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April 21, 2017

File No.: 555766-2/ILW

DELIVERED VIA EMAIL/COURIER

Alberta Justice – Civil Law
9th Floor Peace Hills Trust Tower
10011 – 109 Street
Edmonton, Alberta T5J 3S8

Attention: Bill Olthuis and Cory Millar

Dear Sirs:

RE: Thorhild County v. Her Majesty the Queen in Right of Alberta, as represented by the Minister of Municipal Affairs
Court of Queen's Bench of Alberta Action No.: 1603 04049

Please find enclosed for service upon you an email copy of the Written Submissions of the Applicant Thorhild County for the Judicial Review Application scheduled for May 19, 2017, which is being filed this afternoon. We will forward a filed paper copy to you on Monday.

Yours truly,
Dentons Canada LLP

Ian L Wachowicz

Enclosure

Clerk's Stamp

COURT FILE NUMBER	1603-04049
COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	EDMONTON
APPLICANT	THORHILD COUNTY
RESPONDENT	HER MAJESTY THE QUEEN In right of Alberta, as represented by THE MINISTER OF MUNICIPAL AFFAIRS
DOCUMENT	WRITTEN SUBMISSIONS
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	DENTONS CANADA LLP 2900 Manulife Place 10180 – 101 Street Edmonton, AB T5J 3V5 Ian L. Wachowicz (780) 423-7359 / (780) 423-7164 Fx: (780) 423-7276 File No.: 555766-2/ILW

WRITTEN SUBMISSIONS OF THE APPLICANT THORHILD COUNTY

JUDICIAL REVIEW APPLICATION: MAY 19, 2017

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Solicitors for the Respondent

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I. INTRODUCTION

1. This in an application brought by Thorhild County (the "County") for judicial review of three Ministerial Orders issued by the Minister of Municipal Affairs.

II. FACTS AND LEGISLATIVE BACKGROUND

A. The Petition, and the Inspection

2. On July 29, 2014, Her Majesty the Queen in right of Alberta, as represented by the Minister of Municipal Affairs (the "Minister"), received a petition of electors from the County requesting the Minister to undertake an Inquiry into the conduct of Council and the Chief Administrative Officer of the County (the "Petition"). **[Record, Tabs 9, 10]**

3. Such a petition causing an Inquiry is contemplated by s. 572 of the *Municipal Government Act* ("MGA"), which is as follows:

> **572(1)** The Minister may order an inquiry described in subsection (2) if the Minister receives
>
> (a) a sufficient petition requesting the inquiry that is signed,
>
> (i) in the case of a municipality other than a summer village, by electors of the municipality equal in number to at least 20% of the population, and
>
> (ii) in the case of a summer village, by at least 20% of the electors of the summer village,
>
> or
>
> (b) a request for the inquiry from a council.
>
> **572(2)** An inquiry may be conducted into
>
> (a) the affairs of the municipality,
>
> (b) **the conduct of a councillor, or an employee or agent of the municipality, or**
>
> (c) the conduct of a person who has an agreement with the municipality relating to the duties or obligations of the municipality or a person under the agreement.
>
> **572(3)** The Minister may appoint one or more persons to conduct an inquiry under this section.

572(4) The person or persons appointed to conduct an inquiry are entitled to the fees and expenses specified by the Minister and the Minister may direct who is to pay for the inquiry.

572(5) **The person or persons appointed to conduct an inquiry have all the powers and duties of a commissioner appointed under the *Public Inquiries Act*.**

572(6) The person or persons appointed to conduct an inquiry must report to the Minister and the council and, if there was a petition under subsection (1)(a), to the representative of the petitioners.

4. When it received the petition, the Minister first took the steps required by the MGA to ensure that the petition was sufficient, which was done. **[Record, Tabs 11, 12, 13]**

5. However, the Minister **did not** order an Inquiry pursuant to s. 572.

6. Instead, the Minister, after conducting his own confidential investigations, decided to go a different direction. The Minister appointed an Inspector to conduct an inspection of the County pursuant to s. 571 of the MGA. **[Record, Tab 17]** Section 571 is as follows:

571(1) The Minister may require any matter connected with the management, administration or operation of any municipality or any assessment prepared under Part 9 to be inspected

(a) on the Minister's initiative, or

(b) on the request of the council of the municipality.

571(2) The Minister may appoint one or more persons as inspectors for the purpose of carrying out inspections under this section.

571(3) An inspector

(a) may require the attendance of any officer of the municipality or of any other person whose presence the inspector considers necessary during the course of the inspection, and

(b) has the same powers, privileges and immunities as a commissioner under the *Public Inquiries Act*.

571(4) When required to do so by an inspector, the chief administrative officer of the municipality must produce for examination and inspection all books and records of the municipality.

571(5) After the completion of the inspection, the inspector must make a report to the Minister and, if the inspection was made at the request of a council, to the council.

7. The Minister appointed Mr. Russell Farmer ("Farmer") to conduct the s. 571 Inspection by way of Ministerial Order L:163/14, on December 17, 2014. That Order was very simple and simply ordered:

> That Russell Farmer is appointed as the inspector to conduct an inspection of the management, administration and operations of Thorhild County.

8. Those were the only terms of reference given to Farmer. **[Record, Tab 17]**

9. Farmer began his inspection. The methodology he used is set out in the report that he later generated. He viewed numerous documents and records of the County, and then conducted interviews with current and past council members, current and past employees, county residents, business owners, and even people from other municipalities. He made it clear in his report that he was to determine who was to be interviewed and who would not be interviewed. **[Record, Tab 5, pages 10, 11]**

10. Farmer then wrote his report, completing it on June 19, 2015.

11. The report is scathing. The report, in minute detail, analyzes and criticizes the conduct of the County's Councillors and the County's central employee, the Chief Administrative Officer (the "CAO"). Councillors are severely criticized for everything from their demeanor in meetings, to the tone of their emails. Farmer suggested that two Councillors have acted in bad faith and said that they were guilty of "manipulating" the democratic process. **[Record, Tab 5, pages 12, 13, 25, 32, 48, 61, 62]**

12. Farmer then declared that another councillor was acting in his direct pecuniary interest, and should resign his position as a councillor. The CAO was severely criticized, and Farmer recommended that she be terminated. The report makes 46 sweeping recommendations, including the removal of one Councillor, and the removal of the CAO.

13. The Department of Municipal Affairs received the report, reviewed it, and prepared a briefing note dated September 1, 2015 for the Minister. The briefing note recommends the issuance of a Ministerial Order under s. 574 of the MGA requiring the County to adhere to 14 directives from the Minister, based upon the 46 recommendations made by Farmer. The briefing note also informs the Minister that the Report will be presented by Farmer to the County at a regular public council meeting on September 8, 2015. **[Record, Tab 18]**

B. September 8, 2015

14. Everything happens on September 8, 2015.

15. On September 8, 2015, the Minister signs the September 1, 2015 briefing note approving its recommendations. The Minister also signs Ministerial Order No. MSL:119/15 (the "First Ministerial Order"), which stated that because of the Inspection and the Report, the Minister considered that the County was managed in an irregular, improvident or improper manner and, as a result, ordered fourteen (14) directives to be completed by the County (the "Directives"). **[Record, Tab 18]**

16. When the Minister signs the First Ministerial Order, the County has not yet even been presented with the Report.

17. The County Council meeting on September 8, 2015 had started at 9:30 am. **[Record, Tab 22]**

18. After the First Ministerial Order was signed, Farmer, and a delegation from Municipal Affairs including Assistant Deputy Minister Gary Sandberg, Coral Murphy and Tim Seefeldt, arrived at a the Council meeting, between 2:00 pm and 2:20 pm. **[Record, Tab 22]**

19. The Council meeting went in camera at 2:00 pm as the Report and the First Ministerial Order were presented to the Council in camera. At 3:15 pm the meeting again became public, and Council moved to suspend the CAO in accordance with the First Ministerial Order. At 3:34 pm the Report and the First Ministerial Order were made public at the meeting, and the County was ordered to immediately post the Report on its website. **[Record, Tab 22]**

C. Subsequent Ministerial Orders

20. On December 7, 2015, the Minister issued Ministerial Order No. MSL: 166/15 (the "Second Ministerial Order"), which stated that because of the Inspection and Report, the Minister considered that the County was managed in an irregular, improvident and improper manner and, as a result, ordered two (2) further directives to be completed by the County (the "Further Directives"). **[Record, Tab 2]**

21. On December 16, 2015, the Minister issued Ministerial Order No. MSL: 171/15 (the "Third Ministerial Order"), which appointed two Official Administrators for the County to supervise the County and its Council in carrying out the Directives and Further Directives ordered in the First and Second Ministerial Orders, effectively completely removing the County's right of self-governance: every bylaw or resolution of the County is subject to being overturned by the Official Administrators. **[Record, Tab 3]**

III. GROUNDS FOR JUDICIAL REVIEW

22. The Minister had a duty to be fair and to act in accordance with the rules of natural justice when exercising his and her extraordinary powers under s. 574 of the MGA.

23. The Minister failed in exercising that duty by making a final and unappealable decision against the County, its Councillors and its CAO having profound effects on the County with:

(a) The County have no hearing whatsoever prior to the decision being made;

(b) The County having no knowledge of the case against it; and

(c) The County being given no reasons for the decisions of the Minster.

IV. STANDARD OF REVIEW

24. The law on the various standards of review to be applied by a superior court on a judicial review application, and the concepts of correctness or reasonableness, are not engaged in the present application. The grounds for review, as set out above, all deal with a denial of procedural fairness.

25. Procedural fairness is not assessed in terms of "correctness" or "reasonableness". It is either there to a sufficient degree, or it is not. There are a number of factors that are used to determine the degree of procedural fairness that is required by a given decision maker, and those is discussed at length below. However, the Supreme Court has made it clear that no assessment of the appropriate standard of review is required in determining whether or not there has been a breach of procedural fairness. In *Moreau-Bérubé c. Nouveau-Brunswick*, [2002] 1 S.C.R. 249 at paragraph 74 the Court wrote about procedural fairness:

> *(3) Procedural Fairness*
>
> 74 The third issue requires no assessment of the appropriate standard of judicial review. Evaluating whether procedural fairness, or the duty of fairness, has been adhered to by a tribunal requires an assessment of the procedures and safeguards required in a particular situation. (See, generally, *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653 (S.C.C.), and *Baker*, *supra*.) **[Authorities, Tab 8]**

V. ARGUMENT

A. The Minister's Decision is Subject to Judicial Review

26. There is no case law directly interpreting ss. 571, 572, 574 or 575 of the *MGA*. However, the court of appeal in *Cook v. Alberta (Minister of Environmental Protection)*, 2001 ABCA 276 made it clear that a decision of a Minister, even one that is discretionary and one that involves the allocation of public assets, is subject to judicial review. *A fortiori*, a decision of a Minister that is adjudicative, that is predicated on a finding of fact, or mixed fact and law, by the Minister that the County was "managed in an irregular, improper or improvident manner", certainly is subject to judicial review. **[Authorities, Tab 2]**

B. The Extent of the Duty to be Fair

27. The duty of procedural fairness involves the right to know the case that is being made against you, and being given an opportunity to have your responses to the case against you heard by the decision maker before the decision maker makes its decision.

28. The nature of the disclosure of the case against a person, and the nature of the hearing that a person is to receive prior to the decision maker making its decision, is determined by a set of 5 factors set out by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817, [1999] S.C.J. No. 39, 14 Admin. L.R. (3d) 173, 174 D.L.R. (4th) 193. **[Authorities, Tab 3]**

29. Those 5 factors are set out starting at paragraph 22, which for convenience, are set out below from the decision:

> 22 Although the duty of fairness is flexible and variable, and depends on an appreciation of the context of the particular statute and the rights affected, it is helpful to review the criteria that should be used in determining what procedural rights the duty of fairness requires in a given set of circumstances. I emphasize that underlying all these factors is the notion that the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.
>
> 23 Several factors have been recognized in the jurisprudence as relevant to determining what is required by the common law duty of procedural fairness in a given set of circumstances. One important consideration is the nature of the decision being made and the process followed in making it. In *Knight*, *supra*, at p. 683, it was held that "the closeness of the administrative process to the judicial process should indicate how much of those governing principles should be imported into the realm of administrative decision making". The more the process provided for, the function of the tribunal, the nature of the decision-making body, and the determinations that must be made to reach a decision resemble judicial decision making, the more likely it is that procedural protections closer to the trial model will be required by the duty of fairness. See also *Old St. Boniface*, *supra*, at p. 1191; *Russell v. Duke of Norfolk*, [1949] 1 All E.R. 109 (Eng. C.A.) at p. 118; *Syndicat des employés de production du Québec & de l'Acadie v. Canada (Human Rights Commission)*, [1989] 2 S.C.R. 879 (S.C.C.) at p. 896, *per* Sopinka J.
>
> 24 A second factor is the nature of the statutory scheme and the "terms of the statute pursuant to which the body operates": *Old St. Boniface*, *supra*, at p. 1191. The role of the particular decision within the statutory scheme and other surrounding indications in the statute help determine the content of the duty of fairness owed when a particular administrative decision is made. Greater procedural protections, for example, will be required when no appeal procedure is provided within the statute, or when the

decision is determinative of the issue and further requests cannot be submitted: see D.J.M. Brown and J.M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at pp. 7-66 to 7-67.

25 A third factor in determining the nature and extent of the duty of fairness owed is the importance of the decision to the individual or individuals affected. The more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be mandated. This was expressed, for example, by Dickson J. (as he then was) in *Kane v. University of British Columbia*, [1980] 1 S.C.R. 1105 (S.C.C.) at p. 1113:

> A high standard of justice is required when the right to continue in one's profession or employment is at stake.... A disciplinary suspension can have grave and permanent consequences upon a professional career.

As Sedley J. (now Sedley L.J.) stated in R. v. Higher Education Funding Council (1993), [1994] 1 All E.R. 651 (Eng. Q.B.), at p. 667:

> In the modern state the decisions of administrative bodies can have a more immediate and profound impact on people's lives than the decisions of courts, and public law has since *Ridge v. Baldwin*, [1963] 2 All E.R. 66, [1964] A.C. 40 been alive to that fact. While the judicial character of a function may elevate the practical requirements of fairness above what they would otherwise be, for example by requiring contentious evidence to be given and tested orally, what makes it "judicial" in this sense is principally the nature of the issue it has to determine, not the formal status of the deciding body.

The importance of a decision to the individuals affected, therefore, constitutes a significant factor affecting the content of the duty of procedural fairness.

26 Fourth, the legitimate expectations of the person challenging the decision may also determine what procedures the duty of fairness requires in given circumstances [. . . . . .]

27 Fifth, the analysis of what procedures the duty of fairness requires should also take into account and respect the choices of procedure made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures, or when the agency has an expertise in determining what procedures are appropriate in the circumstances: Brown and Evans, *supra*, at pp. 7-66 to 7-70. While this, of course, is not determinative, important weight must be given to the choice of procedures made by the agency itself and its institutional constraints: *I.W.A. Local 2-69 v. Consolidated Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282 (S.C.C.), *per* Gonthier J.

28 I should note that this list of factors is not exhaustive.

30. Applying these factors to the County decision, it is clear that a high degree of procedural fairness was to be accorded to the County:

(a) Factor One: The Nature of the Decision and the Process in Making it

31. The decision that the Minister has to make, in order to take any steps under s. 574, is to determine, based upon an inspection or an inquiry, a municipality is "managed in an irregular, improper or improvident manner". This essentially requires a finding of fault, indeed, a finding of severe fault in the operation of the municipality, its councillors or its CAO. It involves an analysis of the duties of the management of the County under the MGA, and a determination that improper governance was occurring. The nature of the decision is therefore quasi-judicial in nature, and that warrants a more robust duty of fairness.

32. No procedure is set out in s. 574. However, as will be argued below, s. 574 requires an inspection or an inquiry prior to the making of such a finding, and when "the conduct of a councillor, or an employee" of the municipality is being reviewed, an inquiry, and not an inspection is supposed to be made. If the Minister is going to make its Order based upon an inspection and not an inquiry, the Minister should require an enhanced level of procedural protection at the ministerial level. **[Authorities, Tab 1]**

33. The differences between s. 571 and s. 572 bear a close analysis. By the fact that s. 572 expressly gives the power to an inquiry to be conducted into "the conduct of a councillor, or an employee or agent of the municipality", but these words are not repeated in s. 571, it is to be presumed that a s. 571 inspector is not to inquire into the "conduct of a councillor, or an employee or agent of the municipality".

34. The difference in process required by s. 571 and s. 572 confirms that interpretation. Paragraph 571(3)(b) gives the inspector the "same powers, privileges and immunities as a commissioner under the *Public Inquiries Act*". However, s. 572 effectively incorporates all of the procedural requirements and safeguards that are in the *Public Inquiries Act*. In subsection 572(5) it states that "the person or persons appointed to conduct an inquiry have all the powers and duties of a commissioner appointed under the *Public Inquiries Act*". Those duties are important safeguards. Section 13 of the *Public Inquiries Act* imposes a duty on a commissioner to refrain from making any allegation of misconduct against any person unless they get reasonable notice of the allegations being made against them, and an opportunity to call evidence accordingly:

> **Notice of allegation of misconduct**
>
> 13 No report of a commissioner or commissioners that alleges misconduct by any person shall be made until reasonable notice of the allegation has been given to that person and the person has had an opportunity to give evidence and, at the discretion of the commissioner or commissioners, to call and examine witnesses personally or by that person's counsel in respect of the matter, notwithstanding that the

> person may have already given evidence or may have already called and examined witnesses personally or by that person's counsel.
> **[Authorities, Tab 7]**

35. Those procedural safeguards were denied the County of Thorhild, denied its councillors and denied its CAO.

36. By using an inspector under s. 571 rather than an inquiry, as petitioned by the electors, under s. 572, to review the conduct of councillors and the CAO, the Minister effectively removed the procedural protections that this legislative scheme intends to be provided whenever the conduct of councillors or municipal employees are being investigated.

37. If an inspector does have the power to review the conduct of councillors or municipal employees, which Thorhild denies, then in the alternative, a minimum one of two things should have happened:

(a) The inspector should have followed the procedures set out in s. 13 of the *Public Inquiries Act;* or

(b) The Minister, before exercising any of his and then her powers under s. 574 should have, at the ministerial level, complied with the procedures set out in s. 13 of the *Public Inquiries Act.*

38. That never happened.

(b) Factor Two: Role of the Decision in the Statute: Is there an Appeal?

39. There is no appeal from the decision of the Minister in s. 574 or further review. This factor clearly points towards more extensive procedural protections.

(c) Factor Three: The Importance of the Decision to Those Affected

40. This factor again clearly indicates that procedural fairness is to be taken seriously. The County, pursuant to s. 574, can have its CAO removed (as in this case), its councillors ordered to be removed (as in this case), or have its operations and processed be directed directly by the Minister losing all local autonomy (as in this case). It cannot get more serious for the County of Thorhild.

41. The First Ministerial Order required, as item number 1, to be done immediately, was the publication of the Farmer report on the County's website and to provide paper copies upon request. This magnifies the importance of the decision, as the criticism of the County, its operations, its councillors, its CAO were dramatic and severe. The amount of procedural fairness, both in terms of the amount of pre-decision disclosure and the nature of the hearing

escalates when a person's reputation is going to be tarnished by the administrative decision, particularly when the first order of business for the Minister was to make this damning report as public as possible.

42. If a persons' reputation is at stake, the amount of pre-decision disclosure starts to move towards the level of criminal *Stinchcombe* disclosure: *Sheriff v. Canada (Attorney General)*, 2006 FCA 13. In this case level of pre-hearing disclosure shown in the Record is zero. **[Authorities, Tab 9]**

(d) Factor Four: Reasonable Expectations of Certain Procedure or Result

43. By electing to proceed by way of inspection under s. 571 and not by way of inquiry under s. 572, the Minister created a clear expectation that while the "management, administration or operation" of the County was under investigation, there would not be an inquiry into "the conduct of a councillor or an employee or agent of the municipality", as that can only be done under an inquiry.

44. When the report came back to the Minister, and it predominantly dealt with the conduct of the councillors and the CAO, that warranted an immediate increase in the amount of procedural fairness accorded to the County before any action was taken by the Minister.

(e) Factor Five: Choice of Procedure

45. This is similar to the above, in that the Minister had two procedures to choose in the first instance, and deliberately chose the procedure that had fewer procedural protections, and then used that procedure to make dramatic Orders dealing the subject matter that is outlined to be dealt with in the more extensive procedure.

46. In short, the 5 factors outlined by the Supreme Court of Canada show that a large amount of procedural fairness would be required, close to a full judicial hearing.

C. **The County was Given No Hearing at All, and No Notice at All of the Case Against It**

47. Those requirements are in stark contrast with what happened. What happened was shocking.

48. Farmer's Report, with its damning conclusions is concluded in June of 2015. It is kept from the County until September 8, 2015. The County is given no chance to respond to it. No chance to have a hearing, even a meeting with the Minister. No chance to even send in written submissions. The Report was accepted and the Ministerial Order issued decided upon and signed before the County even saw the report.

49. The briefing note of September 1, 2015 clearly shows that this was deliberate. The briefing note shows that the Minister knew that the Report was going to be presented to the County at its

regular public meeting on September 8, 2015. The Order was then written, decided upon and signed all on September 8, 2015, at which time the delegation from the Minister is despatched to Thorhild to deliver the Report and execute on the Report within minutes. It was then ordered to be made public, and posted on the County's website. In this case, the County found out the nature of the allegations against it and against its CAO and councillors, AFTER the decision had already been made. **[Record, Tab 18]**

50. Contrast this to a very similar situation in Saskatchewan. Saskatchewan has in is *Municipalities Act* very similar provisions to our ss. 571 and 572, namely s. 396 (dealing with inspections) and s. 397 (dealing with inquires) **[Authorities, Tab 4]**. These provisions were referenced in *Baker v. Sherwood (Rural Municipality)*, 2015 SKQB 301. **[Authorities, Tab 5]**

51. In *Baker v. Sherwood* the Minister first ordered an inspection of a rural municipality, as in the case here. The inspection report came back, clearly negative. That resulted in the Minister then appointing an inquiry under s. 397 (similar to our s. 572), to "inquire into the conduct of members of council and agents of the municipality".

52. The terms of reference for that inquiry, which are set out by the Court at paragraph 6, show the degree of procedure protections that were afforded the councillors under the inquiry. The relevant portions are set out below:

> 2. In conducting the Inquiry into the appropriateness of conduct and affairs, the Inquiry Officer shall consider the relevant standards applicable to members of municipal council by virtue of The Municipalities Act, (the "Act"), the Official Oath prescribed in Form A of The Municipalities Regulations, the municipality's Code of Conduct and the common law in relation to conflicts of interest as it relates to the duties of members of council to the municipality and the public.
>
> 3. **In the event the Inquiry Officer is considering making an adverse finding in relation to conduct, the Inquiry Officer will provide reasonable notice of the substance of the allegation and the individual(s) would have a reasonable opportunity during the Inquiry to be heard in person or by counsel. Any notice of such alleged conduct will be delivered on a confidential basis to the person(s) to whom the allegations relate.**
>
> 4. **The Inquiry Officer shall prepare a written report with the results of the Inquiry outlining his findings, conclusions and any recommendations and provide the report to the Minister, the Council, and any person who receives a notice pursuant to section 3 of the Terms of Reference.** The written report will be provided on or before December 31, 2014, unless otherwise extended by the Minister.

53. It is submitted that that is the minimum level of procedural protection that should have been provided. Note that this is very similar to the provisions of our *Public Inquiries Act*.

54. None of that happened. In fact, the opposite happened. The Minister ensured that the decisions to be made pursuant to s. 574 were made before the County even saw the Report. The County got the Report together with the Ministerial Order that was signed only a few hours earlier. Numerous adverse findings relating to the conduct and councillors and the CAO were made in the Report, yet no notice was given to those individuals, or to the County.

55. When that is compared to the factors set out above by the Supreme Court in *Baker*, it is clear that the Minister did not come remotely close to providing any sufficient level of procedural fairness required. The Minister is not even in the ballpark.

56. In fact, there is authority to suggest that the County was entitled to an oral hearing. In matters dealing with reputation, an oral hearing is required. In *Khan v. University of Ottawa* (1997), 2 Admin. L.R. (3d) 298 (Ont. C.A.) the Ontario Court of Appeal held that a law student appealing a grade deserved an oral hearing given the circumstances of the case and the consequences of an adverse finding with respect to her credibility. **[Authorities, Tab 6]**

57. If a university student is entitled to an oral hearing when appealing a mark in school, why should a municipality, whose reputation is going to be severely undermined by serious findings such as acting in bad faith, and being forced to post a report detailing these findings on its own website not be granted an oral hearing?

58. The County here wasn't just denied an oral hearing. It was denied any hearing. Not even in writing. At a bare minimum, when the Minister received the Farmer Report in June, it should have immediately forwarded a copy to the County and afforded the County, with the help of counsel, the chance to formulate a response. An oral hearing would probably be required as well. But at the very minimum, the right to respond in writing to the allegations, was absolutely required.

59. This would not be onerous on the Minister. The briefing notes to the Minister show that in the course of 2 years there were only 5 inspections in the Province. **[Record, Tab 18]** This is not a case where administrative volume and necessity preclude certain elements of the duty to hear both sides.

D. The Second and Third Ministerial Orders are Derivative of the First

60. All three Ministerial Orders are based upon the Farmer Report, and the Ministers conclusion from that report that the municipality was "managed in an irregular, improper or improvident manner".

That determination was made without any procedural fairness to the County, and must be set aside, as well as all three Ministerial Orders based upon it, not just the First Ministerial Order. The Minister's powers to make orders under s. 574 are all predicated either an inspection under s. 571, an inquiry under s. 572, or an audit under s. 282. There was no additional inspection or inquiry after the First Order, so the only authority for making the Second and Third Orders is the Farmer Report, a Report that was made and finalized and published with no procedural fairness.

61. In addition, after the First Ministerial Order was issued, the Record shows that letters from Councillors from the County were received by the ministry. However, those letters are not in the Record, nor is there even a summary of those letters in the Record. As they are not in the Record, they must not have been at all considered relevant to the Minister, given that Rule 3.18(2)(e) requires that the record contain anything that is "relevant to the decision or act in the possession of the person or body". So, when people from the County did try to make submissions after the First Order but prior to the Second Order, those submissions were not even taken into consideration by the Minister. **[Record, Tab 24]**

E. Lack of Reasons

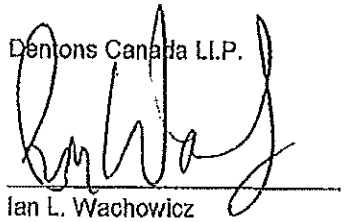
62. The decision in *Cook v. Alberta (Minister of Environmental Protection), 2001 ABCA 276* required reasons to be given even for a ministerial decision that dealt with the discretionary disposition of government assets. Clearly, in a situation such is this, reasons would be required. The Minister gave no reasons for the First, Second or Third Ministerial Orders. **[Authorities, Tab 2]**

VI. CONCLUSION

63. The First, Second and Third Ministerial Orders should be quashed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 21ST DAY OF APRIL, 2017

Dentons Canada LLP.



Ian L. Wachowicz

Authorities

1. *Municipal Government Act*, R.S.A. 2000, c. M-26, ss. 571, 572, 574.
2. *Cook v. Alberta (Minister of Environmental Protection), 2001 ABCA 276*
3. *Baker v. Canada (Minister of Citizenship & Immigration).* [1999] S.C.R. 817, [1999] 2 S.C.J. No. 39 Admin. L.R. (3d) 173, 174 D.L.R. 4th) 193.
4. *Saskatchewan Municipalities Act*, S.S. 2005, c. M-36.1, s. 396
5. *Baker v. Sherwood (Rural Municipality)*, 2015 SKQB 301
6. *Khan v. University of Ottawa* (1997), 2 Admin. L.R. (3d) 298 (Ont. C.A.)
7. *Public Inquires Act*, c. P-39
8. *Moreau-Bérubé c. Nouveau-Brunswick*, [2002] 1 S.C.R. 249 at paragraph 74
9. *Sheriff v. Canada (Attorney General)*, 2006 FCA 13