QUEEN'S BENCH FOR SASKATCHEWAN

Date: **2021 10 07**
Docket: QBG 33 of 2021
Judicial Centre: Battleford

BETWEEN:

TERENCE & TRACY KASHUBA

PLAINTIFFS

- and –

RURAL MUNICIPALITY OF WILTON 472

DEFENDANT

Counsel:

Terence Kashuba and Tracy Kashuba	on their own behalf
Gerald B. Heinrichs	for the defendant

JUDGMENT
October 7, 2021

BARDAI J.

Introduction

[1] There are two applications before the Court. The first is an application filed July 27, 2021 in which the plaintiffs, Terence and Tracy Kashuba [the Kashubas] seek leave to amend their claim. The second application is brought by the defendant, Rural Municipality of Wilton 472 [RM], in which it seeks to strike the claim in its entirety pursuant to Rule 7-9 of *The Queen's Bench Rules* and s. 29 of *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01, on the basis that the claim fails to disclose a reasonable cause of action or, alternatively, is scandalous, frivolous, vexatious or otherwise an abuse of process.

[2] As an alternative to striking the claim in its entirety, the RM seeks to strike portions of the affidavit of Terence Kashuba [Mr. Kashuba], and further seeks to strike the claim of Mr. Kashuba, which would allow the claim of Tracy Kashuba [Mrs. Kashuba] to proceed.

[3] This dispute has a complicated procedural history, although the core issue raised by the Kashubas is quite simple and concerns whether or not the RM has an obligation to provide residents of the Hamlet of Lone Rock [Hamlet], which includes the Kashubas, with water and sewer services.

[4] The court proceedings started with an originating application in QBG 239 of 2019 which was brought by Mr. Kashuba and Lloyd Ludwig against the RM. The application sought to quash certain bylaws and decisions of the RM relating to water and sewer services and billing. That application came before Zuk J. who described the proceedings at paras. 1 and 2 of his decision dated March 6, 2020 as follows:

> [1] Terence Kashuba [Mr. Kashuba] and Lloyd Ludwig [Mr. Ludwig], [applicants] are residents of the Hamlet of Lone Rock which is situate within the Rural Municipality of Wilton No. 472 [the R.M.]. The parties are involved in a series of legal battles. This application represents one of those skirmishes.
>
> [2] The applicants seek a number of remedies, as follows:
>
> 1) An order pursuant to s. 358 of *The Municipalities Act*, SS 2005, c M-36.1 [*Act*] quashing or setting aside resolutions, bylaws or decisions made by the R.M. regarding;
>
> a. The operating budget for the organized Hamlet of Lone Rock;
>
> b. The utility billing submitted by the R.M. to the residents of Lone Rock.
>
> 2) An order setting aside resolutions, bylaws or decisions made by the R.M. to implement a separate water and sewer billing for residents of Lone Rock pursuant to s. 23(3) of the *Act* as the decisions were made without consultation, notification and were made in bad faith;

> 3) Directions regarding the scope of the petition regarding Lone Rock and specifically whether s. 132(2) of the *Act* requires signing by the greater of 15 percent of the population or 25 voters of the Municipality refers to voters within the organized Hamlet of Lone Rock or to the entire R.M.;
>
> 4) Directions regarding who has responsibility over enforcement of the duties and maintaining legislative requirements of the *Act* and regulations.

[5] In addition to having brought the application before Zuk J., residents of the Hamlet also brought an appeal of various decisions of the RM to the Appeal Board established pursuant to *The Municipalities Act,* SS 2005, c M-36.1 [*Act*]. The appeal raises similar issues. At para. 22 of his decision, Zuk J. held:

> [22] Under the circumstances, I accept that s. 29 of the *Queen's Bench Act* is intended to avoid multiplicity of proceedings. The appeal process is first in time and has been instituted to address the precise issues raised by the applicants in the within proceeding. I recognize that the parties to the Appeal Board process and the parties in the current application differ. However, in each case the respective applicants seek to overturn decisions made by R.M. or the identical decisions made by the R.M. Accordingly, the application by Mr. Ludwig and Mr. Kushuba pursuant to s. 358 is adjourned *sine die* pending a completion of the Appeal Board process.

[6] Separate and apart from the proceeding in QBG 239 of 2019, a proceeding was commenced as QBG 228 of 2019 by the RM against Tracy Kashuba and the Lone Rock Organized Hamlet Board *et al.* Here, the RM sought to remove Tracy Kashuba from the Appeal Board that would be hearing the dispute between the RM and the Hamlet. The Hamlet is located within the RM and took issue with the RM's decisions dealing with water, sewer, expenditures and land purchase. The Hamlet sent notice to the RM seeking $700,000 in damages per household. Mrs. Kashuba is listed as one of the claimants on the letter along with her husband. Again, the matter came before Zuk J. who held that the RM had established the existence of a reasonable

apprehension of bias and, accordingly, disqualified Mrs. Kashuba from sitting on the Appeal Board.

[7] The third proceeding is the proceeding before the Appeal Board. Section 77 of the *Act* provides:

> **Disputes between hamlet board and council**
> 77(1) If a dispute arises between the council of a rural municipality and the hamlet board of an organized hamlet within the rural municipality, the council and the hamlet board shall refer that matter to an appeal board appointed in accordance with subsection (2).
>
> (2) The council and the hamlet board shall each appoint a person to an appeal board, and the persons so appointed shall agree on the appointment of a third person to act as chairperson of the appeal board.
>
> (3) If the appointed persons cannot agree on the third person to act as chairperson pursuant to subsection (2) within 30 days, the dispute may be submitted by any 1 party to be resolved pursuant to section 392.

[8] The Appeal Board has jurisdiction to hear and decide matters as between the RM and the Hamlet. The issues put before the Appeal Board are described at paras. 20-21 of Zuk J.'s decision in the context of the disqualification application where he notes:

> [20] The Appeal Board is being constituted for the purpose of hearing the following issues referred by the Hamlet Board; water, sewer, expenditures and land purchase.
>
> [21] Ms. Kashuba has appointed the Hamlet Board to pursue damages and compensation against the R.M. in the amount of $700,000 for:
>
> > property devaluation through conversation and manipulation by Wilton council and administration. Intentional infliction of mental suffering. Creating a monopolized system to the detriment of residents benefiting the rural municipality. Malicious imminent ongoing and future harm and actions in bad faith negating the

> responsibilities of their office and position duty of care.
>
> [Emphasis added]

[9] Next, there is the claim filed in Provincial Court (LM20-16) filed May 27, 2020 by the Kashubas seeking damages and removal of liens registered by the RM. That claim is six paragraphs in length and alleges:

> 1. The Plaintiffs, Terence Kashuba & Tracy Kashuba are ratepayers of the Organized Hamlet of Lone Rock in the province of Saskatchewan.
>
> 2. The Defendant, the Rural Municipality of Wilton 472 is an incorporated Municipality within the Province of Saskatchewan. The Defendant, Taxervice Inc. is an incorporated business within the province of Saskatchewan.
>
> 3. On November 19, 2018, the Defendant RM of Wilton 472 began demolition of properties within the Hamlet & adjacent to the Plaintiff's property shortly thereafter it was discovered that the Plaintiff's water had stopped a number of calls were made to the RM with the only response being *"As the Hamlet Board is represented by council the RM would only speak through council"* this was in regard to QGB 301-2018 matter but ended all contact the RM had with the residents of Lone Rock, SK. All further inquiries were ignored until May of 2019 at which time the administrator advised that he would have a worker look into it there was no further action taken & it was brought up again after a mediation session in June of 2019 with no further action to date of this filing.
>
> 4. On or around the beginning of January 2019 water/sewer utility bills began to arrive in residents mail this was opposed by the Organized Hamlet Board as lacking procedural fairness & is an illegal process as indicated by the legislation as the Defendant RM of Wilton failed to take the steps necessary to enact the bylaw that supports issuing water/sewer utility bills & in the Plaintiff's case especially for not providing the services due to a negligent action of RM of Wilton to which they have a direct liability under the legislation. The Plaintiff's did not pay for service they were not getting. The monthly amounts were then attached as Tax arrears & forwarded to defendant Taxervice Inc. for collection.
>
> 5. The Notice of Arrears sent by the Defendants had a deadline of

> April 2, 2020 but was received April 14, 2020 & any contact attempted regarding the validity of these arrears or compensation for service disruption was not responded to which brings the case at bar.
>
> 6. THE PLAINTIFF, THEREFORE CLAIMS:
>
> a) Judgment removing any & all arrears & liens in amount of $1590.93;
> b) Disruption of service compensation of $4949.07 or amount to be determined by this court.
> c) interest pursuant to The Pre-Judgment Interest Act;
> d) the filing costs of these proceedings; and
> e) such further costs as this Honourable Court may deem just.

[10] In effect, the Kashubas allege they were being billed for a water service that was not provided. The RM in the context of that proceeding made application to strike the claim on the basis that:

a. Mr. Kashubas is not the owner of the property and therefore cannot advance the claim;

b. the claim is duplicative;

c. the applicants did not comply with directed steps from the RM; and

d. that the Small Claims Court lacked jurisdiction.

[11] The matter was ultimately transferred to the Court of Queen's Bench at which time the Kashubas sought the appointment of a case management judge or a case conference. A case conference was ordered in which Danyliuk J. gave the Kashubas until June 30, 2021 to file an application to amend their claim.

[12] The amended claim that has been filed significantly expands the allegations previously made in Small Claims Court. The amended claim does not comply with the rules governing pleadings in that the amendments are not underlined

as required by Rule 3-73(3) which provides:

> **3-73**(3) The amendment must be underlined or otherwise designated to distinguish it from the original wording.

[13] The Kashubas are not represented by counsel in these proceedings though they acknowledge that they do receive assistance from a lawyer who is not on record. I am prepared to overlook the non-compliance with Rule 3-73(3) in the circumstances. Were I to strike the claim for non-compliance on this basis, I would give leave to amend. This would result in the same allegations being made with appropriate underlining and the parties would no doubt be back before the Court on the same substantive issues. Accordingly, in accordance with Rule 1-5(1) and Rule 1-6(1) I am prepared to provide relief to the Kashubas from having failed to comply with Rule 3-73(3). Rule 1-5(1) and 1-6(1) provide:

> **Orders respecting practice or procedure**
> **1-5**(1) To implement and advance the purpose and intention of these rules described in rule 1-3, the Court may, subject to any specific provision of these rules, make any order with respect to practice or procedure, or both, in an action, application or proceeding before the Court.
>
> ...
>
> **Rule contravention, non-compliance and irregularities**
> **1-6**(1) If a person contravenes or does not comply with these rules, or if there is an irregularity in a commencement document, pleading, affidavit, Form or other document, a party may apply to the Court:
>
> (a) to cure the contravention, non-compliance or irregularity; or
>
> (b) to set aside an application, proceeding or other thing because of prejudice to that party arising from the contravention, non-compliance or irregularity.

[14] Also of note is Rule 1-3 which provides:

Purpose and intention of these rules

1-3(1) The purpose of these rules is to provide a means by which claims can be justly resolved in or by a court process in a timely and cost effective way.

(2) In particular, these rules are intended to be used:

(a) to identify the real issues in dispute;

(b) to facilitate the quickest means of resolving a claim at the least expense;

(c) to encourage the parties to resolve the claim themselves, by agreement, with or without assistance, as early in the process as is practicable;

(d) to oblige the parties to communicate honestly, openly and in a timely way; and

(e) to provide an effective, efficient and credible system of remedies and sanctions to enforce these rules and orders and judgments.

(3) To achieve the purpose and intention of these rules, the parties shall, jointly and individually during an action:

(a) identify or make an application to identify the real issues in dispute and facilitate the quickest means of resolving the claim at the least expense;

(b) periodically evaluate dispute resolution process alternatives to a full trial, with or without assistance from the Court;

(c) refrain from filing applications or taking proceedings that do not further the purpose and intention of these rules; and

(d) when using publicly funded Court resources, use them effectively.

(4) Resolving a claim justly in a timely and cost effective way includes, so far as is practicable, conducting the proceeding in ways that are proportionate to:

(a) the amount involved in the proceeding;

(b) the importance of the issues in dispute; and

(c) the complexity of the proceeding.

[15] The result is that I will not strike the claim on the basis of non-compliance with the requirement that amendments be underlined but instead, will determine the application on the basis of Rule 7-9.

[16] The amendments now proposed require detailed consideration. The Kashubas are in effect trying to rewrite the entire claim. Had they complied with Rule 3-73(3), virtually the entire proposed claim would be underlined. The claim has gone from a simple two-page, six-paragraph document to an 11-page, 47-paragraph document, which includes an additional 7½ page annex.

[17] The pleadings are replete with evidence, include lengthy passages of legislation, refers to case law and makes allegations against non-parties. For example, there are now allegations made against:

(a) Dave Jarvis, a realtor who is alleged to have worked for a numbered company operated by the RM (para. 20);

(b) members of Municipal Council, namely, Reeve Glen Dow, Sharon Carruthers, Daryl Hemsley, Les McDougall, Ron Clark, Tim Sawarin and Neil Reece (para. 36);

(c) Town Administrator and Acting Administrative Officer, Darren Elder and Jill Parton (para. 36); and

(d) 102041617 Saskatchewan Ltd. (para. 40).

[18] The Kashubas claim that wrongs were committed not only against them but against the entire Hamlet. This is not a class action proceeding and the Kashubas obviously cannot seek relief on behalf of other residents of the Hamlet, residents who are not plaintiffs in the action.

[19] Although the claim makes allegations against a host of individuals, not one of these individuals is listed as a defendant in the proceeding. The only defendant listed is the RM. That said, the claim alleges that individuals affiliated with the RM and a company controlled by the RM have committed wrongs ranging from breach of statutory duties, to breach of the Saskatchewan Real Estate Board requirements, to abuse of public office. The Kashubas seek the following relief:

> 47. THE PLAINTIFFS, THEREFORE, CLAIMS:
>
> a) Judgment by way of declaration relief:
>
> i) Directing the removing of all and any claims for payment of invoices or claims by the RM for water/sewer services allegedly provided to the Plaintiffs from and after November 18, 2018.
>
> ii) Declaring the **NOTICE OF SEWER & WATER TERMINATION** void and illegal
>
> b) Judgement for compensatory damages for:
>
> i $15,247.34
>
> ii diminishment of their property value
>
> iii interference in the enjoyment and quite possession of their property
>
> iv for increased or incremental costs of municipal water and sewage services.
>
> c) Moral damages for:
>
> i failing to deal with the OH residents and the Plaintiff in good faith.
>
> ii recklessly disregard for the orderly exercise of authority amounting to an abuse of authority.
>
> iii reputational harm and insult arising out of the RM putting their claim for water services into legal collection.
>
> d) Declaratory Relief in the nature of and *quo warranto* to state by what authority the RM has acted in connection with the management of the water and sewer service in the OH of Lone Rock.
>
> e) Declaratory Relief in the nature of *mandamus* directing that the RM comply with the foundational and constating legislation in dealing with the water and sewer municipal services in the OH of Lone Rock.

f) Declaration that the immunity section of the MA does not apply to the misfeasance and damages occasioned by the individual member of the RM Council and its Administrator

g) An interim Order to stay and or enjoin the shutting down of the Organized Hamlet of Lone Rock water and sewer system along with a mandatory order directing that the Kashuba system be restored until such time as the MA s-77 and 392 SMB process has been completed or this Court has issued a final determination on this matter.

h) An Order that the ongoing billing for services not rendered be stopped & that the ongoing procedure to seize and sell the Kashuba property in the OH be stayed until this matter can be ruled on in Court.

i) Cost of these proceeding as against the Reeve, Councillors and Administrator personally based on the inherent prerogative of the Court to award costs against third parties not party to a proceeding.

j) Interest pursuant to The Pre-Judgment Interest Act;

k) Costs in any event.

l) Such further and other relief as this Honourable Court may deem just or appropriate to the circumstances.

[Emphasis in original]

[20] As is evident, relief is being sought against the Reeve, Councillors and the Administrator in addition to the RM.

[21] The claim is fairly described by the RM as confusing, unfocussed and rambling. That said, the basic facts alleged are actually quite straightforward:

(a) the Kashubas live in the Hamlet and since 2006 were getting their water from the RM (paras. 1-4);

(b) the Kashubas were paying for the water they received (para. 11);

(c) in November 2018, the RM completed demolition work on a property neighbouring the Kashubas and the Kashubas' water was cut off (paras. 13-14);

(d) the Kashubas requested that their water be restored and the RM failed to restore the service (paras. 16-17);

(e) the RM started billing the Kashubas for water that was not being received (para. 21); and

(f) when the Kashubas refused to pay for the water that was not received, the RM commenced enforcement proceedings and asserted lien rights (para. 24).

[22] It is difficult to determine exactly what causes of action are being advanced by the Kashubas against the RM from these basic facts. This of course places the RM at a significant disadvantage. They are certainly entitled to know the exact legal basis on which claims are being advanced against them. As far as I am able to determine, it seems the Kashubas are alleging:

(a) breach of contract (para. 32);
(b) breach of statutory duties (paras. 32, 34 and 43);
(c) breach of procedural fairness (para. 35); and
(d) misfeasance of Public Office (paras. 36-43).

Rule 13-8 and Pleadings Generally

[23] Rule 13-8 governs pleadings. It provides:

Pleadings: general requirements
13-8(1) Every pleading must:

> (a) be divided into paragraphs, numbered consecutively, and each allegation must, as far as is practicable, be contained in a separate paragraph;
>
> (b) be signed by the party's lawyer or, if the party is self-represented, by the party;
>
> (c) contain only a statement in summary form of the material facts on which the party pleading relies for the party's claim or defence, but not the evidence by which the facts are to be proved; and
>
> (d) be as brief as the nature of the case will permit.
>
> (2) If necessary, full particulars of any claim or defence must be stated in the pleading.
>
> (3) A party shall plead specifically any matter, fact or point of law that:
>
> (a) makes a claim or defence of the other party not maintainable;
>
> (b) if not specifically pleaded, might take the other party by surprise; or
>
> (c) raises issues not arising out of the preceding pleadings.
>
> (4) A party shall refer to any enactment on which the party's action or defence is founded and, if practicable, give particulars of the specific sections on which the party relies.

[24] The Kashubas have included many pages of excerpts from legislation as part of their claim. This is not what is intended by Rule 13-8(4). The claim can reference sections of regulations, legislation and bylaws without reproducing all those sections in their entirety. It is sufficient to allege a material fact and say that such material fact amounts to a contravention of a specific statute and then reference the statute and section within the statute relied upon.

[25] The claim further includes considerable evidence. For example, at para. 29 of the proposed amended claim, the Kashubas allege that they resisted the RM's claims for the invoiced sums. They then provide particulars of the evidence they intend to submit to establish that material fact, their communications with the RM, the appointment of Mrs. Kashuba to the Appeal Board and the difficulties they have had in

proceeding with the Appeal. This approach runs afoul of Rule 13-8(c).

[26] The result is that the following paragraphs which plead evidence by which the plaintiffs hope to prove their material allegations of fact will be struck along with those paragraphs which simply reproduce large passages of legislation and case law. The paragraphs in issue that are to be struck are portions of paragraph 7, 9, 10, 29, 33, 34, 43, 44 and Annex 1.

[27] To avoid any dispute as to what is being struck and what is not being struck, attached as Schedule "A" is a copy of the claim in which the paragraphs being struck have been crossed out.

Reasonable Cause of Action

[28] The RM seeks to strike the amendments pursuant to Rule 7-9, which provides:

> **Striking out a pleading or other document, etc. in certain circumstances**
> **7-9**(1) If the circumstances warrant and one or more conditions pursuant to subrule (2) apply, the Court may order one or more of the following:
>
> (a) that all or any part of a pleading or other document be struck out;
>
> (b) that a pleading or other document be amended or set aside;
>
> (c) that a judgment or an order be entered;
>
> (d) that the proceeding be stayed or dismissed.
>
> (2) The conditions for an order pursuant to subrule (1) are that the pleading or other document:
>
> (a) discloses no reasonable claim or defence, as the case may be;
>
> (b) is scandalous, frivolous or vexatious;
>
> (c) is immaterial, redundant or unnecessarily lengthy;
>
> (d) may prejudice or delay the fair trial or hearing of the proceeding; or

> (e) is otherwise an abuse of process of the Court.
>
> (3) No evidence is admissible on an application pursuant to clause (2)(a).

[29] In *Ducharme v Davies*, [1984] 1 WWR 699 at para 64 (Sask CA), the Court set out the function and purpose of a pleading as follows:

> [64] While pleadings are no longer subject to the precise, complex, and occasionally oppressive requirements they once were, nevertheless they remain an important aspect of every law suit and must be framed with care. The following passage taken from *The Law of Civil Procedure* - Williston and Rolls (vol. 2, page 636) illustrates why a careful pleading is still important;
>
> > The function of pleadings is fourfold:
> >
> > 1. To define with clarity and precision the question in controversy between litigants.
> >
> > 2. To give fair notice of the case which has to be met so that the opposing party may direct his evidence to the issues disclosed by them. A defendant is entitled to know what it is that the plaintiff asserts against him; the plaintiff is entitled to know the nature of the defence raised in answer to his claim.
> >
> > 3. To assist the court in its investigation of the truth of the allegations made by the litigants.
> >
> > 4. To constitute a record of the issues involved in the action so as to prevent future litigation upon the matter adjudicated between the parties.
>
> To the extent paragraph 6 of the statement of defence is relied upon to found the claim for reduction of the child's damages, on the basis now being advanced, as opposed to that put forward at trial, it fails to fulfill most, if not all, of these basic functions. With respect that is my opinion of it.

[30] The law as it pertains to the striking out of claims was set out by the Court of Appeal in *Saskatchewan Power Corporation v Swift Current (City)*, 2007 SKCA 27 at para 18, [2007] 5 WWR 387:

> [18] These general principles were summarized by Gunn J. in the case of *Collins v. McMahon* [2002 SKQB 201]:
>
> > 11 The principles which apply to an application to strike a plaintiff's claim under Rule 173(a) are the following:
> >
> > (i) The claim should be struck where, assuming the plaintiff proves everything alleged in the claim there is no reasonable chance of success. (*Sagon v. Royal Bank of Canada et al.*, 105 Sask. R. 133 at 140 (C.A.));
> >
> > (ii) The jurisdiction to strike a claim should only be exercised in plain and obvious cases where the matter is beyond doubt. (Sagon, at 140; *Milgaard v. Kujawa et al.* (1994), 123 Sask. R. 164 (Sask. C.A.));
> >
> > (iii) The court may consider only the claim, particulars furnished pursuant to a demand and any document referred to in the claim upon which the plaintiff must rely to establish its case (*Sagon*, at p. 140);
> >
> > (iv) The court can strike all, or a portion of the claim (Rule 173);
> >
> > (v) The plaintiff must state sufficient facts to establish the requisite legal elements for a cause of action. (*Sandy Ridge Sawing Ltd. v. Norrish and Carson* (1996), 140 Sask. R. 146 (Q.B.)).

[31] Rule 173(a) is of course the precursor to Rule 7-9(2)(a).

[32] In *R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 SCR 45, the Court provided a useful summary of the purposes behind an application to strike as well as its limitations. At paras. 19-22, the Court held:

> [19] The power to strike out claims that have no reasonable prospect of success is a valuable housekeeping measure essential to effective and fair litigation. It unclutters the proceedings, weeding out the hopeless claims and ensuring that those that have some chance of success go on to trial.
>
> [20] This promotes two goods — efficiency in the conduct of the litigation and correct results. Striking out claims that have no reasonable prospect of success promotes litigation efficiency,

> reducing time and cost. The litigants can focus on serious claims, without devoting days and sometimes weeks of evidence and argument to claims that are in any event hopeless. The same applies to judges and juries, whose attention is focused where it should be — on claims that have a reasonable chance of success. The efficiency gained by weeding out unmeritorious claims in turn contributes to better justice. The more the evidence and arguments are trained on the real issues, the more likely it is that the trial process will successfully come to grips with the parties' respective positions on those issues and the merits of the case.
>
> [21] Valuable as it is, the motion to strike is a tool that must be used with care. The law is not static and unchanging. Actions that yesterday were deemed hopeless may tomorrow succeed. Before *Donoghue v. Stevenson*, [1932] A.C. 562 (H.L.) introduced a general duty of care to one's neighbour premised on foreseeability, few would have predicted that, absent a contractual relationship, a bottling company could be held liable for physical injury and emotional trauma resulting from a snail in a bottle of ginger beer. Before *Hedley Byrne & Co. v. Heller & Partners, Ltd.*, [1963] 2 All E.R. 575 (H.L.), a tort action for negligent misstatement would have been regarded as incapable of success. The history of our law reveals that often new developments in the law first surface on motions to strike or similar preliminary motions, like the one at issue in *Donoghue v. Stevenson.* Therefore, on a motion to strike, it is not determinative that the law has not yet recognized the particular claim. The court must rather ask whether, assuming the facts pleaded are true, there is a reasonable prospect that the claim will succeed. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial.
>
> [22] A motion to strike for failure to disclose a reasonable cause of action proceeds on the basis that the facts pleaded are true, unless they are manifestly incapable of being proven: *Operation Dismantle Inc. v. The Queen*, [1985] 1 S.C.R. 441, at p. 455. No evidence is admissible on such a motion: r. 19(27) of the *Supreme Court Rules* (now r. 9-5(2) of the *Supreme Court Civil Rules*). It is incumbent on the claimant to clearly plead the facts upon which it relies in making its claim. A claimant is not entitled to rely on the possibility that new facts may turn up as the case progresses. The claimant may not be in a position to prove the facts pleaded at the time of the motion. It may only hope to be able to prove them. But plead them it must. The facts pleaded are the firm basis upon which the possibility of success of the claim must be evaluated. If they are not pleaded, the exercise cannot be properly conducted.

[33] The claim that is before me is not unlike the claim that was before the Court in *Reisinger v J.C. Akin Architect Ltd.,* 2017 SKCA 11, 411 DLR (4th) 687

[*Akin*]. The claim is an unfocussed narrative that includes evidence, argument and opinion. It strays far from the requirements of Rule 13-8(1).

[34] In *Akin* at para 45, the Court of Appeal provided the following guidance when faced with an application under Rule 7-9:

> [45] It is incumbent on a judge considering a Rule 7-9 application to analyze whether the elements of the cause of action can be found in the statement of claim. He or she must determine whether the facts alleged in the claim relate to those elements and in the end whether as a whole the statement of claim discloses any causes of action. In my view, the Chambers judge erred in discharging his duty to determine if specific torts were pleaded when he implied that the requisite elements and referable facts were *somewhere* in the 33 overt acts. Such an approach is perhaps understandable given the state of the pleadings.

[35] The Foundational Rules, being Rule 1-3, of course requires that parties identify the real issues in dispute and facilitate the quickest resolution of claims at the least expense. In certain cases, depending on the degree of problems with the drafting of a claim, a poorly drafted claim may offend Rule 1-3 and affect the analysis under Rule 7-9(2). See *Akin* at para 38.

[36] It is with this backdrop that I will consider the proposed amended claim. I have not considered affidavit evidence when assessing whether or not the claim discloses a reasonable cause of action, given the guidance of the Court of Appeal on this issue. I have only considered the pleading itself and the documents specifically referenced in the pleading upon which the Kashubas rely.

(i) Contract Claim

[37] In order to advance a contract claim, a plaintiff must plead the existence of a contract and its breach. See for example: *Atlantic Lottery Corp. Inc. v Babstock*,

2020 SCC 19 at para 91, 447 DLR (4th) 543.

[38] In order for a contract to be breached, there must be privity of contract. Simply put, the contractual obligations must be owed to the party asserting a breach. See, for example, *Mann v Hawkins,* 2010 SKQB 427 at para 21. Obviously, a party cannot seek damages for breach of contract if they have no contract.

[39] In this case, the claim alleges at para. 11 that the RM was providing water in exchange for payment and at para. 32 "*As of June 30, 2021 the amount of the Plaintiff's claim for expenses incurred because of the RM's breach of its contractual and statutory obligations to the Plaintiffs is...*"

[40] These two allegations together meet the minimum threshold required for this pleading to survive. That said, simply because a pleading is not struck for failing to disclose a reasonable cause of action does not mean it will succeed, or that the evidence will support the allegation, or that it will not be struck for abuse of process which entails a different analysis.

[41] During the course of the argument, Mr. Kashuba acknowledged that his name is not on title to the property, which is in Mrs. Kashuba's name, and that the bills from the RM were addressed to Mrs. Kashuba alone. That said, at this stage I must assume the allegations set out in the claim as being true and, accordingly, I would not strike the breach of contract claim for failing to disclose a reasonable cause of action.

(ii) Breach of Statutory Duties

[42] The claim is replete with allegations that the RM breached statutory duties. In *Holland v Saskatchewan*, 2008 SCC 42 at para 9, [2008] 2 SCR 551, the Court offered the following guidance in respect of claims involving allegations of

breach of statutory duties.

> [9] ...The law to date has not recognized an action for negligent breach of statutory duty. It is well established that mere breach of a statutory duty does not constitute negligence: *The Queen in right of Canada v. Saskatchewan Wheat Pool*, [1983] 1 S.C.R. 205. The proper remedy for breach of statutory duty by a public authority, traditionally viewed, is judicial review for invalidity. The appellant pursued this remedy before Gerein C.J.Q.B. and obtained a declaration that the government's action of reducing the herd certification status was unlawful and invalid. No parallel action lies in tort.

[43] Simply put, the mere breach of a statutory duty does not on its own constitute actionable negligence. See *Saskatchewan (Agriculture, Food and Rural Revitalization) v Holland*, 2007 SKCA 18 at para 46, 299 Sask R 109. Accordingly, to the extent that the claim seeks relief simply on the basis of a breach of a statutory duty, such claims must be dismissed. However, the references to specific statutory duties which were allegedly breached may remain in the claim to the extent that they are being relied upon for the purposes of advancing a claim of abuse of public office.

(iii) Breach of Procedural Fairness

[44] The allegation of breach of procedural fairness is set out at para. 35 of the claim which states:

> 35. The RM in dealing with the Plaintiffs owed the Plaintiffs duty of fairness. The RM breached that duty in that they did not adhere to the rules of natural justice and procedural fairness in its dealings with the Plaintiff it being the Plaintiffs legitimate expectations that the RM would follow its own processes, procedures policies and bylaws and secondly, adhere to the governance and legal requirement of the foundational legislation thereby acted unfairly and contrary to foundation Canadian democratic principles and the rule of law and procedural fairness that seeks to ensure all persons are treated fairly and equally.

[45] This allegation seems more aimed at seeking judicial review than

advancing a free-standing cause of action, though, frankly, the claim in not clear in this regard. In *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall,* 2018 SCC 26, [2018] 1 SCR 750, our highest court examined the purpose of judicial review at para. 13 of the decision and found:

> [13] The purpose of judicial review is to ensure the legality of state decision making: see *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62, [2010] 3 S.C.R. 585, at paras. 24 and 26; *Crevier v. Attorney General of Quebec*, [1981] 2 S.C.R. 220, at pp. 237-38; *Knox v. Conservative Party of Canada*, 2007 ABCA 295, 422 A.R. 29, at paras. 14-15. Judicial review is a public law concept that allows s. 96 courts to "engage in surveillance of lower tribunals" in order to ensure that these tribunals respect the rule of law: *Knox*, at para. 14; *Constitution Act, 1867*, s. 96. The state's decisions can be reviewed on the basis of procedural fairness or on their substance. The parties in this appeal appropriately conceded that judicial review primarily concerns the relationship between the administrative state and the courts. Private parties cannot seek judicial review to solve disputes that may arise between them; rather, their claims must be founded on a valid cause of action, for example, contract, tort or restitution.

[46] In this case, the pleading offends Rule 1-3 as well as Rule 7-9. It creates confusion, rather than clarity, and makes it difficult for a defendant to understand the causes of action advanced against them. Is this allegation being advanced as a freestanding cause of action or is it being raised as the basis of some sort of judicial review application? Neither the defendant nor the Court should have to guess as to what causes of action are being pursued. Accordingly, to the extent that breach of procedural fairness is being advanced as an independent cause of action, it is struck. Paragraph 35 is therefore struck.

(iv) Misfeasance of Public Office

[47] In *Odhavji Estate v Woodhouse,* 2003 SCC 69 at para 31, [2003] 3 SCR 263, this cause of action was summarized as follows:

> 31 I wish to stress that this conclusion is not inconsistent with *R. v. Saskatchewan Wheat Pool*, [1983] 1 S.C.R. 205, in which the Court established that the nominate tort of statutory breach does not exist. *Saskatchewan Wheat Pool* states only that it is insufficient that the defendant has breached the statute. It does not, however, establish that the breach of a statute cannot give rise to liability if the constituent elements of tortious responsibility have been satisfied. Put a different way, the mere fact that the alleged misconduct also constitutes a breach of statute is insufficient to exempt the officer from civil liability. Just as a public officer who breaches a statute might be liable for negligence, so too might a public officer who breaches a statute be liable for misfeasance in a public office. *Saskatchewan Wheat Pool* would only be relevant to this motion if the appellants had pleaded no more than a failure to discharge a statutory obligation. This, however, is not the case. The principle established in *Saskatchewan Wheat Pool* has no bearing on the outcome of the motion on this appeal.
>
> [Emphasis in original]

[48] The cause of action was also recently considered in the Court of Appeal's recent decision in *Harpold v Saskatchewan (Corrections and Policing)*, 2020 SKCA 98 at paras 45-47.

> [45] The tort of misfeasance in public office can arise in one of two ways. The first scenario is where the conduct is specifically intended to injure a person or class of persons. The second situation is where a public officer acts with knowledge that they have no power to do the act complained of and that the act is likely to injure a person. As discussed in *Odhavji*, the constituent elements common to both iterations of this tort are twofold: "(i) deliberate and unlawful conduct in the exercise of public functions; and (ii) awareness that the said conduct is unlawful and likely to injure the plaintiff" (at para 32) – also see Leanne Berry, "Misfeasance in Public Office: Elements of Cause of Action", in *Remedies in Tort*, loose-leaf (2019 – Rel 9) vol 3 (Toronto: Thomson Reuters, 2019) at 24-123, s 61.1).
>
> [46] With regard to the first element, an examination of the nature of the impugned misconduct asks whether it was deliberate and unlawful. Misconduct can embrace both acts or omissions (see *Odhavji* at para 24). The second element requires there to be a nexus between the plaintiff and the public officer. That is to say, a plaintiff must establish that the public officer exhibited a conscious disregard for the interests of those affected by the misconduct in question. Instead of applying the proximity requirement needed in negligence actions, a plaintiff must prove that the defendant had

> subjective foresight that his or her conduct was unlawful and that it was likely to harm the plaintiff. As the Court commented in *Odhavji*, although misfeasance in public office is an intentional tort, "At the very least, according to a number of cases, the defendant must have been subjectively reckless or wilfully blind as to the possibility that harm was a likely consequence of the alleged misconduct" (citations omitted, at para 38). See also *Pedigree Poultry* [2020 SKQB 100] where the court concluded that it was sufficient to prove subjective recklessness or wilful blindness as to both the illegality of the conduct and likely damage to the plaintiff:
>
> > [173] Although misfeasance is an intentional tort that requires proof of deliberate unlawful conduct, it is not necessary to prove the defendant actually knew his or her act or omission was unlawful and likely to damage the plaintiff. It is sufficient to prove subjective recklessness or wilful blindness as to these two factors: *Odhavji*, at paras 26 and 38; *J.P. v British Columbia (Children and Family Development)*, 2017 BCCA 308 at para 29, 1 BCLR (6th) 17 [*J.P.*]; *Powder Mountain Resorts Ltd. v British Columbia*, 2001 BCCA 619 at para 7, [2001] 11 WWR 488 [*Powder Mountain*]; *Alberta (Minister of Infrastructure) v Nilsson*, 2002 ABCA 283 at paras 72 and 95, 220 DLR (4th) 474 [*Nilsson CA*]; and *Foschia*, [2009 ONCA 499] at para 24.
>
> [47] A person alleging the tort of misfeasance in public office has a tough hill to climb. Aside from issues of proof, the Supreme Court in *Odhavji* identified several restrictions that narrow the ambit of this tort. For example, the tort would not apply in cases of mere inadvertence, a negligent failure to adequately discharge the obligations of office, or even the blatant disregard for official duties absent proof of a conscious disregard for the interests of those affected by the alleged misconduct (see paras 26–29). In addition, a plaintiff must also prove the "tortious conduct was the legal cause of his or her injuries, and that the injuries suffered are compensable in tort law" (at para 32). See also *Swift Current* [2007 SKCA 27, [2007] 5 WWR 387] at para 30.

[49] In this case, the claim alleges that the RM and others engaged in "deliberate unlawful conduct in the exercise of their public functions in an attempt to hinder and/or prevent the ratepayers of the Organized Hamlet [OH], which included the Plaintiffs…". The core facts that appear to be advanced in support of the allegation are that the RM instituted collection proceedings against the Kashubas and terminated services, contrary to their alleged contractual and statutory obligations. The claim

alleges bad faith.

[50] As noted by the Court of Appeal, this type of claim faces a high bar before relief may be granted. That said, at this stage, the question is not whether the bar is met on the evidence, but, rather, whether the elements of the cause of action have been adequately pled, bearing in mind that perfection is not the standard.

[51] The claim against the RM for misfeasance can remain as the pleading meets the relatively low bar required by Rule 7-9(2)(a). Again, this issue will be revisited when considering whether the claim should be struck pursuant to Rule 7- 9(2)(b)-(e).

Rule 7-9(2)(b)-(e) – Should the claim or portions of it be struck on the basis that it is scandalous, frivolous or vexatious; is immaterial, redundant or unnecessarily lengthy; may prejudice or delay the fair trial or hearing of the proceeding; or is otherwise an abuse of the process of the Court.

[52] The fact that the claim pleads the minimum required to maintain a contract claim and a claim for misfeasance of public office does not end the inquiry. Rule 7-9 allows for claims to be struck where they are immaterial, redundant, unnecessarily lengthy, scandalous, frivolous, vexatious, will delay or prejudice a fair trial or otherwise amount to an abuse of the process of the Court.

[53] The Court of Appeal summarized the law as it relates to applications under Rule 7-9(2)(b)-(e) in *Sagon v Royal Bank of Canada* (1992), 105 Sask R 133 at para 18 (CA):

> [18] Striking out an entire claim on the ground that it is frivolous, vexatious or an abuse of process of the court is based on an entirely different footing. Instead of considering merely the adequacy of the pleadings to support a reasonable cause of action, it may involve an assessment of the merits of the claim, and the motives of the plaintiff

> in bringing it. Evidence other than the pleadings is admissible. Success on such an application will normally result in dismissal of the action, with the result that the rule of res judicata will likely apply to any subsequent efforts to bring new actions based on the same facts. Odgers on *Pleadings and Practice,* 20th Ed. says at pp. 153-154:
>
> > "If, in all the circumstances of the case, it is obvious that the claim or defence is devoid of all merit or cannot possibly succeed, an order may be made. But it is a jurisdiction which ought to be very sparingly exercised, and only in very exceptional cases. Its exercise would not be justified merely because the story told in the pleadings is highly improbable, and one which it is difficult to believe could be proved." (footnotes omitted)

[54] In *Siemens v Baker,* 2019 SKQB 99 at paras 23-25, 2019 DTC 5051, the Court explained when a claim may be struck for being frivolous, vexatious or scandalous:

> [23] Although these terms are often used interchangeably, it is helpful to differentiate among them. A pleading will qualify as "scandalous" if it levels degrading charges or baseless allegations of misconduct or bad faith against an opposite party. See: *Paulsen v Saskatchewan (Ministry of Environment)*, 2013 SKQB 119 at para 45, 418 Sask R 96 [*Paulsen*] and the authorities cited there. Courts in British Columbia, for example, have described a scandalous pleading as "one that is so irrelevant that it will involve the parties in useless expense and prejudice the [pursuit] of the action by involving them in a dispute apart from the issues". See: *Turpel-Lafond v British Columbia*, 2019 BCSC 51 at para 23, 429 DLR (4th) 131 [*Turpel-Lafond*] quoting from *Woolsey v Dawson Creek (City)*, 2011 BCSC 751 at para 28.
>
> [24] A pleading will qualify as "vexatious" if it was commenced for an ulterior motive (other than to enforce a true legal claim) or maliciously for the purposes of delay or simply to annoy the defendants. See: *Paulsen*, at para 46. Put another way, it is vexatious if it does not assist in establishing a plaintiff's cause of action or fails to advance a claim known in law. See: *Turpel-Lafond*, at para 23.
>
> [25] A pleading will qualify as "frivolous" if it is plain or obvious or beyond reasonable doubt the claim it advances is groundless and cannot succeed. See: *Hunt v Carey Canada Inc.*, [1990] 2 SCR 959 at 980; *Paulsen* at para 47; and *Wayneroy Holdings Ltd. v Sideen*, 2002 BCSC 1510 at para 17.

[55] The doctrine of abuse of process was described by our Court of Appeal in *Bear v Merck Frosst Canada & Co.*, 2011 SKCA 152 at paras 36-38, 385 Sask R 76:

> [36] The doctrine of abuse of process reflects the inherent power of a judge to prevent an abuse of his or her court's authority. It is a flexible concept not restricted by the requirements of issue estoppel, such as those relating to privity. The doctrine can be engaged by a variety of circumstances including what might be called those concerning the "re-litigation" of issues or claims.
>
> [37] Goudge J.A., in *Canam Enterprises Inc. v. Coles* (2000), 194 D.L.R. (4th) 648 (Ont. C.A.), dissenting but approved at 2002 SCC 63, [2002] 3 S.C.R. 307, explained the applicable concepts as follows at paras. 55-6:
>
> > [55] The doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute. It is a flexible doctrine unencumbered by the specific requirements of concepts such as issue estoppel. See *House of Spring Gardens Ltd. v. Waite,* [1990] 3 W.L.R. 347 (C.A.) at 358.
> >
> > [56] One circumstance in which abuse of process has been applied is where the litigation before the court is found to be in essence an attempt to relitigate a claim which the court has already determined. ...
>
> [38] The need to maintain the integrity of the adjudicative process sits at the heart of the concept of abuse of process. The Supreme Court of Canada explained this point as follows in *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77:
>
> > 51 Rather than focus on the motive or status of the parties, the doctrine of abuse of process concentrates on the integrity of the adjudicative process. Three preliminary observations are useful in that respect. First, there can be no assumption that relitigation will yield a more accurate result than the original proceeding. Second, if the same result is reached in the subsequent proceeding, the relitigation will prove to have been a waste of judicial resources as well as an unnecessary expense for the parties and possibly an additional hardship for some witnesses. Finally, if the result in the subsequent proceeding is different from the conclusion reached in the first on the very same issue, the inconsistency, in and of itself, will undermine the credibility of the entire judicial process,

> thereby diminishing its authority, its credibility and its aim of finality.
>
> See also: *Cameco Corp. v. Insurance Co. of State of Pennsylvania*, 2010 SKCA 95, [2010] 10 W.W.R. 385 per Cameron J.A. at paras. 47-50.

[56] As the RM argues that the current claim is duplicative of other proceedings, s. 29 of *The Queen's Bench Act, 1998* is also relevant. That section states:

> **Multiplicity of proceedings avoided**
> 29(1) The court shall grant to the parties to an action or matter all remedies to which the parties appear to be entitled with respect to any legal or equitable claims that they have properly brought forward so that:
>
> (a) all issues in controversy between the parties are determined as completely and finally as possible; and
>
> (b) a multiplicity of legal proceedings concerning the issues is avoided.
>
> (2) Relief pursuant to subsection (1) may be granted either absolutely or on any terms and conditions that a judge considers appropriate.

[57] In the context of an application to strike under Rule 7-9(2)(b)-(e), I am able to consider the affidavit evidence filed. A preliminary matter arises in relation to the affidavit evidence in that the RM seeks to strike much of Mr. Kashuba's affidavit.

Application to Strike Portions of Mr. Kashuba's Affidavit

[58] Rule 13-30 states:

> **Affidavit to be on knowledge or belief**
> **13-30**(1) Subject to subrule (2), an affidavit must be confined to facts that are within the personal knowledge of the person swearing or affirming the affidavit.
>
> (2) In an interlocutory application, the Court may admit an affidavit that is sworn or affirmed on the basis of information known to the person swearing or affirming the affidavit and that person's belief.

> (3) If an affidavit is sworn or affirmed on the basis of information and belief in accordance with subrule (2), the source of the information must be disclosed in the affidavit.
>
> (4) The costs of every affidavit that unnecessarily sets forth matters of hearsay or argumentative matter, or copies of or extracts from documents, must be paid by the party filing the affidavit.
>
> (5) If an affidavit based on information and belief is filed and does not adequately disclose the grounds of that information and belief, the Court may direct that the costs of the affidavit shall be paid personally by the lawyer filing the affidavit.
>
> (6) An affidavit filed in a subsequent proceeding for the same action must not repeat matters filed in earlier affidavits, but may make reference to earlier affidavits containing those matters.

[59] In *Cowessess First Nation No. 73 v Phillips Legal Professional Corporation,* 2018 SKQB 156, affirmed at 2020 SKCA 16, Barrington Foote J. (as he then was) described the purpose and intent behind Rule 13-30 at para. 18 of his decision as follows:

> [18] Rule 13-30 is concerned with both rules of evidence, and rules governing practice and procedure. Opinion evidence and argument, other than opinion evidence which falls within recognized exceptions, is not admissible. Inadmissible opinion evidence and argument are not facts, and are no more acceptable in an affidavit than in *viva voce* testimony. Rule 13-30(1) confirms this basic notion, providing that affidavits must be "confined to facts". Rules 13-30(4) and (6) direct parties not to clutter the record with unnecessary copies of or extracts from documents, or by repeating matters already filed in earlier affidavits. Those rules are intended to promote effective and efficient fact finding. All too frequently, counsel ignores these fundamental principles when drafting affidavits, in a way that they would not at trial. Some parts of the Cowessess' affidavits fall short of the standard that they should meet.

[60] Mr. Kashuba's affidavit is full of speculation, evidence concerning the intentions of others, and argument. For example, the affidavit attaches case law, provides Mr. Kashuba's opinion as to what conduct is illegal, includes matters that have nothing to do with the application like access to information requests, provides his opinion of who may or may not be able to have wells, and includes statutory excerpts

with his opinion of such excerpts. The result is that I strike paras. 6-13 of the affidavit. To the extent that Mr. Kashuba alleges unilateral conduct by the RM, at para. 3 of his affidavit, alleging unilateral action in a pleading is different than putting it in an affidavit. Mr. Kashuba can say whether the RM consulted with him as he would have knowledge of this, but he cannot say the RM consulted with no one as this would not be information within his personal knowledge. Accordingly, para. 3 of his affidavit is also struck.

[61] Mr. Dow, the Reeve, indicates that Mr. Kashuba does not own the property that is the subject of the claim. This is not disputed by Mr. Kashuba. Mr. Dow offers evidence relating to the substance of the allegations, including, for example, that the Kashubas have not provided a certified report from a plumber in respect of their claims. Mr. Dow also notes that Mr. Kashuba was removed from a position on the Hamlet Board on account of his criminal record. Of course, there are aspects of Mr. Dow's evidence which have no bearing on the application, including, for example, whether Mr. Kashuba was removed from the Hamlet Board and, if so, why.

[62] As a starting point, the Kashubas' proposed claim advances allegations against individuals and entities who are not parties. These persons will have no notice of the claim, will not be entitled to productions, will not have the right to question the Kashubas under the Rules and may not even be aware or have been made aware of these proceedings. It is an abuse of process to make allegations against persons and entities without giving them an opportunity to be heard. Each of the individuals and entities is entitled to have the opportunity to put their side of the story before the Court before a decision is made affecting their reputations and interests. To allow otherwise would bring the administration of justice into disrepute and deny these individuals due process and basic fairness. The allegations and relief sought against non-parties are accordingly struck as an abuse of the Court's process. This will apply to paras. and/or portions of

paras. 18, 19, 20, 25, 36, 37, 38, 39, 40, 41, 42, 46 and 47.

[63] Again, the offending paragraphs are struck out on Schedule "A".

Breach of Statutory Duty, Breach of Procedural Fairness and Abuse of Public Office

[64] The problem with these claims is that they are largely duplicative of the allegations made before Zuk J.

[65] In the originating application, brought by Mr. Kashuba and Mr. Ludwig, they sought to challenge the RM's budget, its decisions, bylaws and resolutions. The applicants in that proceeding sought a determination of responsibilities in relation to water, sewer and utilities. In the relief section of this amended claim and, in particular, items (d)-(h), much of the same or similar relief is sought. The application of Mr. Ludwig and Mr. Kashuba was adjourned *sine die* pending the outcome of the Appeal Board process. The first question is whether *res judicata* applies. In order for this doctrine to apply, the RM must meet the criteria set out by the Court in *Wilchuck v Westfield Twins Condominium Corporation*, 2020 SKQB 40 at para 47:

> [47] I have concluded that Westfield Twins should succeed on this last ground, namely that the doctrine of *res judicata* applies. In order to succeed on a claim of this doctrine, it is necessary for the party relying on it to show that (1) there is a previous final decision of a court of competent jurisdiction; (2) the parties are the same; and (3) the final judicial decision determined the same issues as those not being raised, including points properly belonging to the subject of litigation that the parties might have brought forward in the previous litigation. See for example: *Jones v Kindrachuk and Canadian Imperial Bank of Commerce* (1991), 96 Sask R 73 (QB); *Haug v Loran*, 2017 SKQB 92 at para 30; and *Wilchuk (No.2)* at para 30.

[66] Mr. Kashuba and the RM were both parties to the previous proceeding before Zuk J.

[67] Zuk J. rendered a decision and there is nothing before me to suggest that such decision was appealed. Zuk J. determined that the issues before him, which are largely the same as those raised before me, should be adjourned pending completion of the Appeal Board process. If I were to allow Mr. Kashuba to continue with this claim, I would be encouraging parties to bring forward the same allegations before the same level of Court, over and over again, using different procedures until they got the result they wanted. I am not prepared to set such a precedent. If I had not struck the allegations of breach of statutory duty and breach of procedural fairness, I would have struck Mr. Kashuba's claim for such relief on the basis of *res judicata*.

[68] As for the allegation of misfeasance of public office by Mr. Kashuba, I did not strike that allegation, but I would stay it on the basis of *res judicata* pending the outcome of the Appeal Board process, as that was the decision of Zuk J. and to rule otherwise would again allow the same parties to bring the same claims over and over again until they got the result they wanted.

[69] As for the claim of Mrs. Kashuba, it would not be subject to *res judicata* as she was not a party in the earlier proceeding before Zuk J. That said, allowing multiple proceedings for the same relief is an abuse of the Court's process and is contrary to s. 29 of *The Queen's Bench Act, 1998*. There is presently a process before an Appeal Board, a process in which Mrs. Kashuba is an active participant and claimant. To allow similar allegations to proceed while that process is underway could lead to inconsistent results and, therefore, amounts to an abuse of the Court's process. The result is that I would stay Mrs. Kashuba's allegation of misfeasance in public office pending the outcome of the Appeal Board on the basis that to do otherwise, would amount to an abuse of the Court's process and force the RM to, in effect, fight the same battle on multiple fronts with the potential of inconsistent results. Had I not struck the procedural fairness and breach of statutory duty allegations of Mrs. Kashuba, I would

have stayed them on this basis as well.

[70] As Zuk J. notes, the Appeal Board has been constituted to assess whether the RM engaged in "...Malicious imminent ongoing and future harm and actions in bad faith negating the responsibilities of their office and position duty of care...".

[71] This is a claim for misfeasance of public office. The result is that even if I had not found that *res judicata* applied to Mr. Kashuba's claim, I would nevertheless have found the claims of breach of statutory duty, misfeasance in public office and breach of procedural fairness to be duplicative of the process commenced before the Appeal Board and stayed such allegations on that basis.

Breach of Contract

[72] The elements of breach of contract are aptly pled. However, the evidence of the RM and Mr. Kashuba's own submissions confirm that he is not on title to the property at issue and that the bills from the RM were addressed to Mrs. Kashuba. Mr. Kashuba cannot maintain a breach of contract claim against the RM if he has no contract with the RM. Such a claim would be frivolous. Accordingly, his claim for breach of contract is struck, though the claim of Mrs. Kashuba's for breach of contract will remain. Notwithstanding that I have found that Mrs. Kashuba may maintain a claim for breach of contract, given the fact that this matter is before the Appeal Board to decide whether the RM acted in accordance with its obligations and such a decision will obviously affect the outcome of Mrs. Kashuba's contract claim, to avoid multiple proceedings and multiple results, I stay this aspect of the claim pending the outcome of the Appeal Board process.

Costs

[73] The RM has largely succeeded in its application. I find it is entitled to one

set of costs based on column 2.

Conclusion

[74] The net effect of this decision is that:

(a) The following paragraphs are struck for violating the requirements of Rule 13-8 and Rule 1-3 in that they plead evidence and are unnecessarily lengthy in terms of pleading legislation as opposed to simply references. They are portions of paragraphs 7, 9, 10, 29, 33, 34, 43, 44 and Annex 1, as identified on Schedule "A".

(b) Paragraph 35, relating to breach of procedural fairness, is struck for failing to disclose a reasonable cause of action.

(c) The following paragraphs, or portions thereof, making allegations against non-parties are struck as an abuse of the Court's process as they would undermine the trial fairness to which such parties are entitled. They are portions of paragraphs 18, 19, 20, 25, 36, 37, 38, 39, 40, 41, 42, 46 and 47 as set out on Schedule "A".

(d) The claim of Mr. Kashuba for breach of contract is struck as it is a frivolous claim and unable to succeed;

(e) The claim of Mrs. Kashuba for breach of contract is stayed as its outcome will depend on the findings of the Appeal Board;

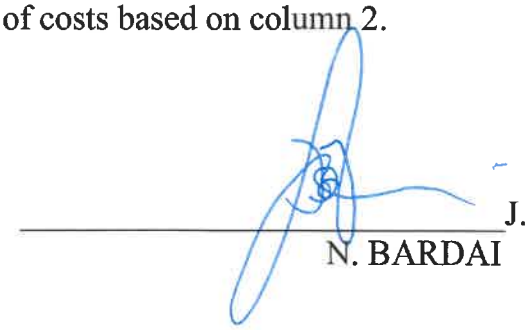
(f) Mr. Kashuba's claim for misfeasance of public office is stayed on the basis of *res judicata* given the decision of Zuk J. This claim will be on hold pending the outcome of the appeal process in accordance with the decision of Zuk J. who adjourned such claim;

(g) The claim of Mrs. Kashuba for misfeasance of public office is stayed pending the outcome of the Appeal Board's proceeding on the basis that to allow it to proceed now would be an abuse of the Court process and encourage multiplicity of proceedings;

(h) The contract claim of Mrs. Kashuba is stayed to allow the Appeal Board process to conclude first so as not to give rise to potentially inconsistent results;

(i) Paragraphs 3 and 6-13 of Mr. Kashuba's affidavit are struck; and

(j) The RM is entitled to one set of costs based on column 2.



J.
N. BARDAI

SCHEDULE "A"

COURT FILE NUMBER: QBG 33 OF 2021
COURT OF QUEENS BENCH FOR SASKATCHEWAN
JUDICIAL CENTRE: BATTLEFORD

PLAINTIFF'S: TERENCE & TRACY KASHUBA

AND

DEFENDANT: RURAL MUNICIPALITY OF WILTON 472

DRAFT STATEMENT OF PLAINTIFF'S CLAIM
Amended as pursuant to Fiat of Danyliuk J. June 11, 2021

1. The Plaintiffs, **Terence Kashuba** & **Tracy Kashuba** [**Terry & Tracy**] are home owners, voters, ratepayers and residents of the **Organized Hamlet of Lone Rock** [**OH** *or* **Lone Rock**], in the Rural Municipality of Wilton 472, in the province of Saskatchewan. Terence Kashuba is also board member of the OH board constituted under s 68(1) of ***The Municipalities Act*** [**MA**]

2. The Defendant, the Rural Municipality of Wilton 472 [Wilton] is a rural municipality incorporated under *The Municipalities Act,* Province of Saskatchewan.

3. The Organized Hamlet of Lone Rock was constituted under s 59 of the MA in 1927. The OH currently consists of 14 homes and 64 residents. The hamlet is in the middle of heavy oil country & is still surrounded by oil batteries & a refinery.

Background and Context:

4. At all material times from and after 2006 the Plaintiffs, Terry & Tracy, subscribed to and were lawful users of the local municipal water and sewer services [**water utility** *or* **water service**] being a public utility contemplated by s 23 of the MA and which public utility provides for potable water and sewer services for public and domestic consumption and for the benefit, convenience and use of home owners and residents of the OH which included the Plaintiffs Terry & Tracy.

5. Pursuant to the MA, DIVISION 3, Public Utilities, ***Method of providing a public utility service*** s 23, the rates, charges, tolls or rents [**rates** *or* **charges**] for access to the water services are required to be set by the RM Council in a bylaw.

6. Pursuant to s 23 (3) the rates are subject to and conditional on the approval of the Saskatchewan Municipal Board [**SMB**]

7. Pursuant to s 23(4) the rates approved by the SMB are in force and binding upon the RM from the date of approval.

DIVISION 3 Public Utilities

Method of providing a public utility service

23(1) A municipality may provide a public utility service directly, through a controlled corporation, or by agreement with any person.

(3) The following are subject to the approval of the Saskatchewan Municipal Board:

(a) the rates, charges, tolls or rents set by a council by bylaw for the use of water or sewer services;

(b) any discounts or additional amounts or percentages to be charged for arrears relating to the rates, charges, tolls or rents mentioned in clause (a).

(4) The rates, charges, tolls or rents approved by the Saskatchewan Municipal Board are in force from the date of approval, and the Saskatchewan Municipal Board may, at any time, inquire into the rates and may vary them in any manner that it considers advisable.

Discontinuance of public utility

29 In accordance with its bylaws, resolutions or policies, a municipality may, for any lawful reason:

(a) discontinue providing a public utility service after giving reasonable notice of its intention to do so;

(b) remove the system or works of the public utility used to provide the utility service; and

(c) enter any land or building for the purposes set out in clauses (a) and (b).

8. Pursuant to s 23(4) the SMB may, at any time, inquire into the rates and may vary them in any manner that it considers advisable.

9. The water and sewage utility in addition is regulated by *The Public Health Act, 1994* and without limiting the foregoing s 14(1):

PART III

Community Health Protection

WATER SUPPLIES AND SEWAGE DISPOSAL

Responsibilities

14(1) The council of a rural municipality in which a hamlet or an organized hamlet is located, of a town within the meaning of The Northern Municipalities Act, 2010, or of any other municipality other than a rural municipality or northern municipality shall ensure that there is a supply of potable water and a system for the disposal of sewage for use by the inhabitants of the hamlet, organized hamlet, town or other municipality, as the case may be.

(2)…

(3) …

10. The water and sewage utility in addition is regulated by *The Environmental Management and Protection Act, 2010* E-10-22 and without limiting the foregoing, s-24 and Table 1

PART IV General Rules Respecting Permits, Environmental Protection Plans and

Notices Permits required for certain activities

24(1) Before a person carries out any of the activities listed in Table 1 of the Schedule, that person shall obtain a permit to carry out that activity.

(2) The prescribed terms and conditions respecting permits apply to the permits required by subsection (1).

~~Schedule TABLE 1 [Section 24]~~
Activities for which a permit is required
Item Activity
1. Operation of a waterworks
2. Construction or alteration of all or part of a water treatment works
3. Construction, alteration or extension of all or part of a water distribution works, other than construction, alteration or extension of all or part of a water distribution works that is governed by a chapter of the code
4. Operation of a sewage works
5. Construction or alteration of all or part of a sewage treatment works
6. Construction, alteration or extension of all or part of a sewage collection works, other than construction, alteration or extension of all or part of a ~~sewage collection works that is governed by a chapter of the code.~~

11. At all times material while the RM was providing access to their water service to the Plaintiffs at their home in the OH of the RM and the Plaintiffs Terry and Tracy in exchange, faithfully paid all sums charged for their usage in a timely and punctual fashion.

12. On November 19, 2018, the Defendant RM began demolition of certain properties within the OH.

13. On November 19, 2018 after RM work crews began demolition work on properties adjoining Terry & Tracy's home.

14. Upon returning to their home on November 19, 2018 at approximately 2:30PM they discovered the RM's water service to their home had ceased.

15. A series of phone calls were made to the RM inquiring about the loss of the water service and when the water service, and incidental sewer service, would be restored.

16. The RM was unresponsive.

17. As of the date of this Statement of Claim the water service has not been restored.

~~18. On November 21, 2018 and on several occasions thereafter while the water and sewer remained out of commission, Dave Jarvis a realtor, made persistent inquires advising he had an undisclosed buyer interested in acquiring their properly.~~

~~19. In anticipation of the sewer and water being restored and in any event the realtor was advised that Terry and Tracy were not interested in selling their home.~~

~~20. It was subsequently disclosed by an investigation conducted by the Saskatchewan Real Estate Board through a discipline hearing to which he was sanctioned & fined that Dave Jarvis was employed directly or indirectly by a numbered company created by the RM and tasked with acquiring for the RM not less than all of the residential properties in the OH.~~

21. Notwithstanding the Plaintiffs, through no fault of theirs, were unable to access the municipal water services from and after November 19, 2018, the RM in January 2019 began sending out monthly water/sewer utility bills to the Plaintiffs requiring payment for a water service that had not been supplied since November 19 2018.

22. The Plaintiffs at all times were ready, willing and able to pay for the municipal water they had subscribed to but were not prepared to pay for a municipal water sewer service that was unilaterally discontinued or disabled and which they could not access, use or enjoy since November 19 2018.

23. The RM was advised accordingly.

24. The RM notwithstanding made a demand for payment of "arrears" and then immediately thereafter asserted a s 31 ***Liens re public utility services*** for the amounts (sum or sums) of the invoiced water services that had ceased on November 19, 2018.

25. ~~The RM forwarded the sum claimed to a debt collector called Taxervice Inc. for collection enforcement.~~

26. The RM has since begun and is currently vigorously perusing enforcement distress and sale proceeding pursuant to s 31(4) to recover the sum(s) claimed and associated costs as tax arrears.

27. By letter dated May 28, 2020 the RM issued a **NOTICE OF SEWER & WATER TERMINATION** [Termination Notice] addressed to all residents of the OH, including the Plaintiffs Terry and Tracy, which in part stated:

> *Effective June 30", 2021 the R.M. of Wilton No. 472 will be shutting down the water plant that supplies water to residences in Lone Rock.*
>
> *In addition effective June 30", 2021, the RM of Wilton No. 4 72 will be closing down the sewer plant that processes sanitary sewer from residences in Lone Rock. This means all existing residential sanitary sewer lines in Lone Rock will no longer be useable.*

28. As of the date hereof the RMs has and continues to assert a claim for water and sewer service in the amount of $ 3,932.36.

29. The Plaintiffs Terry & Tracy have continually resisted the claimed for the invoiced sum(s) for municipal water and sewer services they had not received ~~by:~~

~~29.1 notifying the RM they would not pay for the sums claimed as the service for which the claimed sums were being asserted were not payable.~~

~~29.2 contacting the regulatory body being the **SMB who advised that the Plaintiffs take this matter to Small Claims Court which the Plaintiffs did (and which Small Claims Proceeding is the origin of this Claim)**~~

~~29.3 The Board of the OH on behalf of the members of the OH initiated a proceeding under the MA to constitute a s 77(1) "appeal board "to deal with the~~

~~legality/lawfulness of the RM's decision i.e. to terminate the current municipal water~~ and sewer service to all households in the OH from and after June 30th 2021:

i) The OH in a timely and respectful manner contacted the RM with its s77(3) nominee to the appeal board being the plaintiff Terry Kashuba along with it list of possible chairpersons.

ii) The RM challenged the OH's appointment and further rejected selecting a chairperson from the list proffered by the OH.

iii) To facilitate the RM's objection the Board nominated and notified their replacement appointee Tracy Kashuba to the RM.

iv) The RM again objected and the Board appointed Karen Crawford as the OH's s77 (3) Appeal Board nominee.

v) The OH and the RM could not come to an agreement on the Chairperson.

vi) The parties having failed to agree to the appeal board chairperson the OH pursuant to s 77(3) and s 392 (1.1) - ***PART XIII Intermunicipal Dispute Resolutions Compulsory dispute resolution*** sought out the appoint of a Mediator by the SMB to have a chairperson identified.

vii) A mediator was appointed.

viii) The mediation failed but not for any reason attributable to the OH or the Plaintiffs.

ix) Pursuant to the mandatory language of s 392(2) the SMB then notified the parties it would precede with a hearing.

x) The dates of August 17-19 or August 24-26, 2021 were identified by the SMB with the parties to confirm their availability for those dates by June 14, 2021

vii) The OH immediately advised the SMB of their availability.

viii) The Defendant RM has declined to identify or agree to any of the identified dates and has instead raised jurisdiction concerns.

~~vii) As of June 26 2021 no date for a decision hearing has been set by the SMB.~~

The Plaintiffs' Claim with particulars

30. The Plaintiff states and fact is that the claim asserted for payment of municipal water and sewer services not provided by the RM by the RM in the amount of $ $ 3,932.36 is illegal, unconscionable, egregious and contrary to law.

31. The Plaintiffs since November 18, 2018 in order to maintain their residence have had to incur expense to purchase water and water for water related services (such as sewer flushing,) for all of their domestic usage needs as well as have their laundry done in Lloydminster Saskatchewan.

32. As of June 30, 2021 the amount of the Plaintiff's claim for expenses incurred because of the RM's breach of its contractual and statutory obligations to the Plaintiffs is $15,247.34 and for which the Plaintiffs claim as against the RM as damages for its failure to provide the entitled municipal water and sewer services from and after November 18 2018.

33. The particulars of the Plaintiffs' claim from the period November 18, 2018 to June 30, 202 (954 days) , that can be particularised at this time are :

Laundry:	2 x week@ 272 x $16 =	$4,352
Water:	$12.79 x 954 = 12,201.66 minus discount 66 2/3% =	$4,026.54
Mileage:	72 KM round trip @ $0.10 / KM= $7.20 per trip $7.20 x 954 =	$6,868.80
		$15,247.34

~~**Note: Legal Counsel for the RM charges $0.41/KM which would come to $29.52 x 954 = $28,162.08 versus $6,868.80 advanced by the Plaintiffs**~~

34. The particulars for paragraph 33 and the allegations of "*illegal, unconscionable, egregious and contrary to law*" include but are not limited to:

34.1 Breaches of Legislation, and without limiting the same, include the following:

i) *The Municipalities Act* M- 36.1

~~S-5 **Municipality to act through council; S- 94 Oath or affirmation ; s- 119 Actions in public; S- 73Water or sewer system; s-11 Relationship between bylaws, resolutions and provincial laws**~~

ii) *The Public Health Act, 1994* P-37.1 s- 14(1)

iii) *The Environmental Management and Protection Act, 2010* E-10-22 and without limiting the foregoing s- 24 and Table 1

34.2 *Breaches of RM of Wilton bylaws and Policies

(i) MA s 93.1 Code of Ethics Bylaw No. 8-2019

(ii) MA s 81.1 Council Procedures Bylaw.

~~***The RM does not post minutes from on its website and Plaintiffs have had to file Freedom of information requests to gain the same.**~~

Doctrine of Legitimate Expectations and the rule of law

35. The RM in dealing with the Plaintiffs owed the Plaintiffs duty of fairness. The RM breached that duty in that they did not adhere to the rules of natural justice and procedural fairness in its dealings with the Plaintiff it being the Plaintiffs legitimate expectations that the RM would follow its own processes, procedures policies and bylaws and secondly, adhere to the governance and legal requirement of the foundational legislation thereby acted unfairly and contrary to foundation Canadian democratic principles and the rule of law and procedural fairness that seeks to ensure all persons are treated fairly and equally

Misfeasance in Public Office

36. The Defendant Rural Municipality of Wilton 472 [RM] and its Municipal Council, Reeve Glen Dow and Councillors Sharon Carruthers, Daryl Hemsley, Les McDougall, Ron Clark, Tim Sawarin and Neil Reece [Council Members] and its Administrator/ Chief Administrative Officer and Acting Administrative Officer [CAOs] Darren Elder and Jill Parton, have acted in *bad faith.*

37. The RM, Council Members and CAOs have repeatedly engaged in deliberate, unlawful conduct in the exercise of their public functions in an attempt to hinder and/or prevent the ratepayers of the Organised Hamlet [OH], which included the Plaintiffs, in accessing and or utilizing their statutory and municipal entitlements as ratepayers, citizens and residents of the Organized Hamlet of Lone Rock in the Municipality of Wilton.

38. Alternatively, the RM, Council Members and CAOs were reckless or wilfully blind as to the possibility of the nature and extent of the harm and the likely consequence of their conduct and the harm that would be inflicted on the Plaintiffs.

39. Alternatively, the RM, Council Members and the CAOs at all material times, were aware or wilfully blind to the fact their conduct was unlawful and likely to injure the Plaintiffs who are ratepayers, residents and voters of the OH, and thereby did, in fact, cause compensable injury to the Plaintiff ratepayers of the Organized Hamlet.

40. Specifically, but without limiting the reach of paragraph 37, 38, and 39 the bad faith or lack of good faith conduct complained of includes:

i On November 19 2018 without notice, the Plaintiffs' municipal water supply to their residence in the OH had been discontinued by the RM.

ii On or about May 2018 , surreptitiously and without lawful authority, (bylaw or resolution) and in disregard for process and governance dictated by the *Municipalities Act* , created a number company 102041617 SASKATCHEWAN LTD. [Numbered Company] the sole purpose of which was to acquire the holdings of the residents of the OH and to that effect sought to make life in the OH as uncomfortable as possible to motivate and encourage the residents of the OH to abandon or sell their properties to the RM at a reduced value, all with the insidious objective of the Municipal Council and the CAOs to do away with the OH so as to

unburden the RM from continuing to provide municipal service and entitlements to the OH.

iii The Council members and the CAO were the moving and directing mind of the Number Company.

iv On or about the June 2018 the Numbered Company secretly engaged a realtor Dave Jarvis to seek out and acquire the holdings of the residents of the OH,

v On or about September 17,2020, the RM applied to create an amending bylaw to amend its existing Zoning Bylaw to specifically target the OH in the RM's attempt to do away with the OH. That amendment having failed for legal reasons, the RM again attempted another amendment on March, 11, 2021 to effect the same purpose which is now under review as questions arose to its compliance with enabling and foundational legislation.

vi Breaches of **Code of Ethics** being **Bylaw # 8-2019** of the RM of Wilton #472 and without limiting the foregoing are set out for the convenience of the reader in **Annex 1** to this Statement of Claim

vii The termination of municipal water services and the subsequent collection proceeding against the Plaintiffs and their property from and after November 19, 2018 and the May 28, 2020 Notice of Sewer and Water Termination, in context of the constituting legislation in the MA s 5 and s 119, and the RM's Council Meeting procedures bylaw , and to the extent such action were *ad hoc* ie have never been properly or at all authorized by proper and legal resolutions or bylaws, such actions are void ,illegal and or *ultra vires*

41. The conduct of the RM Council Members and CAO in relation to the OH and the Plaintiffs represents a concerted and ongoing campaign, using ratepayer funds, including those of the residents of the OH, to hinder, delay, and/or prevent the ratepayers of the OH from quiet enjoyment and lawful use of their property. The ultimate objective of the Municipal Council and the CAO in doing so, being to diminish the property values in the OH so they could be acquired at a discounted price favourable to the RM.

42. The conduct of the RM, Municipal Council and the CAO is **so markedly inconsistent with the relevant legislative, statutory imposed duties and obligations, the RM's own Code of Ethics, foundational Canadian democratic principles and their solemn Oath of Office, that a Court can reasonably conclude that the conduct of these Defendants is so egregious as to find they did not act in *good faith* in relation to the Plaintiffs, that is to say, acted in bad faith.**

43. Breaches of Legislation, and without limiting the foregoing, include provisions of the ***Municipalities Act*** and it Regulations. For the convenience of the reader some of those sections are set out in **Annex 2** to this Statement of Claim.

Rules of interpretation pertaining to municipalities

44. The Plaintiffs, and without limiting the foregoing, relies on the following rules of interpretation:

i) *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] S.C.J. No. 15 that any ambiguity or doubt is to be resolved in favour of the citizen, especially when the grant of power contended for is out of the usual range.

ii) **Rule of natural justice and the right to a fair hearing** as captured by the Baker decision

iii) General Governance best practice and principles as personified in the rhetoric "***transparency, accountability and recourse***".

Damages

45. The Plaintiffs in addition to the sum of $15,247.34, the Plaintiffs seeks such additional special which may be proved as such at trial together with general damages including moral damages in an amount to be determined by the Court.

(i) Special Damages $15,247.34 as particularised above.

(ii) General and Moral Damages

The particulars of the Plaintiffs claim for general and moral damages are set out in paragraph 33 to 45 above.

Costs as Against Non-parties

46. The Plaintiffs ask that should this Court find there was misfeasance in public office that any costs awarded to the Plaintiffs to be assessed jointly and severely as against the Council Members Reeve Glen Dow and Councillors Sharon Carruthers, Daryl Hemsley, Les McDougall, Ron Clark, Tim Sawarin and Neil Reece, COAs Darren Elder and Jill Parton personality together with 102041617 SASKATCHEWAN LTD. on the basis that the said parties , though not named as Defendants, having acted in bad faith are not entitled to the MA, s 355 statutory immunity that might otherwise be in place.

47. THE PLAINTIFFS, THEREFORE, CLAIMS:

a) Judgment by way of declaration relief:

i) Directing the removing of all and any claims for payment of invoices or claims by the RM for water/sewer services allegedly provided to the Plaintiffs from and after November 18, 2018.

ii) Declaring the **NOTICE OF SEWER & WATER TERMINATION** void and illegal

b) Judgement for compensatory damages for:
   i $15,247.34
   ii diminishment of their property value
   iii interference in the enjoyment and quite possession of their property
   iv for increased or incremental costs of municipal water and sewage services .

c) Moral damages for:
   i failing to deal with the OH residents and the Plaintiff in good faith.
   ii recklessly disregard for the orderly exercise of authority amounting to an abuse of authority.
   iii reputational harm and insult arising out of the RM putting their claim for water services into legal collection.

d) Declaratory Relief in the nature of and *quo warranto* to state by what authority the RM has acted in connection with the management of the water and sewer service in the OH of Lone Rock.

e) Declaratory Relief in the nature of *mandamus* directing that the RM comply with the foundational and constating legislation in dealing with the water and sewer municipal services in the OH of Lone Rock

f) Declaration that the immunity section of the MA does not apply to the misfeasance and damages occasioned by the individual member of the RM Council and its Administrator

g) An interim Order to stay and or enjoin the shutting down of the Organized Hamlet of Lone Rock water and sewer system along with a mandatory order directing that the Kashuba system be restored until such time as the MA s-77 and 392 SMB process has been completed or this Court has issued a final determination on this matter.

h) An Order that the ongoing billing for services not rendered be stopped & that the ongoing procedure to seize and sell the Kashuba property in the OH be stayed until this matter can be ruled on in Court.

i) Cost of these proceeding ~~as against the Reeve, Councillors and Admisntrator personally based on the inherent prerogative of the Court to award costs against third parties not party to a proceeding~~.

j) Interest pursuant to The Pre-Judgment Interest Act;

k) Costs in any event.

l) Such further and other relief as this Honourable Court may deem just or appropriate to the circumstances.

Dated at: Lone Rock, Saskatchewan, this 29th day of June, 2021.

Terenee Kashuba

Tracy Kashuba

The RM of WILTON, by its legal Counsel, hereby consent to the above amended Statement of Claim, this day of , 2021.

Annex 1- Code of Ethics Bylaw of RM of Wilton-extracts

Standards and Values

a. **Honesty:** We will act with honesty and openness in all our dealings with each other, administration and members of the public.
b. **Objectivity**: We will make decisions carefully, fairly and with impartiality.
c. **Respect**: We shall treat every person with dignity, understanding and respect. Incidents of bullying, harassment, inappropriate temper outbursts and derogatory language targeted at peers, staff, taxpayers, interest groups and at representatives from other levels of government shall not be tolerated. This includes any print, press or social media.
d. **Transparency and Accountability**: We will conduct the business of Council within the laws of Local Government governing openness and transparency. The highest and best interests of all ratepayers shall be considered where transparency must be temporarily limited.
e. **Confidentiality**: We will not release any confidential information that has been acquired by virtue of our office without the explicit approval of Council or unless required by law. We shall not receive any personal or private benefit gained from the acquisition of confidential information obtained from the course of our duties.
f. **Leadership and the Public Interest:** We will be diligent in serving in the overall best interests of our community by demonstrating good ethical leadership and by showing the public by our actions that we do not act in a self-interested or illegal manner.
g. **Responsibility:** We shall at all times serve in a responsible manner, free of conflict of interest ensuring that our actions, decisions and processes are conducted in accordance with the principles and laws governing good governance.
h. **Ethical Compliance**: We shall at all times comply with Bylaws, resolutions, permit and permit conditions, and all other measures pertaining to ratepayers generally including property tax currency. We shall as Council members, make

Annex 2 – Extracts from foundational legislation

Municipality to act through council

5(1) Unless otherwise provided by any other provision of this or any other Act, a municipality is required to act through its council.
(2) If required to do so by this Act, a council shall exercise a power through the passing of bylaws.
(3) With respect to powers other than those mentioned in subsection (2), a council may exercise its powers by passing bylaws or resolutions

Jurisdiction to pass bylaws

Jurisdiction to pass bylaws

8(1) A municipality has a general power to pass any bylaws for the purposes of the municipality that it considers expedient in relation to the following matters respecting the municipality:
….
(j) public utilities;
….

Relationship between bylaws, resolutions and provincial laws

11 If there is a conflict between a bylaw or resolution and this or any other Act or regulation, the bylaw or resolution is of no effect to the extent of the conflict.
2005, c.M-36.1, s.11.

Oath or affirmation

94(1) Every member of council shall, before carrying out any power, duty or function of his or her office, take an official oath or affirmation in the prescribed form.
(2) The oath or affirmation mentioned in subsection (1) must include statements declaring that the member of council:
(a) is qualified to hold the office to which he or she has been elected;

(b) has not received and will not receive any payment or reward or promise of payment or reward for the exercise of any corrupt practice or other undue execution or influence of his or her office;
(c) has read and understands the code of ethics, rules of conduct and procedures applicable to the member's office imposed by this and any other Act and by the council; and
(d) promises to:
(i) perform the duties of office imposed by this and any other Act or law and by the council;
(ii) disclose any conflict of interest within the meaning of Part VII in accordance with this Act; and

(iii) comply with the code of ethics, rules of conduct and procedures applicable to the member's office imposed by this and any other Act and by the council.

(3) Every member of council holding office on the day before the coming into force of this section shall take the official oath or affirmation in the prescribed form within 30 days after the council's adoption or amendment of the code of ethics, rules of conduct and procedures applicable to the member's office imposed by this and any other Act and by the council

Actions in public

119(1) An act or proceeding of a council is not effective unless it is authorized or adopted by a bylaw or a resolution at a duly constituted public meeting of the council.

(2) An act or proceeding of a council committee is not effective unless it is authorized or adopted by a resolution at a duly constituted public meeting of the committee or council.

(3) Everyone has a right to be present at council meetings and council committee meetings that are conducted in public unless the person presiding at the meeting expels a person for improper conduct.

Councils as governing bodies

79(1) Each municipality is governed by a council.

(2) The council is responsible for exercising the powers and carrying out the duties of the municipality.

DIVISION 3

Public Utilities

Method of providing a public utility service

23(1) A municipality may provide a public utility service directly, through a controlled corporation, or by agreement with any person.

(3) The following are subject to the approval of the Saskatchewan Municipal Board:

(a) the rates, charges, tolls or rents set by a council by bylaw for the use of water or sewer services;

(b) any discounts or additional amounts or percentages to be charged for arrears relating to the rates, charges, tolls or rents mentioned in clause (a).

(4) The rates, charges, tolls or rents approved by the Saskatchewan Municipal Board are in force from the date of approval, and the Saskatchewan Municipal Board may, at any time, inquire into the rates and may vary them in any manner that it considers advisable.

Discontinuance of public utility

29 In accordance with its bylaws, resolutions or policies, a municipality may, for any lawful reason:

(a) discontinue providing a public utility service after giving reasonable notice of its intention to do so;
(b) remove the system or works of the public utility used to provide the utility service; and
(c) enter any land or building for the purposes set out in clauses (a) and (b).

Hamlet account

69(1) The council of the rural municipality in which an organized hamlet is located shall allocate to a special hamlet account:
(a) all grants received on behalf of the hamlet; and
(b) at least 40% but not more than 75%, as may be agreed to by the council of the rural municipality and the hamlet board, of the taxes collected for municipal purposes and the municipal portion of any special licence fees established pursuant to section 306 from within the organized hamlet.
(2) The council of the rural municipality shall use moneys in the hamlet account at the request of the hamlet board and only for any purpose that is included in the budget pursuant to section 69.1.

Water or sewer system

73(1) On the request of the hamlet board, the council of the rural municipality may provide for the installation of a waterworks system or a sewage system in the organized hamlet.
(2) If the council provides for the installation in accordance with subsection (1), the waterworks system or sewage system must be constructed, operated and maintained in the prescribed manner and in accordance with the prescribed terms and conditions.

Disputes between hamlet board and council

77(1) If a dispute arises between the council of a rural municipality and the hamlet board of an organized hamlet within the rural municipality, the council and the hamlet board shall refer that matter to an appeal board appointed in accordance
with subsection (2).
(2) The council and the hamlet board shall each appoint a person to an appeal board, and the persons so appointed shall agree on the appointment of a third person to act as chairperson of the appeal board.
(3) If the appointed persons cannot agree on the third person to act as chairperson pursuant to subsection (2) within 30 days, the dispute may be submitted by any party to be resolved pursuant to section 392.

Repair of streets, roads, public places and public works

343(1) A municipality shall keep every street, road or other public place that is subject to the direction, control and management of the municipality, including all public works in, on or above the street, road or public place put there by the municipality or by any other person with the permission of the municipality, in a reasonable state of repair, having regard to:

(a) the character of the street, road, public place or public work; and

(b) the area of the municipality in which it is located.

Intermunicipal Dispute Resolutions

Compulsory dispute resolution

392(1) If a matter is referred to the Saskatchewan Municipal Board pursuant to subsection 24(4) or 43(2), subsection 60(1) or subsection 188(5), the Saskatchewan Municipal Board shall appoint a mediator to assist the municipalities in resolving the matter in dispute before holding a hearing and making a decision.

(1.1) If a matter is referred to the Saskatchewan Municipal Board pursuant to section 19 or 77, the Saskatchewan Municipal Board shall appoint a mediator to assist the parties in resolving the matter in dispute before holding a hearing and making a decision.

(2) If mediation fails to resolve the dispute, the Saskatchewan Municipal Board shall hold a hearing and make a decision to settle the dispute.

Decision binding

394 A decision of the Saskatchewan Municipal Board to settle a dispute is binding and shall be implemented by the parties.

2005, c.M-36.1, s.392; 2007,

Expenditure of money

159 A municipality may only make an expenditure that is:

(a) included in its budget or otherwise authorized by its council;

(b) for an emergency; or

(c) legally required to be paid.

Civil liability of members of council

192 (1) A member of council who knowingly makes an expenditure that is not authorized pursuant to section 159, or who knowingly makes an investment that is not authorized pursuant to section 160, is liable to the municipality for the expenditure, investment or amount spent, as the case may be.

(2)...

(3) If more than one member of council is liable to the municipality pursuant to subsection (1) or (2), all those members are jointly and severally liable to the municipality for the expenditure or amount spent or for the amount borrowed, loaned or guaranteed, as the case may be.

(4) The liability imposed on members of council pursuant to this section may be enforced by:

(a) the municipality; or

(b) a voter or taxpayer of the municipality.

(5) A person who is found liable pursuant to subsection (1) or (2) is, in addition to any other penalty or consequence, disqualified from holding office in the municipality or in any other municipality for 12 years after the date of the finding of liability.

The Health Hazard Regulations being Chapter P-37.1 Reg 10 (effective December 5, 2002)

Approval re public water supplies

5(1) No person shall establish, extend, renovate or alter a public water supply unless the owner or operator has obtained written approval to do so from the local authority.

(2) Subsection (1) does not apply to the routine maintenance of a public water supply or to any alteration to, or renovation of, a public water supply that is governed by The Plumbing and Drainage Regulations.

(3) Nothing in subsection (1) requires the operator of a public water supply in operation on the coming into force of these regulations to obtain written approval to establish that public water supply.

Preamble

These guidelines cover the design of new public water supplies or extensions and replacement of public water supplies regulated by Regional Health Authorities under *The Health Hazard Regulations*. The guide is not intended to be a detailed engineering manual. However, the guide addresses certain aspects pertinent to the design of public water supplies so as to safeguard the public and protect the environment.

This document is intended to describe the minimum criteria acceptable to the Health Region for a new or significantly altered public water supply. It is expected that designers comply with good engineering practice and supply evidence supporting a design, where a design deviates from the typical. It remains the responsibility of the owner and designer to ensure that the water supplied as drinking water is suitable for human consumption regardless of any approval, permit or licence issued by the Regional Health Authority.

Reference Regulations

The Health Hazard Regulations require that the written approval of the health region is obtained prior to establishing, extending, renovating or altering a public water supply.

Section 1 Submission Requirements

Sections 5 of *The Health Hazard Regulations* states:

Approval re public Water supplies
5(1) *No person shall establish, extend, renovate or alter a public water supply unless the owner or operator has obtained written approval to do so from the local authority.*

Method(s) of Achievement – The intent of the above regulatory requirements can be achieved by applying the best management practices below:

All submissions to the Regional Health Authority should include:

- a completed application;
- a plan/map to show where the system is located;
- all supply, transmission, storage, pumping, treatment and distribution works;
- location of any nearby utilities including sanitary sewers, storm sewers, and onsite sewage treatment and disposal systems;
- water quality results;
- information that indicates the source water quantity is sufficient (as applicable);
  - ground water: well log, pump test, hydrogeological report; or
  - surface water: water license;
- proposed treatment (on application form); and
- one complete set of plans.

Where an application is made for approval of a public water supply that serves a rural residential community, a professional engineer of Saskatchewan should make the submission. All plans submitted by a professional engineer must be signed and sealed.

2.2 Quantities

Water supplied must be of sufficient quantity for sanitary purposes and to satisfy the reasonable expectations of users. The supply must be adequate to meet reasonable peak demands without development of low pressures that could result in health hazards. Water usage from similar facilities may provide valuable information. For a residential situation, 340 L (75 Imperial gallons) per person per day (1020 L or 225 Imperial gallons per household based on triple occupancy) may be adequate as an average flow. Water for fire fighting[1], irrigation, or other purposes is additional to that required for sanitary purposes.

A typical daily water usage rate for a community setting inclusive of all uses is 400 Lpcd (90 igpd). Maximum daily flow can be 150% to 450% or more of the average daily water usage. Systems without sufficient storage may have to design for flows higher than the maximum day demand.

[1] For details regarding fire protection requirements, the designer should refer to the most current Fire Underwriters Survey publication entitled Water Supply for Public Fire Protection.

Environmental Management and Protection Act

PART IV
General Rules Respecting Permits, Environmental Protection Plans and Notices

Permits required for certain activities

24(1) Before a person carries out any of the activities listed in Table 1 of the Schedule, that person shall obtain a permit to carry out that activity.

(2) The prescribed terms and conditions respecting permits apply to the permits required by subsection (1).

2010, c.E-10.22, s.24.

Schedule

TABLE 1
[Section 24]

Activities for which a permit is required

Item	Activity
1.	Operation of a waterworks
2.	Construction or alteration of all or part of a water treatment works
3.	Construction, alteration or extension of all or part of a water distribution works, other than construction, alteration or extension of all or part of a water distribution works that is governed by a chapter of the code
4.	Operation of a sewage works
5.	Construction or alteration of all or part of a sewage treatment works
6.	Construction, alteration or extension of all or part of a sewage collection works, other than construction, alteration or extension of all or part of a sewage collection works that is governed by a chapter of the code

2018, c9, s.16.