

KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 23**

Date: **2025 02 12**
File No.: QBG-RG-00581-2021
Judicial Centre: Regina

BETWEEN:

MORE & BETTER ASSET DEVELOPMENT CORP.

PLAINTIFF

- and -

THE TOWN OF FORT QU'APPELLE

DEFENDANT

Counsel:

Dallas Smith
Lauren J. Wihak, K.C.

for the plaintiff
for the defendant

FIAT
FEBRUARY 12, 2025

BERGBUSCH J.

I. OVERVIEW

[1] This application concerns the subject-matter competence of this Court to entertain a taxpayer's action challenging its liability for municipal taxes. The taxpayer did not receive an assessment notice or a tax notice in accordance with the applicable legislation but it nevertheless had an opportunity to appeal the assessment and its tax liability.

[2] The defendant applies for orders striking or dismissing the Statement of Claim on the basis that it concerns subject-matter that is the exclusive jurisdiction of a municipal board of revision and is subject to the statutory appeal processes provided in *The Municipalities Act*, SS 2005, c M-36.1 [Act] and *The Municipal Board Act*, SS 1988-89, c M-23.2. The plaintiff contends that, in the unusual circumstances of this case, the statutory regime does not provide an effective remedy.

[3] The issues raised by the defendant's application are the following:

- (a) Is it plain and obvious that the Statement of Claim is bound to fail?
- (b) In the alternative, should the claim be dismissed summarily?

[4] For the reasons that follow, I have concluded the Statement of Claim must be struck as it is plain and obvious that the claims the plaintiff advances are outside the jurisdiction of the Court of King's Bench. Considering this determination, I need not decide whether the claim could also be dismissed summarily because no genuine issue exists requiring a trial. I decline to award the defendant the costs of this application, however, as the dispute results in part from the defendant's failure to comply with its obligation to send the plaintiff an assessment notice and a tax notice in accordance with the *Act*.

II. BACKGROUND

[5] The Town of Fort Qu'Appelle, Saskatchewan [Town] is a municipality under the *Act*, located between Echo and Mission Lakes in the Qu'Appelle Valley.

[6] On about November 6, 2018, More & Better Asset Development Corp. [M&B] entered into a contract of purchase and sale with Valley Cabin Rental Inc. [Valley Cabin] to purchase four 624-square-foot cabins located on leased land owned by the Town. A condition of the purchase agreement was that M&B would assume

Valley Cabin's obligations under its lease agreement with the Town.

[7] Between December 2018 and May 2019, Noel Geremia, the director of M&B, had discussions with the Town over a long-term lease. On May 9, 2019, M&B entered into a new lease agreement [Lease] with the Town, with a lease term from June 1, 2019, to December 31, 2043. Pursuant to the Lease, M&B rents 0.44 acres of an undivided parcel of land legally described as Parcel #114233510, Block MR1, Plan 89R00194, Fort Qu'Appelle, Saskatchewan [Property].

[8] M&B's purchase of the cabins from Valley Cabin closed on or about June 14, 2019. M&B rents the cabins out year-round.

[9] In the Lease, the premises is defined as follows:

All that portion of Block MR-1 Fort Qu'Appelle, Saskatchewan Plan 89R000194 that portion of parcel #114233510, identified in Appendix A as 0.44 acres (hereinafter called the "Property")

[10] Among other things, the Lease requires M&B to pay property taxes on the leased premises as follows:

Taxes:

5) a) The Tenant shall promptly pay all business and other similar taxes imposed on the Property in relation to the business carried on thereon.

b) The Tenant shall promptly pay all Property taxes assessed or chargeable against the Property during the said term, said Property taxes to be based on the assessed value of the Property and building thereon as established by Saskatchewan Assessment Management Agency. For clarity property taxes shall consist of both land and improvements within the defined area of Appendix A.

[underlining added]

[11] According to Mr. Geremia, during negotiations with Valley Cabin he was provided with copies of various tax notices and receipts from the Town, which included a receipt dated September 18, 2017, showing that the corporation had paid \$4,271.95 for property taxes for 2017.

[12] M&B's solicitor received from the Town two tax certificates dated June 14, 2019, one for the land and one for the improvements. The named property owner on the certificates was the Town itself. The certificates provided the assessed values for the land (\$46,200) and the improvements (\$335,000). Both properties were classified as "Other Commercial and Ind." Both tax certificates indicated that taxes had not been levied for 2019 and the amount of taxes levied for the previous year was \$0.00. The full assessed value of the land and improvements was listed as exempt. (Exhibit C to the Affidavit of Noel Geremia dated March 13, 2023 [Geremia Affidavit])

[13] M&B's solicitor received another tax certificate from the Town dated June 20, 2019. This tax certificate was addressed to Valley Cabin and gave the identical assessed values for the land and improvements as the tax certificates issued to the Town. However, the tax certificate indicated that the taxable values of the land and improvements were \$46,200 and \$335,000, respectively, and the exempt amount was \$0.00. The tax certificate stated that taxes in the amount of \$6,662.08 had been levied for 2019. (Geremia Affidavit, Exhibit D)

[14] The Town did not send an assessment notice in relation to the land and improvements in 2019 to Valley Cabin or M&B.

[15] On or about December 10, 2019, M&B received an invoice from the Town for "2019 Lease Agreement Taxes" in the amount of \$6,662.08. (Geremia Affidavit, Exhibit F). In subsequent correspondence with the Town, Mr. Geremia questioned the fairness of the invoice and the Town's failure to provide M&B with an

assessment notice or a tax notice that M&B could challenge.

[16] On January 10, 2020, M&B received a demand letter from the Town's counsel, seeking payment of the property taxes and a 15% late payment charge of \$999.31. The Town took the position that clause 5(b) of the Lease was a tax agreement within the meaning of s. 291 of the *Act*.

[17] On March 13, 2020, M&B submitted payment to the Town of \$6,662.08 plus \$999.31 under protest.

[18] In April 2020, the Saskatchewan Assessment Management Agency [SAMA] prepared a notice of assessment for the land and improvements. The notice of assessment classified the land and improvements as commercial and valued the land at \$46,200 and the improvements at \$335,000. The notice of assessment listed the Town as the assessed person and stated that the land and improvements were exempt from taxation. A copy of this notice of assessment [2020 NOA] was provided to M&B. (Geremia Affidavit, Exhibit O)

[19] The Town's assessment roll for 2020 lists the assessed value of the land as \$46,200, and the exempt amount as \$46,200. It lists the assessed value of the improvements as \$335,000 and the exempt amount as \$335,000. These amounts correspond to the 2020 NOA. (Geremia Affidavit, Exhibit X)

[20] On June 23, 2020, M&B appealed the 2020 NOA to the Fort Qu'Appelle Board of Revision [Board]. The Board dismissed the appeal on November 13, 2020, holding that the property was subject to assessment and was properly classified as commercial rather than residential: *More & Better Asset Development Corporation v Fort Qu'Appelle (Town)* (13 November 2020) Regina, File No. 2020-A001, 2020 SKMBR 1871001 (Fort Qu'Appelle Board of Revision). M&B appealed the decision to the Assessment Appeals Committee of the Saskatchewan Municipal Board

[Committee]. The Committee dismissed the appeal in a lengthy decision on June 30, 2021: *More and Better Asset Development Corporation v Fort Qu'Appelle (Town)*, 2021 SKMB 36 [*Committee Decision*]. On September 24, 2021, Schwann J.A. dismissed M&B's application for leave to appeal the Committee's decision: *More and Better Asset Development Corporation v Town of Fort Qu'Appelle* (24 September 2021) CACV3868 (Sask CA) [*Leave Decision*]. I will have more to say about these decisions later in these reasons.

[21] On September 29, 2020, the Town sent M&B an invoice for "2020 Lease Agreement Taxes" in the amount of \$6,662.08. On January 8, 2021, M&B made a payment to the Town, under protest, of \$5,662.77, which was the amount charged on the invoice less the \$999.31 previously collected by the Town as a late payment penalty. On January 25, 2021, M&B received another invoice from the Town for \$1,998.62, which was the combined amount of the late payment penalties for 2019 and 2020. On March 5, 2021, M&B paid this amount to the Town, again under protest.

[22] M&B did not receive a notice of assessment in 2021 or 2022. However, it received two invoices on September 8, 2022, for "Lease Agreement Taxes" for 2021 and 2022. M&B paid the combined amount of these invoices, \$10,341.33, to its legal counsel to be held in trust pending the outcome of this litigation.

III. HISTORY OF THIS PROCEEDING

[23] M&B issued the Statement of Claim in this proceeding on March 10, 2021. Distilled to its essence, M&B's Statement of Claim alleges the Town represented, during lease negotiations, that the land and improvements were subject to taxation and M&B would receive notices of assessment and tax notices as tenant of the land. M&B received an invoice for "Lease Agreement Taxes" on December 1, 2019, rather than a notice of assessment for 2019. M&B disputes that amounts invoiced by the Town are

payable under the Lease. M&B did receive a notice of assessment for 2020 on or about April 20, 2020, listing the assessed person as the Town and indicating that the land and improvements were exempt from taxation.

[24] M&B seeks a declaration that the Lease is not a tax agreement within the meaning of s. 291 of the *Act* and judgment against the Town for payments M&B made under protest on March 13, 2020, January 8, 2021, and March 5, 2021, totaling \$15,322.78. In the alternative, M&B claims that no property taxes are payable for the land and improvements because the land and improvements are exempt from taxation, the Town did not issue an assessment notice to M&B for 2019 or 2020, as required by ss. 216 or 217(1)(d) of the *Act*, and the Town did not issue a tax notice to M&B for either 2019 or 2020, as required by ss. 216, 264(4)(b) and/or 267 of the *Act*. Consequently, M&B asserts no property taxes were “assessed or chargeable” within the meaning of clause 5(b) of the Lease. The Statement of Claim acknowledges that the use of the land changed in 1998 when Valley Cabin established a cabin rental business but says the Town cannot charge property tax in relation to the land unless it changes the status of the land and improvements from tax exempt to taxable, pursuant to ss. 264(4)(b) of the *Act*. In addition to seeking judgment for the amounts it paid under protest, M&B also seeks punitive damages against the Town, alleging:

- (a) the Town was grossly negligent in failing to understand that the change in use of the land in 1998 meant that the land was no longer exempt from taxation;
- (b) during the Lease negotiations, the Town informed M&B that the land and improvements were subject to taxation, but changed its position to assert that clause 5(b) of the Lease is a tax agreement and the land and improvements “were otherwise exempt from taxation through to February 8, 2021”; and

- (c) the Town forced M&B to pay tax invoices that the Town knew could not be enforced, under threat of terminating the Lease and by advising M&B's mortgage lender of the proposed cancellation.

[25] In its Statement of Defence, the Town says that the Lease permits M&B to operate a vacation cabin rental business on municipal reserve land and requires M&B to pay municipal property taxes in relation to that land and four cabins located thereon. The Town says that land has been shown as taxable on the Town's assessment roll since the commencement of the Lease. The Town denies that it represented to M&B that M&B would receive a notice of assessment in relation to the land and improvements. The Town claims that, in keeping with municipal practice throughout the province, it does not issue a notice of assessment to itself, as the landowner. The Town says that, since the land and improvements are not being used for a municipal purpose, they are not exempt and are subject to taxation, irrespective of whether the Lease constitutes a "tax agreement" under the *Act* or not. The Town says that M&B has not identified any legal obligation requiring the Town to provide M&B with a tax notice and says it provided notices to M&B as a courtesy.

[26] The Town contends that the land and improvements were subject to taxation at all material times and the amounts invoiced and collected from M&B were lawful. The Town denies that it threatened to terminate the Lease and says that it gave notice to M&B and its mortgage lender that M&B was in default, as it was legally required and entitled to do.

[27] In response to the whole of the Statement of Claim, the Town says that the Committee has exclusive jurisdiction over municipal tax assessment and valuation matters and this Court has no jurisdiction to adjudicate the subject-matter of the Statement of Claim or to grant the relief sought. Further, M&B had an ongoing statutory

appeal before the Committee dealing with many of the allegations in the Statement of Claim. The Town asserts that the Statement of Claim is a collateral attack on the Committee proceeding and an abuse of process. The Town also relies on the statutory immunity clause at s. 355 of the *Act*. The Town says that the *Act* and the Lease both oblige M&B to pay property taxes in respect of the land and improvements. Finally, the Town says that M&B has not suffered a loss and has not pleaded a cause of action that would entitle it to damages, including punitive damages.

[28] On March 1, 2023, the Town filed a Notice of Application, seeking an order to strike the claim pursuant to Rules 7-9(1), 2(a), (b), and (e) or alternately summary judgment dismissing the claim pursuant to Rules 7-2 and 7-5 of *The King's Bench Rules*.

[29] On March 21, 2023, Kilback J. (as he then was) made a scheduling order for the Town's summary judgment application pursuant to Practice Directive #9.

[30] On June 16, 2023, Mitchell J. dismissed an application by M&B for leave to cross-examine the chief administrative officer of the Town on her affidavit dated February 17, 2023. Mitchell J. held *inter alia* that cross-examination would not elicit evidence to assist the Court in determining whether it lacks jurisdiction to determine the issues in dispute or whether the Statement of Claim amounts to a collateral attack on the Committee's decision.

[31] On August 29, 2023, Chief Justice Popescul directed that this matter be set down for a special hearing.

IV. POSITIONS OF THE PARTIES

[32] The Town argues that the Statement of Claim should be dismissed pursuant to Rule 7-9 because it does not disclose a reasonable cause of action, it is

vexatious, and it is an abuse of process. Alternately, the Town submits that the action should be summarily dismissed pursuant to Rules 7-2 and 7-5. The Town contends that the Statement of Claim seeks relief within the exclusive subject-matter jurisdiction of the Board. The essential character of the claim is the plaintiff's obligation to pay property tax and the amount of such tax owing, both of which are within the exclusive jurisdiction of the Board. Accordingly, the Town submits, the Statement of Claim should be struck as an abuse of process. The *Act* specifies certain exemptions from tax liability, which includes municipally owned land (ss. 292(k)) unless it is not used for a municipal purpose (s. 300). This allows municipalities to rent out municipal land, which is subject to taxation, while avoiding the need to subdivide it. Importantly, both the assessment and tax liability of property are subject to rights of appeal to a board of revision, which conducts a *de novo* hearing. Decisions of boards of revision are subject to further appeal.

[33] The Town submits that M&B had the right to appeal its tax liability to the Board, which had exclusive jurisdiction to determine that issue. The Town acknowledges that M&B did not receive a notice of assessment in 2019 but contends the plaintiff would have been out of time to appeal in any event. M&B did appeal the 2020 NOA, contending that, because the land and improvements were exempt from taxation, their assessed value should be zero. The Town submits that *Pacific Regeneration Technologies Inc. v Buckland (Rural Municipality No. 491)*, 2000 SKQB 415, 198 Sask R 268 [*Pacific Regeneration*], is a complete answer to the plaintiff's claim. Parts X and XI of the *Act* are a complete code, leaving no role for this Court regarding the issues of assessment and liability for taxation. Whether the plaintiff frames its claim in negligence or as a breach of statutory authority, or seeks to convert the Statement of Claim to an application for judicial review, fundamentally this Court does not have subject-matter jurisdiction. Further, the plaintiff cannot advance a standalone claim to punitive damages.

[34] The Town also submits that, under the Lease, M&B agreed to be liable to pay property taxes chargeable against the property. The Board had exclusive jurisdiction to interpret this term of the Lease. On appeal from the Board's decision, the Committee decided the Lease could be construed as a tax agreement, rejected the argument that the property should be valued at zero because it was exempt from taxation, and concluded the exemption did not apply if the land was used for purposes other than municipal purposes. The Town contends that the Committee's findings are *res judicata* and the present action is a collateral attack on those final determinations. If the tax roll was in error in listing the land as exempt in the circumstances, this error did not relieve M&B from its obligation to pay property taxes.

[35] M&B responds that the claim is about whether the Town acted outside its statutory authority in wrongfully collecting taxes on property listed as exempt on its tax roll. M&B denies that it is attempting to relitigate the subject-matter of its appeal of the 2020 NOA. M&B says that it did not appeal the designation of the property as exempt from taxation on the assessment roll. M&B argues both parties are bound by the assessment roll and it was not open for the Town to subsequently list the land and improvements as taxable on the tax roll. M&B submits the Town's decision to list the property as taxable when the assessment roll stated that it was exempt is subject to this Court's review.

[36] M&B describes the essential character of its complaint as the Town having exceeded its statutory authority by collecting taxes on property that was exempt. M&B submits the comments of the Board and the Committee on the property's non-exempt status were *obiter dicta*, pointing to Schwann J.A.'s reasons in the *Leave Decision* on M&B's leave application. M&B submits that this case is distinguishable from *Pacific Regeneration*, because here neither party appealed the property's exempt status. M&B explains that it appealed the assessed value and classification of the

property, as set out in the 2020 NOA, because it considered the Property to be overvalued and wanted those issues addressed in the event that the Property's exempt status changed.

[37] M&B submits that the Town is acting as though it is above the law, by sending an invoice for taxes without a tax notice. M&B denies that its claim is a collateral attack on the decisions of the Board or the Committee. It says the tax roll was closed and the Town acted outside its authority in attempting to collect taxes for property that was exempt.

[38] M&B does not seek damages but rather the return of sums collected by the Town on account of property taxes. M&B also disputes the Town's entitlement to impose a penalty for late payment of property taxes, as the Lease does not provide for this.

[39] M&B accepts that its claim in negligence is not properly pleaded. If required, M&B seeks leave to convert the claim to an application for judicial review, pursuant to Rule 3-2(7) of *The King's Bench Rules*.

[40] In reply, the Town submits that the Committee held M&B owed property taxes for 2020. As far as the 2020 NOA being dispositive of the Property's exempt status, the Town says that the Committee disagreed, finding that errors in the 2020 NOA did not invalidate the assessment. Further, the Lease contemplated that M&B had to pay an amount on account of property taxes, and the Town issued invoices to M&B for property taxes in accordance with the Lease.

[41] The Town submits that the Court should deny M&B's request to convert the action to a judicial review application. M&B has not explained what remedies it would seek if it applied for judicial review.

V. STATUTORY REGIME FOR MUNICIPAL PROPERTY ASSESSMENT AND TAXATION

[42] In *Corman Park (Rural Municipality) v 618421 Saskatchewan Ltd.*, 2018 SKCA 29, 73 MPLR (5th) 1, Caldwell J.A. explained at length the mechanics of the statutory scheme for property assessment and taxation, including the appeal process. I will not duplicate that analysis here. I will, instead, highlight certain aspects of the regime for the purpose of determining whether this comprehensive code encompasses the plaintiff's complaints in this case or whether a gap exists for which recourse to the Court is available.

[43] Part X of the *Act* governs property assessment. Section 194 provides that all property in a municipality is subject to assessment. Land and improvements may be assessed separately where separate values for each are required: ss. 195(3).

[44] Municipalities are required to prepare an assessment roll for each year for all assessed property in the municipality no later than May 1: ss. 204(1). The information the assessment roll must contain is set out in s. 205, which reads:

Contents of assessment roll

205 The assessment roll is required to show the following for each assessed property:

- (a) a description sufficient to identify the location of the property;
- (b) the contact information of the assessed person or, if that information is not known and cannot be ascertained after reasonable inquiry, a note stating that the contact information is not known;

- (c) whether the property is a parcel of land, an improvement or a parcel of land and the improvements to it;
- (d) the assessment class or classes;
- (e) the assessed value of the property;
- (f) the assessed value of the property after applying the applicable percentage of value set by regulation made pursuant to subsection 196(1);
- (g) in the case of a municipality in which a separate school division is or may be established, whether the property is assessable for public school purposes or separate school purposes;
- (h) if the property is exempt from taxation, a notation of that fact;
- (i) any other information considered appropriate by the municipality.

[underlining added]

[45] The assessed person with respect to a property that is a parcel of land is one of the following:

- (a) the registered owner as shown in the records of the Land Titles Registry;
- (b) the owner under a *bona fide* agreement for sale;
- (c) “the occupant under a lease, licence, permit or contract who is not the registered owner but who is to be assessed pursuant to an agreement between the occupant and the owner”; or

- (d) in the case of land exempt from taxation, the owner under a *bona fide* agreement for sale or the occupant under a lease, licence, permit or contract: ss. 207(1).

[underlining added]

[46] If the property is an improvement, the assessed person with respect to that improvement (excluding circumstances specific to rural municipalities) is the registered owner or the person assessed with respect to the land on which the improvement is situated: ss. 207(2). If a person purchases property or in any other manner becomes liable to be shown on the assessment roll as an assessed person, that person must give the municipality written notice of its contact information to which assessment and tax notices may be sent: ss. 207(3). I have omitted from this summary elements of these sections that do not apply to the present case.

[47] As found by the Committee, M&B is an “assessed person” with respect to the 0.44 acres it leases from the Town and the four cabins situate on that land: *Committee Decision* at paras 29-30.

[48] The assessor is required to make the assessment roll available for public inspection during normal business hours from the day of completion of the assessment roll to the last day for lodging an appeal: s. 213.

[49] Subsection 215(1) specifies the information that an assessment notice must contain, which include the information required to be shown on the assessment roll and the deadline for appealing the assessment. No assessment is invalid by reason of any error in the notice of assessment or the non-receipt of the notice by the person to whom it was addressed: s. 215(7). Municipalities are required to send the assessment notices to assessed persons within 15 days after the assessment roll is completed: ss. 216(1). The assessment notice and the tax notice for the same property may be sent

together or may be combined on one notice: ss. 216(2), ss. 267(4).

[50] Municipalities are also required to publish annually in the *Saskatchewan Gazette* and in one issue of a newspaper “or in any other manner considered appropriate by the municipality” a notice stating, *inter alia*, that the assessment notices have been sent and the last date on which the assessment may be appealed: ss. 217(1). All assessed persons are deemed to have received their assessment notices as a result of the publication: ss. 217(2).

[51] I pause to note the following. In her affidavit, the chief administrative officer of the Town explained, “[B]ecause the Town is the owner of the Land, and in keeping with municipal practice, the Town did not issue itself a Notice of Assessment in relation to the Land and improvements.” [underlining added] (Affidavit of Cheryl Martens dated February 17, 2023 at para. 18). Ms. Martens then states that, for reasons she cannot explain, an assessment notice was generated for the land and improvements in April 2020 (the 2020 NOA). The 2020 NOA, which is specific to the 0.44 acres leased to M&B, names the Town of Fort Qu’Appelle as the assessed person and identifies the property class as commercial/industrial. It lists the taxable assessed value of the land as \$46,200 and of the improvements as \$335,000. It indicates that those amounts are exempt from taxation, stating the net taxable assessment to be \$0.

[52] As required by ss. 216(1), within 15 days of completion of the assessment roll in 2019 – by no later than May 15 – the Town should have sent Valley Cabin, then the occupant of the property under a lease, an assessment notice. In 2020, the Town should have sent an assessment notice to M&B. However, as noted in the *Committee Decision* at para 38, whether the Town followed the requirements of the *Act* exactly or not, the fact was that M&B did receive the 2020 NOA, which sets out the assessed values for M&B’s leased land and owned improvements.

[53] Part XI of the *Act* deals with taxation. On or before August 15 in each year, each municipality must prepare a tax roll: ss. 263(1). The required contents of the tax roll are specified in ss. 264(1), which reads:

Contents and correction of tax roll

264(1) The tax roll must show all of the following for each taxable property:

- (a) a description sufficient to identify the location of the property;
- (b) the contact information of the taxpayer;
- (c) the taxable assessment as determined in accordance with section 197;
- (d) the name, tax rate and amount of each tax imposed with respect to the property;
- (e) the total amount of all taxes imposed with respect to the property;
- (f) the amount of tax arrears, if any;
- (g) if a tax lien has been registered pursuant to any *Tax Enforcement Act* against the land with respect to which any portion of the taxes shown in the notice is due, a notice to that effect;
- (h) any other information that the municipality considers appropriate.

[54] Subject to the *Act*, taxes are to be levied on all property: s. 265.

[55] Municipalities are required to prepare and send tax notices to taxpayers before September 1 of the year in which the taxes are imposed: s. 267(1). The tax notice must show, *inter alia*, the same information as is required to be shown on the tax roll,

the total taxes due, and the dates on which penalties may be imposed if taxes are not paid: s. 267(5). No defect, error or omission in the form or substance of a tax notice or in its service, transmission or receipt, invalidates any subsequent proceedings for the recovery of taxes: ss. 267(10). Municipalities may provide incentives for the prompt payment or prepayment of taxes (ss. 272(1) and (2)) and shall impose penalties for late payment at the rate set out in the regulations: ss. 279(1).

[56] The Town's Statement of Defence questions M&B's failure to identify any legal obligation under the *Act* or the Lease obliging the Town to provide M&B with a tax notice and says the Town provided M&B notices related to ongoing assessment appeal matters as a courtesy and to ensure transparency: Statement of Defence on behalf of the Town at para. 10. I am unable to understand the Town's position, given the municipality's statutory obligation to send assessment notices to assessed persons and tax notices to taxpayers: ss. 216(1) and 267(1). That said, the Town did send M&B the 2020 NOA, which appears to be the combined assessment and tax notice issued to the Town.

[57] Part XI, Division 7 of the *Act* addresses the imposition and calculation of taxes on taxable assessments within municipalities. Section 292 provides a lengthy list of property exempt from taxation in all municipalities, which includes "all property of the municipality": s. 292(1)(q).

[58] Exempt property or part of an exempt property becomes taxable if the use changes to a non-exempt use or the occupant changes and the new occupant does not qualify for the exemption. This does not apply to property owned by the municipality that continues to be used for municipal purposes. The relevant provision reads:

300(1) An exempt property or part of an exempt property becomes taxable if:

(a) the use of the property changes to a use that does not qualify for the exemption; or

(b) the occupant of the property changes and the new occupant does not qualify for the exemption.

(1.1) Subsection (1) does not apply to property mentioned in clause 292(1)(q) that continues to be used for municipal purposes but is occupied or leased under agreement with the municipality unless the agreement provides for a change in the taxable status. ...

[59] The person liable to pay property tax is the person who is the assessed person at the time the assessment is prepared or adopted or subsequently becomes the assessed person: ss. 319(1).

[60] I will now review briefly the appeal provisions in the *Act*.

[61] Part X, Division 6 of the *Act* deals with appeals to boards of revision. An assessment may be appealed by a person who has an interest in any property affected by the valuation or classification of any property and believes that an error has been made in the valuation or classification of the property or in the preparation of or the content of the assessment roll or assessment notice: s. 225(1). A municipality may also appeal an assessment to a board of revision: s. 225(3).

[62] A notice of appeal must be filed within 30 days after the date the notice of assessment is mailed to the person or, if no notice of assessment is mailed to the person, within 30 days after the date on which the notice stating that the assessment notices have been sent is published pursuant to s. 217: s. 226(1).

[63] Boards of revision are not bound by the rules of evidence, may require evidence to be given under oath, and may make rules to govern their proceedings that are consistent with the *Act* and with the duty of fairness: s. 233. After hearing an appeal,

the board of revision may confirm or change the assessment: s. 240.

[64] If a person considers that an error has been made in determining that any property is liable to taxation, that person may appeal that matter to the board of revision: ss. 296(1). This provision expressly contemplates appeals on the question whether a property is exempt from taxation: *Aquila Holdings Ltd. v Edenwold (Rural Municipality)*, 2017 SKCA 66 at para 26, 65 MPLR (5th) 11 [*Aquila*]. An appeal may be taken by any person who “considers that an error has been made”, not only by a person who has an interest in the property, as is the case with appeals pursuant to ss. 225(1): *Aquila* at para 27.

[65] An appeal to a board of revision is not a *de novo* appeal. The assessment notice is presumed correct and the jurisdiction of the board of revision is restricted to correcting errors identified in the notice of appeal: *101306454 Saskatchewan Ltd. (Brightwater Senior Living) v Regina (City)*, 2024 SKCA 76 at paras 28-29.

[66] M&B appealed the 2020 NOA to the Board on June 23, 2020. M&B raised numerous grounds, including the following: (a) no such property exists, as per the Land Titles Registry; (b) the improvements have no value because the land is leased; (c) the cabins are residential, not commercial, and should be classified accordingly; and (d) the property was assessed, while others were not. The Board distilled M&B’s appeal to two issues: (a) whether the improvements should be assessed at zero value because the cabins are located on land leased from the Town, and (b) whether the property should be classified as residential rather than commercial. The Board heard and dismissed M&B’s appeal on those issues, holding that s. 194 of the *Act* was a complete answer to the first issue and the improvements were seasonal cabins used to generate revenue and, like extended stay hotel properties, they should be classified as commercial.

[67] Any party to an appeal before a board of revision has the right of appeal to the Committee respecting the Board's decision and against the omission, neglect, or refusal of the Board to hear or decide an appeal: s. 246. After hearing an appeal, the Committee may confirm or modify the decision of the board of revision or may set aside the assessment and remit the matter to the assessor: ss. 256(1). The Committee's authority to hear and determine assessment or classification appeals, as well as appeals regarding property tax exemptions, is found in ss. 16(1) of *The Municipal Board Act*.

[68] M&B exercised its right of appeal from the Board's decision. While M&B advanced ten grounds of appeal, some of these were contingent on the Committee granting M&B's application to adduce new evidence on appeal, which the Committee refused. The Committee distilled the grounds properly before it as follows:

[11] The following are the issues for determination of the appeal:

- a) Did the Board err when it found the property was subject to assessment, and by extension, taxable?
- b) Did the Board err in upholding the property's classification as Commercial?
- c) Did the Board err in fact, law or assessment practice and principle in deciding More/Better's appeal?
- d) Did the Board err by failing to provide sufficient reasons in its decision?

[69] Among other things, the Committee commented that M&B's appeal before the Board engaged the rights of appeal under s. 225 and s. 296, since M&B argued that the assessed value of the land and improvements should be zero and it was not liable to taxation: *Committee Decision* at para 40. Ultimately, the Committee dismissed the appeal, finding no error in the Board's decision that the land and

improvements were subject to assessment and, by extension, to taxation and were properly classified as commercial property. The Committee summarized its bottom-line conclusion as follows: “Whether or not certain grounds were not explicitly stated and addressed, the fact remains the Board decision was reasonable in determining the property was subject to assessment (and taxation) and correctly classified as Commercial”: *Committee Decision*, para 51.

[70] Decisions of the Committee may be appealed to the Court of Appeal on questions of law or jurisdiction, with leave of a judge of the Court of Appeal: s. 33.1 of *The Municipal Board Act*.

[71] M&B sought leave to appeal the *Committee Decision*. Among other things, M&B argued that the Committee had incorrectly equated assessment with taxation and had erred in law in holding that the Board had determined the property was subject to taxation. While Schwann J.A. in the *Leave Decision* concluded that the issue of taxation was not before the Board, she viewed the Committee’s observations about the taxable status of the property as an attempt to explain the property tax assessment regime to M&B and as *obiter dicta*. However, she also noted that, if the Committee did determine the property was not exempt from taxation, that did not engage a question of law or jurisdiction appealable to the Court of Appeal. In a similar vein, she determined that the Committee’s observations about s. 296 were *obiter dicta*; these “gratuitous comments about taxation were most likely responsive to M&B’s root argument that the assessment should be zero because it could not be taxed”: *Leave Decision* at para 21. M&B also contended that the Committee erred in construing the Lease as a tax agreement governed by s. 291 of the *Act*, but Schwann J.A. viewed the Committee’s comments on this point as merely instructive *obiter dicta*. Schwann J.A. also declined to grant leave on a ground of appeal related to the standard of review applicable by the Board to the assessor’s classification of the property as commercial and another ground

alleging error related to the proper valuation of the land. In the result, Schwann J.A, concluded none of the proposed grounds of appeal had sufficient merit and were *prima facie* destined to fail.

[72] The foregoing summary will inform my analysis of the Town's application to strike the claim, to which I now turn.

VI. APPLICATION TO STRIKE PURSUANT TO RULE 7-9

[73] Rule 7-9 of *The King's Bench Rules* reads:

7-9(1) If the circumstances warrant and one or more conditions pursuant to subrule (2) apply, the Court may order one or more of the following:

- (a) that all or any part of a pleading or other document be struck out;
- (b) that a pleading or other document be amended or set aside;
- (c) that a judgment or an order be entered;
- (d) that the proceeding be stayed or dismissed.

(2) The conditions for an order pursuant to subrule (1) are that the pleading or other document:

- (a) discloses no reasonable claim or defence, as the case may be;
- (b) is scandalous, frivolous or vexatious;
- (c) is immaterial, redundant or unnecessarily lengthy;
- (d) may prejudice or delay the fair trial or hearing of the proceeding; or
- (e) is otherwise an abuse of process of the Court.

(3) No evidence is admissible on an application pursuant to clause (2)(a).

[74] The governing principles that apply to an application to strike a pleading for failing to disclose a reasonable cause of action are well established. A statement of claim should only be struck where it is plain and obvious that the plaintiff has no reasonable chance of success, considering only the claim, particulars furnished pursuant to a demand, and any document referred to in the claim on which the plaintiff relies to establish its case: *Collins v Saskatchewan Rural Legal Aid Commission*, 2002 SKQB 201 at para 11. When reviewing a statement of claim to determine whether it discloses a reasonable cause of action, the court assumes all of the facts as pleaded are true, unless they are manifestly incapable of being proven: *R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para 22, [2011] 3 SCR 45 [*Imperial Tobacco*].

[75] *Harpold v Saskatchewan (Corrections and Policing)*, 2020 SKCA 98 [*Harpold*], directs a reviewing judge to consider the whole of the statement of claim, including any technical pleading and alleged facts, in determining whether the essential elements of a cause of action are present:

[26] When called upon to review a claim in response to an application under Rule 7-9(2)(a), the reviewing judge is required to determine whether sufficient facts have been pleaded to establish the legal elements of a cause of action by considering the whole of the statement of claim. It is for the reviewing judge “to determine whether the combined effect of any technical pleading, together with other facts, properly plead the essential elements of the cause of action” (*Reisinger v J.C. Architect Ltd.*, 2017 SKCA 11 at para 20, 411 DLR (4th) 687 [*Reisinger*]).

[76] Pleadings that do not comply with the technical requirements of *The King’s Bench Rules* should not be struck if they adequately serve their purpose, which is to define the issues in dispute and give notice to the other side of what is claimed. The court’s focus in assessing an application to strike all or part of a claim as disclosing no reasonable cause of action is on the substance of the pleading rather than its form: *Thirsk v Public Guardian and Trustee of Saskatchewan*, 2017 SKQB 66 at paras 21 and

23 [*Thirsk*]; *Harpold* at para 32. Screening out claims that have no chance of success enhances efficiency, promotes fairness, and avoids unnecessary costs: *Harpold* at para 33; *Imperial Tobacco* at paras 19-20.

[77] If a deficient statement of claim can be rehabilitated through amendments, a plaintiff should be given leave to do so before the claim is struck: *Yashcheshen v Teva Canada Ltd.*, 2022 SKCA 49 at para 43, [2022] 8 WWR 60; *Wilson v Saskatchewan Water Security Agency*, 2023 SKCA 16 at paras 19-20, 478 DLR (4th) 170 [*Wilson*]. This is so even if the plaintiff has not expressly applied to amend the pleading: *Thirsk* at para 11; *Wilson* at para 21. A judge can consider extrinsic evidence when deciding whether the plaintiff should be given an opportunity to amend the claim: *Wilson* at para 22.

[78] As an alternate ground for striking the claim, the defendant cites Rule 7-9(2)(b) of *The King's Bench Rules*, contending that the statement of claim is vexatious. A pleading is vexatious if it has been “commenced for an ulterior motive (other than to enforce a true legal claim) or maliciously for the purpose of delay or simply to annoy the defendants”: *Siemens v Baker*, 2019 SKQB 99 at para 24; *Yashcheshen v Janssen Inc.*, 2022 SKCA 140 at para 20.

[79] Although the Town asserts that the Statement of Claim is vexatious in its entirety, it did not develop this position in its submissions and, specifically, it did not suggest that the claim was commenced for an ulterior motive or maliciously. Accordingly, I will not address this ground for striking the claim.

[80] Finally, the defendant contends that the Statement of Claim should be struck pursuant to Rule 7-9(2)(e) as an abuse of process. The doctrine of abuse of process “is flexible and is unencumbered by specific doctrinal requirements...”: *Walker v Mitchell*, 2020 SKCA 127 at para 24, [2021] 4 WWR 555. In determining whether a

claim is an abuse of process, a judge may consider the merits of the claim and the motives of the plaintiff in bringing it, and evidence other than the pleadings is admissible: *Sagon v Royal Bank of Canada* (1992), 105 Sask R 133 (WL)(CA) at para 18. It must be plain and obvious that a claim is bound to fail before it can be struck as an abuse of process: *GHC Swift Current Realty Inc. v BACZ Engineering (2004) Ltd.*, 2022 SKCA 38 at paras 25-26, 29 CLR (5th) 294; *Merchant Law Group LLP v Slusar*, 2022 SKCA 75 at para 42.

VII. IS IT PLAIN AND OBVIOUS THAT THE STATEMENT OF CLAIM CANNOT SUCCEED?

A. The statement of claim does not disclose a reasonable cause of action.

[81] The Town contends that the Statement of Claim does not disclose a claim recognized in law against it and does not plead a cause of action entitling M&B to damages, punitive or otherwise, for acts or omissions made pursuant to the exercise of statutory authority in good faith.

[82] The complete displacement of common law and equitable remedies by the statutory property assessment and taxation regime has been recognized in numerous decisions.

[83] In *Hensrud v Regina (City)*, [1994] 6 WWR 751 (WL) (Sask QB) [*Hensrud*], affirmed (1994), 125 Sask R 209 (CA), the plaintiff applied for determination of a point of law, namely whether the city was estopped from collecting taxes levied against the plaintiff's condominium property for a period predating her ownership. The plaintiff argued she had relied upon a tax certificate issued by the city showing that the taxes had been paid in full when she completed the purchase. Among his reasons for concluding that the city was entitled to impose a one-time adjustment to the property taxes in line with the result of several assessment appeals, Barclay J.

determined that Parts X and XI of *The Urban Municipality Act, 1984*, SS 1983-84, c U-11 (since rep), operated as a complete statutory code governing the assessment and taxation of property, leaving no room for the application of equitable doctrines such as estoppel: *Hensrud* at paras 31-36.

[84] Barclay J. referred to the decision in *Zaidan Group Ltd. v London (City)* (1990), 71 OR (2d) 65 (WL) (Ont CA) [*Zaidan*], appeal dismissed [1991] 3 SCR 593. In *Zaidan*, the Ontario Court of Appeal held that a taxpayer's claim against the city for unjust enrichment could not succeed because the Ontario legislation constituted a complete code for assessing, levying, collecting, and rebating municipal taxes. On the facts in *Zaidan*, while the taxpayer had recovered the principal amount of municipal taxes paid under compulsion following a successful appeal, the city had not passed a bylaw fixing interest for overpayments. Since there was no bylaw, the taxpayer could not recover the interest.

[85] *Hensrud* has been followed in numerous decisions. In *Saskatoon Fresh Pack Potatoes Ltd. v Saskatoon (City)* (1997), 155 Sask R 22 (WL) (QB), a statement of claim alleging negligent assessment was dismissed under Rule 99 of *The Queen's Bench Rules* (now Rule 3-14 of *The King's Bench Rules*) because the court lacked jurisdiction. In her decision, Blacklock Linn J. agreed with *Hensrud* that Parts X and XI of *The Urban Municipality Act, 1984*, comprised a complete code, concluding at para. 8 that "the legislature has enacted exhaustive and comprehensive terms that leave no room for resort to the common law, or to courts of original jurisdiction." She further held at para. 13 that the claim could also be dismissed for disclosing no reasonable cause of action and as an abuse of process. In *Miller v Moose Jaw (City)* (1997), 160 Sask R 71 (QB), MacLean J. held that an unjust enrichment claim, founded upon an alleged overpayment of taxes because of a calculation error, did not disclose a reasonable cause of action. The taxpayer's only recourse if an error was made in the

valuation or classification of land or the preparation of the notice of assessment was to appeal following the statutory process.

[86] Rothery J. applied the same reasoning to a claim for the recovery of money grounded on a property tax exemption in *Pacific Regeneration*. An amendment to *The Rural Municipality Act, 1989*, SS 1989-90, c R-26.1 (since rep), in 1997 had added a statutory right of appeal permitting taxpayers to challenge the determination that any land, improvement, or business is liable to taxation. As a result, the statutory regime was a complete code not only for resolving disputes over assessment and classification of property but also liability for taxation, including the applicability of exemptions: see also *Aquila* at paras 23-25.

[87] As discussed above, in determining the Town's application pursuant to Rule 7-9(2)(a), the Court must consider only the Statement of Claim and any documents relied upon by M&B in support of its action and must assume the facts as alleged to be true unless they are manifestly incapable of being proved.

[88] M&B's Statement of Claim does not clearly identify the causes of action it seeks to advance. M&B alleges that it paid the property taxes invoiced by the Town under protest. It appears that M&B claims that it paid those amounts under duress, out of concern that the Town might terminate the Lease. M&B now seeks recovery of the taxes, presumably on the basis that the Town has been unjustly enriched. I take M&B's position to be that there is no juristic reason for the benefit received by the Town, because the land and improvements are listed as tax exempt on the assessment rolls for 2019 and 2020 and, consequently, property taxes were not "assessed or chargeable" within the meaning of clause 5(b) of the Lease. Finally, the Statement of Claim alleges that the Town is liable for gross negligence because the Town failed to understand the Property was not exempt from taxation starting in 1998, informed M&B during Lease negotiations that the Property was subject to taxation but later claimed the Lease was a

tax agreement pursuant to s. 291 of the *Act* and the land is otherwise exempt from taxation, and acted improperly in seeking to enforce M&B's tax liability, including by threatening to terminate the Lease and by informing M&B's mortgage lender that M&B had not paid the property taxes.

[89] The particulars of M&B's allegation that the Town has acted negligently are hard to follow. Unlike the fact pattern in *Aquila*, M&B does not contend that it is entitled to a tax exemption under the *Act*. Instead, M&B complains that the Town represented to M&B that the land and improvements are subject to liability for property taxes but then recorded them as tax exempt on the assessment roll and the assessment notice, with the Town identified as the assessed person. M&B claims that it is entitled to the benefit of the municipality's tax exemption because of the way the taxable status of the land and improvements has been recorded on the assessment roll and the 2020 NOA.

[90] In my view, these claims all raise issues that fall to be decided under the statutory property assessment and taxation regime. Claims alleging unjust enrichment, seeking the recovery of monies paid under a mistake of fact, or for negligence related to property assessment and the determination of tax liability, including the applicability of tax exemptions, have been ousted by the comprehensive code enacted by the Legislature.

[91] Even though M&B did not receive an assessment notice in 2019 or 2020, the *Act* deems the owner of the land and improvements to have received the notices through publication in the *Saskatchewan Gazette*. Valley Cabin could have initiated an appeal of the 2019 assessment. M&B could also have done so after it completed its purchase from Valley Cabin on June 14, 2019. M&B did appeal the assessment notice the following year. M&B could have raised errors with the assessment roll or the assessment notice as a ground of appeal in accordance with s. 225 of the *Act*. M&B

could also have asserted in an appeal pursuant to s. 296 that it is entitled to an exemption from taxation under the *Act*. These issues could have been raised squarely by either party and determined by the Board. The effect of neither party raising these issues in an appeal to the Board is not to confer jurisdiction on this Court where it would not exist otherwise.

[92] For these reasons I conclude that it is plain and obvious the Statement of Claim does not disclose a reasonable cause of action and is destined to fail.

B. The statement of claim is an abuse of process

[93] As noted above, in considering this ground for striking the claim, the Court is not confined to the four corners of the Statement of Claim, any particulars, and any documents relied upon in the claim, and may consider extrinsic evidence.

[94] The Town makes four points in this regard. First, the Town asserts that the matters raised in the Statement of Claim concerning municipal property assessment and taxation are not within the subject-matter jurisdiction of the Court. Second, the Town says that the claim raises issues that are *res judicata* because they have been finally determined by the Committee. Third, the Town submits that the claim amounts to a collateral attack on the Committee's decision and on the statutory regime governing tax appeals generally. Fourth, the Town relies on the statutory immunity clause at s. 355 of the *Act*.

[95] I will first address the Town's arguments that the claim raises issues that are *res judicata* and constitutes a collateral on the *Committee Decision*. As noted earlier, I agree with Schwann J.A. in the *Leave Decision* that the liability of the land and improvements to taxation was not properly before the Committee and its comments in that regard were *obiter dicta*. Accordingly, the issues raised in the Statement of Claim were not finally determined by the Committee and they are not *res judicata*: see *Hertz*

v Kille, 2023 SKCA 3, 476 DLR (4th) 708. This also disposes of the Town's argument that the Statement of Claim is a collateral attack on the *Committee Decision*.

[96] The statutory immunity argument is also without merit. The Town submitted that it is immune from a claim for loss or damage, which includes punitive damages, for anything in good faith done or omitted to be done in the exercise of any power conferred by the *Act*. The complete answer to this argument is that s. 355 does not confer immunity on the municipality at all and applies to members of council and other specified individuals.

[97] However, I have concluded that M&B's Statement of Claim is an abuse of process, for the following reasons.

[98] First, as explained above, the Statement of Claim seeks to litigate matters which the Legislature has assigned to the exclusive jurisdiction of municipal boards of revision and subject to the appeal rights in the *Act*. M&B challenged the 2020 NOA on the grounds that the land and improvements should be valued at zero because they were located on land leased from the Town and would have to be removed if the Lease were terminated. M&B also contended that the land and improvements should be classified as residential rather than commercial properties. The Board and the Committee dismissed these grounds of appeal. The fact that M&B's appeal to the Board did not expressly raise its entitlement to rely upon the municipality's exemption from tax liability does not mean that this issue can be considered by this Court.

[99] Second, the evidence filed by M&B, in the form of the Geremia Affidavit, shows that M&B was alive at all relevant times to the issue of its liability for property taxes.

[100] The uncontroverted evidence is that M&B understood at all times that the property was not exempt from taxation. M&B received due diligence information from Valley Cabin about its historical tax liability. In his affidavit, Mr. Geremia acknowledges that Mr. Giroux, the principal of Valley Cabin, disclosed to him various tax notices issued by the Town and receipts for payments made on account of property taxes. Mr. Geremia averred that he “formed the understanding that the average taxes payable on the leased land would be in or around the \$4,000.00 mark” (Geremia Affidavit at para. 7). The Lease entered into between M&B and the Town contains the same term regarding the payment of property taxes as the prior lease (Geremia Affidavit at para. 9). Clause 5(b) of the Lease provides that M&B would pay to the Town all property taxes “assessed or chargeable against the Property during the said term, said Property taxes to be based on the assessed value of the Property and building thereon as established by” SAMA.

[101] M&B received a copy of the 2019 tax certificates showing that property taxes of \$6,662.08 had been levied against Valley Cabin for 2019, while the Town was exempt from tax liability for the same land and improvements. Two tax certificates, dated June 14, 2019 (Geremia Affidavit, Exhibit C), addressed to the Town, list the taxable value of the land and improvements as \$0. The third, a tax certificate dated June 20, 2019 for the property (Geremia Affidavit, Exhibit D), was addressed to Valley Cabin. This tax certificate lists the assessed value of the land as \$46,200 and the value of the improvements as \$335,000, and the classification of the land and improvements as “Other Commercial and Ind.” It states that the value of exempt property is \$0.00. The tax certificate states:

Taxes for current year have not been levied.

Taxes in the amount of \$6,662.08 are levied for this year.

The meaning of these tax certificates was clear. The Town, as the exempt owner of the property, owed \$0 in property taxes, while Valley Cabin, M&B's predecessor as lessee, owed \$6,662.08. While Mr. Geremia attested that the taxes were higher than he had expected, he understood that M&B was liable to pay property taxes.

[102] M&B received an invoice for the 2019 property taxes in December 2019 and exchanged correspondence with the Town over the issue. Mr. Geremia averred that M&B received an invoice from the Town in the amount of \$6,662.08 for "2019 lease agreement taxes" on or about December 10, 2019. This amount matches exactly the amount on the tax certificate issued on June 20, 2019.

[103] M&B knew that its liability for property taxes was a live issue long before it filed an appeal from the 2020 NOA. Accordingly, there is no basis upon which M&B can maintain that it did not have a timely and effective remedy available through the statutory appeal process.

[104] Regarding the Town's authority to impose a 15% penalty for late payment, the Town adopted a bylaw to establish property tax incentives and penalties, which provides a 5% discount for early payment and imposes a 15% penalty, compounded monthly, for late payment. The authority to enact this bylaw is found at ss. 272 and 279 of the *Act*. A penalty imposed pursuant to s. 279 is included in the tax owed by the taxpayer: s. 281. Accordingly, M&B is liable for payment of the late penalties as well.

[105] For the foregoing reasons, I conclude that it is plain and obvious the Statement of Claim is an abuse of process.

C. This is not an appropriate case to grant leave to amend.

[106] M&B argued that, rather than striking the Statement of Claim, the Court

should grant it leave to convert the action to an application for judicial review.

[107] This Court retains a limited supervisory jurisdiction related to municipal property assessment and taxation. This has arisen where taxpayers have sought recourse when an assessor has failed to give effect to decisions of a board of revision or the Committee. For example, in *Alford Holdings Ltd. v Moose Jaw (City)*, 2016 SKQB 375, 13 Admin LR (6th) 251, Megaw J. concluded that he could grant an order of *mandamus* compelling the assessor to give effect to a decision of the board of revision by amending the assessment roll.

[108] Similarly, in *Altus Group Limited v Estevan (City)*, 2021 SKCA 101, 23 MPLR (6th) 9, a group of property owners was successful in two appeals before the Committee, which remitted matters to SAMA to make adjustments to the assessments based upon the directions in the two decisions. The property owners took issue with the adjustments made by SAMA, contending that SAMA had not complied with the directions. The property owners applied to this Court for an order authorizing and compelling the Committee to determine whether SAMA had complied with the directions contained in the remittals. On appeal, the Court of Appeal concluded that there was no statutory path for a taxpayer to obtain a remedy when it alleges that SAMA has not complied with remittal directions after a successful appeal to the Committee. However, this did not mean that SAMA's action or inaction, after a matter was remitted to it with directions, was not subject to oversight. Notwithstanding the fact that the *Act* is a comprehensive code governing municipal property tax assessment, judicial review is available to fill any gap where the statute does not provide an effective remedy:

[84] The Legislature has set up a comprehensive code dealing with municipal tax matters. However, if, outside of the procedures that are provided for in that code, a person charged with a statutory obligation – such as SAMA [Saskatchewan Assessment Management Agency] in response to remittal directions – acts in an unlawful way, judicial review is available.

It is my view that the Legislature did not intend that a person who believes that SAMA proceeded on an unlawful basis would have no remedy. To the contrary, the Legislature would assume that SAMA would act in a lawful manner, but that, if it failed to do so, taxpayers would have recourse. Sections 53 and 54 of the *MBA [The Municipal Board Act, SS 1988-89, c. M-23.2]* have been interpreted in light of the Legislature's awareness of the availability of the Court of Queen's Bench to supervise SAMA's exercise of its statutory authority.

[109] Drawing on the foregoing analysis, Robertson J. concluded in *Thorpe v Kindersley (Town)*, 2021 SKQB 211, 19 MPLR (6th) 77, that judicial review was available to challenge the authority of the Town to add charges for public works to the tax roll, although he ultimately dismissed the application.

[110] In my view, M&B has not identified a gap in the statutory regime for which judicial review is available. M&B could have appealed the issue of its tax liability and its entitlement to rely on the Town's exemption to the Board. M&B could have appealed any concerns it had with the assessment roll or the Town's failure to send it a notice of assessment or a tax notice to the Board. The comprehensive code provides recourse, which M&B elected not to seek.

VIII. CONCLUSION

[111] The Statement of Claim must be struck because this Court lacks subject-matter jurisdiction. In the circumstances, I do not find it necessary to consider the Town's application to dismiss the claim summarily pursuant to Rules 7-2 and 7-5.

[112] Although M&B is the unsuccessful party, I have decided it is not appropriate to award costs to the Town on this application. If the Town had complied with its statutory obligation to issue a notice of assessment to M&B as an assessed person under the *Act*, identifying the land and improvements as taxable, much confusion would have been avoided. M&B might have pursued its appeal related to the

assessed value and classification of the land and improvements, but it is unlikely M&B would have commenced this litigation.

[113] For the foregoing reasons, the Statement of Claim is struck without leave to amend. The parties will bear their own costs.

J.
P.T. BERGBUSCH