payments in lieu of taxes and this understanding was reinforced by successful payments in lieu of taxes in relation to the Golf Course from 2012 until the 2019 Application. The Applicant argues that this factor weighs towards a higher level of procedural fairness.

[36] However, this statutory scheme nonetheless confers the Minister with discretion in making payments in lieu of taxes and does not confer a right of payment to municipalities (*PILT Act*, ss 3, 15). Applications for payments in lieu of taxes are made annually and apply to the discrete tax year in question. The Applicant is able to reapply in each subsequent year and receive a novel determination for the same property. The Respondent, in this case, is entitled to respect for its choice of procedure. These factors support the engagement of a lower duty of procedural fairness.

[37] The Affidavit of Colin Boutin, the National Manager, Policy, Valuation and Strategic Initiatives of the Program, sworn on December 4, 2019, describes an application review process which consists of:

i. A Program officer checks the application package to ensure it has been submitted by a valid taxing authority and includes all required information and documentation. The application information is then entered into the Program's payment system;

ii. The Program officer reviews the eligibility of the properties on the claim. They will process small and less complex applications, while referring more complex applications to a valuation analyst;

iii. The valuation analyst will review properties to ensure they are federal properties as defined in the *PILT Act*. The valuation analyst will review the Respondent's internal files for correspondence and information that may impact the decision and renders an eligibility decision, at times consulting with the Program's National Office in the case of complex applications;

iv. If the property is determined to be eligible, a valuation review is conducted. The Program's regional manager approves the final payments in lieu of taxes calculations that are above the delegated financial signing authorities of the Program officer or valuation analyst; and

v. A payment is requisitioned and a letter and schedule regarding payments in lieu of taxes calculations by property is sent to the taxing authority. Ineligible properties are indicated.

[38] I agree with the Respondent that the circumstances of this case engage a low duty of procedural fairness. However, as acknowledged by the Respondent, the legitimate expectations of the Applicant required that the Respondent provide notice of the case to be met and a meaningful opportunity for the Applicant to submit relevant evidence. In the specific context of this case, I also find that the Respondent was required to provide reasons to the Applicant for the change in eligibility designation of the Golf Course components, given the prior understanding and course of conduct reached between the Applicant and the Wing Commander over a period of some seven years and the significant payments in lieu of taxes consequences for the Applicant.

(1) Notice

[39] The Respondent did not provide sufficient notice and the 2019 Notice Letter did not constitute effective notice in this case. It reads like a final determination, providing that:

i. The golf course lands along with improvements are not federal property under section 2(3)(h) of the *PILT Act*;

ii. Subsection 6(e) of the Concession Agreement does not change the applicable law;

iii. It is not the Program's intention to retroactively adjust payments; and

iv. Commencing in the 2019 taxation year, the payment in lieu of tax made to the Applicant will reflect the ineligibility of the Golf Course.

[40] The 2019 Notice Letter also provided the estimated financial impact to the payment in lieu of tax for the 2019 tax year. I do not accept that an offer to contact the Program, as contained in the 2019 Notice Letter, constitutes fair or reasonable notice to the Applicant of the case it has to meet in regards to the 2019 Application.

[41] First, the Applicant was not made aware of the whether the Respondent had found that the Golf Course was "leased" or "occupied" under subsection 2(3)(h) of the *PILT Act* in order to adequately respond.

[42] Second, while the Applicant may have had notice that the Concession Agreement was the basis of the Respondent's 2019 Decision, it was not made aware of an opportunity to make submissions in the four months leading up to the 2019 Decision and as part of the 2019 Application, which the Respondent now alleges were avenues available to the Applicant. The Applicant bolstered its 2020 Application with additional information, in light of the Respondent's submissions in these proceedings.

[43] Where a legislative regime, such as this, is highly discretionary, and does not prescribe a process, it is incumbent on the decision maker to be clear in the procedural steps it expects. The evidence supports a finding that the Applicant was unaware of any opportunity to provide additional evidence, until the commencement of the proceedings before this Court. The

Respondent cannot now rely on the fact that the Applicant did not provide submissions and evidence in the lead up to and as part of its 2019 Application.

[44] That the Respondent argues that the Applicant should have been able to “glean” the context for the Decisions from the Certified Tribunal Record for the Decisions is hardly an exercise of reasonable discretion.

[45] I take issue with the Respondent’s submissions that the Applicant was aware of the case to be met in its 2020 Application. I accept the Applicant’s submission that it learned from the evidence in this current proceeding before the Court that the Respondent expected it to submit supporting documentation.

[46] The Respondent therefore did not meet the requirements to provide fair or effective notice in relation to the 2019 and 2020 Decisions.

(2) Reasons

[47] Reasons were provided in the form of an eligibility determination in the appended “Schedule of Federal Property Values and Final PILT Calculations by Land and Building” for both the 2019 and 2020 Decisions. The sufficiency of those reasons is a question related to the reasonableness of the Decision and will be considered below (*Vavilov* at paras 76-78).

C. *Reasonableness of the Decision*

[48] It is the Applicant's position that the 2019 and 2020 Decisions are an unreasonable outcome in light of the facts, the law and an improper reasoning process on the part of the Respondent. The Applicant submits there was no reasonable basis to conclude that the Golf Course was "leased to or occupied by" the City. The Applicant alleges several areas in which the Respondent's reasoning remains entirely opaque, including: (a) whether it determined the Golf Course was "leased to" or "occupied by" the Applicant pursuant to subsection 2(3)(h) of the *PILT Act*; (b) why the Respondent concluded the entire Golf Course was part of the Concession Agreement, when approximately half of the area consists of forested land; (c) the "precedent" used in reaching the Decision and why it outweighed prior determinations that the Golf Course was eligible under the *PILT Act*; and (d) why subsection 6(e) of the Concession Agreement fails to assist the Applicant.

[49] It is the Respondent's position that the 2019 and 2020 Decisions were reasonable. The Respondent considered the evidence before it and made a reasonable determination that the Golf Course was not federal property because it was "occupied" by the Applicant. Further, detailed reasons are not required in all contexts, but a reviewing court must be able to understand the basis for the decision.

[50] As set out by the Supreme Court in *Vavilov*, reasonableness review includes consideration of the decision maker's reasoning process, as well as the outcome (*Vavilov* at para 83). The Decision must bear the hallmarks of reasonableness – justification, transparency and

intelligibility. The Decision must further be "justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). The reviewing Court should be able to discern a line of analysis within the reasons that could lead the decision maker from the evidence before it to the conclusion at which it arrived (*Vavilov* at paras 84, 102):

> [84] As explained above, where the administrative decision maker has provided written reasons, those reasons are the means by which the decision maker communicates the rationale for its decision. A principled approach to reasonableness review is one which puts those reasons first. A reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with "respectful attention" and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion…

[51] While the reasons are not to be assessed against a standard of perfection (*Vavilov* at para 91), nevertheless the Decisions must provide a transparent and intelligible justification (*Vavilov* at para 110). The existence of a legitimate expectation further puts a burden on the decision maker to explain the violation of that expectation in its reasons (*Vavilov* at para 131):

> [131] Whether a particular decision is consistent with the administrative body's past decisions is also a constraint that the reviewing court should consider when determining whether an administrative decision is reasonable. Where a decision maker *does* depart from longstanding practices or established internal authority, it bears the justificatory burden of explaining that departure in its reasons. If the decision maker does not satisfy this burden, the decision will be unreasonable…

[52] The reviewing Court must look to the record as a whole (*Vavilov* at para 137). A purposive approach to the Concession Agreement and the *PILT Act* must include a holistic and realistic lens to the interpretation of "occupied" under subsection 2(3)(h) of the *PILT Act* and whether the Golf Course should be considered federal property.

(1) Adequate Reasons

[53] Adequate reasons were not provided to the Applicant in this case.

[54] In the 2019 Notice Letter, the Applicant was made aware of the Respondent's determination that the Golf Course was ineligible for payments in lieu of taxes in light of subsection 2(3)(h) of the *PILT Act* and the Concession Agreement. However, considering the Applicant's legitimate expectations, the Respondent was required to indicate to the Applicant whether the Concession Agreement had led it to conclude that the Golf Course was either leased or rather occupied by the Applicant. Further, in this context, the Applicant was entitled to know why the Concession Agreement rendered the Golf Course ineligible and the factual basis for this finding. It is this question of "occupied" that is the key determination for the Court as to whether the Respondent was reasonable in making the determination that the Golf Course was not federal property. I accept this is a factual determination and do not find that either Decision discloses any consideration of the relevant facts outside the existence of the Concession Agreement.

[55] While I do not find that the Respondent is held to a high standard of "detailed reasons", as requested by the Applicant in its 2020 Application cover letter, the Respondent does need to justify on a reasonable basis the departure from past decisions in its reasons in this case (*Vavilov* at para 131). The basis for its departure was not adequately provided in its 2019 and 2020 Decisions, as in neither case did the Respondent explain how or why the Concession Agreement led it to a finding that the Applicant was leasing or occupying the Golf Course.

(2) The Reasoning Process

[56] The 2019 and 2020 Decisions are not "justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99).

[57] The Respondent, through its counsel, states that the Applicant was entitled to make submissions. However, owing to the procedure adopted, the Applicant was not afforded an opportunity to do so in relation to the 2019 Decision.

[58] In respect of the 2020 Decision, the reasons do not state that the Respondent considered the Applicant's submissions. I agree with the Applicant that the record suggests that the 2020 Decision may have been based, in part, on this pending Court proceeding. Suzanne Clarke, Regional Manager of the Program wrote in an email dated June 9, 2020 that:

> My initial thought is we would stay the course (unless there is something presented that would move us off our position) until we get a definitive answer from the Courts… If I am recalling correctly the information presented now does not change the Program's view of occupancy, but again, I haven't compared this document line by line with the original court submissions…

[59] While this does not necessarily suggest that the 2020 Application was not reviewed, the evidence in its entirety brings into question the Respondent's consideration of the Applicant's submissions as it relates to the 2020 Decision.

[60] The evidence supports the view that on a balance of probabilities, the reasonable construct for the Applicant's role with respect to the operation, management and maintenance of

the Golf Course is essentially as a service provider, not as an occupier of federal land constituted by the Golf Course. The Applicant was accountable at all times to the Wing Commander with respect to management and operations. Further, the Respondent determined that the 4 Wing Remote Land was ineligible for payments in lieu of taxes, as it formed part of the Concession Agreement. The 4 Wing Remote Land did not form part of the Concession Agreement, as identified in Schedule B to the Concession Agreement. This further suggests that the Concession Agreement was relied upon by the Respondent to find the Golf Course ineligible for payments in lieu of taxes without attention to the facts in their entirety.

[61] Therefore, the Decisions are unreasonable as they fail to address the factual constraints in this case, particularly as identified by the Applicant in its 2020 Application submissions.

(3) Bad Faith

[62] I do not find there is sufficient evidence in this case to ground the Applicant's allegations of bad faith, the onus of which falls upon the Applicant (*Rocarelli v Duplessis*, [1959] SCR 121 at 141). The excerpt that the Court has been pointed to in the Affidavit of Colin Boutin does not demonstrate the Respondent was specifically searching for a means to find the Golf Course ineligible:

> Prior to 2017, the City applied for and received PILT in respect of the Golf Course building and underlying land. They had not applied for or received PILT in respect of the Golf Course improvements, such as the greens and the tee boxes, as prior to 2017 they had identified these in their assessment rolls with an exempt tax code… In 2017, the City's tax coding for the Golf Course improvements changes so that they were not included as part of the property for which the City expected payment. This change in the City's application with respect to the Golf Course

> prompted [PSPC] to review the Golf Course's eligibility for PILT… During the course of this review, in or about June 2018, [PSPC] became aware of the Concession Agreement.

[63] There is no conduct in this application that falls outside the Respondent's role in relation to the Program. Neither do I find the latter inclusion of the additional DND Emails on the record to be suspect. They have been included in the record before me and this evidence has been considered in my findings above.

VIII. Remedy

[64] The Applicant argues that this is a case where the outcome is clear and requests a determination from this Court that the Golf Course is considered to be federal property and is therefore eligible for payments in lieu of taxes for the purposes of the *PILT Act*.

[65] I do not find that the facts of this case are exceptional or fall within the limited scenarios discussed by *Vavilov*, where a matter entrusted to an administrative decision maker should otherwise be decided by this Court. The matter will be remitted back to the Respondent for redetermination, having regard to these reasons (*Vavilov* at paras 139-142).

IX. Conclusion

[66] For the reasons above, I would grant the application and remit the matter for re-determination. I find that the Respondent did not meet the procedural fairness requirements to provide fair and effective notice. Further, the 2019 and 2020 Decisions were unreasonable owing

to the inadequacy of the reasons and the reasoning process, which failed to consider the Applicant's submissions and factual matrix related to whether the Golf Course was "occupied by" the Applicant.

X. Costs

[67] Costs are awarded to the Applicant. While the Applicant has argued for elevated costs, I do not find the circumstances of this case, including the complexity of the issues and amount of work warrant elevated costs. Costs are awarded at Tariff B, column III, of the *Federal Courts Rules*, SOR/98-106 in an amount of $5,000.

JUDGMENT in T-1124-19

THIS COURT'S JUDGMENT is that:

1. The application is granted; and

2. The matter shall be remitted back to Procurement Canada for redetermination.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1124-19
STYLE OF CAUSE:	THE CITY OF COLD LAKE v HER MAJESTY THE QUEEN, AS REPRESENTED BY THE MINISTER OF PUBLIC SERVICES AND PROCUREMENT CANADA AND BY THE DEPARTMENT OF PUBLIC SERVICES AND PROCUREMENT CANADA
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JUDGMENT AND REASONS:	MANSON J.
DATED:	MAY 6, 2021

APPEARANCES:

Gregory Plester Alvin Kosak	FOR THE APPLICANT
Sydney McHugh Jennifer Lee	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Brownlee LLP Barristers and Solicitors Edmonton, AB	FOR THE APPLICANT
Attorney General of Canada Edmonton, AB	FOR THE RESPONDENT