
Donna Woods and Lloyd Ludwig

Applicants/Appellants
(Respondents)

and

The Rural Municipality of Wilton No. 472

Respondent/Respondent
(Appellant)

Before: Schwann J.A. (in Chambers on September 11, 2025)

Fiat

I. Introduction

[1] Donna Woods and Lloyd Ludwig apply under s. 33.1 of *The Municipal Board Act*, SS 1988-89, c M-23.2, for leave to appeal from a decision made by the Saskatchewan Municipal Board [SMB] in *Lone Rock (Organized Hamlet) v Wilton (Rural Municipality)*, 2025 SKMB 28 [SMB Decision]. That decision concerned a dispute between the Organized Hamlet of Lone Rock [Hamlet] and the Rural Municipality of Wilton [RM] over the RM's decision to decommission the Hamlet's waterworks.

[2] Under s. 77(1) of *The Municipalities Act*, SS 2005, c M-36.1, a dispute between the council of a rural municipality and a hamlet board may be submitted to the SMB for mediation, and if that fails, "the [SMB] shall hold a hearing and make a decision to settle the dispute" (s. 392(2)). Recognizing that only a Hamlet board can initiate the s. 77 process, and for ease of reference, in my decision, the word Hamlet is intended to refer to the board of the organized hamlet of Lone Rock.

II. Background

[3] A short summary of the relevant facts is found in the *SMB Decision*.

[5] The origin of this dispute is concerning the decommissioning of the waterworks in the OH [Hamlet] and ultimately, the removal of the building and equipment housing the waterworks by the RM. The OHB says those actions were not authorized by an appropriate bylaw or resolution to establish their legality. The OHB also says that the RM acted inappropriately with respect to Grounds b, c, and d. These grounds are more financial in nature, hence the four witnesses called by the OHB.

[6] The original dispute submitted to the SMB had some 21 grounds. After intensive case management covering some seven case management hearings, these grounds had been substantially reduced. Pro bono legal counsel on behalf of the OH attended most, if not all, the case management meetings. Part of the RM's concern was the OHB had failed to provide particulars allowing them to understand the case they were called upon to meet. The OHB referenced numerous cases yet failed in most instances to say how these cases were applicable to the factual matrix or how the RM has diverted from those cases. The SMB provided guidance to the OHB on the nature of the particulars required as contained in our interim decision #3. Some, but not all the requested particulars were provided. We add that the OHB was represented by pro bono legal counsel on an intermittent basis throughout the case management process. The OHB was not represented by legal counsel at the hearing.

[4] The parties appear to have been of one mind that the decommissioning of the Hamlet's waterworks constituted a "dispute" within the meaning of s. 77 of *The Municipality Act*, and that it was appropriate to submit it to the SMB under s. 392 for a mediated resolution, or if necessary, for the SMB to "hold a hearing and make a decision to settle the dispute" (s. 392(2)).

[5] The Hamlet identified 21 grounds of dispute for referral to the SMB, however, its central issue (issue #1), was framed around the following requested relief: "direct the OH's municipal sewer and water services are returned to the OH to be managed by the Organized Hamlet" (SMB Notice of Appeal).

[6] Before moving on, I observe that the *SMB Decision* represents the Hamlet's most recent attempt to overturn the decommissioning decision. Indeed, there is no shortage of proceedings or case law where the Hamlet, or Terry Kashuba personally, have challenged the RM's actions. The following decisions provide sampling of the judicial skirmishes leading up to the *SMB Decision*: *Terrence & Tracy Kashuba v Rural Municipality of Wilton* 472 (8 December 2021) Battleford, QB 33 of 2021, leave to appeal SKCA refused 2022 SKCA 37, 87 CPC (8th) 264; *Kashuba v Wilton (Rural Municipality)* (6 March 2020) QB 239 of 2019; *Heney v Wilton No. 472 (Rural Municipality)*, 2021 SKQB 19, 12 MPLR (6th) 47; *Terrence Kashuba (O/A Board Member of the Organized Hamlet of Lone Rock v Rural Municipality of Wilton #472*, 2022 SKQB 180, 36 MPLR (6th) 182.

III. Issues before the SMB

[7] As noted, the Hamlet's initiating document identified 21 issues for resolution. By agreement of the parties and a whittling down process achieved through case management and an SMB order made in 2024 SKMB 39, the issues before the SMB were narrowed to the following:

- (a) Did the RM comply with the provisions of the *Act*? Was there a requirement that the RM hold a public hearing and if so, was proper notice given?
- (b) Did the RM breach the *Act* by unilaterally changing the tax percentage amounts to be deposited to the Hamlet's account without consultation with the Hamlet? Did the taxation amounts and arrears of property purchased or through enforcement by the RM be deposited into the Hamlet's account as required by legislation?

- (c) Is the RM required to pay the Hamlet's expenses pursuant to ss. 69(1) and 356 of the *Act*? Were withdrawals made by the RM from the Hamlet's account illegal in not conforming to the legislation and requiring approval of the Hamlet?
- (d) Is the RM required to implement a special levy requested by the Hamlet?

IV. Preliminary matters: style of cause and Mr. Kashuba's participation

[8] The leave application is brought by Ms. Woods and Mr. Ludwig even though they were not named as parties in the *SMB Decision*. Ms. Woods informed me that she appears in her capacity as secretary of the Hamlet and that Mr. Ludwig (who did not appear) is also a board member. While it would have been helpful for these individuals to have filed an affidavit to that effect, the RM did not take issue with Ms. Woods verbal assurance that they were indeed Board members.

[9] Given the wording of s. 77 of *The Municipalities Act*, only the Hamlet board has standing; not the Hamlet or individual ratepayers (*Heney v Wilton No. 472 (Rural Municipality)*, 2021 SKQB 19 at para 23, 12 MPLR (6th) 47). As presently styled, it appears as though Ms. Woods and Mr. Ludwig seek leave in their personal capacity. That cannot be the case. That said, I am prepared to accept that they are named personally to give a face to the Hamlet board.

[10] However, the RM does take issue with Mr. Kashuba's ability to serve as spokesperson for the Hamlet. Mr. Kashuba filed an extensive 43-page brief and 74-page affidavit. He appeared in court intending to make oral submissions for the Hamlet board. Ms. Woods asked to have Mr. Kashuba speak to the leave application as agent on behalf of the Hamlet and its board.

[11] The RM takes the position that the application for leave should be struck because Mr. Kashuba does not have an inherent legal right to represent the Hamlet or its board because he is not named as a prospective appellant and, more importantly, he is not a lawyer. The RM submits that Mr. Kashuba purports to provide guidance on legal tests, statutory interpretation and questions of law and jurisdiction, and is therefore offside of *The Legal Profession Act, 1990*, SS 1990-91, c L-10.1.

[12] I decline to strike the application on that basis. During oral submissions I allowed Mr. Kashuba to speak on behalf of the Hamlet board. I did so because (a) he appeared as an "agent" for the Hamlet in the proceedings before the SMB; (b) he has considerable familiarity with the evidence and the issues; and (c) Ms. Woods, as a member of the hamlet board, requested that he be allowed to serve as the board's spokesperson on its leave application. If the RM is truly concerned that Mr. Kashuba is acting contrary to *The Legal Profession Act*, its recourse is to pursue the matter with the Law Society of Saskatchewan.

V. Analysis

A. The jurisdictional issue

[13] Neither party addressed what appears to be a threshold issue: do the proposed appellants have a right of appeal (albeit with leave) to this Court? As noted above, the proposed appellant in this matter can only be the Hamlet board. This is because the parties to a decision resulting from a hearing under s. 392 are limited to the council of a rural municipality and the board of an organized hamlet.

[14] The starting point on the jurisdictional question is s. 33.1 of *The Municipal Board Act*, which provides:

33.1 Any person affected by an order, decision or determination of the board may appeal to the Court of Appeal against the order, decision or determination on a question of law or on a question concerning the jurisdiction of the board:

(a) within:

(i) 30 days after the date on which the order, decision or determination is made; or

(ii) any further time, not exceeding 30 days, that a judge of the Court of Appeal may allow on an application made within 30 days after the date on which the order, decision or determination is made; and

(b) with leave of a judge of the Court of Appeal.

(Emphasis added)

[15] The words or phrases underlined above are key to addressing this issue.

[16] The plain wording of s. 392(2) of *The Municipalities Act* provides an answer to two of the three lines of inquiry. It stipulates that “if a mediation fails to resolve the dispute, the Saskatchewan Municipal Board shall hold a hearing and make a decision to settle the dispute”. That section, in my view, clearly contemplates a *decision* being made by the Saskatchewan Municipal Board regarding a s. 77 dispute. To close the loop, the word “board” in s. 33.1 is defined in s. 2 (1)(a) of *The Municipal Board Act* to mean the Saskatchewan Municipal Board established pursuant to s. 3 of that *Act*.

[17] That leaves the question of whether the Hamlet board is a “person” within the meaning of s. 33.1.

[18] The answer to that query is complicated in two ways. First, the applicant named in the *SMB Decision* is styled as the *Organized Hamlet of Lone Creek*. That is incorrect. As I noted above, pursuant to s. 77, only a dispute between the council of a rural municipality and the hamlet *board* can be submitted to the SMB for resolution, as per s. 392.

[19] That aside, the question remains whether a hamlet board is a “person” within the meaning of s. 33.1. This is a significant issue because there is no inherent right of appeal to an appellate court from any matter unless provided for by legislation (*Kourteassis v M.N.R.*, [1993] 2 SCR 53). A properly constituted appeal is one grounded substantively in a right of appeal conferred by

statute. Absent a properly constituted appeal, this Court is unable to exercise its appellate jurisdiction (see Stuart Cameron, *Civil Appeals in Saskatchewan: The Court of Appeal Act & Rules Annotated*, 1st ed (Regina, Sask: The Law Society of Saskatchewan Library) at 8).

[20] A municipality is a creature of statute and does not exist independently from statute. In Saskatchewan, a municipality is deemed to be a corporation with all the powers of a natural person except as otherwise limited by legislation (*The Municipalities Act*, s. 4). An organized hamlet does not fall within the definition of “municipality” (s. 2(1)(w)) and thus does not have the powers and status conferred by s. 4. More to the point, the legislation does not confer it with corporate status or the powers of a natural person (see generally Part III, Div 6). In *Organized Hamlet of Indian Point Golden Sands v Parkdale No. 498*, 2002 SKQB 362, Rothery J. said as follows about the legal status of a Hamlet: “It is merely a creature of statute, where voters in a rural municipality may form a hamlet board under certain conditions as provided for by ss. 14-15 of the Act” (at para 2) (see also *Terrence Kashuba (O/A Board Member of the Organized Hamlet of Lone Rock v Rural Municipality of Wilton #472*, 2022 SKQB 180 at para 47; *Heney* at para 24).

[21] Blacks Law Dictionary defines “person” to be a human being or natural person. *The Legislation Act* expands on what constitutes “person” by deeming that term to refer to a corporation and the heirs, executors, administrators or other legal representative of a person (s. 2-29). Thus, the term “any person” in s. 33.1 logically refers to natural persons (their heirs and administrators etc.) and corporations. An organized Hamlet is not that. That said, the more difficult question is the legal status of a hamlet board. Does it take its status through the individuals who sit on it?

[22] All that said, I will leave the question of whether a hamlet board can seek leave to appeal under s. 33.1 from a *SMB decision* made pursuant to s. 392 for another day because (a) neither party raised the jurisdictional issue in their written or oral submissions; (b) the proposed appellants are natural persons (albeit as members of the board of an organized hamlet); and (c) in, any event, I conclude that leave must be denied.

B. If this Court has jurisdiction, leave should be denied

1. Proposed Grounds of Appeal

[23] The proposed appellants seek leave to appeal on the following grounds:

- (a) Did the SMB err in how it resolved the Hamlet’s disclosure requests by:
 - (i) Concluding that the RM had not breached its duty to disclose under legislation or common law?
 - (ii) Failing to compel the RM to produce documents?
- (b) Did the SMB err by failing to allow the Hamlet’s legal counsel appear before it and to participate in examining witnesses?
- (c) Did the Board err by mischaracterizing or failing to consider evidence of the parties’ dispute?

- (d) Did the SMB err by making findings of fact inconsistent with findings of the Board or for which there was no evidence?
- (e) Was there a breach of procedural fairness?

2. The leave test

[24] Leave to appeal may be granted under s. 33.1 on a question of law or jurisdiction only. This Court in *SBLP Town N Country Mall Inc. v Moose Jaw (City)* 2022 SKCA 10, 465 DLR (4th) 675 [*Town N Country*], canvassed the principles applicable when considering whether to grant leave.

[42] Having canvassed the various submissions as to how the *Saskatoon (City) v North Ridge Development Corporation*, 2015 SKCA 13, 451 Sask R 265, approach might be adjusted, it may be helpful at this point to offer something of a restatement of the key part of *North Ridge*. I do so by noting, at the outset, and as per *North Ridge* itself, that the questions raised for consideration under each heading are not necessarily exhaustive. I also note that, in considering the issue of whether to grant leave in this context, it is best to analyze matters on a proposed question-by-proposed-question basis rather than by looking globally at the potential appeal. Thus, I would restate the *North Ridge* approach as follows:

First, is the proposed question of sufficient merit to warrant the attention of the Court of Appeal?

- (a) Will the proposed question give rise to an appeal that is prima facie frivolous or vexatious? If so, leave should be denied.
- (b) Will the proposed question give rise to an appeal that is prima facie destined to fail having regard to the applicable standard of review and other relevant considerations? If so, leave should be denied.
- (c) Will the answer to the proposed question have a material impact on the bottom line of the Committee's decision? If not, leave should be denied.
- (d) In the normal course, leave should be granted only if there is a meaningful doubt as to the correctness of the Committee's decision in relation to the proposed question.
- (e) All other things being equal, the stronger the apparent merits of the applicant's position on the proposed question, the more appropriate it will be to grant leave.

Second, is the proposed question of sufficient importance to warrant determination by the Court of Appeal?

- (f) Does the answer to the proposed question have significant consequences for the proposed appellant or the proposed respondent?
- (g) Does the proposed question transcend the particular in its implications?
- (h) Does the proposed question raise a point of significance to the law of property assessment, to the larger assessment regime or to the administration of justice more generally?

- (i) Does the proposed question raise a new or uncertain or unsettled point of law or jurisdiction?

[25] I am satisfied that, as framed, all but one of the proposed grounds of appeal raise questions of law. Most are rooted in alleged errors of statutory interpretation or denial of procedural fairness and natural justice. As such, apart from one ground that I will address below, they clear the first *Town N Country* hurdle.

[26] That decided, I will proceed to examine the proposed grounds by asking whether they are of sufficient merit and importance to warrant the attention of this Court.

3. The proposed grounds of appeal

a. Document disclosure

[27] Document disclosure was an issue that permeated the case management process and the hearing.

[28] In the lead up to the hearing, the SMB made the following interim rulings concerning the Hamlet's expansive disclosure requests.

- (a) 2022 SKMB 10 (January 20, 2022) – The SMB directed the RM “to ensure all disclosure required under Section 117 has been made to the OH”. However, because it concluded 102041617 Saskatchewan Ltd. was not a controlled corporation within the meaning of the *Act*, it declined to make an order for disclosure in relation to it
- (b) 2022 SKMB 26 (March 7, 2022) – The SMB amended its January 20, 2022, decision by ordering production of the records related to 102041617 Saskatchewan Ltd. and, further, once again directed the RM to “ensure all production required under Section 117 of the Act has been made”.
- (c) 2022 SKMB 115 (October 10, 2022) – The SMB directed the RM to provide members of the Hamlet board with access and the right to examine the documents itemized in s. 117 of *The Municipalities Act* within 30 days. The SMB observed in its decision that Mr. Kashuba was not a member of the Hamlet board.
- (d) 2024 SKMB 39 (August 22, 2024) – Although not a decision about disclosure, the SMB's determination that the hearing would proceed on four core issues (discussed below) bore on the scope of disclosure.

[29] At the hearing, the Hamlet renewed its complaint about an alleged lack of disclosure. The SMB concluded that the Hamlet was not prejudiced by any alleged failure to disclose and that it was “confident that the RM has met its disclosure obligations” (*SMB Decision* at para 13). In response to specific arguments made by the Hamlet, the SMB found as follows:

- (a) The record as provided by the parties totaled 3,836 pages but very little of that record was referred to or introduced in the evidence by the Hamlet.

- (b) The Hamlet took its complaint about the RM's failure to disclose to the Privacy Commissioner who found the RM's search efforts were reasonable.
- (c) In *Terrence Kashuba (O/A Board Member of the Organized Hamlet of Lone Rock v Rural Municipality of Wilton #472*, 2022 SKQB 180, the Court held that it was open to the Hamlet to have someone other than Mr. Kashuba personally attend the RM office to examine the documents.
- (d) In the case management process, it had ordered the RM to disclose documents concerning a certain corporate body that was controlled by the RM.
- (e) It rejected the Hamlet's allegation that it had no documents in its own possession because the RM was the repository of their documents.
- (f) It was confident the RM had met its disclosure obligations.

[30] The Hamlet seeks leave to appeal on the basis that the RM's failure to disclose everything it had repeatedly requested prevented it from presenting its case. As I see it, there are three problems with this argument.

[31] First, in an earlier ruling, the SMB determined that the scope of document disclosure was confined to those listed in s. 117 of *The Municipalities Act*. I do not take the Hamlet to challenge that ruling. Further, in responding to the Hamlet's complaint that the RM failed to disclose the s. 117 documents, the SMB made this key finding: "We are confident that the RM has met its disclosure obligations" (*SMB Decision* at para 13). That is a finding of fact that is not open to appeal under s. 33.1. In any event, while the Hamlet complains that the SMB erred in so holding, the absence of a hearing transcript makes that submission difficult to assess.

[32] Second, the Hamlet's reliance on *SBLP Southland Mall Inc. v Regina (City)*, 2022 SKCA 115, is entirely misplaced. That decision addressed an assessor's disclosure obligations in the tax assessment appeal process. This is not that. Nor do I see anything in the record that shows the RM used its undisclosed documents to create evidence, as so alleged by the Hamlet.

[33] Third, even if procedural fairness required enhanced document disclosure beyond the scope of s. 117, the Hamlet has not explained to me what other documents the RM should have disclosed for it to understand the case it had to meet. To repeat, the core issues as framed by SMB order were (a) whether the RM complied with the provisions of the *Act* (presumably in reference to *The Municipalities Act*), and (b) whether the RM was required to hold a public hearing, and if so, whether proper notice was given. While the Hamlet disagrees with the SMB's conclusion on those two points, it does not seek leave to challenge the *SMB Decision* on its merits. Instead, it reverts to its long-standing lament that the RM did not provide full disclosure.

[34] Without some context to assess what might or should have been disclosed *and how the undisclosed documents related to the issues before the SMB*, I am unable to assess this proposed ground of appeal.

[35] In sum, even if this allegation constitutes an error of law, it is without merit. And as it is unique to the parties and this dispute, it does not transcend the particulars in application.

b. Denial of legal counsel at the hearing

[36] The Hamlet claims that the SMB denied it the right to have legal counsel present at the hearing, which constituted either an error of law or a breach of procedural fairness. It relies on *Markwart v Prince Albert (City)*, 2006 SKCA 122, 277 DLR (4th) 360 [*Markwart*], in support.

[37] As the SMB noted in its decision, the Hamlet board was represented by pro bono legal counsel on an intermittent basis throughout the case management process. The record shows that Ron Cherkewich was that pro bono counsel.

[38] Apart from the Hamlet's broad assertion, it makes a number of accusations, including that: (a) the SMB banned Mr. Cherkewich from attending the hearing; (b) the SMB refused to allow Mr. Cherkewich to sit as a "second chair" in the hearing, (c) the time constraints of the hearing made calling Mr. Cherkewich intermittently for advice and assistance unworkable; and (d) the SMB prohibited Mr. Cherkewich from attending the hearing in person and only allowed him to participate by video.

[39] For the following three reasons, I conclude this argument is wholly without merit.

[40] First, as a matter of general principle, there is no legal right to be represented by counsel at a hearing before an administrative tribunal. While a person's right to be represented by legal counsel may facilitate participation in a more meaningful way "a party to an administrative proceeding to which the duty of fairness applies has no absolute right to be represented by counsel. Accordingly, whether counsel is permitted to represent a party or a witness is a matter for the tribunal to decide in the exercise of its discretion, albeit limited by the need to comply with the duty to act fairly" (Donald J.M. Brown & the Honourable John M. Evans, *Judicial Review of Administrative Actions in Canada* (Toronto: Thomson Reuters Canada, 2020) at §10:24).

[41] Second, this Court's decision in *Markwart* does *not* stand for the bald proposition that the lack of legal representation – on its own – constitutes a breach of procedural fairness. The Hamlet draws upon *Markwart* in support, where this Court said as follows:

[36] We are therefore of the view that the Chambers judge erred in the exercise of his discretion by failing to give effect to the lack of representation and the lack of disclosure.

That paragraph must be considered in the context of the Court's reasoning that preceded it.

[42] The issue in *Markwart* was whether the decision-maker's denial of *Markwart's* request to adjourn proceedings (because its legal counsel was unavailable) amounted to a breach of procedural fairness. The Court said: "the basic question is whether an adjournment was required in order to ensure that the individual concerned had a reasonable opportunity in all the circumstances to present proofs and arguments to the decision-maker, and to answer the opposing case" (*Markwart* at para 33). In other words, the breach of procedural fairness concern pertained to the decision-maker's *denial of an adjournment request*; the absence of legal counsel was but the appellant's reason for the adjournment request.

[43] Third, the record does not show that the Hamlet was denied the right to be represented by legal counsel. Context is important. The issue of Mr. Cherkewich's involvement came up in a pre-

hearing conference where the SMB sought clarification about *whether* Mr. Cherkewich was representing the Hamlet in the hearing dispute (2022 SKMB 115). That order was made in October of 2022.

[44] Apparently unclarified, in 2025, on the eve of the scheduled hearing, the SMB once again asked the Hamlet this simple question: “has the OHB retained counsel to provide representation?” It sought written confirmation one way or the other from Mr. Cherkewich. The SMB’s request was understandable because Mr. Cherkewich’s status was muddled by the fact that he had earlier claimed to represent Mr. Kashuba, Mr. Ludwig and Ms. Woods *in their personal capacity* on a limited unbundled retainer with pro bono. Growing frustrated with what it perceived to be the Hamlet’s lack of response, or at worst obfuscation, the SMB wrote to Mr. Kashuba as follows: “Unless Mr. Cherkewich provides formal confirmation that he is acting on behalf of the [Hamlet] rather than individual residents he will not have standing before the [SMB]”.

[45] Mr. Cherkewich responded directly to the SMB by email of March 23, 2025. He indicated that he acted for Mr. Kashuba, Mr. Ludwig and Ms. Woods “in their involvement as ratepayer, voter and Board member”. In response to the SMB’s question, he replied “As to your concern as to who my client might be and who I represent, I confirm your understanding that I am not acting for the Board” but would “assist/coach and advise Kashuba, Woods and Ludwig as to their personal role and responsibilities as Board members. ... At this point I have not been asked and have not considered acting as ‘counsel of record’ at the ... Hearing”. Mr. Cherkewich then asked for observer status at the hearing because, as he said, “The clients asked that I ‘participate’ as an observer at the Hearing and to be on standby should they need ‘help’”.

[46] Viewed from that context, the SMB understood that Mr. Cherkewich was not counsel of record for the Hamlet. In any event, contrary to the Hamlet’s argument, there is no credible evidence that shows Mr. Cherkewich was banned from attending by the SMB as so alleged.

[47] To sum up, this proposed ground of appeal is destined to fail. Nor, in my view, is it of sufficient importance to warrant the attention of this Court: it does not transcend the particulars of this case in its implications or raise a new or uncertain point of law. At the end of the day, an applicant for leave must establish that, on balance, the proposed grounds of appeal weigh decisively in favour of leave being granted (*Town N Country* at para 43). This ground of appeal does not achieve that threshold.

c. Failure to consider disputed evidence

[48] Here, the Hamlet argues that the SMB erred in law by failing “to address certain grounds of dispute entirely” such as the RM’s alleged non-compliance with *The Environmental Management and Protection Act, 2010*, SS 2010, c E-10.22, the need for a bylaw to legally achieve decommissioning, and various areas of concern regarding finances and budgets.

[49] At root, this is a complaint that the SMB did not agree with the Hamlet’s scope of issues or entertain the various lines of argument it had pursued at the hearing. More importantly, the Hamlet’s position is at odds with the narrow statement of issues that were before the SMB. As the SMB explained at the outset of its decision, the original dispute (as framed by the Hamlet) contained 21 grounds, but following extensive case management, they were reduced to four central

issues (see statement of issues in para 7 above). In the *SMB Decision*, the statement of issues was prefaced with the words: “The parties and the SMB *have agreed that the following issues require determination*” (at para 8, emphasis added).

[50] Having read the *SMB Decision*, I am satisfied that the SMB turned its mind to the issues that were properly before it. In any event, as a matter of law, it was not required to answer or address each and every argument the Hamlet raised at the time of hearing (*Hilmoe v Hilmoe*, 2018 SKCA 92 at para 35, [2019] 1 WWR 118; *Friesen v Friesen*, 2023 SKCA 60 at para 79, [2023] 10 WWR 1).

[51] Regarding the SMB’s failure to address the alleged non-compliance with *The Environmental Management and Protection Act*, I repeat that it was *not* an issue before the SMB. The SMB made a ruling to that effect in its 2024 SKMB 39 decision, on which the Hamlet does not seek leave to appeal.

[52] Further, as the issue was whether the RM had complied with *The Municipalities Act*, not environmental legislation, unless the environmental legislation was legislatively intertwined with *The Municipalities Act*, the Hamlet’s argument goes well beyond the stated issues. Finally, as the Hamlet did not explain how non-compliance with *The Environmental Management and Protection Act* was relevant to the questions before the SMB, I am left to guess. I am not prepared to do that. As this Court cautioned in *Town N Country*, there must be a sufficient factual and evidentiary background to assess the proposed ground of appeal, and further, “[a]ppeals from the [SMB] are not vehicles for resolving theoretical questions of law or questions of law that are only thinly or artificially tied to the case at hand” (at para 44(c)).

[53] While it is correct to say that several of the issues the SMB was tasked with determining related to how the RM managed the Hamlet’s accounts and finances, I see nothing in the *SMB Decision* to suggest that it ignored them. It extensively canvassed the evidence in that regard (see paras 25–72) but ultimately found itself unable to resolve those issues without a forensic audit. It wrote:

[73] Despite all the testimony we heard about the financial matters, we are left with the evidence that no auditor reviewed the OH transactions nor was any audit done to determine whether the RM had complied with the legislative requirements. To address the financial concerns raised by the OHB in this application, the RM agreed to fund a forensic audit to review the OH/RM transactions. They said most expenditures have been explained. The OHB is fully supportive of the RM’s proposal concerning financial matters. Kashuba confirmed during the hearing that the forensic audit “would solve most of our problems”.

[74] We direct the RM to engage the services of a forensic auditor to review the OH/RM transactions and to provide a report to both parties and the SMB. The audit result shall be binding on the parties.

[75] We believe that order will answer the questions contained in Issues b), b)1), and c)1). We have found that the RM complied with the Act with respect to decommissioning the water utility and no public meeting was required. This determination answers Issues a)i) and a)iii). This leaves us to provide our views on Issues c) and d).

d. Errors regarding the special levy

[54] The Hamlet alleges that the SMB erred in its conclusion on the special levy issue. It submits the RM was required by legislation to implement a special levy once instructed to do so by the Hamlet pursuant to s. 70 of *The Municipalities Act*. I understand the Hamlet to assert that the SMB misinterpreted key provisions of that *Act* and thereby erred in law. The Hamlet argues s. 70 was ignored. That section permits a hamlet board to request a special levy, with the balance of that provision providing: “the council shall make the levy”.

[55] I see no obvious error. The special levy sought in this case was restricted to certain lots within the Hamlet that were owned by the RM. In other words, it amounted to a request by the Hamlet for the RM to levy or impose a tax on itself. The SMB rejected that argument based on s. 292(1)(q) of the *Act* which exempts all municipal property from taxation.

[56] As I am not persuaded that the SMB erred in the way suggested by the Hamlet, this proposed ground of appeal does not pass the merit threshold. Nor do I view it to be of sufficient importance to warrant the attention of this Court.

e. Lack of Procedural fairness

[57] Lastly, the Hamlet contends it was denied procedural fairness because the SMB limited the materials that should have been included in its document books and the number of witnesses it was allowed to call. These transgressions, it says, denied it the right to fully present its case.

[58] This is a broad ranging allegation made without evidential support. Apart from pointing to a singular document that the SMB refused to allow into a document book (i.e. Hamlet AGM minutes and budget), the Hamlet provides no other example. In any event, although the SMB in the case management process found the document irrelevant, it made no order to that effect. This meant that the Hamlet was not precluded from seeking to put it into evidence through a witness at the hearing subject of course to objections for relevancy (see *SMB Decision* at para 9).

[59] The issue of the number of witnesses arose in the case management process. When the SMB asked the Hamlet how many witnesses it intended to call, the Hamlet listed 15 individuals along with a short synopsis about the relevance of their prospective evidence. With a view to receiving only relevant testimony and avoid repetition, the SMB allowed the Hamlet to call six of those witnesses to give *viva voce* testimony.

[60] The Hamlet is correct in thinking that, as a matter of general principal, a right to present one’s case necessarily includes the right to present evidence. However, that general proposition is not unyielding. “A tribunal has inherent authority to manage its processes and may require that parties to an oral hearing indicate in advance the names of the witnesses that they intend to call, the nature of each witness’s evidence, and its relevance. A tribunal may refuse permission to call witnesses if parties do not indicate what facts they seek to prove by the witnesses’ testimony, or if the evidence appears to be irrelevant or repetitive” (Sara Blake, *Administrative Law in Canada*, 7th ed (Markham, Ont: LexisNexis, 2002) at 69; *Ho v Alberta Association of Architects*, 2015 ABCA 68, 599 AR 122). While the Hamlet points to the SMB’s decision as giving rise to a breach of procedural fairness, it offers nothing by way of explanation to assist me in determining if or how it impaired the Hamlet from presenting its case before the SMB.

[61] Apart from general and sweeping allegations of breach of procedural fairness, the significance and relevance of the evidence those witnesses could provide is not apparent from the Hamlet's argument. Bearing in mind that it is within the purview of statutory decision makers to make determinations regarding the relevance of witnesses and documents, without more, I am unable to assess the merit of the alleged error. A sweeping assertion, without more, does not pass the merit or importance test.

4. Additional issue

[62] The Hamlet contends the SMB erred by failing to take s. 11 of *The Municipalities Act* into account in its reasoning. That section provides that if there is a conflict between a bylaw or resolution and another provincial statute or regulation, the bylaw or resolution must yield to the extent of the conflict. I am not prepared to give effect to this argument. Not only is it not set out as a proposed ground of appeal, but it represents a new issue on appeal, which as a general rule, the Court does not entertain (*Mosiuk v BASF Canada Inc.*, 2025 SKCA 90).

VI. Conclusion

[63] Leave to appeal is denied.

“Schwann J.A.”

Schwann J.A.

Counsel: Terry Kashuba, as agent for Donna Woods and Lloyd Ludwig
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