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Our File: 221-17-003 NM

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CSU 52
10212 112 Street N.W.
Edmonton, AB T5K 1M4

Attention: Lanny Chudyk

Re: Opinion on Binding a Subsequent Council and Obtaining Documents from Epcor

1. The Union is concerned about Epcor's bid to acquire the City of Edmonton's Drainage Department. The Union is of the view that drainage should remain a public utility and that its transfer to a private corporation such as Epcor would decrease transparency and accountability.

2. In this context, you asked us,

- Could City Council bind subsequent City Councils? and
- If City Council compelled Epcor to disclose documents, would this bind future City Councils and a future Epcor CEO?

3. For the reasons outlined below, we are of the view that City Council cannot bind a subsequent City Council, and Epcor cannot be compelled to disclose documents, either now or in the future.

I. Binding Subsequent Councils

4. The key case with respect to whether City Council can bind a subsequent City Council is *Pacific National Investments Ltd. v Victoria (City)*, 2000 SCC 64. In that case, a land developer argued that a municipality had implied in a contract that it would not re-zone certain lands. The Court held that any such contractual term would be invalid. The Court also explained that municipal councils cannot fetter the discretion of successor councils, cannot bind their successors councils through contracts with a third party, and cannot bargain away their legislative powers in advance (para 56).

5. Thus, the current City Council could not bind subsequent City Councils.

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II. Obtaining Documents from Epcor

6. There also does not appear to be a way to compel Epcor to disclose documents. The *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25 (“*FOIPPA*”), does not apply to Epcor (s. 1(i)(xii); s. 1(j); 1(p)). The *Personal Information Protection Act*, SA 2003, c P-6.5 (“*PIPA*”), applies to Epcor instead and, unlike *FOIPPA*, *PIPA* does not include a provision allowing anyone to access certain documents in the organization’s possession. Rather, *PIPA* only allows an individual to access documents in the organization’s possession that are about that individual. Thus, there is no way in which to compel Epcor to release documents not covered by this exception. However, the Union could obtain documents about Epcor by making a *FOIPPA* request to the City for specific types of documents in its possession about Epcor.

7. Our understanding is that Epcor’s CEO has said that if City Council asks Epcor to respect disclosure requests, it will do so. Such a gratuitous promise on Epcor’s part would not be contractually binding and would not bind future Epcor CEOs. It may be that there is something in the Master Agreement between the City and Epcor that would be of assistance, but we do not have access to that document.

8. For the reasons outlined in the proceeding section, the current City Council could not require subsequent City Councils to issue or maintain a directive asking Epcor to respect disclosure requests. Rather, future City Councils would retain the discretion to rescind such a directive.

Please do not hesitate to contact me if you have any questions about this opinion.

Yours truly,

CHIVERS CARPENTER



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