

Municipal Bonusing Update: Supreme Court denies leave to appeal in *Vincorp Financial Ltd. v. Oxford (County)*, 2014 ONCA 876 (CanLII)

Municipal, Land Use, and Development

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The Supreme Court of Canada has denied leave to appeal in the case of *Vincorp Financial Ltd. v. Oxford (County)*, 2014 ONCA 876 (CanLII) (“Vincorp”). Notwithstanding the case has now been looked at by the highest court, the law around municipal bonusing is not a whole lot clearer today than it was back when we wrote our [previous blog post](#) on the lower court decision in November 2014.

As reviewed in that earlier blog post, the lower court in *Vincorp* decided that for an advantage conferred on a commercial entity to constitute a “bonus” within the meaning of s. 106 of the *Municipal Act, 2001* there must be an “obvious undue advantage”. The lower court found that there was no such advantage on the facts, but unfortunately provided little guidance on how distinctions between “obvious undue advantages” and “merited advantages” should be made.

When the matter was heard by the Court of Appeal, the appellant maintained the argument that there had been a bonus to Toyota and that this should invalidate the expropriation of the appellant’s lands. In rejecting this argument, the Court of Appeal said “[e]ven if the subsequent sale and transfer to Toyota had breached s. 106, this breach would not invalidate or vitiate the proper purpose for the expropriation and would not render the expropriation invalid”. The Court of Appeal went on to say “the appellants have an interest in the legality and propriety of the expropriation process and are entitled to receive the fair value of the mall lands as determined under the Expropriations Act, but their interests are not at stake in reviewing the second transaction [involving the alleged bonus to Toyota]”. The Court of Appeal also took the opportunity to remind us that the legislative purpose underlying s. 106 is “to level the playing field between municipalities competing to attract development”.

To the extent there has been any clarification of the law of bonusing, it appears to be only this: an expropriation will not be invalidated only on the basis of some indirect connection to another transaction involving a bonus.

While we had hoped the Court of Appeal might provide further guidance on how distinctions between “obvious undue advantages” and “merited advantages” should be made, unfortunately that was not in the cards. As a result, significant uncertainty around where to draw the line between an “obvious undue advantage” and a “merited advantage” remains.

* * This article is intended only to inform and educate. It is **not legal advice**. Be sure to contact a lawyer to obtain legal advice on any specific matter.

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