KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 39**

Date: **2025 03 12**
File No.: KBG-SA-01133-2022
Judicial Centre: Saskatoon

BETWEEN:

GAS PLUS (SASK-MAN) INC.

APPELLANT

- and -

HIS MAJESTY THE KING, SASKATCHEWAN,
AS REPRESENTED BY THE MINISTER OF FINANCE

RESPONDENT

Counsel:

Katelyn A. Rath	for the appellant
Justin T. Stevenson	for the respondent

JUDGMENT
March 12, 2025

CROOKS J.

Introduction

[1] On November 30, 2021, the Ministry of Finance [Ministry] served a Notice of Assessment [NOA] on Gas Plus (Sask-Man) Inc. [GPSM] with respect to an alleged liability for Provincial Sales Tax [PST] owing. The amount was deemed owing pursuant to the terms of *The Provincial Sales Tax Act*, RSS 1978, c P-34.1 [*PSTA*] and *The Revenue and Financial Services Act*, SS 1983, c R-22.01 [*RFSA*]. The NOA provided an estimate "for collecting PST and not remitting it for the period February 1, 2019 to November 30, 2019" with a total liability of $64,017.06.

[2] GPSM appealed the NOA and that appeal was heard by the Board of Revenue Commissioners [Board]. In the Board's decision dated October 18, 2022 (2022 BRC 5) [*Decision*], the Board determined that GPSM is liable to the Ministry for outstanding PST amounts under the *RFSA*.

[3] GPSM now appeals the *Decision* of the Board, pursuant to s. 21 and s. 62 of the *RFSA*.

Background

[4] GPSM leased and operated a retail gas bar at #9 – 3310 Fairlight Drive in Saskatoon, Saskatchewan. GPSM had a verbal "handshake" agreement with Marr Management Inc. [MMI] for the joint operation of a gas station and convenience store.

[5] MMI operated a convenience store at this location – "Night Owl Grocery and Confectionary" – which sold confectionary items, but also facilitated the sale of gas and related products for GPSM via pumps and storage tanks GPSM owned on the property. Richard and Mandi Marr – [Marrs] were directors of MMI at the relevant time.

[6] The Board notes that under the arrangement between GPSM and MMI, cash sales were handled by MMI, but credit and debit card sales for both fuel products and confectionary items were processed through electronic point-of-sale terminals provided by agreement with Moneris Solutions Corporation [Moneris]. Under that agreement, Moneris transmitted sums it collected, presumably less fees owing to it, to GPSM. This would include both fuel and confectionary sales made through the point-of-sale terminal.

[7] GPSM would then reconcile the total point-of-sale purchases, retaining the amounts for fuel (including PST) from the total and pay all amounts for confectionary point-of-sale purchases (including PST) to MMI. GSPM would then

submit PST on its fuel and related product sales to the Ministry and assumed MMI was doing the same on their confectionary sales. This was the practice for the previous 10 years.

[8] However, in 2019, MMI encountered financial difficulties, and the Ministry became aware of MMI's liability for unpaid PST. The Ministry attempted recovery against MMI and the Marrs. The Ministry was able to collect just over $9,000 from MMI for PST owed. However, the Marrs filed for bankruptcy protection and MMI ceased to operate as a corporation. The Board stated in the *Decision* that the Ministry filed claims with the bankruptcy trustee.

[9] The Board stated at paragraph 5 of the *Decision* "… the Ministry maintains its collection attempts toward MMI, and its directors, are exhausted and the amount of $64,017.06 remains unpaid."

[10] The Ministry then pursued collection against GPSM, alleging that they were also responsible for the unremitted PST on the confectionary sales. The Ministry relies on GPSM's role as a "collector" under the *RFSA*.

[11] In the *Decision*, the Board noted that GPSM did not dispute the amount of the assessment, only disputing that it is a collector under the *RFSA* and therefore liable for payment of the PST for confectionary sales.

[12] The Board largely focussed on whether GPSM met the definition of "collector" under the *RFSA*. The Board found GPSM to be a "collector" and determined there was a shared obligation to the Ministry to pay the outstanding amounts.

[13] The Board ultimately concluded that GPSM is a "collector" and is liable for the assessment amount of $64,017.06.

Interim Applications

[14] There were two interim applications addressed prior to the within appeal hearing. These applications were interconnected in that GPSM was seeking to compel the Ministry to provide information related to the steps taken to collect the owing PST from MMI and the Marrs, including through any bankruptcy proceedings, and seeking to adduce new evidence related to the Board's findings relating to bankruptcy collection steps.

[15] In a fiat dated September 13, 2023, I dismissed the application seeking to compel the Ministry to disclose information and documents, specifically regarding the steps taken to collect the PST through information and documentation relating to the bankruptcies of third parties.

[16] On October 11, 2023, the application to admit fresh evidence was withdrawn.

Issues

[17] There are nine grounds of appeal set out in the Notice of Appeal. Although there are multiple grounds of appeal identified, the central question and the focus of counsel is whether GPSM is responsible for the payment of the PST owed for the confectionary sales, even though it was MMI who was ultimately in receipt of those amounts.

[18] The issues which I have specifically addressed in this application are:

1. Did the Board err in finding GPSM is a "collector"?

2. Did the Board err in finding a shared obligation to remit PST?

3. Did GPSM alleviate its obligations by providing these funds to MMI?

Positions of the Parties

[19] GPSM does not dispute they are a "collector" of the taxes from fuel sales. However, they dispute being a "collector" for the confectionary sales which form the foundation of the Ministry's NOA for unremitted PST. GPSM views their role in these transactions as being akin to that of Moneris, who simply facilitated the transactions without any legal obligation to collect or remit PST. GPSM argues that although the collection of sales first occurred in their bank account, the confectionary sales and associated taxes were subsequently provided to MMI. As such, GPSM views their role as simply facilitating the collection, without any obligation to remit. GPSM takes the position that the Board erred in interpreting their relationship with MMI under s. 47 of the *RFSA*.

[20] GPSM applies the same reasoning to s. 48 of the *RFSA*. They propose that being a facilitator of these transactions does not mean they are an "agent" or "trustee". Alternatively, they propose that Moneris would also meet this definition.

[21] The Ministry takes the position that the Board made no error. GPSM is a "collector" under the *RFSA* and, as such, has an obligation to remit the PST they collected.

A. Standard of Review

[22] Section 21 of the *RFSA* sets out the procedure to be followed and the jurisdiction of this Court in an appeal:

> **21** …
>
> (11) On appeal, the court shall apply the following standards of review:

> (a) correctness with respect to questions of law;
>
> (b) palpable and overriding error with respect to questions of fact and mixed fact and law.
>
> (12) At the hearing of the appeal, the court shall hear and consider the cause based on the material which was before the board at the hearing conducted before it and on any further material or evidence that the court may, on any terms that it considers appropriate, permit.
>
> (13) The court may:
>
> (a) affirm the decision of the board;
>
> (b) amend or reverse the decision of the board insofar as it is based on any error in law; or
>
> (c) refer the matter of assessment back to the minister for reconsideration.
>
> …

[23] In *Total Oilfield Rentals Limited Partnership v Saskatchewan (Finance)*, 2021 SKCA 40 at para 17, the Saskatchewan Court of Appeal confirmed the applicable standard of review is correctness on questions of law and palpable and overriding error on questions of fact and mixed fact and law.

[24] The questions to be addressed in this appeal are those of mixed fact and law and attract a standard of review of palpable and overriding error.

[25] In applying that standard, the Ministry points to the guidance of the Supreme Court of Canada in *Benhaim v St-Germain*, 2016 SCC 48, [2016] 2 SCR 352:

> **38** It is equally useful to recall what is meant by "palpable and overriding error". Stratas J.A. described the deferential standard as follows in *South Yukon Forest Corp. v. R.*, 2012 FCA 165, 4 B.L.R. (5th) 31, at para. 46:
>
> > Palpable and overriding error is a highly deferential standard of review ... . "Palpable" means an error that is obvious.

> "Overriding" means an error that goes to the very core of the outcome of the case. When arguing palpable and overriding error, it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall.

B. Analysis

Issue 1: Did the Board err in finding GPSM is a "collector"?

[26] The *Decision* sets out the provisions of the *RFSA* that the Board relied on:

> [29] Pursuant to the *RFSA*, once the Ministry makes an assessment regarding PST, any person (or company) so assessed must prove error (see subsections 60(1) and 60(2) of the *RFSA*). The Ministry must have "reasonable grounds" to believe tax is due and owing. In this instance, the Ministry relied on its investigation of the unpaid tax owing by MMI, its pursuit of the Marrs as directors of MMI, and its knowledge of the operating "agreement" between GMSM and MMI. Further and notably, GPSM does not dispute that the sums identified by the Ministry are due and owing; it disputes that it is a collector pursuant to the legislation and liable for payment of the sums.
>
> …
>
> [31] The following subsections of the *RFSA* fall under the heading Part III, Revenue Collection, Interpretation. The application to this appeal comes in defining who is a "collector" pursuant to that legislation:
>
> **47(1) In this Part:**
>
> **(a) "collector" means a person authorized or required to collect a tax by a revenue Act or by an agreement made between the minister and that person pursuant to a revenue Act and includes:**
>
> **(i) a vendor as defined in *The Provincial Sales Tax Act*; …**
>
> **(e) "revenue Act" means:**

> **(ii) *The Provincial Sales Tax Act*;**
> **and includes any regulations made pursuant to an Act described in subclauses (i) to (xii);**
> **…**

[32] The following section of the *RFSA* falls under the heading Liability for Tax and establishes the liability of any collector to hold and pay such tax to the Crown:

> **Tax collected held in trust**
> **48(1) In this section:**
> **(a) "collector" includes anyone acting as a trustee or agent of a collector; …**
>
> **(2) Every collector who collects a tax pursuant to any revenue Act shall hold the amount of the tax in trust for the Crown and any collector who collects or is deemed to have collected a tax pursuant to any revenue Act:**
> **(a) is deemed to hold the amount of that tax in trust for the Crown; and**
> **(b) is responsible for the payment over of that tax in the manner and at the time provided pursuant to this Part, [or] any revenue Act or the regulations. …**

[27] Relevant to the definition of a "collector" in s. 47(1)(a)(i) of the *RFSA* is that of "vendor" under s. 3 of the *PSTA*:

> **3**(1) In this Act:
>
> …
>
> (o) "vendor" means, unless otherwise specified, any person who, within the province and in the course of his business or in the course of continuous or successive acts:
>
> (i) sells or leases tangible personal property to a consumer or user at a retail sale in the province for purposes of consumption or use, and not for resale;

> (ii) sells or leases taxable services to a user at a retail sale in the province for purposes of use and not for resale; or
>
> (iii) sells tangible personal property to a consumer or user to be used by the consumer or user for the purpose of promotional distribution.
>
> (1.1) For the purpose of the definition of 'vendor' and subject to the regulations, a retail sale in the province includes a retail sale of tangible personal property or of a taxable service by a person who does not otherwise carry on business in Saskatchewan, if the tangible personal property or the taxable service is acquired for use or consumption in or relating to Saskatchewan.
>
> (1.2) For the purpose of the definition of 'vendor' and subject to the regulations, a retail sale in Saskatchewan includes a retail sale of a contract of insurance as defined in subsection 5.9(1) by a person who does not otherwise carry on business in Saskatchewan, if the contract of insurance is acquired for use or consumption in or relating to Saskatchewan.
>
> …

[28] Section 8.1(1) of the *PSTA* addresses the obligation to remit taxes collected:

> **8.1**(1) Unless otherwise provided for in this Act, all taxes imposed pursuant to this Act are to be collected and remitted to the minister in accordance with Part III of *The Revenue and Financial Services Act* and the regulations made pursuant to that Part.

[29] GPSM and MMI had a "handshake" agreement that GPSM would collect all non-cash purchases and provide MMI with those proceeds, including PST paid. The collection of PST by GPSM was required pursuant to their obligations under the *RFSA* and *PSTA*. There is no evidence that Moneris carried the same obligation to collect PST, nor is there any evidentiary support which suggests GPSM and Moneris are in the same position *vis-à-vis* the collection of PST. This is significant as there is, presumably, more than a "handshake" agreement between GPSM and Moneris regarding their role in

facilitating these transactions, although the nature of that agreement does not appear to have been before the Board.

[30] There is no evidence that Moneris had a legal obligation to collect PST, which is distinct from GPSM's obligations as a "vendor" under the *PSTA* and a "collector" under the *RFSA*. The *RFSA* references that collection is "pursuant to any revenue Act". There is nothing in the legislation that suggests Moneris was obligated by any revenue Act to collect a tax, which distinguishes their position from GPSM.

[31] GPSM relies on *Law Society of Saskatchewan v Stevenson (Re),* 2013 SKLSS 9, [2013] LSDD No 187 [*Stevenson*], which related to a lawyer's failure to remit PST owed to the Ministry. Based on the evidence at that hearing, the Panel determined that s. 48(2) of the *RFSA* created a deemed statutory trust in favour of the Government of Saskatchewan in respect of PST collected or deemed collected. The evidence was that the deemed statutory trust in s. 48 of the *RFSA* is a legislative device with the sole purpose of giving the Government of Saskatchewan priority over other creditors of a tax collector; a priority the government loses in bankruptcy proceedings.

[32] However, the issue before the Panel in *Stevenson* related to the professional conduct of a member of the Law Society of Saskatchewan. The failure to remit PST in that case included consideration of the comingling of "trust funds" with those held under a "statutory trust" and whether a separate account is required to ensure the traceability of those funds.

[33] I find the manner of collection and the issue of conversion in *Stevenson* to be of limited relevance to the issues raised on the within appeal.

[34] What is clear is that as a "vendor" under the *PSTA* and given the obligation created through the collection of a tax pursuant to a revenue Act, GPSM meets the definition of a "collector" under the *RFSA*.

[35] There is no palpable and overriding error in the Board's rejection of GPSM's position that they were in the same position as Moneris. I would similarly reject this position.

[36] Likewise, there is no palpable and overriding error in the Board's conclusion that GPSM is a "collector" under the *RFSA*.

Issue 2: Did the Board err in finding a shared obligation to remit PST?

[37] At paragraph 43 of the *Decision*, the Board determined there was a shared obligation between MMI and GPSM to remit PST for confectionary sales.

[38] GPSM suggests there cannot be a shared obligation with MMI and that the Board erred in making this finding. They suggest this would lead to the potential for the duplicate payment of taxes. Further, they suggest that as separate entities, there was no intention to create a shared obligation as there was no trust or agency between them as separately operating corporations.

[39] The Ministry suggests that the legislation does not limit the obligation to one corporation. Instead, they point to the wording of s. 48(2) of the *RFSA*, which provides that "every collector who collects a tax pursuant to any revenue Act" shall hold that amount in trust for the Crown and is responsible for payment.

[40] The *RFSA* does not limit the obligation to remit PST to the collector who ultimately holds those funds. Rather, that obligation is extended to *every* collector who collects that tax.

[41] GPSM's arrangement with MMI, although consistent with their past practice, does not alleviate their obligation to hold and remit the PST they collected.

[42] There is no palpable and overriding error in the Board's finding that GPSM and MMI share the obligation for payment of the outstanding PST to the

Ministry.

Issue 3: Did GPSM alleviate its obligations by providing these funds to MMI?

[43] The Ministry suggests that the PST was held in trust pursuant to s. 48(2) and that payment to a third party does not alleviate their obligation. The Ministry points to s. 21 of *The Revenue Collection Administration Regulations*, RRS c R-22.01 Reg 2 [*Regulations*], which provides:

> **21**(1) A vendor or registered consumer, as the case may be, shall remit to the minister the amount of tax collected or payable less the allowance allowed by section 14 with the required return.

[44] Under the *Regulations*, a "vendor" carries the same definition as that in the *PSTA*.

[45] GPSM takes the position that their obligation was fulfilled when they paid these funds to MMI, who was ultimately responsible for remitting the required PST to the Ministry. They suggest that requiring GPSM to pay this amount a second time would result in an injustice. GPSM relies on s. 50 of the *RFSA*, which provides:

> **50**(1) A taxpayer on whom tax is imposed remains liable to the Crown for the tax until the taxpayer has paid the tax to a collector or the minister as required pursuant to this Part or any revenue Act.
>
> (2) Where a taxpayer fails to pay all or any part of the tax, the minister may:
>
> (a) bring an action in a court of competent jurisdiction to obtain payment of the tax as a debt due to the Crown; or
>
> (b) proceed in accordance with sections 60 to 63 or in accordance with section 64 to collect the tax.

[46] In my view, s. 50 of the *RFSA* applies to those who "consume" through

purchase from a vendor or "use" through purchase or lease from a vendor. The intention of s. 50 relates to the obligations that arise by the user or consumer to pay PST to a vendor, not to the vendor's obligation to remit PST to the Ministry flowing from that transaction. As such, the user or consumer does not carry an ongoing liability for PST once they have paid that amount to a vendor or collector.

[47] The Board made no palpable and overriding error in determining that payment from one collector to another collector does not alleviate either party's obligation to remit the PST collected to the Ministry.

Additional Issues Raised on Appeal

[48] In the Notice of Appeal, GPSM sets out a number of grounds pertaining to the procedural decisions made by the Board in the conduct of this proceeding. GPSM relies on s. 61(5) of the *RFSA*, which provides:

> **61**(5) Where the Board of Revenue Commissioners receives a notice of appeal, it shall:
>
> > (a) consider the matter and may hold any hearing and make any investigation it considers necessary to make its decision; and
> >
> > (b) affirm or amend the estimate of the minister and, after making its decision, immediately notify the appellant and the minister of its decision.

[49] The remaining grounds set out in the Notice of Appeal relate largely to the inclusion of third parties, an issue which is not relevant given that GPSM can and does carry shared liability for the PST amounts. There is no dispute that MMI was also a "collector" under the *RFSA*; however, they appear to be insolvent. The issue as to whether Moneris is also liable does not mitigate GPSM's liability, nor did the Board or this Court view there to be sufficient evidence to establish that Moneris was liable in any event under the *RFSA* or the *PSTA*.

[50] Further, the Board determined that the issue of whether another party may be liable was not required to ascertain whether GPSM was obligated to remit the PST owing to the Ministry. As set out at para. 25 of the *Decision*, the Board was clearly aware of their authority under s. 61 of the *RFSA* and determined that the exercise of that authority was not necessary to determine the issue before them. GPSM has pointed to no authority under the legislation that would permit a third-party claim by a collector.

[51] I find no error in the Board's reasons on the issue, which are clearly set out at paras. 7 to 26 of the *Decision*.

[52] In addition, the collection efforts pertaining to MMI and the Marrs do not alleviate GPSM of their obligations as a "collector" under the *RFSA*.

Conclusion

[53] GPSM placed itself in the position of a collector in relation to the confectionary sales. Had they maintained separate methods of collection specific to their own business of gas sales, the mutual obligation for the remittance of PST may not have arisen. However, that is not the factual foundation before the Board or this Court. Instead, through a handshake agreement, GPSM and MMI both placed themselves in a position where they carried a shared responsibility in relation to the obligation to remit PST to the Ministry. As noted in the *RFSA*, every collector holds these funds in trust for the Ministry.

[54] I find no palpable and overriding error in the Board's findings or determinations. The appeal is dismissed.

Costs

[55] The Ministry has been the successful party. They seek taxable costs. To assist the parties in bringing finality to these proceedings, I am setting costs at $5,000,

payable by GPSM to the Ministry within 30 days of the date of this Judgment.

[56] In reviewing Column II of the Tariff of Costs, I assess this amount to be approximate to, albeit slightly less than, what would be reached through a taxation of costs.

_____J.
N.D. CROOKS