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Phone: (800) 668-6481 | Fax: (905) 479-3758 | John.Carson@lexisnexis.ca

**Real Estate**

# Alberta Appeal Court decision on utilities has 'huge precedential value': lawyer

By **Ian Burns**

(August 13, 2019, 12:20 PM EDT) -- A group of Alberta condo owners has won a long battle to get the City of Medicine Hat to take care of a number of water and sewage lines on their property, with a lawyer involved in the case saying the decision will inform how municipalities and developers conduct themselves when building utilities.

The issue in *Condo Corporation No. 0410106 v. Medicine Hat (City)* 2019 ABCA 294 concerns water and sewer services at the River Ridge lands in Medicine Hat, which consist of three condominium corporations, an assisted living complex and office space. During the building of the project, the developer Medican and the City entered into an agreement which said the developer would build and retain ownership of the water, sanitary sewers and storm sewers on the River Ridge lands. The three condo corporations were not party to the agreements.

In early 2005, a conflict arose surrounding the sewage lift station, which provides service for all five parcels of land at River Ridge. It was revealed the lift station was not up to code and would cost $880,000 to repair, a number which has since increased. The developer's lawyer told one of the condo corporations it was responsible for the station because it was on their land, with the City saying the developer knowingly chose to own the water and sewer infrastructure and the legal ownership of that infrastructure, and thus responsibility for its operation and maintenance, rests either with the developer or the condo corporation.

Medican was later declared insolvent, so the three condo corporations took the City to court, asking them to take responsibility for operating and maintaining the potable water, storm water and sanitary sewer lines which run across the five parcels that make up River Ridge. The City countered the condo corporations are responsible for maintaining the infrastructure because they own it, as the provincial *Municipal Governance Act* (MGA) says the owner of land is responsible for the construction, maintenance and repair of a "service connection" of a municipal public utility, which is "the part of the system or works of a public utility that runs from the main lines of the public utility to a building or other place on a parcel of land for the purpose of providing the utility service to the parcel."

And Justice G.D. Marriott of Alberta's Court of Queen's Bench found the City did not have to take care of the infrastructure.

"Medican [the developer] was the original owner of the land. Subsequently it was divided but each owner of the land is then responsible for the service connection," she wrote. "The City has resolved its duty with respect to its responsibilities as set out by statute and agreement and owes no duty to the applicants as they have alleged."

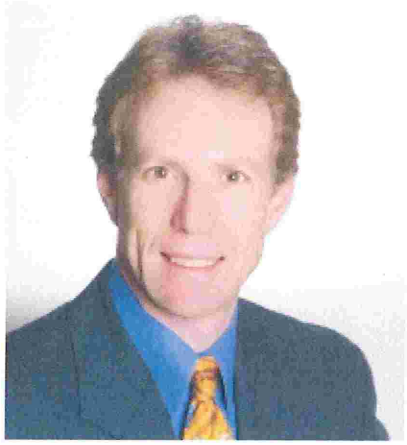
But the condo corporation appealed, and Justice Jo'Anne Strekaf of the Court of Appeal ruled the City had a statutory duty to operate and maintain the lines and lift station. She

noted parts of what the City referred to as "service connections" on the River Ridge lands are located on one parcel but provide utility service to others.

"It is not consistent with the language or the purpose of the MGA to require the owner of one parcel to be responsible for the utility service provided to another parcel, nor, conversely, to expect the owner of one parcel to rely on the owner of another for its utility service," she wrote. "That interpretation is not consistent with the plain meaning of 'service connection' in the MGA, the City's duty to provide utility service, or the broader scheme of the Act."

Justice Strekaf, who was joined by Justices Brian O'Ferrall and Frederica Schutz in the unanimous decision released Aug. 1, found the utilities "were specifically designed to serve the five-parcel development as a whole, and not only the individual parcels on which they sit."

"These are, both functionally and legally, 'main lines' in that their purpose is to transmit drinking water, storm water and sewage across the development, from one parcel to another," she wrote. "The service connections, by contrast, are those parts of the utility systems that branch off from these main lines to supply service within an individual parcel."



Peter Linder, Peacock Linder Halt & Mack

Peter Linder of Peacock Linder Halt & Mack, who represented the condo corporations, called it a "wonderful decision that is well-reasoned, and vindicates the persistence of a group of elderly residents who had this very onerous obligation foisted upon them by the City's refusal to carry out their statutory duties."

"At the end of the day the court said if you have a utility that services more than one parcel of land, you can't foist that responsibility to the landowners," he said. "That goes to the pith and substance of what it is to operate a public utility, because you are providing public utility services to multiple parcels of land — so that's how the court approached this, not on a strict statutory construction approach, but rather a functional approach based on what the statute was intending to do, in terms of the City's duties."

Eran Kaplinsky, who teaches property and municipal law at the University of Alberta, said the case was interesting "because it involves both the technical application of the statutory provisions involving utilities and infrastructure, but also raises interesting policy questions."

"Under the court's interpretation, whenever a utility system serves another parcel of land

that can be the City's obligation," he said. "And that brings up an interesting question, because if the purchasers had been made aware of the arrangement, and if all of the infrastructure was approved the way it is supposed to be approved and something goes wrong, under the court's interpretation it is still the City's obligation."

Linder said the decision "has a huge precedential value."

"It makes it crystal clear that a municipality can't contract out of its statutory obligation to provide public utilities where those utilities are going to service more than one parcel of land," he said. "I think that it's going to fundamentally inform how municipalities and developers conduct themselves going forward."

But Kaplinsky said he was unsure of the decision's impact.

"What happened here was the development was approved where part of the service is located on one lot, but there is a different property that benefits without the appropriate arrangements being made and without being clarified in advance," he said. "And that to me is the big takeaway from this case — the servicing responsibilities need to be clarified to every person who purchases property in a city-approved development."

Counsel for Medicine Hat did not reply to requests for comment.