

KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 28**

Date: **2025 02 20**
File No.: KBG-RG-02916-2024
Judicial Centre: Regina

BETWEEN:

GORDON LOUCKS

PLAINTIFF

- and -

REGINA HUMANE SOCIETY INC.

DEFENDANT

Counsel:

Andrew S. Erhardt
Meagan J. Bortis

for the plaintiff
for the defendant

FIAT
February 20, 2025

DANYLIUK J.

Introduction

[1] Twenty-one dogs. That's how many dogs the plaintiff owned. Twenty-one.

[2] He did not live out in the country, on the beautiful open flatlands of southern Saskatchewan or in the rolling hills of the Qu'Appelle Valley. No. He lived in two neighbouring houses, 908 and 910 Princess Street in Regina, Saskatchewan. These are both homes of modest size, located in the North Central area of the city.

[3] The plaintiff seeks relief in the form of a preservation order pursuant to

s. 5 of *The Enforcement of Money Judgments Act*, SS 2010, c E-9.22 [EMJA]. The plaintiff wants that order to prevent the respondent, Regina Humane Society Inc. [RHS], from disposing or dealing with his 21 dogs which were seized from the plaintiff by RHS on November 1, 2024. Further, his application asks that the order direct RHS to tell him where the 21 dogs are. He also seeks costs of this application. In turn, RHS asks that the application be dismissed with costs.

[4] Based on the material before me and the law as it exists in Saskatchewan, I must dismiss the plaintiff's application.

Facts

[5] Some facts are in dispute. The facts are set out in significant detail within the affidavits filed by the parties. Given the difficulties with the plaintiff's application I am really not required to conduct a deep dive into the facts, but some background is required.

[6] On October 22, 2024 RHS served the plaintiff with a notice of complaint. The plaintiff's two houses were not formally inspected at that time but a formal inspection date of October 25, 2024 was established. The inspection was conducted on that date. RHS's initial attendance on the plaintiff was initiated due to a complaint received about the plaintiff, which alleged he had about 11 dogs and an unknown number of puppies in his houses. This was not the first time RHS had investigated the plaintiff.

[7] Two Animal Protection Officers, APO Balogh and APO Crossley, attended at the plaintiff's residences on October 22. They saw the plaintiff outside his houses and even from there they detected the odour of feces and urine. They looked in the backyard of 908 and could see old dry feces in the yard but no dogs. They noted the smell of feces appeared to be emanating from 910. The plaintiff refused the officers' request to see the interior of the homes, saying he needed more time to clean them. This

is when the October 25 inspection date was agreed to.

[8] The same two officers came back on that date. The plaintiff agreed to an interior inspection of 910. In their affidavits the officers describe the appearance of 910 Princess on that date. They saw multiple dogs. There was “a strong smell of feces and urine” which was noticeable immediately upon entering 910. There was garbage and debris on the kitchen counters. There was no lighting. The only furniture in the house appeared to be a futon, a coffee table and a kitchen table, as well as a television on a stand. The residence at 908 was also inspected and was in similar condition. A number of dogs were present at and in these houses. The officers noted signs of illness and distress.

[9] As a result of the inspection the officers served the plaintiff with a corrective action order. It set out what the plaintiff was required to do, and set a due date of November 1, 2024. The steps to be taken were set out as follows:

- At 910 Princess St, you are required to clean and scrape the floors of all defecation and debris.
- At 908 Princess St, you are required to upkeep on the floors and clean the bird cage.

[10] Between October 25 and November 1, 2024 the officers determined that the plaintiff actually had more dogs in his care, which had been boarded. As well, their investigation disclosed that he was using medication prescribed for one dog to treat other dogs. As a result the officers sought and obtained a search warrant. On the strength of that warrant a number of officers attended and conducted a search. Members of the Regina Police Service were also present. On that date the officers went to 910 first and still noted a readily noticeable and distinct odour of feces. The officers felt feces was still ground into the floors. The search shifted to 908 and feces and mud were noted to be ground into the cupboards, walls and fridge in the kitchen. Copious mouse droppings were observed.

[11] There were 21 dogs seized on that date. The plaintiff was served with a notice of seizure. Then, on November 10, 2024 another inspection was conducted. While things had changed and 910 had improved, the houses were still in a bad state. 908 was found to be unsanitary. The plaintiff was given a two-day extension to deal with further cleaning. The November 12 inspection revealed that both houses were unsanitary.

[12] The plaintiff filed copious material. He disagrees as to the material facts and most notably on the state of cleanliness of both houses. He attached numerous photographs and attested to the clean state of the homes. He also spent significant time on deprecating the officers of RHS and their affidavits. I note that in chambers the plaintiff, though represented, sat at the counsel table. While RHS counsel was speaking (she attended via telephone) the plaintiff gesticulated, shook his head, rolled his eyes, and the like. I cautioned the plaintiff that not only was this disrespectful, it was not at all helpful to his case.

[13] After the 21 dogs were seized the plaintiff sued RHS by statement of claim issued December 31, 2024. There was no explanation for the delay of approximately two months after the dog seizure had occurred. The injunction application was filed January 6, 2025. While the statement of claim seeks a preservation order (para. 21(b) of the claim) and a mandatory injunction (para. 21(c) of the claim) there is no mention of the *EMJA*.

[14] The object of the preservation order was the dogs, which the plaintiff specifically claimed to be his property as opposed to anyone else's property.

Issue

[15] The issue before the court is:

1. Should a preservation order be granted and, if so, on what terms?

Analysis

1. *Should a preservation order be granted and, if so, on what terms?*

[16] I have already indicated that I am dismissing the plaintiff's application in its entirety. Let me explain.

[17] The plaintiff seeks a relatively broad form of preservation order against the defendant under s. 5 of the *EMJA*. The relevant sections of the *EMJA* are as follows:

5(1) In this Part:

(a) "action" means a legal action that would, if successful, result in:

(i) a judgment; or

(ii) an order declaring a gift, conveyance, assignment, transfer, delivery over or payment of property by the defendant void as a fraudulent conveyance or fraudulent preference;

...

(2) An application for a preservation order may be made to the court by any of the following persons:

(a) a plaintiff in an action commenced in Saskatchewan;

(b) a plaintiff in an action commenced in another jurisdiction, if the action would, if successful, result in a judgment that is enforceable as a judgment of the court.

...

(5) The court may grant a preservation order if the court is satisfied that:

(a) the action would, if successful, result in:

(i) a judgment in favour of the plaintiff; or

(ii) an order described in subclause (1)(a)(ii);

(b) if the preservation order is not granted, the enforcement of a judgment or order against the defendant or transferee is likely to be partially or totally ineffective as a result of the disposition of, damage to, dissipation of, destruction of, concealment of or any dealing with property, other than disposition for the purposes of:

- (i) meeting reasonable living expenses of the defendant and dependants of the defendant;
 - (ii) carrying on the business of the defendant in the ordinary course; or
 - (iii) acquiring income to pay the expenses of defending or responding to the action; and
- (c) the action will be prosecuted without delay, other than delay caused by the defendant or transferee.
- (6) A preservation order may do one or more of the following:
- (a) prohibit the disposition of property other than for a purpose mentioned in subclause (5)(b)(i), (ii) or (iii);
 - (b) prohibit the damage to, dissipation of, destruction of or concealment of property;
 - (c) require the defendant or transferee to pay money to the sheriff, whether as a single amount or through a series of payments;
 - (d) require a person who is or who will become indebted to the defendant or transferee to discharge the debt by payment to the sheriff when the debt becomes payable;
 - (e) prohibit the defendant or transferee from collecting an account;
 - (f) appoint a receiver pursuant to Part VIII, with or without security, in which case Part VIII applies with any necessary modification;
 - (g) allow the defendant or transferee to retain and use property affected by an order subject to conditions;
 - (h) instruct the sheriff to seize property on such terms and conditions as the court considers appropriate;
 - (i) instruct the sheriff, a receiver, the defendant, a transferee or another person to sell property pursuant to Part XI if:
 - (i) the property is likely to depreciate substantially in value before expiry of a preservation order; or
 - (ii) the costs of storage of the property are disproportionately large in relation to its value;
 - (j) in the case of a sale mentioned in clause (i) by a person other than the sheriff or a receiver, instruct that person to pay the net proceeds of the sale to the sheriff;
 - (k) direct the defendant or transferee to disclose to the court

or to the sheriff the existence and location of property in the manner specified, which may include an examination of the defendant under oath or affirmation;

(l) make any other provision that the court considers necessary for the effectiveness of the preservation order.

(7) A preservation order shall require the plaintiff to provide security in an amount that, in the opinion of the court, is sufficient to compensate the defendant or other person affected by the preservation order for pecuniary loss that may be caused as a result of the preservation order unless, in the court's opinion, requiring the plaintiff to provide security would cause undue hardship to the plaintiff.

(8) A preservation order shall not relate to property located outside Saskatchewan if the action in connection with which the order is made was commenced outside of Canada.

(9) The court may grant a preservation order against any of the following persons:

(a) the defendant, with respect to property of the defendant and property acquired by the defendant after the date of the preservation order;

(b) a transferee, with respect to property received from the defendant;

(c) a person, other than the defendant or a transferee, with respect to property of the defendant and property acquired by the defendant after the date of the preservation order.

(10) A preservation order may be granted on application by a judgment creditor.

(11) Subsections (1) to (9) apply, with any necessary modification, to an application pursuant to subsection (10).

6(1) A preservation order:

(a) operates as an injunction against the defendant, transferee and any other person named in the preservation order; and

(b) gives no property interest or priority to the plaintiff or judgment creditor.

(2) If a preservation order is granted without notice, it is not binding on the defendant, transferee or on any other person named in the preservation order until the preservation order is personally served on the defendant, transferee or other person.

(3) The sheriff shall hold money received pursuant to a

preservation order or an order of the court pursuant to section 9 until the earliest of:

- (a) 15 days after:
 - (i) the issuance of a judgment against the defendant; or
 - (ii) in the case of an action as defined in subclause 5(1)(a)(ii), the issuance of a declaration that a transfer is void;
- (b) the day on which the action to which the order relates is discontinued or dismissed; and
- (c) the day on which the order expires.

(4) Unless the court orders otherwise:

- (a) property affected by a preservation order, other than a preservation order granted pursuant to subclause 5(5)(a)(ii), shall be subject to enforcement measures as if the preservation order had not been granted; and
- (b) if an enforcement instruction has been given to the sheriff with respect to a defendant, money received by the sheriff pursuant to a preservation order affecting the property of the defendant, other than money received as a result of a preservation order granted pursuant to subclause 5(5)(a)(ii), shall be allocated to the fund constituted in connection with that defendant pursuant to section 107.

7(1) Subject to section 8 and subsection (2), a preservation order is terminated on the earliest of the following:

- (a) if granted on an application without notice, on the expiry of 21 days;
- (b) if granted on an application with notice, on the expiry of 60 days;
- (c) on termination or dismissal of the action to which the preservation order relates;
- (d) on the expiry of 15 days after the issuance of a judgment in favour of the plaintiff;
- (e) on the day on which the defendant, transferee or other person provides security to the court or the plaintiff in a form and in an amount considered sufficient by the court or the plaintiff;
- (f) in the case of an action as defined in subclause 5(1)(a)(i), on satisfaction of a judgment obtained against the judgment debtor in the action to which the preservation order relates.

(2) Notwithstanding subsection (1), on application of the plaintiff or judgment creditor, the court may fix any date on which the preservation order terminates.

8(1) A plaintiff, judgment creditor, defendant, judgment debtor or any other person affected by a preservation order may apply to the court to have the preservation order extended, renewed, modified or terminated.

(2) Section 5 applies, with any necessary modification, to an application made pursuant to this section.

(3) In an application to extend, renew, modify or terminate a preservation order, the onus is on the applicant to establish that the preservation order should be extended, renewed, modified or terminated.

(4) On application made pursuant to this section, the court may make any order that the court considers appropriate in the circumstances, including:

(a) an order doing one or more of the things mentioned in subsection 5(6); and

(b) an order extending, renewing, modifying or terminating a preservation order.

[18] At the outset of the chambers appearance plaintiff's counsel advised the second portion of the injunction application – a mandatory order that RHS disclose the whereabouts of the dogs – was abandoned as RHS had already made this disclosure on a voluntary basis. Thus only the preservation order, in the nature of a prohibitory injunction, was being pursued.

[19] During chambers I queried plaintiff's counsel as to jurisdiction. Specifically, I inquired the basis upon which the plaintiff felt he could bring his application under s. 5 *EMJA* as opposed to a common law interim injunction or pursuant to *The King's Bench Rules*. Plaintiff's counsel had not considered this. He had leave to file a supplementary brief on point by February 7, 2025 and RHS counsel had leave to file a reply brief one week later. Both lawyers filed additional briefs for my assistance.

[20] In ruling upon the plaintiff's application I have considered the applicable

statutes as well as the following authorities:

- *Arslan v Sekerbank T.A.S.*, 2018 SKCA 77, 38 CPC (8th) 311;
- *Alliance Pulse Processors Inc. v Hudson Bay Port Company*, 2016 SKQB 307;
- *Grant Thornton Alger Inc. v Jorgensen*, 2013 SKQB 250, 424 Sask R 252;
- *Saskatchewan Crop Insurance Corporation v Avramenko*, 2014 SKQB 96, 436 Sask R 179;
- *Triple A Farms v State Agriculture Development Inc.*, 2014 SKQB 369, 461 Sask R 197;
- *Lawless v Avalerion Corp.*, 2021 SKQB 185;
- *Patrick 1703 Condominium Corp. v First Degree Developments Ltd.*, 2023 SKKB 151;
- *Yorkton (City) v Mi-Sask Industries Ltd.*, 2021 SKCA 43, [2021] 6 WWR 18;
- *1773907 Alberta Ltd. v Davidson*, 2016 ABQB 2;
- *2055190 Ontario Limited v Zhao*, 2017 SKQB 117 (appeal: 2018 SKCA 66);
- *Custom Foundations Ltd. v Welcome Homes Ltd.*, 2017 SKQB 148, 77 CLR (4th) 31;
- *Toronto-Dominion Bank (TD Canada Trust) v Currie*, 2017 ABCA 45, 407 DLR (4th) 640;
- *Taylor v Heritage Roofing & Exteriors Inc.*, 2014 SKQB 85, 440 Sask R 261;
- *Scepter Industries Ltd. v Georgian Custom Renovations Inc.*, 2019 ONSC 7515, 441 DLR (4th) 359.

[21] The advent of the *EMJA* represents a wholesale change in the law. In *Arslan*, at paras. 73 and 74, the Court of Appeal said:

[73] What all of this confirms is that the Legislature intended that the *EMJA* completely displace prior law. Therefore, the

matter of the conditions for a preservation order must be determined afresh by the courts. But, this does not mean existing judicial authorities are wholly irrelevant to that inquiry as extrinsic aids. They *may* assist in the formulation of the correct approach to ss. 5 and 8 of the *EMJA* by reason of the old policy considerations they reflect under pre-*EMJA* enforcement remedies as compared to and displaced by the new policy choices the Legislature has made through the *EMJA*.

[74] To be clear, however, the complete range of remedies available for the enforcement of money judgments and the parameters within which these remedies may be exercised are now found in the *EMJA* (along with accompanying amendments to *The Land Titles Act, 2000*, SS 2000, c L-5.1). They are no longer found in traditional money judgment enforcement law or the inherent jurisdiction of the Court of Queen’s Bench acting as a court of equity. In that regard, while the *EMJA* retains some of the basic features of prior enforcement law, the Legislature has abandoned antiquated common law concepts and obsolete approaches to money judgment enforcement to focus on the effective implementation of its policy choices (*Final Report* at page 3). This means the common law and prior statute law are less valuable as extrinsic aids to the interpretation of the *EMJA*, if they hold any value at all.

The Test

[22] Section 5(5) *EMJA* sets out a three-prong test for the granting of a preservation order:

1. If the action is successful, will it result in a judgment or order in favour of the plaintiff?
2. If a preservation order is not granted, would the enforcement of such a judgment or order likely be ineffective (in whole or part) as a result of the defendants dealing with the property?
3. Will the action be prosecuted without delay?

[23] In *Arslan*, Chief Justice Richards noted at para. 7: “In broad terms,

preservation orders are aimed at preventing situations where the enforcement of a judgment would be frustrated because the defendant disposed of or dissipated assets during the course of the litigation”. This is not at all the situation here.

[24] In *Lawless*, Justice Wilkinson reviewed the three-prong test in detail at paras. 27 to 31 of her decision.

Jurisdiction

[25] Before getting to the analysis of the *EMJA* test, the issue of jurisdiction arises. I have determined I have no jurisdiction to grant a preservation order under the *EMJA*, and there is no application before me for any other type of injunction. I have come to this conclusion for several reasons.

[26] First, the language of s. 5 *EMJA* does not support the granting of a preservation order as sought here. In particular, I note s. 5(9) and repeat it here for ease of reference:

(9) The court may grant a preservation order against any of the following persons:

(a) the defendant, **with respect to property of the defendant and property acquired by the defendant after the date of the preservation order;**

(b) a transferee, with respect to property received from the defendant;

(c) a person, other than the defendant or a transferee, with respect to property of the defendant and property acquired by the defendant after the date of the preservation order.

[Emphasis added]

[27] RHS is the defendant but the other conditions of s. (9) are not met. Under s. (9)(a) the subject of this application is not the property of the defendant. The plaintiff asserts it is his own property. With respect to (b), no transferee is a respondent to this application and no relief is sought against any transferee. Regarding (c) only the

defendant is the respondent to this application, not any third party. In the case of (a) and (c) there is no issue about property acquired by RHS after the granting of a preservation order, as no order is in place.

[28] Thus the plaintiff cannot bring himself or his application within the ambit of s. 5(9), which puts him out of court on this application.

[29] The second reason I find I have no jurisdiction is that there is no grounding for *EMJA* relief in the statement of claim. The statute is not even mentioned in the plaintiff's claim. It first arises in the notice of application which follows the claim by less than one week.

[30] That the statement of claim must set out a request for injunctive relief is clear. In *101280222 Saskatchewan Ltd. v Silver Star Salvage (1998) Ltd.*, 2019 SKCA 59, [2019] 11 WWR 516, the chambers judge's dismissal of an injunction application was upheld. One of the reasons of the chambers judge was that the plaintiff's statement of claim contained no request for injunctive relief. The Court of Appeal disagreed with the chambers judge's interpretation of the statement of claim but did not disturb the principle that a claim needs to contain a prayer for injunctive relief.

[31] So the general rule is that the pleadings form the framework within which the injunction application occurs. The statement of claim must delineate, with some particularity, the basis upon which injunctive relief is sought and precisely what is being sought. See: *Poulin (N.L.) Ltd. v Plante and Riess Exterminators Ltd.* (1986), 53 Sask R 300 (QB) at 301. *Poulin* was accepted and applied in *Stegg Ltd. v Moffatt*, 2006 SKQB 7 at paras 2 and 3, and in *Central Water Conditioning Ltd. v Dolce Automation Inc.*, 2007 SKQB 386, 306 Sask R 16.

[32] A relevant decision with a broadly similar factual matrix is *Mokelky v Animal Protection Services of Saskatchewan Inc.*, 2019 SKQB 80, which involved a cattle seizure. The animals were seized because the protection officers said they were

in distress under *The Animal Protection Act, 2018*, SS 2018, c A-21.2. The owner sued and sought injunctive relief which Kalmakoff J. (as he then was) dismissed on several grounds. One of the grounds was that the statement of claim was deficient. At para. 59:

[59] As a general rule, a plaintiff applying for an injunction is limited to seeking relief that is requested and set forth in the statement of claim (or that which may naturally flow from the relief sought in the statement of claim): *Stegg Ltd. v Moffatt*, 2006 SKQB 7 at para 20; *Central Water Conditioning Ltd. v Delco Automation Inc.*, 2007 SKQB 386, 306 Sask R 16. The plaintiffs' statement of claim in this case makes no reference to injunctive relief, and such relief does not naturally flow from the relief sought in the claim. Their application could properly be dismissed on this basis.

[33] There are numerous other authorities to like effect. While the statement of claim herein seeks injunctive relief there is no mention of the *EMJA* and no mention of a preservation order. These are distinct remedies.

[34] A further reason for lack of jurisdiction is that this application is a misuse of the statute. The *EMJA* is a statute controlling enforcement in debtor-creditor relationships. It neither applies to nor supplants the "ordinary" injunction mechanisms that continue to exist. Those mechanisms are noted below. Viewing the law as a whole it seems clear that the plaintiff's current motion fits far more easily into those applications than under the *EMJA*.

[35] Regarding the *EMJA*'s purpose, defendant's counsel appropriately cites Tamara M. Buckwold & Ronald C.C. Cuming, *Modernization of Saskatchewan Money Judgment Enforcement Law: Final Report* (Saskatoon: University of Saskatchewan, College of Law, 2005), online: Queen's Printer (Saskatchewan) (19 November 2013). From this Report the purpose of the *EMJA* – modernization and regulation of Saskatchewan's system for collecting on money judgments – is clear.

[36] As well, the plaintiff could easily have advanced an application for a

common law interim injunction, either under Rule 6-41 or otherwise. Further, Rules 6-44 and 6-45 expressly contemplate a preservation order as a remedy. The plaintiff has opted not to pursue any of these applications. I do not know why.

[37] The plaintiff's supplementary brief does not deal with the issues of jurisdiction on the plain wording of the statute or on the basis of the other points raised in this initial chambers appearance. However, it advances a theory of jurisdiction based upon use of the Court's inherent jurisdiction.

[38] Inherent jurisdiction is not a "go to" basis to proceed. It is to be used sparingly. Defendant's counsel cited *H.N.M.L. v C.P.J.L.*, 2010 SKQB 456, 96 RFL (6th) 165, and this decision of Popescul J. (as he then was) offers good guidance:

[13] There are numerous cases where a court has relied upon its inherent jurisdiction to supplement statutes, regulations or rules of court to effectively control its own process and to ensure that the administration of justice is not undermined. However, the exercise of inherent jurisdiction is not infinite. Jurisprudence in the area has generally recognized at least three important limitations.

[14] Firstly, the court should be careful to ensure that the purported exercise of inherent jurisdiction does not overtly conflict with a statute or rule of law. See *Halstead v. Anderson* [(1993), 115 Sask R 257], at paragraph 36.

[15] Secondly, the exercise of inherent jurisdiction should be exercised sparingly and only in clear cases. See *Leier v. Shumiatcher (No. 2)* (1962), 39 W.W.R. 446 (Sask. C.A.), and *Rowe v. Brandon Packers Ltd.* (1961), 29 D.L.R. (2d) 246 (Man. C.A.).

[16] Thirdly, the relief sought ought not be granted where it can be reasonably or realistically obtained by some other lawful means. See *Fortugno v. Wickstrom*, 2005 SKQB 53, 259 Sask. R. 315.

[17] There is good reason for these restraints. If the remedy sought is available to the applicant by some other means, bypassing or duplicating existing legal procedures should be avoided because there is a risk of making an order that is

contrary to law. Also, granting discretionary orders outside the procedural framework established by statute, rules of court or common law introduces an element of uncertainty in the law.

[39] More specifically, Saskatchewan authority exists which discourages use of inherent jurisdiction where that would contravene or conflict with the language of a statute. For example see *Rekken v Saskatchewan (Health Region #1)*, 2015 SKCA 36 at para 25, 384 DLR (4th) 174:

[25] Before moving off the topic of aggravated damages, it is also important to address the extensive submissions of the appellants relating to the inherent jurisdiction of the Court of Queen's Bench. Simply put, the appellants urge this Court to apply the long-standing concept of the inherent jurisdiction of the Court of Queen's Bench to fashion a remedy in appropriate situations where a vacuum exists. No one takes issue with this principle. **However, inherent jurisdiction cannot be exercised in contravention of a statutory provision:** see *Zipchen v Bainbridge*, 2008 SKCA 87 at para 70, [2008] 12 WWR 397. In this situation, we have the statutory provisions of *The Fatal Accidents Act* [RSS 1978, c F-11] and binding case law that negates the use of the remedy. In other words, **the inherent jurisdiction of the court is ousted by the legislative provisions.**

[Emphasis added]

[40] Further, Schwann J. (as she then was) considered *H.N.M.L.* (and other cases) in *Egware v Regina (City)*, 2016 SKQB 388, 95 CPC (7th) 174, and stated at paras. 44 and 45:

[44] Applying these principles to the facts of this case leads me to the following conclusions. First and foremost, the exercise of inherent jurisdiction should be undertaken sparingly and only in the clearest of cases. Exercise of the court's inherent powers in this case would be in disregard for the express wording of the statute, existing jurisprudence and the need for certainty and finality in litigation. This is not, in my view, the "clearest of cases".

[45] Second, exercise of this Court's inherent powers appears to be in conflict with clear statutory direction. By enacting s. 329

of the Act [*The Cities Act*, SS 2002, c C-11.1] in relation to appeals from a local appeal board, the Legislature of this province decided not only to place a time limit on the right of appeal, but precluded the possibility of a discretionary expansion of that right. In contrast, ss. 306(6) and (7) of the Act identifies circumstances where relief may be granted from the 30 day time frame imposed in relation to actions against a city arising from its failure to maintain streets and public places.

[41] The Supreme Court of Canada has weighed in on this point. In *Endean v British Columbia*, 2016 SCC 42, [2016] 2 SCR 162, this was said at paras. 23 and 24:

[23] The inherent powers of superior courts are central to the role of those courts, which form the backbone of our judicial system. Inherent jurisdiction derives from the very nature of the court as a superior court of law and may be defined as a “reserve or fund of powers” or a “residual source of powers”, which a superior court “may draw upon as necessary whenever it is just or equitable to do so, and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them”: I. H. Jacob, “The Inherent Jurisdiction of the Court” (1970), 23 *Curr. Legal Probs.* 23, at p. 51, cited with approval in, e.g., *Ontario v. Criminal Lawyers’ Association of Ontario*, 2013 SCC 43, [2013] 3 S.C.R. 3, at para. 20; *R. v. Caron*, 2011 SCC 5, [2011] 1 S.C.R. 78, at para. 24; and *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 S.C.R. 725, at paras. 29-31.

[24] **The courts have recognized that, given the broad and loosely defined nature of these powers, they should be “exercised sparingly and with caution”:** *Caron* [2011 SCC 5, [2011] 1 S.C.R. 78], at para. 30. **It follows that courts should first determine the scope of express grants of statutory powers before dipping into this important but murky pool of residual authority that forms their inherent jurisdiction:** see, e.g., *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379, at paras. 63-68. As The Honourable Georgina Jackson and Janis Sarra write, “[i]t is only where broad statutory authority is unavailable that inherent jurisdiction needs to be considered as a possible judicial tool to utilize in the circumstances”: “Selecting the Judicial Tool to get the Job Done: An Examination of Statutory Interpretation, Discretionary Power and Inherent Jurisdiction in Insolvency

Matters”, in J. P. Sarra, ed., *Annual Review of Insolvency Law* 2007 (2008), 41, at p. 73.

[Emphasis added]

[42] Given the existing alternate remedies there is no need for this Court to invoke its inherent jurisdiction. The plaintiff ought to have pursued readily available procedures. There is no lacuna to fill through the use of inherent jurisdiction. Such use is not necessary in this case. I decline to do so.

[43] For all the reasons stated I find the Court does not have jurisdiction to grant the plaintiff any relief under the *EMJA*. In case I am in error on this point I shall go on to analyze the applicable test.

The Test Applied

[44] It is useful to review the law pertaining to each prong of the test, then (if that hurdle is passed) deal with the issue of the security to be posted by the plaintiff.

[45] **The first branch:** If the action is successful will it result in a judgment or order for the plaintiff? While the plaintiff obliquely argued this action to be one for a liquidated demand, a sum certain, it is not. It is clearly an action for damages.

[46] In *Jorgensen Gabrielson J.* reviewed this branch of the test at para. 23 and adopted an extract from a text in which the threshold was described as “the court must be satisfied on the documentation presented to the court that the plaintiff’s action is a recognized cause of action and is not groundless”. In *Avramenko Mills J.* dealt with this requirement at para. 21:

[21] It would be open to the defendant, if so desired, to respond by affidavit. It must be remembered, however, that **the plaintiff does not have to establish a *prima facie* case** at this stage. Rather, **it must only establish that it has a recognized cause of action which is not groundless and offers more than a slim possibility that the plaintiff will recover** a money judgment against the defendant.

[Emphasis added]

[47] I agree. The legislation and the authorities do not require or permit a deep analysis of the merits of the action itself. At this preliminary stage of an action, that would be overly intrusive. At paras. 81 to 87 of *Arslan* the Court of Appeal noted the test provides a low bar to clear and approved the analyses conducted in cases such as *Jorgensen* and *Avramenko*.

[48] While I do have some concerns as to the causes of action asserted in the statement of claim – such as a *Charter*-based putative cause of action – there is enough asserted in the claim to survive this relatively tame prong of the test.

[49] I therefore find the plaintiff has satisfied the first branch of the test.

[50] Turning to **the second branch** of the test, the plaintiff asserts that enforcement of any judgment it obtains will be rendered ineffective (in whole or in part) if the requested order is not granted. This engages s. 5(5)(b) of the *EMJA*.

[51] The proper assessment of this branch of the test involves a balancing process. The risks of loss to the plaintiff are weighed against the risk of unfairness to the defendant. See *Lawless*, para 41.

[52] In paras. 28 and 29 of *Jorgensen*, Gabrielson J. determined that to satisfy this criterion some additional evidence is required beyond the assertions in the statement of claim, evidence sufficient to convince the court that the order is required to prevent the defendant (or someone else) “from taking one or more of the measures described in clause 5(5)(b) that would result in any judgment being partially or totally ineffective”. He further interpreted the section as not imposing a requirement that the applicant lead evidence that the defendants would remove assets from the jurisdiction or dispose of assets. Rather, the evidence must establish that enforcement would be wholly or partially ineffective if the preservation order is not granted.

[53] In *Avramenko*, Justice Mills commented upon the evidentiary

requirements for an application under s. 5 *EMJA*. He determined that the initial onus is on the plaintiff to lead evidence to satisfy s. 5(5)(b) (para. 30) and that the standard of proof is on a *prima facie* basis. He also commented that as the intention of the defendant is not important, but rather it is the effect of dealing with assets that is germane. The issue of intention is not thereby closed. In this regard he does not entirely agree with Gabrielson J. in *Jorgensen*.

[54] I also note *Alliance Pulse Processors Inc. v Hudson Bay Port Company*, 2016 SKQB 307. Justice Barrington-Foote noted it is not sufficient that the evidence shows that assets might be sold or disposed of. There must be evidence showing that the judgment is likely to be wholly or partially ineffective. At para. 8:

... The plaintiff must adduce evidence that establishes a *prima facie* case that enforcement is likely to be at least partially ineffective if the order is not granted: see *Avramenko*, at paras 24 – 26 and 30, and *Sekerbank T.A.S v Arslan*, 2014 SKQB 215, at para 40-44, 450 Sask R 76. Whether that is so turns, among other things, not only on whether a disposition is likely, but on the terms of the disposition, what will happen to the proceeds, and whether the defendants have other exigible assets.

[55] More recent decisions are of assistance. In *Patrick 1703* Justice Elson adopted what the Court of Appeal had said in *Mi-Sask*, which was the following:

53 A judge hearing an application for a preservation order can take account of the nature of such an application and the evidence that a plaintiff is capable of adducing. The manner in which those factors will impact the judge's reasoning will depend on the circumstances of the case. **A defendant will frequently have exclusive or, at a minimum, far better access to the financial and other information relevant to an application for a preservation order. That would weigh in favour of a less stringent approach when determining whether the evidence is sufficiently clear and persuasive to make the plaintiff's case.** From the defendant's perspective, this could be characterized as resulting in a tactical burden on the defendant to lead better evidence, such as evidence as to the extent and confirmation of insurance coverage; evidence of other assets, cash flow and revenue; and evidence of anticipated

expenditures. **However, there will also be occasions where the plaintiff has or has ready access to the necessary information.**

54 This analysis is not intended to suggest that the ability to access relevant evidence is the only relevant circumstance in this context. The potential impact of a likely shortfall in judgment enforcement or of a preservation order being granted are other examples. **Further, I would emphasize that mere allegations that enforcement may be ineffective are not enough. Evidence of a likely shortfall is required.** The case law relating to s. 5(5) and s. 8 has correctly stressed that requirement.

...

56 **In the result, I conclude that while the *evidential* burden on a s. 5(5) application is that the plaintiff must adduce or point to evidence that constitutes *prima facie* proof of the conditions noted above, the *persuasive* burden is proof that those conditions exist on a balance of probabilities. If the court is unable to conclude on a balance of probabilities that those conditions exist, the plaintiff will not succeed.**

[Italics in original] [Emphasis added]

[56] As a result, I have examined the material filed in this case to see what evidence is filed (if any) that shows that if the defendant is left with the property pending adjudication of this action, the plaintiff will not be wholly effective in enforcing its judgment. “Dealing with the property” is nothing more than my shorthand. By this phrase I refer to the language of s. 5(5)(b): “as a result of the disposition of, damage to, dissipation of, destruction of, concealment of or any dealing with property”.

[57] It is my view that the commentary on the evidence in *Avramenko* remains applicable. More is required than simply showing a defendant’s impecuniosity or inability to satisfy the plaintiff’s eventual money judgment. Such evidence of limited assets may be a factor, but on its own it cannot determine this matter. While the *EMJA* may have substantially lowered the bar regarding obtaining such preservation orders, I do not accept that the legislature intended to place the bar so low that a mere allegation will suffice. Something more is needed. Evidence is needed.

[58] I have therefore looked at the plaintiff's material to see if there is evidence of "something more". There is not. The plaintiff does not address this at all in his material. There is nothing before me to suggest RHS cannot satisfy a judgment rendered by this Court. True, most of the dogs have been re-homed, but this occurred prior to the application being heard and this is within the core mandate of RHS. Granting a preservation order now will not undo what the defendant did prior to this application being brought. Further the plaintiff was aware of RHS's actions, as he attested to same in both his affidavits notably his second affidavit sworn January 9, 2025.

[59] I have no information before me that the defendant would be unable to satisfy any judgment of this Court. The plaintiff's material is deficient in this regard. I therefore conclude that the plaintiff has not discharged his onus regarding the second branch of the preservation order test, s. 5(5)(b).

[60] **The third branch** of the test for a preservation order involves an inquiry as to whether this action will be prosecuted without delay. In the current circumstances, this criterion deserves some attention.

[61] To use a medical analogy, injunctions and preservation orders generally are dealt with in the "emergency department" of law. There is a need to move swiftly. They are usually brought on an urgent basis, often *ex parte*.

[62] Not so here. The seizure of the dogs occurred November 1, 2024. The statement of claim was not issued until December 31, 2024 – two months after the alleged wrongful act of the defendant. The application was not heard until January 28, 2025. These initial procedures do not evince a plaintiff committed to moving quickly.

[63] In neither of his affidavits does the plaintiff assert that the action will be pursued without delay. There is not even such a bare assertion, as opposed to a litigation plan or timetable. There is no evidence on point. The plaintiff fails this branch of the *EMJA* test as well.

[64] The plaintiff does not meet the *EMJA* test for a preservation order.

[65] I also have considered an additional matter. Section 5(7) *EMJA* makes it mandatory that a plaintiff provide security unless to do so would cause undue hardship on the plaintiff:

(7) A preservation order shall **require** the plaintiff to provide security in an amount that, in the opinion of the court, is sufficient to compensate the defendant or other person affected by the preservation order **for pecuniary loss that may be caused as a result of the preservation order** unless, in the court's opinion, requiring the plaintiff to provide security would cause undue hardship to the plaintiff.

[Emphasis added]

[66] The plaintiff first proposed to post security in the sum of \$3,000.00 (para. 50 of his initial affidavit). There is no explanation as to how that figure was arrived at. However during chambers he reduced that suggestion to \$500.00 to \$1,000.00, on the basis that most of the dogs had already been re-homed. I have evidence before me that RHS spent substantial sums on veterinary services to bring these unhealthy dogs back to a standard level of health. Indeed, for just the two dogs remaining in the care of RHS over \$4,100.00 had been spent.

[67] In *Zhao* (Court of Appeal) the issue of security was dealt with. It was recognized that often the applicant is not in a position to comment on value and the amount of security because the items to be preserved are the defendant's goods. Here, the plaintiff owned the dogs and was in a unique position to comment on value. He chose not to. The figures he proposed were arbitrary and were inordinately low.

[68] In *Zhao* the Court of Appeal explicitly recognized that the security orders made in *Taylor v Heritage Roofing* and in *Custom Foundations* were appropriate. Those cases ordered 25% and 15%, respectively, of the total sum preserved.

[69] The plaintiff has also not satisfied the security portion of the test for the

granting of an *EMJA* preservation order. His application stands dismissed.

[70] Finally, costs. It is a general rule that costs follow the event. The plaintiff has been wholly unsuccessful on this application. Part 11 of *The King's Bench Rules* codifies this Court's jurisdiction over cost awards and empowers members of the Court to fix costs and attach terms where appropriate. I therefore order the plaintiff to pay costs of this application to the defendant, which I fix at \$1,500.00, payable in any event of the cause but not payable until this action is concluded.

Conclusion

[71] Accordingly I determine that the plaintiff has not met the test for a preservation order. His application is dismissed in its entirety. I order the plaintiff to pay costs of this application to the defendant, which I fix at \$1,500.00, payable in any event of the cause but not payable until this action is concluded.

J.
R.W. DANYLIUK