IN THE SUPREME COURT OF YUKON

Citation: *Dalziel* v. *Yukon Government et al*, 2008 YKSC 04

Date: 20080123
Docket No.: S.C. No. 07-A0102
Registry: Whitehorse

Between:

BYRON DALZIEL and SHELLY DALZIEL

Petitioners

And

TOWN OF WATSON LAKE, YUKON GOVERNMENT, DEPARTMENT OF ENERGY MINES & RESOURCES (LANDS BRANCH) and BRYAN ANDERSON

Respondents

Before: Mr. Justice R.S. Veale

Appearances:

André Roothman and Susan Roothman — Counsel for Byron Dalziel and Shelly Dalziel
Michael Winstanley and Teri Cherkewich — Counsel for Yukon Government
James Tucker — Counsel for Town of Watson Lake
Peter Morawsky — Counsel for Bryan Anderson

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is an application by Byron and Shelly Dalziel (the Dalziels) to set aside a decision of the Director of the Lands Branch in the Department of Energy, Mines and Resources (the Director) to grant a piece of land to Bryan Anderson. It is also an application to set aside two by-laws of the Town of Watson Lake to change the zoning of the same piece of land to permit Bryan Anderson to use it. There are many legal issues raised but the primary focus of this decision will be on the duty of fairness.

[2] The parties and the Lands Branch have been struggling with the land issues in this case for some four years. I have been impressed with the efforts made by all to find a resolution and this judgment should not be taken as a criticism of any one involved in the process.

BACKGROUND

[3] The Dalziels own Lots 1-40 and 1-41 on the shore of Watson Lake. Bryan Anderson owns Lot 1-42-1. A piece of land in a triangular shape (the triangle) lies between Lot 1-41 and Lot 1-42-1. The triangle is a greenbelt area that slopes steeply down to the lake, but it does have a small area suitable for development. Both the Dalziels and Bryan Anderson applied for essentially the same land in 2003 and the area suitable for development was subsequently granted to Bryan Anderson. The process has not been a happy experience for anyone involved; an unfortunate outcome for neighbours.

THE FACTS

[4] The Dalziels purchased a cabin in the woods on leased Lots 1-40 and 1-41 on the shore of Watson Lake in approximately 1975.

[5] In 1979, while repairing their septic system, they discovered that it was not contained by these lots, and encroached on the triangle.

[6] The Dalziels made two attempts to lease or purchase the triangle in 1979 and 1981 but the applications were denied because the process of devolving lands from the federal government to the Yukon government was ongoing. The Dalziels understood that their applications would be kept on file should circumstances change.

[7] The Dalziels purchased their lots from Canada in 1985.

[8] The federal government transferred the power to dispose of Yukon lands to the Yukon government on April 1, 2003.

[9] Bryan Anderson, who had recently purchased Lot 1-42-1, applied on May 19, 2003 for a 0.67 hectare portion of the triangle to build a car garage and woodshed. He also applied for a piece of waterfront land called Lot 1-42-2 for a well-site and wanted to build an addition to the lake side of his house.

[10] The Lands Branch informed the Dalziels of the Anderson application on May 29, 2003 and provided them with information on the procedure before the Land Application Review Committee (LARC). Lands Branch, which essentially administered LARC, encouraged the Dalziels to put in their own application for land in the triangle.

[11] A representative of the Lands Branch addressed the reason for permitting the two applications for the same land as follows:

> "On or about June 19, 2003 Lands Branch encouraged the Dalziels to put in their own application for land within the Buffer. Applications are not normally taken over existing applied-for land but I verily believe that this option was seen as fair to both parties as evidence showed that the Dalziel's septic system and other improvements encroached onto the Buffer, thus it seemed fair to permit the Dalziels an opportunity to legitimize their unauthorized land uses and occupations."

[12] In early July 2003, Lands Branch requested the Watson Lake Natural Resources Officer to conduct a land inspection of the triangle. This report concluded:

> "It is the recommendation of this office that the vacant parcel between Lots 1-41 and 1-42 be configured differently in order to maintain sufficient land for the applicants proposed development as well as retaining a significant strip of land to provide a greenbelt/buffer between the landowners. <u>It is felt</u>

> that the site is suitable for its intended purpose and will provide for each of the surrounding land owners (1-41 & 1-42) requirements if the application area configuration were changed slightly. There are no concerns with the disposition of the portion within the ordinary high water mark." (my emphasis)

[13] On August 24, 2003, the Dalziels filed an objection to the Anderson application based on their historic 1979 and 1981 applications and their years of use of the triangle.

[14] At the same time, the Dalziels also filed their own application for all of the triangle for the listed purposes of greenbelt, septic, snow stockpile, parking, storage, firewood storage, and outhouse (the Dalziel application). The Dalziels were not applying for a new location for their septic system but rather wanted to legitimize their existing septic system encroachment on the triangle. They confirmed that they had never contacted Environmental Health about the compliance of their septic system with relevant guidelines.

[15] Both applications received were for the same land in the triangle, although Bryan Anderson applied for a smaller parcel than the Dalziels.

[16] On or about September 10, 2003, Lands Branch determined that the Dalziel and Anderson applications should be considered together in the LARC process.

[17] The Dalziels and Bryan Anderson were informed of a LARC meeting on October 9, 2003. Bryan Anderson attended but the Dalziels did not understand that they could attend and were not present.

[18] The minutes of the LARC meeting of October 9, 2003, indicate that the focus was on the Anderson application with the Dalziel application being described as a letter of intervention with a replacement application of their historic applications. Nevertheless,

with reference to the Anderson application for a car garage and woodshed, it appears that the Natural Resources Officer "… felt that the site [Anderson] is suitable for its intended purpose and will provide for each of the surrounding land owners (1-41 and 1-42) requirements if the application were changed slightly".

[19] It should be noted that Environmental Health advised that if bedrooms were attached to the dwelling (presumably the expansion of the Anderson dwelling), a larger septic system would be required. The Environmental Health Officer also advised that the existing Anderson septic system was in non-compliance with the regulations.

[20] Following the October 9 meeting, LARC made the following recommendation:

> "Deferral to February, 2004, legitimization of tenure on well by lease or licence; Environmental Health Officer, Building Safety Inspector, Town of Watson Lake and NRO to meet with owners of Lots 1-41 and 1-42-1 to provide accurate on-the-ground information, re: location and status of septic systems, topography, ownership of Lot 1-42-2 and zoning issues, as well as opening up the lines of communication to determine what Mr. Anderson and the Dalziels are interested in obtaining." (my emphasis)

[21] On October 28, 2003, the Manager, Lands Client Services (the Manager), decided to adopt the LARC recommendation and to defer the applications to February 2004.

[22] The Manager's decision-letter to the Dalziels concluded:

> "Please note that your application & interest submitted to lands on August 24, 2003, was taken into consideration at the review of Mr. Anderson's Application. Both applications, with accompanying site information and recommendations will be reviewed at the February 12, 2004 LARC." (my emphasis)

[23] A letter dated November 26, 2003 (the first inspection) confirmed a site inspection by a representative of Consumer and Safety Services, the Natural Resources Officer, and a representative of the Town of Watson Lake, along with Shelly Dalziel and Bryan

Anderson. A representative of a crucial player responsible for septic systems, Environmental Health, was absent. The site inspection confirmed that the Dalziels' septic system was fully located in a corner of the area applied for by Bryan Anderson. It also appears that the Anderson application for enlargement included "enough room to achieve a conforming septic system". This was not part of the original Anderson application, but rather evolved during the LARC process.

[24] The first inspection report concluded somewhat prophetically:

> "Note: I would recommend that if there is evidence that both properties have issues with septic disposal an Environmental Health Officer be present. Their knowledge and expertise could have been extremely helpful in resolving issues between the two property owners and possible solutions may have been gained by their presence."

[25] The next day, November 27, 2003, the Manager sent the Dalziels and Bryan Anderson two proposed enlargement options suggesting a division of the triangle. Option A drew a dividing line from the corner of Lot 1-42-2 and Option B drew a line from the corner of Lot 1-42-1. Each option would legitimize the Dalziels' septic system encroachment. The Anderson portion would permit him to build his garage, shed, and conforming septic system.

[26] The Town of Watson Lake, which had originally supported only the Anderson application at the LARC meeting, wrote on February 11, 2004, to support Option A.

[27] The second LARC meeting took place on February 12, 2004, with both the Dalziels and Bryan Anderson present. All the issues raised by each party were discussed, including Options A and B, as well as an Option C presented by the Dalziels, which would give them the entire triangle.

[28] On February 12, 2004, LARC recommended:

> "Approval in principle for legitimization of improvements and interests with a view to meeting applicants' needs, subject to a further site inspection in snow-free conditions with Community Services, Environmental Health, NRO and the applicants to determine requirements for septic systems and required setbacks. Committee recognized that there is room for accommodation of both parties interests with possibility of green space left between enlargements." (my emphasis)

[29] In a March 1, 2004 decision-letter to the Dalziels, the Manager stated:

> "Based on the recommendation of the Committee it is the decision of the Lands Branch that this application be Approved in Principle for legitimization and interests with a view to meeting applicants' needs, subject to the following:
>
> - A further site inspection in snow-free conditions with Community Services, Environmental Health, Natural Resource Officer and the applicants to determine requirements for septic systems and required setbacks.
> - The committee recognized that there is room for accommodation of both parties interests with possibility of green space left between enlargements." (my emphasis)

[30] The decision-letter required confirmation of the conditions of approval within 60 days, or alternatively appealing. Neither alternative was pursued by the Dalziels.

[31] The second site inspection took place on August 27, 2004, resulting in a Land Officer forwarding a proposed sketch for both lot enlargements similar to Option B. It stated:

> "The proposed sketch should meet the interests of both parties, as measurements were taken to determine the requirements for septic systems and required setbacks."

[32] Bryan Anderson accepted the proposed configurations. The Dalziels did not respond.

[33] On November 5, 2004, the Manager wrote a final decision-letter approving the previously proposed configuration. I note that this decision appeared to legitimize the Dalziels' septic system encroachment.

[34] The Dalziels appealed the Manager's decision on both applications to the Director by letter dated January 17, 2005. The appeal contains a great deal of information, much of which had been considered before. It did not contain any request for a new location for their septic system as there was no indication that there was a problem with the existing location.

[35] On July 18, 2005, the Director wrote the Dalziels advising that he had requested a final inspection of the triangle. A Lands Liaison Officer conducted the final inspection on August 2, 2005, with the Dalziels.

[36] The Lands Liaison Officer reported in a letter to the Dalziels dated August 26, 2005, that:

> "… The Director was very encouraged by the fact that you had expressed a desire for Mr. Anderson to be able to have a lot enlargement to solve his minimum septic needs – without splitting the steep slope in two – and he agrees that the treed buffer along the steep slope should remain in the present state."

The Lands Liaison Officer stated that the Anderson septic system should proceed so as not to encroach on the snow removal clearing area nor approach within two metres of the top of the steeper slope.

[37] The Lands Liaison Officer concluded:

> "Once Mr. Anderson's needs are met to everyone's mutual satisfaction and in the spirit of his actual needs, I have been instructed to visit you again when and if you desire, to discuss your own needs as soon as Mr. Anderson's situation has been ironed out."

[38] The Dalziels telephoned the Lands Liaison Officer on August 5, 2005, to express their concern that their own enlargement application was put on hold with promises to revisit it after the Dalziels agreed to the Anderson enlargement.

[39] The Environmental Health Officer learned on October 15, 2005, that the Dalziels' septic system was non-conforming without a permit.

[40] The view of the Lands Liaison Officer was confirmed in the Appeal decision-letter of the Director dated December 8, 2005. He stated:

> "Environmental Health has directed that Mr. Anderson construct a new septic in an area approximately 10 metres wide and 25 metres long adjacent to the northwest boundary of his property.
>
> …
>
> Environmental Health has stated that your septic system may have to be replaced in accordance with the *Public Health and Safety Act,* which is outside the jurisdiction of Lands Branch. However, as site visits have noted, your existing septic and lawn are encroaching onto public land. If additional enlargement to your lot in an appropriate area is necessary for compliance with the *Public Health and Safety Act,* and the Sewage Disposal Systems Regulation there under, or to legitimize your lawn and/or improvements, please accept our assurance that Lands Branch will support these requirements."

[41] Condition 2 set out on the attached sketch states:

> "2. Dalziel enlargement position and size to be determined based on legitimization of existing septic and lawn currently encroaching into Yukon Land."

[42] The Dalziels did not appeal this decision and proceeded to follow the Director's hopeful suggestion that they apply to Environmental Health to retain their pre-existing encroaching septic system.

[43] On January 16, 2006, before the expiry of the level 2 appeal period in the LARC process, Lands Branch authorized subdivision approval and provided a letter of Purchase Price Estimate to Bryan Anderson.

[44] On February 6, 2006, the Environmental Health Officer advised the Dalziels by letter that they could not retain their septic system because of its location and construction.

[45] The Dalziels expressed their dilemma in this way:

> "… We realized that we have now a real problem due to the fact that the only suitable site for a conforming septic system has already been awarded to Anderson. This site should have been shared between us and Anderson if the officials from the Lands Branch have applied their minds to both applications at the same time and looked at Option C as presented by us during February 2004."

[46] Following this rejection of their existing septic system, the Dalziels engaged the relevant Minister and a number of investigations were completed that were not available to the Director at the date of his decision of December 8, 2005.

[47] The Director sent a final letter to the Dalziels and Bryan Anderson dated August 16, 2007. The attached sketch removed the Dalziel encroaching septic system from the parcel they would receive but granted Bryan Anderson what he required for his septic system.

[48] In addition to the above facts, I find the following:

(a) The Dalziel and Anderson applications proceeded in tandem or linked fashion through the LARC meetings as the expressed purpose was to meet the needs of both applications.

(b) The decision of the Manager dated November 5, 2004, was premised on an attached sketch that legitimized both the Dalziel and the Anderson septic systems on the triangle.

(c) During the appeal process, the applications were de-linked with the appeal decision permitting the Anderson septic system to proceed while the Dalziel existing septic system encroachment was left subject to approval of Environmental Health.

(d) Despite the hopeful expression in the Director's appeal decision, the Dalziels' application to legitimize their long standing septic system encroachment was denied.

The Yukon Land Application Process

[49] On April 1, 2003, federally owned lands were devolved to Yukon. Under the LARC process, the Manager would receive land applications and make decisions after a review of the applications by LARC. LARC was not a statutory body, but operated under written Terms of Reference. It was an advisory body only and made recommendations to the Manager. The purpose of LARC was to facilitate inter-departmental and inter-governmental coordination of land management matters. The majority of LARC membership consisted of the various departments and agencies of the Yukon Government but also included First Nation, municipal, and federal agencies. The Manager chaired the LARC meetings.

[50] The public was very much involved in the LARC process. The public was divided into the categories of applicant, intervenors, or interested parties and they were able to make written submissions followed by attendance at LARC meetings to express their views.

[51] Following the written submissions and oral hearings, LARC provided a recommendation to indicate approval; approval subject to conditions; deferral pending specified action; or denial. The recommendation was forwarded to the Manager, who then made a decision or referred the matter back to LARC for further review or clarification. The decision would be communicated to the applicant by letter.

[52] Following the letter, there was a Response period where an applicant had 60 business days to accept the decision in the letter. A decision was not final until the appeal periods had expired. Further, if an approval or approval in principle was not accepted within 60 days, it would be considered null and void, subject to the appeal provisions.

[53] LARC had a somewhat complex two-level appeal process. In the first level, an applicant had 60 business days and an intervenor had 20 business days to appeal a decision-letter of the Manager to the Director. The Director would assess the appeal to determine if there was an error in due process or in interpretation of policy or the consideration of relevant information; and could consider if substantial additional information had been provided in support of the appeal. The Director could uphold the Manager's decision; overturn the decision and provide reasons for the new decision; modify the decision and provide the reason for the modification; or refer the matter back to LARC for further review.

[54] The Level 2 appeal process was to the Assistant Deputy Minister who had similar powers in relation to the Director's decision as the Director with respect to the decision of the Manager.

ISSUE

[55] The issue that needs to be addressed at the outset is whether the Director has complied with the duty of procedural fairness. This is a preliminary issue before any consideration of the decision itself can be made and indeed the ruling on this could obviate the need for a review of the decision itself.

THE LAW

[56] The duty of procedural fairness applies when an administrative decision by a public body affects individual rights, privileges or interests: *Cardinal* v. *Director of Kent Institution*, [1985] 2 S.C.R. 643; *Attorney General of Canada* v. *Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735; *Martineau* v. *Matsqui Institution Disciplinary Board*, [1980] 1 S.C.R. 602; *Nicholson* v. *Haldimand-Norfolk Regional Board of Commissioners of Police*, [1979] 1 S.C.R. 311.

[57] The context of the duty of fairness varies according to the particular facts. The *Congrégation des témoins de Jéhovah de St-Jérome-Lafontaine* v. *Lafontaine (Village),* 2004 SCC 48, sets out the five factors that must be considered:

1. the nature of the decision and the decision-making process employed by the public body;
2. the nature of the statutory scheme and the precise statutory provisions pursuant to which the public body operates;
3. the importance of the decision to the individuals affected;

4. the legitimate expectations of the party challenging the decision; and

5. the nature of the deference accorded to the body.

[58] It is also important to state that the duty of procedural fairness does not require the application of a standard of review that is required in a judicial review application of a decision. In determining whether the duty of procedural fairness has been met, the issue is not the reasonableness or lack of it in a decision, but rather whether the procedure to reach the decision was fair.

[59] Having said that, the deference given to the decision-making body is still a factor to be considered. I will now consider the five factors in the context of this application.

The Nature of the Decision

[60] In the case of a land disposition decision in Yukon, the Minister involved makes the decision pursuant to s. 9 of the *Lands Act*, R.S.Y. 2002 c. 132, which states:

> (1) The Minister shall refuse an application to purchase or lease Yukon lands
>
> (a) if the applicant fails or is unable or unwilling to comply with any applicable provision of a statute of the Parliament of Canada or the Legislature, or a regulation made under any such statute;
>
> (b) if the lands with respect to which the application is made are reserved lands; or
>
> (c) if the purpose for which the lands are to be used is not in the public interest.
>
> (2) If the Commissioner in Executive Council, within a period of one year after an application is made, revokes or amends the order whereby those lands were made reserved lands and proceeds to call for tenders with respect to those lands, the Minister shall in the manner prescribed notify the applicant accordingly.
>
> (3) If an application is made with respect to reserved lands the most desirable use of which has been designated by the

> Commissioner in Executive Council, paragraph (1)(b) does not apply if the lands are to be used for designated purposes.

[61] Given the lengthy procedural process before the LARC recommendation is made and the two-level appeal process, it would be fair to say that the Yukon land application and decision-making process is less political and more administrative at the decision-making level of the Manager and Director.

[62] The decision in the *Jehovah Witness* case was made by an elected council and was partly political and partly administrative in nature. While not identical to the *Jehovah Witness* decision, the admonition at para. 6 is still a matter for consideration:

> "… Provided the municipality acts honestly and within the limits of its statutory powers, the reviewing court is not to interfere with the municipal decision unless "good and sufficient reason be established." …"

[63] The point is that the Director's decision should not be set aside lightly, although it was not made at an elected political level like the municipal council in the *Jehovah Witness* case.

The Statutory Scheme

[64] Although the LARC process was not a statutory one, there were precise written procedural rules to be adhered to. A two-level appeal process is designed to ensure a fair procedure in terms of considering all the factors and interests that pertain to land decisions. A complicating factor in this case is that the written procedures did not contemplate two applications for the same piece of land and to that extent, the procedure was somewhat novel for the Director.

The Importance of the Decision

[65] There can be no doubt that this land decision is extremely important to both applicants. Each party had a strong interest in having compliant septic systems.

The Legitimate Expectations Principle

[66] The principle to be applied is set out in the *Jehovah Witness* case at para. 10:

> "… Where prior conduct creates for the claimant a legitimate expectation that certain procedures will be followed as a matter of course, fairness may require consistency. …"

[67] The precise question here is whether the Dalziels had a legitimate expectation that the septic system requirements of each application would be addressed at the same time before a land disposition was made to either party.

The Deference due to the Decision-Maker

[68] There is no doubt that the Director of Lands is better positioned to make the land disposition than this Court. The LARC process in this case was a highly consultative and inclusive procedure that benefited from advice of the qualified individuals who bring their expertise to bear upon the proposed land disposition. The deference to the decision-maker is considered in relation to the other factors and especially the legitimate expectation of the parties on the procedure to be followed. While deference should be given to the Director, some consideration must be given to the fact that these applications presented a novel procedural situation.

[69] There is no doubt that the duty of procedural fairness applies to the land applications in this case.

Applying the Duty of Fairness to the Facts

[70] The decision to assess these applications together was a reasonable one considering the historical interest and claim of the Dalziels as well as the legitimate interest of Bryan Anderson in the triangle. In my view, both parties had legitimate interests in the triangle and the Lands Branch was clearly committed to resolving the conflicting applications to meet the reasonable interests of each applicant.

[71] However, from a procedural point of view, the parties were not treated equally. The Anderson application, which did not initially include a septic system, changed focus to include a septic system component. Ultimately, the willingness of the Dalziels to accommodate this change, worked to their detriment.

[72] On the other hand, the Dalziel application always declared their need to legitimize their encroaching septic system and also included the land that Bryan Anderson was ultimately granted. The Dalziel application did not specifically include a proposal to have their septic system on the suitable portion of the triangle granted to Bryan Anderson as no one contemplated that this was effectively the only land for a compliant septic system. In saying this, I reject the submission or suggestion that the Dalziels were somehow the authors of their own demise. Rather, the problem was that the process did not provide for the assessment of both septic system requirements before reaching a final decision.

[73] The explanation for the septic systems being assessed at different times may be based upon the apparent failure of the appropriate representative to assess the septic systems in the first and subsequent site inspections. I do not make this comment as a criticism of any person or body in the process, but simply to say that an early

identification of the problems with both septic systems would have avoided the procedural fairness problem that occurred.

[74] In my view, the Dalziels had a legitimate expectation that the applications would proceed together with a view to accommodating the interests of both applicants if possible. Their expectation is well founded and clear on the LARC record. The Lands Branch decided in September 2003 that the Dalziel and Anderson applications would be heard together. The Manager, in October 2003, adopted the LARC recommendation to obtain accurate information “re: location and status of septic systems.” Both applications were reviewed together at the LARC meeting in February 2004. The proposals discussed appeared to include legitimization of both septic systems and the LARC recommendation sought to accommodate both applicants. The Manager approved in principle “for legitimization and interests with a view to meeting applicants’ needs …” and recognized “that there is room for accommodation of both parties interests.” It was during the appeal process that the Director changed course and decided to proceed with legitimizing the Anderson septic system before determining the options for the Dalziels’ septic system.

[75] Indeed, it is clear that the Appeal decision of the Director on December 8, 2005, was premised, but not promised, on the approval of the Dalziels’ septic system under the *Public Health and Safety Act*, R.S.Y. 2002, c. 176. While it appeared that all concerned expected that approval to be granted, for reasons that have arisen subsequently it was not.

[76] The legitimate expectation of the Dalziels was that the disposition of the contested triangle would not be concluded until all interests of both parties were considered. That

did not occur as no consideration could be given to a solution that involved both septic systems once the only suitable land had been granted to Bryan Anderson.

[77] Counsel submits that the Director had no choice but to grant the land to Bryan Anderson because of a direction by Environmental Health under the *Public Health and Safety Act, supra*. There is no evidence before me that the Director received a direction compelling the Director to grant the land to Bryan Anderson. It could only be a direction to Mr. Anderson to bring his septic system into compliance. In other words, the discretion of the Director is not fettered by such an order, although obviously it is a factor in his consideration. The Director did not have to approve the Anderson septic system without first considering the Dalziels' septic system. In my view, the Director as a matter of procedural fairness should have decided both applications at the same time, consistent with the procedure followed throughout the previous two years of the process.

DECISION

[78] I conclude that the duty of procedural fairness requires consideration of the two applications at the same time with all the facts on the table and, specifically, whether the interests of both the Dalziels and Bryan Anderson in having a complying septic system in the triangle can be accommodated. I therefore order that the Director's decision of December 8, 2005 be set aside. I do not direct that there be any particular decision so long as the Director fairly considers if there are alternatives that could meet the interests of both the Dalziels and Bryan Anderson in the triangle. The point is that the Director should not be constrained by his decision of December 8, 2005 but review the applications with all the facts on the table and provide reasons for his decision.

[79] I have considered the claims against the Town of Watson Lake. There is no doubt that the Town did not adequately meet its notice requirement "with a statement of the reasons for the amendment and an explanation of it" as required in ss. 280(2)(c) and 294(2)(c) of the *Municipal Act*. That breach is clearly cured by s. 351(3), as I do not find that the breach would affect the outcome of the vote on the bylaw. I dismiss the claims against Watson Lake. In my view, the Town has indicated its willingness to assist both Dalziels and Bryan Anderson to implement any decision of the Director.

[80] Counsel may wish to speak to costs and address any issues that may arise.

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VEALE J.