QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2021 SKQB 19**

Date: **2021 01 11**
Docket: QBG 301 of 2018
Judicial Centre: Battleford

BETWEEN:

MELISSA HENEY, JANIS LAVOIE, and THE HAMLET OF LONE ROCK

APPLICANTS

- and –

THE RURAL MUNICIPALITY OF WILTON NO. 472

RESPONDENT

Counsel:

Lauren J. Wihak	for the applicants
Gerald B. Heinrichs	for the respondent

DECISION HILDEBRANDT J.
January 11, 2021

INTRODUCTION

[1] There has long been tension between the applicants and the respondent, The Rural Municipality of Wilton No. 472 [RM of Wilton], regarding such issues as increased municipal taxes and the provision of water and sewer services to The Hamlet of Lone Rock [Hamlet]. The RM of Wilton undertook a course of action in considering the rezoning of the Hamlet as "country residential", which included

purchasing the homes of a number of Hamlet ratepayers through a numbered company. The RM of Wilton's methods, which may well have been unwise and overly paternalistic, riled the applicants. However, the question for this court is whether the measures taken constitute a decision subject to judicial review.

[2] The originating application in this case is not one seeking to quash or otherwise challenge a bylaw or resolution of the RM of Wilton. No such pronouncement exists. Rather, the case raises questions regarding whether a municipality, faced with a community that it considers to be an economic drain, may take steps in exploring or indirectly implementing a plan of action prior to direct compliance with procedural and statutory obligations. As such, the application is grounded in the common law and requires a consideration of what the applicants have described as "a factual matrix that is so far unprecedented in Canada".

[3] The applicants, by their originating application, seek an order quashing or setting aside several alleged decisions of the RM of Wilton on the grounds that they were made without lawful authority, in breach of procedural fairness, and in bad faith. The applicants also seek costs on a solicitor-and-client basis or enhanced costs.

[4] In response, the RM of Wilton served a notice of application returnable on the initial date set for hearing the judicial review application. The RM of Wilton sought an order striking the judicial review application in its entirety, striking certain of the parties, striking portions of the affidavits filed in support of the originating application, and directing that the originating applicants post security for costs. Alternatively, the RM of Wilton sought bifurcation of the process, requesting that the main application be adjourned pending the court's determination on these matters.

[5] On that initial return date, I expressed concern that many of the objections raised on behalf of the RM of Wilton were not truly preliminary matters, but were inextricably intertwined with the substantive arguments by both parties. As such,

bifurcation was denied. However, I remained seized of the matter and a special hearing date was set to hear both the application for judicial review as well as the application by the RM of Wilton.

BACKGROUND TO THE ALLEGED "DECISIONS"

[6] What the applicants have described in the originating application as the "impugned decisions" of the RM of Wilton, all allegedly made without lawful authority and fundamentally impacting the rights and circumstances of the Hamlet residents, are:

a) The decision to withdraw water and sewer services to the Hamlet, unilaterally and contrary to the RM of Wilton's obligations under s. 73 of *The Municipalities Act*, SS 2005, c M-36.1;
b) The decision to force ratepayers in the Hamlet to either sell their land or accept responsibility for the cost of sewer and water services;
c) The decision to create a corporation for the purposes of buying the property of Hamlet ratepayers in the absence of any statutory authority to do so;
d) The decision to acquire the properties of Hamlet residents in the absence of a proper municipal purpose and without complying with the statutory requirements of *The Municipal Expropriation Act*, RSS 1978, c M-27; and
e) The decision to rezone the Hamlet from an organized hamlet to "country residential" in the absence of statutory authority.

[7] In chambers, as some of these matters are related, the applicants distilled them into three decisions: 1) rezoning the Hamlet as "country residential"; 2) buying property of Hamlet ratepayers through a numbered company without disclosing the actual purchaser; and 3) discontinuing the water and sewer services.

[8] The RM of Wilton, in response, says that the applicants are misinformed, confused, and asserting facts not in existence. The respondent contends that no final decisions have been made which are amenable to judicial review. Further, it is argued, the applicants' failure to provide the court with any record that may be reviewed is fatal to the originating application.

[9] The Hamlet is one organized within the meaning of *The Municipalities Act* and located within the boundaries of, and governed by, the RM of Wilton. Like other organized hamlets, the applicant Hamlet has no independent source of funding and no authority to adopt bylaws or resolutions of its own. Rather, it elects a three-person hamlet board, which then makes representations to the council of the rural municipality. The rural municipality collects all grants and taxes for the entire community, including the organized hamlet, adopting a budget and making allocations through a negotiation with the hamlet board.

[10] Commencing in December 2017, a real estate agent began approaching ratepayers in the Hamlet, offering to purchase their homes on behalf of a numbered company. The applicant, Melissa Heney [Ms. Heney], made inquiries of the Council of the RM of Wilton as to the real identity of the buyer. It was not until approximately eight months later that the applicants learned the RM of Wilton was the ultimate buyer. In 2018, the real estate agent, at the behest of the RM of Wilton, was involved in 25 purchase transactions in the Hamlet.

[11] Concerning these transactions, Glen Dow, Reeve of the RM of Wilton [Reeve Dow], avers, at para. 6 of his affidavit, that there "were no expropriation steps whatsoever taken on those lands". Reeve Dow further states, at para. 7.b), "there exists no bylaw or resolution to expropriate any land whatsoever in the Hamlet". He further suggests, at paras. 51 and 52 that there were multiple reasons for purchasing the lands:

> 51. In 2018, the RM of Wilton purchased these available lands in

> Hamlet for many reasons. The purchase allows for decrepit properties to be cleaned up and thereby improve the appearance of the town. The purchase of the properties reduces the infrastructure demands on the current water and sewer systems. The purchase allows for potential buyers to build new structures with the now-available lands even under the current zoning of the Hamlet. Any such new building can be approved on a discretionary basis of the RM of Wilton council. The purchase allows for new lands to be available for future sale by the RM of Wilton, if and when the Hamlet is re-zoned to country residential.
>
> 52. The purchase of these lands allowed a reasonable and compassionate opportunity for the land sellers to sell their Hamlet lands in 2018, if they chose to do so. The RM of Wilton council took this seriously. The RM of Wilton council wanted to avoid a possible collapse in real estate values in the Hamlet, and the purchasing plan in 2018 gave the sellers a fair price and a quick sale. Otherwise sellers may have been waiting months or years to sell and in a possibly fast-declining real estate market.

[12] On August 21, 2018, the Council of the RM of Wilton held a public meeting, which was attended by the two individual applicants as well as most, if not all, of the remaining residents of the Hamlet. The applicants argue that this was not a public meeting pursuant to *The Municipalities Act* and that at the meeting the RM of Wilton announced that the "impugned decisions" had already been made.

[13] With respect to the suggestion that the meeting was not held pursuant to *The Municipalities Act*, the exact nature of the applicants' concern is not clear. Section 129(1) of *The Municipalities Act* enables a mayor or reeve to call a public meeting, when authorized by a council resolution, "for the discussion of any municipal matter". Whether there was a council resolution regarding the meeting of August 21, 2018 is uncertain. However, it is apparent that Hamlet residents were made aware of the meeting and attended. Thus, the meeting itself cannot be considered objectionable. At the meeting, information was provided to the residents regarding the "Lone Rock Renewal Project".

[14] Attached as Exhibit "C" to the affidavit of the applicant, Ms. Heney, is a

copy of an audio recording of the August 21, 2018 meeting, which was made by another individual, Steve Clark. A review of that recording reveals that the RM of Wilton provided those in attendance with the information which was posted on the RM of Wilton Council's website, the first portion of which is as follows:

> **Lone Rock Renewal Project August 27, 2018**
>
> Background:
>
> 1. Lone Rock was a busy community in the 1950's, because of the oil boom that started in the immediate area in 1947. But from 1970's forward began to rapidly decline. As a result of the loss of the school and elevator, the village became a Hamlet.
>
> 2. The Hamlet Board has been focused on keeping taxes at a minimum, and protesting the RM to subsidize Hamlet costs more.
>
> 3. Currently, the residents of Lone Rock pay approximately 1/2 of the cost of Hamlet maintenance and operations. The balance is covered by the tax dollars of other ratepayers in the RM.
>
> 4. A citizen initiative to lower taxes as a result of the 2017 assessment resulted in a downgrade in an assessment from 4.1 to 2.1 million.
>
> 5. A complete waste water renewal is currently pending with an anticipated cost in excess of $1.5 Million.
>
> 6. The water is currently within provincial guidelines and had a projected renewal date of 2030. However, increasing regulation, system failure, and distribution line failure over the last four years suggest that a complete water renewal may be required as early as 2022-2024. Estimated renewal costs are $1.5 to $2.0 Million.
>
> 7. A drop in assessment also takes a human toll as it creates a significant probability of loss of equity. (drop in property values). This is expected to be as much as 33%. Greatest impacted residents will be the most vulnerable:
>
> - the elderly looking for home equity funding
> - those holding a high percentage of mortgage vs. property value
> - residents with special needs
>
> **Council's Decision to Consider conversion of Hamlet to Country Residential Subdivision**
>
> Based on:

> - Continued decrease in SAMA Assessment: Current assessment $2.1 million, down from $3.2 million in 2013, 2017 initial assessment of $4.1 million.
>
> - Growing subsidization of operating costs in Lone Rock.
>
> - Growing Tax arrears greater than $20,000 which equates to an uncollectable risk.
>
> - More than $3 million in water/sewer upgrades needed in the upcoming term (renewal cost of $80,000 per household).
>
> - 2018 Hamlet debt to RM Wilton - Operation deficit of $137,897.42 as of July 31, 2018.
>
> - Potential devastating property value drop hurting the most vulnerable residents.
>
> RM Council decided to explore if residents were committed to staying in Lone Rock as a quiet bedroom community with falling property values, or if some would choose to relocate if a purchase offer of appraised value plus 5% were given.

[15] As will be discussed further below, it appears that what the RM of Wilton has undertaken is a "decision to consider" a course of action. As part of such consideration, offers to purchase properties were made throughout 2018. Notably, the RM of Wilton had, from 2006 to 2017, acquired 31 other lots in the Hamlet, eight of which were through purchases and 23 through tax enforcement. The distinguishing feature in the 2018 purchases was the intermediary role of the numbered company.

ISSUES

[16] Against this backdrop, both the procedural issues raised by the RM of Wilton, as well as the central issue of whether there has been any decision made which is subject to judicial review, must be considered. The issues are:

a) Do the applicants, Janis Lavoie and the Hamlet, have standing to bring an application for judicial review?
b) Is the absence of a record fatal to the application for judicial review?

c) Are the impugned "decisions" amenable to judicial review?

[17] The RM of Wilton also objected to portions of the affidavits of both Janis Lavoie and Ms. Heney, which were filed in support of the originating application for judicial review. On behalf of the applicants, counsel submitted that some of the evidence presented on behalf of the RM of Wilton could likewise be seen as suffering from similar alleged deficiencies—a submission with which I concur. She also did not consider it a proportionate response for this court to go line by line through the affidavits and strike portions. Rather, she was content to have this court disregard or give less weight to any aspect of the evidence provided by either party if such offended *The Queen's Bench Rules*. While I consider that this would have been the preferred approach, my ruling regarding the RM of Wilton's request to strike certain portions is attached as Appendix "A" to this decision. Further, in light of concerns regarding wording, I have given limited weight to the affidavit of the realtor, Dave Jarvis.

[18] I also note that, following completion of the arguments, Ms. Heney and others from the Hamlet, on their own and not through counsel, sought on several occasions to file supplemental materials. These cannot and will not be considered in this decision.

[19] The RM of Wilton also sought security for costs pursuant to either Rule 4-22 or s. 358(4) of *The Municipalities* Act. Pursuant to Rule 4-22, such an order is discretionary. Likewise, it is permitted, but not mandatory, pursuant to s. 358(4). Here, the RM of Wilton sought to raise a number of preliminary issues and objections, thus increasing the costs to all parties. These measures appeared designed to deflect from consideration of the central issue pertaining to the scope of judicial review in circumstances where the conduct of the RM of Wilton cannot be said to be beyond reproach. Indeed, such conduct cannot be said to be in keeping with the degree of transparency expected of government bodies. Accordingly, an order for security for

costs was not appropriate in this case and the RM of Wilton's request for same is denied.

[20] For the reasons which follow, I have concluded that only Ms. Heney had standing to pursue this application. Regarding the objection that the matter could not proceed without a record, the website posting would constitute a sufficient record in this case, in relation to at least two of the impugned "decisions". However, on the central issue, I have concluded that the "decisions" in question are not amenable to judicial review. While the court's purview in this area may have room for expansion, the particular circumstances of this case do not warrant such an extension.

ANALYSIS

a) Do the applicants, Janis Lavoie and the Hamlet, have standing to bring an application for judicial review?

[21] The RM of Wilton has conceded that Ms. Heney, as a current resident of the Hamlet, has standing to bring the application. However, the RM of Wilton seeks an order striking out both the Hamlet and Janis Lavoie [Ms. Lavoie] as parties to the originating application. Regarding the Hamlet, reliance is placed on *Indian Point Golden Sands (Organized Hamlet) v Parkdale (Rural Municipality No. 498)*, 2002 SKQB 362 at para 2, 224 Sask R 233 [*Indian Point*]:

> [2] First of all, while a voter may apply under s.182 of The Rural Municipality Act, 1989, S.S. 1989-90, c.R-26.1 (the "Act") to quash a resolution or bylaw for illegality, a hamlet has no such standing. It is merely a creature of statute, where voters in a rural municipality may form a hamlet board under certain conditions as provided for by ss. 14- 15 of the Act. The hamlet board receives monies from the municipal council to spend for purposes authorized by the Act within its hamlet. Any dispute arising between the hamlet board and the municipality is directed to an appeal board for resolution. This appeal is outlined in The Organized Hamlet Regulations, 1990, c.R.-26.1, Reg. 1. Thus, if the Hamlet has a dispute with the Municipality, it is required to seek its remedy under the Act and Regulations. It has no standing to bring an injunction application.

[22] In *Indian Point*, at para 6, the dispute was described as "a situation where certain of the electorate do not agree with the actions of its council". That is not unlike the case at hand. While the absence of a resolution or bylaw makes an application infeasible under s. 358 of *The Municipalities Act*—the successor legislation to that considered in *Indian Point*—the principle that a party is to pursue those remedies available under the applicable legislation is operative.

[23] Section 77 of *The Municipalities Act* outlines an appeal board process where "a dispute arises between the council of a rural municipality and the hamlet board of an organized hamlet". Reeve Dow, at para. 21 of his affidavit, refers to this as a mediation process, which was underway prior to the originating application being launched. Nonetheless, it is the hamlet board and not the Hamlet which has standing in the process contemplated by s. 77. Thus, it appears as an attempt to side-step the mediation process by having others advance Hamlet interests in the context of this originating application.

[24] On behalf of the Hamlet, counsel argues that it has a public interest standing, as does Ms. Lavoie, a former resident of the Hamlet. While acknowledging that the Hamlet has no corporate statute, counsel submits that nothing prevents the ratepayers, as a group, from "coming together to raise issues of public importance to the courts". She further argues that this case is "of interests to all citizens of Saskatchewan" and is significant "for the governance of the province", relying on *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, [2012] 2 SCR 524 [*Downtown Eastside*].

[25] In *Downtown Eastside*, public interest standing was noted as involving a three-part test: a serious justiciable issue, the party having a genuine interest in the outcome, and this being an effective way to bring the matter before the court. Justice Cromwell, at para. 42 of *Downton Eastside*, noted that to be considered a serious

justiciable issue, "the question raised must be a 'substantial constitutional issue' . . . or an 'important one'". This case does not rise to that status.

[26] While I am in no way diminishing the importance of the issues to the remaining ratepayers of the Hamlet, nor failing to recognize the financial challenges faced in rural communities across Saskatchewan, the circumstances here do not meet even the first prong of the *Downtown Eastside* test. Ms. Lavoie, having already sold her property in the Hamlet, has no actual interest in the outcome. Finally, and notably, it is not the Hamlet board which has applied, which raises the question of the effectiveness of this application, particularly given the alternate route to potential resolution, as contemplated by s. 77 of *The Municipalities Act*, in which the board is engaged. Indeed, as noted earlier, this process pursuant to s. 77 was underway prior to the originating application being launched, a matter on which I will comment further below.

[27] Accordingly, I accept the view of the respondent that neither Ms. Lavoie nor the Hamlet are appropriate parties to this application. They are therefore struck. However, as noted previously, Ms. Heney is an appropriate applicant. As such, the merits of the application may be considered.

b) Is the absence of a record fatal to the application for judicial review?

[28] On behalf of the RM of Wilton, it is argued that, as there is no record for the court to review, the application for judicial review must be dismissed. The RM of Wilton submits that the requirement to provide a record is a basic tenet of judicial review and that Rule 3-57(1) of *The Queen's Bench Rules* emphasizes this.

[29] The Hamlet has a differing view on the necessity of a record in these circumstances, even considering the wording of Rule 3-57. The applicants note that Rule 3-57 refers to "proceedings", "evidence and exhibits" and "reasons given". As a result, they argue that this Rule contemplates only those decisions arising out of a

tribunal setting. As the circumstances here do not reflect a traditional case of judicial review, where the decision maker is a tribunal and the matter was required to be decided on record, a "record" under Rule 3-57, the Hamlet submits, is not required.

[30] While the RM of Wilton correctly asserts that a record must be provided when an originating application for judicial review is brought, Rule 3-57 grants the court broad discretion in terms of the record that may be presented. Subrule 3-57(3) could potentially be utilized to dispense with the need to provide a record entirely. Moreover, subrule 3-57(2), with the repeated use of the phrase "if any" simply requires documents to be produced if they exist. Given this apparent flexibility in the rule, consideration of the case authorities is in order.

[31] The applicants rely on *Saskatchewan (Workers' Compensation Board) v Gjerde,* 2016 SKCA 30, 395 DLR (4th) 331 [*Gjerde*], to support the proposition that courts have had difficulty in determining what constitutes a record when a decision is not adjudicative. The comments of Justice Ryan-Froslie, at paras. 41-43, are of assistance:

> [41] **A key component of any judicial review is the record**. In determining whether that record should be supplemented, it is important to keep in mind the distinct roles played by administrative bodies and the courts. The provincial Legislatures and Parliament have seen fit to create a wide variety of administrative bodies and put into their hands all manner of decision-making that directly affects the rights, privileges and obligations of citizens. On an application for judicial review it is the s. 96 courts' role to ensure "the legality, the reasonableness and the fairness of the administrative process and its outcomes" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 28, [2008] 1 SCR 190 [*Dunsmuir*] The scope of administrative decision-making which may give rise to judicial review is extensive. Judicial review may come about in a wide variety of circumstances including review of an administrative tribunal's adjudication of a matter; the exercise of a ministerial discretion; the making of political and policy decisions, or non-adjudicative (purely administrative) decisions. **Accordingly, what constitutes the "record" for the purpose of judicial review will vary considerably depending on the context in which the decision arises. For this reason, in my view, there can be no "one size fits all" rule with respect to what**

amounts to the record for judicial review purposes or when that record should be supplemented.

[42] Denning L.J.'s comments in *Northumberland* set out the general rule relating to supplementing the record where there has been an adjudication i.e., after a hearing. The rule in that context makes sense because in such circumstances there is usually an "official record" consisting of the transcript of the proceedings, the documents filed and arguments made before the administrative tribunal. *Hartwig* and *SELI* demonstrate that the record relating to administrative adjudications may sometimes be deficient requiring it to be supplemented so that the reviewing court has before it the necessary material to do its job. Many provinces (Saskatchewan is not one of them) and the Federal Court have legislation which defines the record for judicial review purposes, at least where the review relates to adjudicative matters. **Determining what constitutes the "record" when reviewing other types of administrative decisions can be more challenging. Many non-adjudicative actions by administrative bodies have no "official record" and purely administrative decisions are rarely accompanied by reasons**.

[43] In the journal article "Evidentiary Rules in a Post-*Dunsmuir* World: Modernizing the Scope of Admissible Evidence on Judicial Review" (2015) 28 Can J Admin L & Prac, Lauren J. Wihak and Benjamin J. Oliphant examined the need to modernize the rules of evidence pertaining to judicial review. When addressing the record with respect to administrative decisions, as opposed to decisions from a tribunal, they stated at 339-340:

> In our view, applying strict limitations on the admissibility of evidence on judicial review of these non-adjudicative or legislative decisions carries important consequences. A restrictive view of the record and of admissible evidence may frustrate the courts' application of *Dunsmuir*, and in particular the determination of whether the outcome is "defensible" in light of the facts and the law. Moreover, if the information available to a court on judicial review remains as limited as was suggested in cases like *Northumberland* and *Nat Bell Liquor*, not only will this potentially frustrate the court's task on judicial review, but may also occasion considerable unfairness to affected parties; many would be permitted to argue that a decision falls below the *Dunsmuir* standard, but unable to file the evidence necessary to establish why this is so.

I agree with these comments.

[Emphasis added]

[32] In *Gjerde*, supplementation of the record was permitted. However, the decision does not conclude that a record in any form is not required. Rather, it anticipates some type of record being available, albeit the format may vary and the record may be limited in nature. As such, in circumstances where there is a complete absence of a record, judicially reviewing a decision may be difficult, if not impossible.

[33] Indeed, the court reviewing the decisions must understand the proceedings undertaken to date. As noted in *Pyramid Corp. v International Brotherhood of Electrical Workers, Local 529*, 2004 SKQB 159 at para 8, 248 Sask R 148, a "proper return is essential for the court to embark on a judicial review application". Thus, some form of record is important.

[34] However, given the flexibility of what constitutes a "record" under both Rule 3-57 and the case authorities, the posting on the RM of Wilton's website relating to the Lone Rock Renewal Project may be sufficient to constitute a record for the purpose of a judicial review. The posting on the website outlines the reasons why the RM of Wilton undertook consideration of converting the Hamlet to "country residential", provides background information, and outlines the steps that are to be taken to complete the project including a proposed timeline for those steps. Such may be sufficient a record to embark on judicial review in relation to at least some of the "impugned decisions", particularly regarding the rezoning and matters pertaining to the water and sewer. It is certainly adequate to deny the RM of Wilton's request to dismiss the application in a preliminary and perfunctory fashion.

[35] There is, however, nothing in writing pertaining to the decision to purchase the houses from the residents of the Hamlet, nor are there any official documents pertaining to the establishment of the numbered company that was used to purchase the properties. While the cloak-and-dagger manner in which this is alleged to have been undertaken by the RM of Wilton is of concern to this court, the absence of

any form of record is also problematic for the applicants. Judicial review in such circumstances becomes extremely difficult, if not impossible, as noted above. The court may then be asked, as here, to make presumptions and inferences as to the reasons and decisions made by the decision maker in a vacuum and may be called upon to entertain premature applications.

[36] Nonetheless, the website posting addresses the bulk of the alleged decisions and the preliminary objection to the application on the grounds of there being no record is, accordingly, denied. I therefore turn to the central issue raised by the application.

c) Are the impugned "decisions" amenable to judicial review?

[37] The central issue in this case is whether the impugned "decisions" are decisions that are amenable to judicial review. The applicants argue that the term "decision" has been given a liberal interpretation in the case law such that actions taken by the RM of Wilton may be considered decisions subject to judicial review. Further, the applicants submit that judicial review is available to review "all decisions" made pursuant to statutory authority, and to "all decision makers" exercising statutory authority, whether or not a formal decision or legislative instrument is created as a result.

[38] Although such a view is appealing in the circumstances of this case, it conflicts with pre-existing jurisprudence and would constitute an expansion of the scope of judicial review. While judicial review may be applicable to all decision makers exercising public authority and statutory discretion, the Supreme Court expressly explained in *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, 2018 SCC 26 at paras 13 and 14, [2018] 1 SCR 750, that not all decisions made by those decision makers are amenable to the superior court's supervisory powers. Previously, in *Minister of National Revenue v Coopers and Lybrand,* [1979] 1 SCR

495, Dickson J. held that not all decisions by persons clothed with or created by statutory authority are eligible for judicial review. While those comments were made in the context of ascertaining whether the decisions were sufficiently public in nature to attract judicial review, the general principles espoused in the statements made by the Supreme Court contradict the contention put forward by the applicant in this case.

[39] Further, in *Peguis First Nation v Canada (Attorney General)*, 2013 FC 276 at para 17, 56 Admin LR (5th) 34, the Federal Court held that "[a]s a threshold requirement for every judicial review, an applicant must identify a "decision" that is reviewable". *Black's Law Dictionary* defines decision as "a judicial or agency determination after consideration of the facts and the law: esp., a ruling, order or judgment pronounced by a court when considering or disposing of a case". Surprisingly, there is a dearth of case law that explicitly canvasses the types of decisions that are amendable to judicial review.

[40] Although the applicants contend that the actions taken by the RM of Wilton constitute decisions subject to judicial review, the RM of Wilton says that a final decision has not been made in relation to either converting the Hamlet to a "country residential" area or even shutting off the water and sewer services. While that suggestion belies the past and current actions of the RM of Wilton and is inconsistent with the many steps already taken to proceed with the Lone Rock Renewal Project, the question remains whether those actions may be considered as decisions subject to judicial review by this court.

[41] The applicants acknowledge that judicial review in circumstances similar to those giving rise to this application is unprecedented in Canada, but they cite several authorities to support their position that the term "decision" in the context of administrative law has been given a liberal interpretation. However, in all the cases referred to, there were formal actions taken to bring the impugned decision into effect.

Unfortunately, the cases relied upon by the applicants simply do not support the position that the court can extend judicial review to the circumstances of this case.

[42] Regarding the various ways in which "decision" has been interpreted in the administrative law context, the applicants provide cases and commentaries to suggest that the breadth of judicial review extends far beyond resolutions and final determinations, including:

a) From authors David Phillip Jones & Anne S. de Villars, *Principles of Administrative Law*, 5th ed (Toronto: Thomson Reuters, 2009), at 6, the suggestion that judicial review is "probably the most important means of controlling illegal government actions" and that superior courts have inherent power to review "the legality of administrative actions";

b) From *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 28 and 134, [2008] 1 SCR 190 [*Dunsmuir*], the suggestion that the *Dunsmuir* framework applies to administrative decision makers generally and not just to administrative tribunals;

c) From Michael Supperstone, James Goudie & Paul Walker, *Judicial Review*, 4th ed (London: LexisNexis, 2010) at 81, the comment that "The word 'decision' is used as a convenient shorthand for the matter which the claimant seeks to have reviewed" and, at 568, the view that *R v Boycott, ex parte Keasley*, [1939] 2 All ER 626 (KB), demonstrates that substantive judicial review was available for a decision that was not final, but merely a preliminary decision in the context of a statutory procedure pertaining to township planning.

[43] Whether such semantics by academic writers support the applicants'

position is not entirely clear. Again, however, support does not appear to be found in the case law at this juncture.

[44] Looking at cases involving rural municipalities in Saskatchewan where judicial review has been undertaken, these have involved the review of a clear, formal decision. See, for example, *Saskatchewan Safety Council v Rural Municipality of Sherwood No. 159,* 2020 SKQB 1, where the court reviewed a resolution passed by the RM council; *Barbour v Ituna (Town),* 2018 SKQB 50, where the court judicially reviewed a resolution passed by a municipal council requiring the public library branch to relocate; *Gary L. Redhead Holdings Ltd. v Swift Current (Rural Municipality),* 2017 SKCA 47, 415 DLR (4th) 218, where the court reviewed a municipal tax assessment; *Willow Bunch (Town) v Fister,* 2016 SKCA 114, which concerned the judicial review of an order made declaring land nuisance and ordering the applicants to remedy the nuisance; and *Eagle's Nest Youth Ranch Inc. v Corman Park (Rural Municipality #344),* 2016 SKCA 20, 395 DLR (4th) 24, where the applicant applied for judicial review of council's decision to deny a discretionary use application. In contrast to these authorities, a formal, final and unambiguous "decision" that is generally subject to judicial review is simply not present in the circumstances of this case.

[45] Further, while extension of the purview of judicial review may in some contexts be feasible, the particular circumstances of this case do not justify this court advancing the law in that direction for several reasons. Firstly, as noted at para. 21 of Reeve Dow's affidavit, a mediation process was initiated by the board of the Hamlet pursuant to s. 77 of *The Municipalities Act.* The claimed dispute, as indicated in the notice, is "Water, Sewer, Expenditures & Land purchase". Given an available process to address the precise issues which form the subject of this application, judicial review is not the appropriate course. While not precisely an integrated appeal process, such as was the case in *Anderson v Saskatchewan Human Rights Commission,* 2017 SKQB

277, where judicial review was not permitted as it was a collateral attempt to attack a decision, the mediation here is a mechanism provided in the applicable legislation for resolution of disputes. It should neither be bypassed nor leap-frogged in the pursuit of judicial review.

[46] Secondly, while the buying of lots through the numbered company is argued to be surreptitious and suspicious, the purchase of properties in the Hamlet by the RM of Wilton had occurred for many years. As noted at para. 16 of the affidavit of Reeve Dow, from 2006 to 2017, 31 other individual lots were acquired. Thus, while the method of approaching potential sellers was adjusted, which may have been misguided albeit not malicious, the more recent purchases were not unprecedented.

[47] Finally, while counsel for the applicants made it clear that the recording attached as Exhibit "C" to the affidavit of Ms. Heney did not constitute a record of the "impugned decisions", it is in evidence and relied upon by the applicants. Listening to that recording of the meeting, however, puts the RM of Wilton in better light than the description provided by the applicants. As noted above, the meeting was indeed public. The attendees were at times unruly. The challenges posed by the financial circumstances of the Hamlet were outlined by the RM of Wilton. Further, the RM of Wilton outlined steps being considered in light of the "dilemma" posed by the fiscal pressures, with a view to working further and talking more with the Hamlet residents. The conduct and tone of the meeting does not, in my view, lead to a conclusion that final decisions had been made.

[48] Accordingly, for the reasons outlined, the actions of the RM of Wilton in the circumstances of this case do not constitute decisions subject to judicial review. The application by Ms. Heney is therefore dismissed.

COSTS

[49] Each counsel brought worthwhile insights to the court's consideration of the potential for judicial review in the factual context of this case. Further, given both the preliminary and substantive issues raised, success has been divided. Accordingly, there will be no order as to costs.

J.
B.R. HILDEBRANDT

Appendix "A"
Ruling on Objections to Affidavit

Counsel for the respondent objects to portions of the affidavits of both Janis Lavoie and Melissa Heney.

Both *Noseworthy v Morin*, 2014 SKQB 206 [*Noseworthy*], and *Gusikoski v Gusikoski*, 2001 SKQB 139, on which the court in *Noseworthy* relied, emphasize that not every sentence ought to be parsed. However, the requirements for proper affidavit material set out in Rules 15-20 and 13-30 of *The Queen's Bench Rules* remain. In light of this, the specific objections raised are considered in the following:

Affidavit of Janis Lavoie

Paragraph 7 – The portion from "The Battle River School division . . ." on is struck. It is not relevant.

Paragraph 10 – The first two sentences shall remain. They appear to be connected to Ms. Lavoie's observations and experiences as described in paragraph 9. From the phrase "Ratepayers who I spoke to . . ." on is struck as hearsay.

Paragraph 19 – Ms. Lavoie is entitled to describe her observations. The paragraph shall remain as is.

Paragraph 22 - The final sentence shall remain (which commences with "I do not recall . . ."); however, the first two sentences are struck as they constitute an opinion on issues central to the application.

Paragraph 24 – This paragraph shall remain. It is not objectionable. Ms. Lavoie is describing her research.

Paragraph 26 – This paragraph shall remain. It is not objectionable. Ms. Lavoie is describing what she learned at the August 21, 2018 meeting.

Paragraph 27 – This paragraph shall remain. It is not objectionable.

Paragraph 28 – In light of Ms. Lavoie's research noted earlier, this paragraph is not objectionable and shall remain.

Paragraphs 29-35 – These paragraphs are not relevant and are therefore struck.

Affidavit of Melissa Heney

Paragraph 2 – This paragraph is not objectionable and shall remain. Ms. Heney functioned in a capacity whereby ratepayers would come to her and she had a duty to receive such information.

Paragraph 12 – Similarly, this paragraph is not objectionable and shall remain.

Paragraph 15 – Given Ms. Heney's role as a member of the Hamlet board, such information would be in her knowledge and not hearsay as alleged. This paragraph shall remain.

Paragraph 17 – This paragraph shall be struck as it is opinion and argument on a central issue.

Paragraph 19 – As a Hamlet board member, Ms. Heney had a duty to receive information. This paragraph shall remain.

Paragraph 20 - As a Hamlet board member, Ms. Heney had a duty to receive information. This paragraph shall remain.

Paragraph 21 – The first sentence is struck as Ms. Heney cannot speak to the state of mind of others. The fact of misinformation circulating in the community is not objectionable so the balance of the paragraph shall remain.

Paragraph 22 – This paragraph is struck as it is hearsay.

Paragraph 23 – The second sentence (beginning with "They told me . . .") is struck as it is hearsay. The balance of the paragraph shall remain.

Paragraph 26 – Ms. Heney may describe her observations. The paragraph is not objectionable and shall remain.

Paragraph 28 – This paragraph shall remain. It is not objectionable.

Paragraph 35 – The second sentence is struck as it constitutes speculation.

Paragraph 37 – The last sentence is struck as it is an argument and conclusion.

Paragraph 38 – The first two sentences are struck as they constitute an opinion on issues central to the application.

Heading prior to paragraph 43 – This will not be struck as it is not evidence and is merely added for ease of reference.

Heading prior to paragraph 48 – This will not be struck as it is not evidence and is merely added for ease of reference.

Paragraph 50 – This paragraph contains her observations. It shall remain and is not objectionable.

Paragraph 51 – The last three sentences (from "To my knowledge . . . on) are struck as irrelevant.

Paragraph 52 – The first sentence shall remain, as it contains her observations. The second sentence is struck as it is speculative and argumentative. The next sentence shall remain (which begins with "I am considered [*sic*] . . .) but the final sentence is struck as irrelevant.

Paragraph 53 – This paragraph is struck as irrelevant.

Paragraph 54 – This paragraph is struck as irrelevant.

Paragraph 55 – This paragraph shall remain as it is her observations of the meeting.

Paragraph 57 – This paragraph shall remain in its entirety. She is describing the basis for her call to Occupational Health and Safety.

Paragraph 58 – The first sentence shall remain as it is not objectionable. The second sentence is struck as speculation.

Paragraph 59 – This paragraph is struck as hearsay.

Paragraph 60 – The words "along with my fellow ratepayers" are struck.

Paragraph 63 – This paragraph shall remain as it reflects her observations. It is not objectionable.

Paragraph 70 – This outlines the impact upon her, and her interest in the application, and is not objectionable. It shall, therefore, remain.

Paragraph 73 – This paragraph is not objectionable and shall remain.

Paragraph 74 – This paragraph is struck as it is an argument or conclusion on the issues central to the application.