Court of Appeal for Saskatchewan
Docket: CACV4228

Citation: *Altus Group Limited v Saskatchewan Assessment Management Agency*, 2025 SKCA 7
Date: 2025-01-21

Between:

Altus Group Limited, on behalf of Various Owners

Appellant
(Applicant)

And

Saskatchewan Assessment Management Agency, City of Estevan and Rural Municipality of Estevan No. 5

Respondents
(Respondents)

Before:	Leurer C.J.S., Schwann and Kalmakoff JJ.A.
Disposition:	Appeal allowed in part
Written reasons by:	The Honourable Justice Jeffery D. Kalmakoff
In concurrence:	The Honourable Chief Justice Robert W. Leurer The Honourable Justice Lian M. Schwann
On appeal from:	2023 SKKB 129, Regina
Appeal heard:	October 17, 2024
Counsel:	Leonard Andrychuk, K.C. and Allison Graham for the Appellant Jeff Grubb, K.C. and Allen Berriault for the Respondent

Kalmakoff J.A.

I. INTRODUCTION

[1] Altus Group Limited [Altus] represents various commercial property owners in the City of Estevan [City] and the Rural Municipality of Estevan No. 5 [RM] who have appealed the 2017 and 2018 tax assessments for their properties under the statutory mechanism that governs municipal assessment appeals. The appeals culminated in three separate decisions of the Assessment Appeals Committee of the Saskatchewan Municipal Board [Committee], which were resolved largely in the appellants' favour, and which directed the Saskatchewan Assessment Management Agency [SAMA] to make consequent adjustments to the assessments (*Estevan (Rural Municipality) v Various (Altus)*, 2019 SKMB 34 [*2017 RM Decision*]; *Various (Altus) v Estevan (City)*, 2019 SKMB 36 [*2017 City Decision*]; and *Various (Altus) v Estevan (City) and Estevan (Rural Municipality)*, 2020 SKMB 13 [*2018 Decision*]; collectively [*Committee Decisions*]).

[2] SAMA purported to make the directed adjustments to the assessments and provided its replies to the Committee. Altus took the position that SAMA had not followed the Committee's directions in preparing the revised assessments. Eventually, Altus applied, again on behalf of the property owners, to the Court of King's Bench for judicial review of SAMA's response to the Committee's orders. It sought various forms of relief, including a declaration that SAMA had failed to comply with the remittal instructions, a declaration that the revised property assessments were unreasonable, an order for *certiorari* setting aside or quashing the revised assessments, and an order of *mandamus* directing SAMA to prepare and remit further revised assessments.

[3] A judge of the Court of King's Bench, sitting in Chambers, dismissed Altus's application because she determined that SAMA's actions in response to the remittal instructions of the Committee were "reasonable in the circumstances of this case" (*Altus Group Limited v Saskatchewan Assessment Management Agency*, 2023 SKKB 129 at para 84 [*Chambers Decision*]).

[4] The property owners appeal from the *Chambers Decision*. They continue to be represented by their agent, Altus. For this reason, and because the parties consistently referred to the appellants

as Altus, I will do the same in these reasons. Altus alleges that the Chambers judge made various legal errors in upholding SAMA's response to the Committee's directions. For the reasons that follow, I would allow the appeal with respect to the *2017 RM Decision* and the *2017 City Decision*, but I would dismiss the appeal as it pertains to the *2018 Decision*.

II. BACKGROUND

A. The 2017 assessment appeals

[5] The path that led to the *Chambers Decision* had a number of twists and turns. It began when Altus, acting as agent for the owners of several large commercial properties in the City and the R.M., appealed their 2017 property tax assessments to their respective local boards of revision, pursuant to the relevant provisions of *The Cities Act*, SS 2002, c C-11.1 and *The Municipalities Act*, SS 2005, c M-36.1.

[6] While Altus raised several issues before the boards of revision, its main argument before each board was that the assessment model used by SAMA failed to account for and consider the sales data for larger properties. Altus contended that the assessment to sales ratio [ASR] for properties greater than 6,000 square feet in size consistently exceeded 1.0, and that SAMA's failure to adjust for the impact of size resulted in such properties being overvalued and, consequently, overtaxed.

[7] Altus was partially successful in connection with each of the 2017 assessment appeals at the board of revision stage. This led to further appeals and a cross-appeal to the Committee. The Committee ultimately ruled in Altus's favour, rendering two separate decisions: the *2017 City Decision*, respecting the properties located in the City, and the *2017 RM Decision* for the properties located in the R.M.

[8] I will discuss the details of the *2017 City Decision* and the *2017 RM Decision* later in these reasons but, by way of overview, the important aspect of each was that the Committee remitted the matters to SAMA to make adjustments to the assessments based on the directions provided in the decisions.

[9] In response to the Committee's directions, SAMA made several adjustments to the assessments and reported the changes back to the Committee and Altus. After reviewing the changes, Altus took the position that SAMA had not complied with the Committee's direction. Altus then applied to the Court of Queen's Bench, under s. 53(2) of *The Municipal Board Act*, SS 1988-89, c M-23.2, for an order compelling the Committee to make a determination about whether SAMA had complied with its directions and, if necessary, requiring compliance by SAMA. The judge who heard that application dismissed it because he concluded that s. 53(2) of that Act did not provide the authority to make such an order (*Altus Group Ltd. v Estevan (City)*, 2020 SKQB 20 [*2020 QB Decision*]).

B. The 2018 assessment appeals

[10] In 2018, SAMA undertook a reinspection of properties in the City and the R.M. and collected new data for the purpose of preparing its assessments. A group of substantially the same property owners, again represented by Altus, appealed their 2018 assessments to the appropriate boards of revision. While Altus raised several grounds of appeal on behalf of the owners before those boards, its primary submission was that SAMA had erred by continuing to rely on 2017 data rather than incorporating the new data into its 2018 model. Altus asserted SAMA had failed to adjust for age or to stratify by size based on the new data. The boards of revision dismissed the appeals on all grounds.

[11] Altus then appealed each board decision to the Committee. The Committee rendered a single decision in relation to these appeals – the *2018 Decision* – in which it partially allowed Altus's appeal and remitted the assessment to "SAMA to derive a new Cap Rate model for the 2018 tax year using the 2018 data" (at para 65).

[12] SAMA took various steps in response to the remittal direction contained in the *2018 Decision* and provided a reply to the Committee in relation thereto. Once again, Altus took the view that SAMA had failed to comply with the Committee's directions. Altus then wrote to the Committee, asking it to exercise its powers under ss. 41 and 54 of *The Municipal Board Act*, and direct SAMA to provide further statistical analysis and an explanation of the adjustments it made to calculate the value in the remittal, and to make certain specific adjustments for size, as well as to make a further order compelling SAMA to comply with its directions. Responding by way of a

letter dated April 3, 2020, the Committee declined Altus's request, taking the view that it lacked the jurisdiction to make the orders that Altus sought [*Jurisdiction Decision*].

C. Appeals to the Court of Appeal

[13] Altus brought an appeal to this Court from the *2020 QB Decision* and was granted leave to appeal from the *Jurisdiction Decision.* Both appeals were dismissed (*Altus Group Limited v Estevan (City)*, 2021 SKCA 101, 23 MPLR (6th) 9 [*2021 CA Decision*]). As a bottom-line proposition, this Court held that, in the circumstances, Altus's only means to seek a remedy in relation to SAMA's alleged failure to follow the Committee's remittal directions was to apply to the Court of King's Bench for judicial review. In that regard, Tholl J.A., writing for the Court, said this:

> [82] As it stands, I have concluded that there is no statutory path for a taxpayer to obtain a remedy when they allege that SAMA has not complied with remittal directions after a successful appeal to the Committee. While the taxpayer may again appeal in a subsequent tax year, that potential future remedy provides cold comfort to a person who, despite their success on appeal, cannot realize the benefit in the year to which the appeal related. However, this does not mean that actions taken, or not taken, by SAMA after the Committee remits a matter to it with directions are not subject to any oversight. Judicial review is available to fill this gap.
>
> [83] SAMA was established pursuant to s. 3 of *The Assessment Management Agency Act*, SS 1986, c A-28.1, and is a creature of statute. It has numerous obligations under its home statute, including those under s. 12. It also has obligations under s. 226(5) of *The Cities Act* and s. 256(5) of *The Municipalities Act*. Counsel for SAMA properly conceded that judicial review is available to review SAMA's actions or inactions after a remittal by the Committee. To be clear, SAMA did not concede that judicial review would be successful in either of the two matters at hand, just that the procedure is generally available.
>
> [84] The Legislature has set up a comprehensive code dealing with municipal tax matters. However, if, outside of the procedures that are provided for in that code, a person charged with a statutory obligation – such as SAMA in response to remittal directions – acts in an unlawful way, judicial review is available. It is my view that the Legislature did not intend that a person who believes that SAMA proceeded on an unlawful basis would have no remedy. To the contrary, the Legislature would assume that SAMA would act in a lawful manner, but that, if it failed to do so, taxpayers would have recourse. Sections 53 and 54 of the *MBA* have been interpreted in light of the Legislature's awareness of the availability of the Court of [King]'s Bench to supervise SAMA's exercise of its statutory authority.
>
> [85] The rule of law demands a remedy when a state actor does not comply with the law. This includes a direction from the Committee upon remittal to SAMA. Judicial review of SAMA's actions or inactions is available to a party who is dissatisfied with SAMA's response after a remittal. While judicial review may not be an attractive route for taxpayers who believe SAMA has not complied with remittal directions from the Committee, absent

> legislative amendment, it appears to be the only option available for the tax year that was the subject of an appeal.

D. The *Chambers Decision*

[14] After the *2021 CA Decision* was rendered, Altus applied to the Court of King's Bench for judicial review. In its originating application, Altus sought the following relief:

(a) a declaration that SAMA had failed to comply with the remittal directions set out in the *Committee Decisions*;

(b) a declaration that the revised property assessments prepared and remitted by SAMA in response to the remittal directions were unreasonable;

(c) an order for *certiorari* setting aside or quashing the revised property assessments; and

(d) an order for *mandamus* compelling SAMA to prepare and remit revised property assessments that conform to the direction provided in the *Committee Decisions*.

[15] The Chambers judge began her analysis of Altus's requests by reviewing the relevant procedural history. She then framed the issues that she was required to consider in the form of the following questions (at para 15):

(i) What decisions, acts or omissions of SAMA are subject to judicial review?
(ii) What did the Committee direct SAMA to do?
(iii) What did SAMA do in response to the directions of the Committee?
(iv) What is the appropriate standard of review to apply to SAMA's actions?
(v) Were SAMA's actions reasonable?
(vi) What is the proper result or outcome of this judicial review proceeding?

[16] With respect to the question of which of SAMA's acts or omissions were subject to judicial review, the Chambers judge held that the revised property assessments constituted the "decisions of the property assessors", and that the "accompanying response documents and evidence from SAMA" were the "expressed reasons" for those decisions, in that they "describe[d] the actions taken by SAMA, and thereby identif[ied] the actions not taken by SAMA, in response to the decisions of the Committee" (at para 22). She went on to say:

> [23] As noted above, the Court of Appeal in [the *2021 CA Decision*] scrupulously avoids reference to the decisions or revised assessments of SAMA in the portion of the court's decision relating to judicial review, referring instead to SAMA's actions or inactions. This is no doubt by design rather than by coincidence. I therefore conclude that the judicial review contemplated by the Court of Appeal … relates to the actions taken and not taken by SAMA and does not extend to SAMA's decisions - the revised property assessments - and I will proceed on this basis.

[17] The Chambers judge also explicitly stated that it was not her role to judicially review the appeal decisions of the boards of revision or the Committee (at para 24).

[18] Turning to the question of what the Committee had directed SAMA to do, the Chambers judge noted that the *Committee Decisions* contained certain findings pertaining to how adjustments to the capitalization rate, more commonly referred to as "cap rate", were required to account for building size. She then examined the individual decisions of the Committee and the remittal instructions contained in each.

[19] With respect to the *2017 City Decision*, she said the following:

> [29] In the *2017 City Decision*, the Committee made the following relevant findings:
>
> (i) The statistics and expert evidence before the Committee supported an adjustment for larger structures.
>
> (ii) Based on the Altus graph, near 6,000 square feet, only a small adjustment was required to the four sales to achieve a median ASR near 1.00 and the remaining four sales did not support increasing cap rates beyond approximately 9,000 square feet.
>
> (iii) The Committee was unable to rule on the appropriate cap rate adjustment.
>
> [30] After making these findings, the Committee remitted the matter to SAMA with the following directions:
>
> (i) Ensure the errors identified in the Committee's decision are corrected and that "an accurate, fair and equitable assessment for the property is placed on the assessment roll".

[20] As for the *2017 RM Decision*, she found the Committee's instructions to be as follows:

> [31] In the *2017 R.M. Decision*, the Committee indicated that it found in favour of Altus and remitted the matter to SAMA with the following direction(s):
>
> (i) Calculate the assessments based on the data reflected in the Altus graph. Near 6,000 square feet, only a small adjustment is required to the four sales to achieve a median ASR near 1.00 and the remaining four sales do not support increasing cap rates beyond approximately 9,000 square feet.

[21] And, in relation to the *2018 Decision*, she stated:

> [32] In the *2018 Decision*, the Committee made the following relevant findings:

> (i) The Committee had confidence in the evidence presented by the parties with respect to a need for an adjustment in cap rates for building age.
>
> (ii) The Committee did not have confidence in Altus' position that an adjustment for building size was warranted but expected SAMA to investigate this issue.
>
> (iii) There was adequate evidence to show the 2018 reinspection influenced the analysis sufficiently that a new model must be determined using the 2018 data.
>
> [33] After making these findings, the Committee remitted the matter to SAMA with the following directions:
>
> (i) Derive a new cap rate model for the 2018 tax year using the 2018 data but do not increase assessments above what they were originally in the 2018 roll.
>
> (ii) Undertake these tasks and adjust the assessments according to the Committee's directions.
>
> [34] Altus takes no issue with SAMA's response to the direction at (i) above. As such, the issue of a new cap rate model for 2018 using 2018 data is not before me on this application.

[22] Turning to SAMA's response to the directions of the Committee, the Chambers judge noted that, as described in the *2021 CA Decision*, SAMA had answered the remittal from the *2017 City Decision* and the *2017 RM Decision* by undertaking some further analysis, by adjusting the values of the properties by a straight-line amount of 4%, regardless of size, and by reporting the resulting changes in the assessments back to the Committee and Altus (at para 35). She also reviewed the evidentiary record before her and catalogued SAMA's response in the following way:

> [36] In its evidence before me, which was also before the Court of Appeal, SAMA adds the following details about its actions in response to the *2017 City Decision* and the *2017 R.M. Decision*:
>
> (i) SAMA reviewed all 31 data points contained in the Altus graph (data points for buildings smaller than 6,000 square feet and data points for buildings larger than 6,000 square feet).
>
> (ii) Of the eight data points for overvalued properties over 6,000 square feet, four are at or near a 1.00 ASR and one is extreme but does not affect the analysis because the analysis focuses on median ASRs. This leaves three data points which SAMA found to be of marginal influence for an array of 31 data points.
>
> (iii) Due to what it found to be the marginal influence of the three data points described above, SAMA decided to apply a 4% outside the model straight line adjustment to the eight overvalued properties.
>
> (iv) The 4% adjustment maintains a semblance of balance between the properties under and over 6,000 square feet with the smaller properties undervalued by approximately 7% and the larger properties overvalued by approximately 5.5% resulting in a median ASR of 0.989.
>
> [37] As for the *2018 Decision*, SAMA described its investigation as follows in its March 20, 2020 response to the Committee:

> The issue of rent size was tested by plotting the ASR's against the rent size. The ASR's were fitted with a Loess curve. Three distinct groups emerged, namely:
>
> ➢ =<2,250 square feet, median ASR 0.997 with 10 sales;
>
> ➢ 2251 to 4,400 square feet, median ASR 0.916 with 12 sales; and
>
> ➢ greater than 4.400 square feet, median ASR 1.031 with 9 sales.
>
> As with the effective age model, any size relationship requires a proper sample size to determine a statistically reliable model.
>
> When looking at the scatter plot, it is natural to be drawn to the end of the plot. There are only three sales above the 7,500 square feet, which is not enough observations to make a statistically reliable model adjustment.
>
> **Therefore, it is SAMA's conclusion that no additional adjustment is required for the rent size based on the median ASR results combined with the equal distribution of the sales.**
>
> **…**

[38] Altus responded to SAMA's 2018 remittal response on March 27, 2020, taking issue with SAMA's approach on the basis that the approach did not investigate whether an adjustment was warranted specifically for buildings over 6,000 square feet.

[39] SAMA provided a further reply on April 1, 2020 indicating, in part, as follows:

> Regarding the review on size, the scatter plot produced by SAMA in support of the three size bands point to a trend starting at about 4400 square feet.
>
> It is noteworthy to point out that 5 of the 9 sales in this size band are below or at an ASR of 1.00. Further, 4 sales from 6,000 square feet to approximately 7,500 square feet are straddling the 1.00 ASR line, which leave only 3 sales beyond 7,500 square feet that have ASR's in excess of 1.00. This small sample size is considered a statistically unreliable measure for size.
>
> While one's gaze tends to focus the attention to the right side of the scatter plot, the left side of the scatter plot, also produces a sample of 3 sales for a unit size less than 2,000 square feet. This group of sales have ASR's within a similar range over 1.00 as the properties over 7,500 square feet.
>
> As with the effective age model, any size relationship requires a proper sample size to determine a statistically reliable model.
>
> (Emphasis in original)

[23] With respect to the question of the applicable standard of review, Altus had argued that, although a reasonableness standard applied to the Chambers judge's review of SAMA's decisions, the question of whether SAMA had complied with the Committee's direction was reviewable for correctness. In this regard, Altus asserted that it had rebutted the presumption of reasonableness identified in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4

SCR 653 [*Vavilov*], because it was alleging that SAMA, a state actor, had failed to follow the law by not complying with the Committee's directions, giving rise to a question of law of central importance to the legal system as a whole.

[24] The Chambers judge rejected this argument, saying the following:

> [46] In *Vavilov* at para 62, the court indicates that a general question of law of central importance to the legal system as a whole requires a single determinative answer which is why correctness review is necessary. It is undoubtedly of central importance to the legal system as a whole that state actors comply with the law. Indeed, [the *2021 CA Decision*] specifically invokes the rule of law as demanding a remedy where this does not occur.
>
> [47] I am not convinced, however, that there is a question of law here which approaches those quasi-constitutional questions identified at paras. 59 and 60 of *Vavilov*. While the issue is of central importance, there is no question or controversy about the law on this point that needs to be resolved. There is no suggestion that a state actor, like SAMA, does not have to comply with the law. What is at issue is whether SAMA, in fact, complied with the law in this particular case. This question is not of central importance to the legal system as a whole.
>
> (Emphasis in original)

[25] The Chambers judge then turned her attention to whether SAMA's actions were reasonable. She began her analysis of this question by noting that Altus bore the onus of establishing unreasonableness and that, in deciding the issue, she was required to examine whether SAMA's actions stayed within the constraints to which it was subject, and whether its reasoning was logical and sufficient.

[26] On those points, she found that the relevant constraints on SAMA's actions were the remittal directions set out in the *Committee Decisions*. Citing this Court's decision in *Affinity Holdings Ltd. v Shaunavon (Town)*, 2022 SKCA 83, 474 DLR (4th) 71 [*Affinity*], the Chambers judge concluded that the remittal directions left some discretion to SAMA. In that regard, she said:

> [60] In my view, all of these directions leave some discretion to SAMA. None of them is sufficiently specific to create a situation where, practically and legally, the decision is the only constraint on SAMA. None of them supports only one interpretation. The direction made in the *2017 City Decision* specifically uses the broadly worded, discretion laden language from s. 226(1)(c) of *The Cities Act* under which SAMA is to ensure that an accurate, fair and equitable assessment is placed on the assessment roll. It is true that SAMA is left no discretion as to which errors must be corrected but the method of correction is not specified. While the language of the direction in the *2017 R.M. Decision* provides more delineation by identifying the data to be considered by SAMA in calculating revised assessments, it leaves the other details of the calculation in SAMA's hands. Finally, the Committee's expectation of an investigation (which is not even clearly identified as a

> direction in the *2018 Decision*) without addressing the nature, extent or consequences of the investigation necessarily requires an exercise of discretion by SAMA.

[27] After reviewing the other potential constraints that *Vavilov* says may bind a decision maker, including the applicable statutory scheme, relevant law, evidence, past practices, etc., and canvassing the governing principles of assessment law and practice set out in *Affinity*, the Chambers judge said:

> [63] One significant constraint on SAMA is satisfaction of the market valuation standard. It is uncontroversial that the achievement of equity is the dominant and controlling factor in the assessment of property - both parties before me agree on this point. The satisfaction of the market valuation standard is fundamental to the achievement of equity: *CP Reil S Real Estate Limited v Saskatoon* (City), 2021 SKCA 100.

[28] The Chambers judge then reviewed what this Court said in *Affinity* about the market valuation standard and concluded that SAMA had operated within the relevant constraints, stating as follows:

> [67] In my view, on the basis of the evidence before me, the actions taken by SAMA in response to the Committee's 2017 decisions stayed within the constraints to which SAMA's decision making was subject. SAMA made an adjustment in favour of properties over 6,000 square feet after considering all of the data in the Altus graph and the need to ensure an accurate, fair and equitable assessment, all in accordance with the Committee's 2017 decisions. ln making the adjustment, SAMA relied upon assessment law and practice, including the interpretation of the market valuation standard and ASR, as well as its own understanding or position on statistical significance. While there are no doubt other courses of action that could have been taken within the constraints upon SAMA, that does not take what SAMA did outside those constraints.
>
> [68] SAMA made no adjustments on the basis of building size in response to the *2018 Decision*. Altus maintains that, as a result of the *2018 Decision*, SAMA was subject to a constraint requiring it to focus its investigation on properties over 6,000 square feet and to adjust the assessments for building size in a way similar to what Altus expected for 2017. SAMA points out that the 2*018 Decision* only directs an investigation and maintains, in any event, that the investigation results did not indicate the need for an adjustment for building size.
>
> [69] The *2018 Decision* directs SAMA to investigate the issue of whether an adjustment for building size was warranted without specifying any necessary aspects of the investigation. It is uncontroverted that an investigation (according to SAMA) or statistical testing (according to Altus) took place. SAMA described its investigative actions in its remittal responses dated March 20 and April 1, 2020.
>
> [70] Based upon my reading of the *2018 Decision*, it does not require SAMA to focus its investigation on properties over 6,000 square feet or to make an adjustment for 2018 on the basis of building size. SAMA was not subject to those constraints on its decision-making. SAMA was subject to a constraint requiring it to investigate and to the principles of assessment law and practice and it operated within these constraints.
>
> …

> [72] In my view and based on the foregoing analysis, SAMA's actions which are the subject of this application stayed within the constraints to which SAMA was subject.

[29] As for whether SAMA's reasoning was rational, logical and sufficient, the Chambers judge noted that Altus took no issue with the sufficiency component; its concerns related to the rationality and logic of SAMA's approach. She concluded that SAMA had met the necessary mark in that respect as well, stating:

> [78] In my view, SAMA's reasoning, as described in its affidavit evidence, is logical. I am able to understand SAMA's reasoning as to why, in its view, a 4% straight line adjustment was appropriate. I see no logical fallacies, circular reasoning, false dilemmas, unfounded generalizations or absurd premises in SAMA's reasoning following the Committee's 2017 decisions.
>
> [79] Altus argues that SAMA's reasoning leading to the 2018 revised assessments was not rational and logical on the basis that it did not "add up." Specifically, Altus interprets the results of SAMA's statistical testing as not supporting SAMA's finding of three distinct groups of sales based on rent size. SAMA counters that its finding was based, in part, on its position that the sample size of buildings over 7,500 square feet was statistically unreliable. Altus disagrees that the sample size was statistically unreliable.
>
> [80] It is clear from the evidence filed and the positions taken by the parties before me that there may be differing opinions on statistical reliability, even among experts. I do not find SAMA's particular characterization of the reliability of the sample size over 7,500 square feet to be an absurd premise or otherwise unreasonable.
>
> [81] SAMA's responses to the direction to investigate made in the *2018 Decision* remittal describe the nature and results of its investigation as well as explaining SAMA's position on sample size and statistical re liability . In my view, the reasoning in SAMA's responses does logically add up, particularly in light of the open ended, non-specific investigation described in the *2018 Decision.*
>
> [82] On the basis of the foregoing analysis, I find that SAMA's reasoning in its responses to the *2017 City Decision*, the *2017 R.M. Decision* and the *2018 Decision* assessments was both rational and logical. Adding this finding to my determination above that SAMA acted within the constraints to which it was subject, I conclude that SAMA's actions were reasonable in the circumstances of this case.

[30] Accordingly, the Chambers judge dismissed Altus's application for judicial review. She also made an "alternative" finding, namely, that if she had been wrong in determining that only SAMA's actions or inactions – and not the revised assessments themselves – were reviewable, it would not have changed the result, saying:

> [83] If I am wrong about the scope of judicial review contemplated in *Altus CA* and it should, in fact, extend to the decisions made by SAMA (the revised assessments), I would find the revised assessments to be reasonable on the basis of the record before me and the foregoing analysis of SAMA's actions and reasoning leading to these decisions. In my view, the revised assessments logically flow from SAMA's reasoning and the actions taken by SAMA in response to the *2017 City Decision*, the *2017 RM Decision* and the *2018 Decision*.

III. ISSUES

[31] The arguments advanced by Altus in this appeal give rise to the following questions:

(a) Did the Chambers judge improperly narrow the scope of the judicial review?

(b) Did the Chambers judge misidentify the applicable standard of review?

(c) Did the Chambers judge misapply the relevant standard of review by:

(i) failing to correctly identify the constraints to which SAMA was subject as a result of the Committee's remittal directions; and/or

(ii) concluding that SAMA had complied with the Committee's remittal directions?

[32] I will address each of these questions in turn.

IV. ANALYSIS

A. Did the Chambers judge improperly narrow the scope of the judicial review?

[33] Under its first line of attack, Altus contends that the Chambers judge erred in law by limiting the scope of judicial review to the "actions taken and not taken by SAMA" in response to the remittal directions of the Committee. Altus says that the revised property assessments prepared following the remittal by the Committee were SAMA's "decisions" and, as such, the Chambers judge ought to have found that the results of the revised assessments were reviewable.

[34] I would not give effect to this argument.

[35] Generally speaking, judicial review is not available where an adequate alternative remedy, such as a comprehensive statutory appeal process, exists (*Strickland v Canada (Attorney General)*, 2015 SCC 37 at paras 40–45, [2015] 2 SCR 713; *Saskatoon (City) v Wal-Mart Canada Corp.*, 2019 SKCA 3 at paras 42–44, 430 DLR (4th) 697). As noted above, in the *2021 CA Decision*, this Court held that the Legislature has established a comprehensive code for dealing with municipal

tax matters through the provisions of *The Cities Act*, *The Municipalities Act*, and *The Municipal Board Act*, which includes a statutory appeal mechanism to challenge the results of a property tax assessment. It is only where there is "no statutory path for a taxpayer to obtain a remedy" that access to judicial review will be necessary to fill the gap (*2021 CA Decision* at para 82). The availability of judicial review in such circumstances is premised on the principle that the "rule of law demands a remedy when a state actor does not comply with the law" (at para 85).

[36] The availability of judicial review, however, does not mean that a taxpayer who is dissatisfied with SAMA's response to the Committee's remittal directions can use this path to launch what is effectively another appeal from the result of a revised assessment. As Tholl J.A. observed in the *2021 CA Decision*, the appeal rights created by the statutory scheme concerning municipal tax assessments have a "restricted scope" that is narrow in focus and designed to ensure that assessment appeals are heard in a timely, efficient, and effective fashion (at para 66). Judicial review is available only to address the actions of state actors that fall outside of the appeal process provided for by the Legislature; it cannot be used as a judicial extension of that process through the implementation of a parallel or supplementary right of appeal. In other words, because there is a statutory appeal regime in place, judicial review is properly limited to "SAMA's actions or inactions" in response to the remittal directions (at paras 84–85) and is not meant to otherwise examine the merits of the resulting assessment. The Chambers judge was correct, in my respectful view, to reach that conclusion.

[37] That said, for reasons that I will develop, in the present circumstances, the merits of the revised assessments are inextricably linked to the nature of SAMA's responses to the remittal directions. Put another way, the revised assessments cannot stand if SAMA did not comply with the remittal directions of the Committee in preparing them.

B. Did the Chambers judge misidentify the applicable standard of review?

[38] When faced with an appeal from a decision disposing of an application for judicial review, the appellate court must decide whether the court below identified the appropriate standard of review and applied it correctly (*Dr. Q. v College of Physicians and Surgeons of British Columbia*, 2003 SCC 19 at para 43, [2003] 1 SCR 226 [*Dr. Q.*]; *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras 45–47, [2013] 2 SCR 559; *Northern Regional*

Health Authority v Horrocks, 2021 SCC 42 at para 10, [2021] 3 SCR 107 [*Horrocks*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 36 [*Mason*]).

[39] Where a court reviews the merits of an administrative decision, there is a presumption that the applicable standard of review is reasonableness (*Vavilov* at paras 16 and 23). This presumption can be rebutted in the following circumstances:

(a) where the Legislature has indicated that it intends for a standard other than reasonableness to apply, by either: (i) explicitly prescribing a certain standard of review; or (ii) creating an appeal mechanism, such that appellate standards of review apply;

(b) where the rule of law requires that a standard of correctness apply because constitutional questions, general questions of law of central importance to the legal system as a whole, or questions regarding jurisdictional boundaries between two or more administrative bodies are engaged; or

(c) when courts and administrative bodies have concurrent first instance jurisdiction over a legal issue in a statute, in which case a standard of correctness will apply.

See: *Vavilov* at para 17; *Society of Composers, Authors and Music Publishers of Canada v Entertainment Software Association*, 2022 SCC 30 at paras 26–28 [*Society of Composers*].

[40] In this case, Altus contends that the Chambers judge was wrong to hold that the presumption of reasonableness had not been rebutted by either the existing legislative framework or the existence of a general question of law of central importance to the legal system as a whole. It points out that, under the statutory regime that governs municipal property assessment appeals, the Board and the Committee apply appellate standards of review, meaning that they review questions of assessment law and assessment practice, and whether assessors have complied with same, on a correctness standard. Altus submits that to then apply a standard of reasonableness to judicial review of the question of whether SAMA has complied with a remittal direction by one of those bodies would undermine the Legislature’s intent.

[41] Altus also argues that reviewing SAMA's actions and inactions on a reasonableness standard would undermine the rule of law, because requiring only reasonableness, rather than correctness, in the implementation of a Committee's directions would risk rendering a parties' appeal rights under the statutory scheme meaningless.

[42] I would not give effect to either of these arguments. In my opinion, the Chambers judge correctly determined that a reasonableness standard of review applied to the actions and inactions of SAMA.

[43] As a starting point, the mere fact that the Legislature has created a statutory appellate scheme in which questions of law are reviewed for correctness does not equate to an intention on its part that similar questions arising in connection with municipal tax assessments should be subject to that standard on judicial review (see: *Yatar v TD Insurance Meloche Monnex*, 2024 SCC 8 at paras 41–50). I would note that, in support of this branch of its argument, Altus relies on this Court's comments in *Affinity*, which pertain to the standards of review applicable to questions that fall within the purview of the statutory appeal structure. With respect, Altus's reliance on *Affinity* is misplaced. As *Vavilov* instructs, where the decisions or actions of the state actors in question are not covered by the statutory appellate scheme, derogation from the presumed reasonableness standard on judicial review requires clear statutory language that prescribes a different standard (at paras 33–35 and 282). Altus has identified nothing in any of the relevant legislation that prescribes a standard of review in relation to judicial review of the actions or inactions of SAMA.

[44] Moreover, I disagree with Altus's submission that a correctness standard of review is required to ensure consistency with the statutory appellate scheme. Obviously, for matters falling within the purview of the statutory scheme, appellate standards of review apply; *Vavilov* is quite clear about that. However, *Vavilov* also holds that judicial review and appeals are different animals and may well engage different standards of review, even when dealing with similar questions. In that regard, the majority in *Vavilov* wrote:

> [52] …[S]tatutory appeal rights are often circumscribed, as their scope might be limited with reference to the types of questions on which a party may appeal (where, for example, appeals are limited to questions of law) or the types of decisions that may be appealed (where, for example, not every decision of an administrative decision maker may be appealed to a court), or to the party or parties that may bring an appeal. However, the existence of a circumscribed right of appeal in a statutory scheme does not on its own preclude applications for judicial review of decisions, or of aspects of decisions, to which

> the appeal mechanism does not apply, or by individuals who have no right of appeal. But any such application for judicial review is distinct from an appeal, and the presumption of reasonableness review that applies on judicial review cannot then be rebutted by reference to the statutory appeal mechanism.
>
> (Emphasis added)

[45] I am also not persuaded that a correctness standard of review should be applied in this case on the basis that SAMA's compliance or non-compliance with the remittal directions of the *Committee Decisions* is a question of law of central importance to the legal system as a whole. Not every question of law is of such fundamental importance that it needs to be answered consistently and definitively, which is the basis upon which the standard of reasonableness that presumptively applies to the judicial review of administrative decisions gives way to considerations aimed at maintaining the rule of law (*Vavilov* at para 53; *Society of Composers* at para 33). Rather, only a narrow band of administrative decisions will fall into this category. The "question of central importance to the legal system as a whole" category is not a "broad catch-all" for correctness review, and the mere fact that a dispute is of wider public concern or that the questions raised "touch on an important issue" is not enough to rebut the presumption (*Vavilov* at para 61). The high bar that must be cleared for a question to fall into the category of questions of central importance to the legal system as a whole was aptly described by Stratas J.A. in *Portnov v Canada (Attorney General)*, 2021 FCA 171, [2021] 4 FCR 501 as follows:

> [12] Questions of central importance to the legal system as a whole must be "general questions of law" of "fundamental importance" and "broad applicability" with "significant legal consequences" for "the legal system", "the justice system", "the administration of justice as a whole", or "other institutions of government". They must be questions that require "uniform", "consistent", "final" and "determinate" answers, failing which the constitutional principle of the rule of law will suffer. See *Vavilov*, at paragraphs 58–59; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 [*Dunsmuir*], at paragraph 60.
>
> [13] While the Supreme Court has heard nearly a hundred judicial reviews over the last twelve years—each one selected for hearing because of its high public importance—the number that have qualified under this exception can be counted on one hand: *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, [2015] 2 S.C.R. 3 (prayer at municipal council meetings); *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53, [2016] 2 S.C.R. 555 (privacy interests and solicitor and client privilege); *Chagnon v. Syndicat de la fonction publique et parapublique du Québec*, 2018 SCC 39, [2018] 2 S.C.R. 687 (parliamentary privilege). Each of these raised a sweeping, transcendent point suffused with constitutional or quasi-constitutional principle.
>
> [14] Questions "of wider public concern" or that touch "on an important issue" in a "general or abstract sense" are "not sufficient" and fall short of the mark: *Vavilov*, at

> paragraph 61, citing eight Supreme Court decisions; see also tens more from this Court to the same effect.

[46] I am simply unable to conclude that the issue of SAMA's compliance with the orders made by the Committee is capable of clearing that bar. There is no constitutional or quasi-constitutional dimension to the questions at issue. There is also no question that needs to be resolved about *whether* SAMA is required to comply with the remittal directions of the Committee. The question is whether SAMA *did*, in fact, comply. Even to the extent that the determination of that question engages matters of law, it is inextricably bound to the specific facts of this case; it cannot be said that a single, determinative answer is required to uphold the rule of law.

[47] Accordingly, I am satisfied that the Chambers judge was correct to find that a standard of reasonableness applied to her review of SAMA's compliance with the Committee's remittal directions.

C. Did the Chambers judge misapply the relevant standard of review?

[48] As set out above, Altus contends that, even if reasonableness was the proper standard of review, the Chambers judge misapplied that standard by failing to correctly identify the constraints that the Committee's remittal directions placed on SAMA and by finding that SAMA had done what the Committee directed it to do.

[49] As previously noted, in an appeal of this nature, we review the Chambers judge's application of the pertinent standard of review for correctness (*Dr. Q.* at para 43). This approach "affords no deference to the reviewing judge's application of the standard of review. Rather, the appellate court performs a *de novo* review of the administrative decision" (*Horrocks* at para 10; *Mason* at para 36).

[50] *Vavilov* directs a reviewing court to assess "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and *whether it is justified in relation to the relevant factual and legal constraints that bear on the decision*" (at para 99, emphasis added). Before an administrative body's decision can be set aside as unreasonable, "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and

transparency" (*Vavilov* at para 100). This means that any identified flaws in the decision must be more than trifling or superficial; a reviewing "court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100; see also *Saskatchewan Polytechnic Faculty Association v Saskatchewan Polytechnic*, 2022 SKCA 30 at paras 23–24). According to *Vavilov*, a decision will be unreasonable if it fails to reveal a rational chain of analysis or is untenable because of the relevant factual and legal constraints that bear upon it (at para 101).

1. The 2017 Decisions

[51] Cutting directly to the bottom line, I am of the view that the Chambers judge erred in her application of the reasonableness standard of review with respect to the *2017 RM Decision* and *2017 City Decision.* In my respectful opinion, SAMA's response to the Committee's remittal instructions from those decisions was not reasonable because it failed to abide by the relevant factual and legal constraints bearing upon it. In other words, it lacked the hallmark of justification. As I will discuss, the Chambers judge failed to correctly identify the constraints to which SAMA was subject, which led her to erroneously conclude that SAMA had complied with the directions of the Committee. Let me explain how I arrive at that conclusion.

[52] I begin by observing that, generally speaking, SAMA's actions are primarily constrained by the principles of assessment law and practice (*Affinity* at paras 22–43, 78 and 82), by the requirement to satisfy the market valuation standard to achieve equity (*Affinity* at paras 33–38), and by the language used by the Committee in its remittal instructions.

[53] In the *2017 RM Decision*, the Committee upheld the board of revision's finding that SAMA's original 2017 assessment had failed to achieve equity because its assessment model "did not accurately represent the actual mass appraisal market data and ignored the principles of comparability and diminishing returns" (at para 14). Based on that conclusion, the Committee gave explicit directions to SAMA respecting how the assessments for the subject properties in the R.M. were to be calculated. It said:

> [31] The Committee remits the 2017 property valuations to SAMA. The assessments are to be calculated based upon the data reflected on the graph on page 149 of Tab 5 in Altus' submission to the Board, which illustrated the ASRs of the Cap Rate sales versus rent area. Near 6,000 square feet, only a small adjustment is required to the four sales to

> achieve a median ASR near 1.00. The remaining four sales do not support increasing Cap rates beyond approximately 9,000 square feet.
>
> (Emphasis added)

[54] In the *2017 City Decision*, the Committee allowed Altus's appeal because it concluded, once again, that a downward adjustment to the capitalization rate was required to achieve equity in relation to buildings larger than 6,000 square feet. It determined that the board of revision had erred by holding that such an adjustment for buildings of that size was not required. The Committee then gave the following direction to SAMA respecting the nature of the adjustment necessary to the capitalization rate to properly account for size:

> [44] Mr. Gloudemans, an international expert on mass appraisal, stated that "…some adjustment for larger properties can be supported, the proposed solution is unreasonable and does not make appraisal sense." We agree with Mr. Gloudemans. The graph on page 13 of Altus' submission to the Board shows the ASRs of the Cap Rate sales versus rent area. Near 6,000 square feet, only a small adjustment is required to the four sales to achieve a median ASR near 1.00. The remaining four sales do not support increasing Cap rates beyond approximately 9,000 square feet.
>
> [45] We are unable to rule on the appropriate Cap Rate adjustment. Accordingly, we must remit the matter back to SAMA to ensure the errors identified in this decision are corrected and that "… an accurate, fair and equitable assessment for the property is placed on the assessment roll" [subsection 226(1)(c) of the *Act*].
>
> (Emphasis added)

[55] As I read the foregoing portions of the *Committee Decisions* from 2017, the Committee's direction to SAMA, in both cases, was to correct the inequity that the Committee had found to exist in the assessments for properties over 6,000 square feet in size by making specific adjustments to the capitalization rate applicable to such properties. Moreover, both the *2017 RM Decision* and the *2017 City Decision* referred to the data contained in a graph that was part of Altus's submissions, which expressly reference a curved assessment, with different adjustments made to properties of differing sizes. In other words, the Committee's remittal instructions used "narrow language" that "precisely circumscribed" the approach that SAMA was to take in correcting the errors identified in the assessments (*Affinity* at para 103).

[56] Despite the Committee's explicit direction, however, SAMA made no modification to the overall capitalization rate. Instead, it simply reduced the assessed value of all properties larger than 6,000 square feet by a straight-line amount of 4%, regardless of their size. I can come to no other conclusion that, in so doing, SAMA simply disregarded the Committee's directions. SAMA had

been ordered to adjust the *capitalization rates* for larger properties. Instead of doing that, however, it proceeded to implement its own view of what constituted an equitable assessment and, in the result, substituted a remedy that was not grounded in either of the *Committee Decisions* from 2017. With respect, that cannot be a reasonable response on the part of SAMA to the directions it was given. In this case, one of the relevant constraints on the assessor's discretion was the explicit direction given in the *2017 RM Decision* and the *2017 City Decision*. SAMA's departure from the Committee's instructions in this case meant that it did not correct the errors that it had been ordered to correct. As a result, it cannot be seen as constituting a reasonable exercise of whatever discretion it otherwise enjoys in connection with the assessments. The Chambers judge erred by concluding to the contrary.

[57] Accordingly, I would allow the appeal as it relates to both the *2017 RM Decision* and the *2017 City Decision*, quash the revised assessments, and remit the matter to SAMA with a direction to adjust the capitalization rate for the subject properties in accordance with the Committee's instructions.

2. The *2018 Decision*

[58] I reach a different conclusion, however, with respect to the *2018 Decision.* In relation to that matter, Altus took the position that SAMA had erred by using 2017 data in establishing its 2018 assessment model. The board of revision dismissed Altus's appeals, and Altus appealed to the Committee. The Committee allowed the appeals, but only in part. Its remittal instructions to SAMA related to one property, and were as follows:

> [37] …In summary, we find the effective age [for the property at 1104 5th Street] should be recalculated as described above, and the property should be valued as an open mall.
>
> …
>
> [64] …As stated previously, we do not have confidence in Altus' position an adjustment for building size is warranted. However, we expect SAMA will investigate this issue.
>
> [65] Therefore, we remit the assessment to SAMA to derive a new Cap Rate model for the 2018 tax year using the 2018 data.

[59] In the reasons describing its response to those instructions, provided by way of letters dated March 20, 2020, and April 1, 2020, SAMA explained how it undertook the revision of the effective age of the property at 1104 5th Street, and how it derived a new capitalization rate model based on

the 2018 data. In the March 20, 2020, letter, in particular, SAMA wrote that it had "investigated the issue of size when it derived a new cap rate model using the 2018 data by adjusting for effective age" but ultimately concluded that no additional adjustment was required for the building size, stating as follows:

> The issue of rent size was tested by plotting the ASR's against the rent size. The ASR's were fitted with a Loess curve. Three distinct groups emerged, namely:
>
> - =<2,250 square feet, median ASR 0.997 with 10 sales;
> - 2251 to 4,400 square feet, median ASR 0.916 with 12 sales; and
> - greater than 4,400 square feet, median ASR 1.031 with 9 sales.
>
> As with the effective age model, any size relationship requires a proper sample size to determine a statistically reliable model.
>
> When looking at the scatter plot, it is natural to be drawn to the end of the plot. There are only three sales above the 7,500 square feet, which is not enough observations to make a statistically reliable model adjustment.
>
> Therefore, it is SAMA's conclusion that no additional adjustment is required for the rent size based on the median ASR results combined with the equal distribution of the sales (Please refer to Appendix F – NCSS Output Report ASR 2018 MODEL SIZE BANDS).

[60] Altus argues that this does not constitute an "investigation" but, rather, a mere identification or review of size bands. It accuses SAMA of "inexplicably ignor[ing] test results showing that properties over 6,000 square feet were being overvalued". I disagree. As I read the *2018 Decision*, the remittal instructions (unlike the *Committee Decisions* from 2017) afforded SAMA significant discretion to *investigate* whether a size adjustment was necessary. In the *2018 Decision*, the Committee did not dictate the fashion in which SAMA was to conduct this investigation. Specifically, and contrary to what Altus contends, it did not limit the investigation to testing whether properties of over 6,000 square feet were being overvalued.

[61] The Chambers judge recognized this as well. In that regard, she said:

> [69] The *2018 Decision* directs SAMA to investigate the issue of whether an adjustment for building size was warranted without specifying any necessary aspects of the investigation. It is uncontroverted that an investigation (according to SAMA) or statistical testing (according to Altus) took place. SAMA described its investigative actions in its remittal responses dated March 20 and April 1, 2020.
>
> [70] Based upon my reading of the *2018 Decision*, it does not require SAMA to focus its investigation on properties over 6,000 square feet or to make an adjustment for 2018 on the basis of building size. SAMA was not subject to those constraints on its decision-making. SAMA was subject to a constraint requiring it to investigate and to the principles of assessment law and practice and it operated within these constraints.

[62] I agree with the Chambers judge's reasoning on this point, and I find that she correctly characterized the relevant constraints under which SAMA was to operate.

[63] The Chambers judge also concluded that SAMA's reasoning in relation to the *2018 Decision* was transparent, intelligible, rational and logical. In that respect, she stated:

> [80] It is clear from the evidence filed and the positions taken by the parties before me that there may be differing opinions on statistical reliability, even among experts. I do not find SAMA's particular characterization of the reliability of the sample size over 7,500 square feet to be an absurd premise or otherwise unreasonable.
>
> [81] SAMA's responses to the direction to investigate made in the *2018 Decision* remittal describe the nature and results of its investigation as well as explaining SAMA's position on sample size and statistical reliability. In my view, the reasoning in SAMA's responses does logically add up, particularly in light of the open ended, non-specific investigation described in the *2018 Decision.*

[64] I also agree with the Chambers judge's reasoning here. Considering the discretion bestowed upon SAMA by the Committee's remittal instructions, SAMA adequately explained its investigation into the three size bands and provided cogent, rational and logical reasons for concluding that a size adjustment was unnecessary. Accordingly, SAMA responded reasonably and within the bounds of its constraints with respect to the *2018 Decision*. Its response bears the hallmarks of reasonableness and, as a result, I would dismiss the appeal as it relates to the *2018 Decision*.

V. CONCLUSION

[65] For the foregoing reasons, I would allow the appeal as it relates to the *2017 RM Decision* and the *2017 City Decision*, quash the revised assessments in relation to those decisions, and remit the matter to SAMA to be reassessed in accordance with the Committee's directions. I would dismiss the appeal as it relates to the *2018 Decision*.

[66] In light of that mixed success, I am of the view that it is appropriate that the parties bear their own costs in this Court and in the Court of King's Bench.

"Kalmakoff J.A."

Kalmakoff J.A.

I concur. "Leurer C.J.S."

Leurer C.J.S.

I concur. "Schwann J.A."

Schwann J.A.