Federal Court  Cour fédérale

Date: 20250904

Docket: T-2283-23

Citation: 2025 FC 1456

Vancouver, British Columbia, September 4, 2025

PRESENT: Justice Andrew D. Little

BETWEEN:

CITY OF VANCOUVER

Applicant

and

ATTORNEY GENERAL OF CANADA AND CANADA MORTGAGE AND HOUSING CORPORATION

Respondents

JUDGMENT AND REASONS

[1] The city of Vancouver applied to the Court to review a decision contained in a letter dated September 27, 2023, from the chair of the dispute advisory panel ("DAP") established under the *Payments in Lieu of Taxes Act*, R.S.C. 1985, c. M-13, section 11.1 (the "*PILT Act*").

[2] The DAP's decision concluded that it would not consider Vancouver's application to review payments in lieu of taxes ("PILT") paid to the city by Canada Mortgage and Housing Corporation ("CMHC") for CMHC federal properties located on Granville Island for the tax

years 2011 to 2022. The DAP concluded that that the city's application was not within its legislative mandate.

[3] Vancouver submitted that the DAP's decision was unreasonable under the principles in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 563, and was reached in a procedurally unfair manner.

[4] For the reasons that follow, I conclude that Vancouver has not shown that DAP's decision was unreasonable or that it was deprived of procedural fairness. Accordingly, the application is dismissed.

I. **Background and events leading to this application**

A. The PILT Act and the relevant regulations

[5] The *PILT Act* provides a framework for voluntary payments to be made by the federal government to taxing authorities – often municipalities – in lieu of (municipal) taxes. Its purpose is to provide for the fair and equitable administration of payments in lieu of taxes, by reconciling the objective of tax fairness for municipalities with the preservation of the federal government's constitutional immunity from taxation.

[6] PILTs are payments that are determined on an annual basis. The legislative framework requires that property values and tax rates be calculated as if the federal property were taxable property belonging to a private owner. Generally, the statute contemplates that a PILT is determined by "multiplying the relevant municipal mill rate by the 'property value' of 'federal

property', as those terms are defined in the [PILT] Act": *Cold Lake (City) v. Canada (Attorney General),* 2025 FCA 138, at paras 8-9.

[7] As the Federal Court of Appeal recently remarked in *Chelsea (Municipality) v. Canada (Attorney General),* 2024 FCA 89, at para 44:

> The definitions of "effective rate" and "property value" set out in the PILT Act and the Regulations clearly establish that the point of reference is the local real property tax scheme that would be applicable if the property in dispute were a taxable property.
>
> [Emphasis added; see also para 18.]

[8] Section 3 of the *PILT Act* contemplates payments to municipalities in lieu of real property tax. Sections 4 to 8 provide for the calculations, including a general calculation involving the product of the "effective rate" in the taxation year applicable to the federal property and the "property value". Both quoted terms are defined section 2 of the statute. Certain deductions are permitted by sections 7 and 8.

[9] The *Crown Corporation Payments Regulations,* SOR/81-1030 (the "*CCP Regulations*") provide for the calculation of PILTs to be made by Crown corporations listed in schedules III and IV of the *PILT Act*. CMHC is listed in Schedule III. In the *CCP Regulations*, section 7 provides for a general calculation involving the product of the "corporation effective rate" in the taxation year applicable to the federal property and the "corporation property value". Both quoted terms are defined in section 2 of the *CCP Regulations*. Certain deductions are permitted by sections 9 and 10.

[10] The *PILT Act* provides for a dispute advisory panel to provide advice to the federal government. As its name implies, the DAP is an advisory body. Its mandate is in subsection 11.1(2), which provides:

(2) The advisory panel shall give advice to the Minister in the event that a taxing authority disagrees with the property value, property dimension or effective rate applicable to any federal property, or claims that a payment should be supplemented under subsection 3(1.1).	(2) Le comité a pour mandat de donner des avis au ministre relativement à une propriété fédérale en cas de désaccord avec une autorité taxatrice sur la valeur effective, la dimension effective ou le taux effectif ou sur l'augmentation ou non d'un paiement au titre du paragraphe 3(1.1).

[11] Thus, for present purposes, if a taxing authority (here, the city of Vancouver) "disagrees" with the "effective rate applicable to any federal property", then the DAP "shall give advice" to the Minister.

[12] The *CCP Regulations* provide, through section 12.1, that section 11.1 of the *PILT Act* applies to a Crown corporation with respect to payments in lieu of a real property tax or a frontage or area tax. In those circumstances, the DAP provides advice to a Crown corporation on the same subjects, including the "corporation effective rate" applicable to the corporation's property.

[13] It is important to the outcome of this application that the statutory mandate of the DAP in subsection 11.1(2) expressly uses terms that are defined in the *PILT Act*. The key terms are "effective rate" (defined in section 2 of the *PILT Act*), and its counterpart "corporation effective rate" (defined in section 2 of the *CCP Regulations*, and which apply to the present circumstances

due to section 12.1 of the *CCP Regulations*). Both terms, in relevant part, mean the rate of real property tax that, in the opinion of the Minister or the Crown corporation (as applicable), would be applicable to the relevant federal property "if that property were taxable property": see *Montréal (City) v. Montreal Port Authority,* 2010 SCC 14, [2010] 1 SCR 427, at paras 32, 35, 40; see also the discussion of "effective rates" in *Ottawa (City) v. Canada (Public Services and Procurement),* 2025 FC 315.

B. Vancouver's requests for PILTs and CMHC's 2023 response

[14] From 2011 to 2022, Vancouver made annual requests to CMHC for PILTs in respect of various properties located on Granville Island under the *PILT Act* and the *CCP Regulations*. During that period, CMHC did not make any payments.

[15] In total, the city requested $4,064,618.61 for the taxation years from 2011 to 2022. By letter dated May 11, 2023, CMHC sent a letter to Vancouver with a cheque payment for the period 2011 to 2022 in the amount of $406,618.61.

[16] CMHC's letter provided its rationale and supporting calculations. It explained that CMHC-Granville Island had been directly providing and paying for all services and capital investments on Granville Island that would normally be provided by the municipality, other than emergency public safety services (police and fire). CMHC therefore relied on section 9 of the *CCP Regulations* to deduct these amounts in calculating the quantum owed. CMHC provided a summary of its annual expenditures in an appendix, and a detailed breakdown of its 2022 expenditures in another appendix. The first appendix provided a table of CMHC's operating

expenditures for each year from 2010-2011 to 2021-2022 (totalling approximately $5.63 million) and its capital improvements (totalling approximately $5.52 million), for total expenditures for those years of approximately $11.15 million.

[17] CMHC referred to the longstanding relationship between Vancouver and CMHC-Granville Island, based on an understanding (dating to the 1970s) that Granville Island operates on a cost recovery basis in order to provide a significant arts and cultural amenity to Vancouver residents and visitors.

[18] CMHC's letter explained:

> The City's total assessed PILTs from 2010 to 2022 is $4,064,618.61. After deducting the reasonable annual expenditures incurred by CMHC-GI through the provision of services, the remaining PILT payable to The City is minimal. However, CMHC-GI wishes to building [sic] on the strong current and historic relationship between Granville Island and The City. As a gesture of goodwill, and to come to a reasonable conclusion to the past PILT assessments, CMHC-GI has included a cheque in the amount of $406,461.86 payable to The City, along with this letter. The annual totals from 2010 to 2022 are listed in Appendix C.

[19] The third appendix in CMHC's letter listed the PILTs it had calculated for each of the years from 2010-2011 to 2021-2022, which totalled $406,461.86.

C. Vancouver's application to the DAP

[20] By letter dated June 26, 2023, Vancouver applied to the DAP under subsection 11.1(2) of the *PILT Act* for a review of the PILTs paid to Vancouver by CMHC. The city's application

letter also referred to section 12.1 of the *CCP Regulations* and Rule 4 of the DAP's Rules of Practice.

[21] Vancouver's letter to the DAP confirmed that all of the relevant CMHC properties were located in the Granville Island development in Vancouver and that the properties constituted federally managed properties managed by CMHC on behalf of the Government of Canada.

[22] The city's letter attached schedules "A" through "L" for the tax years 2011 to 2022. The schedules were tables with headings and numbers that included, for each of the CMHC properties:

- their tax and roll numbers
- their civic addresses and descriptions
- the land assessment value, adjustments and the net land assessment value for each property
- the tax rates used by the city to determine the PILT amounts claimed, and
- the PILT amount received from CMHC for the relevant tax year.

[23] Vancouver's letter identified the aggregate amount requested as PILTs and the amount CMHC received. It also enclosed a copy of CMHC's decision letter dated May 11, 2023.

[24] Vancouver's letter to the DAP then provided the grounds for review for each tax year:

1. The PILT payments made by CMHC for the subject properties are unreasonable because they stem from the application of a corporation

effective rate that was arbitrarily determined, and not made in accordance with the provisions of the Act or the Regulations.

2. The PILT payments made by CMHC for the subject properties are unreasonable because they include mitigation measures, claw backs, or discounts under section 9(c) of the Regulations that exceed reasonable expenditures incurred by the corporation to provide services to the subject properties.
3. The PILT payments made by CMHC for the subject properties are unreasonable because the mitigation measures, claw backs, or discounts applied under section 9(c) of the Regulations resulted in a payment amount that fails to adequately compensate the City for the services it delivers to the subject properties, including policing and fire prevention services.
4. The PILT payments made by CMHC for the subject properties are unreasonable because they improperly take into account purported benefits that Granville Island provides to the City as justification for the corporation effective rate applied by CMHC.

D. The DAP's Decision

[25] The DAP's decision – and only that decision – is under review in this application. The DAP's letter to Vancouver dated September 27, 2023, contained its decision and reasons:

> Further to your application dated June 26, 2023 to the Payment in Lieu of Taxes (PILT) Dispute Advisory Panel (DAP) for a review of the above referenced property, this is to advise that the application cannot be considered since the issue is not within the legislative mandate of DAP.
>
> After careful consideration of the documents received, it is not reasonable for DAP to undertake this review as Granville Island is deducting for services that it, in its opinion, would be receiving if it were taxable. The mandate of the DAP, as stated in Section 11.1 (2) of the federal Payments in Lieu of Taxes Act is to provide advice on matters of "property value, property dimension or effective rate application". The matter you have applied to the DAP to consider, in my opinion, is one regarding the

> reasonableness of deductions made by Granville Island under Section 7(c) of the Payments in Lieu of Taxes Act.
>
> Determination of reasonability, within the Payments in Lieu of Taxes Act, rests with the Federal Court as DAP has no legislative authority to consider such matters.

E. The application before the Court

[26] This application concerns the DAP's conclusion that Vancouver's application was not within its mandate under subsection 11.1(2) of the *PILT Act*.

[27] This application does not impugn the reasonableness of CMHC's decision on the PILTs for the relevant tax years. The four stated grounds for Vancouver's application to the DAP may be read to challenge the reasonableness of CMHC's decision on annual PILTs. Indeed, each ground starts with the same words: "[t]he PILT payments made by CMHC for the subject properties are unreasonable because …". However, CMHC's decision is not the subject of this application.

[28] At the hearing in this Court, counsel for both parties both acknowledged the importance of the long-term relationship between the city of Vancouver and CMHC. Vancouver suggested that Parliament created the DAP to assist municipalities and federal entities to resolve disagreements over PILT issues, including this one, without a lawsuit. CMHC recognized the city's "admirable" intentions in pursuing a resolution through the DAP process and acknowledged the practical assistance that the DAP can provide when a disagreement arises. At the same time, CMHC noted that parties' good intentions did not alter the scope of the DAP's express statutory mandate under the *PILT Act*.

II. **Was the DAP's decision unreasonable?**

A. Standard of Review

[29] I agree with the parties that reasonableness is the standard of review for the DAP's substantive decision, as described in *Vavilov*. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15.

[30] The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194; *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, at paras 8, 59-61, 66.

[31] The decision maker must provide a "reasoned explanation" for its decision that is adequate and that is logical, coherent and rational: *Alexion Pharmaceuticals Inc. v. Canada (Attorney General)*, 2021 FCA 157, [2022] 1 FCR 153, at paras 12, 31. The reviewing court may consider the reasons provided, including both express and implicit findings, having regard to the record before the decision maker including the evidence, the submissions of the parties, the understandings or prior decisions of the decision maker, the nature of the issue and other matters known to the decision maker: *Alexion Pharmaceuticals*, at para 16.

[32] The obligation to provide a reasoned explanation may be higher when the impact of a decision on an individual's rights and interests is severe: *Pepa v. Canada (Citizenship and Immigration)*, 2025 SCC 21, at paras 11, 64, 115-116; *Vavilov*, at paras 133-134; *Alexion Pharmaceuticals*, at para 21. However, the standard for reasons is not perfection: *Vavilov*, at para 91; *Alexion Pharmaceuticals*, at para 23.

[33] The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. While administrative decision makers cannot be expected to respond to every argument or line of possible analysis, the decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it: *Vavilov*, at paras 127-128; *Mason*, at paras 10, 86, 97, 98, 118; *Cold Lake (City)*, at paras 21, 33, 36-37.

[34] However, the history and context of the proceeding, including the record before the decision maker, may explain an aspect of the reasoning process that is "not apparent from the reasons themselves": *Mason*, at para 61 (quoting *Vavilov*, at para 94); see also *Mason*, at paras 69, 91, 97. An administrative decision should be left in place if reviewing courts can discern from the record, with a high level of confidence, why the decision was made and also that the decision is otherwise reasonable: *Zeifmans LLP v. Canada*, 2022 FCA 160, at paras 9-11.

[35] A decision-maker is constrained by the specifically worded statutory scheme under which it draws its authority. If the decision-maker fails to respect specifically worded statutory

provisions, reversal of the decision can result: *Safe Food Matters Inc. v. Canada (Attorney General),* 2022 FCA 19, at para 42.

[36] When a question of statutory interpretation arises on judicial review, the Court does not conduct its own interpretation of a statutory provision, or determine the correct interpretation: *Vavilov*, at paras 83, 116; *Mason,* at para 62; *Pepa*, at paras 48, 147, 179. Appellate courts have concluded that, with certain exceptions, the proper interpretation of an applicable statutory provision is a task assigned to the administrator, not a reviewing court: *Old Port of Montréal Corporation Inc. v. Montréal (City),* 2023 FCA 126, at para 13; *Le-Vel Brands, LLC v. Canada (Attorney General),* 2023 FCA 66, at para 17. This includes a decision maker interpreting its home statute: *Safe Food Matters*, at para 38.

[37] There are legal constraints on the administrator's interpretation of legislation and regulations. An administrative decision maker is required to interpret a statutory provision in a manner consistent with its text, context and purpose and to demonstrate in its reasons that it was "alive to the essential elements" of proper statutory interpretation: *Vavilov*, at para 120-121; *Mason*, at paras 10-11, 69; *Pepa*, at paras 10, 62-65, 180.

[38] There is no requirement for an administrative decision maker to conduct a full statutory interpretation analysis in every case: *Pepa,* at para 86. Nor must a decision maker mimic a court's reasoning: *Safe Food Matters*, at para 40. A reviewing court must be "able to discern the interpretation adopted by the decision maker from the record and determine whether that

interpretation is reasonable": *Vavilov*, at para 123; *Safe Food Matters*, at para 41; *Alexion Pharmaceuticals*, at paras 7, 31.

[39] If a proposed interpretation is "clearly incongruous" with a statutory provision's text, context, or purpose, its failure to consider that element "would be indefensible, and unreasonable in the circumstances": *Pepa*, at para 86, citing *Vavilov*, at para 122.

[40] Publicly available policies and guidelines may be part of the record, and a reviewing court may take them into account when assessing the reasonableness of a decision: *Vavilov*, at para 94; *Pepa*, at para 47. If a decision maker has the legislative power to enact guidelines on the interpretation of its mandate, and does so, any departure from those non-binding guidelines must be reasonable and consistent with the provision in question (including a reasonable interpretation of it), and the decision maker must provide a reasoned explanation for the departure: *Alexion Pharmaceuticals*, at paras 38-39.

[41] In some circumstances, the court's analysis of the applicable legal and factual constraints may cumulatively lead to a conclusion that there is only one possible interpretation of a provision. Doctrinally, that conclusion does not lead the court to conduct correct (or disguised correctness) review of the impugned decision, but it may in some cases lead a court to a remedy: see *Vavilov*, at para 124; *Mason*, at paras 11, 71, 120-121; *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, 2024 SCC 4, at para 63 (see also paras 80-83); *Pepa*, at paras 121-131 (see also paras 142, 146-148, 152, 158, 181, 216); *Canada (Public Safety and*

Emergency Preparedness) v. Weldemariam, 2024 FCA 69, at paras 115-119; *Paladin Security Group Limited v. Canadian Union of Public Employees, Local 5479,* 2023 NSCA 86, at para 74.

B. Overview of the Parties' Positions

[42] This dispute concerns whether the city's application fell within the scope of the DAP's statutory mandate, within the scheme of the *PILT Act* and the *CCP Regulations*. Subsection 11.1(2) of the *PILT Act* and section 12.1 of the *CCP Regulations* make clear that the DAP can consider disagreements concerning the "corporation effective rate". Vancouver argued that it had submitted an application that did so. CMHC submitted that there was no disagreement about the "corporation effective rate" as defined and it was reasonable for the DAP to conclude that the city's applicant was outside its mandate.

(1) Vancouver's Position

[43] Vancouver challenged two aspects of the DAP's decision as unreasonable: the DAP's treatment of the city's four identified grounds for review in its letter dated June 26, 2023; and its interpretation of its mandate in subsection 11.1(2) of the *PILT Act*.

[44] First, Vancouver submitted that the DAP made a reviewable error by failing to address each of the city's four grounds for review separately. Instead, the DAP unreasonably collapsed the four grounds into one and did not provide responsive reasoning to Vancouver that comported with the importance of the matter to the city (citing *Vavilov*, esp. at paras 127-128, 131).

[45] Second, Vancouver submitted that the DAP's interpretation of its own mandate in subsection 11.1(2) of the PILT Act did not respect the text, context and purpose of the provision, read with sections 7 and 9 of the *CCP Regulations* and Rule 4.5 of the DAP's Rules of Practice. Rule 4.5 reads as follows:

4.5 Only a disagreement by a Taxing Authority as to the property value, the property dimensions, the effective rate including the method of application of any tax mitigation measures such as capping and claw back provisions, rebates and discounts applicable to any federal or corporation property, or a claim that a payment should be supplemented under subsection 3 (1.1) of the Act is admissible as an application to the Advisory Panel. Issues dealing with the eligibility of a property, improvement or structure or decisions arising from the interpretation of the Act and its Regulations are outside the mandate of the Advisory Panel and should be addressed directly to the Federal Organization.	4.5 Seules la contestation par l'autorité taxatrice de la valeur du bien immobilier, des dimensions du bien immobilier, du taux en vigueur, incluant toute méthode d'application de mesures de réduction de taxes, telles que les dispositions en matière de plafonnement et de récupération, de dégrèvements et de rabais applicables à tout bien immobilier fédéral ou bien immobilier de société, ou la revendication qu'un paiement devrait être augmenté en vertu du paragraphe 3(1.1) de la Loi, sont admissibles au titre de demande de révision au Comité consultatif. Les questions ayant trait à l'admissibilité d'un bien immobilier, aux améliorations et à la structure, ainsi que les décisions découlant de l'interprétation de la Loi et de son Règlement ne relèvent pas du mandat du Comité consultatif et elles doivent être soumises directement à l'organisme fédéral.

[46] The city argued that Rule 4.5 provided the DAP's own interpretation of what is within its mandate (tax mitigation measures, claw backs, discounts). According to Vancouver, the

deduction in paragraph 9(c) of the *CCP Regulations* informed the discretion exercised by CMHC in determining PILTs to be made and inherently affected the "corporation effective rate" because the deductions "discount" the tax rate. On this argument, deductions under paragraph 9(c) fall under the DAP's express jurisdiction to provide advice about the "corporation effective rate": *PILT Act*, subsection 11.1(2); *CCP Regulations*, sections 2, 9(c), 12.1.

[47] I will set out additional details of the city's position later in these Reasons.

(2) CMHC's Position

[48] CMHC's position was that the DAP's decision was reasonable. When situated properly in the scheme set out in the *PILT Act* and the *CCP Regulations*, the DAP's decision reasonably characterized the disagreement between the parties and respected its legal mandate in subsection 11.1(2). According to the respondent, there was only one reasonable way to interpret the DAP's jurisdiction in subsection 11.1(2) and apply it to the circumstances of this case. CMHC contended that Vancouver's arguments rested on a misunderstanding of the DAP's decision and of CMHC's letter dated May 11, 2025, explaining its rationale and calculations related to the PILTs.

[49] CMHC noted the statutory definitions in section 2 of the *PILT Act* for the "effective rate" applicable to "federal property" mentioned in the DAP's mandate in subsection 11.1(2), and the "corporation effective rate" as defined in the *CCP Regulations* that applies in the present situation as a result of section 12.1 of the *CCP Regulations*. CMHC argued that both an "effective rate" and a "corporation effective rate" refer to the tax rates in a municipality's

taxation scheme, in this case in provisions of the Vancouver Charter (citing *Chelsea (Municipality)*, at para 44). CMHC maintained that the "mitigation measures" contemplated by Rule 4.5 of the DAP's Rules of Practice are also found in a municipality's tax scheme. In CMHC's view, the "mitigation measures" of DAP's Rules of Practice are therefore distinct from the deductions contemplated by section 9 of the *CCP Regulations*.

[50] In addition, CMHC emphasized the totality of the scheme in sections 6-9 of the *CCP Regulations*. Section 7 provides that a payment made by a corporation in lieu of a real property tax for a taxation year shall be "not less than" the product of (a) the corporation effective rate in the taxation year applicable to the corporation property in respect of which the payment may be made, and (b) the corporation property value in the taxation year of that corporation property. Section 9 contemplates deductions in determining the amount of a PILT for expenditures incurred by the corporation to provide services to the property that are not provided by the municipality. Paragraph 9(c) of the *CCP Regulations* provides:

9 In determining the amount of a payment for a taxation year under section 7, there may be deducted	9 Dans le calcul du paiement visé à l'article 7 pour une année d'imposition donnée, peut être déduit :
[…]	[…]
(c) if a taxing authority, or a body on behalf of which the authority collects a real property tax, is, in the opinion of the corporation, unable or unwilling to provide the corporation property with a service, and no special arrangement exists, an amount that, in the opinion of the corporation, does not exceed reasonable	c) au titre d'un service — non visé par une entente spéciale — que, selon la société, l'autorité taxatrice ou l'organisme pour le compte duquel elle perçoit un impôt foncier ne veulent ou ne peuvent pas fournir à une propriété de la société, une somme qui, selon la société, ne dépasse pas les frais raisonnables qu'elle a

expenditures incurred or expected to be incurred by the corporation to provide the service;	engagés ou estime devoir engager pour fournir le service;

[51] I note that both parties were content to agree that in its decision, the DAP's reference to section 7(c) of the *PILT Act* should have been to paragraph 9(c) of the *CCP Regulations*.

[52] With this legislative scheme in mind, CMHC submitted that Vancouver's submissions conflated the "corporation effective rate" (as expressly defined) with deductions made by CMHC under section 9(c) of the *CCP Regulations*. The corporation effective rate is the tax rate that would be applicable to the value of the property under the municipality's tax scheme (if the property were not owned by the federal government) to find tax payable, whereas the deductions in section 9(c) are the next step in determining a payment – reducing the quantum of the PILT by the amounts of the Crown corporation's expenditures for services. To analyze the scheme otherwise, CMHC maintained, would ignore the express words and scheme of the statute and regulations, and read out the deductions in section 9 of the *CCP Regulations*.

[53] Following from these submissions, CMHC argued that the DAP made no error concerning its statutory mandate. Reading the parties' letters, there was no dispute about the "corporation effective rate" used by Vancouver in proposing its annual PILTs. Rather, as the DAP concluded, the only disagreement between the parties concerned the deductions made against those annual PILTs due to CMHC's expenditures and capital improvements. Put another way, the calculation of the aggregate $4,064,618.61 PILTS payments claimed by Vancouver was

not at issue, only the deductions that reduced those payments to “minimal” and which caused CMHC to make the $406,461.86 payment as a “gesture of goodwill”.

[54] CMHC maintained that in this context, it was reasonable for the DAP to treat Vancouver’s four grounds of review as a single dispute related to the “reasonableness of deductions”.

[55] Finally, CMHC emphasized that the DAP’s statutory role is advisory, within its legislated mandate, and that its advice is not binding on the Crown corporation (i.e., CMHC) that is the decision maker for making PILTs.

C. Was the DAP’s decision unreasonable?

[56] To be reasonable, the DAP’s decision had to respect the legal and factual constraints bearing on it.

[57] The principal legal constraints on the DAP’s decision were the *PILT Act* and the *CCP Regulations*. The DAP had to abide by them. Unlike some other applications for judicial review, the argument in this matter did not concern whether the DAP failed to respect a constraint in the statute by going beyond its statutory mandate or without regard to a statutory recipe: see e.g., *Galderma Canada Inc. v. Canada (Attorney General)*, 2024 FCA 208; *Alexion Pharmaceuticals*. Here, Vancouver submitted that its application fell within the DAP’s mandate in subsection 11.1(2) and that the DAP made a reviewable error by failing to reach that conclusion.

[58] This is also a case in which the decision maker was constrained by the "specifically worded statutory scheme under which it draws its authority": *Safe Food Matters*, at para 42. The DAP has a statutory mandate in subsection 11.1(2) of the *PILT Act*, which it had to respect. The provisions in the *CCP Regulations* are also carefully worded, and the DAP's statutory mandate is extended to matters involving Crown corporations, including the "corporation effective rate" as defined.

[59] Neither party identified any applicable case law interpreting the statute or the regulations.

[60] The factual constraints bearing on the DAP's decision were in the materials filed by Vancouver with its application: the city's letter to the DAP setting out the basis of its application (including the schedules attached to it), and CMHC's letter to the city containing its decision on PILTs (together with its attached appendices).

[61] The DAP's decision was brief – its entire content is set out above at paragraph 25. However, Vancouver did not argue that it was so short or lacking in content that it did not disclose the rationale for the decision or was legally insufficient. As the analysis below will show, I have concluded that the DAP's decision should be left in place because I can discern from the record (particularly the statutory scheme, the city's application letter to the DAP and the CMHC's decision letter) why the DAP made its decision and I am confident that its decision is otherwise reasonable: *Vavilov*, at paras 94, 120-122; *Mason*, at para 61; *Zeifmans*, at paras 9-10.

[62] I note also that in applying a deferential standard of review to the DAP's decision, the Court may recognize the expertise of a decision maker such as the DAP: *Vavilov*, at paras 75, 92-93. The DAP (including its chair, who authored the impugned decision) is presumed to have expertise or training in the matters that come before it: *Chelsea (Municipality)*, at para 25. While the DAP's concise reasons did not amply demonstrate that expertise, the presumption of expertise recognized by the Federal Court of Appeal in *Chelsea (Municipality)* enables the Court to take into account that expertise when assessing the reasonableness of this decision: *Chelsea (Municipality)*, at para 26.

[63] The city's position on this judicial review application challenged the DAP's decision on two bases, which it called the "grounds issue" and the "jurisdiction issue". I will assess them under two similar headings.

(1) The DAP made no reviewable error in its characterization of Vancouver's application as outside its statutory mandate

[64] The DAP concluded that Vancouver's application was a matter concerning the "reasonableness of deductions" made by CMHC-Granville Island under section 7(c) of the *PILT Act* (which, as the parties noted, should have been paragraph 9(c) of the *CCP Regulations*). Therefore, the DAP found that Vancouver's application was not within its mandate in subsection 11.1(2) of the *PILT Act* (as extended to Crown corporations by section 12.1 of the *CCP Regulations*).

[65] Vancouver argued that this conclusion was unreasonable because the DAP did not deal with its of its four grounds separately, and that the grounds could not be reduced into one ground

concerning the reasonableness of deductions. It argued that deductions were an aspect of the DAP's mandate to provide advice about the "corporation effective rate" in the present case.

[66] I conclude that the DAP's decision did not contain a reviewable error. In my view, based on the material before the DAP, it was open to the DAP to characterize the disagreement described in Vancouver's application letter as concerning the reasonableness of deductions made by CMHC and, by implication, as not concerning the "corporation effective rate" in the *CCP Regulations* and subsection 11.1(2) of the *PILT Act*.

[67] To analyze and respond to the city's position on this application, I will address each of the four grounds raised in Vancouver's application to the DAP in turn.

(a) *Ground 1*

[68] The first ground of review in its letter dated June 26, 2023, was that the PILTs stemmed from a "corporation effective rate" that was arbitrarily determined. Vancouver argued that the DAP's decision was not intelligible and did not provide reasoning to support its decision not to review the matter. In its submissions to this Court, Vancouver characterized CMHC's PILTs as a "90% discount on the rates used by the city to calculate its PILT requests", which CMHC justified using deductions made under paragraph 9(c) of the *CCP Regulations*. The city submitted that the operating expenses and capital improvements relied on by CMHC bore "no correlation to the PILT amounts that were paid". With these alleged discrepancies, the question posed by the city's submissions was: how did CMHC come to apply an "effective corporate rate [*sic*] for each tax year that was roughly 90% less than the taxation rates applied by the City" in

its PILT requests? Vancouver therefore argued that Ground 1 of its disagreement with CMHC concerned the arbitrariness of the "corporation effective rate" in the *CCP Regulations*, which fell within the DAP's statutory mandate in subsection 11.1(2).

[69] The city's position was that Ground 1 was within the DAP's mandate and did not concern the reasonableness of deductions and that the DAP did not explain itself on either issue. To some extent, the city's argument gains some traction owing to the DAP's concise decision. However, that does not end the matter. The Court's assessment on judicial review must include a consideration of the record (the city's written application to the DAP and CMHC's decision letter) and the provisions of the *PILT Act* and *CCP Regulations* under which the DAP was operating.

[70] I begin by observing that the city's arguments to the Court were not made to the DAP. Ground 1 in Vancouver's letter dated June 26, 2023, stated that the PILTs made by CMHC were unreasonable because they stemmed from the application of a corporation effective rate that was arbitrarily determined, and not made in accordance with the *PILT Act* or the *CCP Regulations*. On this application for judicial review, the analysis of an alleged failure of responsiveness, or a failure to grapple with a party's position, cannot ignore the fact that Vancouver did not explain its position to the DAP as it did to the Court concerning how its disagreement with CMHC fit into subsection 11.1(2) of the *PILT Act*.

[71] The concern here is similar to the administrative law principle that the reasonableness of a decision cannot be impugned by an argument that was not put to the decision maker,

particularly if the issue concerns its specialized functions or expertise: see e.g., *Babb v. Canada (Attorney General)*, 2022 FCA 55, at para 48; *Canada (Citizenship and Immigration) v. R. K.*, 2016 FCA 272, at para 6; *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCR 654, at paras 22-29.

[72] To borrow the language of *Vavilov*, a decision maker cannot be expected to respond to, or grapple with, every argument or lines of possible analysis that were not made to it: see *Vavilov*, at para 128. Vancouver provided Ground 1 to the DAP with no elaboration or explanation in the city's application letter, whereas the submissions in this Court were much more detailed. I will not rest this decision entirely on this point, but it is a potent answer to the city's position on the alleged lack of responsiveness of the DAP's reasons.

[73] Turning to Vancouver's submissions to the Court on Ground 1, it is apparent that the deductions made by CMHC in its decision were a key aspect of the city's position on Ground 1. Its position relies on the extent of the deductions made by CMHC under paragraph 9(c) of the *CCP Regulations*. To support its position on the arbitrariness of the PILTs, the city submitted that the operating expenses and capital improvements relied on by CMHC bore "no correlation to the PILT amounts that were paid". Even on the submissions made on this application, the city's own position raises the reasonableness of the CMHC's deductions.

[74] To address in substance the city's legal submissions to this Court, I find that even accepting that the DAP did not explain why Ground 1 concerned the reasonableness of deductions, it does not follow that the alleged arbitrariness of the "corporation effective rate" in

the *CCP Regulations* fell within the DAP's statutory mandate in subsection 11.1(2), as the city argued to the Court. The "corporation effective rate" is a defined term in the regulations. It means "the rate of real property tax or of frontage or area tax that a corporation would consider applicable to its corporation property if that property were taxable property". Read in light of the record before the DAP, the city's disagreement in its June 23, 2023, letter and in its submissions to the Court, is not with the "corporation effective rate" used by CMHC. Rather, its disagreement is with the alleged arbitrariness of CMHC's PILTs—paid at 10% of the city's proposed annual PILTs after the deductions. Under the statutory scheme, those are not the same.

[75] As CMHC's letter explained, its deductions under paragraph 9(c) of the *CCP Regulations* reduced the city's calculations of proposed annual PILTs to "minimal". The first appendix attached to CMHC's letter confirmed that CMHC's annual expenditures and capital investments were very significant. As CMHC's letter advised, it used these amounts to reduce the city's proposed PILT payments. CMHC's letter did not question the calculation of those PILTs on the basis of the value of each property or the "corporation effective rate". The schedules attached to the city's application letter showed the city's calculation of the PILTs, calculated using the included value of each of the properties and the applicable "tax rate". What the city claims is arbitrary is the choice of 10% of the city's proposed PILTs as a gesture of "goodwill". CMHC's choice of 10% may or may not be arbitrary and may or may not be unrelated to the value of any emergency services, but under the statutory scheme and on the record before the DAP, it was not a selection of a "corporation effective rate". As *Chelsea (Municipality)* confirmed, that rate is in the municipal tax rate and is defined in the *CCP Regulations* as a rate of real property tax that a corporation would consider applicable to its corporation property if that property were taxable

property: *Chelsea (Municipality)*, at paras 18, 44, 46; see also *Montreal Port Authority*, at paras 32-33, 40.

[76] Vancouver's written submissions to the Court posed the question: how did CMHC come to apply an "effective corporate rate for each tax year that was roughly 90% less than the taxation rates applied by the City" in its PILT requests? In this question, the city referred to an "effective corporate rate" [emphasis added] and to the PILTs being 90% less than the "taxation rates" applied by the city.

[77] Respectfully, this submission does not account for the defined term in the statute or the information in the record before the DAP.

[78] A notional "effective rate" is not the same as the "corporation effective rate" defined in the *CCP Regulations*. The city's question also uses the term "taxation rates" in a colloquial sense. Mathematically, it is true that the effect of selecting 10% of the city's calculated PILT has the same *effect* as changing the "corporation effective rate" by moving the decimal in the tax rate one place to the left. However, that position does not reflect the record before the DAP, which constrained the DAP's decision.

[79] CMHC's decision letter did not question or debate the "tax rates" in the schedules attached to the city's application letter that applied to each of the properties on Granville Island, consistent with its obligation in the *CCP Regulations* to use the municipal tax scheme as a frame of reference to determine the applicable "corporation effective rate": *Chelsea (Municipality)*, at

paras 18 and 44. CMHC's letter explained that it took the proposed annual PILTs as calculated by the city using the applicable municipal tax rate, and made deductions as set out in Appendix A to CMHC's letter, which resulted in minimal annual PILTs. CMHC's decision letter advised that it determined that it would pay 10% of the PILT amounts proposed by the city – that is, it would pay 10% of the quantum of the city's proposed PILTs, not some notional lower "taxation rate".

[80] In sum, even if I were to accept that the city's application to the DAP was sufficient to raise the points it made to the Court and accept that the DAP did not provide any responsive reasoning in relation to the city's position (as occurred in *Cold Lake (City)*), I would not find a reviewable error because the decision is manifestly reasonable looking at the record before the DAP and the statutory scheme. Specifically, it was open to the DAP to find that the disagreement between the parties concerned the reasonableness of deductions CMHC made under the *CCP Regulations,* rather than the "corporation effective rate" required to support an application within the mandate of the DAP. In addition, the DAP's failure to provide reasoning in response to Ground 1 does not lead to a conclusion that the DAP made a reviewable error in finding that Ground 1 was not within its statutory mandate under subsection 11.1(2) of the *PILT Act*. The city's legal submissions do not cause me to lose confidence in the DAP's decision, considering both the DAP's reasons and the outcome it reached: *Vavilov*, at para 85.

(b) *Grounds 2 and 3*

[81] Vancouver maintained that Grounds 2 and 3 in its letter dated June 26, 2023, concerned the reasonableness of CMHC's deductions for expenditures under paragraph 9(c) of the *CCP*

Regulations, which fell within DAP's statutory mandate because of Rule 4.5 of the DAP's Rules of Practice.

[82] Vancouver's Grounds 2 and 3 expressly raised deductions in paragraph 9(c) of the *CCP Regulations*. The *PILT Act* does not expressly state that deductions are within the DAP's mandate in subsection 11.1(2). Vancouver contended that the DAP made a reviewable error by failing to grapple with, and expressly address in its reasons, the city's position that CMHC's PILTs included "mitigation measures, claw backs, or discounts under paragraph 9(c)" of the *CCP Regulations* that (in Ground 2) exceed reasonable expenditures incurred by CMHC to provide services to the properties, and (in Ground 3) resulted in a PILT that failed to adequately compensate the city for the services it provided to the properties including police and fire services. Vancouver's references to "mitigation measures, claw backs, or discounts" in Grounds 2 and 3 tracked the language in Rule 4.5 of the DAP's Rules of Practice. Yet the DAP's decision did not respond to this position with any reasoning.

[83] I again note that the city's arguments to the Court, here concerning Rule 4.5 and the interaction between paragraph 9(c) and section 7 of the *CCP Regulations*, were not made to the DAP. The analysis of an alleged failure of responsiveness, or a failure to grapple with a party's position, cannot ignore the fact that Vancouver did not make submissions to the DAP on these issues. It is hard to fault DAP for not responding to submissions that were not made to it.

[84] Regardless, in my view, the DAP made no reviewable error in its characterization of these two grounds as concerning the "reasonableness of deductions". Grounds 2 and 3 both

expressly referred to “mitigation measures, claw backs, or discounts under paragraph 9(c)” of the *CCP Regulations* [emphasis added]. Paragraph 9(c) provides for a deduction: in determining the amount of a payment for a taxation year under section 7, if the municipality is, in the opinion of the corporation, unable or unwilling to provide the corporation property with a service, there may be deducted an amount that, “in the opinion of the corporation, does not exceed reasonable expenditures incurred … by the corporation to provide the service”. Section 7 essentially provides that a PILT in lieu of a real property tax “shall not be less than” the product of the corporation effective rate and the corporation property value.

[85] Vancouver did not explain to the DAP, or to the Court, how a deduction made under paragraph 9(c) to the quantum of a payment would affect the “corporation effective rate” – which is by definition a rate of real property tax that the corporation would consider applicable if the corporation property were taxable property: *CCP Regulations*, section 2. That rate is multiplied by the value of a property to come to a minimum amount under section 7 for a payment in lieu of a real property tax. In the absence of some impact of a deduction under paragraph 9(c) on the “corporation effective rate” as defined and used to establish the DAP’s mandate, I cannot find a reviewable error in the DAP’s characterization of Grounds 2 and 3 as related to the reasonableness of deductions and, by implication, as not concerning the “corporation effective rate” for subsection 11.1(2). Again, one cannot use some notional “effective” tax rate, only the defined term that is part of the municipality’s tax scheme.

[86] The city attempted to connect the deduction in paragraph 9(c) and the “corporation effective rate” using Rule 4.5 of the DAP’s Rules of Practice. It states, in parallel to subsection

11.1(2), that "[o]nly a disagreement by a taxing authority as to the property value, the property dimensions, the effective rate including the method of application of any tax mitigation measures such as capping and claw back provisions, rebates and discounts applicable to any federal or corporation property or a claim [related to section 3(1.1)] [are] admissible as an application to" the DAP. Neither party referred to the French version of Rule 4.5.

[87] In my view, given the statutory structure at issue, the Rule 4.5 did not constrain the DAP to render a decision other than the one it did.

[88] While Grounds 2 and 3 incorporated some language from Rule 4.5, neither Vancouver's written application to the DAP nor its submissions to the Court pointed to anything specific in the record before the DAP that CMHC had in fact applied any tax mitigation measures, or claw back provisions, or discounts applicable to any corporation property on Granville Island. The city's application to the DAP also did not refer to the meaning of any of the terms in Rule 4.5, nor to how those mitigation measures, *etc.*, would affect the "corporation effective rate" applicable to a property. There is no basis for a reviewable error arising from these potential sources of constraints in the record. (No submissions were made at any point about property values or property dimensions.)

[89] Vancouver also did not identify any power of the DAP to enact guidelines to interpret its mandate in subsection 11.1(2): *Alexion Pharmaceuticals*, at paras 38-39. Indeed, Rule 4.5 is found in the DAP's Rules of Practice, which are not legally binding: *Trois-Rivières (City) v. Trois-Rivières Port Authority*, 2015 FC 106, at para 67.

[90] In addition, after the language relied upon by the city, Rule 4.5 states that "decisions arising from the interpretation of the [PILT] Act or its Regulations are outside the mandate" of the DAP and should be addressed to the federal decision maker (i.e., CMHC in this case). Vancouver's position on this application, if accepted, would result in a curious situation: the DAP should have interpreted its statutory mandate in a manner that accounts for language in the first part of Rule 4.5, yet to do so would run contrary to the DAP's description of its role stated later in the same rule.

[91] In all these circumstances, I am not persuaded that the DAP made a reviewable error in its characterization of Grounds 2 and 3 or by failing to engage or expressly grapple with the language in those grounds that tracked the words in Rule 4.5.

(c) *Ground 4*

[92] Ground 4 of Vancouver's application to the DAP was that the PILTs were unreasonable because they improperly took into account purported benefits that CMHC Granville Island provided to the city as justification for the "corporation effective rate" applied by CMHC. Vancouver explained at the hearing in this Court that Ground 4 concerned whether CMHC could take into account the "nebulous" notion of the goodwill its Granville Island properties brought to the city, which has no predictable rationale to support PILTs. Again, Vancouver argued that the DAP decision was unreasonable because it did not address this ground separately and that Ground 4 was, in substance, within the DAP's mandate in subsection 11.1(2).

[93] In my view, it was reasonable for the DAP to characterize this ground as concerning the reasonableness of deductions, as any amount for goodwill would reduce PILTs in the same manner as deductions in Grounds 2 and 3. However, as explained above, the reduction of those amounts does not affect the "corporation effective rate" as defined and used in the *CCP Regulations*. The facts in the record did not constrain the DAP to find that Ground 4 fell within its mandate. The DAP did not make a reviewable error in its decision with respect to Ground 4.

[94] I conclude that Vancouver has not demonstrated that the DAP made a reviewable error in its characterization of the four grounds in the city's application.

(2) The DAP's decision made no reviewable error in the interpretation of the statutory scheme

[95] Vancouver's second position was that the DAP made a reviewable error by failing to determine the question of whether a disagreement of a taxing authority with a Crown corporation's deductions under paragraph 9(c) of the *CCP Regulations* constituted a disagreement within the enumerated grounds in the DAP's mandate in subsection 11.1(2) of the *PILT Act*. The city contended that, to answer this, the DAP was required to interpret the scope of its statutory mandate and the meaning of paragraph 9(c) in light of the text, context and purpose of the statutory scheme, and made a reviewable error by failing to do so. Vancouver's principal submission was that Rule 4.5 of the DAP's Rules of Practice was a contextual factor that the DAP's decision had to address in interpreting its mandate in subsection 11.1(2), but it failed to do so.

[96] The city recognized that the terms “tax mitigation measures”, “claw back” and “discounts” in Rule 4.5 were not defined anywhere in the PILT scheme, but submitted that the “ordinary meaning of those terms plainly indicate the view that the application of measures to reduce tax liability will necessarily impact the effective rate determined by a Crown corporation”. According to the city, Rule 4.5 is consistent with the text of paragraph 9(c) of the *CCP Regulations*, which begins “In determining the amount of payment … under section 7 …”, so that the deductions under paragraph 9(c) were integral to the section 7 framework and informed the discretion of the Crown corporation in determining the “corporation effective rate” as defined.

[97] Therefore, according to the city, if a Crown corporation incorporates a deduction under paragraph 9(c) of the *CCP Regulations*, the deductions, as a “tax mitigation measure”, will “inherently affect the effective rate” determined by the Crown corporation because the deductions will “discount” the tax rate to account for the services that are not provided to the property by the taxing authority.

[98] This approach, the city argued, is consistent with the purpose of the statutory scheme, which empowers the DAP to provide specialized advice to CMHC in a non-adversarial process and a non-binding manner, to achieve Parliament’s objective of ensuring that the federal government’s “administrators and agents … act as good residents of the municipalities where federal property is located” (quoting *Montreal Port Authority*, at para 14). Vancouver contended that the DAP’s decision did not show that it was alive to the considerations of the context and

purpose of the statutory scheme, as required for a reasonable decision (citing *Vavilov*, at para 122).

[99] The DAP's concise reasons expressly referred to its mandate in subsection 11.1(2) of the *PILT Act*, but it did not engage in a formal statutory interpretation analysis of the text, context and purpose of the provision. Nor was it required in law to do so: *Pepa*, at para 86.

[100] In my view, Vancouver has not shown that if the DAP had considered a key element of the statutory provision's text, context or purpose, it may well have arrived at a different result than it did (*Vavilov*, at para 122), or that its decision was "clearly incongruous" with the text, context, or purpose of subsection 11.1(2) (*Pepa*, at para 86).

[101] As Vancouver acknowledged, the text of subsection 11.1(2) does not expressly provide a mandate to the DAP to give advice to a Crown corporation concerning deductions generally, or deductions in paragraph 9(c) of the *CCP Regulations*.

[102] The "context" of a provision is often its surroundings: adjacent or neighbouring provisions that may affect the understanding of its text within the scheme and structure of the statute: *Piekut v. Canada (National Revenue)*, 2025 SCC 13, at paras 44, 67, 73; *Pepa*, at paras 107-114; *Mason*, at paras 86-97. Contextual factors outside the statute may also be considered to constrain a decision maker's interpretation of a provision: see the Supreme Court's reasons in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*; *Mason*, at para 117.

[103] The city's text and context argument concerning section 7 and paragraph 9(c) of the *CCP Regulations*, read with Rule 4.5 of the DAP's Rules of Practice, does not yield a reviewable error. I will not repeat the analysis of the statutory scheme of the *PILT Act* and the *CCP Regulations,* set out above. Put simply, the deductions, as a "tax mitigation measure", do not inherently affect the "corporation effective rate" as defined in the *CCP Regulations* because the deductions do not "discount" the "corporation effective rate". A deduction by a corporation under paragraph 9(c) does not impact the "corporation effective rate"; it reduces the quantum of a PILT as determined in accordance with section 7.

[104] The city's submission about the purpose of the *PILT Act* also does not support a reviewable error in the DAP's decision.

[105] As a matter of law, the text of the *PILT Act* and the *CCP Regulations* is the anchor for statutory interpretation: *Piekut*, at para 45; *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43, at para 24. The text plays a central role in specifying the means and qualifications selected by Parliament to achieve its purposes, or "how far a legislature wanted to go" to achieve a more abstract goal: *Commission des droits de la personne et des droits de la jeunesse*, at para 24 (quoting M. Mancini, "The Purpose Error in the Modern Approach to Statutory Interpretation" (2022), 59 *Alta. L. Rev.* 919, at p. 927).

[106] In this case, the DAP's mandate is express and specified in subsection 11.1(2). The text of that provision includes defined terms, including "effective rate", which means "corporation

effective rate" by virtue of the *CCP Regulations*. The DAP's decision was constrained by the precise language in the statute and the *CCP Regulations* to give advice on the four matters expressly stated in subsection 11.1(2): see *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 SCR 601, at para 10; *Waterhen Lake First Nation v. Canada*, 2025 FCA 49, at paras 96-97. See similarly, *Ottawa (City)*, at paras 31-32 (with respect to the term "effective rate" in the *PILT Act*).

[107] The purpose of the *PILT Act*, or of the provision creating the DAP, cannot amend or overwhelm the precise text of subsection 11.1(2) to create new categories or subjects for the DAP's mandate, even if Parliament's objectives under the *PILT Act* and in creating the DAP were to ensure that federal properties are good residents in a municipality and to assist parties to resolve disagreements by giving advice to the Minister or a Crown corporation. To enlarge the DAP's statutory mandate beyond the express and defined terms could well constitute an error of law (that could be called a "purpose error"): see the discussion in *Manns v. Vancouver Island Health Authority*, 2024 BCCA 110, at paras 29-36. An administrative decision maker does not make a reviewable error by failing to make an error of law.

[108] For these reasons, I conclude that Vancouver has not demonstrated that the DAP's decision contained a reviewable error related to statutory interpretation.

[109] For clarity, I confirm that nothing in these Reasons comments on the reasonableness of CMHC's decision(s), or its deduction(s), on the annual PILTs for the tax years in question, or the methodology used to determine them.

III. **Did the DAP's process deprive Vancouver of procedural fairness?**

[110] The Court reviews questions of procedural fairness on a standard akin to correctness. The reviewing court considers whether the procedure followed by an administrative decision maker was fair having regard to all the circumstances. See *Cold Lake (City)*, at para 24; *Shull v. Canada*, 2025 FCA 25, at para 6; *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69, [2019] 1 FCR 121, at paras 54-55.

[111] Vancouver's position on procedural fairness was that the DAP should have given it an opportunity to be heard. The city argued, with respect to the factors in *Baker*, that the process before the DAP involved an elevated degree of procedural fairness (in the mid-range): *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at paras 22-28.

[112] The city did not argue that it had a freestanding right to be heard before the DAP made a decision on whether to accept the application. Instead, Vancouver contended that its application, in Grounds 2 and 3, had expressly relied on the interpretation of the DAP's mandate found in Rule 4.5 of the Rules of Practice and that it had a legitimate expectation that the DAP would apply Rule 4.5 to the issue of jurisdiction to maintain consistency across all decisions rendered by the DAP. The city maintained that before rendering a decision that departed from the interpretation of its mandate in Rule 4.5, the DAP had to give the city notice that it intended to do so and provide an opportunity to be heard.

[113] The city also referred to Rule 9 of the Rules of Practice, which provides that at any time after receiving a request for review, "on the written application of a party or on the Chair's own

initiative", the Chair may require the parties to provide information on specific issues, produce statements of issues and attend a case management conference.

[114] CMHC took no position on procedural fairness in its written submissions (at that time, the Attorney General of Canada appeared as a respondent in this proceeding). At the hearing, CMHC offered the following observations to assist the Court:

a) The DAP did not derogate or depart from Rule 4.5 of its Rules of Practice. Mitigation measures and the other issues in Rule 4.5 do not relate to deductions under paragraph 9(c).
b) Rule 9 of the DAP's Rules of Practice has limited application, because it is only engaged by a written application of a party or on the Chair's own initiative – neither of which occurred in this case.
c) The level of procedural fairness, applying the *Baker* factors, was not at the mid-range in the circumstances, because the process was not judicial in nature and the DAP's decision, while final, was advisory and non-binding in nature and did not directly affect the PILTs.

[115] In my view, at the initial stage of deciding whether to accept an application from a taxing authority, the level of participatory rights in the process before the DAP was low.

[116] The statutory scheme did not establish or describe a party's right to participate in the decision making process at the inception of an application to the DAP. The nature of the DAP's decision at that early stage, and the process before the DAP generally, is not at the judicial end of

the spectrum. This observation is more evident at the preliminary stage of accepting an application and is consistent with the non-binding advice that could eventually come from the DAP if a matter is accepted within its mandate. These *Baker* factors militate against a high level of party participation as part of procedural fairness.

[117] It is generally true that the matter, considered very broadly as the PILTs from 2011 to 2022, is important to the city. However, this factor is tempered by the fact that the city decided not to challenge CMHC's decisions about PILTs and instead to seek the assistance of the DAP to provide non-binding advice to CMHC about its voluntary payments under the *PILT Act*. As such, the impact of the decision on Vancouver is, in a legal sense, not as severe as the city argued.

[118] The city did not have a legitimate expectation in law that the DAP would apply Rule 4.5 to the issue of its jurisdiction. Legitimate expectations only go to matters of process and not to substance: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 SCR 559; *Chelsea (Municipality)*, at para 36; *Canada (Attorney General) v. Honey Fashions Ltd.*, 2020 FCA 64, at para 50. The city does not rely on any rule or other representation by the DAP about the procedure it would follow: *Agraira*, at para 94. It is a matter of substance, not process, to apply the words of Rule 4.5 to the decision on whether the city's application was within the DAP's mandate. In addition, for the reasons already explained in the substantive review portion of these Reasons, the DAP did not depart from the language in Rule 4.5 in the present case. Finally, Rule 9 does not assist the city's position on procedural fairness, whether as a *Baker* factor or otherwise. Neither the city nor the DAP Chair initiated the process contemplated by that rule.

[119] Regardless of whether the required level of participation in the DAP's process was at the low or mid-range, one must look at the specific circumstances to determine whether there was a breach of procedural fairness.

[120] At the preliminary stage when the DAP rendered its decision, the city as a taxing authority had made an application to the DAP. The DAP had an express statutory mandate set out in subsection 11.1(2). The city had complete control over the contents of its application and was responsible for providing the DAP with sufficient information about the disagreement with CMHC to engage the DAP's statutory mandate. The DAP did not ask CMHC to respond in any way to the city's application, nor did CMHC do so on its own initiative. In the circumstances, it was up to the city from the outset to show that its application was within the DAP's statutory mandate. Procedural fairness did not require the DAP to go back to Vancouver to request further information or additional submissions on that issue.

[121] Accordingly, I conclude that the DAP did not deprive Vancouver of procedural fairness.

IV. **Conclusion**

[122] The application for judicial review is dismissed. Neither party requested costs against the other and none will be ordered.

[123] The Court thanks counsel for both parties for their insights and professionalism on this application, in writing and at the oral hearing.

JUDGMENT IN T-2283-23

1. The application for judicial review is dismissed.

2. There is no costs order.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
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APPEARANCES:

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