IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *West Kootenay Community Ecosociety v. British Columbia,* 2015 BCSC 2061

Date: 20151110
Docket: S17506
Registry: Nelson

Between:

West Kootenay Community Ecosociety

Petitioner

And

Her Majesty the Queen in right of the Province of British Columbia, Minister of Community, Sport and Cultural Development & Jumbo Glacier Mountain Resort Municipality

Respondents

Before: The Honourable Madam Justice Choi

On judicial review from: A decision of the Minister of Community Sport and Cultural Development and the Lieutenant Governor in Council of the Province of British Columbia

Reasons for Judgment

Counsel for the Petitioner:	J. Gratl J. Harrison
Counsel for the Respondent Province and Minister:	K. Evans E. Ross
Place and Date of Hearing:	Vancouver, B.C. July 15, 2015
Place and Date of Judgment:	Nelson, B.C. November 10, 2015

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Introduction

[1] This is a judicial review brought pursuant to the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 [*JRPA*]. West Kootenay Community Ecosociety (the "Society") challenges the Province's authority to create the Jumbo Glacier Mountain Resort Municipality ("Jumbo Municipality").

[2] The Society is a not-for-profit society incorporated pursuant to the *Society Act*, R.S.B.C. 1996, c. 433. The Society challenges the existence of the municipality, arguing that it is in the public interest to do so.

[3] In particular, the judicial review challenges two decisions made pursuant to s. 11 of the *Local Government Act,* R.S.B.C. 1996, c. 323 [*LGA*]: the decision of the Minister of Community Sport and Cultural Development (the "Minister") to recommend creation of the Jumbo Municipality (the "Minister's Decision"), and the decision of the Lieutenant Governor in Council of the Province of British Columbia ("LGIC") to incorporate the Jumbo Municipality subject to some conditions (the "LGIC's Decision"). As a result of those two decisions, the Province established Jumbo Municipality without electors, elected council or scheduled elections. The evidence is that this remained the case at the time the Court heard the amended petition.

[4] The Society takes the position that s. 11 of the *LGA* does not include the discretion to create a municipality without electors, an elected council or elections for an indefinite duration. The Province says that the *LGA* places no such restrictions on the Minister's and the LGIC's discretion.

[5] For the reasons that follow, I conclude the Minister's Decision and the LGIC's Decision were both reasonable and that the Minister's discretion is not limited by election timelines in the way the Society claims.

Background

[6] The Upper Jumbo Creek Valley is a mountainous valley located in the East Kootenay region of British Columbia, to the west of Invermere. In the early 1990s the

Province issued a call for proposals to develop the region. Following a land-use planning review for the Kootenay region, the Province accepted Glacier Mountain Resort ("Glacier") as the sole proponent.

[7] In 1995, the Province granted Glacier a licence to enter the area for the purpose of completing its obligations under the Environmental Assessment Review process. After the Ministry of Environment granted the Environmental Assessment Certificate, the Master Development Agreement ("MDA") was drafted. The MDA outlines the nature, scope, and pace of the proposed development, identifies land tenure requirements, and incorporates recommendations arising from consultation with the public and First Nations. The final drafting and approval of the MDA concluded in March 2012.

[8] Meanwhile, the legislature passed amendments to the *LGA* to facilitate the creation of mountain resorts like the one envisioned in the Upper Jumbo Creek Valley.

[9] On May 31, 2012, Bill 41, the *Miscellaneous Statutes Amendment Act (No. 2), 2012,* S.B.C. 2012, c. 18, received Royal Assent. Section 14 of the *Miscellaneous Statutes Amendment Act (No. 2), 2012* amended section 11 of the *LGA* by repealing and replacing subsection 11(2.1), and adding subsections 11(3.01) and 11(3.02) (the "Pre-Development Municipality Provisions"). These amendments specifically allow the Minister and the LGIC to incorporate a mountain resort municipality irrespective of residents provided an agreement is in place for the development of a ski resort. The provisions also allow the LGIC to issue letters patent containing terms derogating from the normal four-year election cycle set out in s. 36 of the *LGA* that applies to most municipalities.

[10] As indicated by letters patent (the "Jumbo Letters Patent") signed by both the LGIC and the Minister, the Minister recommended incorporating the Jumbo Glacier Mountain Resort Municipality. On November 19, 2012, the LGIC issued the Jumbo Letters Patent incorporating the Jumbo Municipality pursuant to the Pre-Development Municipality Provisions. Pursuant to the Jumbo Letters Patent,

elections in the Jumbo Municipality are required within 15 years from the date of incorporation.

[11] To date, construction of the Jumbo Municipality has not taken place. The Jumbo Municipality continues to lack electors and an elected council, and no elections have occurred.

[12] Since the petition in this matter was filed, several developments transpired including a decision by the Minister of the Environment and an environmental assessment which impacted the development of the Jumbo Municipality going forward. Since those developments post-date both the Minister's Decision and the LGIC's Decision, they are not relevant to this judicial review.

The Petition

[13] The Society seeks reviews of the Minister's Decision and the LGIC's Decision. The Society argues the Minister erred in recommending the incorporation of the Jumbo Municipality to the LGIC and that the LGIC erred in turn by in issuing the letters patent incorporating the municipality.

[14] The Society claims the Pre-Development Municipality Provisions do not include the discretion to create a municipality without electors, an elected council or elections for an indefinite duration.

[15] The Society does not say that the LGIC and Minister are limited by the Constitution, nor does it say that the discretion afforded to the Minister and LGIC is limited by the express wording of the statutory grants of authority. The Society acknowledges that the words of those provisions import a very broad discretion.

[16] Rather, the Society says the purposes of the *LGA* and the *Community Charter,* S.B.C. 2003, c. 26, limit the discretion. The Society suggests that since those purposes invoke the notion of democratic accountability to electors, the broad discretion in the Pre-Development Municipality Provisions must be read in a way that

invokes requirements for municipalities to have electors, an elected council or elections within a certain period of time.

[17] The Province disagrees. In its submission, the Pre-Development Municipality Provisions are clear and unambiguous, and do not limit the discretion of the LGIC or the Minister in the way suggested by the Society.

[18] The petition was originally filed on February 18, 2013. Subsequently, on August 5, 2014, the Society filed an amended petition. Prior to the hearing of the petition, the parties narrowed the issues to be resolved. As a result, some of the relief sought in the amended petition was not pursued at the hearing before me. Specifically, the Society no longer asserts that certain provisions of the *LGA* are ultra vires, and no longer asks me to quash portions of the letters patent on the basis that they fetter the discretion of Jumbo Municipality's council.

[19] As a result of the narrowed issues, the Society advised at the outset of the hearing that much of the filed material is tangential. I agree that most of the original material filed is irrelevant to the remaining issues.

Statutory Scheme

[20] The *LGA* establishes the framework for the creation of municipalities.

[21] Section 7 of the *LGA* establishes the general framework for incorporating new municipalities. Section 7(2) gives the Minister discretion to recommend incorporation of a new municipality to the LGIC if certain conditions are met:

> (2) The minister may recommend incorporation of a new municipality to the Lieutenant Governor in Council if,
>
> > (a) in the case of an area for which a vote was taken under section 8(3)(a), more than 50% of the votes counted as valid favour the proposed incorporation,
> >
> > (a.1) in the case of an area to which section 279 *[no forced amalgamations]* of the Community Charter applies, the requirements of that section have been met, or
> >
> > (b) in the case of an area for which a vote was taken under section 8(3)(b),

> (i) more than 50% of the votes counted as valid favour a change in local government, and
>
> (ii) more than 50% of the votes counted as valid favour the proposed incorporation if a change in local government were made.

[22] Importantly, the Minister may only exercise the discretion under s. 7(2) provided that a vote favours incorporation pursuant to s. 8 of the *LGA*. Section 8 sets out the circumstances in which the Minister may direct that a vote be taken of persons in an area to determine their opinion on a proposed incorporation. Section 9 sets out the procedure and costs for a vote on incorporation.

[23] After the favourable vote on incorporation and a recommendation by the Minister, s. 7(1) provides that the LGIC may, by letters patent, incorporate the residents of an area into a new municipality.

[24] Section 12.2 of the *LGA* provides that letters patent incorporating a municipality may set the voting day for the first election or authorize a person to do this; appoint a chief election officer and deputy for the first election; or apply other local governments' election bylaws to the new municipality.

[25] Further, Part 3 of the *LGA,* which concerns electors and elections*,* sets out requirements for local general municipal elections. Section 36 requires that elections for the mayor and all councillors of each municipality take place in 2014 and every fourth year subsequent. The four-year election requirement is confirmed in s. 81 of the *Community Charter*. Part 3 of the *LGA* also sets out residency requirements for electors and procedural requirements related to elections.

[26] The *LGA* also carves out procedures for the creation and governance of particular forms of municipalities. Section 11 creates one such exception for the incorporation of mountain resort municipalities.

[27] Sections 11(1), 11(1.1), and 11(2.1) establish the Minister's discretion to recommend incorporation of a mountain resort municipality in the usual course:

> (1) If a vote under section 8 is in favour of incorporation, the minister may recommend to the Lieutenant Governor in Council incorporation of a municipality as a mountain resort municipality.
>
> (1.1) The minister may not recommend incorporation of a mountain resort municipality under subsection (1) unless the minister is satisfied that
>
> > (a) alpine ski lift operations, year-round recreational facilities and commercial overnight accommodation are offered within the area of the proposed municipality, or
> >
> > (b) a person has entered into an agreement with the government with respect to developing alpine ski lift operations, year-round recreational facilities and commercial overnight accommodation within the area of the proposed municipality.
>
> …
>
> (2.1) Despite section 8, in the case of an area that is not a mountain resort improvement district, the minister may recommend to the Lieutenant Governor in Council incorporation of a new mountain resort municipality for the area, whether or not there are residents in the area at the time of the recommendation, if the minister is satisfied that a person has entered into an agreement with the government with respect to developing alpine ski lift operations, year-round recreational facilities and commercial overnight accommodation within the area.

[28] Section 11(1.1) sets a clear precondition to the Minister's exercise of discretion. The Minister must be satisfied of one of two things: that ski lift operations and accommodation are offered in the area, or that a person made an agreement with the government to develop those facilities. If one of those conditions is met, s. 11(1.1) gives the Minister discretion to recommend incorporating a mountain resort municipality on a favourable vote by residents under s. 8, just as the Minister may make such a recommendation for a typical municipality.

[29] Section 11(2.1) concerns the vote's applicability to the Minister's recommendation regarding undeveloped mountain resort municipalities. Specifically, if the Minister is satisfied an agreement is in place for the development of a ski resort, he or she may recommend incorporating a resort municipality absent a vote on incorporation. The Minister may even do so if the area has no residents.

[30] The LGIC's discretion in connection with the creation of mountain resort municipalities is established by ss. 11(3), 11(3.01), 11(3.02), 11(3.1), 11(3.2) and 11(3.3) of the *LGA*:

> (3) On the recommendation of the minister under subsection (1) or (2), the Lieutenant Governor in Council may, by letters patent, incorporate the residents of an area into a mountain resort municipality.
>
> (3.01) On the recommendation of the minister under subsection (2.1), and whether or not there are residents in the area at the time of incorporation, the Lieutenant Governor in Council may, by letters patent, incorporate a new mountain resort municipality for the area, consisting of the members of the municipal council and the residents of the area, if any.
>
> (3.02) For certainty, and unless the letters patent for a mountain resort municipality incorporated under subsection (3.01) provide otherwise,
>
> (a) a mountain resort municipality incorporated under subsection (3.01) is a municipality and any provision of this Act or regulation under this Act or any other Act or regulation that applies to municipalities applies to the mountain resort municipality, and
>
> (b) the council of a mountain resort municipality incorporated under subsection (3.01) is a council and any provision of this Act or regulation under this Act or any other Act or regulation that applies to municipal councils applies to the council of the mountain resort municipality.
>
> (3.1) Letters patent under subsection (3.01) that, on the recommendation of the minister under subsection (2.1), incorporate a mountain resort municipality may do one or more of the following:
>
> > (a) include exceptions from statutory provisions;
> >
> > (b) specify the effective period or time for an exception;
> >
> > (c) provide for restriction, modification or cancellation by the Lieutenant Governor in Council of an exception or its effective period;
> >
> > (d) appoint or provide for the appointment of one or more individuals to be the members of the municipal council of the municipality and appoint or provide for the appointment of a mayor from among the appointed members of the municipal council;
> >
> > (e) despite section 36, provide that the minister may set the general voting day for the first election of members to the municipal council for any date the minister considers appropriate, including a date that is 3 or more years after the incorporation of the mountain resort municipality.
>
> (3.2) For a mountain resort municipality incorporated under subsection (3) on the recommendation of the minister under subsection (2.1), the Lieutenant Governor in Council may, on the recommendation of the minister and by letters patent, provide for further exceptions, conditions and appointments.

> (3.3) Appointments may be made under subsection (3.1) (d) or (3.2) until the general voting day for the first election of members to the municipal council.

[31] If the Minister recommends incorporation on the basis that a vote has taken place, then s. 11(3) gives the LGIC the discretion to, by letters patent, incorporate the residents of the area into a mountain resort municipality. Sections 11(3.2) and 11(3.3) allow the LGIC to mandate further exceptions, conditions and appointments until the general voting date for the first election of members to the municipal council. This is roughly analogous to the process for incorporating typical municipalities.

[32] However, if the Minister recommends incorporation based on a development agreement, s. 11(3.01) gives the LGIC the added discretion to incorporate a new mountain resort municipality for the area, "consisting of the members of the municipal council and the residents of the area, if any". The LGIC may do so "whether or not there are residents in the area at the time of incorporation".

[33] For added certainty, s. 11(3.02) confirms that mountain resort municipalities incorporated under s. 11(3.01) are municipalities and their councils are municipal councils. Thus, subject to exceptions in the letters patent, any provisions of the *LGA* or regulations that apply to municipalities or municipal councils apply to the new mountain resort municipality. The requirements for fixed elections every four years in s. 36 seem to apply to every resort municipality, even if incorporated without a vote on incorporation and without fixed elections.

[34] However, the legislature gave the LGIC power to grant exceptions from the applicability of other provisions. If the LGIC incorporates a resort municipality on the basis of a development agreement, s. 11(3.1) allows the LGIC to place limitations in the letters patent. The LGIC can exempt the municipality from statutory provisions; specify the effective period or time for an exception; restrict, modify or cancel an exception or its effective period; and appoint members to the municipal council.

[35] Importantly, s. 11(3.1)(e) expressly provides that despite the requirement for elections every fourth year subsequent to 2014 in s. 36 of the *LGA*, the Minister may

set the general voting day for the first election "for any date the minister considers appropriate, including a date that is three or more years after the incorporation of the mountain resort municipality."

Issues

1) What is the standard of review of the Minister's Decision and the LGIC's Decision?
2) Should the discretion given to the Minister and the LGIC in connection with pre-development resort municipalities be limited by election timelines?
3) Were the Minister's Decision and the LGIC's Decision reasonable?

1) Standard of Review

[36] The Society submits that the standard of review is reasonableness; the Province took no issue with this position. Since the parties seemed to be in agreement, the question was not argued before me.

[37] If the Minister applies the correct legal test, his exercise of discretion is reviewed by a court for reasonableness. His conclusion should be upheld unless it is not reasonable.

[38] The Minister's Decision and the LGIC's Decision were both grounded in the Pre-Development Municipality Provisions: ss. 11(2.1), (3.01) and (3.1). Section 11(2.1) of the *LGA* provides that the Minister "may" recommend incorporation if certain conditions are met. The LGIC likewise "may" issue letters patent pursuant to s. 11(3.01), and "may" include limitations pursuant to s. 11(3.1). The use of the word "may" connotes a grant of discretion. In *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 53, [2008] 1 S.C.R. 190 [*Dunsmuir*] the majority held that the more deferential reasonableness standard will usually automatically apply to questions of discretion. I agree that the Minister's Decision and the LGIC's Decision were discretionary and that the appropriate standard of review is the more deferential reasonableness standard.

2) Should the Discretion Given to the Minister and the Lieutenant Governor in Council be Limited by Election Timelines?

Position of the Parties

[39] The Society claims that the Minister's and the LGIC's grants of authority set out in the Pre-Development Municipality Provisions should implicitly include a time limit for elections and electors given what it says is the purpose of the *LGA*: to set out a legal framework for establishing, continuing and empowering local governments to respond to the needs of their communities.

[40] The Society points to the typical incorporation pattern established by ss. 7 and 8 of the *LGA,* as well as the election process in Part 3 of the *LGA* and s. 81 of the *Community Charter.* Looking to those provisions, the Society says the *LGA* and the *Community Charter* contemplate electors and a community. The Society likewise points to the definition of municipality in several cases and in the *Community Charter*, noting that it contemplates citizens. Given the importance of those concepts to the *LGA*, the Society suggests the Minister can only recommend a municipality without electors, and the LGIC can only create such a municipality where there is a reasonable expectation that the municipality will have an electorate and elections within four years.

[41] In arguing that grants of authority are limited by the statutory purpose, the Society relies on a line of cases related to abuse of discretion. It argues that a broad discretion must be exercised in a way that is consistent with the purpose of the statutory scheme, citing *C.U.P.E. v. Ontario (Minister of Labour),* 2003 SCC 29, [2003] 1 S.C.R. 539 [*C.U.P.E.*] and *Multi-Malls Inc. et al. and Minister of Transportation and Communication et al. (Re)*(1976)*,* 14 O.R. (2d) 49, 73 D.L.R. (3d) 18 (Ont. C.A.) [*Multi-Malls*].

[42] The Province argues that the statute's purpose is an interpretative aid only in cases of ambiguity. It says that where a mountain resort municipality is being incorporated pursuant to s. 11(2.1), residents or electors are not specifically required. The only prerequisite for the Minister's exercise of discretion is in

s. 11(2.1): a development agreement must be in place. Similarly, the Province says s. 11(3.01) is clear that the LGIC has discretion to incorporate a new mountain resort municipality for the area on the Minister's recommendation even if the area has no residents. The Province says that to the extent the statutory purpose is relevant to interpreting the Minister's discretion, the Pre-Development Municipality Provisions carve out an exception to the general requirements for residents and democratically accountable governance. This exception is a narrow one for a limited purpose: the development of a future community around a ski resort.

[43] The Province also submits that it has the exclusive jurisdiction to make laws relating to the municipalities within British Columbia. As such, it claims the Society's argument that the Province lacks authority to incorporate a municipality without residents is contrary to the principle of parliamentary sovereignty.

Discussion

[44] It is well settled that provisions of a statute must be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament: *Rizzo & Rizzo Shoes Ltd. (Re)* [1998] 1 S.C.R. 27 at para. 21, 36 O.R. (3d) 418.

[45] The purposes of the *LGA* are set out in section 1:

> 1 The purposes of this Act are
>
> (a) to provide a legal framework and foundation for the establishment and continuation of local governments to represent the interests and respond to the needs of their communities,
>
> (b) to provide local governments with the powers, duties and functions necessary for fulfilling their purposes, and
>
> (c) to provide local governments with the flexibility to respond to the different needs and changing circumstances of their communities

[46] The provisions at issue deal with incorporating new municipalities. My review of the scheme of the *LGA* leads me to conclude the *LGA* establishes three streams for incorporating municipalities that are relevant to this judicial review.

[47] The first, more typical stream, takes place pursuant to ss. 7 and 8 of the *LGA*. The Minister may recommend the incorporation of a municipality on a positive vote for incorporation under s. 8 of the *LGA*. Based on that recommendation, the LGIC may then incorporate the municipality by letters patent. The LGIC may also establish some interim measures pending the first election. Elections then must take place every fourth year subsequent to 2014.

[48] The second stream takes place pursuant to ss. 11(1), 11(1.1), 11(3), 11(3.2) and 11(3.3) of the *LGA*. It enables the Minister to recommend incorporation of a mountain resort municipality based on both a positive s. 8 vote and the existence of ski operations and accommodations or agreements to develop them. Based on that recommendation, the LGIC may incorporate the municipality by letters patent. The LGIC may also establish some interim measures pending the first election. Elections then must take place every fourth year subsequent to 2014.

[49] The final stream takes place pursuant to ss. 11(2.1), 11(3.01) and 11(3.02) of the *LGA*: the Pre-Development Municipality Provisions. It envisions the incorporation of a mountain resort municipality without a s. 8 vote for incorporation. Indeed, the area may not even have any residents. Provided the Minister is satisfied, an agreement is in place for the development of alpine ski lift operations, year-round recreational facilities and commercial overnight accommodation within the area of the proposed municipality, he or she may recommend incorporation to the LGIC. The requirement for an incorporation vote under s. 8 is waived. The LGIC may then incorporate the municipality as consisting of the members of the municipal council and the residents of the area, if any. While the voting requirements would normally apply to the new municipality, the LGIC may exempt the municipality or limit those requirements. The LGIC may even set letters patent delegating the ability to set the voting day to the Minister, even if that date is outside of the time limits that normally apply.

[50] The Jumbo Municipality was established pursuant to this exceptional third stream.

[51] The Society says the Court should interpret this third stream as requiring a reasonable expectation that the area bounded by the municipality will have an electorate within four years. The Society points to the purpose of the *LGA*, which it says is based in democracy and community.

[52] In my view, while much of the *LGA* is intended to further the pillars of community and democracy, the *LGA* -- specifically ss. 11(2.1), 11(3.01) and 11(3.1) -- also intends to facilitate ski resort development. I note that this third stream was facilitated by the 2012 amendments to the *LGA*. It seems to me that those amendments were specifically designed to facilitate the creation of pre-development, pre-resident resort municipalities that may be exempted from the normal voting requirements. Parliament's intention is clear.

[53] Further, a plain reading of ss. 11(2.1), 11(3.01) and 11(3.1) reveals that the Pre-Development Municipality Provisions carve out an exception to the general requirement for residents and democratically accountable governance. The legislature clearly put its mind to pre-development voting requirements and determined that the requirements of Part 3 of the *LGA* and s. 81 of the *Community Charter* need not apply in the pre-development phase. For that reason, the *LGA* gives the LGIC discretion to enable the Minister through letters patent to set the first election date, even if that date exceeds three years from the incorporation of the mountain resort municipality. In this instance, the LGIC empowered the Minister to set a voting date within 15 years.

[54] In light of what in my view is an unambiguous legislative scheme, reading in a requirement for elections or an electorate within four years would directly contradict the intention of the legislature. The legislature thought it best to create an exception to the s. 36 four-year election cycle pending development of a ski resort community. The exception is a narrow one for a limited purpose: facilitating the development of a future community around a ski resort. This has been done with specificity in the *LGA.*

[55] The Society also relied on the definition of "municipality" by pointing to s. 6(1) of the *Community Charter,* which says a municipality is a corporation of the residents of its area. The Society also refers to two decisions of the Ontario Superior Court for the proposition that "municipal institution" under the *Constitution Act, 1867* (UK), s. 92(8), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5 and "municipal corporation" under the *Municipal Act,* R.S.O. 1960, c. 249 require inhabitants by definition: *Smith v. London (City)* (1909), 20 O.L.R. 133, 1 O.W.R. 1248 (Ont. Div. Ct.); *Election of Bushnell et al., Ex. rel. Gonneau (Re),* [1962] O.R. 911, 34 D.L.R. (2d) 539 (Ont. H.C.).

[56] While municipalities are sometimes defined in a way that emphasizes residents, as I see it, this does not impede the legislature from creating different forms of municipalities for different purposes. This case concerns an exceptional form of municipality -- a pre-development resort municipality -- created for the purpose of furthering the development of ski resorts.

[57] I also do not think that there is a general legal rule that requires all statutory grants of discretion, however explicit and narrow, to be read in a way that is wholly consistent with every aspect of a statutory scheme.

[58] The Society relies on the following cases for the proposition that where the legislation appears to confer a broad discretion upon a ministerial decision-maker, exercise of that discretion is constrained by the purposes of the statute construed as a whole.

[59] In *C.U.P.E.,* the facts were that in Ontario, collective agreement disputes in hospitals and nursing homes were resolved by arbitration. However, the union perceived the arbitration boards as biased. Specifically, the union claimed the Minister of Labour appointed retired judges, rather than labour relations experts independent from government, as chairpersons, prompting a reasonable apprehension of bias. In response, the Minister argued that since the statute conferred a broad discretion to appoint chairpersons his choices were reasonable. The Supreme Court of Canada clarified the discretion was actually constrained by

the purpose of the statute conferring the discretion. That purpose was to have "the parties … perceive the system [of resolving disputes] as neutral and credible". Thus, a proper interpretation of the statute required the Minister to select qualified, impartial, expert arbitrators who were generally accepted in the labour relations community. Since the Minister did not consider this criteria in his selection process, the Court found the appointments patently unreasonable.

[60] *C.U.P.E.* comes closest to supporting the Society's argument. In *C.U.P.E.*, the Court read in a requirement that was consistent with the scheme of that Act and the clear intention of Parliament: to further the need for labour peace, the Minister's discretion to appoint labour arbitrators required appointments generally accepted by both sides.

[61] However, the interpretation pressed by the Society in this case does not further the legislature's intention in the same way. The *LGA* has several different purposes. In some instances, it aims to further democratic accountability. Another purpose is to empower local governments with flexibility to respond to differing needs and circumstances they are faced with. Reading in a requirement for elections every fourth year subsequent to 2014, or some other timeline, is not necessary to further the legislature's intent to facilitate the development of new tourist destinations. This is particularly so since the legislature clearly put its mind to delaying election requirements for longer than three years to give new resort municipalities an opportunity to develop.

[62] The Society also relied on *Multi-Malls* and *Great Lakes United v. Canada (Minister of the Environment),* 2009 FC 408, [2010] F.C.R. 515 (F.C.) [*Great Lakes*].

[63] In *Multi Malls*, a developer of a shopping mall applied to the Ministry of Transportation and Communications for a grant of access on to a highway via the development's private road. Access was not granted. The developer alleged the Minister overlooked the fact it met the criteria qualifying it for road access. Instead, the Minister cited land-use planning concerns as the reason for denying the permit. In response, the Minister argued the court could not intervene in his decision

because he reasonably exercised discretion to deny the permit pursuant to the statute conferring wide discretion to select, constrain, and cancel permits. The Ontario Court of Appeal held it could intervene since the Minister's discretion was constrained by the purposes of that Act in general, which was to control traffic, not land-use planning.

[64] In *Great Lakes*, the Minister of the Environment exempted mining operations from reporting certain movements of tailings or waste rock. Specifically, the mining operations were exempted from reporting any controlled delivery of those substances inside mining facilities to designated storage areas within the same facilities. However, environmental public interest groups claimed that the Minister was statutorily obligated to require such reporting and to publish such movements. The Minister responded that the statute confers discretionary power to issue a notice requiring information, and that a decision not to require reporting falls under this discretionary power. The Federal Court looked to the entire context of the statute and held that it mandated the collection and reporting of the information at issue. The intentions of Parliament evidenced by the statute were to ensure Canadians have ready access to information concerning pollutants that may impact the environment and health and that this is done in a fair, predictable and consistent manner.

[65] Both *Multi-Malls* and *Great Lakes* concern decisions that were made for an improper purpose. Where a decision is made for an improper purpose, the decision is quashed. The Society argues something different: that the express grant of authority is inconsistent with a statutory purpose. In my view, these cases do not support the Society's argument.

[66] In my view, in a case like this one, where the grant of authority is specific and explicit, it would be inappropriate to read in a requirement for the development of an electorate and elections within four years of incorporation as suggested by the Society. The statutory scheme is clear. The legislature clearly intended to exempt pre-development resort municipalities from normal election and electorate

requirements. On their face, the provisions further the legislature's intent of facilitating development of new resort municipalities. I therefore reject the Society's argument that the LGIC and the Minister can only exercise their discretion if they can reasonably expect elections to take place within four years.

[67] The amended petition requested that ss. 11(2.1), 11(3.01) and 11(3.02) of the *LGA* be struck down on the basis that these subsections are incoherent and incompatible with the remainder of the *LGA*. Based on my interpretation of the provisions above, there is no incoherence and no need to address this issue further.

[68] The Minister's and the LGIC's discretion are not limited in the way suggested by the Society.

3) Were the Minister's Decision and the LGIC's Decision reasonable?

The Minister's Decision

[69] The statutory precondition for the Minister's Decision is set out in s. 11(2.1). The Minister must be "satisfied that a person has entered into an agreement with the government with respect to developing alpine ski lift operations, year-round recreational facilities and commercial overnight accommodation within the area". If the Minister is so satisfied, he or she may recommend incorporation whether or not any people reside in the area at the time of the recommendation.

[70] The Society does not dispute that the requisite agreement was complete when the Minister made his decision. The final MDA between the Provincial government and Glacier concluded in March 2012. In light of the conclusion I have reached about interpreting discretionary authority in s. 11(2.1), whether s. 11(2.1) affords the Minister wide discretion is no longer in dispute.

[71] Accordingly, given that the one condition was met, the Minister's Decision to recommend incorporation of the Jumbo Municipality fell within the range of reasonable outcomes contemplated in *Dunsmuir*. The court should not interfere with a discretionary, policy-motivated decision such as this without clear reason to do so.

The LGIC's Decision

[72] The statutory conditions governing the LGIC's Decision are set out in s. 11(3.01). On recommendation by the Minister, the LGIC may incorporate a new mountain resort municipality, whether or not anyone resides in the area at the time of incorporation. Pursuant to s. 11(3.1), the LGIC may also exempt the new municipality from statutory provisions, and may allow the Minister to set the voting day for the first municipal elections as whatever date he or she thinks appropriate, even if that date is more than three years from the date of incorporation.

[73] The condition precedent for the LGIC to issue letters patent under this section is simply "on the recommendation of the minister". Since the Minister had recommended incorporation of the Jumbo Municipality, the condition precedent was met. It was also within the LGIC's discretion to allow the Minister to set the date for the first election whenever he determined it to be reasonable. The LGIC set a 15-year timeframe, which was within her discretion.

[74] As made clear by the statute and the evidence before this Court, the LGIC exercised her power to issue letters patent under the *LGA* within the scope of the delegated legislative authority granted to her.

Conclusion

[75] The Minister's Decision and the LGIC's Decision were both reasonable. The Society's application for judicial review is dismissed.

"Choi J."