YOUNG ANDERSON
BARRISTERS & SOLICITORS

REPORT WRITING: THE DOS AND DON'TS

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REPORT WRITING: THE DOS AND DON'TS

I. INTRODUCTION

Solid report writing is always a tricky balance between comprehensiveness and efficiency. Include too much, or offer too much detail, and readers may be turned off or get lost in the maze. Leave out too much, or skimp on the details, and you risk readers not getting it. And never forget that, if your report supports a reviewable decision, it will be key to persuading a reviewing court that the decision should be affirmed. This makes finding the sweet spot even more important. A longer and more detailed report risks giving those attacking a decision more ammunition, so less is truly sometimes more. That being said, a minimalist approach may not sit well with a reviewing judge. Trial judges are used to explaining themselves properly to appeal courts and they might mistakenly think that a perfunctory, minimalist approach signals a weakly supported or poorly considered decision.

II. MAINTAINING CONFIDENTIALITY – IMPLICATIONS OF THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FIPPA)

As we have said, writing a good report is always tricky. Finding the balance between properly explaining a matter or supporting a decision is often challenging across varying objectives and situations. The challenges are heightened when dealing with confidential matters that require discretion as well as proper explanation. Reports to your council or board about things like labour relations, land negotiations, or litigation or legal advice require your usual report writing skills, but you also need to keep in mind the freedom of information risks.

As we all know, FIPPA gives the public a right of access to records in a local government's custody or control. Although FIPPA recognizes the need for confidentiality across a spectrum of local government interests, the default is the public's right of access. The public interest in confidentiality is primarily reflected in three of FIPPA's protections against access, i.e., the protections for the substance of in camera deliberations, advice or recommendations, and solicitor-client privilege.

A. Protecting the Substance of In Camera Deliberations

In camera material can be protected under section 12(3)(b), which allows a local government to refuse to disclose information that would reveal "the substance of deliberations of a meeting of its elected officials … if an Act … authorizes the holding of that meeting in the absence of the public."[1]

[1] Also remember that section 12(3)(a) allows you to refuse to disclose a draft of a resolution or bylaw regardless of whether the draft has been submitted in camera. For example, if you draft a resolution for your council and the

The Office of the Information and Privacy Commissioner for British Columbia (OIPC), FIPPA's oversight agency, requires you to show three things to rely on section 12(3)(b):

- That an Act authorized the meeting to be held in camera;
- The meeting in question was, in fact, properly held in camera by following all required procedures; and,
- Disclosure of the report "would reveal…the substance of deliberations of" the meeting.

If an access applicant appeals to the OIPC, you can meet the first two conditions by establishing the legislative authority for the in camera meeting, and attesting to the fact that a resolution to go in camera was passed.[2] If you submit an affidavit, append the meeting minutes to it, so the OIPC can see what was before your council or board, notably the report itself, and how it figured in its deliberations.[3]

Meeting the requirement that disclosure would reveal the substance of deliberations at the meeting is another kettle of fish. The bottom line is that just because a report or other record is tabled at an in-camera meeting does not mean the Legislature intended it to be protected under section 12(3)(b).[4]

The OIPC's approach to this has arguably varied somewhat over the years and, as usual, it all depends on the circumstances.

The OIPC has typically taken a fairly strict view of what qualifies as the "substance of deliberations", at times suggesting that it is limited to "who said what at the meeting", as reflected in the meeting's minutes.[5] On its face this could require disclosure of an in camera

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draft never makes it out of your office, you can still refuse disclosure under this exemption (and the draft might well also qualify as protected advice or recommendations under section 13(1)).

[2] If the appeal goes to a formal OIPC hearing, you will want to submit an affidavit from a knowledgeable colleague to prove the three parts of the test. It also would not hurt if the affidavit speaks to the procedural regularity of the holding of the meeting overall, through the giving of notice, and so on.

[3] If you do not provide evidence to show that the meeting was properly held in camera, you risk your reliance on section 12(3)(b). In *White Rock (City) (Re)*, 2017 BCIPC 18 (CanLII), at paragraphs 38-39, the OIPC held that, because it did not have the meeting minutes or evidence from meeting participants about the holding of the meeting, and the meeting's in camera nature, section 12(3)(b) did not apply to an in camera report.

[4] As for the Legislature's choices, section 12(1) protects the "substance of deliberations" of a Cabinet or Cabinet committee meeting (and a few other types of information).

[5] *The College of Physicians and Surgeons' Decision Not to Disclose Complaint Records, Re*, 2000 CanLII 10554. In another recent case, the adjudicator observed that the records did not disclose who had said what at the in camera meeting, so section 12(3)(b) did not apply: *Parksville (City) (Re)*, 2018 BCIPC 20 (CanLII) [*Parksville*]. (To find decisions on CanLII, go to www.canlii.org and enter the citation, e.g., 2000 CanLII 10554, in the search box.)

report, even though it was debated in camera, if the report does not somehow disclose the substance of the discussion. Consistent with this strict approach, other decisions say that information disclosing the subject of the meeting does not qualify as the "substance of deliberations".[6]

Other OIPC decisions show that the content and purpose of an in camera report, and whether the report was in fact debated, make all the difference. In one case, the City received a report about a developer's decision to withdraw from a project with the City, and the OIPC concluded, on the basis of the adjudicator's review of the report, that section 12(3)(b) applied to the entire report.[7] The evidence showed that the report contained a recommendation to Council, Council considered the report, and it was essential to Council's deliberations. The adjudicator contrasted this kind of report to one that merely provided general information, to stimulate council discussion but not action.[8]

Keep this in mind when you write in camera reports. If your report is intended to prompt a council or board decision, or other action, consider including language making this clear. It will not be determinative on appeal to the OIPC, but if you say something like, "This report is to inform Council's deliberations on the recommendations that it contains [or matters it addresses]" you can help your case.

You should keep in mind that section 12(3)(b) can apply to a record that was not tabled at a meeting. For example, the OIPC found that disclosure of one sentence in an email between employees would reveal the substance of deliberations at an in camera meeting.[9]

Earlier we suggested you give the OIPC a copy of the in camera meeting minutes if you face an appeal, to help the OIPC understand why you have properly applied section 12(3)(b) to an in-camera report. You can try to improve your case earlier in the process, by making sure the minutes reflect the fact that the report itself was discussed (i.e., deliberated upon) at the in camera meeting. This sounds a bit like boot strapping because it is; but, it may help you make your case to the OIPC later. You could say something like, "Staff report XYZ was tabled at the meeting and Council deliberated on its contents", then go on to record any related action (e.g., deferral for further analysis).

Another twist to keep in mind is that section 12(4) says you cannot withhold a draft resolution or bylaw, or material that would disclose the substance of deliberations, if the draft or the subject matter of the deliberations has been considered in a meeting open to the public. We take the view that the mere mention by a councillor or director of the "subject matter" does

[6] See *Parksville*, for example.
[7] *New Westminster (City) (Re)*, 2015 BCIPC 59 (CanLII).
[8] An example of such a case is *City of Cranbrook, Re*, 1999 CanLII 4353.
[9] *Nanaimo (City) (Re)*, 2016 BCIPC 3 (CanLII).

not mean the subject has been "considered" in an open meeting. We would argue that a matter has been "considered" only where it is put before the council or board as an agenda item, or otherwise formally considered by the entire body. Still, watch out for the possible application of section 12(4) when you are preparing your OIPC appeal brief; if the access applicant raises it, be ready to say, in response, why it does not apply.

B. Protecting Advice or Recommendations

Section 13(1) of FIPPA protects "advice or recommendations" developed by or for a local government, including where the advice or recommendation is implicit (i.e., it can protect more than text that is explicitly stated to be a "recommendation", "advice" or "option"). This exemption will, however, only exceptionally protect entire in camera reports, and it will not protect "factual information".

This is because section 13(2)(a) says you cannot withhold, as advice or recommendations, "any factual material". Remember this when writing reports, so you do not include more background facts than you need to properly inform your council or board, so it can make a diligent decision on an appropriate factual basis. This is one way in which tension can arise between protecting in camera confidences while ensuring a proper record in case of any judicial review challenge. You might, on the one hand, decide that the risk of access under FIPPA favours including less information. On the other hand, if the record supporting the decision is factually inadequate, the decision may be more vulnerable to challenge on judicial review.

We suggest that, certainly in controversial or high-profile cases where you suspect there may be a judicial challenge, it is better to properly prepare for a possible legal challenge. It is better to ensure you can show a proper factual foundation for a decision that may be challenged than to worry about disclosure through access to information.[10] And remember that we are talking about factual material, about evidence of facts, which in the circumstances might be uncontroversial.

The foregoing being said, the OIPC has recently been applying two Supreme Court of British Columbia decisions that have effectively narrowed the scope of the class of "factual material". These decisions suggest that you may be able to withhold information compiled from source materials by experts, using their expertise, for the specific purpose of aiding a deliberative process.[11] This can include, for example, information compiled by in-house auditors who were conducting a risk audit:

> [I]f the factual information is compiled and selected by an expert, using his or her expertise, judgment and skill for the purpose of providing explanations

[10] For one thing, if a legal challenge is made, the material is going to end up in the court record anyway.

[11] *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC [*PHSA*].

> necessary to the deliberative process of a public body or if the expert's advice can be inferred from the work product it falls under s. 13(1) and not under s. 13(2)(a). As I held earlier, these compilations do not exist separately and independently from the opinions and advice in the reports. Rather, the compilation of factual information and weighing the significance of matters of fact is an integral component of the expert's advice and informs the decision-making process. Based on the principles articulated in *Physicians*, the documents created as part of a public body's deliberative process are subject to protection.[12]

Whether you can rely on this expanded interpretation of what can be "advice or recommendations" depends on the circumstances, of course. You will also want to watch out for other aspects of section 13(2) that can catch portions of reports. The OIPC recently ruled, for example, that reports prepared by hydrogeological and geotechnical engineers and submitted to council in camera were not protected as "advice or recommendations" because they amounted to "an environmental impact statement or similar information", and section 13(2)(f) says these kinds of material cannot be withheld as "advice or recommendations" under section 13(1).[13]

C. Protecting Solicitor-Client Privilege

Section 14 of FIPPA protects both kinds of legal privilege, solicitor-client privilege and litigation privilege. It is quite common for legal opinions to be placed before a board or council, of course, and this is almost invariably done in camera. This is done for the obvious reason that public disclosure will waive the privilege, and this is only exceptionally desirable.[14]

When you are preparing a report to table privileged material in camera, make sure you label the report as "privileged". This is not a guarantee that the entire report, not just an appended opinion, will be exempt, but it can help. If your report summarizes legal advice, as opposed to simply referring to an appended opinion, the portions of the report that sum up the advice will likely be protected under section 14, but not necessarily the entire report.[15] Rather than worry about finessing these cases, we suggest that, where you are placing legal advice in camera, be sure to clearly state the privilege claim, ideally on each page of your report.

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[12] PHSA, at paragraphs 93-94, citation omitted.

[13] *Gibsons (Town) (Re)*, 2020 BCIPC 37 (CanLII).

[14] As a reminder, the privilege belongs to the local government, not the lawyers, although some lawyers sometimes seem to forget this.

[15] You would have a good argument that the entire report can be withheld, especially where disclosing the fact that advice had been received, and the matter involved, would reveal privileged information. This might be so, for example, where there is ongoing litigation and the fact of receiving advice at a given point might itself disclose the stage of the local government's litigation strategy or case preparation.

D. Remember to Claim all Applicable FIPPA Exemptions

Our last point on FIPPA practice is a reminder. FIPPA allows you to apply more than one exemption to the same records or portions of records. For example, legal advice protected under section 14 is also "advice" under section 13(1), so consider claiming both. This can guard against any risk that the advice was given by someone who is a lawyer but the OIPC later concludes was not acting in that capacity, e.g., where an in-house lawyer advises on a business matter and the advice is not legal advice.[16] If you have claimed section 13(1), this can still apply to that advice. And since we are talking about in camera reports, you should apply section 12(3)(b) to reports summarizing or tabling legal advice.

III. MAINTAINING SOLICITOR-CLIENT PRIVILEGE

While on the topic of solicitor-client privilege, we caution that mentioning legal advice in a public setting may accidentally waive privilege for all purposes, not just access to information under FIPPA. This sometimes comes up during public meetings, where a council or board member asks staff why the local government can or cannot do something. A staff member might say something like, "We have received legal advice saying we don't have the legal authority to do what [Council or the Board] is asking." If a bylaw is passed doing that same thing and is challenged, the challenger might demand that you produce the legal advice underlying that public statement, on the basis that the statement revealed the substance of the advice and thus waived privilege. This is not, of course, what you want to see happen.

The legal principles relating to waiver of privilege were recently summarized by the British Columbia Supreme Court in *United States v. Meng*, where the Court stated the following:

> [36] Waiver of a privilege may be explicit, where there is a voluntary intention to set aside the privilege. Or, waiver may be implicit, without a voluntary intention to waive, where the holder of the privilege conducts themselves in such a way that it would be unfair to allow the privilege to subsist. McLachlin J. (as she then was) explained this in *S. & K. Processors Ltd. v. Campbell Avenue*

[16] These cases will, admittedly, be rare, especially where the advice is from outside counsel, and we are *not* suggesting that you should second-guess yourself and leave section 14 on the table. If the advice is from a lawyer, claim section 14, but also consider other exemptions, especially section 13(1). As for lawyers giving advice that is not privileged, the courts have repeatedly reminded the legal profession that not everything a lawyer does is privileged—all parts of the common law test for solicitor-client privilege must be met in each case. See, for example, *R. v. B.*, 1995 CanLII 2007 (BC SC).

Herring Producers Ltd. (1983), 1983 CanLII 407 (BCSC), 45 B.C.L.R. 218 at 220 (S.C.) as follows:

> Waiver of privilege is ordinarily established where it is shown that the possessor of the privilege: (1) knows of the existence of the privilege; and (2) voluntarily evinces an intention to waive that privilege. However, waiver may also occur in the absence of an intention to waive, where fairness and consistency so require. Thus waiver of privilege as to part of a communication will be held to be waiver as to the entire communication. Similarly, where a litigant relies on legal advice as an element of his claim or defence, the privilege which would otherwise attach to that advice is lost *Rogers v. Hunter*, 1981 CanLII 710 (BCSC), [1982] 2 W.W.R. 189, 34 B.C.L.R. 206 (S.C.).

[37] Implicit waiver may take place where a party does not expressly waive privilege, but takes a position in relation to privileged materials that is inconsistent with maintaining the privilege. This may be by, for example, selectively disclosing part of a privileged document or a category of privileged documents on a particular subject, but withholding the remainder of the document or other documents on that same subject. In these circumstances, to uphold the privilege over the remaining communications would be unfair, because the opposing party and the court would be deprived of access to the full narrative. In *Huang v. Silvercorp Metals Inc.*, 2017 BCSC 795 at para. 143, Madam Justice Warren explained:

> The common thread in the cases where implied waiver is found is that the privilege holder has attempted to use and, at the same time, to shelter behind privileged documents. In such cases, fairness and consistency require production because the privilege holder uses the privilege as a sword to justify or explain a position or action while also using the privilege as a shield to prevent the other party from testing the justification or explanation.

[38] In a case of the selective disclosure of privileged documents, fairness and consistency require the disclosure of all documents on the same subject so to ensure that the partial disclosure does not give an unfair advantage or create a misleading picture: *McDermott v. McDermott*, 2013 BCSC 534 at paras. 113-117; *Huang* at para. 149.

> [39] Waiver will cause loss of privilege only in relation to the particular subject matter over which privilege has been waived. This limit ensures that waiver extends only as far as is necessary to ensure fairness: *R. v. Sipes*, 2012 BCSC 635 at para. 22; *Biehl v. Strang*, 2011 BCSC 213 at para. 47.

The legal test for waiver can be difficult to apply, and it can seem to be in the eye of the beholder, (i.e., the OIPC or reviewing court).

We know that it can be tempting to refer to legal advice having been received in public staff reports or during meetings open to the public. We also know it can be difficult to avoid answering questions from council or board members at public meetings about legal advice received. But, it is best to try to avoid doing so, if at all possible. If you can, respond by saying that this is a question better answered in a closed meeting, due to the need for confidentiality about such matters. It is always open to your council or board to close a portion of the meeting to the public if it wishes to discuss legal advice.

IV. THE REQUIREMENTS OF *CANADA (MINISTER OF CITIZENSHIP AND IMMIGRATION) V. VAVILOV*

Most of the Supreme Court of Canada's guidance in its recent decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov* concerning reasonableness review focuses on situations where reasons are, as a matter of statute or procedural fairness, both required and provided. While the Court emphasized the significant role of the decision maker's reasons in judicial review, it also recognized that there are circumstances where neither the duty of procedural fairness nor the statutory scheme requires the giving of formal reasons, or where the decision-making process does not lend itself easily to producing a single set of reasons.

For local governments, this portion of *Vavilov* is informed by the following comments from the Supreme Court of Canada's decision in *Catalyst Paper Corp. v. North Cowichan (District)*:

> [29] … Formal reasons may be required for decisions that involve quasi- judicial adjudication by a municipality. But that does not apply to the process of passing municipal bylaws. To demand that councillors who have just emerged from a heated debate on the merits of a bylaw get together to produce a coherent set of reasons is to misconceive the nature of the democratic process that prevails in the council chamber. The reasons for a municipal bylaw are traditionally deduced from the debate, deliberations and the statements of policy that give rise to the bylaw.
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> [31] This is not to say that it is wrong for municipal councils to explain the rationale behind their bylaws. Typically, as in this case, modern municipal councils provide information in the form of long-term plans. Nor is it to say that municipalities performing decisional or adjudicative functions are exempt from giving reasons as discussed above.

Also relevant in this context are the following comments made by our Court of Appeal in *377050 BC Ltd. dba the Inter-City Motel v. Burnaby (City of)*, in relation to a statutory obligation of a municipal council to give reasons for its decision:

> [12] The chambers judge rejected the approach to an assessment of the reasons of Council taken by Mr. Justice Oppal in *552197 B.C. Ltd. (dba Luxor Nite Club) v. City of Abbotsford*, 2003 BCSC 304. In that case, His Lordship said:
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> > [21] The reasons are not comprehensive. However, there is no doubt that the owners of the club were aware of the reasons for Council's decision. The club had had lengthy dealings with the police and Council. The concerns of Council must have been well known to the operators of the club. There could not have been any mystery as to the reasons for the suspension. Courts give reasons to parties in order to ensure that they have a reasonable understanding of a decision. Accordingly, with respect, there is no merit to this argument.
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> [13] In my view, the approach taken in Luxor is appropriate in this case. The respondent clearly knew the issues that were troubling the City. A 4 April 2006 letter from Council provided adequate reasons in the circumstances of this case. That letter replied to an inquiry made by counsel for the respondent. It noted that the Municipality did not base its decision on the contravention of any particular bylaw or policy and stated that Council exercised its authority under s. 60 of the Community Charter to not renew the business licence for what it considered to be reasonable cause: poor management of the operation of the motel giving rise to concerns for public safety, the enjoyment of use of neighbouring properties and a high demand for police services related to the business.
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> [14] Municipal councils are not courts. Their reasons should not be scrutinized with the same criteria as judicial reasons. Decisions by councils are made by a vote. The votes take into account the public interest. They also may reflect political considerations.

In *Vavilov*, the Supreme Court of Canada directed that, where neither the duty of procedural fairness nor the statutory scheme requires the giving of formal reasons, or where the decision-making process does not lend itself easily to producing a single set of reasons, such as in the cases referred to above, the reviewing court is to look to the record or larger context to understand the decision.

Where the record or larger context does not shed light on the basis of the decision, the reviewing court must still examine the decision in light of the relevant constraints on the decision maker, with it perhaps being inevitable that, without reasons, the analysis will focus on the outcome rather than on the decision maker's reasoning process.

Recently, in *1120732 B.C. Ltd. v. Whistler (Resort Municipality)*, the Court of Appeal considered the application of the principles set out in *Vavilov*, to decision-making by a local government, making the following comments in relation to judicial review of local government decision-making where statutory interpretation is involved, and where reasons for the decision are not given:

> [41] At para. 123 of *Vavilov*, in discussing the application of the reasonableness standard to questions of statutory interpretation, the Court commented that there will be cases where the administrative body did not explicitly consider the relevant statutory provisions. Rather than permitting the reviewing court to embark on its own interpretation, the Court stated that the reviewing court may be able to discern the interpretation adopted by the decision maker from the record and determine whether that interpretation is reasonable.
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> [42] At para. 137 of *Vavilov*, the Court referred to bylaws passed by a municipality as an example of a situation where the administrative body will typically not give reasons for its decision. The Court did not say that this is a basis for the reviewing court itself to interpret the enabling legislation but, instead, the Court made the point that the reviewing court must look at the record as a whole to understand the municipality's decision.
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> [49] Reasonableness review takes a different shape in cases where reasons are not required and have not been given: *Vavilov* at para. 76. As discussed above, *Vavilov* clarified that, in such cases, the record as a whole may serve as reasons….

In applying the principles from *Vavilov*, to local government decision-making, the Court of Appeal stated the following:

> [84] In the present case, there were no reasons given by the Municipality's council as to why it considered the Zoning Amendment Bylaw to fall within the s. 479 zoning power. The record discloses the reasons for the enactment of the Zoning Amendment Bylaw, but it does not cast any light on the reasoning of the council in this regard. In such a case, the reviewing court must assess whether the outcome is reasonable in light of the relevant constellation of law and facts: *Vavilov* at paras. 105, 138. To this end, it is necessary to consider whether there are any reasonable interpretations of s. 479 that would have authorized the Municipality's council to adopt the Zoning Amendment Bylaw: *Catalyst* at para. 24; and *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para. 12.
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> …
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> [88] As there were at least three ways in which the Municipality's council could have reasonably concluded that s. 479 gave it the power to adopt the Zoning Amendment Bylaw and the reasonableness of the decision to adopt the Bylaw is not being otherwise challenged, it has not been shown that the council's decision to enact the Bylaw was unreasonable. Hence, the council's decision should not be disturbed on judicial review.

It is important to take note of the Court of Appeal's approach in *Whistler* to determining whether the Resort Municipality's decision was reasonable where no reasons were given and the reasons could not be discerned from the record. The Court undertook itself a consideration of whether there were bases on which the Resort Municipality could have reasonably based its decision, but did not itself "answer" the question that was before the Resort Municipality. Having itself determined that there were at least three possible bases for the Resort Municipality's decision, the Court concluded that the Resort Municipality's decision was reasonable.

Notwithstanding the guidance provided by the Supreme Court of Canada in *Vavilov* and by our Court of Appeal in *Whistler*, there are a number of decisions from our Supreme Court where the Justices hearing the matters appear to have taken the absence of reasons from the local government decision-maker as an invitation for lesser deference to the decision-maker and greater opportunity for the Justices to substitute their view for that of the decision-maker. Many of these decisions are currently under appeal and, in our view, should be reversed for failing to properly apply the guidance from *Vavilov* and *Whistler*.

So, what does this mean for local government report writing. Well, we know that, in the absence of reasons, the courts are to look to the record or larger context to understand the local government's reasons for its decision. Clearly, part of that larger context will be the staff reports that were considered by your council or board when it made its decision.

Given the disparity between the guidance provided by the Supreme Court of Canada in *Vavilov* and by our Court of Appeal in *Whistler* and the apparent approach of our Supreme Court to judicial review of local government decisions, how local governments should evidence the larger context in which a decision is made will depend on the context. Sometimes having a less detailed staff report will preserve opportunities for the local government to make arguments if its decision is challenged in the courts. For example, in the same manner that we have often advised that recitals in bylaws not include references to specific statutory authority to allow for arguments to be made that the bylaw is otherwise statutorily authorized, staff reports should avoid references to specific authority for the proposed action. Other times, especially where you know that a decision is controversial and likely to be challenged in the courts, having a more detailed staff report, which addresses all considerations, both in favour and against the recommendation in the report, may be preferable. The purpose of the staff report in that circumstance is to provide the court with the background considerations in which the decision was made, and to impress upon the court that your council or board considered a whole range of matters before coming to its decision. In preparing such a staff report, it is imperative though that the report be as complete as possible and avoid irrelevant matters. Often, in such circumstances, it may be prudent to have such reports vetted by legal counsel in advance of presentation to your council or board as a thorough and fully considered report may result in a legal challenge being wholly avoided.

V. CONCLUSION

As we have said, writing a good report is always tricky. Finding the balance between properly explaining a matter or supporting a decision is often challenging across varying objectives and situations. The challenges are heightened when dealing with confidential matters that require discretion as well as proper explanation, or when dealing with a decision that is known to be controversial and may lead to judicial review proceedings.

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