Court of Appeal for Saskatchewan
Docket: CACV4051

Citation: *Canada Life Assurance Company v Regina (City)*, 2025 SKCA 60
Date: 2025-06-18

Between:

Canada Life Assurance Company

Appellant
(Appellant)

And

City of Regina and
Saskatchewan Assessment Management Agency

Respondents
(Respondents)

Before:	Schwann, Tholl and Kilback JJ.A.
Disposition:	Appeal allowed
Written reasons by: In concurrence:	The Honourable Justice Lian M. Schwann The Honourable Justice Jerome A. Tholl The Honourable Justice Keith D. Kilback
On appeal from: Appeal heard:	2022 SKMB 73, Regina October 30, 2024
Counsel:	Allison Graham for the Appellant Steven Dribnenki, K.C., for the City of Regina No one appearing for the Saskatchewan Assessment Management Agency

Schwann J.A.

I. INTRODUCTION

[1] This appeal concerns the 2021 property tax assessment for 49 office properties in the City of Regina [City]. Acting as the lead appellant, Canada Life Assurance Company [Canada Life] appeals against the decision made by the Assessment Appeals Committee of the Saskatchewan Municipal Board [Committee] in *Various (Altus Group Limited) v Regina (City)*, 2022 SKMB 73 [*Committee Decision*]. In its decision, the Committee dismissed an appeal from a determination made by the Regina Board of Revision [Board] in which the Board had found the City's Assessor had not erred in using the sales data for general commercial properties to derive the capitalization rate, that equity had been achieved, and that Canada Life was not entitled to further document production from the Assessor: *Altus Group Ltd. v Regina (City)* (23 October 2021) Regina, Appeal # 29165 et al (Regina Board of Revision) [*Board Decision*].

[2] Canada Life asserts the Committee made various legal errors in upholding the *Board Decision*. For the reasons that follow, I would allow its appeal on the disclosure issue and direct a de novo hearing before the Committee. My reasons follow.

II. BACKGROUND

[3] Canada Life owns an office building located in Regina [property]. It is a non-regulated Class A office tower that was constructed in 1992. In 2021, utilizing the income approach to assessment, the property was assessed at $42,331,100.

[4] The Assessor used the office commercial model for assessment purposes, which was composed of two sub models: the office rent model and the general commercial capitalization rate [CAP rate] model.

[5] The office rent model was derived from 195 net rents of office properties using multiple regression analysis [MRA]. The rent model is an additive model that predicts rents based on the class of office space, lease space location within the building, and effective age of the building.

[6] The Assessor used sales from 142 commercial properties to develop the CAP rate model. The property was grouped with general commercial properties citywide. It included, for instance, sales of small offices, all retail-type properties, restaurants, and small general-purpose warehouses. There was no substratification for that property type (e.g., office towers, etc.), location, or any other physical characteristic. Adjustments were made within this model for things like office class, basement space, and the year the property was built. The CAP rate derived from the commercial CAP rate model was 6.967%, with only one adjustment made for site coverage.

[7] A key point in dispute was the Assessor's use of the MRA. The City explained this concept in its 10-day submission to the Board as being one that is designed to "help the Assessor determine what features of sold properties impact CAP rates. The MRA tool allows for the influence of all features at the same time so the Assessor is not required to stratify by property type first" (original emphasis omitted, at para 100).

[8] Beginning in January of 2021, after receipt of its notice of assessment, Canada Life sought disclosure from the Assessor for a wide range of documents broadly related to its 2021 assessment. The parties exchanged correspondence on the matter prior to Canada Life's appeal on March 15, 2021; and, thereafter, Canada Life pressed for further disclosure up to the date of the Board hearing. Although the Assessor ultimately agreed to disclose some of the sought-after material, in the end, the Assessor refused to provide the following information:

(a) the unmasked rents used in the office rent model;

(b) the unmasked parking rent model and the vacancy rate data breakdown;

(c) the rent regression testing results and datasets used and stored on the SPSS program, including syntax (the computer code used to transform raw data into the assessment model), raw data, and output; and

(d) the results of statistical testing derived from the MRA, including "the model summary, ANOVA table and findings of non-parametric or other testing" (appellant factum at para 19).

In these reasons, this information will collectively be referred to as the "undisclosed information".

[9] Despite the Assessor's refusal to provide the undisclosed information, it reserved the right to conduct additional statistical testing using the models it had developed.

[10] In its notice of appeal to the Board, Canada Life alleged that the Assessor had erred in the following three ways:

(a) the CAP rate of 6.967%, which was used in the calculation of the subject assessment, was in error because the Assessor had grouped office building sales with non-comparable sale properties, resulting in an erroneous CAP rate;

(b) the Assessor breached its duty to disclose and its duty of procedural fairness; and

(c) the Assessor failed to achieve the market valuation standard [MVS] and equity as required by *The Cities Act*, SS 2002, c C-11.1 [*Act*].

III. THE *BOARD DECISION*

[11] As a preliminary issue at the commencement of the Board hearing, Canada Life raised the fact that the Assessor had not provided the undisclosed information. It asked the Board for an order directing the Assessor to disclose "any and all information as to assessment" (*Board Decision* at 2). Although broadly framed, Canada Life's request was multifaceted and contained many detailed particulars. It submitted that the Assessor had breached its duty of procedural fairness and its statutory obligation under s. 200(4) of the *Act*. Following a short caucus, the Board dismissed Canada Life's application. The Board's rationale for its decision is addressed in my reasons below.

[12] The Board then turned to the merits of the appeal, where Canada Life argued the Assessor had erred in grouping sales of general commercial properties in the model's dataset because, in its view, those types of buildings were not comparable to commercial office towers in downtown Regina. To establish a suitable CAP rate for the subject property, it said the assessment model could and should have used the sales data from six office buildings since those buildings were more comparable to the Canada Life property. Canada Life also submitted that, while it was appropriate for the Assessor to statistically test the chosen model, the Assessor improperly used MRA to develop the model. At bottom, Canada Life asserted the assessment of the subject property failed to achieve the MVS or equity as required by the legislation.

[13] The Board rejected all of Canada Life's arguments. It found the properties chosen by the Assessor were comparable, stating they had "similar economic characteristics and therefore similar CAP rates" (*Board Decision* at 6). It also rejected the argument that the sales grouping should have been limited to six office high-rise buildings, reasoning that that approach needlessly restricted the sample size and, thus, the reliability of the CAP rate model. The Board characterized Canada Life's position as "essentially stating an alternative approach that the Assessor may have used", noting that an alternative method is not evidence of error (at 6). Relatedly, it said the decision as to which properties used for grouping purposes is a matter of Assessor discretion. On the evidence before it, the Board saw no basis to conclude that the Assessor had exceeded the exercise of its discretion in that regard.

[14] Although the Board agreed that the Assessor's failure to include a certain office tower in the sales array was an error (a point the Assessor had conceded), it concluded that oversight had a negligible effect on the CAP rate. Since the error was not material to the result, the Board declined to intervene on that point.

[15] Finally, the Board considered Canada Life's argument that the MVS and equity had not been achieved. The Board disagreed. It pointed to the Assessor's use of sales data from office towers and general commercial properties to develop the CAP rate model and found those properties were sufficiently "similar in their physical and economic characteristics to be grouped together for such a purpose" and, therefore, met the MVS (at 8). In sum, the Board agreed with the Assessor's approach and the conclusion that the quality assurance standard was met and equity had been achieved.

[16] In the result, the Board dismissed Canada Life's appeal in its entirety.

IV. THE *COMMITTEE DECISION*

[17] Canada Life appealed the *Board Decision* to the Committee, advancing six, broadly stated grounds of appeal, each containing numerous sub-grounds and discrete arguments.

[18] The Committee found no merit in any of Canada Life's arguments and upheld the *Board Decision* and the assessed values for all 49 properties. It concluded that the Board had not erred in its approach to comparability or in determining that the properties used in the general commercial model were comparable or in its treatment of the missing property. While the Committee agreed that the Board had identified the wrong test for equity (apparently contained in its boilerplate self-direction), it nonetheless found the Board had *applied* the correct test for equity and that the assessed value met the MVS standard and, thus, equity had been achieved.

[19] In brief terms, the Committee held as follows (*Committee Decision*):

> [30] The Committee finds that the Board did not:
>
> • err in law and/or jurisdiction by failing to consider or make findings and/or provide reasons with respect to disclosure;
>
> • err in law and/or jurisdiction in its approach to procedural fairness;
>
> • err in law in its approach to comparability;
>
> • err in its finding that the properties in the general commercial model were comparable;
>
> • err in its treatment of [the excluded office tower]; and
>
> • apply the incorrect equity test.

V. LEAVE TO APPEAL

[20] Canada Life was granted leave to appeal to this Court on the following grounds:

(a) Did the Committee err in law or jurisdiction by affirming the Board's finding that no duty of disclosure had been breached, whether at common law or under the *Act*?

(b) Did the Committee err in law or jurisdiction by affirming the Board's failure to compel production of information, whether pursuant to common law or the *Act*?

(c) Did the Committee err in law or jurisdiction by making findings of fact that were inconsistent with the findings of fact of the Board or for which there was no evidence?

(d) Did the Committee err in law by finding that the Board did not err in its identification, interpretation, or application of the governing assessment law and practice?

VI. THE DISCLOSURE GROUND OF APPEAL

[21] The first two issues on which leave was granted relate to the overarching question of whether the Committee erred in affirming the Board's approach to the duty of fairness and the production of documents. Canada Life argues that this Court's recent decision in *SBLP Southland Mall Inc. v Regina (City)*, 2022 SKCA 115, 474 DLR (4th) 702 [*Southland*], demonstrates how the Committee had erred in affirming the Boards's finding that the Assessor's disclosure was adequate and that no further production should be ordered.

[22] Consideration of this ground of appeal requires a closer examination of Canada Life's disclosure requests, the *Board Decision*, the *Committee Decision*, and the applicable law. I will proceed in that order before turning to my analysis of the issue.

A. Requests for further disclosure

[23] In the time leading up to the Board hearing, the Assessor had provided information to Canada Life pertaining to (a) the year of the rent data for the office rent model, (b) the masked (redacted) rents used to derive the rent model, (c) the masked vacancy rate data breakdown, and (d) the coefficient table. However, as previously noted, the Assessor did not provide the undisclosed information. In its 20-day submission to the Board, Canada Life said it reserved the right to pursue further disclosure in its rebuttal to the City and the Assessor's submission, depending on what was disclosed pre-hearing.

[24] As it turned out, the City and Assessor's 10-day submission consisted of an explanation as to how the assessment was determined, but did not include the undisclosed information as part of its written materials or the Assessor's written explanation for the assessment. The Assessor also said it reserved the right to undertake additional testing.

[25] Canada Life's 5-day submission in response included an addendum in which it once again emphasized the point that the Assessor had failed to comply with s. 200 of the *Act* and urged the Board to refuse to accept the City and Assessor's 10-day submission. Its position was grounded on the assertion that the Assessor had breached both its statutory obligation to disclose as spelled out in s. 200(4) of the *Act* and its broader duty of procedural fairness. Canada Life asked the Board to make an order compelling the City or the Assessor (or both) to produce the undisclosed information and to adjourn the appeal hearing for it to consider the production so ordered.

[26] Canada Life claims it was prejudiced in its appeal to the Board. It says that, without the undisclosed information, it could not meaningfully challenge the City's or the Assessor's evidence because it lacked access to essential information used to arrive at the assessment of the subject properties. Furthermore, it asserts that the lack of access to the undisclosed information meant it was unable to develop its own evidence using the same data and syntax that the Assessor had used. In sum, Canada Life claims it was denied procedural fairness for those reasons.

B. Proceedings before the Board

[27] As noted above, Canada Life renewed its disclosure request at the outset of the appeal hearing before the Board on August 4, 2021. More particularly, it applied for an order compelling the City to produce the undisclosed information and for an adjournment to allow it time to consider any of the production ordered by the Board.

[28] The Board rendered a short ruling in which it situated its reasoning around ss. 200(4), 203.1, and 205 of the *Act*, quoting from *SBLP Southland Mall Inc. v Regina (City)* (31 July 2020) Regina, Appeal #2020-28822 (Regina Board of Revision) at 3, aff'd 2021 SKMB 14, leave to appeal to Sask CA refused, CACV3822 [*SBLP-Board*]:

> Specifically, s. 200(4) specifies the assessor's statutory requirement of disclosure. He or she must file the documents listed in subsection 200(4)(a) and (b), namely the field sheets and a written explanation of how the assessment was determined, including whether or not any decisions of the appeal board have been considered and how they have been applied. The person having charge of the assessment roll can be required by the board of revision to attend the appeal hearing and bring the items listed in s. 203.1 of the *Act*, including being required to produce the assessment roll and all books, papers and other documents in his or her custody relating to the matter on appeal. Witnesses can be subpoenaed or summonsed under s. 205 of the *Act*, and required to produce documents, provided those documents are relevant and relate to matters in appeal.

[29] Having set out the legislative framework, the Board turned to the question of the relevance of the requested disclosure, remarking that the lens from which to view that consideration was in connection with the matters put in issue in the appeal. The Board then continued to quote from its ruling in the *SBLP-Board* decision as follows: "If documents do not exist, or if the request is not relevant, then the request to seek production of such things has no place in the legislative scheme. If a party seeks to have anything else filed at the appeal, then it remains within the discretion of the Board as to whether or not to accept it, and on what terms" (at 3).

[30] The final thread of reasoning explored by the Board concerned the need for timeliness in the assessment appeal process, which, in its view, coloured Canada Life's production request (*Board Decision* at 3):

> Boards of revision do not have the luxury of time. The decisions must be delivered within 6 months of the closing of the assessment roll (s. 210(4)). A concise statutory framework is required in order to ensure that proper notice of hearing dates can be provided, all appeals can be heard, and all decisions rendered within that timeline. If there were no time constraints, the processes might well be different, but that is not the case. Appeals are new appeals every year, the same process occurs every year. Time simply does not permit a lengthier process and the legislation recognizes that. Appeals, hearings, and decision-writing have to happen in a relatively short period of time, and *seeking reams of documents, or having forms of discovery, by either side from the other does not appear within the contemplation of the disclosure provisions of the Act.* The Board anticipates that in the future, the legislative framework can be followed to avoid issues such as this from arising and bogging down the appeal process.
>
> (Emphasis added)

[31] Following a hearing on the merits of Canada Life's appeal, the Board rendered a written decision on October 23, 2021, in which it affirmed its earlier decision respecting disclosure, concluding that the Assessor was not in breach of its duty to disclose or procedural fairness (*Board Decision* at 7):

> **Issue #2:**
>
> Whether the Assessor is in breach of its duty to disclose and its duty of procedural fairness.
>
> The Appellant suggested that the Assessor had failed to provide requested information prior to the appeal, thereby breaching its duty to disclose existing both pursuant to case law, of *Altus Group Ltd. v Saskatoon (City)*, [2015] SMBACD No 40, and the procedural duty of fairness, rendering the Appellant unable to have meaningful participation in the appeal process and to ensure the Appellant knows the case against it.
>
> As to disclosure prior to the hearing, the Board agrees with the submissions of the Assessor, to the effect that there is no statutory requirement for any pre-hearing disclosure, other than as set out in s. 200 of *The Cities Act*. *The Assessor made the required pre-hearing disclosure required by s. 200 of* The Cities Act*, being the written record explaining the assessment, the field sheet, and all the evidence that the Assessor intended to rely upon in its 10-day submission filed following appeal*.
>
> The Board finds that the Assessor was not in breach of any duty to disclose or procedural fairness.
>
> (Emphasis added)

C. Proceedings before the Committee

[32] On further appeal to the Committee, Canada Life sought to have the *Board Decision* overturned and a hearing de novo ordered. Although Canada Life had forcefully presented a multifaceted argument before that tribunal concerning the Board's failure to grasp the broad concept of procedural fairness in an assessment appeal context, the Committee rejected that argument. In doing so, it made note of the Board's explicit finding that the Assessor had complied with s. 200 of the *Act* and of the absence of any statutory requirement dictating pre-hearing disclosure: see, generally, *Committee Decision* at paras 33–41.

[33] Neither was the Committee persuaded that the Board had erred in law or jurisdiction in its approach to the issue of procedural fairness by failing to apply *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*], to determine whether that duty existed and, if so, what was its scope and content. The Committee concluded the Board was alert to the *Baker* factors in assessing Canada Life's procedural fairness argument, writing as follows (*Committee Decision*):

> [43] … The *Baker* factors expressly say that one of the key principles to take into consideration is the nature of the statutory scheme and the terms of the statute to which the body operates. The Board did precisely that in determining the Assessor complied with his obligations for disclosure under Section 200 of the *Act*. Similarly, the Board considered the nature of the decision and the process followed in making it, another *Baker* factor.

[34] While the Committee recognized there was an appeal pending before this Court concerning procedural fairness and an assessor's disclosure obligations – presumably referring to *Southland* – it declined to depart from its understanding of the applicable law: "We see no reason to depart from our previous decision that the *Act* provides for disclosure as laid out in Section 200, that the *Act* does not provide for pre-hearing disclosure and, in the particular circumstances of the case under reserve, a refusal of an adjournment was not unfair" (*Committee Decision* at para 48).

D. Positions of the parties on appeal

[35] Canada Life takes issue with the Committee's affirmation of the Board's approach to procedural fairness and its narrow view of the Assessor's disclosure obligations. It draws from various passages in *Southland* as support for the idea that an assessor must disclose all information relevant to an assessment: "This includes 'the factual and legal basis' of the assessment. This is not limited to information that is relevant to the *appeal*, and requires disclosure of all information relevant to the *assessment*" (emphasis in original, appellant factum at para 36).

[36] If the concept of relevance is viewed through the prism of its existing grounds of appeal, Canada Life says the right to amend a notice of appeal following disclosure would be stymied, and, more generally, it would cause appellants to take a shotgun approach to their statement of the grounds of appeal going forward. Canada Life points to passages from S*outhland* said to acknowledge the information imbalance between assessors and assessed persons, the assessed person's statutory right to amend their notice of appeal following receipt of disclosure, and the overarching principle that an assessment is presumed to be correct. Taken together, it submits that "s. 200(4) requires full and complete disclosure by the Assessor of all information that is relevant to the assessment – nothing less" (appellant factum at para 40).

[37] In the context of how things played out in the present matter, Canada Life asserts that the Board erred by failing to grapple with the central question before it, which was this: Did the Assessor fail to disclose the information that Canada Life claimed was relevant to its assessment? It points to how the City's 10-day submission omitted any reference to the undisclosed information, much less how it was considered and used in preparing the assessment. It claims the City had put forward tables comparing the physical characteristics of the six office sales to the Cap rate sales used to determine the capitalization rate but acknowledged that the tables had only been created in response to Canada Life's appeal. This bootstrapping approach was prejudicial, says Canada Life, because it could not then meaningfully challenge the Assessor's evidence or access the information used by the Assessor to create the model for purposes of developing its own evidence in response.

[38] The City strenuously disagrees with Canada Life's argument, asserting it is inconsistent with the *Act* and this Court's decision in *Southland*. According to the City, the provisions of the *Act* – respecting information collection, preparation of assessments, and the yearly right of appeal – do not lend themselves to what it calls an "overly broad right to information claimed by Canada Life" (respondent factum at para 42). It points to the following passage from *Southland* that specifically addresses an assessor's obligations and the duty of fairness: "While disclosure may occur outside an assessment appeal, the obligation of assessors to disclose arises only under, and must be fulfilled in accordance with, s. 200 of *The Cities Act*" (at para 67).

[39] If Canada Life prevails on appeal, the City says it will result in the application of a more onerous and unreasonable standard than presently exists in assessment law and practice. According to the City, the assessment appeal regime, which provides for yearly appeals, must be procedurally structured with an eye to achieving a delicate balance, bearing the hallmarks of speed, informality, expertise, reduced costs, certainty, and finality: "The Assessor's duties are to provide a written explanation 10 days before [a] hearing, and, guided by [the] reasonable exercise of its discretion and using terms, [disclose] information relevant to assessment and reflecting the matters at issue in the appeal" (respondent factum at para 86). It cautions against creating a disclosure scheme akin to that used in civil litigation conducted in the Court of King's Bench.

[40] Finally, the City points to how both the Board and the Committee were of one mind: the Assessor did not err with respect to disclosure. Considering the aforesaid principles of property assessment appeals, it contends that the Board and Committee must be understood to have concluded that Canada Life's request was overly burdensome and unnecessary relative to its grounds of appeal. Furthermore, the City claims Canada Life's approach to disclosure, in the matter at hand, is unreasonable because it had offered to provide Canada Life with the rental information on reasonable terms, but Canada Life had inexplicably declined to accept the City's proposed resolution. Put simply, the City asserts none of the requested information is relevant to Canada Life's assessment or was within the Board's jurisdiction to order.

VII. ANALYSIS

A. *Southland*, procedural fairness, and disclosure obligations

[41] *Southland* is the leading decision from this Court concerning procedural fairness and its application to assessment appeals brought under the *Act*. In broad strokes, it addressed the nature and extent of an assessor's duty to disclose and the jurisdiction of the Committee to respond to concerns about procedural fairness in proceedings before the Board.

[42] As a starting point, *Southland* confirms that assessors are administrative decision makers – as are boards of revision and the Committee – and that all three entities are independently obliged to abide by the principles of natural justice and procedural fairness. Applying the Supreme Court's jurisprudence in *Baker*, this Court observed that the content or scope of the duty of procedural

fairness at each level is flexible and variable. While it falls to be determined by reference to, among other things, the provisions of the *Act*, "that regime must not be taken as establishing a complete code of the procedural fairness requirements at any of its levels" (*Southland* at para 17). Drilling down to the assessor's duty of fairness, the Court examined both the property-assessment and the internal-appeal regimes under the *Act*, which it considered to be relevant and material to its determination of the content of an assessor's duty of fairness, including the scope of an assessor's disclosure obligations therein.

[43] *Southland* also explored the nature of the statutory scheme at issue for property assessment and assessment appeals under which assessors operate. The Court commented on how ss. 185, 197, and 204 confirm the Legislature's intention for there to be some amount of pre-appeal disclosure for purposes of achieving non-adjudicative resolution of assessment disputes. The Court found that, although those provisions do not directly or indirectly impose an obligation on cities or assessors to disclose information relevant to assessments, neither do they prohibit it. Disclosure is meant to streamline and foster settlement in advance of an appeal.

[44] All of that said, *Southland* makes clear that assessors are *obliged* to disclose such information "in the course of an appeal" as a matter of statutory requirement but not as "an aspect of their duty of fairness" (at para 44). The Court framed its analysis on the question of disclosure after a notice of appeal is filed around four core principles:

(a) an assessment appeal is a review for error on the record;

(b) an appellant must identify the specific grounds on which it alleges that an error exists;

(c) assessments are presumptively correct; and

(d) hearings before a board are adversarial in nature.

[45] As the Court went on to note in *Southland*, there is an evidentiary imbalance in the process that favours assessors insofar as "assessed persons may not have ready access to the evidence that affected the preparation of their assessments" (at para 26): see *Estevan Coal Corporation v Estevan (Rural Municipality)*, 2000 SKCA 82 at paras 46–49, 199 Sask R 57. While this imbalance is addressed by s. 200(4)(a) and s. 200(4)(b), which require assessors to file the assessment field sheet and a written explanation of how the assessment was determined in their 10-day submission, it does not end with that one section.

[46] The filing obligation spelled out in s. 200 was also analyzed. Although the jurisprudence indicates that an assessor's disclosure obligation under s. 200(4) is considered to be part of the "neutral record explaining the basis for the assessment calculation" (*GFL Environmental Inc. v Edenwold (Rural Municipality)*, 2020 SKCA 89 at para 50 [*GFL*]), the parties' filings under ss. 200(1), (2), and (2.1) consist of advocacy and evidentiary material: see, generally, paragraphs 46–49 of *Southland*.

[47] Having laid that foundation, the Court's discussion in *Southland* turned to the appeal process under the *Act* with an eye to its adversarial nature, remarking that it "weighs in favour of the conclusion that parties to an assessment appeal have court-like participatory rights (and consequently court-like disclosure obligations)" (at para 47). That necessarily means, in the words of the Court, "that procedural fairness in an appeal hearing requires that the parties to assessment appeals *must have the opportunity to know the case to be met and to put forward their argument and evidence on the issues raised*" (emphasis added, at para 47). As a conclusory point to its discussion on the nature of decisions made by assessors and the process followed in an assessment appeal, the Court wrote as follows:

> [49] However, the fact that assessed persons will face, as an opponent, the municipality collecting the taxes and potentially the assessor fulfilling its role under s. 22(15) tips strongly toward the conclusion that *the principles of fairness demand that assessed persons receive full disclosure of the information relevant to their assessments*. Both cities and assessors have complete access to the information that underpinned the assessments under appeal. Given that an assessment is presumptively correct in an appeal, we conclude that the fairness of an appeal hearing would be entirely undercut if cities and assessors were permitted not only to double-team assessed persons *but to control the disclosure of information relevant to whether "an error has been made" in the valuation or classification of properties or in the preparation or content of the relevant assessment roll or assessment notice*.
>
> (Emphasis added)

[48] *Southland* also found s. 209 of the *Act* to be instructive. That section permits appellants to apply to boards of revision for leave to amend their notices of appeal after receipt of disclosure from the assessor. That provision, the Court said, "reinforces the inference that the Legislature understood that assessed persons involved in appeals may not have received access to all of the information relevant to their assessments until after assessors and cities have filed their material pursuant to s. 200" (at para 51). These principles (and the potential for unfairness) led this Court in *Affinity Holdings Ltd. v Shaunavon (Town)*, 2022 SKCA 83, 474 DLR (4th) 71 [*Affinity*], to

emphasize the significance of s. 209(1) to the assessment appeal regime when it said that it "confirms that notices of appeal may be amended *after* the parties have disclosed their evidence and *after* the Assessor has filed its assessment field sheet and written explanation of how the assessment was determined" (emphasis in original, at para 67).

[49] Finally, the Court in *Southland* observed that the *Act* conferred certain powers upon boards of revision, including the authority to compel the production of documents and direct the attendance of persons to "appear at the hearing", who, in turn, must "produce the assessment roll and all books, paper and other documents in … custody relating to the matter under appeal" (s. 203.1(a) and s. 203.1(b)). As the Court noted, these powers help to inform the legitimate expectations of persons with respect to pre-hearing disclosure of information respecting assessments. It said as follows in that regard:

> [66] …The statutory powers of boards of revision and the procedural choices of the Regina [Board] confirm that assessed persons would legitimately expect to have received *full disclosure* of the *information relevant to their assessments* prior to hearings before boards of revision and, where that obligation has not been met, to have boards of revision consider any allegations of deficiencies and, if established, to address them through the exercise of their statutory powers.
>
> (Emphasis added)

[50] Pulling the *Baker* analysis together, this Court in *Southland* concluded that assessors do *not* have a general obligation to disclose assessment information to the owners of assessed property as part of its duty of fairness. They are, however, statutorily obliged to disclose to those persons all the information that is relevant to their assessments when those assessments have been appealed. Since both parties rely on the concluding paragraphs in *Southland*, they are reproduced in full below:

> [67] The *Baker* factors confirm that assessors do not have a general obligation to disclose assessment information to assessed persons as part of the assessors' duty of fairness. However, assessors are statutorily obliged to disclose to assessed persons all of the information that is relevant to their assessments when those assessments are appealed. While disclosure may occur outside an assessment appeal, the obligation of assessors to disclose arises only under, and must be fulfilled in accordance with, s. 200 of *The Cities Act*. In their adjudicative role, boards of revision have a duty to ensure that assessors, cities and assessed persons have complied with s. 200 and they may exercise their powers to ensure that that occurs in advance of a hearing in the interests of procedural fairness.

> [68] In the instant context, which involves a presumption of correctness and a review for error on the record, we conclude that the notion of a "fair hearing" before boards of revision is achieved where assessed persons, whether appellants or respondents, are fully informed of the factual and legal basis of the assessments under appeal so that they may state their case for establishing or dispelling allegations of error. Without full disclosure of the relevant evidence and the basis in assessment law and practice for assessments, assessed persons will not be in a position to identify or dispel allegations of errors of fact, principle or in the application of assessment law and practice to the facts.

[51] Succinctly stated, the relevant conclusions in *Southland*, respecting procedural fairness, can be reduced to the following:

(a) assessors and boards of revision each owe a duty of fairness to assessed persons;

(b) assessors *may* disclose information about assessments to the assessed person upon request, but they are only statutorily obliged to do so in the context of an assessment appeal under s. 200(4) of *The Cities Act*;

(c) boards of revision have a duty to ensure that their proceedings are conducted in a procedurally fair manner, which includes ensuring that assessors, cities, and assessed persons have abided by their obligations under s. 200 of *The Cities Act*; and

(d) the Committee has jurisdiction to remedy any failure made by boards of revision to ensure that their proceedings are conducted in a procedurally fair manner.

[52] *Boardwalk REIT Property Holdings Ltd. v Regina (City)*, 2022 SKCA 128 [*Boardwalk*], followed *Southland*. It, too, concerned the authority and obligation of boards of revision to compel the production of evidence. In *Boardwalk*, the assessor had relied on MRA but refused to provide any summary statistics illustrating whether its choices were justified by the market evidence. In advance of the Board hearing, Boardwalk requested the results of the assessor's statistical testing of the model it had used and the sales data, but the assessor refused to disclose those particulars. At the commencement of the hearing, Boardwalk asked the Board to issue a subpoena pursuant to s. 203.1 of the *Act* compelling the assessor to produce that information. The Board concluded that it lacked the authority to do so. In dismissing Boardwalk's appeal, the Committee found the Board's decision was reasonable.

[53] On further appeal, this Court determined that the Committee had erred by affirming the Board's premise that it had no authority to order disclosure or production pursuant to s. 203.1. In terms of remedy, the Court reasoned that, given the Board's erroneous interpretation of its authority to order further disclosure, the Board may not have had before it all the relevant evidence necessary to resolve the substantive issues and that this absence of evidence may have affected the scope of the arguments heard on appeal: "Since a notice of appeal may be amended following the disclosure of evidence by assessors and respondents (*The Cities Act*, s. 209; *Affinity* at para 67), the Regina [Board's] misinterpretation of its statutory authority to order disclosure of the Information may also have affected the breadth of the arguments that were permissible in the appeal hearing" (*Boardwalk* at para 13).

[54] That being so, a de novo hearing before the Committee was directed.

B. The appropriate test for disclosure

[55] With the principles from *Southland* firmly in mind, I return to the matter at hand.

[56] As I see it, Canada Life's allegation of error requires an answer to the following question: Does an assessor's disclosure obligation encompass all documents in the assessor's possession that are broadly relevant to the assessment in issue, as Canada Life urges, or, as suggested by the City, is relevance for purposes of disclosure examined and determined within the context of an appellant's grounds of appeal?

[57] Much like the case in *Southland*, that issue must be considered with an eye to the foundational principles unique to the mass appraisal system of the assessment appeal regime. Speaking for the Court in *Corman Park (Rural Municipality) v 618421 Saskatchewan Ltd.*, 2018 SKCA 29, 73 MPLR (5th) 1, Caldwell J.A. addressed the difficulty appellants face due to the fact that an assessor controls the evidence:

> [37] I recognise that SAMA's control over some of the evidence that may be necessary to establish error on the part of an assessor under the mass appraisal system — i.e., the particular facts supporting each ground of appeal — often presents an evidentiary impediment to taxpayers who seek to challenge an assessment. This is particularly so because in *Sasco Developments Ltd. v Moose Jaw (City)*, 2012 SKCA 24, 385 Sask R 287 [*Sasco*], this Court squarely put the onus of proof of the allegations of specific error on the appellant, regardless of whether the appellant is SAMA, a municipality or a taxpayer. However, this Court has also previously addressed the difficulty this presents for taxpayers.

> [38] In *Estevan Coal Corporation v Estevan (Rural Municipality No. 5)*, 2000 SKCA 82, 199 Sask R 57 [*Estevan Coal*], Sherstobitoff J.A., who was addressing — in rather pointed terms — a similar difficulty under the prior system of assessment based on a manual prepared by SAMA, chastised SAMA for failing to adduce evidence before the board of revision that was relevant to the allegation of specific error in the taxpayer's notice of appeal. He did so because SAMA "is probably the only body in the province with ready access, on a province-wide basis, to the sort of information necessary to calculate market adjustment factors, not to mention the skills and knowledge necessary to collect the information and make the calculation" (at para 46). More critically, Sherstobitoff J.A. went on to rebuke SAMA for failing to recognise that "its own initial error was the cause of the lack of evidence, or that it has any obligation to reassess or to provide the evidence which would permit an appeal body to reassess" (at para 49). That is, in some circumstances, the evidentiary burden in a hearing before a board of revision will shift to the assessor notwithstanding that the onus of proof may lay with the taxpayer.
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> [39] Nonetheless, s. 225(6) [now s. 197] focuses the parties on identifying specific errors and the particular facts that support them. Further, s. 225(6)(d) encourages the parties to resolve assessment issues between themselves. This is supported by s. 226(5) [now s. 198(3)], under which the board of revision must "as soon as is reasonably practicable" provide all parties (other than the appellant) with a copy of the notice of appeal. It is further supported by s. 228 [now s. 204], which permits "parties to an appeal" — *during the appeal period and before the appeal is heard by the board of revision* — to agree to a valuation or classification of a property other than as stated on the notice of assessment or to a change in the taxable or exempt status of a property from that shown on the assessment roll. All parties to an appeal must agree but, where they do and the agreement resolves all matters on appeal, s. 228(3) [now 204(3)(a)] gives that agreement practical effect by requiring the assessor to make "any changes to the assessment roll that are necessary to reflect the agreement between the parties".
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> (Emphasis in original)

[58] Also relevant is the premise that "boards of revision must accept as correct every fact that an assessor has relied upon and every principle of assessment law and practice that has been employed by the assessor in preparing the assessment unless it has been put in issue by the appellant in the notice of appeal and has been proven to be erroneous" (*Affinity* at para 67). The Court in *Southland* was alert to this reality.

[59] Given the hurdles faced by assessed persons, Canada Life urges this Court to take a broad approach to document disclosure, generally, and to relevance in particular, which is to say, that it ought to encompass anything concerned with the assessment *writ large*. In its view, anything less than that ignores the informational imbalance discussed above and fails to give effect to the practical reality facing appellants in the assessment appeal regime that "you don't know what you don't know".

[60] On appeal, the City drilled down into the specifics of Canada Life's request to counter its argument. It took pains to explain what the undisclosed information consists of to illustrate why Canada Life's request goes too far and is patently unreasonable. It says that when adequacy of disclosure is put in issue, the assessor's obligation in that regard must be viewed through the lens of the assessment appeals regime: although adversarial in nature, the legislation envisions a streamlined process that respects speed and a lack of formality. The City contends that the introduction of a complex, expanded approach to disclosure, which is more akin to civil litigation (which the City suggests reflects Canada Life's position), should be avoided at all costs because it is anathema to the Legislature's intention. I take the City to say that disclosure must be more tightly constrained than the process employed for civil litigation to avoid its cumbersome nature and inherent associated delays. The City further asserts that Canada Life's position will inevitably encourage *fishing* expeditions.

[61] All of this leads me to the question of what is relevant for purposes of an assessment appeal? How should assessors and boards approach the concept of relevance? What is adequate disclosure in any given case?

[62] Reading *Southland* in its entirety leads me to conclude that the concept and scope of disclosure is not free-standing but must be tethered to the grounds set out in the notice of appeal. My reasoning is as follows.

[63] First, as *Southland* makes clear, following issuance of the notice of assessment, there is no general obligation imposed on assessors or cities to disclose information that is relevant to an assessment. Disclosure at this point in the process is a matter of discretion. However, the *may* turns to a *must* once an appeal is commenced, in which case assessors are obliged to disclose certain information. This requirement flows from statute and is not an aspect of procedural fairness imposed by common law: see *Southland* at para 44. Put another way, the obligation to disclose is triggered by an assessment appeal brought pursuant to s. 198 of the *Act*.

[64] Section 200 deals with disclosure. It sets time frames for the parties (assessed persons and cities) by which they must disclose any written materials they intend to rely upon at the board hearing.

[65] Assessors – who are administrative decision-makers and not a party, per se, to the appeal – are statutorily obliged by s. 200(4)(a) and s. 200(4)(b) to serve and file "a complete assessment field sheet" and "a written explanation for how the assessment was determined". This body of information is referred to as the neutral record and is said to stand "apart from the advocacy and evidentiary material" filed by the assessed person and the municipality pursuant to ss. 200(1), (2), and (2.1) (*GFL* at para 49).

[66] Picking up on the nature of the decision being made by boards of revision, *Southland* observed how the appeal process is intended to be adversarial in nature, involving, among other things, "evidence that is disclosed in advance" (at para 47). That consideration, in the broader scheme of the legislative appeal structure, weighed in favour of the determination that parties "have court-like participatory rights (and, consequently, court-like disclosure obligations)" (at para 47) and the Court's conclusion that "procedural fairness in an appeal hearing requires that the parties to assessment appeals must have the opportunity to know the case to be met and to put forward their argument and evidence on issues raised" (at para 47).

[67] That passage means what it says: procedural fairness *in the context of an assessment appeal* requires appellants to know the factual and legal basis for the assessment under appeal so they are enabled to "state their case for establishing or dispelling allegations of error" (at para 68).

[68] Of course, knowing the case to be met does not answer the question of the breadth of disclosure. *Southland* confirms that this is the case. It does not describe the scope of disclosure in a broad, unconstrained context untethered from the issues raised by an appellant on appeal. Indeed, as pointed out in *Southland*, the disclosure sought must still be relevant.

[69] A useful and principled approach to the relevance of documents in an assessment appeal context can be drawn from the rules and jurisprudence that relate to disclosure and production of documents in civil actions. In that regard, Rule 5-6(1)(b) of *The King's Bench Rules* requires parties to an action to prepare an affidavit of documents that discloses "all documents *relevant* to any matter in issue in the action" (emphasis added). The precursor to Rule 5-6(1)(b) – i.e., Rule 212(1) – was stated more widely. It required disclosure of any document "relating to any matter in question". The latter concept – referred to as the broad relevance test – applied "to both production and discovery obligations" (*Canadian National Railway Co. v Clarke Transport*, 2013 SKQB 394 at para 15, 432 Sask R 63 [*CNR*]).

[70] In *CNR*, a judge of the Court of Queen's Bench (now the Court of King's Bench) determined that broad relevance was no longer the operative standard. Whether a document needs to be disclosed engages consideration of both logical relevance and materiality. Logical relevance speaks to whether the evidence tends to prove "the fact or matter for which it is offered" or sought (at para 21). Materiality, on the other hand, refers to whether the fact or matter that one seeks to prove or disprove is in issue in the action:

> [22] What determines whether a fact or matter is material are the elements of the cause(s) of action and what the parties have pled as being the facts or their positions. Only if the matter is in issue in the action is the matter material, in a jurisprudential sense. If the matter qualifies as being material to the action, the next question is whether the evidence being proffered tends to prove or disprove the matter in issue. If the question does not relate to a matter in issue as particularized by the pleadings, then the matter is not relevant to any matter in issue.

[71] This narrower conception of relevance for disclosure purposes under *The King's Bench Rules* is said to align with the foundational principle of proportionality, which aims to strike a balance between an efficient, accessible, and affordable system of justice, without compromising fairness, and to identify the real issues in dispute and facilitate the quickest means of resolving a claim.

[72] Applying that same conceptual approach to disclosure in an assessment appeal context rationally supports the conclusion that the scope of assessor disclosure must be linked to any matter put in issue *in the notice of appeal*. That is to say, the documents sought by the assessed person must be material in the sense that they tend to prove or disprove the fact or matter the appellant seeks to prove or disprove on appeal. Logically speaking, this approach to the question of relevance runs counter to the idea of a broad, open-ended disclosure obligation encompassing all things assessment-related, unhinged from the issues and allegations of error identified in the notice of appeal.

[73] Indeed, as the Committee itself recognized in a post-*Southland* decision – *Various (Altus Group Limited) v Regina (City)*, 2024 SKMB 9 – a tailored approach to disclosure is both intended by the Legislature and is to be desired: "We do not read the legislation and the Court's interpretation of it as providing an unlimited power to order disclosure that extends to any and all activities and documents of the assessors, or even to any documents that may in any way relate, no matter how remotely, to the property or its assessment" (at para 41). I agree with those comments.

[74] Furthermore, much like *The King's Bench Rules*, the tailored approach reflects the principle of proportionality and adheres faithfully to the statutory scheme wherein taxes must be known and paid within a year. As appropriately noted in *Southland*, the significance of that structure led the Legislature to create a time-limited right of appeal in which boards of revision must conduct and conclude assessment appeal litigation in a timely manner. This means the hallmarks of speed, informality, expertise, and reduced costs are important considerations in the overall disclosure analysis; but those considerations cannot overwhelm a board's evaluation of disclosure requests.

[75] This is not to say there will never be disagreements concerning the relevance of documents or how far document disclosure should drill down into how the assessment was prepared in any given case. Appellants who apply for disclosure bear the burden of establishing how the sought-after material is relevant to their ongoing appeal. It is for boards of revision to properly analyze those requests, bearing in mind that necessary disclosure may very well extend beyond the informational framework set out in s. 200. Exercise of common sense, informed by knowledge and experience in assessment law and practice, is essential.

[76] In fairness to Canada Life's argument, it is conceivable that additional disclosure may reveal new or different allegations of error. However, as I noted above, s. 209 of the *Act* (which permits amendments to be made to the notice of appeal) can accommodate this possibility.

[77] To conclude, the approach to relevance and disclosure discussed above is consistent with the rules of natural justice and procedural fairness expressed in *Southland*. As I mentioned, *Southland* stands for the proposition that, since boards of revision are restricted to considering only the errors identified in the notice of appeal, it stands to reason that an appellant (a) should have access to the documents that tend to prove or disprove an issue raised by the appeal, and (b) should know the case to be met in order to put forth their argument and evidence. However, the principles of procedural fairness in the context of an assessment appeal are not open-ended. Rather, the following point made in *Southland* merits emphasis:

> [68] … the notion of a "fair hearing" before boards of revision is achieved where assessed persons, whether appellants or respondents, are fully informed of the factual and legal basis of the assessments under appeal so that they may state their case for establishing or dispelling allegations of error. Without full disclosure *of the relevant evidence* and the basis in assessment law and practice for assessments, assessed persons will not be in a position to identify or dispel allegations of errors of fact, principle or in the application of assessment law and practice to the facts.
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> (Emphasis added)

C. The Committee erred

[78] The Board concluded that the required pre-hearing disclosure had been satisfied and, consequently, "the Assessor was not in breach of any duty to disclose or procedural fairness" (*Board Decision* at 7). Pre-hearing disclosure, it said, is that required by s. 200 of the *Act*, "being the written record explaining the assessment, the field sheet, and all the evidence that the Assessor intended to rely upon in its 10-day submission" (at 7).

[79] The Committee upheld the *Board Decision*. While it acknowledged Canada Life's arguments and understood that a similar procedural fairness issue was on reserve before this Court, it saw no reason to depart from its previous jurisprudence in relation to disclosure. That being so, it found no error in the Board's conclusion that the Assessor's obligation to disclose was based solely on statute and that the Board had taken the statutory scheme into consideration in its *Baker* analysis. As I noted earlier in my reasons, the Committee concluded by writing, "the *Act* provides for disclosure as laid out in Section 200, that the *Act* does not provide for pre-hearing disclosure and, in the particular circumstances of the case under reserve, a refusal of an adjournment was not unfair" (*Committee Decision* at para 48).

[80] The Board grasped the concept of relevance by maintaining that "if the request is not relevant, then the request to seek production of such things has no place in the legislative scheme" (*Board Decision* at 3). It was alert to the idea that if a party seeks additional disclosure, it was within the purview of the Board to determine whether it should accept that submission. However, neither the Board nor the Committee mentioned, let alone grappled with, the undisclosed information that Canada Life had requested or considered whether it was relevant to the appeal at issue. The absence of any analysis reaffirms my conclusion that the Board did not put its mind to whether the Assessor and the City had disclosed all information relevant to the assessment appeal in either its 10-day submission or pursuant to s. 200(4) of the *Act*. The fact that the City and the Assessor appeared to comply with their obligations under s. 200 (by submitting material) was accepted as a full answer to Canada Life's request.

[81] Based on the reasoning of *Southland* and *Boardwalk*, I am persuaded that the Committee erred in law when it affirmed the Board's conclusion that disclosure was limited to the documents an assessor is statutorily obliged to disclose and, further, by not considering whether, as a matter of procedural fairness, an order for further disclosure could or should be made.

VIII. CONCLUSION AND REMEDY

[82] Much like this Court's approach in *Boardwalk*, since a notice of appeal may be amended following further disclosure, the Board's erroneous decision may have affected the breadth of argument that was open to Canada Life on appeal. Although Canada Life was given leave to appeal on two other issues, I am hard-pressed to see how resolution of those matters – particularly the comparability issue – can be decided without the relevant evidence, should further disclosure be ordered.

[83] The Committee has a full record of the proceedings before the Board and the authority under s. 223 of the *Act* to supplement the record. The Committee must conduct a de novo hearing of the 2021 assessment.

[84] The appeal is therefore allowed. The *Committee Decision* is set aside, with the matter remitted to the Committee for reconsideration.

[85] Given that the parties and the Committee did not have the benefit of *Southland* before the Committee rendered its decision, there will be no order as to costs.

"Schwann J.A."
Schwann J.A.

I concur. "Tholl J.A."
Tholl J.A.

I concur. "Kilback J.A."
Kilback J.A.