Court of Queen's Bench of Alberta

Citation: Pacific Investments & Development Ltd v Wood Buffalo (Regional Municipality), 2016 ABQB 643

2016 ABQB 643 (CanLII)

Date: 20161117
Docket: 1401 09551
Registry: Calgary

Between:

Pacific Investments & Development Ltd.
and Pacific Investments GP Ltd.

Plaintiffs

\- and -

Regional Municipality of Wood Buffalo
and Glen Laubenstein

Defendants

Memorandum of Decision
of
A. R. Robertson, Q.C., Master in Chambers

Overview

[1] This is an application to compel answers to a variety of undertaking requests given at a cross-examination on the defendant municipality's affidavit of records. Cross-examinations on affidavits of records are not often done. Counsel is usually content to conduct questioning (discovery) based on the initial affidavit of records, and in the course of questioning if it becomes apparent that there are more records that should have been produced, an undertaking is sought. That sometimes results in the scheduling of further questioning and delay that could have been avoided with complete production before questioning.

[2] Until recently, there has been some debate over whether a party was entitled, as of right, to cross-examine on an affidavit of records. It may be done "as of right": ***Penn West Petroleum Ltd. v. Devon Canada Corporation***, 2016 ABQB 623.

[3] The nature of such a cross-examination is different than questioning generally.

[4] Cross-examination on the affidavit of records can be more efficient than exploring records at questioning, especially where the corporate representative does not have significant personal knowledge of the facts in issue, and where it appears at first blush that the list of documents appears to be significantly lacking. Where the party examining intends to examine employees, ensuring that all the proper records have been identified at the outset will tend to avoid later delays.

[5] In this case, many of the questions, as specifically posed, were very broad. The defendant opposes, and in many instances the reasons for the objections were that the question was simply too broad. I have concluded that the specific way a question was asked should not be determinative of the relief I grant in this circumstance. The foundational rules mandate the approach. The obligation to inform and produce lies firstly with the litigant that has provided the affidavit of records. Where there are significant deficiencies in the production, it is not a proper response to be fussy over how the question was asked. If the question had to be asked because of the failure to properly produce records, the records have to be produced.

The Claim

[6] The plaintiff sues in connection with lands that it purchased within the Regional Municipality of Wood Buffalo ("RMWB") which it expected would be included within the Urban Services Area ("USA"), which is essentially the Fort McMurray townsite. That process was delayed for a considerable period of time and the plaintiff paid property taxes well beyond what it expected to pay and well beyond what it believes it should have paid. The plaintiff claims damages for the excess taxes from the very party that it paid them to, being the municipality.

[7] The reason for this is an anomaly in the RMWB. In the rural area of the municipality, there is considerable oil sands activity, so the rural land is highly valued. As a result, the property tax structure is the reverse of most rural and urban areas: the property taxes payable on the lands outside the town are much greater than the taxes payable on the lands within the town. Therefore, once the land had been acquired by the plaintiff pursuant to what it says was an arrangement amongst the Province as vendor, the plaintiff as purchaser, and the municipality as the taxing authority, it was important to the plaintiff to have the land designated as being within the USA as soon as possible.

[8] The plaintiff believes it was taken advantage of by the municipality in the process of buying land from the Province for the express purposes of having the land included within the USA - and then finding that the (now former) Chief Administrative Officer of the municipality, who is also named as a defendant, was actively opposing having the lands included.

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Problems in Providing an Affidavit of Records

[9] The production so far has been quite significant, at least in quantity. The RMWB identified 1,412 documents. However, the former Chief Administrative Officer is no longer with the municipality, or even lives in the area, and I am advised that there is significant turnover within the workforce of the municipality, with the result that it is sometimes difficult to find a witness who has personal knowledge of things that happened only a few years ago. That has apparently impeded the RMWB'S ability to identify and produce records.

[10] After it received the municipality defendant's affidavit of records, the plaintiff concluded that it was inadequate, and counsel chose to cross-examine, in an attempt to determine that all relevant and material records had been produced and all appropriate inquiries had been made. It is said that that step was taken here to work more efficiently.

[11] The specific circumstances of this case demand that all parties focus on efficiency, because since this lawsuit was started, and in fact since the cross-examination on affidavit of records was held, there was a significant fire and then later on a flood in Fort McMurray, which is the urban centre within the municipality. Many homes were destroyed, and I am told that municipal employees are extremely busy addressing the fallout from that tragedy.

[12] In this case, the person who swore the affidavit of records is the manager of the Freedom of Information and Protection of Privacy branch with the Department of Legal and Legislative Services with the municipality. He was not involved, so far as I have been able to determine, with any aspect of the factual background that led to this claim. Accordingly, he has no personal knowledge of the facts in issue. More importantly, the affidavit of records was prepared by others and the documents listed in it were identified and assembled by others. When asked if he personally had any role in the instructions or requests that were given to the various municipal departments assembling the affidavit of records, he said he did not. He was not sure of the process followed. He admitted that he had no role in making any follow-up inquiries with anyone concerning any of the records that were produced by the municipality. It was only after he was asked to be the corporate officer that he became involved, and after that he received the records and had a chance to review them. He did not know the specific mechanisms used by the staff involved to conduct a search for records.

[13] Accordingly, at the time he swore the affidavit of records he was essentially a "straw man". I do not mean that in a pejorative manner, or to suggest that he will not, over the course of the lawsuit, properly inform himself.

[14] Having someone who has no personal knowledge of the facts is not in and of itself objectionable in the context of a large organization such as the Regional Municipality of Wood Buffalo. Given the nature of the claim advanced, there is likely not one person who would know all of the relevant details of the municipality's response to the claim and be able to identify and produce relevant and material records. The Chief Administrative Officer is no longer an employee, and he is likely the one with the most personal knowledge of the relevant facts. There is a high turnover of staff. The circumstances would, by necessity, require a cooperative effort amongst various individuals and departments within the municipality.

[15] However, given the deponent's complete absence of participation in the assembly of the documents, the cross-examination became both more necessary and more difficult than it might otherwise have been.

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General Comments

[16] Before addressing each of the specific undertaking requests that were objected to, I make some general comments on cross-examinations on affidavits of records, undertakings requested and objected to, and the approach taken here. I do not mean to be critical of counsel for the municipality. It became clear in the course of oral argument that counsel is having some difficulty getting information from the employees of the municipality because of the staff turnover mentioned above and their focus on more urgent matters and in this circumstance that is entirely understandable.

[17] My overall comment is that since the introduction of the current Rules of Court in 2010, the bar and the courts have been finding their way to a new reality as to how litigation is to be conducted. The foundational rules make it clear, in rule 1.2(3), that both parties must "jointly and individually" take steps to identify the real issues in dispute and facilitate the quickest means of resolving the claim, periodically evaluate dispute resolution, refrain from filing applications and taking proceedings that do not further the purpose and intention of the rules, and to use publicly funded Court resources effectively.

[18] That effectively places a burden on the legal counsel who are representing the parties to do these things.

[19] With that in mind, particularly where the witness is a person with no meaningful knowledge of the facts in issue, it is inappropriate to focus on the precise way that questions were asked in a cross-examination on affidavit of records. The fundamental purposes of cross-examining on an affidavit of records are to determine (a) whether appropriate inquiries have been made to identify what records are within the possession or power to produce of the litigant, and (b) whether the appropriate documents have been identified in the affidavit of records. Where the witness did not participate in the creation of the list of documents and was not involved in the circumstances that gave rise to the claim, and where the answers to questions are frequently, in essence, "I don't know", the questioning lawyer is, to a great extent, essentially asking questions "in the blind".

[20] Without having a witness who knows what documents there are, or what employees should or might be in possession of those documents, what documents or records might exist in email form or in paper form in a filing cabinet, what practices are followed by employees of the litigant in keeping records of meetings or telephone conversations, it is difficult for the person seeking the production to know precisely how to phrase questions or to ask for specific enquiries to be made of the correct persons within the organization for production. Those sorts of details are the responsibility of the litigant itself, in this case the RMWB. It is the responsibility of the corporate representative to inform himself of these things before swearing the affidavit of records. When no one at the questioning table has even asked those who might know, the questioning inevitably is going to involve specific requests for groups of records that may not exist.

[21] In this circumstance, what the questioning lawyer wants for his or her client is not necessarily the direct answers to specific undertakings. What the questioning lawyer wants is a better attempt at preparing an affidavit of records.

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[22] Accordingly, the approach in cross-examining on the affidavit of records is to be contrasted with the approach taken when at questioning on the merits, formerly referred to as “examinations for discovery”. In that questioning, when a party asks for an undertaking and it is refused, the courts generally focus on the question actually asked and whether that request must be complied with. The court may rule that an undertaking need not be given, even though the court can see that had the information been requested in a different fashion the request would have been proper and an answer required.

[23] Counsel for RMWB refers to many cases dealing with cross-examinations, but those cases deal with cross-examinations generally, not on an affidavit of records. Generally speaking, a deponent who is not also the corporate representative cannot be required to undertake to gather information; the deponent can be asked about things they actually know. However, the corporate representative is required to inform himself or herself of the dispute and the records to be produced before swearing the affidavit of records.

[24] In a cross-examination on affidavit of records where the witness did not participate in the assembly of the records and has no personal knowledge, the over-arching question is basically whether documents have been properly requested, identified, and produced. The question is whether the opposing litigant has fulfilled its obligations. Here, it quickly became apparent that the witness did not know. Ignorance of this does not give a party a strategic advantage at the production stage.

[25] Accordingly, in my view it is not appropriate here to focus on whether the question, or the specific request for production of records, was worded precisely to the satisfaction of the litigant whose officer is being questioned. The questions here were framed as asking the witness to “review the records of the RMWB and produce *any and all* records relating to …” which, on its face, is a very broad approach. I will interpret the questions as essentially “I ask you to undertake to identify and produce all relevant and material records related to …”. That is what can be expected at this stage. The overly-broad way questions were framed cannot be used to avoid proper production of relevant and material records or to delay production to the questioning stage and the request for undertakings mentioned above.

Specific Rulings

[26] With all of that in mind and taking into account rule 1.2(3), I give my specific rulings on the objections to undertakings in Schedule “A”. Although I have placed some limitations on the periods of time for which records must be produced, that is done to create some boundaries at this stage, without the benefit of seeing the records. My ruling is not intended to preclude production of relevant and material records as they may become apparent as the disclosure process is followed.

[27] In light of the fact that the municipality has apparently found the requests overwhelming, in part because of the way the requests for undertakings were posed, I have suggested some starting places to try to find the records (or to be able to give an informed answer that there are not any) so as to satisfy the RMWB’s obligations. I expect that the RMWB has already done this to an extent, but the many objections based on the assertion that the request is “onerous” lead me to make these comments.

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[28] The statement of claim here is 16 pages and quite complex. It is not realistic to think that ordinary employees of the municipality would be able to read it and know what records to produce. The circumstances require that legal counsel for the municipality identify the issues, and then take reasonable steps to identify which employees might be responsible for different aspects of the municipality's operations such that they could identify what records exist, and identify what records used to exist but do not exist anymore, and what records that might be expected to have existed never did. It is often an iterative process, somewhat like peeling an onion, when the litigant is a large organization such as a municipality, with each iteration of the process leading to a better understanding of what records are available.

[29] Throughout my directions, there is overlaid a "reasonableness" limitation as there always is to record production and undertaking replies. Proportionality applies. A litigant is not required to go to extensive lengths to look for a record that may not exist when its possible existence will not likely have a significant bearing on the resolution – that is why the test is relevant *and material*.

[30] Here, the objection has been made in gross that many of the requests are onerous. But the inquiry as to the existence of records may be done in a pragmatic way. For undertaking No. 6, for example, I would expect that the question will first be put to Mr. Laubenstein and to Mr. Evans as to whether they recall any such correspondence, and where it would be likely to be found. I do not expect the RMWB, at the first instance, to conduct an extensive review of all of its records in search of this correspondence. The intent is to avoid a later examination of either of these witnesses only to find that they acknowledge that there is such correspondence, no one even asked them for it, and of course it has not been produced – necessitating an undertaking to produce it and a re-scheduling of their examinations, and perhaps a re-examination of other witnesses already examined.

[31] For undertaking No. 13, I would expect enquiries to be made either of the mayor or the mayor's assistant (or both), or of others who may have worked with the mayor, to determine whether there are such records.

Conclusion

[32] For the reasons set out above and the specific reasons about various documents set out in **Schedule "A"**, I direct that the RMWB provide a further and better affidavit of records taking into account the specific directions set out in the schedule.

[33] Counsel made no specific submissions on when it would be reasonable to have the affidavit sworn and served. In light of the number of records and the work required, the intervening holiday period, and the challenges that the RMWB currently faces, my suggestion is that the further and better affidavit of records should be completed February 28, 2017. Further questioning dates could be scheduled now in anticipation of the deadline being met. However, if counsel wish to make submission on this point they may contact the Masters' Chambers clerk for a brief hearing. If neither party contacts the clerk to challenge this proposed deadline by Friday November 25, 2016, then unless they have agreed on a different deadline that will be the deadline.

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[34] The plaintiff shall have its cost under Schedule "C" unless there is a special reason why a different award should be made. If so, counsel may contact the Masters' Chambers Clerk to arrange to speak to the Court.

Heard on the 17th day of October, 2016.
Dated at the City of Calgary, Alberta this 17th day of November, 2016.

A. R. Robertson, Q.C.
M.C.C.Q.B.A.

Appearances:

Phillip A. Carson
Miller Thomson LLP
for the Applicants

Andrea Luft
Parlee McLaws LLP
for the Respondent

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Schedule "A"

[1] No. 6: *To review the records of RMWB and ascertain whether there is any correspondence between Mr. Laubenstein and Mike Evans instructing him concerning his communications with Pacific.* The municipality objects to the request for "any records" and argues that compliance would require the production of irrelevant records. However, in light of the mayor's delegation of the resolution of development matters of the lands to Mr. Evans, the Executive Director of Stakeholder Relations, and document RMWB's 4060, which indicates that Mr. Evans was *not* to meet with Pacific, the determination of whether there are any records relating to those instructions is relevant and material and therefore the request to identify such correspondence must be completed, and if there are any, they must be produced.

[2] No. 9: *To review RMWB's records and identify any records of the Province working with the Municipality to identify developable lands within the Fort McMurray airport land/south of Highway 69.* The municipality argues that this request is too broad and is not limited to the lands subject to the claim. Also, it argues that "these records would not elicit direct facts with respect to representations made or not made to Pacific." But records are not relevant and material only when they directly disclose directly probative information. The facts leading up to the plaintiff's acquisition of the lands and the arrangements as between the Province, the RMWB and the plaintiff, if there were any, are relevant and material. In light of the indication that the Province and the municipality collaborated to identify a phased approach to the sale and transfer of land, and paragraph 7 of the statement of claim which asserts that the municipality and the province had a mutual intention to develop the lands, the RMWB must make reasonable efforts to identify records of their possible collaboration to the extent that the communications relate to the subject lands.

[3] No. 13: *To review the records of RMWB to provide any records of any preliminary or other discussion preceding this October 23, 2013 letter between Minister Griffiths and the Mayor regarding substantive discussions between the various levels of government about the transfer of UDSR [Urban Development Sub-Region] lands.* RMWB objects on the grounds that the "request is not based in the content of the Affidavit of Records or for information or documents referenced in the RMWB's Affidavit of Records" and argues that the "request is contrary to the Affidavit of Records." This seems to be a variation of the often made but discredited and baseless "within the four corners of the affidavit" objection mentioned in ***Dow Chemical Canada Inc v Shell Chemicals Canada Ltd***, 2008 ABQB 671 at para. 7. It is not a valid objection. The RMWB must make reasonable efforts to determine if there are records in this regard, limited to the time beginning January 1, 2010. If there are, they must be produced.

[4] No. 14: *To review the records of RMWB for any records of Mayor Blake's staff having worked collaboratively with the staff of the Minister of Alberta Municipal Affairs with respect to the development of the Prairie Creek lands.* This is a repetition of part of No. 13, the question here being limited to Mayor Blake's staff. It need not be addressed separately. (The RMWB takes exception to the word "collaboratively" and says that it is not known what this means, so the question is too broad. However, the word was used by the Mayor of the RMWB and the word means "working together." Answering the previous undertaking should get to the desired result.)

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[5] No. 15: *To provide all documents prepared by RMWB related to the development of the proposal that 55,000 acres be included in the USA.* The claim is that the municipality had worked with the province to bring lands into the USA. The RMWB objects because this request relates to the amended statement of claim "not with respect to anything contained in the RMWB's Affidavit of Records." Once again, this is not a valid objection. The RMWB must make reasonable efforts to determine if there are records as requested and, if there are, to produce them.

[6] No. 16: *To provide any records that RMWB may have considering tax relief for Pacific in relation to the Prairie Creek Lands.* This relates to the plaintiff's claim. The RMWB is said to have denied tax relief. The RMWB says the decision was discretionary so the inquiry on this topic should be limited to the representations made to Pacific. I disagree. If the discretion was not exercised properly, it is clearly relevant to the claim. The RMWB must make reasonable efforts to determine if there are records relating to this topic and, if there are, to produce them. (Once again, the appropriate way to embark on this is to ask the persons who were, or may have been, involved in this. Minutes of council meetings, the related agenda, and reports submitted to council would seem to be an obvious source, and the Municipal Clerk should be able to offer some assistance.)

[7] No. 17: *To review the records of RMWB and identify and produce any records in which Pacific Investments' request for tax relief was considered by Council or by any administrative person providing information to Council.* This is a repetition of No. 16 and need not be answered separately.

[8] No. 18: *To review the records and produce any records of RMWB considering the Province's role as the master developer in the situation that's described in the briefing note RMWB03449.* This document is said to indicate that the Province acted as a "master developer" with respect to a previous development near Fort McMurray. This question appears to be too broad at this time. The title "master developer" is not a term of art and it does not reflect a particular role or body of responsibilities. It need not be answered at this time. Later questioning may provide more insight on this topic and identify appropriate boundaries for the inquiry.

[9] No. 19: *To review the records of RWMB to identify and then produce any records of consideration of the motion that's referenced on RMWB3508, page 3 of 9, and any records related to the drafting of the motion, page 9 of 9, RMWB03514.* Since this document relates to the request for the lands to be included in the USA and directly relates to the allegation by the plaintiff that Mr. Laubenstein attempted to frustrate the plaintiff's attempts, and the RMWB has joined issue on this debate, reasonable attempts must be made at identifying records relating to the consideration of the motion and if they are identified, they must be produced. "Any records relating to the drafting of the motion" is too broad and need not be answered.

[10] No. 20: *To provide any records of communications or agreement regarding the selection of the subject lands for sale by the Crown that is referred to by Tom Ross (RMWB03919).* This document is an email and it is said to suggest that some people within the RMWB did not agree with the selection of the lands for the Request for Proposal process, but there eventually was agreement. It suggests that the RMWB was involved in the selection of the lands and the topic seems clearly to fall within the matters in dispute. The RMWB argues that "the specific documents requested in this undertaking cannot be ascertained." That is often a difficulty that

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the opposing party has: it cannot ask for specific documents because it does not know if inquiries have even been made as to their existence. If a record suggests that a file of records probably exists (as here), then asking for their production is reasonable. The answer may be, "We have looked and there are not any." Reasonable efforts must be made to identify and produce records of communications regarding the selection of the lands ultimately purchased by the plaintiff.

[11] No. 26: *To review the records of RMWB and to identify and produce any records that are prepared in furtherance of the items that are listed in the bullet points on page 4 of the memorandum of understanding (RMWB3924).* The RMWB says this request is too onerous. The MOU was as between the Province and the municipality. It mentions, among other things, the responsibility of the municipality to lead the development of a formal process to identify the lands required for release by the Province. This would relate to the genesis of the facts upon which the claim is based. I would expect that if the Province and the municipality had agreed on this, there would be a file. Two levels of government do not normally take steps of this magnitude only by phone calls and occasional meetings with no record of them having taken place. The RMWB must take reasonable steps to identify records relating to the municipality's responsibilities regarding the release of lands by the Province to the extent that the records relate to the lands in question. If, after reasonable enquiry, it is determined that there is no file (and no records otherwise have been identified) then that would be the answer to the question: there are not any.

[12] No. 28: *To review the records of RMWB and to produce any records that were prepared in preparation for or at that meeting (RMWB3964).* The RMWB says this request is too broad. This document records a stakeholders meeting held in September 2012 and is said to relate to the assertion in the claim that representations were made to the plaintiff that the development of a UDSR would result in reduced taxes for the lands, but the plaintiff was subsequently informed that the creation of a USDR would not have this effect. The plaintiff is trying to re-create the paper trail of what it says were opposite representations made to it, relating to its claims of misrepresentation, deceit, and abuse of authority. These documents are relevant and material and the municipality must take reasonable steps to identify the records requested.

[13] No. 29: *To review the records of RMWB and produce any correspondence between Mr. Laubenstein and Mr. Vinni concerning the USDR and the USA related to the subject lands and the tax treatment of the Prairie Creek lands (RMWB4021).* Councillor Vinni has said that he received "education" from Mr. Laubenstein with respect to the UDSR, the USA, and related tax treatment on lands so designated. The RMWB says this is not relevant because it would not disclose what was said to the plaintiff. Since the claim is about what Mr. Laubenstein did and said to frustrate the plaintiff's acquisition and arrangements for designation of the lands, what he told a councillor in giving him an "education" on these topics is relevant and material, and reasonable steps must be taken to identify the records.

[14] No. 30: *To review the records of RMWB and produce any relevant and material correspondence predating November 30, 2010, between the Province and the municipality related to the selection of the Prairie Creek property for sale for industrial development.* The RMWB says that the request is too broad as to time and again the discredited "four corners of the affidavit" argument is made. The request is proper other than as to time, provided that the records sought are relevant and material to the dispute. Relevance and materiality presumes some time constraints, which I believe to be "created or dated in 2010".

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[15] No. 31: *To review the records of RMWB and to produce any records in which the CILUS [Commercial and Industrial Land Use Study] report is considered in the context of the selection of the Prairie Creek lands as potential land for release for industrial development.* The RMWB says the report does not specifically or exclusively discuss the subject lands, but this report is mentioned in paragraph 11 of the Amended Statement of claim and it touches on the genesis of the identification of the land acquired by the plaintiff. The RMWB points out that it was created about 2007, three years prior to the RFP, although it was revamped in 2010. But the request is not for any records that reference it, merely those relating to the selection of these lands. Reasonable steps must be taken to produce documents that are relevant and material to the selection of the particular lands is considered in which this report is mentioned. This is along the lines of undertaking 20.

[16] No. 32: *To review the records of RMWB and produce any records predating October 26, 2011, in which the municipal development plan is considered or referenced in respect to inclusion of the Prairie Creek lands within the urban service area.* This is too broad, because there is no context at all, and there is no limit on time. However, records relating to the Council's consideration in the year 2011 in which the municipal development plan is considered or referenced in connection with these lands must be identified and produced.

[17] No. 33: *To review the records of RMWB and produce any records predating April 11, 2012, considering the property tax to be assessed on the Prairie Creek lands.* Once again, this is too broad both as to context and time. However, records relating to the municipality's taxation of the lands in the hands of the plaintiff must be identified and produced.

[18] No. 35: *To review the records of RMWB and produce any records in which RMWB has considered the tax relief request made by the plaintiff.* The RMWB says this is "overly onerous and broad". The allegation is that Mr. Laubenstein erroneously informed some councillors that the "tax code" would be undermined if tax assistance were granted to the plaintiff, that Council relied on his information, and denied the plaintiff's request for tax assistance. Reasonable efforts must be made to identify and produce records relating to the plaintiff's request, records relating to information presented to Council or to individual councillors, specifically including information provided by Mr. Laubenstein. (Once again, the Municipal Clerk should be able to provide agenda, minutes, and reports presented, as a start.)

[19] No. 38: *To produce any records related to the preparation of RMWB00136.* This document is a map that is apparently marked as an attachment to something but the document to which it is an attachment has not been produced. The RMWB has already undertaken to produce the main document. Further directions as to production will await that production in order to understand what it is, the apparent context of its creation, and whether any further production is appropriate.

[20] No. 39: *To review the records of RMWB and to produce any records of the collaboration between RMWB and the Crown that's described in document RMWB1580.* This document describes the collaboration. This request follows on undertaking No. 14 and the records must be identified and produced.

[21] No. 43: *To review the records of RMWB and to produce all records of the collaboration that's described by the Mayor in RMWB03475.* This request arises from an email between Minister Griffiths and the Mayor dated November 4, 2013 (RM WB 3475) were in the Mayor indicates that her staff had been working collaboratively with the Minister staff to identify a

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phased approach to the sale and transfer of land. The municipality must make reasonable efforts to identify any relevant and material documents that reflect communications between the Mayor, the Mayor's staff, and the Alberta Ministry of Municipal Affairs. (My anticipation is that this would be answered, at least at the first instance, by contacting the Mayor's office and either asking her, or her senior staff members, what file would reflect the "collaboration" that was referenced in the email.)

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[22] No. 44: *To review the records of RMWB and to produce any and all documents that were created in the preparation and development of the administrative recommendation that's described in document RMWB 03489.* The RMWB objects because "the documents pertaining to [the representations that Mr. Laubenstein made to councillors] have not been requested." This objection seems to presume that no representations were made, that the RMWB will be successful, and therefore they are not relevant. Reasonable efforts must be made by the municipality to identify records leading to the administrative recommendation.

[23] No. 46: *To review the records of RMWB and to produce any records that were created in the preparation of that administrative recommendation (RMWB03691).* The RMWB says that the request is onerous. This undertaking relates to the recommendation regarding the request that the USA include all UDSR lands, and is essential to the claim. The plaintiff asserts that Mr. Laubenstein made misrepresentations to Council, and the municipality must make reasonable efforts to identify and produce records relating to the representations that were made to Council regarding the administrative recommendation.

[24] No. 47: *To provide all the records that were created in preparation for the meeting that's described in document RMWB 3963, and to produce all records and notes arising from the meeting*. The RMWB says this request is onerous and would only lead to irrelevant record production. A stakeholders meeting is said to have occurred in September 2012 in which the issues relating to misrepresentation, deceit and abuse of authority alleged by the plaintiff were, or may have been, discussed. In light of the nature of claim involving the state of mind of the defendants, specifically Mr. Laubenstein, the municipality must take reasonable steps to identify and produce any materials prepared in advance of the meeting, as well as minutes or other records arising from the meeting that are within its possession or power to produce.

[25] No. 50: *To produce all of the records of the work between RMWB and the Crown that's referenced in RMWB03922.* The RMWB says this request is too vague and would result in irrelevant record production. This undertaking relates to a briefing note that is said to state that the municipality had been working with the Government Alberta since the fall of 2010 to establish the UDSR. The statement of defence denies that the municipality had *any* involvement in the process of moving the lands into the UDSR and USA. Records of the work done that is referenced in this briefing note must be identified and produced.

[26] No. 51: *To produce records of that work between RMWB and the Government of Alberta (RMWB03922).* This undertaking is too broad at this point. Depending upon documents produced in relation to undertaking number 50, it may or may not be appropriate to answer. The records to be produced must relate to the plaintiffs claim.

[27] No. 54: *To provide any records of any negotiations between the Government of Alberta and RMWB to sell the land contained within the UDSR.* The RMWB says this is too broad and assumes that there were negotiations, although this document makes no reference to any. This objection assumes success by RMWB on this point. The request relates to the assertion in the

statement of claim that Mr. Laubenstein caused the RM WB to promote development of other property to compete with the lands. As asked, I agree that this request is too broad, but the municipality must make reasonable efforts to identify and produce records of negotiations between it and the Government of Alberta in the period from six months before the RFP that led to the plaintiff purchasing from the Province.

[28] No. 55: *As an alternative undertaking to undertaking No. 54, to restrict it to the time period prior to the issuance of the RFP for the sale of the subject lands.* I have given the time limitation, so this undertaking need not be separately answered.

[29] No. 59: *To review the records of RMWB and produce any correspondence or notes to, or from, or prepared by any of the RMWB representatives who are identified as having attended that meeting (Pacific document 15524).* The discredited "four corners of the affidavit" objection is raised again, and the RMWB asserts that the request relates to a document in the plaintiff's production, not its production. That is not a valid objection. This undertaking relates to a November 21, 2011 meeting where the RMWB formally adopted the municipal development plan referenced in paragraph 12A of the amended statement of claim. The plaintiff asserts that the adoption of the plan implicitly waived the conditions precedent to effect the purchase of the lands and that this step contributed to the representations that the RMWB's objective was to incorporate the lands into the USA in a timely fashion. The RWMB denies it made any representations of support. What was said and heard at the meeting is relevant and material, and accordingly the municipality must take reasonable steps to identify and produce records of its employees that chronicled the meeting.

[30] No. 60: *To review the records of RMWB and to produce any records prepared by any of the RMWB attendees in preparation for, during the attendance, or subsequent to the meeting related to the matters that are described in the record of meeting (Pacific document 15528).* This undertaking is similar to the previous one (and receives the same objections), but it relates to a record of a meeting between the RMWB in the plaintiff in July 2012. The municipality must take reasonable steps to identify and produce records made by RMWB attendees in preparation for the meeting, during the meeting, or documents prepared shortly after the meeting relating to the meeting.

[31] No. 81: *To review the records and email correspondence of Audrey Rogers to determine whether she received the email at Pacific document 32440; and whether she forwarded to other councillors.* The RMWB says this record is from the plaintiff's production, not with respect to the RMWB's affidavit of records. That is exactly the point. The plaintiff wants to know if it was received, and if so, why it was not produced. This undertaking requests the RMWB to review its records and the email correspondence of Audrey Rogers to determine whether she received an email, Pacific document 144793, and whether she forwarded to the other RMWB counsellors. It was addressed to all counsellors. It was sent in response to a briefing note of the RMWB relating to the inclusion of the lands into the USA as well as various property tax issues. This is a proper request, and the municipality must make reasonable efforts to identify and locate records in respect of her receipt and forwarding of this email.

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