

## **Leave to Intervene in Supreme Court of Canada Case addressing Municipal Powers: Westcan Recyclers Ltd. v. Calgary**

**Date:** May 11, 2026

**To:** City Council

**From:** City Solicitor

**Wards:** All Wards

### **SUMMARY**

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The City Solicitor is seeking authority to proceed with a motion for leave to intervene in a case being heard at the Supreme Court of Canada, where the Court will consider the extent to which a municipality is required to distinguish between good governance and natural person powers when passing by-laws that also advance its own commercial interests.

### **RECOMMENDATIONS**

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The City Solicitor recommends that:

1. City Council authorize the City Solicitor, with retroactive authority if required, to:
  - a) Bring a motion seeking leave to intervene in the appeal to be heard by the Supreme Court of Canada of the decision in *Westcan Recyclers Ltd. v Calgary (City)*, dated February 27, 2025 by the Alberta Court of Appeal; and
  - b) Intervene in the appeal if leave is granted by the Court.

### **FINANCIAL IMPACT**

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The City will incur some minor expenses for filing materials at the Supreme Court of Canada and, if leave is granted, participating in the appeal. These are estimated to be less than \$10,000.00 net of HST recovery. These costs will be funded by the 2026 Operating Budget for CreateTO.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the information as presented in the Financial Impact Section

## **DECISION HISTORY**

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None.

## **COMMENTS**

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Westcan Recyclers Inc., (“Westcan”), is a scrap metal recycler which owns and operates a site on 68<sup>th</sup> Street in Calgary, Alberta (the “Westcan Site”). The City of Calgary (“Calgary”) is the owner and developer of an industrial area approximately 500 m. away from the Westcan Site (the “Trotter Subdivision”). Pursuant to a subdivision agreement, the City was required to expand 68th Street.

Calgary enacted a by-law closing access to the Westcan Site from 68<sup>th</sup> Street (the “Closure By-Law”) pursuant to its authority under applicable Alberta legislation.

Westcan brought a court application challenging the City’s authority to enact the Closure By-Law. Westcan argues the enactment of the Closure By-Law was an improper attempt to provide Calgary with a private commercial advantage.

### **Earlier court decisions in Westcan Recyclers Ltd. v. Calgary**

At the first stage, on July 27, 2023, the Court of King’s Bench of Alberta concluded that procedural fairness was not afforded to Westcan and the Closure By-law was substantively unreasonable.

The court was critical of Calgary’s Real Estate division appearing as a “developer” while making submissions in support of the Closure By-Law in furtherance of other City goals. The Court felt the City’s dual roles (ie. developer and policy advisor) should have been made clear and stated the City cannot transform its natural person powers (ie. role as developer) into good governance projects.

Calgary successfully appealed the Court of King’s Bench decision.

The Court of Appeal of Alberta concluded the Closure By-Law was procedurally fair and substantively reasonable.

From a procedural perspective, the majority of the Court of Appeal concluded the submissions by the City’s real estate division at Committee and Council did not mislead councillors about their role and the purpose of the Closure By-law and Westcan had a meaningful opportunity to participate in the decision-making process. Since the City as a whole cannot act outside its statutory authority it did not lose its public mandate when it acted through its real estate division.

One judge wrote a lengthy dissent, however, stating that the actions of Calgary, through its real estate division, had to be considered distinctly and separately from Calgary as a municipality exercising its statutory powers. While conceding that Calgary could act in both capacities, he was of the view that the differing roles were not sufficiently clear and

explicit in this case, and the lack of clarity ultimately led to a breach of procedural fairness.

### **Supreme Court of Canada Leave to Appeal**

On February 5, 2026, the Supreme Court of Canada granted Westcan Recyclers leave to appeal the Court of Appeal of Alberta's decision.

In its appeal, Westcan challenges a municipality's ability to exercise its by-law powers when commercial interests are involved.

We anticipate that the appeal will be heard in 2027.

### **Proposed City Intervention**

The City frequently holds dual roles when conducting City business. Any limitations on the City's ability to exercise its legislative powers when commercial interests are engaged is of great interest. Therefore, the City Solicitor consulted with CreateTO and the Housing Development Office, and both support the recommendation that the City seek leave to participate in this case.

The Supreme Court may grant intervener status to a non party that demonstrates it has an interest in the legal issues at stake and can assist the Court.

If the City is granted leave to intervene, the City will be able to offer its unique perspective on the legal issues in the appeal. The City can explain the practical implications of limiting municipal powers and assist the Supreme Court of Canada in contextualizing the impacts on municipal day to day operations when commercial interests are engaged.

## **CONTACT**

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## **SIGNATURE**

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City Solicitor