

Court of King’s Bench of Alberta

Citation: Rocky View County v Westridge Utilities Inc., 2026 ABKB 644

Date: 20260914
Docket: 2601 02853
Registry: Calgary

Between:

Rocky View County

Plaintiff

- and -

Westridge Utilities Inc.

Defendant

Reasons for Decision
of the
Honourable Justice C.M. Jones

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I. Background:

[1] This matter concerns an application by Rocky View County (the “County” or “RVC”) under section 554 of the *Municipal Government Act*, RSA 2000, c M-26 (the “MGA”) for a statutory injunction requiring Westridge Utilities Inc (“Westridge”) to: (1) assign or identify an impairment coordinator; (2) implement and maintain a 24/7 fire watch until a water supply is established; and (3) establish and maintain a temporary freeze-proof water supply in Swift Creek Estates (“Swift Creek”).

[2] RVC seeks the statutory injunction based on an alleged ongoing contravention of the *Safety Codes Act*, RSA 2000, c S-1 (the “*Safety Codes Act*”), the *National Fire Code – 2023 Alberta Edition* (the “*Alberta Fire Code*”), and the National Fire Protection Association Standard for Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 2017 Edition (the “NFPA-25”).

[3] Westridge’s alleged continuing contravention is that it caused or permitted the hydrants to become impaired, failed to obtain the required approval before marking the hydrants out of service, and failed to take measures during the impairment to ensure that increased risks are minimized and the duration of the impairment is limited.

[4] Westridge is an Alberta-incorporated regulated public utility that provides potable water services to communities within RVC through water utility infrastructure that it owns and operates. Westridge services approximately 1,800 residences and 6,500 people. This application concerns Westridge’s operation of nine fire hydrants in the Swift Creek subdivision within RVC.

[5] The relevant infrastructure in this dispute is the Swift Creek central water distribution system (the “Swift Creek Potable Water System”), which provides potable water service to residences in the Swift Creek community. The nine hydrants in Swift Creek are directly connected to the Swift Creek Potable Water System.

[6] Throughout these reasons, “RVC” refers to Rocky View County and, where context requires, includes references to the County’s Fire Department or Fire Chief.

[7] In August 2006, RVC approved the Swift Creek subdivision (the “Subdivision Decision”). In May 2007, RVC entered into a development agreement (the “Development Agreement”) with Macdonald Westspring Properties (the “Developer”). Under the Subdivision Decision, the Developer was required to construct the Swift Creek Potable Water System and install fire hydrants directly connected to the system.

At the Owner’s expense, a central water distribution system including fire hydrants for fire fighting purposes, which conform to the requirements of the Safety Codes Act, shall be provided...

[8] Under special clause 7 of the Development Agreement, the Developer was required to submit, to RVC’s satisfaction, a hydrant testing report demonstrating that sufficient flow and pressure existed for firefighting purposes.

Prior to the issuance of a Construction Completion Certificate, the developer is to submit a hydrant testing report indicating that sufficient flow and pressure exists for fire fighting purposes, to the satisfaction of the Municipality. This report is to be prepared by a third party testing company and is to be signed off by a qualified professional engineer licensed to practice in the Province of Alberta.

[9] On February 2, 2011, Doran Consulting Services Ltd., an engineering firm, issued a Final Acceptance Certificate for the Swift Creek hydrants. Later that month, the Developer conveyed the Swift Creek Potable Water System, including the hydrants, to Westridge. The Final Acceptance Certificate contains the words “Acceptance by Westridge Utilities Inc” and bears the signature of D. Smith on behalf of Westridge. Prior to the Developer conveying the Swift Creek Potable Water System to Westridge, Westridge does not appear to have been involved in the system’s design, construction, or operation. I note that the Final Acceptance Certificate bears a 2009 date in two locations. However, the signature block date shows that “09” was struck out and replaced with “2011.” Both parties acknowledge in their briefs that the Final Acceptance Certificate was issued in 2011.

[10] On April 23, 2013, RVC passed the *Fire Hydrant Water Suppression Bylaw* (C-7259-2013) (the “*Fire Hydrant Bylaw*”) under the *MGA* and *Safety Codes Act*. The *Fire Hydrant Bylaw* establishes common standards to apply to all fire hydrants, regulating the installation of new hydrants, setting the responsibilities for private hydrant owners, providing for inspection and enforcement, and providing offences.

[11] The record includes a series of communications between Westridge and RVC regarding the Swift Creek hydrants. In 2023, RVC requested Westridge provide information and records under the *Fire Hydrant Bylaw*. Following discussions, RVC and Westridge agreed that RVC would conduct its own inspection and testing of the hydrants. Similar requests by RVC to conduct its own testing were agreed to in 2024 and 2025.

[12] In June 2025, RVC opened an enforcement file concerning the Swift Creek hydrants following complaints from residents of the community.

[13] In July 2025, Westridge exchanged telephone calls and emails with the RVC Fire Chief regarding the status of the Swift Creek hydrants and the scheduling of further testing and inspections in September 2025.

[14] On July 17, 2025, RVC notified Westridge that it was aware that two of the Swift Creek hydrants had been marked by Westridge as out of service and sought information on the date on which that occurred, the repairs necessary to bring the hydrants into operational service, and a timeline for the restoration of service. Westridge responded on July 23, stating the two hydrants needed to be replaced or repaired, and no timeline was provided. Westridge noted it was not certain of the extent of repairs necessary for four other hydrants.

[15] In the summer of 2025, the Safety Codes Council commenced an investigation into the condition of the Swift Creek hydrants. The investigation stemmed from a complaint made by a Swift Creek resident on July 21, 2025. The complaint raised concerns regarding historical non-compliance, hydrant maintenance across multiple subdivisions, and RVC's awareness of those issues and alleged failure to take enforcement action. As a note, the Safety Codes Council regulates accredited entities empowered to enforce the *Safety Codes Act* such as RVC and does not regulate private operators such as Westridge.

[16] On August 1, 2025, RVC issued an Enforcement Order under section 545 of the *MGA* requiring Westridge to comply with the *Fire Hydrant Bylaw* (the "Enforcement Order"). The Enforcement Order required Westridge to: (1) provide written records of tests and corrective measures relating to the Swift Creek hydrants for the previous two years; (2) retain a qualified inspector to prepare an inspection report for the nine Swift Creek hydrants and provide the report to RVC; and (3) within 30 days of receiving written notice from RVC, correct any deficiencies and implement any remedial measures identified in the inspection report or by RVC, and restore the Swift Creek hydrants to ensure compliance with the *Fire Hydrant Bylaw*.

[17] Westridge filed an appeal of the Enforcement Order under section 547(1) of the *MGA*. The RVC Enforcement Appeal Committee heard the appeal on November 18, 2025, and reserved its decision.

[18] On December 3, 2025, Westridge marked the Swift Creek hydrants as out of service and notified RVC. On the same day, a resident also notified RVC of the change.

[19] On December 12, 2025, the Safety Codes Council held a hearing and issued an order requiring RVC to achieve full legislative compliance for fire hydrants by December 31, 2027 (the "Safety Codes Council Order"). The Safety Codes Council Order required RVC to inspect, test, and maintain all hydrants; obtain annual compliance records from private hydrant owners; and enforce compliance through audits, orders, and other legal measures where necessary. The relevant requirements of the Safety Codes Council Order are as follows:

1. Rocky View County must ensure full compliance with all relevant regulations under the *Safety Codes Act*, the National Fire Code – Alberta Edition, and NFPA 25 for all fire hydrants within its jurisdiction no later than December 31, 2027.

- a. This includes annual inspection, testing and maintenance of all fire hydrants, regardless of ownership or subdivision;

- b. Rocky View County must require all owners of private hydrants, including Westridge Utilities Inc, to submit annual inspection and testing records as mandated by the National Fire Code – Alberta Edition and compliance with NFPA 25;

c. Rocky View County must implement enforcement measures to address any instance of non-compliance, including issuing orders, conducting audits, and pursuing legal remedies as necessary.

2. Rocky View County must expand its enforcement actions beyond the Springbank area to all subdivisions where hydrants are present, ensuring that no area is excluded from regulatory oversight.

3. Rocky View County must provide a comprehensive report to the Safety Codes Council by December 31, 2027, detailing the steps taken to achieve full compliance, including enforcement actions, communications with hydrant owners, and a plan for ongoing oversight.

[20] The Safety Codes Council Order notes that RVC's failure to comply with the Order may result in cancellation of its status as an accredited municipality under the *Safety Codes Act*. RVC did not file for judicial review of the Order.

[21] On December 30, 2025, the RVC Enforcement Appeal Committee upheld the Enforcement Order, subject to variations to the compliance date (decision 2025-EAC-001) (the "Enforcement Appeal Committee Order"). Westridge subsequently applied for statutory and judicial review of the RVC Enforcement Appeal Committee's decision.

[22] On April 29, 2026, Velocity Water Services completed testing of the nine Swift Creek hydrants and issued a report (the "Velocity Water Services Report"). The report concluded that eight of the nine hydrants required some form of repair, that three hydrants produced no water output, and six hydrants produced only 257 litres per minute ("L/min") of water. These flow rates were below both the 2011 certified flow rates of 2,100-2,500 L/min and the *Fire Hydrant Bylaw* requirement of 3,600 L/min.

[23] On April 30, 2026, RVC enacted the *Water and Wastewater Utility Exclusivity Bylaw* (C-8662-2025) (the "*Exclusivity Bylaw*"). Under section 33 of the *MGA*, the *Exclusivity Bylaw* authorizes the municipality to regulate utility providers by prohibiting the provision of services in the absence of a franchise agreement with the municipality. Westridge asserts that the *Exclusivity Bylaw* prohibits it from continuing operations without a franchise agreement under section 45 of the *MGA*. Westridge subsequently applied for judicial review of the *Exclusivity Bylaw* (the "*Exclusivity Bylaw* Judicial Review").

[24] On May 21, 2026, RVC emailed Westridge and other utility providers a Notice of Compliance with the *Fire Hydrant Bylaw*, requiring those providers to achieve compliance within 60 days of the notice. Among the requirements was for providers to provide RVC with inspection, testing and maintenance records for the past two years, or written confirmation that inspection and testing is scheduled *and* compliance is being initiated. The Notice stated RVC may seek enforcement under the *MGA* or the *Fire Hydrant Bylaw* if compliance is not achieved within 60 days.

[25] On June 10, 2026, Westridge proposed an impairment plan for implementation across all Westridge-serviced communities in RVC (the "Proposed Impairment Plan"). The proposal requested a response by June 30, 2026. Westridge alleges that RVC did not respond (Westridge Brief, Exhibit 3). The Proposed Impairment Plan included several mandatory conditions. Westridge requested that RVC Council pass a resolution stating that the *Exclusivity Bylaw* does

not apply to Westridge; that RVC provide Westridge with 90 days' notice before taking any enforcement action under the *Exclusivity Bylaw*; that the parties address fire suppression matters through franchise agreement negotiations; and that the parties request the Court to adjourn the related proceedings *sine die*. The Proposed Impairment Plan also required Westridge to appoint an impairment coordinator; provide 14 days' advance notice of planned impairments and prompt notice of unplanned impairments; follow specified impairment-labeling procedures; provide notice when a hydrant is returned to service; comply with review and coordination procedures with RVC; and retain records.

[26] On June 22, 2026, RVC issued an order under the Enforcement Order (the "Upgrade Order") requiring Westridge to correct deficiencies in the Swift Creek hydrants identified by the Velocity Water Services Report by August 24, 2026; and retain a qualified engineer to inspect the entire fire hydrant system in Swift Creek Estates and prepare a report that identifies all system deficiencies, outlines remediation and upgrades required for the system to establish flow rates in the hydrants conforming with the *Fire Hydrant Bylaw*, and outlines the estimated costs, steps, and timelines to bring the entire system into compliance with the *Safety Codes Act* and the *Fire Hydrant Bylaw*. The Upgrade Order was varied by the Provincial Fire Administrator on August 11, 2026, to address incorrect references and typographical errors. Westridge has appealed the Upgrade Order to the Safety Codes Council.

[27] There are two upcoming related proceedings. The judicial review of the Enforcement Order (2601 01824) (the "Enforcement Order Judicial Review"), and the judicial review of the *Exclusivity Bylaw*.

1. Background – The Swift Creek Potable Water System and Swift Creek Hydrants:

[28] Nine hydrants are directly connected to the Swift Creek Potable Water System. The Swift Creek Potable Water System provides water to residents of the community. The Swift Creek hydrants received a Final Acceptance Certificate on February 2, 2011, indicating flow rates of 2,100 to 2,500 L/min.

[29] As of April 29, 2026, the Velocity Water Services Report indicates eight of the nine hydrants appear to have required some form of repair, three produced no water output, and six produced only 257 L/min of water. Westridge asserts this report is hearsay and cannot be relied upon for the truth of its contents.

[30] Westridge claims that the Swift Creek Potable Water System was designed to supply water to residents, not to function as a municipal fire suppression system. Westridge further contends that the Swift Creek Potable Water System cannot reliably provide the flow rate, duration, and pressure necessary to meet firefighting standards at hydrants throughout the system on a year-round basis and requires substantial upgrades. No evidence was tendered regarding the capacity, flowrate, condition, or other characteristics of the Swift Creek Potable Water System apart from evidence relating to the hydrants.

II. Issues:

[31] This proceeding raises two issues:

1. Are the Swift Creek hydrants properly described as “fire hydrants”?
2. Should the Court order a statutory injunction under section 554(1) of the *MGA*?

III. Analysis:

1. Relevant Statutory Framework:

[32] The *MGA* establishes the legal framework governing municipalities. It authorizes municipalities to enact bylaws, raise revenue through taxation, and manage land-use and community planning.

[33] The *Safety Codes Act* regulates the safety of the design, manufacture, construction, installation, use, operation, occupancy, and maintenance of various facilities, buildings, and services by establishing standards for their safe use and operation. The matter regulated in this instance is the maintenance and operation of fire hydrants.

2. Legal Authority Incorporating *Alberta Fire Code* and NFPA-25:

[34] Section 1(2) of the *Safety Codes Act* provides that “In this Act, a reference to ‘this Act’ includes the regulations and bylaws made under this Act and any code, standards or body of rules declared to be in force pursuant to this Act.” The *Safety Codes Act* therefore incorporates the *Fire Code Regulation*, AR 32/2015, the *National Fire Code – 2023 Alberta Edition* (the “*Alberta Fire Code*” or “Code”), and the National Fire Protection Association Standard for Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 2017 Edition (“NFPA-25”).

[35] Accordingly, a contravention of any incorporated regulation, code, standard, or body of rules constitutes an offence under section 67(4) of the *Safety Codes Act*, which provides:

(4) A person who

- (a) contravenes this Act,
- (b) contravenes a condition in a permit, certificate or variance,
- (c) contravenes an order, or
- (d) fails to carry out any action required in an order to be taken within the time specified in it,

is guilty of an offence.

[36] Section 2(1) of the *Safety Codes Act* provides that the Act applies to fire protection, among other regulated undertakings:

Application of Act

2(1) This Act applies to fire protection, barrier-free design and the design, manufacture, construction, installation, use, operation, occupancy and maintenance of

- (a) buildings,
- (b) electrical systems,

- (c) elevating devices,
- (d) gas systems,
- (e) plumbing systems,
- (f) pressure equipment, and
- (g) private sewage disposal systems.

(2) The Minister may, by order, exempt any person or municipality or any thing, process or activity from any or all provisions of this Act and attach terms and conditions to the exemption.

(3) An exemption order made under subsection (2) may be made to apply generally or specifically and to all or a particular area of Alberta.

[37] The *Fire Code Regulation* declares the relevant *Alberta Fire Code* to be in force. Section 65(1)(4) of the *Safety Codes Act* provides for automatic code adoption, whereby new national codes come into force 12 months after their publication date. As of May 1, 2024, the 2023 edition of the *Alberta Fire Code* is the edition in force.

[38] The *Alberta Fire Code* is in force with respect to “fire protection” under section 1 of the *Fire Code Regulation*. Section 1(1)(n) of the *Safety Codes Act* defines “fire protection” as including “fire detection, prevention and suppression.” The *Alberta Fire Code* references and incorporates the NFPA-25.

[39] NFPA-25 is a code, standard, recommended practice, and guide published by the National Fire Protection Association in conjunction with the American National Standards Institute for water-based fire protection systems. It establishes minimum requirements and provides instructions for conducting inspections, testing, and maintenance, including the frequency at which those activities must be completed. In particular, it sets out requirements and procedures for impairments, notification processes, and system restoration.

[40] Westridge submits that the full text of NFPA-25 is not readily available to the public. The National Fire Protection Association makes the full text of the NFPA-25 available online for free at: <https://www.nfpa.org/codes-and-standards/nfpa-25-standard-development/25>.

[41] The *Public Utilities Act*, RSA 2000, c P-45 (the “PUA”), establishes the framework for regulating public utilities in Alberta by authorizing the Alberta Utilities Commission (the “AUC”) to regulate the rates, terms, and conditions of service of certain investor-owned utilities. The *Public Utilities Act* seeks to balance the interests of utility providers in earning a fair return on their investments with the interests of customers in receiving protection from unjust or unreasonable rates that might otherwise be charged: *Macdonald Communities Limited v Alberta Utilities Commission*, 2019 ABCA 353 at para 24; citing *Atco Ltd v Calgary Power Ltd*, 1980 ABCA 267, para 12, aff’d 1982 CanLII 208 (SCC), [1982] 2 SCR 557.

3. Statutory Interpretation Principles:

[42] Canadian courts apply a single approach to statutory interpretation. They read the words of an Act “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”: *Rizzo & Rizzo Shoes Ltd (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27 at para 21. In interpreting legislation,

courts presume that the Legislature is familiar with its own statute book and drafts legislation with consistency between enactments in mind: **Gordon v Taylor**, 2014 ABQB 11 at para 10 [**Gordon**]; citing **R v Ulybel Enterprises Ltd**, 2001 SCC 56, [2001] 2 SCR 867 at para 30.

[43] In **United Taxi Drivers' Fellowship of Southern Alberta v Calgary (City)**, 2004 SCC 19 at paras 6–8 [**United Taxi Drivers**], the Supreme Court of Canada held that modern municipal legislation requires a broad and purposive approach to the interpretation of municipal powers. This approach is consistent with the contextual approach described in **Rizzo**. It is also consistent with section 10 of the *Interpretation Act*, RSA 2000, c I-8, which provides that every provincial enactment must be given a fair, large and liberal construction and interpretation that best ensures the attainment of its objects.

[44] Legislative purpose is central to the interpretive exercise. Courts must interpret remedial public welfare legislation generously and avoid narrow or technical interpretations that would interfere with or frustrate the attainment of the Legislature's public welfare objectives. In **CNOOC Petroleum North America ULC v 801 Seventh Inc**, 2025 ABKB 145 at para 536 [**801 Seventh Inc**], Justice Jeffrey approved the approach adopted in **R v Bondfield Construction Company Limited**, 2022 ONCA 302 at paras 58–59 [**Bondfield Construction**], where the Court of Appeal of Ontario articulated principles governing the interpretation of public welfare legislation in the context of the OHSA:

The purpose of the legislation is also central to the interpretive exercise. The OHSA is public welfare legislation “intended to guarantee a minimum level of protection for the health and safety of workers.” As such, provisions of the OHSA and its regulations must be interpreted generously and “[n]arrow or technical interpretations that would interfere with or frustrate the attainment of the legislature's public welfare objectives are to be avoided.”

A generous interpretation, however, should not be confused with a limitless one. While the OHSA aims to protect workers from both deliberate and inadvertent conduct, including accidents that result when workers make mistakes or are careless or reckless, it is important to remember that the OHSA seeks to achieve a reasonable level of worker protection, not an entirely risk-free work environment. [Emphasis in original. Citations omitted.]

[45] The *Safety Codes Act* is remedial public welfare, health, and safety legislation. Courts should therefore interpret it generously and in a manner consistent with its purposes and objectives.

[46] The modern principle of statutory interpretation applies equally to regulations. A regulation must be interpreted in the context of its enabling statute and with regard to the purpose of the enabling provisions: **Gordon** at para 9; citing **Bristol-Myers Squibb Co v Canada (Attorney General)**, 2005 SCC 26 at paras 37–38.

[47] The *Alberta Fire Code* establishes minimum requirements for fire safety. Although the *Alberta Fire Code* is a separate document adopted through the *Fire Code Regulation*, its provisions must be interpreted in accordance with the principle that public welfare legislation receives a broad and purposive interpretation that advances the legislation's purpose and objectives. Those objectives are set out in Division A, section 2.2.1.1.(1).

The objectives of this Code are as follows (see Note A-2.2.1.1.(1)):

OS Safety

An objective of this Code is to limit the probability that, as a result of specific circumstances related to the building or facility, a person in or adjacent to the building or facility will be exposed to an unacceptable risk of injury.

OH Health

An objective of this Code is to limit the probability that, as a result of specific circumstances related to the building or facility, a person will be exposed to an unacceptable risk of illness.

OP Fire Protection of Buildings and Facilities

An objective of this Code is to limit the probability that, as a result of specific circumstances related to the building or facility, the building or facility will be exposed to an unacceptable risk of damage due to fire.

IV. Threshold Issues:

1. Evidentiary Issue – The Hansen Affidavit:

[48] The parties made submissions on the weight the Court should give the Affidavit of Kevin Hansen, Operations Manager of Westridge (“Hansen Affidavit”). I requested supplemental submissions on the topic, which were provided by both parties on September 2, 2026.

[49] RVC submits that the Hansen Affidavit should be given little weight. In particular, RVC points to the lack of supporting evidence and argues that the affidavit is conclusory, argumentative, and entirely self-serving. In supplemental submissions RVC provided particulars to those claims. RVC further submits that it is not required to cross-examine on an affidavit where doing so would permit the witness to explain inconsistencies or anomalies in the evidence. The Court is not required to accept evidence merely because it has not been the subject of cross-examination. Finally, RVC argues that planning documents relating to the design and construction of the Swift Creek Potable Water System and hydrants contradict many of Mr. Hansen’s statements.

[50] RVC relies on *McDonald v Sproule Management GP Limited*, 2023 ABKB 587 [*McDonald*], and *First Capital Holdings (Alb) Corporation v Metropolitan Ventures Inc*, 2015 ABQB 54 [*First Capital Holdings*]. Both cases arose in the context of summary judgment applications.

[51] Westridge opposes RVC’s position and submits that the Hansen Affidavit should be considered and given appropriate weight. Westridge further submits that RVC filed a supplementary affidavit without providing Mr. Hansen with an opportunity to respond to alleged contradictions, contrary to the rule in *Browne v Dunn*, Rule 6.7, and section 23 of the *Alberta Evidence Act*, RSA 2000, c A-18. Westridge submits that this raises a fairness issue, and the Court is entitled to weigh the Hansen Affidavit against other evidence and make findings of fact. Additionally, Westridge further distinguishes the authorities relied on by RVC on the basis that they arose in the context of summary judgment applications rather than an application for a

permanent statutory injunction, and were decided before **Weir-Jones Technical Services Incorporated v Purolator Courier Ltd**, 2019 ABCA 49 [**Weir-Jones**].

[52] Westridge relies on **Weir-Jones, McDonald, R v SCDY**, 2020 ABCA 134, and **Chandos Construction Ltd v Buildtech Framing Inc**, 2014 ABQB 597.

[53] **McDonald** concerned a summary judgment application in a claim for wrongful dismissal. The evidence tendered by one party disputed the other party's evidence and created credibility issues between the parties' witnesses. This included affidavits with "numerous undocumented or unsupported bald assertions, conclusory statements, vague references, personal opinions, and hearsay": **McDonald** at para 86.

[54] In **McDonald**, Justice Marion articulated evidentiary principles and tools applicable in summary judgment applications. Those principles include screening of the evidence to eliminate inadmissible evidence and determining whether disputes regarding material facts or credibility remain. Such disputes are indicators that genuine issues requiring a trial may exist.

[55] The principle on which RVC principally relies was stated at paragraph 96:

bald, conclusory, argumentative or self-serving statements, personal opinion, allegations, speculation, conjecture or assertions made in affidavits or questioning transcripts, in the absence of detailed facts and supporting evidence, should be given little or no weight and cannot establish a genuine issue requiring a trial.

[56] Both parties rely on paragraph 98:

while a party is not required to question on affidavits, and while the court is not bound to accept evidence that has not been the subject of cross-examination, a party's failing to question on admissible evidence runs the risk that the evidence will effectively be unchallenged or uncontradicted for the purposes of the application, which may detract from the strength of the other party's case.
[emphasis added]

[57] **First Capital Holdings** concerned a summary judgment application in a claim for unpaid rent under a commercial lease, including allegations of conspiracy and inducement of breach of contract. Master Robertson dismissed the application.

[58] RVC advances the principle that a party does not need to cross-examine on an affidavit, and may opt not to do so if it would allow the witness to explain inconsistencies or anomalies in their evidence, relying on **First Capital Holdings** at paragraph 19:

[The moving party] argues that there is no obligation to cross-examine an applicant's witness when the witness' evidence in these proceedings, as a whole, cries out for explanations. It is not for the plaintiff to conduct a cross-examination to allow the witness to explain the inconsistencies or anomalies in his evidence. First Capital has not tendered any contrary evidence from another witness; it simply argues that the evidence put forward in support of the application does not pass muster. Therefore, it submits that *Browne v. Dunn* does not apply, nor does section 23(2) of the *Alberta Evidence Act*.

[59] In **Weir-Jones**, the Court of Appeal of Alberta adopted a test for summary judgment based on principles of fairness and proportionality and rejected an earlier line of cases stating that the applicant's position must be "unassailable." Westridge cautions the Court that **First Capital Holdings** was decided under the now rejected "unassailable" standard. **Weir-Jones** permitted courts to weigh evidence in summary judgments.

[60] Courts are required to make decisions on the basis of conflicting affidavit evidence all the time. Questioning on affidavit is permissive, not mandatory. I am not persuaded that the authorities concerning summary judgment, including those decided before **Weir-Jones**, warrant giving the Hansen Affidavit reduced weight or no weight at all.

[61] From a fairness perspective, I am satisfied that each party is fully aware of the other's position and arguments. The status of the Swift Creek hydrants and the applicability of the fire-suppression regulatory regime have been the subject of dispute between these parties for more than a decade and have been the subject of litigation. I do not consider it necessary that RVC cross-examine Mr. Hansen on the contents of his affidavit. However, RVC's decision carries the risk identified by Justice Marion in **McDonald** at paragraph 98.

[62] Accordingly, I reject RVC's request and will consider the Hansen Affidavit in its entirety, assigning it the weight warranted by the evidence and applicable legal tests.

2. Evidentiary Issue – Privilege on Evidence Provided in Party's Affidavits:

[63] The parties submitted two exhibits that raised privilege issues. First, RVC submitted the Velocity Water Services Report. Second, Westridge submitted the Proposed Impairment Plan and asserted that RVC did not respond to it.

[64] I requested supplemental written submissions on whether settlement privilege applied to these two records. The parties' responses indicated that they had not communicated with each other about this issue before filing their supplementary submissions. I questioned the parties on privilege in the hearing.

[65] Westridge did not claim privilege over the Velocity Water Services Report or the Proposed Impairment Plan. RVC did not claim privilege over the Velocity Water Services Report and appeared to claim privilege only over its response to the Proposed Impairment Plan.

[66] I accept that any lack of response by RVC, and the contents of any response, are subject to settlement privilege. Westridge's disclosure of the Proposed Impairment Plan and its submissions that RVC did not respond to the proposal revealed little about RVC's negotiating position. I do not draw an inference or rely on RVC's response or absence of a response to the Proposed Impairment Plan.

3. Evidentiary Issue – Hearsay and Velocity Water Services Report:

[67] During the hearing, counsel for Westridge submitted that the Velocity Water Services Report constituted hearsay if used for the truth of its contents. Although Westridge commissioned the Report in response to section 2 of the Enforcement Order, its author did not attend the hearing, and it appears that neither party sought to cross-examine them. Westridge submits there is no exception to the hearsay rule permitting the Court to use the Report for the flow rate or condition of the hydrants.

[68] Westridge submits that the Velocity Water Services Report is hearsay if tendered as proof of the hydrants' actual functionality. Westridge submits that the Report is technical and requires expert evidence to assist the Court in interpreting it. Westridge further submits that the Report is a point-in-time snapshot based on a short-term test and reflects only the hydrants' flow rates. Westridge submits that a longer test considering additional variables, including duration, which is the volume of water over an extended period of time, and water pressure, is necessary to assess the hydrants' fire suppression capabilities.

[69] RVC submits that the Court need not accept the Velocity Water Services Report for the truth of its contents to issue an injunction because the relevant contravention is the impairment of the hydrants through Westridge affixing the out-of-service tags. However, RVC submits that the Velocity Water Services Report indicates a more significant impairment that bears on the potential or actual functionality of the infrastructure.

[70] I accept Westridge's submission that the Velocity Water Services Report constitutes hearsay if used for the truth of its contents.

[71] I reviewed the Report as it was submitted by RVC. The Report includes two boxes, one marked "pass" and the other "fail," which appear to indicate compliance with NFPA-25 and NFPA-291. The Report indicates that some hydrants received a "pass" designation under NFPA-25 and NFPA-291 despite producing no water output. I find it unclear how or why a hydrant could receive a "pass" designation despite producing no water output. Accordingly, the Court cannot rely on the Report in the absence of expert assistance to interpret the results and assess the hydrants' fire suppression capabilities and conformity with the relevant regulatory framework.

4. Is the Injunction Application an Abuse of Process, in the form of a Collateral Attack on the Judicial Review Applications?

[72] Westridge submits that the injunction application is an impermissible collateral attack on the Enforcement Order Judicial Review. Westridge notes that, in April 2026, RVC enacted an *Exclusivity Bylaw* that would render Westridge's continued operations unlawful and that Westridge intends to seek judicial review of that *Bylaw*.

[73] RVC submits that the application constitutes permissible parallel enforcement despite the ongoing Enforcement Order Judicial Review because Westridge marked the Swift Creek hydrants out of service on December 3, 2025, after the Enforcement Appeal Committee hearing on November 18, 2025. RVC contends that Westridge's decision to mark the hydrants as out of service triggered mandatory obligations under the *Alberta Fire Code*. RVC therefore argues that the injunction application arises from a separate regulatory obligation and is distinct from the *Fire Hydrant Bylaw* enforcement proceedings at issue in the Enforcement Order Judicial Review.

A. Application of section 554(1) of the MGA and other proceedings on the same matter:

[74] Section 554(1) of the *MGA* provides for a specific remedy that does not limit or prevent a municipality from bringing other proceedings on the same facts. The statute expressly contemplates there may be other proceedings relating to a contravention. The language provides that a municipality may apply for an injunction "in addition to any other remedy and penalty imposed by this or any other enactment or a bylaw." A municipality is free to bring an injunction application under a statute or bylaw.

[75] In *Pawlowski v Calgary (City)*, 2008 ABQB 267 at paragraph 47 [*Pawlowski*], Justice Rawlins noted the language “could not be clearer that the [municipality] is not obliged to choose between the two remedies.”

B. Collateral Attack – Law:

[76] A collateral attack is an attack made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgment: *Wilson v The Queen*, 1983 CanLII 35 (SCC), [1983] 2 SCR 594 at 599 [*Wilson*]. Generally, collateral attack is invoked where the party is attempting to challenge the validity of a binding order in the wrong forum, in the sense that the validity of the order comes into question in separate proceedings when that party has not used the direct attack procedures that were open to it, such as an appeal or judicial review: *Garland v Consumers’ Gas Co*, 2004 SCC 25 at para 71. It precludes a party from forum shopping for a different and better result: *British Columbia (Workers’ Compensation Board) v Figliola*, 2011 SCC 52 at para 36. The policy rationale of the doctrine of collateral attack is to maintain the rule of law and to preserve the repute of the administration of justice: *Metropolitan Toronto Condominium Corporation No 1352 v Newport Beach Development Inc*, 2012 ONCA 850 at para 88.

[77] In *Resler v Anglin*, 2026 SCC 23 [*Resler*], the Supreme Court of Canada clarified the collateral attack doctrine. Justice Moreau, relying on *Wilson*, articulated the test: “the object of the proceeding is to reverse, vary or nullify an order or judgment made in a previous collateral proceeding that has not been varied or set aside on appeal”: *Resler* at para 29. Justice Moreau noted that the doctrine “should be construed more narrowly and focus on challenges to the order itself and its enforceability”: *Resler* at para 30. As a result, not every challenge to issues previously litigated will constitute a collateral attack. In particular, “[a] reconsideration of facts established in a collateral order or judgment does not itself dispute the enforceability of the underlying decision,” because “[t]hose two elements are distinct”: *Resler* at para 32. The doctrine is therefore directed at protecting the integrity of the justice system by preventing indirect challenges to the validity or enforceability of existing court orders, rather than preventing all reconsideration of factual issues that may have been addressed in an earlier proceeding: *Resler* at paras 30, 32.

C. Collateral Attack – Application:

[78] This application is not a collateral attack on the Enforcement Order Judicial Review.

[79] The cause of action and underlying legal basis for this application are distinct from the Enforcement Order Judicial Review. This is a statutory injunction sought under section 554(1) of the *MGA* and is based on an alleged contravention of section 5 of the *Safety Codes Act*, not RVC’s *Fire Hydrant Bylaw*. A municipal bylaw is subordinate to provincial legislation and cannot override an Act of the Legislature.

[80] The injunction application does not seek to attack an order “made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order.” Rather, RVC is pursuing a remedy to mitigate the effects of an alleged ongoing contravention in the forum that the Legislature provided. A decision in this proceeding will not render the Enforcement Order Judicial Review invalid or moot.

[81] The remedies sought in this injunction application differ from those at issue in the Enforcement Order Judicial Review. In this application, RVC seeks a statutory injunction requiring Westridge to mitigate the consequences of the Swift Creek hydrants’ impairment by: (1)

assigning or identifying an impairment coordinator; (2) implementing and maintaining a 24/7 fire watch until a water supply is established; and (3) establishing and maintaining a temporary freeze-proof water supply in Swift Creek. By contrast, the Enforcement Order Judicial Review concerns requirements that Westridge: (1) provide written records; (2) retain a qualified inspector to prepare an inspection report, which has since been completed; and (3) correct deficiencies within 30 days of receiving written notice from RVC.

[82] The salient difference in the remedies is that this application seeks relief requiring Westridge to mitigate the consequences of the impaired hydrants under the *Safety Codes Act*, whereas the Enforcement Order Judicial Review concerns obtaining information and enforcing obligations intended to bring the Swift Creek hydrants into compliance with the *Fire Hydrant Bylaw*.

[83] Section 554(1) of the *MGA* provides an appropriate mechanism for RVC to seek the relief requested. This is not a case in which RVC has advanced a new cause of action because it was dissatisfied with the outcome of a separate proceeding arising from the same factual matrix. Enforcement measures intended to compel upgrades to a fire suppression system under a bylaw are distinct from an application seeking relief to address an alleged failure to discharge statutory responsibilities relating to a regulated utility.

[84] RVC is responsible for enforcing the statutory framework governing fire suppression capabilities within its jurisdiction. A failure to discharge those responsibilities could expose RVC and its residents to significant risk.

[85] The underlying facts for the Enforcement Order are a failure to provide maintenance records relating to the Swift Creek hydrants, observations that two hydrants were marked as out of service, and that Westridge advised that two hydrants required repair or replacement. It is not clear from the record whether the observed hydrants were the same as those Westridge flagged for the County.

[86] At the time of the Enforcement Appeal Committee hearing, RVC was unaware that Westridge would mark all of the hydrants out of service a few weeks later. Accordingly, the need for substantial mitigation measures could not have been before the Enforcement Appeal Committee.

[87] Even in the circumstance where the cause of action and remedy sought are the same, section 554(1) of the *MGA* expressly provides municipalities with a mechanism to seek court intervention when an ongoing contravention that may be the subject of a final administrative order is unlikely to cease. This proposition is supported by *Edmonton (City) v Peter*, 2015 ABQB 635 at para 36 [*Peter*], where Justice Veit granted a section 554 injunction while judicial review of a Community Standards and Licence Appeal Board decision was scheduled to be heard three months later.

[88] Accordingly, this application is not a collateral attack. Even if it were, I would permit the application to proceed on its merits.

D. Abuse of Process:

[89] The parties did not make submissions on abuse of process, however, the doctrine was implicitly raised by Westridge in its brief and oral arguments regarding the conduct of RVC and the necessity of this proceeding. In addition, Westridge's collateral attack arguments more closely engage the doctrine of abuse of process.

[90] Abuse of process reflects “the inherent power of the court to prevent the misuse of its procedure, in a way that would . . . bring the administration of justice into disrepute.” It may arise where the “litigation before the court is found to be in essence an attempt to relitigate a claim which the court has already determined”: *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 at para 37.

[91] The Supreme Court of Canada described abuse of process in *Saskatchewan (Environment) v Métis Nation – Saskatchewan*, 2025 SCC 4 at para 33:

The doctrine of abuse of process is concerned with the administration of justice and fairness. The doctrine engages the inherent power of the court to prevent misuse of its proceedings in a way that would be manifestly unfair to a party or would in some way bring the administration of justice into disrepute. [Citations omitted]

[92] Common facts underlying different proceedings with distinct causes of action do not, by themselves, constitute an abuse of process. In *Smode v Deveau*, 1996 ABCA 411 at para 3, the Court of Appeal quotes Justice Johnson in *Hall v Hall and Hall’s Feed & Grain Ltd*, 1958 CanLII 271 (AB SCAD):

...if there are facts which are common to several causes of action, an inquiry into these facts in one cause of action does not prevent an examination of the same facts where another cause of action is set up, provided that this cause of action is separate and distinct.

[93] I do not find that this statutory injunction application constitutes an abuse of process. The application raises a serious issue to be tried, arises from statutory authority that expressly contemplates a municipality commencing multiple proceedings, and seeks a remedy distinct from that sought in the Enforcement Order Judicial Review. I do not accept that the Legislature intended the MGA to preclude this type of proceeding.

E. Has there been an Escalation or Material Change in Circumstances?

[94] Both parties address the concepts of escalation and material change at different parts of their respective analyses. Westridge argues that no escalation or material change in circumstances has occurred, undermining the exceptional circumstances third branch of the injunction test. RVC, by contrast, submits that the circumstances have escalated or materially changed, which weighs against any argument that the injunction application constitutes a collateral attack.

[95] Westridge submits that the evidence does not demonstrate that the condition of the Swift Creek hydrants has deteriorated since the Enforcement Order. Westridge further submits that marking the hydrants as out of service complied with the *Fire Hydrant Bylaw* and enhanced public safety by notifying potential users that the hydrants could not be used for fire suppression purposes.

[96] RVC submits that Westridge’s decision to mark the Swift Creek hydrants as out of service constitutes an escalation or material change in circumstances. RVC relies on *Peter* at para 36, where Justice Veit held a material change in circumstances occurred because the “fact situation changed, one might say escalated.”

F. Analysis – Escalation or Material Change in Circumstances:

[97] In *Peter*, the City sought an injunction under section 554(1)(b) of the MGA to stop an ongoing nuisance arising from a “yard sale” that exceeded the permitted three-day limit while a judicial review of a Community Standards and Licence Appeal Board decision was scheduled to

be heard three months later. The material changes between the administrative proceeding and the injunction application included a significant increase in the quantity and variety of materials on the property and the addition of “yard sale” signage (**Peter** at para 18). The Court granted the injunction to prevent ongoing breaches of the City’s bylaws.

[98] **Peter** confirms that judicial discretion exists to permit a municipality’s application for statutory injunctive relief where a parallel judicial review has not yet been heard, and the facts underlying the judicial review have escalated or materially changed. Additionally, Justice Veit noted at paragraph 35:

Injunctive relief is equitable relief, or relief based on what is fair. It is discretionary; for example, even where the facts presented appear to call for some action, the court being asked for injunctive relief may deny the application if it appears that there are alternate venues available to deal with the issue ...

[99] Westridge’s decision to mark the Swift Creek hydrants as out of service after the Enforcement Appeal Committee hearing and before the Committee rendered its decision constituted an escalation and a material change in circumstances. Although RVC was aware, when it issued the Enforcement Order, that two hydrants had been marked out of service, it did not learn until December 3, 2025, that Westridge marked all nine hydrants out of service, and that Swift Creek no longer had fire suppression support from those hydrants.

G. Application of Collateral Attack – the Injunction Application Can Proceed:

[100] As described above, section 554(1) of the *MGA* does not limit or prevent a municipality from seeking an injunction where other proceedings arising from the same facts are ongoing or have concluded.

[101] This proceeding does not consider a contravention of the *Fire Hydrant Bylaw*. Rather, it considers compliance with the *Safety Codes Act*. This application is not a collateral attack on the Enforcement Order Judicial Review, nor does abuse of process apply. Even if collateral attack and abuse of process applied, I would exercise my discretion to hear the application on its merits.

[102] The Court may exercise its discretion to hear a statutory injunction application despite a parallel judicial review concerning a contravention of the same enactment or bylaw, including where the judicial review has not yet been heard. This is available if the facts underlying the parallel proceeding have materially changed or escalated. I find that Westridge’s conduct of marking the hydrants as out of service constitutes an escalation or material change in circumstances.

[103] Accordingly, I exercise my discretion to hear the statutory injunction application on its merits.

5. Are the Swift Creek Hydrants Properly Described as “Fire Hydrants”?

[104] Westridge submits that the hydrants in Swift Creek are not “fire hydrants” because: (1) they have never been used principally for firefighting, fire prevention, fire suppression, supplying water to firefighters, or similar purposes; (2) the Swift Creek Potable Water System was designed and constructed for utility purposes rather than fire suppression; (3) RVC did not require Westridge to comply with the *Fire Hydrant Bylaw* between 2013 and August 2025; and (4) RVC allegedly acknowledged Westridge’s position as recently as 2023 when it discontinued requests for

documents and arranged for Westridge to conduct its own inspection and testing. Westridge also relies on various definitions, and the absence of definitions, relating to “fire hydrant” and “private hydrant” in the *Fire Hydrant Bylaw*, the *Alberta Fire Code*, and NFPA-25.

[105] RVC submits that the hydrants are fire hydrants. RVC relies on the following factors: (1) the *Alberta Fire Code* does not distinguish between a hydrant’s primary use and its use for fire protection purposes; (2) the subdivision and development agreement approvals required the nine hydrants to be designed, installed, and tested as fire hydrants in compliance with the *Safety Codes Act* and certified upon completion; (3) Westridge has not provided evidence that the hydrants are not fire hydrants; and (4) the hydrants may be identified as fire hydrants based on their characteristics and functionality as a matter of common sense (or the “duck” analogy).

A. Legal Definitions of Fire Hydrants:

[106] Division A, section 1.4.1.1 of the *Alberta Fire Code* provides interpretive assistance where a term is not defined in the *Code*:

1) Words and phrases used in this Code that are not included in the list of definitions in Article 1.4.1.2. shall have the meanings defined in the *Safety Codes Act* and its Regulations, or the meanings that are commonly assigned to them in the context in which they are used, taking into account the specialized use of terms by the various trades and professions to which the terminology applies. [emphasis added]

[...]

5) For words not defined by Sentence (1), reference should be made to the Oxford University Press 2004, “Canadian Oxford Dictionary, 2nd Edition.”

[107] The *Canadian Oxford Dictionary*, 2nd Edition (2004), defines “fire hydrant” as “a pipe, [usually] on the side of the street, with a valve for drawing water from a main to which a firehose can be attached.” The *Canadian Oxford Dictionary* does not provide a separate definition for “hydrant.”

[108] Relevant definitions of “private” in the *Canadian Oxford Dictionary* include “belonging to an individual; one’s own; personal: private property” and “(of a service, business, etc.) provided or owned by an individual or group of individuals rather than the government or a public body.”

[109] Division B, section 6.4.1.1.(1) of the *Alberta Fire Code* incorporates NFPA-25 by reference for the inspection, testing, and maintenance of hydrants by providing:

Water-based fire protection systems shall be inspected, tested and maintained in conformance with NFPA 25, “Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems.”

[110] The note to Division B, section 6.4.1.1.(1) of the *Alberta Fire Code* (A-6.4.1.1.(1)) defines “water-based fire protection systems” to include “private hydrants.”

[111] Section 3.3.12 of NFPA-25 defines “fire hydrant” as “[a] valved connection on a water supply system having one or more outlets and that is used to supply hose and fire department pumps with water.”

B. Are the Swift Creek Hydrants Properly Described as “Fire Hydrants”?

[112] Westridge submits that the hydrants are not fire hydrants because they have not been used principally for firefighting purposes, relying upon the definition in the *Fire Hydrant Bylaw*, which includes the phrase “used principally for firefighting purposes.” Westridge characterizes the distinction between the hydrants’ design under the Subdivision and Development Approvals and their actual use as artificial. Westridge relies on the 2011 Final Acceptance Certificate, interpreting the hydrants’ capabilities in terms of what they “can do” rather than what they “will do.” Westridge further relies on the *Fire Hydrant Bylaw*, submitting that a regulated entity would reasonably expect all the applicable standards to be set out in a bylaw. Westridge argues that RVC must “live and die” by the bylaw in its enforcement and cannot instead rely on definitions in the *Safety Codes Act*. Otherwise, Westridge submits, enforcement would be arbitrary.

[113] I do not find Westridge’s submissions persuasive or reasonable on the interpretation, or absence of a definition, of “hydrant,” “fire hydrant,” or “private hydrant.” Westridge’s Brief dedicated 17 paragraphs to argue that the Swift Creek hydrants are not “fire hydrants.” RVC’s Brief dedicated three paragraphs on the topic, one of which was a photograph of a Swift Creek hydrant. I find the County’s argument persuasive.

[114] Westridge does not dispute that it is the owner of the Swift Creek hydrants.

[115] The record does not disclose with certainty whether RVC has actually had to use the Swift Creek hydrants for emergency fire suppression purposes, but it appears that the hydrants have not been so used. The parties agree that RVC has used the hydrants for testing and training, although Westridge notes that it authorized those activities. Westridge has consistently asserted that unauthorized use of the hydrants by RVC constitutes trespass.

[116] Both parties relied on Master Funduk’s observation that: “[i]f it looks very much like a duck, walks very much like a duck and quacks very much like a duck there is a high probability it may well be a duck”: ***General Motors Acceptance Corp of Canada v Trans Canada Credit Corp***, 1994 CanLII 8905 (AB QB) at para 62. Westridge submits that the Swift Creek hydrants “certainly don’t quack like one.” In oral submissions, Westridge noted “They look like ducks but they don’t quack. They have never quacked. We don’t let them quack.”

[117] I understand the duck test to permit a reasonable person to identify an object based on its observable characteristics. Most children and adults could identify a duck from its appearance, walk, and quack. Like Master Funduk, I recognize that such a deduction carries a risk of error.

[118] The photographs in evidence depict what appear to be typical fire hydrants. I can draw that general first conclusion from the photographs. It is highly likely that an adult or child asked, “What are these?” would answer, “Fire hydrants.” However, the issue requires a complete statutory interpretation analysis.

[119] There is no admissible evidence on the record that indicates whether the particular hydrant models were marketed or sold as fire hydrants, or their fire suppression capabilities. Although the Velocity Water Services Report identifies the manufacturer and model of each hydrant. However, I agree with Westridge that the Velocity Water Services Report does not assist in determining whether the Swift Creek hydrants are “fire hydrants.” The Report merely describes the condition and capabilities of the hydrants in relation to the requirements of NFPA-25. However, the Report is hearsay and cannot be relied upon for the truth of its contents.

[120] Section 3.3.12 of NFPA-25 defines a hydrant as “[a] valved connection on a water supply system having one or more outlets and that is used to supply hose and fire department pumpers with water.” I consider the NFPA-25 definition sufficient to inform the *Alberta Fire Code*’s direction that words and phrases carry “meanings that are commonly assigned to them in the context in which they are used.”

[121] The Swift Creek hydrants also appear to fall within the *Canadian Oxford Dictionary* definition of “fire hydrant” as “a pipe, [usually] on the side of the street, with a valve for drawing water from a main to which a firehose can be attached.” This definition does not incorporate the term “used,” but implies a capability. That definition necessarily implies that a fire hydrant serves a fire suppression purpose.

[122] I approach this issue mindful of the Court of Appeal of Ontario’s comments in ***Bondfield Construction*** at paras 58–59, which were incorporated by Justice Jeffrey in ***801 Seventh Inc*** at para 536, regarding the interpretation of public welfare legislation. Whereby “[n]arrow or technical interpretations that would interfere with or frustrate the attainment of the legislature’s public welfare objectives are to be avoided.”

[123] I do not accept that active use or any prior use for fire suppression purposes is necessary for a hydrant to be characterized as a fire hydrant. Similarly, a hydrant need not be used principally or primarily for fire suppression purposes to fall within that definition. Westridge’s use of the hydrants for general maintenance on the Swift Creek Potable Water System such as flushing and scouring water mains does not remove them from the application of otherwise applicable health and safety legislation.

[124] Requiring a hydrant to be used for fire suppression before it qualifies as a “fire hydrant” frustrates the public safety objectives of the *Safety Codes Act*. Many fire hydrants in Alberta have never been used by a fire department for fire suppression. Relying on a narrow interpretation of prior use would permit owners of those hydrants to avoid the statutory duties and regulatory oversight imposed by the legislation. It is inconsistent with the spirit, purpose, and interpretation of public welfare legislation. The outcome of which invariably enhances the risk to life and property.

[125] This proceeding arises under the *Safety Codes Act*, and the alleged contravention must be interpreted under that Act. The definition of “fire hydrant” in the *Fire Hydrant Bylaw* is not relevant to the interpretation of the *Safety Codes Act* in this proceeding. Supporting this is section 10.8 of the *Fire Hydrant Bylaw* which notes that applicable provincial or federal legislation is paramount in the event of a conflict. I recognize Westridge’s argument, and consistent regulatory definitions across levels of government are desirable. However, where that is not the case, a definition contained in a municipal bylaw does not take precedence over a definition contained in a code incorporated into a provincial regulatory scheme when interpreting obligations and standards under that scheme.

[126] Accordingly, I interpret “used to supply hose and fire department pumpers with water” within the context of section 3.3.12 of NFPA-25 to mean being capable of use, not requiring any prior use.

[127] The adjective “private” does not alter the conclusion that these are fire hydrants under the *Safety Codes Act*. In the context of the *Canadian Oxford Dictionary*, “private” simply denotes

ownership by an individual or private entity rather than by a government or public body. The Swift Creek hydrants also appear to satisfy the definition of “fire hydrant” in NFPA-25.

[128] I do not accept that the adjective “private,” or the fact of non-governmental ownership, changes the purpose or definition of a fire hydrant as it applies to the *Safety Codes Act*.

[129] I do not accept Westridge’s reliance on the enhanced content accompanying section 3.3.12 of NFPA-25, which appears to exclude certain fire hydrants from the standard’s requirements because “fire hydrants located on public water mains under the control of a water authority is outside the scope of this standard unless required by the [Authority Having Jurisdiction].”

[130] This appears to be an alternative argument based on Westridge’s position that it is a “public utility” and potentially a water authority. First, RVC is the authority having jurisdiction under the *Safety Codes Act* and may determine that the hydrants fall within the scope of the standard. Second, the quoted passage is taken from the Enhanced Content accompanying the 2026 edition of NFPA-25. This is apparent from the URL on the page and from the reference to the definition of Fire Hydrants as section 3.3.14 rather than section 3.3.12 of the 2017 edition, which remains in force. Third, the content references NFPA-25 section 1.1.2 (Types of Systems). However, section 1.1.2 of the 2017 edition does not mention “public water mains” or a “water authority.” The scope of systems captured by section 1.1.2 is expressly non-exhaustive, as it provides that such systems “include, but are not limited to.”

[131] Other contextual arguments were made by Westridge to determine whether the hydrants are “fire hydrants” under the *Safety Codes Act*. Both parties advance the Subdivision and Development Approvals to support their conclusion. Westridge submits that the Subdivision and Development Approvals do not assist in determining whether the hydrants are fire hydrants. Westridge submits that there is an artificial distinction between the hydrants’ design and use, submitting that they may be designed for fire suppression but not used for that purpose, or *vice versa*.

[132] The Subdivision Approval issued by RVC required “[a]t the [Developer’s] expense, a central water distribution system including fire hydrants for fire fighting purposes, which conform to the requirements of the *Safety Codes Act*, shall be provided ...” The Development Agreement required the Swift Creek hydrants to be installed to meet fire suppression requirements. Westridge could not assume ownership of the Swift Creek Potable Water System until the hydrants received a Final Acceptance Certificate indicating that “sufficient flow and pressure exists for fire fighting purposes.” The Final Acceptance Certificate includes the words “Acceptance by Westridge Utilities Inc.” and bears the signature of D. Smith which appears to be on behalf of Westridge, and letterhead with the Westridge logo.

[133] While it is possible for an artificial distinction to exist between design and use, Subdivision and Development Approvals demonstrate the intent of the municipality for the approval of the subdivision. RVC required the installation of these hydrants and their connection to the potable water system. Although no evidence addressed the specific hydrant or fire-suppression standards in force at the time of approval, the language of the condition assists in determining the intent behind the requirement. The language is outcome-oriented and focuses on whether the hydrants provide an acceptable level of fire suppression, which is the design intent. These requirements formed part of the approval conditions, and the Developer’s failure to satisfy them could have resulted in the termination of the Approvals.

[134] I infer from the Subdivision and Development Approvals that the hydrants were required, designed, and installed for use in fire suppression.

[135] To analogize the argument, a fire escape in an apartment building at its core is a staircase. The fire escape does not lose its status if residents primarily use it as a regular staircase and the structure never experiences a fire. The owner of the fire escape cannot escape regulatory scrutiny because they bought the building and did not view the fire escape as having an emergency purpose.

[136] Accordingly, the Swift Creek hydrants are both “fire hydrants” and “private hydrants” for the purposes of NFPA-25 under both the duck test and through purposive statutory interpretation.

C. Privity and Provision of Water:

[137] Westridge argues that it is not a party to the Developer’s Subdivision and Development Agreements. This includes the agreement between RVC and the Developer requiring the construction of the Swift Creek hydrants to specified standards that was never assigned to Westridge. Westridge submits that no documented agreement exists that entitles the County to obtain water from Westridge for fire suppression purposes. Westridge further submits that, where it does provide water for fire suppression purposes, it does so “gratuitously for the benefit of the residents of Rocky View County, and specifically without any obligation to do so.” Westridge also states that it is unaware of any legal authority requiring it to provide water for fire suppression purposes.

[138] RVC invokes the principle of *caveat emptor*, or “let the buyer beware.” RVC submits that a representative of Westridge signed the 2011 Final Acceptance Certificate, which included materials bearing Westridge’s letterhead. RVC submits that Westridge knew, or ought to have known, of the mandatory conditions in the Subdivision and Development Agreements and that ownership of the hydrants is itself a sufficient activity or undertaking to subject it to obligations under the *Safety Codes Act*.

[139] Westridge did not tender evidence of any agreement, licence, permit, or approval authorizing it to divert or use water for potable water purposes. I decline to speculate whether any such agreement, licence, permit, or approval authorizes or addresses the use of water for emergency fire suppression purposes. No submissions addressed the *Water Act*, RSA 2000, c W-3, or any other statutory or common law authority governing the provision of privately owned water for emergency or fire-suppression purposes. Accordingly, I decline to make a determination on whether there is a statutory or common law rule regarding water provision for fire suppression purposes.

[140] There was no evidence provided that goes into detail on how Westridge came to own the Swift Creek Potable Water System and hydrants besides the parties’ submissions that the infrastructure was conveyed to Westridge. The record does not contain a contract of sale or other conveyance document. Both parties agree Westridge is the owner of the hydrants.

[141] Both parties agree that no contract exists between Westridge and RVC for the provision of water for fire suppression or for the provision and maintenance of fire hydrants.

[142] Privity is the common law principle that “a contract cannot, as a general rule, confer rights or impose obligations arising under it on any person except the parties to it”: ***London Drugs Ltd v Kuehne & Nagel International Ltd***, 1992 CanLII 41 (SCC), [1992] 3 SCR 299, *per* Justice Iacobucci for the majority, at 415–416.

[143] The absence of an agreement between RVC and Westridge is not relevant to the alleged statutory breach. Where legislation imposes a legal duty that is enforceable by the state, liability depends on the existence and scope of the statutory obligation, not on contractual privity between the entity with the statutory duty and the enforcing authority.

[144] The *Safety Codes Act* is engaged when a person undertakes an activity that subjects them to obligations under the statute. A contract is not a condition precedent.

[145] Westridge’s legal obligations arise from its ownership of the fire hydrants. By acquiring certain property, a person may be vested with statutory duties and obligations that would not otherwise apply. For example, a person who purchases a residential property becomes subject to a new set of laws that are inapplicable but for property ownership. The owner becomes liable for property taxes, and any changes to the home are subject to land use planning requirements, safety codes, and other regulatory oversight. The homeowner must also maintain the property to minimum standards; otherwise, the municipality may take enforcement action to address any resulting nuisance. These legal duties and obligations arise from property ownership, not from a contract with the municipality.

6. Relevance of the RVC *Exclusivity Bylaw*:

[146] On April 30, 2026, RVC enacted the *Exclusivity Bylaw* (C-8662-2025). The *Exclusivity Bylaw*, enacted under section 33 of the *MGA*, authorizes the municipality to regulate utility providers by prohibiting the provision of services in the absence of a franchise agreement with the municipality. Westridge submits that the *Exclusivity Bylaw* prohibits it from continuing operations without a franchise agreement under section 45 of the *MGA*. Westridge has applied for judicial review of the *Exclusivity Bylaw*.

[147] No submissions addressed the validity, enforceability, or statutory framework of bylaws enacted under section 33 of the *MGA*. Westridge submits that the *Exclusivity Bylaw* renders its continued operation of the water utility unlawful and evidences RVC’s prejudicial treatment of Westridge since 2025.

[148] There is limited judicial consideration of section 33 of the *MGA*. In ***Kozak v Lacombe (County)***, 2017 ABCA 351 [***Kozak***], the Court of Appeal observed that section 33 grants municipalities “the power to monopolize the provision of a municipal utility service.” The Court further held that the provision is limited to prohibiting persons from providing “a service by a system or works for public consumption or benefit that is the same or similar in type to the service provided by the municipality”: ***Kozak*** at paras 37, 41.

[149] The *Exclusivity Bylaw* appears to prohibit any person from providing utility services where the municipality already provides those services. Under an *Exclusivity Bylaw*, the municipality may authorize private entities to provide utility services throughout all or part of the municipality through exclusive franchise agreements.

[150] Utility exclusivity bylaws may be enacted alongside franchise agreements that allow the municipality to charge the private utility local access fees or municipal consent and access fees for permission to construct and operate power lines, gas lines, water lines, or other utility infrastructure on municipally owned property. Utilities recover those costs through fees charged to their customers. The Alberta Utilities Commission approves both the franchise agreements and the associated fees.

[151] I accept Westridge’s general submission that the purpose and effect of the *Exclusivity Bylaw* are important to its business. Westridge has not submitted that they have ceased their operations, stopped providing water to customers, or stopped billing customers in the aftermath of RVC passing the *Exclusivity Bylaw*, despite assertions that the continued operation of the water utility is unlawful.

[152] The validity and enforceability of the *Exclusivity Bylaw* are not at issue in this statutory injunction application. RVC’s enactment of the bylaw is relevant only insofar as it supports Westridge’s argument that RVC has acted in a heavy-handed manner as a regulator.

V. Statutory Injunction Under Section 554(1) of the MGA:

1. Statutory Injunction Test Under Section 554(1) of the MGA:

[153] RVC brings this application under section 554 of the *MGA*, which provides:

554 (1) When

- (a) a structure is being constructed in contravention of an enactment that a municipality is authorized to enforce or a bylaw,
- (b) a contravention of this Act, another enactment that a municipality is authorized to enforce or a bylaw is of a continuing nature, or
- (c) any person is carrying on business or is doing any act, matter or thing without having paid money required to be paid by a bylaw,

in addition to any other remedy and penalty imposed by this or any other enactment or a bylaw, the municipality may apply to the Court of King’s Bench for an injunction or other order.

(2) The Court may grant or refuse the injunction or other order or may make any other order that in its opinion the justice of the case requires.

[154] The parties agree that *Kneehill County v Risler*, 2024 ABKB 89 at para 79 [*Risler*], sets out the applicable test for granting a statutory injunction under section 554 of the *MGA*:

Based on the foregoing, the analytical framework for an injunction under section 554(1)(b) of the *MGA* involves at least these questions:

- (a) is there a continuing contravention of the *MGA*, another statute the municipality is authorized to enforce, or a bylaw?
- (b) if so, is the continuing contravention unlikely to end without court intervention?
- (c) if so, are there exceptional circumstances warranting refusal of the injunction?
- (d) does the justice of the case warrant the granting of the injunction or any other order?

[155] Section 554 of the *MGA* grants municipalities a range of remedies that are “in addition to any other remedy and penalty imposed by this or any other enactment or bylaw.” Section 554 authorizes injunctions in support of penal provisions: *St. Paul (County) No 19 v Belland*, 2006 ABCA 55 at para 20 [*St. Paul (County)*].

[156] Section 554 is part of Part 13, Division 4 of the *MGA* (Enforcement of Municipal Law), which generally empowers municipalities and courts to identify and remedy contraventions of municipal law and to address emergencies. Consistent with the interpretation of municipal powers more generally, section 554 must receive a broad and purposive interpretation: *Risler* at para 72; citing *St. Paul (County)* at paras 16, 20–22; *United Taxi Drivers* at paras 6–7; *Canadian Centre for Bio-Ethical Reform v Grande Prairie (City)*, 2018 ABCA 154 at para 100; *Lacombe (County) v Radomsky*, 2023 ABKB 421 at para 19 [*Radomsky*].

[157] The authority conferred by section 554(1)(b) arises only where there is a contravention of the *MGA*, another enactment that the municipality is authorized to enforce, or a municipal bylaw. The applicant must establish both the existence of a contravention and that the contravention is unlikely to be remedied without the intervention of the Court: *Risler* at para 77; citing *Newell (County No 4) v Dola*, 2003 ABCA 371 at para 10 [*Newell (County No 4)*]; *Radomsky* at paras 17–18; *Occupy Calgary* at para 29; *Pawlowski; Parkland (County) v Barakat Industries Ltd*, 2004 ABQB 822 at para 27; *Alberta (Attorney General) v Plantation Indoor Plants Ltd*, 1982 ABCA 1 at para 13, reversed on other grounds 1985 CanLII 71 (SCC).

[158] Justice Slatter observed that a “municipality might also have the ‘authority to enforce an enactment,’ even if no actual steps had been taken to exercise that authority”: *St. Paul (County)* at para 21. There is no requirement for a conviction, or even a prosecution prior to seeking a section 554 injunction: *St. Paul (County)* at para 21; *R v Deacon, ex parte Collins*, 1969 CanLII 483 (ON HCJ), [1970] 1 OR 207 at 213.

[159] Statutory injunctions are distinct from equitable injunctions. As a result, the factors considered under the traditional tripartite test for an equitable injunction have limited, if any, application to the granting of a statutory injunction: *Risler* at para 75; *Occupy Calgary* at para 28; *Maple Ridge (District of) v Thornhill Aggregates Ltd*, 1998 CanLII 6446 (BC CA) at paras 7, 9 [*Thornhill Aggregates*].

A. Interpretation of the Public Right:

[160] Westridge submits that access to, or the provision of, fire suppression is not a “public right,” and a legitimate expectation of fire suppression is insufficient to support a statutory injunction as a public right under *Occupy Calgary* and *Radomsky*.

[161] RVC acknowledges that no inalienable right to fire suppression exists and notes that some municipalities and regions of the province lack fire suppression services or equal access to them. These areas are primarily rural, remote, or sparsely populated communities and residences. However, RVC submits that when a municipality decides through a Development Agreement to provide a service, that policy decision creates an enforceable public right and gives rise to a legitimate expectation for the purposes of a statutory injunction. RVC also submits that the municipality, having created the public right to fire suppression, may abolish that right through a policy decision. RVC summarizes this proposition as: “the County giveth, and the County may taketh away.” RVC asserts that it has not made a policy decision to remove any public right or reasonable expectation of fire suppression in Swift Creek.

[162] While the submissions were informative in identifying the parties' positions on public rights, legitimate expectations, and access to fire suppression, they misconstrue the nature of the public right engaged by a statutory injunction.

[163] The term "public right" for these injunctions has been used in caselaw: *Occupy Calgary* at para 28; *Radomsky* at para 16; *Thornhill Aggregates* at para 9.

[164] The public right at issue is the public interest in ensuring compliance with the law. The public right arises from duly enacted laws and are engaged when a person contravenes them.

[165] The common law has long recognized the enforcement of the public right.

[166] In *United Nurses of Alberta v Alberta (Attorney General)*, 1980 CanLII 1111 (AB QB) at paragraph 14, Justice Stevenson quoted *Attorney-General v Premier Line, Ltd*, [1931] 1 Ch 303 at 37, describing the public right:

The public is concerned in seeing that Acts of Parliament are obeyed, and if those who are acting in breach of them persist in so doing, notwithstanding the infliction of the punishment prescribed by the Act, the public at large is sufficiently interested in the dispute to warrant the Attorney-General intervening for the purpose of asserting public rights, and if he does so the general rule no longer operates; the dispute is no longer one between individuals, it is one between the public and a small section of the public refusing to abide by the law of the land.

[167] The Attorney General holds the authority to enforce public rights, which has been described as arising from the Attorney General's *parens patriae* jurisdiction: *British Columbia v Canadian Forest Products Ltd*, 2004 SCC 38 at para 67. Section 554 of the MGA grants municipalities authority to enforce public rights by means of injunction within the limits of their statutory jurisdiction.

[168] In the context of a municipal statutory injunction in *Polai v City of Toronto*, 1972 CanLII 22 (SCC), [1973] SCR 38 [*Polai*], Justice Judson noted at 40: "the public has a direct and substantial interest in the enforcement of the by-law."

2. Injunction Test Part 1 – is there a continuing contravention of the MGA, another statute the municipality is authorized to enforce, or a bylaw:

[169] RVC submits that, as the Authority Having Jurisdiction, it is authorized to enforce other enactments, regulations, and bylaws, including the *Safety Codes Act*, the *Alberta Fire Code* as incorporated through the *Fire Code Regulation*, and NFPA-25. RVC contends that Westridge, as the owner of the hydrants, has contravened section 5 of the *Safety Codes Act* by failing to ensure that the hydrants comply with the Act and are maintained in accordance with the applicable requirements.

[170] In particular, RVC alleges three ongoing contraventions:

1. Westridge caused or permitted the hydrants to become impaired.
2. Westridge failed to obtain the required approval before marking the hydrants out of service.
3. Westridge failed to prepare or implement an impairment plan as required by the *Alberta Fire Code* through its incorporation of NFPA-25.

[171] Westridge submits that no contravention exists because the Swift Creek hydrants are not “fire hydrants.” In the alternative, Westridge submits that the hydrants comply with the applicable requirements because it marked them out of service in accordance with the *Fire Hydrant Bylaw*, which does not require RVC’s consent. Westridge further argues that RVC improperly relies on provisions of the *Alberta Fire Code* that purportedly require approval before a hydrant may be marked out of service. In particular, Westridge submits that Division C, section 2.2.7.2 of the *Alberta Fire Code* falls outside the scope of the dispute and that NFPA-25 applies only to “preplanned impairment programs,” for which there is no evidence of preplanning in this case. Westridge notes that at no point since receiving the Enforcement Order in August 2025 has Westridge taken any steps to physically remove, impair, or otherwise disconnect any access points in Swift Creek, including the hydrants. Additionally, Westridge claims that its infrastructure has been enhanced in Swift Creek and the Swift Creek hydrants “are currently in better condition than they were as of August 1, 2025.”

[172] RVC’s approval argument is based on Division C, section 2.2.7.2.(5) of the *Alberta Fire Code*, which provides that a person involved in the alteration, repair, shutdown, or impairment of a hydrant that affects its operation must ensure that “the fire department approves the alteration, repair, shutdown or impairment.” RVC submits that Westridge failed to obtain that approval before marking the hydrants out of service. RVC further relies on the accompanying explanatory note, which describes the provision’s public safety purpose and contemplates coordination with external parties where necessary in relation to private hydrant systems.

[173] For the following reasons, the first stage of the statutory injunction test is met as Westridge is in a continuing contravention of the *Safety Codes Act*.

A. Injunction Test Part 1 – Application of Statutory Framework to Ground Authority with Westridge and Rocky View County

[174] The Swift Creek Potable Water System is a “public utility” under section 1(i)(iv) of the *Public Utilities Act* because it is “a system, works, plant, equipment or service for the production, transmission, delivery or furnishing of water [...] either directly or indirectly to or for the public.” Westridge is an “owner of a public utility” within the meaning of section 1(h) of the *Public Utilities Act*. There is no evidence that either the Swift Creek Potable Water System or Westridge has been exempted by the Alberta Utilities Commission from the application of the *Public Utilities Act*.

[175] The parties agree that Westridge is the owner of the Swift Creek Potable Water System and the nine hydrants.

[176] Westridge is an “owner” of the Swift Creek Potable Water System within the meaning of section 1(1)(v) of the *Safety Codes Act*. Westridge also owns the Swift Creek hydrants, which are directly attached to the Swift Creek Potable Water System.

“owner” includes a lessee, a person in charge, a person who has care and control and a person who holds out that the person has the powers and authority of ownership or who for the time being exercises the powers and authority of ownership.

[177] Section 5 of the *Safety Codes Act* requires Westridge to ensure that the Swift Creek Potable Water System complies with the *Safety Codes Act* and is properly maintained.

The owner of any thing, process or activity to which this Act applies shall ensure that it meets the requirements of this Act, that the thing is maintained as required

by the regulations and that when the process or activity is undertaken it is done in a safe manner.

[178] Division C, section 2.2.1.1 of the *Alberta Fire Code* requires the owner or the owner's authorized agent to carry out the provisions of the *Code*.

Unless otherwise specified, the owner or the owner's authorized agent shall be responsible for carrying out the provisions of this Code.

[179] The *Alberta Fire Code* does not define the term "owner." Division A, section 1.4.1.1.(1) of the *Alberta Fire Code* provides that undefined terms are to be interpreted by reference to the definitions contained in the *Safety Codes Act* and its regulations.

Words and phrases used in this Code that are not included in the list of definitions in Article 1.4.1.2. shall have the meanings defined in the *Safety Codes Act* and its Regulations, or the meanings that are commonly assigned to them in the context in which they are used, taking into account the specialized use of terms by the various trades and professions to which the terminology applies. [emphasis added]

[180] RVC is an "accredited municipality" and "Authority Having Jurisdiction" under section 26 of the *Safety Codes Act*. As a municipality, the County is "authorized to administer all or part of this Act with respect to any or all things, processes or activities to which this Act applies within the boundaries of the municipality." This authority includes the power to administer and enforce the requirements of the *Safety Codes Act*. Section 26(1)(a) provides:

- (1) On the application of a local authority, the Minister may, by order,
 - (a) designate a municipality as an accredited municipality authorized to administer all or part of this Act with respect to any or all things, processes or activities to which this Act applies within the boundaries of the municipality [...]

[181] The combination of the *Safety Codes Act* and the *MGA* grounds the jurisdiction for RVC to seek an injunction under section 554 of the *MGA*.

B. Injunction Test Part 1 – Law:

[182] A contravention of an enactment under section 554(1)(b) of the *MGA* does not require a conviction, or even a prosecution. Additionally, a municipality might also have the "authority to enforce an enactment," even if no actual steps had been taken to exercise that authority: **St. Paul (County)** at para 21; **Radomsky** at para 19.

[183] While the test articulated in **Risler** describes "another statute the municipality is authorized to enforce," the language of section 554(1)(b) of the *MGA* specifically describes an "enactment." Section 28(1)(m) of the *Interpretation Act* states: "In an enactment, [...] "enactment" means an Act or a regulation or any portion of an Act or regulation."

[184] As long as this "contravention" is "of a continuing nature," section 554(1)(b) is triggered: **St. Paul (County)** at para 24. RVC has the onus to prove the continuing nature of the contravention of the enactment: **Newell (County No 4)** at para 10.

[185] In the case of a statutory injunction application under an enactment, the Court must identify the particular provision of the enactment the municipality has the authority to enforce.

C. Background to Application – Injunction Test Part 1: *Alberta Fire Code* and NFPA-25 Provisions:

[186] Section 1(2) of the *Safety Codes Act* incorporates “regulations and bylaws made under this Act and any code, standards or body of rules declared to be in force pursuant to this Act,” including the *Alberta Fire Code* and NFPA-25.

[187] Division C, section 2.2.7.2.(5) of the *Alberta Fire Code* states as follows:

A person involved in the alteration, repair, shutdown or impairment of a hydrant, which affects its operation, shall ensure that

- a) the fire department is notified,
- b) the fire department approves the alteration, repair, shutdown or impairment, and
- c) the affected hydrant is identified in a manner acceptable to the fire department.

[emphasis added]

[188] The explanatory note to Division C, section 2.2.7.2.(5) of the *Alberta Fire Code* (B-2.2.7.2.(5)) states as follows:

Water supply systems, whether municipally or privately owned, form an essential component of most fire suppression systems. When planning firefighting strategies and tactics, fire departments place a great deal of reliance on an adequate and dependable supply of water.

The responsibility for the inspection and maintenance of these water supply systems often rests with persons outside the control of the fire department. In many cases, the system is maintained and serviced by a water works or engineering department or by an outside agency.

No matter who is responsible for the system, it is essential that the agencies develop a cooperative approach and that they work together to ensure the best possible protection for the public. Failure to notify the fire department that a hydrant is out of service or that a water main has broken can cause delays, which may result in the loss of lives or excessive damage to property. Such neglect may also expose a municipality or an individual to litigation, which could otherwise be avoided.

[189] Division B, section 6.4.1.1.(1) of the *Alberta Fire Code* incorporates NFPA-25 by reference and requires that hydrants be inspected, tested, and maintained in accordance with that standard. It provides:

Water-based fire protection systems shall be inspected, tested and maintained in conformance with NFPA 25, “Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems.” (See Note A-6.4.1.1.(1))

[190] The explanatory note to Division B, section 6.4.1.1(1) of the *Alberta Fire Code* (A-6.4.1.1(1)) provides that “water-based fire protection systems” include “private hydrants.”

[191] The following provisions of NFPA-25 are relevant to its scope and interpretation:

1.1 Scope. This document establishes the minimum requirements for the periodic inspection, testing, and maintenance of water-based fire protection systems and the actions to undertake when changes in occupancy, use, process, materials, hazard, or water supply that potentially impact the performance of the water-based system are planned or identified.

1.1.2.1 The types of systems addressed by this standard include, but are not limited to, sprinkler, standpipe and hose, fixed water spray, private fire hydrants, water mist, and foam water.

1.1.2.2 Water supplies that are part of these systems, such as private fire service mains and appurtenances, fire pumps and water storage tanks, and valves that control system flow, are also included in this standard.

1.1.3 This standard addresses the operating condition of fire protection systems as well as impairment handling and reporting and applies to fire protection systems that have been properly installed in accordance with generally accepted practice.

1.2.1 The purpose of this document is to provide requirements that ensure a reasonable degree of protection for life and property from fire through minimum inspection, testing, and maintenance methods for water-based fire protection systems.

1.2.2 In those cases where it is determined that an existing situation involves a distinct hazard to life or property, the authority having jurisdiction shall be permitted to require inspection, testing, and maintenance methods in excess of those required by the standard.

[Emphasis added]

[192] As described above, the Swift Creek hydrants are “fire hydrants” under the NFPA-25.

[193] Section 3.3.21 of NFPA-25 defines “impairment,” “emergency impairment,” and “preplanned impairment” as follows:

Impairment: A condition where a fire protection system or unit or portion thereof is out of order, and the condition can result in the fire protection system or unit not functioning in a fire event.

Emergency Impairment: A condition where a water-based fire protection system or portion thereof is out of order due to an unplanned occurrence, or the impairment is found while performing inspection testing or maintenance activities.

Preplanned Impairment: A condition where a water-based fire protection system or a portion thereof is out of service due to work planned in advance, such as revisions to the water supply or sprinkler system piping.

[194] Chapter 15 of NFPA-25 addresses impairments to water-based fire protection systems. In particular, section 15.1.1.1 provides that “[t]his chapter shall provide the minimum requirements for a water-based fire protection system impairment program.” Chapter 15 sets out a series of measures that must be taken during an impairment to “ensure that increased risks are minimized and the duration of the impairment is limited”: section 15.1.1.2 of NFPA-25.

[195] Section 15.4.2 of NFPA-25 provides a non-exhaustive list of impaired equipment. Fire hydrants are not expressly included in the list. However, “Fire service control valves” which has no definition in the NFPA-25, and other apparatus that would attach to a fire hydrant are included, such as “Fire hose systems.”

[196] The measures described in Chapter 15 of NFPA-25 include: (1) assigning an impairment coordinator; (2) affixing a visual tag identifying the impairment status of the affected device; (3) implementing procedures for which the impairment coordinator is responsible; and (4) following procedures for restoring the impaired system to service.

[197] In particular, sections 15.2.1 and 15.2.2 of NFPA-25 require the property owner to appoint an impairment coordinator:

The property owner or designated representative shall assign an impairment coordinator to comply with the requirements of this chapter.

In the absence of a specific designee, the property owner or designated representative shall be considered the impairment coordinator.

[emphasis added]

[198] Accordingly, Westridge, as the owner of the Swift Creek hydrants, has the responsibility to appoint an impairment coordinator under NFPA-25.

[199] NFPA-25 (sections 15.5.2 and 15.6.2) prescribes the same duties for an impairment coordinator during both a preplanned impairment and an emergency impairment, including:

Before authorization is given, the impairment coordinator shall be responsible for verifying that the following procedures have been implemented:

- (1) The extent and expected duration of the impairment have been determined.
- (2) The areas or buildings involved have been inspected and the increased risks determined.
- (3) Recommendations to mitigate any increased risks have been submitted to management or the property owner or designated representative.
- (4) Where a fire protection system is out of service for more than 10 hours in a 24-hour period, the impairment coordinator shall arrange for one of the following:
 - (a) Evacuation of the building or portion of the building affected by the system out of service
 - (b) An approved fire watch
 - (c) Establishment of a temporary water supply
 - (d) Establishment and implementation of an approved program to eliminate potential ignition sources and limit the amount of fuel available to the fire

- (5) The fire department has been notified.
- (6) The insurance carrier, the alarm company, property owner or designated representative, and other authorities having jurisdiction have been notified.
- (7) The supervisors in the areas to be affected have been notified.
- (8) A tag impairment system has been implemented. (See Section 15.3.)
- (9) All necessary tools and materials have been assembled on the impairment site.

[emphasis added]

[200] NFPA-25 includes explanatory notes to section 15.5.2(4) that describe measures intended to mitigate the risks associated with an impairment (NFPA-25, Notes A.15.5.2(4)(b) and A.15.5.2(4)(c)):

A.15.5.2(4)(b) A fire watch should consist of trained personnel who continuously patrol the affected area. Ready access to fire extinguishers and the ability to promptly notify the fire department are important items to consider. During the patrol of the area, the person should not only be looking for fire, but making sure that the other fire protection features of the building such as egress routes and alarm systems are available and functioning properly.

A.15.5.2(4)(c) Temporary water supplies are possible from a number of sources, including use of a large-diameter hose from a fire hydrant to a fire department connection, use of a portable tank and a portable pump, or use of a standby fire department pumper and/or tanker.

[201] Section 15.7 of the NFPA-25 describes the process for restoring systems to service, this includes testing and inspection prior to the resolution of the impairment. The section provides:

Restoring Systems to Service. When all impaired equipment is restored to normal working order, the impairment coordinator shall verify that the following procedures have been implemented:

- (1) Any necessary inspections and tests have been conducted to verify that affected systems are operational. The appropriate chapter of this standard shall be consulted for guidance on the type of inspection and test required.
- (2) Supervisors have been advised that protection is restored.
- (3) The fire department has been advised that protection is restored.
- (4) The property owner or designated representative, insurance carrier, alarm company, and other authorities having jurisdiction have been advised that protection is restored.
- (5) The impairment tag has been removed.

D. Injunction Test Part 1: is the absence of an Impairment Plan a Contravention:

[202] At trial, Westridge submitted that it has no legal duty under the *Safety Codes Act* to prepare an impairment plan.

[203] RVC submits that Westridge failed to implement the measures required by sections 15.1.1.1, 15.1.1.2, 15.5.2, and 15.6.1 of NFPA-25.

[204] RVC submits that Westridge failed to prepare or implement an impairment as required under sections 15.1.1.1, 15.1.1.2, 15.5.2, and 15.6.1 of the NFPA-25.

[205] There does not appear to be any reference to an “impairment plan” in the *Alberta Fire Code* or NFPA-25.

[206] The contravention is not the absence of an impairment plan *per se*. Rather, it is the failure to take the “[m]easures [that] shall be taken during the impairment to ensure that increased risks are minimized and the duration of the impairment is limited”: NFPA-25, section 15.1.1.2 (Minimum Requirements).

[207] Those mandatory measures under section 15.5.2 of NFPA-25 must be completed by the impairment coordinator appointed by the property owner: NFPA-25, sections 15.2.1, 15.5.2.

[208] I am satisfied that, when RVC referred to an “impairment plan” in the context of preparing and implementing such a plan (RVC Brief, paras 28-34), it was referring to the measures prescribed in Chapter 15 of NFPA-25, as RVC specifically cited those provisions. In addition, those paragraphs were under the header: “Ongoing Impairment without an Impairment Plan.”

E. Application – Injunction Test Part 1: Alberta Fire Code and NFPA-25 Provisions:

[209] Westridge is in a continuing contravention of section 5 of the *Safety Codes Act*.

[210] The three alleged ongoing contraventions under the *Safety Codes Act*, *Alberta Fire Code*, and NFPA-25 are:

1. Westridge caused or permitted the hydrants to become impaired.
2. Westridge failed to obtain the required approval before marking the hydrants out of service.
3. Westridge failed to take measures during the impairment to ensure that increased risks are minimized and the duration of the impairment is limited.

[211] As discussed above, the Swift Creek hydrants are “fire hydrants” and “private hydrants” under the *Alberta Fire Code* and NFPA-25.

[212] Applying the relevant definitions to the facts of this case, Westridge caused the Swift Creek hydrants to enter a state of emergency impairment under NFPA-25 when it marked them as out of service without RVC’s consent. A broad and purposive interpretation of this public safety legislation supports that conclusion. Such conduct fits within the definition of “emergency impairment” and includes, *inter alia*, impairments identified during inspection, testing, or maintenance activities: NFPA-25, sections 3.3.21.1 and 15.6.1. Furthermore, Westridge’s

argument that NFPA-25 applies only to preplanned impairment programs does not align with the duties of an impairment coordinator in sections 15.5.2 and 15.6.2.

[213] As owner of the Swift Creek hydrants, Westridge must ensure that the hydrants are maintained in accordance with the applicable regulatory requirements. Where an impairment arises, Westridge must also take measures during the impairment to ensure that increased risks are minimized and the duration of the impairment is limited.

[214] I find Westridge caused or permitted the hydrants to enter a state of impairment by marking the hydrants out of service without RVC's consent. In doing so, Westridge placed the hydrants into a state of impairment within the meaning of NFPA-25. This conclusion is based on Westridge's conduct in marking the hydrants out of service, regardless of whether some or all of the hydrants were already functionally deficient.

[215] Westridge did not comply with the *Alberta Fire Code* when it marked the hydrants out of service. Division C, section 2.2.7.2.(5) of the *Alberta Fire Code* requires a person involved in the alteration, repair, shutdown, or impairment of a hydrant to notify the fire department and obtain its approval. Westridge did not obtain RVC's approval before removing the hydrants from service.

[216] I find that Westridge failed to obtain RVC's approval before marking the hydrants out of service. However, that contravention is not continuing in nature.

[217] While Westridge provided the June 2026 Proposed Impairment Plan, I assign it limited weight. Several of its conditions were excessive, including requiring RVC Council to pass a resolution stating that the *Exclusivity Bylaw* does not apply to Westridge and requiring RVC to provide Westridge with 90 days' notice before taking any enforcement action under the *Exclusivity Bylaw*. In addition, although the proposed plan addressed the appointment of an impairment coordinator, it did not appear to include other mitigation measures to address the fire suppression limitations arising from the impairment of the Swift Creek hydrants. I find that the Proposed Impairment Plan is not adequate to constitute measures during the impairment to ensure that increased risks are minimized and the duration of the impairment is limited, as required under Chapter 15 of the NFPA-25.

[218] Accordingly, I find that Westridge failed to take measures during the impairment to ensure that increased risks are minimized and the duration of the impairment is limited as required by the *Alberta Fire Code* through its incorporation of NFPA-25. The contravention is continuing because Westridge still has not taken such measures.

3. Injunction Test Part 2 – is the continuing contravention unlikely to end without court intervention?

[219] Westridge disputes that court intervention is necessary. Westridge further disputes RVC's assertion that it does not intend to implement an impairment plan. It submitted a proposed an impairment plan on June 10, 2026, and that RVC did not respond to the proposal. In addition, Westridge distinguishes *Risler* on the basis that no judicial review or appeal of the relevant bylaw was before the Court in that case. Westridge also distinguishes *Occupy Calgary*. Westridge also noted there are other enforcement tools RVC could have used, such as collaboration, negotiation, or willingness to work together in some form to bring an end to this issue. Furthermore, Westridge argues that neither the prompt resolution of a contravention nor the use of a statutory injunction to

achieve a timely and efficient remedy forms part of the statutory injunction test. Westridge asserts that its appeals of administrative orders demonstrate a willingness to follow the law and the presence of appeals does not show evidence of a continuing contravention.

[220] RVC submits that the ongoing contravention is unlikely to end without court intervention. RVC notes that the impairment has remained in place since December 2025 and contends that Westridge does not appear to intend to implement an impairment plan that addresses the requirements in Chapter 15 of the NFPA-25. RVC submits that it has several enforcement tools available, but chose to proceed with a statutory injunction because the contravention has persisted for a lengthy period, the expedient nature of statutory injunctions, and escalated nature of the dispute when Westridge marked the hydrants out of service during the administrative proceedings. Collaborative measures include negotiation and education. Enforcement measures include legal remedies such as a stop order under section 645 of the *MGA*, which authorizes the enforcement of subdivision and development agreements, or order to remedy contraventions under section 545 of the *MGA* in conjunction with safety codes officer order under section 49 of the *Safety Codes Act*.

[221] The Court may consider the evidence and history of the matter. It may also consider the respondent's conduct and representations when determining whether the continuing contravention is unlikely to end without court intervention: **Risler** at para 89; **Occupy Calgary** at para 29.

[222] Westridge's threshold argument that the Swift Creek hydrants are not "fire hydrants" and therefore are exempt from regulatory oversight indicates that Court intervention is necessary to mitigate the risk to lives and property. Similar to the Velocity Water Services Report, Westridge's assertion in the Hansen Affidavit that the Swift Creek hydrants are "currently in better condition than they were as of August 1, 2025" is hearsay, with no corroborative evidence. Westridge has not adduced evidence of any repairs or upgrades to the hydrants since August 1, 2025, that would support that assertion.

[223] Although the relationship between Westridge and RVC appears to have deteriorated significantly since mid-2025, Westridge's decision to mark the hydrants out of service without notice in December 2025, while the Enforcement Order Committee appeal was ongoing, constituted a material escalation and change in circumstances within the meaning of **Peter**. This conduct weighs strongly in favour of Court intervention.

[224] The length of time that the contravention has existed, the hydrants being marked out of service, is relevant. There was ample time for the parties to arrive at a compromise or solution over the past 10 months. Although Westridge's June 2026 Proposed Impairment Plan suggests a willingness to remedy the contravention without court intervention, the plan has significant limitations. First, it imposes conditions on RVC relating to the *Exclusivity Bylaw*, including a requirement that RVC Council pass a resolution confirming that the *Exclusivity Bylaw* does not apply to Westridge and that RVC provide 90 days' advance notice before enforcing the Bylaw. Second, the plan addresses only the appointment of an impairment coordinator and certain procedures to be followed. It does not address other mitigation measures contemplated by Chapter 15 of the NFPA-25 or requested by RVC in this proceeding.

[225] The Proposed Impairment Plan does not appear to address fire suppression in Swift Creek beyond administrative measures. In addition, the plan is premised on RVC providing Westridge with greater regulatory flexibility or, at its furthest extent, exempting Westridge from a separate regulatory regime unrelated to fire suppression. I do not accept that a proposal premised on the

municipality reducing or foregoing regulatory oversight in one sphere of control in exchange for measures relating to fire suppression constitutes a good-faith effort sufficient to establish that the continuing contravention will end without court intervention.

[226] As for whether the prompt resolution of a contravention through a statutory injunction is relevant to this test, I conclude that it is. The second element of the test is whether the continuing contravention is unlikely to end without court intervention. The Court should not ignore that an injunction may bring a timely end to a continuing contravention. A timely resolution of the contravention may be relevant at this stage in a variety of circumstances, including where the contravention poses a threat to public safety or constitutes a nuisance.

[227] However, considerations of timeliness will carry little or no weight where the respondent is exercising *bona fide* legal rights, such as challenging the lawfulness of the applicant's position in an administrative proceeding or before a Court. In these circumstances, the Court will draw no negative inference from the time required for Westridge to diligently pursue lawful appeals of the Enforcement Order or other *bona fide* judicial proceedings concerning this and related matters. But as I explained earlier, section 554 permits RVC to bring this proceeding in addition to any other remedy and penalty, including where parallel proceedings exist.

[228] The availability of alternative enforcement measures available to RVC does not weigh against court intervention. RVC has discretion under the MGA to seek a statutory injunction but must satisfy the Court that the remedy is necessary. The existence of other collaborative dispute resolution or enforcement options does not weigh significantly against court intervention.

[229] Accordingly, I find that the ongoing impairment, failure to implement a substantive impairment plan, escalation and material change in circumstances, and absence of mitigating measures in Swift Creek is unlikely to end without Court intervention.

4. Injunction Test Part 3 – are there exceptional circumstances warranting refusal of the injunction?

[230] Westridge submits that exceptional circumstances justify refusing the injunction. The central thrust of Westridge's argument is that RVC is unfairly prejudicing Westridge by singling it out for enforcement while other utility operators remain non-compliant.

[231] In particular, Westridge argues that:

1. RVC is not acting in a *bona fide* manner but is instead attempting to satisfy the Safety Codes Council at the expense of Westridge's customers or to compel Westridge to provide fire suppression services without compensation;
2. RVC engaged in inconsistent and selective enforcement before abruptly changing its position;
3. RVC pursued enforcement in a high-handed manner without regard for Westridge's regulatory obligations, financial circumstances, or the costs imposed on its customers;
4. The requested injunction is a disproportionate response, particularly because, following RVC's May 21, 2026 notice to utility operators, RVC has sought an injunction only against Westridge and only in relation to one community;
5. Compliance with the injunction would impose significant costs on Westridge;

6. The application effectively serves as a test case for future enforcement proceedings; and
7. The injunction would effectively supplant RVC's bylaws.

[232] Westridge further submits that the injunction would create an unlawful outcome under the *Exclusivity Bylaw* and the *Public Utilities Act*. Westridge argues that requiring it to provide enhanced services to a single subdivision would impose costs on all ratepayers and would contravene section 100(a), (c), and (d) of the *Public Utilities Act*. According to Westridge, the resulting arrangement would be unjustly discriminatory or would confer an undue preference or advantage on the Swift Creek residents.

[233] RVC submits that Westridge is in contravention of the *Safety Codes Act* and that the circumstances in which a court may refuse a statutory injunction are limited. RVC submits that exceptional circumstances generally arise where: (1) the injunction would infringe *Charter* rights; (2) the respondent is willing to cease the unlawful conduct; (3) there is no clear case of non-compliance because the primary unlawful conduct has already ceased; or (4) there is no evidence that the conduct relates to the mischief the statute was intended to address. RVC relies on *Vancouver (City) v O'Flynn-Magee*, 2011 BCSC 1647 at para 47 [*O'Flynn-Magee*] and *British Columbia (Minister of Environment, Lands and Parks) v Alpha Manufacturing Inc*, 1997 CanLII 4598 (BC CA) at para 32 [*Alpha Manufacturing*]. RVC further submits that personal hardship, including financial expense or inconvenience, does not constitute an exceptional circumstance warranting the refusal of an injunction, relying on *O'Flynn-Magee* at para 49.

A. Law of Exceptional Circumstances:

[234] Once a clear breach of a public right has been shown, the Court should only refuse the application in exceptional circumstances: *Risler* at para 78; *Alpha Manufacturing* at para 30.

[235] As stated above, statutory injunctions are distinct from equitable injunctions. As a result, the factors considered under the equitable injunction test have limited, if any, application to the granting of a statutory injunction: *Risler* at paras 16, 75; *Occupy Calgary* at para 28, citing *Thornhill Aggregates* at paras 7, 9.

B. Exceptional Circumstance – costs associated with complying with injunction:

[236] RVC relies on *O'Flynn-Magee* for the proposition that the time and expense associated with complying with an injunction do not constitute exceptional circumstances. In *O'Flynn-Magee*, the Court granted an injunction requiring the removal of structures, tents, and other objects placed on public property in contravention of City of Vancouver bylaws. The Court held that personal hardship and inconvenience are not relevant considerations when determining whether exceptional circumstances exist in the context of a statutory injunction. In reaching that conclusion, the Court relied on *Vancouver (City) v Maurice*, 2002 BCSC 1421 at para 19, aff'd 2005 BCCA 37 [*Maurice*]. RVC submitted at trial that regulatory enforcement invariably imposes some degree of hardship on the person or entity subject to it, but that is not sufficient for an exceptional circumstance.

[237] Westridge submits that the injunction would impose significant costs and hardship.

[238] Statutory injunctions engage different considerations than equitable injunctions. In **Maurice**, the Court identified several respondent-focused circumstances that may constitute exceptional circumstances, including:

1. The exercise of a right that pre-existed the enactment allegedly contravened (*ex post facto* concerns);
2. Clear and unequivocal willingness of the party to refrain from the unlawful act;
3. Whether there may not be a clear case of flouting the law;
4. The strength of the proof that the activity was related to the mischief the statute was designed to address; and
5. The injunction would infringe *Charter* rights.

Robert J Sharpe, *Injunctions and Specific Performance*, loose-leaf (Toronto: Thomson Reuters, Release No 1, November 2025) at §3:4; **Occupy Calgary** at para 30; **Maurice** at para 20; **Alpha Manufacturing** at para 32.

[239] The **Maurice** principles do not treat cost, inconvenience, or personal hardship to the respondent as exceptional circumstances.

[240] However, an injunction that would infringe *Charter* rights will not be granted: **Occupy Calgary** at para 30.

[241] None of the **Maurice** exceptional circumstances warranting refusal of an injunction are present on the facts. RVC's lack of enforcement since 2011 does not make this an exercise of a right that pre-dated the application of the *Safety Codes Act* or the relevant provisions of the *Alberta Fire Code*. Westridge has not remedied the impairment of the Swift Creek hydrants. Nor has it adduced evidence of an impairment plan without substantial conditions precedent, or a plan to end the contraventions. As described above, I placed little weight on the June 2026 Proposed Impairment Plan by Westridge.

[242] Instead, Westridge has consistently maintained that the hydrants are not fire hydrants and are therefore not subject to the regulatory framework. It is also unclear whether Westridge has provided records relating to the inspection, testing, or maintenance of the hydrants as required by the *Safety Codes Act* and the *Alberta Fire Code*. Marking the hydrants as out of service during administrative proceedings indicates an unwillingness to refrain from unlawful conduct. Westridge's conduct is the mischief the statutory scheme is intended to address, which is the protection of life and property from the risks associated with fire.

[243] Even if cost, inconvenience, or personal hardship could constitute an exceptional circumstance, the record does not establish that it is present in these circumstances.

[244] Westridge has not adduced evidence or particulars regarding the capacity or condition of the Swift Creek Potable Water System beyond asserting that it cannot, in its current condition, provide sufficient water for fire-suppression purposes. Nor has it adduced evidence regarding the costs or measures required to bring the Swift Creek Potable Water System to a condition capable of supporting fire suppression. Similarly, Westridge has not adduced evidence regarding the costs or measures required to repair or replace the Swift Creek hydrants. I am inclined to believe

mitigation in the form of a temporary water supply is substantially cheaper than infrastructure upgrades Westridge claims are necessary to bring the system into compliance.

[245] Accordingly, the costs associated with complying with the relief sought by RVC do not constitute exceptional circumstances warranting the refusal of a statutory injunction. Westridge's conduct after RVC commenced enforcement proceedings such as the Proposed Impairment Plan does not support a finding of exceptional circumstances weighing against an injunction.

C. Exceptional Circumstance – Rocky View County's conduct and motives:

[246] Westridge submits that section 3.4 of the June 2020 RVC Quality Management Plan sets out procedures for County enforcement actions. Westridge concedes that the Quality Management Plan is not legally binding but submits that it creates reasonable expectations regarding process. Section 3.4 sets out the following procedure:

An [Safety Codes Officer] will:

Prior to Issuing an Order, first make every reasonable effort, including consultation with the [Quality Management Plan] Manager or designate, to facilitate conformance with the Act.

Issue an Order if they are of the opinion that all other reasonable efforts to obtain compliance with have failed.

[247] The Quality Management Plan is not binding. In any event, section 554 of the *MGA* authorizes alternative or concurrent enforcement actions.

[248] Westridge has made a number of allegations related to procedural unfairness.

[249] Westridge submitted supplemental exhibits the day before trial consisting of internal RVC correspondence, correspondence between the parties, and public correspondence. The records date from 2008 to 2025, although some documents refer to earlier records that predate that period. In general, Westridge has maintained that the Swift Creek hydrants are not intended for fire suppression and that consent is required to use them. Since at least 2010, RVC has maintained that the hydrants were designed for fire suppression purposes. Internal RVC records indicate that RVC acknowledged Westridge's position and considered options including enforcement, alternative fire suppression measures, financing upgrades to the Swift Creek Potable Water System, and acquiring that system. The internal RVC correspondence does not disclose the extent of any analysis, evaluation, or planning undertaken regarding those options. Nor does it identify any final selection among them.

[250] RVC proceeded with the Enforcement Order on August 1, 2025, two days after receiving notice from the Safety Codes Council that it had initiated an investigation into the Swift Creek hydrants. On August 29, 2025, RVC sought advice from the Safety Codes Council regarding messaging and whether it should issue a Safety Codes Order, presumably under section 545 of the *MGA* and section 49 of the *Safety Codes Act*. The Safety Codes Council responded that RVC should seek legal advice and noted that its appeal schedule was booked into November, making it likely that the administrative appeal of the Enforcement Order would be decided before then.

[251] The Safety Codes Council investigation resulted from complaints made by a Swift Creek resident. The resident informed RVC of their intent to file provincial complaints after a lengthy period of communications during which they urged RVC to take enforcement action to make the Swift Creek hydrants operational. In internal email correspondence dated July 25, 2025, RVC Fire Chief Mr. Hubbard tells RVC Chief Operating Officer Mr. Riemann that: “I believe we need to provide a response that outlines the orders coming to Westridge with past communication attempts over the past month to resolve these issues, and clearly put the onus back on [Westridge].” This correspondence may indicate that RVC was preparing enforcement action through orders before receiving notice from the Safety Codes Council. In the correspondence, Mr. Hubbard states: “I am deeply concerned RVC’s a [sic] non-response has heightened the situation and now is threatening the County’s and my reputation!”

[252] The December 17, 2025 Fire Services Meeting record instructs RVC personnel (presumptively fire personnel) to note all hydrants marked out of service because the County is monitoring them. The record also directs personnel responding to calls, particularly in water co-op areas, to record hydrant pressure and flow rates. The meeting record also refers to Westridge, the Enforcement Order, and Westridge’s appeal.

[253] However, a public authority may obtain an injunction to restrain a breach of the law even where it enforces the law on a unequal basis where other infringement has not been questioned: **Polai v City of Toronto**, 1972 CanLII 22 (SCC), [1973] SCR 38 [Polai]. In **Polai**, the City of Toronto maintained a “deferred list” of persons who were not in compliance but against whom it had neither commenced nor intended to commence enforcement proceedings, whether by prosecution or injunction. In effect, inclusion on the deferred list amounted to immunity from enforcement. Despite the discriminatory nature of that practice, the Supreme Court of Canada held that the public has a direct and substantial interest in the enforcement of municipal bylaws and that this public interest prevails over competing private interests (**Polai** at 40). Justice Judson observed that “[i]t is no defence against his action to say that there are other cases of infringement which have not been questioned” (**Polai** at 41).

[254] In **Chateau-Gai Wines Ltd v Institut National des Appellations d’Origine des Vins et Eaux-de-Vie et al**, 1974 CanLII 135 (SCC), [1975] 1 SCR 190 at 207, Justice Pigeon articulated the rule in **Polai** as: “no one who infringes a public policy statute can plead as a defence to an action for an injunction the fact that others who were in breach have not been prosecuted.” **Polai** was applied in Alberta by Justice Clark in **Wood v Wetaskiwin (County No 10) County Council**, 2001 ABQB 681 at para 79, aff’d 2003 ABCA 67, which stated: “[a] municipality may enforce a public right against one party even though enforcement proceedings have not been taken against another party who is in breach.”

[255] Estoppel does not prevent a municipality from carrying out its statutory duties: **Neuman v Parkland (County No 31)**, 1998 ABCA 83 at para 10. A municipality’s failure to carry out provisions of a statute are of a public nature that cannot be waived, lost or vitiated by mere acquiescence, laches, or estoppel: **Langley (Township of) v Wood**, 1999 BCCA 260 at para 12.

[256] Westridge’s position is inconsistent with these principles. Even if RVC previously failed to enforce the law against other utility operators, that fact would not preclude it from seeking compliance now. RVC’s application is not frivolous. At its core, the application concerns compliance with legislation enacted to protect public health and safety. Although RVC could have

commenced proceedings against all utility providers alleged to be non-compliant, doing so would likely have increased the complexity of the litigation and delayed its resolution. Nor is there anything improper in seeking relief against a single allegedly non-compliant entity while simultaneously notifying other entities of its position regarding compliance.

[257] Westridge alleges that RVC's enforcement efforts, including this statutory injunction application, are motivated by improper purposes. First, Westridge alleges that RVC seeks to shift the costs of fire suppression to Westridge rather than incur those costs itself. Second, Westridge alleges that RVC is motivated by resident complaints and the prospect of benefit that lower home insurance rates will bring for residents. Third, Westridge alleges that RVC is motivated by the Safety Codes Council Order, which Westridge says was affected by procedural fairness deficiencies that prejudiced its interests.

[258] RVC submits that it is acting in the public interest in seeking the injunction. RVC further submits that the suggestion it is improperly motivated by the Safety Codes Council Order presents a false dilemma. RVC notes that the Safety Codes Council's jurisdiction in issuing the Order was limited to RVC, not private utility providers. As a result, RVC, rather than Westridge, faces the consequences of any failure to comply with the Safety Codes Council Order. Additionally, although only Westridge is named in the Order and this proceeding, RVC submits that it is pursuing compliance from all fire hydrant owners within the municipality in response to the Safety Codes Council Order.

[259] Section 3 of the *MGA* identifies several statutory purposes of municipalities, including "to provide good government," "to provide services, facilities or other things that, in the opinion of council, are necessary or desirable for all or a part of the municipality," and "to develop and maintain safe and viable communities." Through the Subdivision Agreement and Development Agreement, RVC required the construction of hydrants for fire suppression purposes. Fire hydrants are infrastructure that may be necessary or desirable for all or part of the municipality and are intended to foster safe and viable communities.

[260] The enforcement of public welfare legislation, including legislation designed to promote health and safety, is consistent with the statutory purposes of municipalities. Where parties dispute responsibility for complying with statutory obligations or bearing the costs associated with compliance, judicial intervention may be necessary to resolve that dispute.

[261] To the extent that RVC seeks this injunction to reduce the costs of providing interim fire suppression measures, that motivation does not constitute an exceptional circumstance. RVC is enforcing a statutory scheme that imposes duties and obligations on infrastructure owners. Although RVC notes that it has modified its fire suppression planning and incurred additional costs as a result, the record does not suggest that RVC is improperly invoking its statutory authority to alleviate a financial burden. The fact that RVC may have incurred costs before bringing this application that it may no longer incur following enforcement does not constitute an exceptional circumstance.

[262] As described above, sections 15.2.1 and 15.2.2 of NFPA-25 require the relevant property owner to appoint an impairment coordinator. Sections 15.5.2 and 15.6.2 prescribe the same mitigative duties for the impairment coordinator during both preplanned and emergency impairments. NFPA-25 assigns these responsibilities to the owner of the hydrants. Accordingly, those responsibilities rest with Westridge, not RVC.

[263] Neither party made substantive submissions regarding the Safety Codes Council's procedures or the statutory framework governing its orders and appeals. Westridge notes that the Safety Codes Council Order expressly names it, yet it received neither notice nor an opportunity to make submissions. Westridge alleges that RVC's submissions to the Safety Codes Council were insufficient and that RVC elected not to appeal the Order. Westridge submits that it likely lacks standing to appeal the Safety Codes Council Order and, in any event, the time for an appeal or judicial review has likely expired.

[264] This proceeding is not a judicial review of the Safety Codes Council Order. Westridge raised its procedural fairness concerns regarding the Safety Codes Council in oral submissions without reference to specific provisions of the governing statute. I am reluctant to comment on the procedures of an administrative tribunal without adequate submissions on the relevant statutory provisions.

[265] Without making any findings of fact, I accept notification and opportunity to make submissions are hallmarks of common law procedural fairness. The Safety Codes Council Order at paragraph 18 note that the "Council does not regulate private operators, but rather regulates the accredited entities empowered to enforce the Act against owners that are in contravention of its provisions within its jurisdiction." The same paragraph includes a conclusion regarding Westridge's conduct within the scope of the decision: "Therefore, the scope of the investigation must be limited to whether the County has met their obligations as an accredited municipality regarding WUI's contravention of its obligations." Nonetheless, it is not clear whether Westridge had standing to make submissions or file for judicial review.

[266] The Safety Codes Council Order record included materials provided by RVC, including a 2023 hydrant test report, the Enforcement Order, supporting documentation for the Enforcement Order, notices to Swift Creek residents, and Westridge's notice of appeal and submissions in support of its Enforcement Order appeal. In addition, the record included the Swift Creek resident's initial complaint and a 2025 AITA records request.

[267] RVC appears to have had the right to seek judicial review of the Safety Codes Council Order within six months of the Order's issuance but did not do so.

[268] However, where a regulator directs a municipality to enforce a statutory regime and bring regulated entities into compliance, the existence or effect of that direction on the municipality's motive for seeking compliance is neither an exceptional circumstance nor a factor that weighs strongly against granting an injunction. A Safety Codes Council order is not a condition precedent to a municipality enforcing statutes that it is authorized to enforce.

[269] It appears a resident complaint prompted the Safety Codes Council's investigation into the fire hydrants in RVC. That investigation was, presumptively, an exercise of the Safety Codes Council's jurisdiction, which appears to include protecting the public interest through the enforcement of relevant statutes.

[270] Westridge's assertion that RVC is responding to complaints from residents concerning increased home insurance costs does not constitute an exceptional circumstance. In any event, residents may have a variety of reasons for raising concerns about impaired hydrants, including concerns relating to public safety. In a democratic system of government, residents are entitled to raise concerns with public authorities, and public authorities may act on those concerns. A

municipality's response to residents' public-safety concerns does not establish an improper motive. Any effect on homeowner insurance costs is incidental to the broader purpose of ensuring that fire suppression infrastructure functions as intended.

[271] Accordingly, RVC's previous failure to enforce the relevant statutory requirements, and its failure to seek an injunction or pursue enforcement against other utilities, do not constitute an equitable or exceptional circumstance sufficient to justify refusing the injunction.

D. Exceptional Circumstance through Conflict with Statute – *Public Utilities Act* unjust discrimination:

[272] Westridge asserts that an injunction effectively requiring it to provide a service is unlawful under the *Public Utilities Act* and interferes with the Alberta Utilities Commission's jurisdiction to approve services and service rates. Westridge further characterizes both the provision of fire suppression services through operational hydrants and the remedies sought by RVC as services that confer a direct or indirect benefit or privilege on certain RVC residents in a discriminatory or preferential manner, contrary to section 100 of the *Public Utilities Act*. Westridge submits that it could provide such a service if it obtained prior approval from the Alberta Utilities Commission and would be willing to do so if RVC supported that effort. Additionally, Westridge asserted at trial that fire suppression in this context would be a regulated service under the *Public Utilities Act*.

[273] The relevant provisions of the *Public Utilities Act* relied upon by Westridge are set out in section 100:

100 No owner of a public utility shall

- (a) make, impose or extract an unjust or unreasonable or unjustly discriminatory or unduly preferential individual or joint rate, commutation rate, mileage or kilometre rate or other special rate, toll, fare, charge or schedule for any product or service supplied or rendered by it within Alberta,
- (b) adopt or impose an unjust or unreasonable classification in the making of or as the basis of an individual or joint rate, toll, fare, charge or schedule for any product or service supplied or rendered by it within Alberta,
- (c) adopt, maintain or enforce a regulation, practice or measurement that is unjust, unreasonable, unduly preferential, arbitrarily or unjustly discriminatory or otherwise in contravention of law, or provide or maintain a service that is unsafe, improper or inadequate, or withhold or refuse a service that can reasonably be demanded and furnished when ordered by the Commission, or
- (d) make or give, directly or indirectly, an undue or unreasonable preference or advantage to any person or corporation or to any locality or to any particular description of traffic in any respect whatsoever, or subject a particular person or corporation or locality

or a particular description of traffic to any prejudice or disadvantage in any respect whatever.

[274] Westridge has not made substantive submissions on the interpretation of section 100 or its application to this case. Nor has it cited any authority addressing that provision’s interpretation or application. Westridge submitted two Alberta Utilities Commission decisions, one from 2019 and the other from 2008. The 2008 decision discusses Westridge’s operations in the context of a General Rate Application Compliance filing that predated its acquisition of the Swift Creek Potable Water System by three years. The 2019 decision concerns an appeal by commercial property owners in the Village of Delia regarding utility charges after disconnecting from the utility.

[275] Westridge has made no substantive submissions on the Alberta Utilities Commission’s administrative processes, how it determines matters, or how it applies section 100 of the *Public Utilities Act*, beyond filing copies of the two decisions. Westridge essentially submits that any injunction requiring it to incur costs or provide services encroaches on the Alberta Utilities Commission’s jurisdiction and may conflict with the *Public Utilities Act*. However, merely asserting that the proposed remedy is unlawful under another statute does not assist the Court in understanding the relevant regulatory framework or its application to the issues before it. For the following reasons, I reject the assertion that the jurisdiction delegated to the Alberta Utilities Commission constrains a superior court’s inherent authority or its broad discretion to grant just and appropriate remedies under the *Safety Codes Act* and *MGA*.

[276] First, as to Westridge’s assertion that fire suppression constitutes a regulated service under section 100 of the *Public Utilities Act*, I make no finding on that issue in the absence of substantive submissions regarding the interpretation and application of that provision. Whether a service is regulated under the *Public Utilities Act* is a determination best left to the Alberta Utilities Commission.

[277] I view the core purpose of section 100 of the *Public Utilities Act* to promote fairness in the provision of utility services and the rates charged by regulated utility providers. The provision does not require absolute equality. Rather, it is qualified by concepts such as “reasonable,” “undue,” “unjust,” and “discriminatory.”

[278] In *Canada v Canada North Group Inc*, 2019 ABCA 314 [*Canada North Group*], the Court of Appeal of Alberta at paragraph 27 described the presumption of coherence, citing Ruth Sullivan, *The Construction of Statutes*, 7th ed (Toronto: LexisNexis Canada, 2022), §11.01, s 1:

A governing principle of statutory interpretation is the presumption of coherence:

It is presumed that the provisions of legislation are meant to work together, both logically and teleologically, as parts of a functioning whole. The parts are presumed to fit together logically to form a rational, internally consistent framework; and because the framework has a purpose, the parts are also presumed to work together dynamically, each contributing something toward accomplishing the intended goal.

[279] The Court of Appeal continued, citing *Lévis (City) v Fraternité des policiers de Lévis Inc.*, 2007 SCC 14 at para 47, that: “[i]f a conflict is unavoidable, meaning it cannot be resolved by adopting an interpretation that would remove the inconsistency, the court is faced with the question of which provision should prevail having regard to the legislature’s intent”: *Canada North Group* at para 29.

[280] No evidence was tendered on the costs associated with maintaining safety or potable water infrastructure owned by a utility generally, or specifically in relation to fire hydrants, nor was evidence tendered about the cost associated with the injunctive relief sought by RVC. The financial information concerning Westridge contained in the 2008 Alberta Utilities Commission decision is 18 years old and predates Westridge’s acquisition of the Swift Creek Potable Water System. Accordingly, I am unable to find that those costs, without more, exceed the standard of reasonableness contemplated by section 100 of the *Public Utilities Act*. Whether or not Westridge intended to assume responsibilities relating to fire suppression infrastructure, ownership of the hydrants attracts the statutory obligations that accompany that infrastructure.

[281] Westridge submits that fire suppression is “a service it has never before provided.” However, the evidence indicates that the Swift Creek hydrants were certified as operational and accepted by Westridge in 2011 through the Final Acceptance Certificate. For an unknown period before the hydrants became impaired, presumably firefighters could rely on them for fire suppression purposes. Thankfully firefighters did not need to rely on the hydrants during that period.

[282] The costs that Westridge may incur as a result of the requested relief are directed toward mitigating an existing deficiency rather than conferring an advantage. Expenses borne by Westridge to comply with a statutory duty do not constitute unjust discrimination or an unreasonable benefit to Westridge’s customers as described under the *Public Utilities Act*.

[283] As discussed above, Westridge has a statutory obligation in relation to the Swift Creek hydrants. Where that fails, Westridge must take certain steps to mitigate the risk associated with the impairment under Chapter 15 of the NFPA-25. Reliance on another statute to avoid compliance with that obligation would, at a minimum, require an irreconcilable conflict between the two statutory schemes. I do not see such a conflict, I presume legislative coherence and do not accept that the *Public Utilities Act* was intended to shield a utility from compliance with an otherwise applicable statutory duty.

[284] Where a property owner permits infrastructure to deteriorate to the point that it poses a risk to the public, the Court may order that owner to take remedial steps. The extent to which Westridge may incur additional costs, and whether those costs may be passed on to ratepayers, are matters for the Alberta Utilities Commission.

[285] In the application before me, Westridge argued that the injunction would encroach on the Alberta Utilities Commission’s jurisdiction as the administrative body responsible for determining acceptable rates and services. Westridge briefly submitted that the Alberta Utilities Commission may assess whether the provision of services and the associated costs are justified under section 100. However, Westridge provided no details about that process or the factors the Alberta Utilities Commission considers. Presumably those factors are enumerated in section 100, and other policy documents.

[286] A statutory injunction with the remedies sought by RVC does not encroach on the Alberta Utilities Commission's jurisdiction. Such an order authorized under the *MGA* identifies a contravention and requires the respondent to do, or refrain from doing, a particular act. Nothing in this decision should be construed as directing the Alberta Utilities Commission in determining the public interest or setting rates for services. Westridge did not explain in its written materials or oral submissions how an order of this Court would interfere with the Alberta Utilities Commission's role, other than by potentially placing a new issue before it. Once this order is made, Westridge may exercise any statutory right available, including if authorized by statute, to bring the matter before the Alberta Utilities Commission for determination of how those costs are to be borne.

[287] However, nothing in this decision should be construed as interpreting any statute or as granting, directing, or authorizing the Alberta Utilities Commission to take, or refrain from taking, any action.

[288] Accordingly, I do not accept that compliance with the injunction would create an exceptional circumstance arising from a conflict with the *Public Utilities Act* or from the possibility of unjust discrimination against Westridge's customers.

5. Injunction Test Part 4 – does the justice of the case warrant granting the injunction or any other order?

[289] Westridge submits that the Enforcement Order Judicial Review is the appropriate forum to resolve the dispute. Westridge further argues that RVC does not possess a legal or public right to access Westridge's water distribution system for fire suppression purposes.

[290] Westridge also advances several related arguments. It submits that: (1) the injunction application is an attempt to circumvent the Alberta Utilities Commission approval process to gain access to Westridge's water system and undermine Westridge's position in negotiations concerning a franchise agreement under the *Exclusivity Bylaw*; (2) RVC is attempting to shift the costs of complying with the Safety Codes Council Order onto Westridge; and (3) it is inequitable and arbitrary that RVC should get to rely on two definitions of fire hydrants in the *Fire Hydrant Bylaw* and the *Safety Codes Act*.

[291] Westridge submits that there is a distinction between the mandatory injunction sought here requiring it to provide a service, and a prohibitive injunction commonly associated with municipal statutory injunctions. Westridge distinguishes *St. Paul (County)*, where the injunction required the removal of rocks from a road allowance under the County's control and where the County held the right and title to the road. I note that a road allowance is owned by the Crown in right of Alberta. However, the County of St. Paul, under the *MGA*, "appears to grant all rights with respect to roads short of an ability to alienate the title to the road, or the right to unilaterally close the road": *St. Paul (County)* at para 18.

[292] Westridge submits that the Court has jurisdiction to consider other remedies besides injunctive relief, and that alternative remedies such as instruction from the Court on the proceedings, interpretation of the *Fire Hydrant Bylaw*, or other remedies may be appropriate and capable of ending the contravention.

[293] RVC submits that courts should be reluctant to refuse an injunction sought to enforce a public right on discretionary grounds. RVC further submits that the Court should consider the elevated risks faced by Swift Creek residents. RVC notes that it has borne the financial burden of implementing interim measures intended to address the risks arising from Westridge's alleged contraventions.

[294] RVC also submits that municipalities retain discretion in deciding how and when to enforce their bylaws and other statutory obligations. RVC argues that allegations of heavy-handed enforcement are not relevant unless the enforcement decision is irrational, arbitrary, or made in bad faith. RVC further submits that its previous decision not to enforce the applicable requirements does not affect its current authority to do so because estoppel does not apply to the enforcement of public law obligations.

[295] Where an injunction is sought to enforce a public right, the courts will be reluctant to refuse it on discretionary grounds: **Radomsky** at para 16; **Occupy Calgary** at para 28; **Thornhill Aggregates** at paras 7 and 9.

[296] In **Risler**, Justice Marion noted the following at paragraph 105:

Therefore, the broad power provided to the court in section 554 of the *MGA* to grant any appropriate order that the “justice of the case” requires is not an unfettered discretion to do whatever the Court feels should be done. For example, it does not grant the court jurisdiction to take over the municipality’s function in passing or amending bylaws or area structure plans. It does not provide courts the unfettered power to impose specific terms of agreements on private parties, to negotiate agreements on behalf of parties, or to micro-manage business or other operations. Although not a complete bar, Courts are wary about granting mandatory injunctions that require ongoing supervision by the court, especially where the terms of the order cannot be precisely drawn and where it may result in wasteful litigation over compliance. [citations omitted]

[297] I have already addressed Westridge’s submissions in my analysis of exceptional circumstances for the purpose and effect of the *Exclusivity Bylaw* and the costs of mitigating the impairment of the Swift Creek hydrants.

[298] A statutory injunction is an extraordinary remedy. I agree that the facts of this case differ from those in many other statutory injunction cases. The injunction sought by RVC is different from other section 554 injunctions. It does not seek to remedy a common nuisance, such as the removal of a pile of garbage in **Peter** or rocks from a road allowance in **St. Paul (County)**. Nor does it seek to disperse an encampment on public property, as in **Occupy Calgary**. The proposed order requires the Respondent to take positive and ongoing steps to mitigate a statutory contravention. The nature of the relief sought is a significant consideration in assessing the justice of the case.

[299] However, RVC has established a strong case that an ongoing statutory contravention places the lives and property of the Swift Creek community at risk. Westridge materially escalated the matter by marking the Swift Creek hydrants out of service during an ongoing appeal of RVC’s enforcement action. The established contravention is unlikely to cease without court intervention,

and I believe that any remedy less than mitigative injunctive relief will be insufficient to address the issue.

[300] The jurisprudence on section 554 injunctions provides limited guidance on the fourth stage, which concerns the justice of the case. I accept Westridge's submission that the justice of the case may, in appropriate circumstances, favour relief short of a statutory injunction or the denial of injunctive relief where substantial and compelling equitable considerations warrant that result.

[301] However, I believe I am equally entitled to consider the public interest generally and, in particular, the interests of those directly affected by the contravention. I am also entitled to consider the purpose of the *Safety Codes Act*.

[302] In bringing this statutory injunction application, RVC exercised the jurisdiction conferred on it in the public interest. Although RVC's conduct and procedures in changing its enforcement approach left something to be desired, *Polai* and other binding authorities support its ability to bring this proceeding and confirm that the public has a direct and substantial interest in the enforcement of the law. I do not find that the enforcement decision or this statutory injunction application rose to the level of being irrational, arbitrary, or brought in bad faith.

[303] The risk to life and property in Swift Creek arising from the impaired fire hydrants weighs in favour of granting the injunction sought by RVC. Those affected may include children and other vulnerable individuals. Fire suppression is critical to the health and safety of a community. The *Safety Codes Act* is public welfare legislation designed to promote health and safety. The public interest weighs in favour of granting the injunction sought by RVC.

[304] Accordingly, justice of the case warrants the exercise of discretion to issue an injunction under section 554(1) of the *MGA*.

VI. Other Issues:

1. Direction from the Court on the interpretation of the *Fire Hydrant Bylaw*:

[305] Westridge seeks reasons clarifying the interpretation of the *Fire Hydrant Bylaw*. If the Court grants the injunction, in whole or in part, Westridge also seeks guidance regarding the relationship between this application, the Enforcement Order Judicial Review, and the *Exclusivity Bylaw* Judicial Review.

[306] The parties did not advance substantial submissions regarding the interpretation of the *Fire Hydrant Bylaw*. There is a pending Enforcement Order Judicial Review. In these circumstances, I decline to express any opinion on the interpretation of the *Fire Hydrant Bylaw*.

[307] I decline Westridge's request for me to seize myself of the Related Actions, as that term is defined at page 6 of its supplementary submissions dated September 2, 2026. My direction in that regard is without prejudice to Westridge's ability to advance such a request before a Justice of this Court in Chambers.

VII. Remedy:

[308] At the outset of the hearing, I questioned RVC about the inclusion of the *Fire Hydrant Bylaw* in its proposed order. RVC's written materials relied on an alleged contravention of the

Safety Codes Act, not the *Fire Hydrant Bylaw*. Counsel for RVC acknowledged that the reference to the *Fire Hydrant Bylaw* in the draft order was an error that should have been corrected before filing the written submissions and requested that it be struck. I accepted that submission and struck the reference accordingly. Notably, RVC's brief relies on a contravention of the *Safety Codes Act* and not the *Fire Hydrant Bylaw*, which supports the conclusion that its inclusion in the draft order was inadvertent. Even if RVC had insisted on retaining the reference in the final order, I would have removed it.

[309] RVC seeks four specific forms of injunctive relief:

1. Westridge shall immediately assign or identify an impairment coordinator.
2. Westridge shall immediately implement and maintain a 24/7 fire watch, in a manner approved by RVC, solely for the purpose of mitigating the increased fire risk in Swift Creek, until such a time that the third element, a freeze-proof temporary water supply is established.
3. Westridge shall establish and maintain a freeze-proof temporary water supply in Swift Creek, through the use of a portable water tank and a portable pump, with a pumping supply able to ensure a minimum flow, duration, and volume to every residence in Swift Creek. The water supply shall achieve a flow of at least 60 litres per second (3,600 litres per minute) for a duration of at least 1.5 hours, and volume of at least 320 cubic metres.
4. Westridge shall thereafter, comply with the *Safety Codes Act*, *Alberta Fire Code*, and NFPA-25.

[310] NFPA-25 is the source of the remedies sought. It includes explanatory notes to section 15.5.2(4) that describe the fire watch and temporary water supply measures intended to mitigate the risks associated with an impairment:

A.15.5.2(4)(b) A fire watch should consist of trained personnel who continuously patrol the affected area. Ready access to fire extinguishers and the ability to promptly notify the fire department are important items to consider. During the patrol of the area, the person should not only be looking for fire, but making sure that the other fire protection features of the building such as egress routes and alarm systems are available and functioning properly.

A.15.5.2(4)(c) Temporary water supplies are possible from a number of sources, including use of a large-diameter hose from a fire hydrant to a fire department connection, use of a portable tank and a portable pump, or use of a standby fire department pumper and/or tanker.

[311] I am reluctant to order the 24/7 fire watch. While surveillance may mitigate the increased risk of loss of life and property from fire in Swift Creek, RVC has not satisfied me that it is necessary to protect Swift Creek estates. The NFPA-25 does not treat a fire watch as purely a surveillance tool, it includes elements relevant to structural fire protection, such as ensuring egress routes and alarm systems. A fire watch appears unlikely to enhance fire response or suppression where homes are occupied and equipped with hopefully functioning smoke detectors.

[312] During the hearing, I asked RVC to identify the source of the flow rate, pressure, and volume requirements for the proposed temporary water supply, including whether those

requirements originated from a statute, code, or other standard. RVC responded that those requirements were derived from the *Fire Hydrant Bylaw* and that it was unaware of any code or standard prescribing those volumes outside the *Bylaw*. RVC characterized the inclusion of those volumes in the *Bylaw* as a policy decision of the elected Council and could not explain why those particular values were chosen.

[313] Counsel for RVC acknowledged that a temporary water source meeting the flow requirements set out in the 2011 Final Acceptance Certificate would be acceptable. The levels are: 2,100-2,500 L/min.

[314] Neither the record, the *Alberta Fire Code*, nor NFPA-25 establishes what an acceptable flow rate, duration, or volume would be for a temporary water supply. I accept RVC's submissions that the requirements of an adequate temporary water tank can reflect the *Fire Hydrant Bylaw* requirements.

[315] At the hearing I questioned RVC about the inclusion of a provision requiring Westridge to comply generally with the *Safety Codes Act*, *Alberta Fire Code*, and NFPA-25. Counsel for RVC submitted that this type of clause is standard boilerplate in statutory injunctions applications under the *MGA*. Counsel also submitted that section 554 injunctions are relatively common, although the resulting decisions are often unreported.

[316] I am reluctant to order Westridge to comply generally with the *Safety Codes Act*, *Alberta Fire Code*, and NFPA-25 because such an order may effectively require ongoing judicial supervision of highly technical regulatory requirements. The instruments governing this area may confer discretion on regulators and other decision-makers to achieve acceptable outcomes. Administrative decision-makers and subject-matter experts are better positioned to resolve disputes concerning the regulatory acceptability of infrastructure condition, capacity, performance, and technical specifications. Such jurisdiction has recourse to the courts, should that become necessary. This decision should have made clear to the parties why and how Westridge is not in compliance with its responsibilities as they relate to the Swift Creek fire suppression infrastructure. It should not be necessary for the Court to order a party to comply with obligations which should now be apparent to it.

VIII. Order:

[317] I grant a statutory injunction under section 554(1) of the *MGA*, with the following terms:

- a) Westridge shall assign or identify an impairment coordinator.
- b) Westridge shall establish and maintain a freeze-proof temporary water supply in Swift Creek, through the use of a portable water tank and a portable pump, with a pumping supply able to ensure a minimum flow, duration, and volume to every residence in Swift Creek. The water supply shall achieve a flow of at least 60 litres per second (3,600 litres per minute) for a duration of at least 1.5 hours, and volume of at least 320 cubic meters.

[318] Paragraph (a) must be implemented or completed within 24 hours of this Order. Paragraph (b) must be implemented within 10 days of this Order, or with the consent of RVC at a later date.

[319] The Order shall remain in effect until otherwise agreed by the parties, or further order of this Court, whichever is earlier.

IX. Costs:

[320] Section 554.1 of the *MGA* provides guidance on the allocation of costs in a section 554 injunction proceeding:

1. A municipality is entitled to collect lawful costs in all actions and proceedings to which the municipality is a party.
2. The costs of a municipality in an action or proceeding in which the municipality is a party are not to be disallowed or reduced because the municipality's lawyer in the action or proceeding is an employee of the municipality.

[321] I will observe that Counsel for the parties provided quality written and oral submissions to the Court. The parties were responsive when I asked for additional submissions in late-August on the issue of privilege, particulars related to claims regarding affidavits, and an error I made in reading RVC's proposed order.

[322] I will also note that Counsel for Westridge provided a substantial number of documents in the Friday afternoon prior to the hearing on the next business day. I reviewed those materials thoroughly prior to the hearing before me.

[323] If the parties cannot agree on costs, they may make written submissions within thirty days of the date of this decision. Such submissions are not to exceed ten pages in length.

Heard on the 8th day of September, 2026.

Dated at the City of Calgary, Alberta this 14th day of September, 2026.

C.M. Jones
J.C.K.B.A.

Appearances:

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