
Court of Appeal for Saskatchewan
Docket: CACV4466

**Citation: *Tarasoff v Saskatoon (City)*, 2025
SKCA 77**
Date: 2025-08-20

Between:

Cary Tarasoff

Appellant
(Plaintiff/Respondent)

And

City of Saskatoon

Respondent
(Defendant/Applicant)

Before: Tholl, Kalmakoff and McCreary JJ.A.

Disposition: Appeal allowed

Written reasons by: The Honourable Justice Jeffery D. Kalmakoff
In concurrence: The Honourable Justice Jerome A. Tholl
The Honourable Justice Meghan R. McCreary

On appeal from: KBG-SA-00759-2024 (Sask KB), Saskatoon
Appeal heard: June 5, 2025

Counsel: Cary Tarasoff on his own behalf
Alan Rankine for the Respondent

Kalmakoff J.A.

I. INTRODUCTION

[1] Cary Tarasoff appeals from a decision in which a Court of King's Bench judge, sitting in Chambers, granted an application by the City of Saskatoon [City] to strike his statement of claim under Rule 7-9(2) of *The King's Bench Rules* [Rules] (*Tarasoff v Saskatoon (City)* (27 November 2024) Saskatoon, KBG-SA-00759-2024 (Sask KB) [Decision]).

[2] Mr. Tarasoff contends that, in the *Decision*, the Chambers judge erred by misinterpreting certain provisions of *The Cities Act*, SS 2002, c C-11 [Act], by failing to give sufficient reasons, and by not affording him the opportunity to amend his claim before striking it.

[3] For the reasons that follow, I would allow the appeal.

II. BACKGROUND

[4] Mr. Tarasoff owns a home in the City. When he purchased the land where his home was constructed in 1999, the subdivision in which it was located was zoned for single-family dwellings. He expected that the land would remain zoned that way.

[5] However, in 2024, the Government of Canada introduced a program called the Housing Accelerator Fund [HAF]. The purpose of the HAF was to provide infrastructure funding to cities to facilitate the construction of higher density housing. In order to access the funding available under the HAF, the City was required to amend its zoning bylaw (*City of Saskatoon Bylaw No. 8770* [Zoning Bylaw]) to allow for the construction of multi-unit dwellings in neighbourhoods that had previously permitted only single-family dwellings.

[6] The City held public consultations concerning amendments that it proposed to make to the *Zoning Bylaw*. Mr. Tarasoff opposed the proposed amendments. This was because, based on his past experience and his professional knowledge, he was concerned that the amendments may lead to the City approving development projects for multi-unit dwellings without fully considering or accounting for the negative effects that he says the construction of such dwellings may have on his property and others in his neighbourhood, or the strain they would cause to existing City

infrastructure. He viewed the amendments to the *Zoning Bylaw* as something that would deprive members of the public of any opportunity to provide the City with constructive feedback or to voice valid concerns about potentially problematic development projects before they were approved. Accordingly, Mr. Tarasoff attended some of the public meetings and made submissions against the proposed amendments.

[7] On June 21, 2024, Mr. Tarasoff commenced an action against the City by filing a statement of claim. In the claim, he alleged that the City was not acting in good faith or with due diligence in pursuing the proposed amendments to the *Zoning Bylaw*, and identified various causes of action, including breach of contract, misrepresentation, negligence, private nuisance, and unjust enrichment. By way of remedy, Mr. Tarasoff's claim sought injunctive relief in the form of a "suspension of the HAF approval process for at least 90 days" to permit more information to be gathered concerning the impact of the proposed amendments or, alternatively, a permanent injunction halting the HAF approval process "until a final determination has been made on the main action".

[8] When he filed his statement of claim, Mr. Tarasoff also filed a without-notice application seeking a temporary injunction, for a period of 90 days, to "pause the [City] from proceeding further with the [HAF] approvals until suitable detailed engineering data is produced to show the limitations and costs of the HAF throughout the City Utility Systems and including the City Landfill". That application also came before the Chambers judge, who dismissed it on June 25, 2024. She gave a number of reasons for doing so, including that Mr. Tarasoff had not identified any jurisdictional basis upon which the relief he requested could be granted, and also that it would not be appropriate for the Court to intervene to pre-emptively interrupt the functioning of City Council absent some basis to conclude that City Council had acted illegally (*Tarasoff v Saskatoon (City)* (25 June 2024) Saskatoon, KBG-SA-00759-2024 (Sask KB)).

[9] City Council then held a special meeting, on June 27 and 28, 2024, to debate the amendments to the *Zoning Bylaw*. During the course of that meeting, City Council heard from numerous speakers, both in support of, and in opposition to, the proposed amendments. Following that, City Council voted on the amendments and passed them.

[10] On July 5, 2024, Mr. Tarasoff amended his statement of claim to seek a different remedy.

In his amended claim, he stated his prayer for relief as follows:

[26] That this Honourable Court orders a suspension of any HAF density infill projects within my subdivision until the [City] creates and publicly releases engineering reports to verify that the increased loading on existing services for water, sewer, and traffic will be safely provided for beforehand.

[27] If the Honourable Court wishes further, then to order the [City] to provide these same engineering reports for all other [City] subdivisions now facing non phased, random density infill projects in the future as a result of HAF.

[11] In September of 2024, the City applied to the Court of King's Bench for an order striking Mr. Tarasoff's claim under Rules 7-9(2)(a), (b) and (e), on the bases that it disclosed no reasonable cause of action, that it was frivolous or vexatious, and that it was an abuse of process. The Chambers judge granted the City's application and struck Mr. Tarasoff's claim in its entirety.

[12] In the *Decision*, the Chambers judge did not address the City's argument that Mr. Tarasoff's claim disclosed no reasonable cause of action. However, she concluded that the claim was both frivolous and an abuse of process, and that it ought therefore to be struck. The Chambers judge reasoned that, as Mr. Tarasoff had not used the process set out in the *Act* to challenge the legality of the amendments to the *Zoning Bylaw* or the procedure by which they were enacted, there was no basis upon which she could properly interfere with the City's legislative decisions. In that regard, she said:

[3] Mr. Tarasoff does not challenge the legality of the bylaw or the procedural manner in which it was passed, but rather seeks injunctive relief to prevent projects under this bylaw in his subdivision as well as justification of the City's decision through the creation and public release of engineering reports.

...

[9] ... *The Cities Act* makes it clear that the court should not involve itself with the affairs of a duly elected City Council unless it has acted illegally.

[10] In my view, the claim is frivolous and an abuse of process. There is a very clear and specific process set out under which an elector can challenge the legality of a bylaw pursuant to s. 320 of *The Cities Act*. Mr. Tarasoff has not followed the process set out in *The Cities Act* to challenge this bylaw. Subsection 320(6) makes it clear that if no application is made pursuant to subsection (1), the bylaw is binding.

...

[12] The statutory process to challenge a bylaw focusses largely on the legality of that bylaw. There is no challenge before the Court to the bylaw itself, or to the legality of the bylaw in question.

III. ANALYSIS

[13] As mentioned in the Introduction to these reasons, Mr. Tarasoff says the Chambers judge erred in three ways in striking his claim: (i) by holding that ss. 313 and 320 of the *Act* formed a complete statutory bar to his action against the City; (ii) by failing to give sufficient reasons; and (iii) by not affording him an opportunity to amend his claim before striking it.

[14] Cutting directly to the bottom line, I agree with Mr. Tarasoff that the Chambers judge erred by concluding that ss. 313 and 320 of the *Act* precluded him from seeking injunctive relief against the City without having first obtained an order declaring the *Zoning Bylaw* to be invalid or illegal. This error also infected the Chambers judge's decision to deny Mr. Tarasoff the opportunity to amend his claim. As those errors mean that appellate intervention is required, it is unnecessary to address Mr. Tarasoff's argument concerning the sufficiency of the Chambers judge's reasons.

A. Standard of Review

[15] Before proceeding further, it is worth saying a word about the applicable standard of review.

[16] The decision to strike a claim on the basis that it is frivolous is one that is reviewable for correctness (*Harpold v Saskatchewan (Corrections and Policing)*, 2020 SKCA 98 at para 21; *Hope v Gourlay*, 2015 SKCA 27 at para 16, 384 DLR (4th) 235). An action is frivolous if it is groundless and lacks substance (*Harpold* at para 63). Where it is plain and obvious that an action cannot succeed because it is statute barred, it may properly be struck as frivolous (*Yashcheshen v Janssen Inc.*, 2022 SKCA 140 at para 20).

[17] The determination of whether a claim should be struck as an abuse of process involves an exercise of discretion on the part of a Chambers judge (*Canada (Attorney General) v Merchant Law Group LLP*, 2017 SKCA 62 at para 100, [2017] 10 WWR 664; *Walker v Mitchell*, 2020 SKCA 127 at para 16, [2021] 4 WWR 555 [*Walker*]; *Canadian Pacific Railway Company v Kelly Panteluk Construction Ltd.*, 2020 SKCA 123 at para 43, 17 CLR (5th) 138). However, where the finding that a claim is an abuse of process rests on the interpretation of statutory provisions, that raises a question of law, reviewable for correctness (*Standing Buffalo Dakota First Nation v*

Maurice Law Barristers and Solicitors (Ron S. Maurice Professional Corporation), 2024 SKCA 14 at para 25, [2024] 9 WWR 221; *Regina Bypass Design Builders v Supreme Steel LP*, 2021 SKCA 82 at para 22; *Kot v Kot*, 2021 SKCA 4 at para 20, 63 ETR (4th) 161 [*Kot*]; and *MacInnis v Bayer Inc.*, 2023 SKCA 37 at para 38).

[18] The power to strike out claims as an abuse of process reflects the Court's inherent jurisdiction to guard against its process being used by litigants to harass or vex others, or in a way that would bring the administration of justice into disrepute (*Walker* at para 18, citing *Toronto v C.U.P.E., Local 79*, 2003 SCC 63 at para 51, [2003] 3 SCR 77). However, it is not a power that should be lightly exercised. A claim should only be struck on that basis where it is plain and obvious that allowing the action to proceed would be an abuse of process (*Hunt v Carey Canada Inc.*, [1990] 2 SCR 959). When the alleged abuse of process arises from a contention that the claim is statute-barred, it should not be struck if there is at least an arguable issue as to whether that is the case (*Nelson v Teva Canada Limited*, 2021 SKCA 171 at para 17).

B. The Chambers judge erred by finding that the provisions of the Act barred Mr. Tarasoff's claim for injunctive relief

[19] As I read the Chambers judge's reasons, her conclusion that Mr. Tarasoff's claim was both frivolous and an abuse of process turned on the fact that he had not availed himself of the process described in s. 320 of the *Act* for challenging the legality of the *Zoning Bylaw*. The Chambers judge found that, absent a successful challenge of that sort, s. 313 created a statutory bar to an action against the City for any form of relief related to the operation of the *Zoning Bylaw*. In my respectful view, the Chambers judge's conclusion in that regard rests on a legal error. Let me explain.

[20] Section 313 of the *Act* speaks to the ability of persons to bring an action against a city for anything done pursuant to an allegedly illegal bylaw or resolution. It reads as follows:

313(1) No action is to be brought for anything done pursuant to a bylaw or resolution that is illegal in whole or in part until:

- (a) one month after the bylaw or resolution or the illegal part of the bylaw or resolution is quashed or repealed; and
- (b) one month's notice in writing of the intention to bring the action has been given to the city.

(2) Every action mentioned in subsection (1) is to be brought against the city alone and not against a person acting pursuant to the bylaw or resolution.

[21] Language similar to that which appears in s. 313 is also seen in analogous statutes in several other provinces. Such provisions have long been interpreted by courts as prohibiting actions against municipalities for the recovery of damages alleged to have been caused by the operation of a bylaw enacted by a municipal council unless the bylaw has been quashed or declared to be illegal (see, for example: *Welbridge Holdings Ltd. v Metropolitan Corporation of Greater Winnipeg* (1969), 4 DLR (3d) 509 (Man QB), aff'd on other grounds (1970), 12 DLR (3d) 124 (Man CA), aff'd [1971] SCR 957; and *Hall v City of Moose Jaw* (1910), 3 Sask LR 22, at para 22 (KB) [*Hall*]).

[22] That said, there is also considerable support in the jurisprudence – both historic and modern - for the proposition that provisions like s. 313 do not form a statutory bar to actions for other types of relief, such as injunctive relief to restrain the operation of an allegedly invalid bylaw, or relief that is declaratory in nature.

[23] In *Gesman v Regina (City)* (1909), 10 WLR 136 (WL) (Sask SC) [*Gesman*], for example, the Court found that a provision similar to s. 313 neither precluded an action for a declaration that a bylaw is illegal or void, nor prevented the Court from granting an injunction restraining the City from acting under the illegal bylaw (see also: Ian Rogers, *The Law of Canadian Municipal Corporations*, loose leaf (2019-Rel 4) 2d ed, vol 3 (Toronto: Thomson Reuters, 2017) at §243.42 [Rogers]). The situation in *Gesman* was that the city had passed a bylaw providing for the closure of several streets to facilitate their sale to various companies. The plaintiffs subsequently brought an action for a declaration that the street and the lanes were still public highways. While the Court found that the bylaw was invalid, the city had contended that even if the bylaw was illegal, the plaintiffs' action could not be maintained due to s. 307 of the Regina Charter, which was similar in substance to s. 313 of the *Act*. Justice Lamont rejected the city's argument. Relying on decisions such as *Connor v Middagh* (1899), 16 OAR 356 (CA); *Rose v Township of West Wawanosh et al.* (1890), 19 OR 294 (Lexis) (QB) [*Rose*]; *Bannan v Toronto (City)* (1892), 22 OR 274 (Ont H CJ); and *Pease v Town of Moosomin* (1901), 5 Terr LR 207 (QB), he concluded that provisions like s. 307 of the Regina Charter acted as a bar only “in respect of actions sounding in damages”

(at para 18), and that they did not preclude actions seeking injunctive or declaratory relief, even where the impugned bylaw had not been quashed.

[24] In *Rose*, the plaintiff had brought an action against the township of West Wawanosh to restrain it from removing gravel from the plaintiff's land. The township claimed that a bylaw authorized it to enter the plaintiff's land when necessary and to take gravel from it. The township also argued that, even if the bylaw was illegal, s. 338 of *The Municipal Act*, RSO c. 184 (a similar provision to s. 313 of the *Act*) made it immune from civil action, as the bylaw had not been quashed. The Court found the bylaw to be illegal, rejected the township's argument concerning immunity, and held that the section did not prevent the plaintiff from seeking an injunction. In that regard, Street J. wrote:

[12] ... It is perhaps true that the plaintiff here might be unable until he had quashed the by-law to recover damages for any thing done under even such a by-law as this; but the damages here claimed are trifling; the substantial relief sought is an injunction to restrain the defendants from proceeding to enforce the rights they claim under this by-law. Sec. 338 does not tie the hands of a person threatened with damage under an illegal by-law; it only prevents his bringing an action to recover damages for a wrong already done him until he has quashed it. There is nothing therefore in that section to prevent the plaintiff from maintaining this action, so far as it is based upon a claim to restrain further damage.

(Emphasis added)

[25] In *Hall*, the plaintiff brought an action in relation to a bylaw enacted by the City of Moose Jaw, in which he sought damages, an injunction restraining the city from enforcing the bylaw against him, and a declaration that the bylaw was invalid. The city argued that the then-in-force equivalent of s. 313 of the *Act* barred the action, given that the bylaw had not been quashed or declared illegal. Justice Johnstone agreed that the plaintiff's "action for damages cannot be maintained so long as the by-law remains unquashed" (at para 22) but found that the plaintiff was nonetheless entitled to other relief, "namely, a declaration that the provisions of the by-law already referred to were and are invalid, and also to an injunction" (at para 23). He went on to say:

[24] In *Rose v Township of Wawanosh*, 19 O. R. 294, where an injunction was granted, Street, J., referring to *Wilson v. County of Middlesex*, commenting on sec. 338 (our 404), says: "Section 338 does not tie the hands of a person threatened with damage under an illegal by-law; it only prevents his bringing an action to recover damages for a wrong already done him until he has quashed it. There is nothing, therefore, in that section to prevent the plaintiff from maintaining this action, so far as it is based upon a claim to restrain further damages."

[25] The validity of the by-law may be incidentally questioned otherwise than by motion to quash, namely, by a motion to quash a conviction made

thereunder: *Regina v. Osier*, 32 U.C.R. 324; *Regina v. Belmont*, 35 U.C.R. 298; (2) or in an action of replevin; *Wilson v. County of Middlesex*, 18 U. C. R. 348; (3) or for a mandamus; (4) or in an action for an injunction to restrain the breach of the by-law, or to restrain the municipality from taking proceedings thereunder: *Jones v. Town of Port Arthur*, 16 O.R. 474; *Rose v. Township of Wawanosh*, 19 O.R. 294; *Smith v. Township of Ancaster*, 27 O.R. 276; *Petman v. City of Toronto*, 24 A.R. 53; (5) or a declaration that the by-law is invalid: *Mallott v. Township of Mersea*, 9 O.R. 611; or (6) incidentally upon the trial of an action: *Roberts v. Climie*, 46 U.C.R. 264.

[26] The reasoning in *Hall* was applied in *Pask v McDonald* (1974), 52 DLR (3d) 762 (Sask CA). In *Pask*, the plaintiffs commenced a class action on behalf of the ratepayers of the Town of Esterhazy, seeking a declaration that a resolution passed by the town council was illegal. Relying on a section of *The Urban Municipality Act, 1970* (Sask), c 78, that mirrored s. 313 of the *Act*, a Chambers judge had held that the plaintiffs had no right of action until the resolution in question was either quashed or repealed. While the plaintiffs' appeal to this Court was dismissed on other grounds, Hall J.A., writing for the Court, observed that the analog to s. 313 "constitutes a bar only to an action for damages. It does not apply to an action of the type considered here" (at para 18).

[27] Similarly, in *Wanderers Investment Company v City of Winnipeg; McPherson v City of Winnipeg* (1917), 27 Man R 450 (KB), the Manitoba Court of King's Bench held that statutory provisions similar to s. 313 of the *Act* did not preclude parties from bringing an action "to have a by-law declared illegal and to re-strain its enforcement without first procuring it to be quashed" (at 463; see also *Gook Country Estates Ltd. v Quesnel (City) et al*, 2005 BCSC 221 at paras 10–20, 39 BCLR (4th) 230).

[28] From all of this, I conclude that s. 313 of the *Act* does not constitute a statutory bar to claims for injunctive relief to prevent the City from acting under an allegedly illegal bylaw, even where the bylaw has not yet been quashed or declared invalid. The Chambers judge erred in law by holding otherwise.

[29] That is not the end of the matter, though. Section 320 of the *Act* creates a statutory process by which certain parties may apply to the Court of King's Bench to quash an allegedly illegal bylaw or resolution. As the Chambers judge correctly observed, Mr. Tarasoff had not availed himself of that procedure to challenge the legality of the *Zoning Bylaw*. And, as confirmed by his submissions in this Court, Mr. Tarasoff is not seeking to have the *Zoning Bylaw* quashed.

[30] Section 320 reads, in relevant part, as follows:

320(1) Subject to subsections (2) and (3), any voter of a city, any owner or occupant of property, any business within the city or the minster may apply to the court to quash a bylaw or resolution in whole or in part on the basis that:

- (a) the bylaw or resolution is illegal in substance or form;
- (b) the proceedings before the passing of the bylaw or resolution do not comply with this or any other Act; or
- (c) the manner of passing the bylaw or resolution does not comply with this or any other enactment.

(2) An application pursuant to this section must be made to the court within six months after the bylaw or resolution is passed.

...

(5) A judge of the court may: (a) quash the bylaw or resolution in whole or in part; and (b) award costs for or against the city and determine the scale of costs.

(6) If no application is made pursuant to subsection (1), the bylaw or resolution is binding, notwithstanding any lack of substance or form in the bylaw or resolution or in the proceedings before its passing or in the time or manner of its passing.

[31] The City contends that s. 320(6) reflects the principle that courts should not interfere with the legislative decisions of a duly elected city council unless the council has been shown to have acted illegally. It argues that s. 320 must be read as meaning that the *only* route by which to seek relief against the operation of an allegedly invalid bylaw is an application under s. 320(1), and that the Chambers judge was correct to find that to be the case. I am unable to accept that argument.

[32] I recognize that there is support in the jurisprudence for the proposition that an injunction should not be granted where there is an available statutory process for challenging a bylaw. Rogers explains the thread that runs through this line of authority in the following way:

Where a municipality proposes to carry into effect an invalid by-law or one which is not yet operative, it may be restrained by an injunction issued at the suit of an interested party to prevent damage which might otherwise occur. The jurisdiction of the court, however, is preventive and only ancillary and it cannot always be invoked where the attacking party might have quashed the by-law which the court is asked to restrain the use of, until its validity can be ultimately determined. Thus, the remedy will not be granted if there is another and appropriate and sufficient remedy available or if there has been unreasonable delay in making application to the court.

(at §192.4, citations omitted, emphasis added)

[33] As Rogers observes, courts have frequently declined to grant an injunction restraining the passing of a bylaw where there is an appropriate statutory process, like the one in s. 320 of the *Act*, available to quash it. For example, in *London (City) v Newmarket (Town)* (1912), 2 DLR 244 (WL)

(Ont SC) [*London v Newmarket*], in dismissing an action that sought the granting of an injunction to restrain the passing of a bylaw, Middleton J. stated that:

[4] [...] in my view an injunction should not be granted to restrain the passing of a bylaw. I do not think the Court has any right to interfere with the action of the municipal council at this stage. An injunction is an extraordinary remedy and ought not to be resorted to when there is an appropriate remedy in a motion to quash. No doubt an injunction can be obtained to prevent acting under an invalid by-law but this is very different from what is now sought.

[34] Similarly, in *Keay v Regina (City)* (1912), 6 DLR 327 (Sask KB) the plaintiff brought an action seeking an injunction preventing the passing of a bylaw. Chief Justice Wetmore dismissed the action, citing *London v Newmarket* with approval, and adding the following:

[7] ... I may merely add that in my opinion, when there is a procedure provided by Statute which will practically serve the same purpose as an injunction, the injunction ought not to be granted. I am of opinion that a proceeding under section 242 of the City Act would practically serve every purpose that the injunction would serve. If the city council acted wrongfully or without authority, and a proceeding is properly taken under sec. 242, the by-law would be quashed (or I must assume that it would), and any act done by the city under it would fall with it. There was no necessity for proceeding before the bylaw was passed that I can see.

(See also *Block Brothers Realty Ltd. v Capital (Regional District)*, [1984] 4 WWR 89 at 92–93 (BCSC); *Cairns v Yellowknife (City)*, [1987] NWTR 357 at 359–360 (NWTSC); and *Underhill v Bowen Island (Municipality)*, 2011 BCSC 1197 at paras 9–12).

[35] However, just as there are cases in which courts have declined to grant an injunction restraining the passing of a bylaw due to there being an alternative appropriate remedy to quash the bylaw, there are also decisions which hold that a plaintiff is not required to follow the statutory process to quash an already-passed bylaw in order to then challenge its legality and seek injunctive relief from its operation. For example, as discussed, in *Rose, Hall and Gesman*, the courts found that the plaintiffs could challenge the legality of the bylaws at issue and seek injunctive relief even though the bylaws had not been quashed under the relevant statutory schemes.

[36] Similarly, in *Wiswell v Metropolitan Corporation of Greater Winnipeg*, [1965] SCR 512 [*Wiswell*], the Supreme Court held that the statutory process provided in s. 206(4) of *The Metropolitan Winnipeg Act*, 1960 (Man), c 40 (which was similar in substance to s. 320 of the *Act*) could not be invoked as a bar to an action that sought a declaration that a bylaw enacted by the city was invalid (at 524–525).

[37] The reasoning from *Wiswell* was adopted and relied upon by this Court in *Pappenfus et al. v Pearce*, [1981] 2 WWR 291 (Sask CA). In *Pappenfus*, the plaintiff brought an action for a declaratory judgment that a resolution adopted by the council of the rural municipality appointing Mr. Pappenfus to be its representative on the hospital board was null and void, as well as an injunction restraining Mr. Pappenfus and the board from acting under the resolution. The municipality argued that the action was barred by ss. 195, 197 and s. 380 of *The Rural Municipality Act*, RSS 1978, c R-26 (ss. 195 and 197 of that statute corresponded with s. 320 of the *Act*). While the plaintiff had not followed the statutory scheme available to quash the resolution, Culliton C.J.S. found that the provisions at issue did not prevent the action for declaratory or injunctive relief, stating as follows:

[7] That the provisions of the *Rural Municipality Act* upon which the [municipality] have contended that the present action for a declaratory judgment was barred do not in law bar the action, is made clear in the judgment of Hall J. in *Wiswell v. Winnipeg*, [1965] S.C.R. 512, 51 W.W.R. 513, 51 D.L.R. (2d) 754. At p. 524, referring to provisions in the *Metropolitan Winnipeg Act, 1960* (Man.), c. 40, similar in principle to the provisions in the *Rural Municipality Act* which I have quoted, the learned justice said:

The section in question appears to provide a summary procedure to quash by-laws of the Metropolitan Council but it does not apply to an action such as this. There is nothing in the section depriving the appellants of their right to bring an action to have the by-law declared invalid: *Wanderers Invt. Co. v. Winnipeg*, 27 Man. R. 450, [1917] 2 W.W.R. 197, at p. 205.

[8] The right to question the validity of a municipal bylaw or resolution, other than by motion to quash, in my opinion, is correctly stated in Rogers *The Law of Canadian Municipal Corporations*, Second Edition, in paragraph 192.1, as follows:

It is well established that the validity of municipal by-laws and resolutions may be incidentally questioned otherwise than by a motion to quash. In particular, a by-law may be brought into question in the following ways: by a motion to quash or an appeal from a conviction thereunder; *by an action for a declaration that a by-law is invalid*; incidentally in the trial of an action; by an action to declare assessments invalid under the by-law attacked; in proceedings to obtain *mandamus*; in proceedings to obtain prohibition or *certiorari*; by an action for trespass against an officer acting under its authority; or in an action for an injunction to restrain the breach of a by-law or to restrain the municipality from enforcing or acting under the by-law; in an action for replevin; or in an arbitration to determine compensation for expropriated land.

.....

See also *Gesman v. City of Regina* (1909), 10 W.L.R. 136; *Hall v. City of Moose Jaw* (1910), 3 S.L.R. 22; Re Gordon and *The Be Laval Company Ltd.*, [1938] O.R. 462, and particularly Middleton, J.A., at page 468.

(Emphasis in original)

[38] As I see it, this strongly supports a conclusion that a plaintiff can challenge the legality of a bylaw and seek injunctive relief through means other than the statutory process provided in the *Act*. As stated by Rogers:

The earlier view of the courts of chancery was that their jurisdiction was only preventative and that they had power to restrain enforcement of a by-law of doubtful validity until the applicant had a chance to pursue his statutory remedy, but they declined a general jurisdiction to test its validity. Now, in view of the consolidation of the courts, complete relief will be given in one action and the question of the validity of the by-law can be determined at the same time. It seems clear, therefore, that an action may be brought to restrain the enforcement of a by-law and to have the by-law declared illegal without first procuring it to be quashed. Moreover, s. 273 of the *Ontario Municipal Act* [similar to s. 320 of *The Cities Act*] and corresponding provisions in the Acts of other provinces do not prevent the issue of an injunction before it has been quashed. An interim injunction was granted to restrain enforcement of a by-law of doubtful legality where irreparable injury was shown and the balance of convenience was in favour of the plaintiff [...].

(at §192.4, citations omitted, emphasis added)

[39] I find further support for this as a proper understanding of the statutory process in *Hall*, where, as noted above, Johnstone J. observed that the validity of a bylaw may also be challenged incidentally, including by way of an action that seeks an injunction or a declaration of invalidity as a remedy (at para 25). See also: *E.C. Argue Holdings Ltd. v Edenwold (Rural Municipality No. 158)* (1999), 179 Sask R 142 at para 12; and *Edenwold No. 158 (Rural Municipality) v Murray*, 2017 SKQB 15 at para 28.

[40] Pulling this all together, I am compelled to the conclusion that the legislative mechanism set out in s. 320 of the *Act* is not the only method by which it is possible to challenge the legality of a bylaw. It follows, then, that a failure to avail oneself of that procedure does not necessarily form a statutory bar to seeking a declaration of invalidity or injunctive relief. Respectfully, the Chambers judge erred in law by concluding otherwise.

C. The errors had an impact

[41] Having concluded that the Chambers judge erred in the ways that I have identified, it is then necessary to consider whether the errors affected the outcome, or whether they were inconsequential. In my respectful view, the errors cannot properly be described as inconsequential and, as such, it is appropriate to intervene.

[42] The Chambers judge found that Mr. Tarasoff's claim was both frivolous and an abuse of process because he had not used the procedure set out in s. 320 of the *Act* to have the *Zoning Bylaw* quashed, which meant that his claim for injunctive relief was statute-barred under s. 313. As I have discussed, that conclusion was premised on legal errors.

[43] Those legal errors also infected the Chambers judge's determination of whether Mr. Tarasoff should be permitted to amend his pleadings. Because striking a statement of claim deprives a plaintiff of their day in court, plaintiffs should be given an opportunity, where feasible, to amend their pleadings to correct deficiencies before those pleadings are struck (*Yashcheshen v Teva Canada Ltd.*, 2022 SKCA 49 at para 43, [2022] 8 WWR 60, citing *Sagon v Royal Bank of Canada* (1992), 105 Sask R 133 (CA); and *Thirsk v Public Guardian and Trustee of Saskatchewan*, 2017 SKQB 66 at para 11). While amendments to pleadings are not automatic and should be denied if the proposed amendment would nevertheless properly be struck under Rule 7-9, the determination whether to permit an amendment must be informed by a proper understanding and application of the relevant legal principles (see: *Aecon Mining Construction Services v K + S Potash Canada GP*, 2024 SKCA 48 at paras 14–16). A decision to permit or not permit an amendment is discretionary in nature, meaning that appellate interference will be warranted if the decision is polluted by a palpable and overriding factual error, or by a legal error such as the misidentification or misapplication of the legal criteria that govern the exercise of discretion (*Aecon* at para 16; *Kashuba v Wilton (Rural Municipality)*, 2022 SKCA 37 at para 54, 87 CPC (8th) 264; and *Kot* at para 20).

[44] As I have stated, the Chambers judge premised her decision to deny Mr. Tarasoff the opportunity to amend his pleadings entirely on the fact that he had not followed the process in s. 320 of the *Act* for challenging the *Zoning Bylaw*. In other words, she made a legal error in that respect by misidentifying the legal criteria governing her exercise of discretion. Accordingly, that aspect of the *Decision* also cannot stand.

IV. CONCLUSION

[45] For the foregoing reasons, the appeal must be allowed, and the *Decision* must be set aside.

[46] To be clear, in reaching this result, I am not offering an opinion as to whether the relief that Mr. Tarasoff seeks in his claim should be granted, or whether he should be permitted to make amendments. I have merely found that the bases upon which the Chambers judge relied, both in striking the claim denying him the opportunity to amend the claim, were legally incorrect.

[47] I also offer no comment on whether, as the City had argued before the Chambers judge, Mr. Tarasoff’s claim should be struck under Rule 7-9(2)(a) as disclosing no reasonable cause of action. The Chambers judge did not address that ground of the City’s application, and it was not before the Court on this appeal. Accordingly, I would direct that the matter be remitted to the Chambers judge for determination of that question, and to consider whether Mr. Tarasoff should be permitted to further amend his claim.

[48] I would make no order as to costs.

“Kalmakoff J.A.”

Kalmakoff J.A.

I concur.

“Tholl J.A.”

Tholl J.A.

I concur.

“McCreary J.A.”

McCreary J.A.