

KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 207**

Date: **2025 12 08**
File No.: KBG-SA-01175-2025
Judicial Centre: Saskatoon

IN THE MATTER OF S. 72(1) OF *THE RESIDENTIAL TENANCIES ACT, 2006*

BETWEEN:

ALISTA PATTERSON

APPELLANT

- and -

CROCUS CO-OPERATIVE SUPPORTED HOUSING

RESPONDENT

- and -

THE OFFICE OF THE RESIDENTIAL TENANCIES

RESPONDENT

Counsel:

Michelle A. MacDonald
Alexander J. Ferwerda
no one appearing

for the appellant
for the respondent
for the Office of the Residential Tenancies

JUDGMENT
December 8, 2025

CURRIE J.

[1] Alista Patterson was a tenant of the landlord, Crocus Co-operative Supported Housing. She had applied, under the provisions of *The Residential Tenancies Act, 2006*, SS 2006, c R-22.0001, for compensation relating to her tenancy in the landlord's facility at 126 Avenue W South in Saskatoon.

[2] After a hearing, the hearing officer issued an August 26, 2025 written

decision (2025 SKORT 2237), in which he ruled that he did not have jurisdiction in the matter. He based this ruling on s. 5(d)(i) of the *Act*:

5 This Act does not apply to:

(a) living accommodation included with premises that:

(i) are occupied for business purposes; and

(ii) are rented under a single agreement;

(b) living accommodation in a hotel, a motel, a motor hotel, a resort, a lodge or tourist camp, a cottage, a cabin, a trailer, a tourist home, a bed and breakfast establishment, a farm vacation home or a hostel, if a person resides there for less than six consecutive months;

(c) living accommodation provided for crisis or emergency shelters;

(d) living accommodation:

(i) in a hospital, health centre, addiction treatment centre, special-care home, residential treatment centre or other facility that is designated pursuant to *The Provincial Health Authority Act* [SS 2017, c P-30.3] ;

(ii) in a personal care home that is licensed pursuant to *The Personal Care Homes Act* [SS 1989-90, c P-6.01];
or

(iii) in a facility or an approved home as defined in *The Mental Health Services Act* [SS 1984-85-86, c M-13.1];

(e) living accommodation that is located on property that is being farmed if the living accommodation is being rented by the person engaged in farming that property;

(f) living accommodation provided by the Young Men's Christian Association, the Young Women's Christian Association or The Salvation Army;

(g) living accommodation rented under a tenancy agreement that grants a right of occupancy;

- (i) for the life of the tenant; or
- (ii) for a fixed period of not less than 20 years; or

(h) prescribed tenancy agreements, rental units or residential property, or prescribed categories of tenancy agreements, rental units or residential property.

[Emphasis added]

[3] The hearing officer concluded that the landlord’s facility was a “facility that is designated pursuant to *The Provincial Health Authority Act*” [SS 2017, c P-30.3], and therefore exempt from the provisions of *The Residential Tenancies Act, 2006*.

[4] The tenant appeals from that decision. She asserts that the hearing officer erred on the question of jurisdiction. She says that the landlord’s facility, in which she leased a rental unit, is not “designated” as required under s. 5(d)(i), so that *The Residential Tenancies Act, 2006* applies to her rental unit and therefore to her claim.

The Hearing Officer’s Decision

[5] The hearing officer began his analysis with reference to s. 5(d)(i). He then observed that the landlord is identified as a “health care organization” in *The Provincial Health Authority Administration Regulations*, RRS c P-30.3 Reg 1 (referred to by the hearing officer as “the PHAR”), which were implemented pursuant to *The Provincial Health Authority Act*.

[6] He noted that a “health care organization” is not specified in s. 5(d)(i), and so he proceeded to consider the possible application of “facility that is designated pursuant to *The Provincial Health Authority Act*”. In so doing, he made reference to *The Facility Designation Regulations*, RRS c R-8.2 Reg 6 (referred to by the hearing officer as “the FDR”). As I set out later in this decision, those regulations describe how the minister designates a facility pursuant to *The Provincial Health Authority Act*.

[7] The hearing officer’s analysis continued as follows:

- [27] The Act provides an exemption in section 5 requiring that the living accommodation be any of a non-exhaustive list “designated pursuant to *The Provincial Health Authority Act*”. The Landlord is listed as a health care organization: this type of organization is not listed in section 5 of the Act, but the provision allows for “other facilities”.
- [28] The Tenant’s argument, effectively, is that, first, because of the use of “designated” and, second, the use of “facility”, section 5 should be read to mean the facilities provided in section 3 of the FDR. The Tenant’s argument is corroborated by the fact that the list in subsection 5(1) correlates with section 3 of the FDR. These facilities require the process of designation provided by sections 13 and 14 of the FDR.
- [29] Continuing the Tenant’s effective argument: either the Landlord is not one of these facilities, in which case they are not exempt, or they are, in which case there is no evidence of compliance with the FDR and they are not exempt due to this defect.
- [30] The correlation of “facility” and “designated” does lend itself to the Tenant’s reading, but as a matter of interpretation of the Act: if the intention was to limit this exemption to only certain types of facilities designated then it would have been better to provide a specific provision of the PHAA. Further, in reading the Act, “facility” and “designated” are not defined for the purpose of this provision: I will therefore read them within the commonly understood meaning of each of these words and not the language used in the PHAA.
- [31] Since the list is non-exhaustive, I accept the primary requirement is that the living accommodation solely be designated by the PHAA and I do not assume that the use of “designation” in subclause 5(1)(d)(i) [*sic*] limits the type of living accommodation to those that [are] designated pursuant to section 2-9 of the PHAA. As such, I read the provision to include other entities that are designated, in some manner, by the PHAA. The Landlord is so designated, for the purposes of the Act, by being listed in the PHAR.

[32] The Act therefore includes the Landlord within the exemptions provided by section 5(1) and I do not have jurisdiction to determine this claim.

Standard of Review

[8] The parties are agreed, and the law provides, that the question of jurisdiction in this matter is to be determined on the standard of correctness. In *Silzer v Saskatchewan Government Insurance*, 2021 SKCA 59, Justice Schwann said at para. 25:

[25] With the release of *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, 441 DLR (4th) 1 [*Vavilov*], it is now clear that where the operative legislation allows for a statutory appeal – with leave or as of right – the Legislature is taken to have intended that the usual appellate standards of review will be applied. This means that with respect to questions of law, the correctness standard of appellate review is applicable (at para 37): see also *Van de Sype v Saskatchewan Government Insurance*, 2020 SKCA 18 [*Van de Sype*].

[Emphasis added]

[9] A question of jurisdiction is a question of law.

[10] Specifically in the context of an appeal of a hearing officer’s decision under *The Residential Tenancies Act, 2006*, and likewise in the aftermath of the release of the Supreme Court decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653, in *Lansdowne Equity Ventures Ltd. v Cove Communities Inc.*, 2020 SKQB 113, Justice Elson said at para. 25:

[25] Recently, the Supreme Court of Canada departed from the approach described in *Dr. Q*. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the Court concluded that reviewing courts, hearing statutory appeals from an administrative decision-maker, are required to apply “appellate standards of review” when determining the matter under appeal. As to the nature of these appellate standards, the reviewing court must approach the

matter in the same way as an appellate court considers an appeal from a judgment at trial. In this respect, the majority in *Vavilov* expressly adopted the standards and related principles set out in *Housen v Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235 [*Housen*]. The Court's direction in this regard is set out in para. 37 of *Vavilov*:

37 It should therefore be recognized that, where the legislature has provided for an appeal from an administrative decision to a court, a court hearing such an appeal is to apply appellate standards of review to the decision. This means that the applicable standard is to be determined with reference to the nature of the question and to this Court's jurisprudence on appellate standards of review. Where, for example, a court is hearing an appeal from an administrative decision, it would, in considering questions of law, including questions of statutory interpretation and those concerning the scope of a decision-maker's authority, apply the standard of correctness in accordance with *Housen v. Nikolaisen* ... at para. 8. Where the scope of the statutory appeal includes questions of fact, the appellate standard of review for those questions is palpable and overriding error (as it is for questions of mixed fact and law where the legal principle is not readily extricable): see *Housen*, at paras. 10, 19 and 26-37. Of course, should a legislature intend that a different standard of review apply in a statutory appeal, it is always free to make that intention known by prescribing the applicable standard through statute.

[Emphasis added]

[11] Thus, one effect of the decision in *Vavilov* is to streamline the determination of the standard of review on a question of the jurisdiction of a hearing officer in proceedings under *The Residential Tenancies Act, 2006*. Prior to *Vavilov* the determination sometimes involved an examination of the extent of the hearing officer's expertise in the context of the statutes that would be interpreted on the jurisdictional question (as, for example, in *Ottenbreit v Paul*, 2015 SKQB 326, 7 Admin LR (6th) 293, and in *Fecyk v Bracken*, 2017 SKQB 85). In the aftermath of *Vavilov*, such an examination is not necessary. The Supreme Court has explained that on such an appeal

the appellate court is to “apply the standard of correctness”.

[12] If it had been necessary to engage in the formerly-required examination, I still would have concluded that the standard of review is correctness. This is because the jurisdiction question here involves an interpretation not only of the hearing officer’s home statute, *The Residential Tenancies Act, 2006*, but also of *The Provincial Health Authority Act*, with potential application of the interpretation beyond the realm of residential tenancy.

[13] The standard of review here is correctness.

Affidavit

[14] The landlord seeks to have an affidavit admitted on this appeal. The affidavit describes the landlord and its operations, and it touches on the circumstances of the tenant’s lease of the rental unit.

[15] The admission of new evidence on an appeal such as this has been discussed in several decisions of this court, including *Williams v Elite Property Management Ltd.*, 2012 SKQB 215, 397 Sask R 204. In that case Justice Danyiuk said at paras. 16-17:

[16] As a general rule, affidavits disclosing matters which were not before the hearing officer are not admissible on a s. 72 appeal. These are appeals on the record. It is generally improper for a party to attempt to bolster his or her case on appeal by filing sworn testimony via affidavit. In most appeals, the written material is limited to the notice of appeal, the decision appealed from and the documents filed at the hearing: *Rich-Prop Investments Inc. v. Andres*, 2007 SKQB 18, 291 Sask. R. 40; *Donnelly v. Dupuis*, 2007 SKQB 481, 308 Sask. R. 279.

[17] There are limited circumstances where an affidavit is permissible. For example, where it is alleged there was an absence of jurisdiction due to lack of proper service, circumstances may be explained by way of affidavit.

[16] Here the issue on this appeal does not call for the consideration of additional evidence. The issue is precisely the issue that was dealt with by the hearing officer in his decision. Furthermore, the affidavit that is tendered by the landlord effectively duplicates evidence that was before the hearing officer and therefore already is before me as part of the record.

[17] For these reasons, the affidavit is not admitted in evidence on this appeal.

Whether Section 5(d)(i) Applies

[18] The relevant provisions of s. 5 of *The Residential Tenancies Act, 2006* are:

5 This Act does not apply to:

...

(d) living accommodation:

(i) in a hospital, health centre, addiction treatment centre, special-care home, residential treatment centre or other facility that is designated pursuant to *The Provincial Health Authority Act*; ...

[19] The hearing officer concluded that a facility that is operated by an organization that is designated as a health care organization under *The Provincial Health Authority Act* is a “facility that is designated pursuant to *The Provincial Health Authority Act*”. In so concluding he effectively disregarded the plain language of s. 5(d)(i) requiring that the *facility* be designated.

[20] In referring to the plain language of the provision I am guided by the remarks of Justice Kalmakoff in *Monastyrski v Affinity Credit Union 2013*, 2025 SKCA 119 at paras 35-39, where he explained the proper approach to statutory interpretation:

[35] The proper approach to any issue of statutory interpretation is the so-called modern principle articulated in

Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 SCR 27 [*Rizzo*], and codified in s. 2-10(1) of *The Legislation Act*, SS 2019, c L-10.2, which provides as follows:

2-10(1) The words of an Act and regulations authorized pursuant to an Act are to be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislature.

[36] In s. 2-10(2), *The Legislation Act* also requires every enactment to be interpreted in a remedial fashion and to be given a “fair, large and liberal interpretation that best ensures the attainment of its objects”.

[37] The modern approach requires judges interpreting legislative provisions to read the statutory text in harmony with the scheme and object of the Act. While ordinary meaning is the starting point of the interpretive exercise, it is not the end point; statutory interpretation is incomplete without considering context, purpose and relevant legal norms (*R v Wolfe*, 2024 SCC 34 at para 32; *Giesbrecht* [2025 SKCA 10, [2025] 6 WWR 525] at paras 36–37). Even where the ordinary meaning is plain, courts must take into account the full range of contextual considerations including purpose, related provisions in the same and other Acts, legislative drafting conventions, presumptions of legislative intent, and the rule that absurdities are to be avoided (*Ballantyne v Saskatchewan Government Insurance*, 2015 SKCA 38 at para 20, 457 Sask R 254 [*Ballantyne*], citing Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham, Ontario: LexisNexis, 2014) [*Sullivan*]).

[38] Nevertheless, the ordinary meaning of the legislative text carries significant weight; where there is no ambiguity in the language of the provision in question, “the text of the provision usually dominates the interpretive exercise” (*Wolfe* at para 61). A court may adopt an interpretation that modifies or departs from the ordinary meaning of the statutory text in some circumstances, but the ordinary meaning should prevail unless there is a reason to reject it based on contextual considerations that are sufficient to justify such a departure (*Oladipo v The College of Physicians and Surgeons for Saskatchewan*, 2024 SKCA 94 at para 36; *Hess v Thomas Estate*, 2019 SKCA 26 at para 51, 433 DLR (4th) 60; *Ballantyne* at para 20).

[39] The modern principle also emphasizes the importance of purposive analysis in statutory interpretation. All legislation is presumed to have a purpose which courts should strive to discover and give effect to through the interpretive process. Interpretations that are consistent with legislative purpose should be adopted, while those that defeat or undermine legislative purpose should be avoided (*Regina Bypass* [2021 SKCA 82] at para 27, citing *Sullivan* at §9.3; see also *Farm Credit Canada v Gustafson*, 2021 SKCA 38 at para 58; and s. 2-10(2) of *The Legislation Act*). The search for purpose, however, must not overwhelm the interpretive exercise; a court cannot “ignore the words of the statute to achieve what it considers to be a more sensible result” (*Kennedy v Carry the Kettle First Nation*, 2020 SKCA 32 at para 27). The goal of statutory interpretation is to “find harmony between the words of the statute and the intended objective, not to achieve the objective at all costs” (*R v Breault*, 2023 SCC 9 at para 26, citing *MediaQMI inc. v Kamel*, 2021 SCC 23 at para 39, [2021] 1 SCR 899, and *Sun Indalex Finance, LLC v United Steelworkers*, 2023 SCC 6 at para 174, [2013] 1 SCR 271).

[21] The ordinary sense of the word “designated” incorporates an *act* of identification, as opposed to the state of designation being inferred. For the designation to exist, someone has to *make* the designation. This is the common sense of “designate” as it appears in dictionaries such as:

- (a) the *Merriam-Webster Dictionary* online, where the primary definition of the verb is “to indicate and set apart for a specific purpose, office or duty”; and
- (b) the *Cambridge Dictionary* online, where the primary definition of the verb is “to choose someone officially to do a particular job”.

[22] This ordinary sense of the word is consistent with the statutory context in which it is used by the Legislature. In s. 5(d)(i) of *The Residential Tenancies Act, 2006*, the Legislature refers to a facility being designated pursuant to *The Provincial Health Authority Act*. *The Provincial Health Authority Act* sets out, in s. 9-5(1)(g)(i), the process of the provincial government establishing the categories of facilities that are to be designated:

9-5(1) The Lieutenant Governor in Council may make regulations:

...

(g) for the purposes of section 2-9:

(i) establishing categories of facilities and titles for those categories; ...

[23] Significantly, s. 2-9 of *The Provincial Health Authority Act* provides that *the minister designates a facility* as being in one of these categories of facilities:

2-9 The minister may designate all or part of a facility operated by a health services entity or any other person as one of the prescribed categories of facilities.

[24] So it is that, in *The Provincial Health Authority Act*, the Legislature has directed that the designation of a facility happens *when the minister makes the designation*. Unless the minister has designated a facility under s. 2-9 of *The Provincial Health Authority Act*, the facility is not a “facility that is designated pursuant to *The Provincial Health Authority Act*”.

[25] The landlord argues, though, that the purpose of s. 5(d)(i) is “to provide an exemption for organizations that offer care or treatment to their members who are lodged in their facilities.” In this regard, the landlord points to remarks delivered in the Legislature by the Minister of Justice when s. 5(d)(i) was being presented (along with other amendments) to the Legislature for enactment. The landlord points specifically to these remarks of Minister Quennell on April 19, 2006, regarding Bill No. 57 – *The Residential Tenancies Act, 2006* (Saskatchewan, Legislative Assembly, *Debates and Proceedings (Hansard)*, 25th Leg, 2d Sess (19 April 2006) at 1225 (Minister Quennell)):

... the government recognizes that there are situations where room and board arrangements as well as situations where tenants share living accommodations with their landlord that for various

reasons need to be excluded from the operation of the Act. Exempt[ion]s include housing provided by organizations such as the Salvation Army, dormitories operated by educational institutions, or situations where a tenant receives care or treatment from a landlord with whom they share accommodations.

[26] The landlord argues that this expression of the government's intention establishes that one may infer, from the nature of the organization that is operating a facility, that the facility is designated pursuant to *The Provincial Health Authority Act*.

[27] For two reasons I am not persuaded by this argument. First, the purpose of s. 5(d)(i) asserted by the landlord does not appear in the provision. The provision is not focused on organizations. Rather, it is focused on facilities.

[28] Second, in his remarks the minister was not detailing how one would determine whether a facility is designated. He was simply describing the overview. The detail of how that overview was to be implemented was in the statutory provisions themselves. These are the provisions that I have reviewed – the provisions that specify a process for the act of designation.

[29] Further detail of the designation process appears in *The Facility Designation Regulations*, which were implemented under a former statute but now continue in force under *The Provincial Health Authority Act*:

2(1) In these regulations:

(a) “**Act**” means *The Provincial Health Authority Act*;

...

(d) “**designated**” means designated by the minister pursuant to section 2-9 of the Act;

(e) “**designated facility**” means a facility or part of a facility that has been designated;

...

3 For the purposes of section 2-9 of the Act:

(a) the following categories of facilities are established:

(i) addiction treatment centre;

(i.1) complex care centre;

(ii) health centre;

(iii) hospital;

(iii.1) mental health centre;

(iv) residential treatment centre;

(v) special-care home;

(vi) urgent care centre; ...

...

13(1) The minister shall publish in Part I of the Gazette a list of all facilities or parts of facilities that have been designated, their titles, the categories or subcategories to which they have been designated and their effective dates of designation.

(2) The minister shall annually publish in Part I of the Gazette a notice setting out all amendments to the list described in subsection (1) that have been made within the preceding calendar year including, without limiting the generality of the foregoing:

(a) all additions of facilities or parts of facilities to the list;

(b) all removals of facilities or parts of facilities from the list;

(c) all changes in the categories or subcategories to which facilities or parts of facilities are designated.

14 Neither the provincial health authority nor a health care organization shall operate a facility or part of a facility in any of the categories or subcategories established by section 3 unless

the facility or part of a facility has been designated to that category or subcategory.

[30] The landlord cautions against using regulations to assist in interpreting a statute, citing Justice Binnie in *Bristol-Myers Squibb Co. v Canada (Attorney General)*, 2005 SCC 26 at para 38, [2005] 1 SCR 533:

[38] The same edition of Driedger adds that in the case of regulations, attention must be paid to the terms of the enabling statute:

It is not enough to ascertain the meaning of a regulation when read in light of its own object and the facts surrounding its making; it is also necessary to read the words conferring the power in the whole context of the authorizing statute. The intent of the statute transcends and governs the intent of the regulation.

(Elmer A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 247)

This point is significant. The scope of the regulation is constrained by its enabling legislation. Thus, one cannot simply interpret a regulation the same way one would a statutory provision. In this case, the distinction is crucial, for when viewed in that light the impugned regulation cannot take on the meaning suggested by BMS. Moreover, while the respondents' argument draws some support from the language of s. 5(1.1) isolated from its context, it overlooks a number of significant aspects of the "modern approach".

[31] With these remarks in mind, the landlord warns against relying on an interpretation of the regulations in determining the Legislature's intention in enacting s. 5(d)(i). Here, though, my conclusion that a facility must actually be designated by the minister arises from a review of the statutory provisions alone. That conclusion does not rely on an interpretation of the regulations.

[32] The minister's list of facilities that are designated pursuant to *The Provincial Health Authority Act* appears in Part I of *The Saskatchewan Gazette*. The

list includes hundreds of facilities that fall under the various categories and subcategories that have been established by the provincial government.

[33] The list does not include the landlord's facility at 126 Avenue W South in Saskatoon. The landlord's facility is not a "facility that is designated pursuant to *The Provincial Health Authority Act*". Therefore, s. 5(d)(i) does not operate to exempt the landlord's facility from the application of *The Residential Tenancies Act, 2006*. Consequently, s. 3 of that statute applies:

3(1) Notwithstanding any other Act but subject to section 5, this Act applies to tenancy agreements, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before, on or after the date on which this Act comes into force.

[34] The hearing officer's decision, in which he concluded that he did not have jurisdiction to hear and determine the tenant's application, was incorrect. As an aside, I observe that if the standard of review had been reasonableness, I would have set the decision aside as being unreasonable. This is so in light of the jurisdiction question having been decided not in the statutory context of a "facility that is designated pursuant to *The Provincial Health Authority Act*" but instead in the context of an organization that has been designated as a health care organization.

[35] Therefore, the appeal is allowed and the decision is set aside. The matter is remitted to the Office of Residential Tenancies for a new hearing on the merits of the application.

Costs

[36] The tenant has suggested that, if she were successful, the Court should order that each party bear her or its own costs of this appeal. Therefore, I so order.

Conclusion

[37] The facility in which the tenant leased the rental unit from the landlord is not a “facility that is designated pursuant to *The Provincial Health Authority Act*”. Consequently, the facility is not exempt under s. 5(d)(i) of *The Residential Tenancies Act, 2006*. The hearing officer had jurisdiction to hear and determine the tenant’s application under that statute.

[38] Accordingly, the appeal is allowed and the hearing officer’s decision (in which he ruled that he did not have jurisdiction by operation of s. 5(d)(i)) is set aside. The matter is remitted to the Office of Residential Tenancies for a new hearing on the merits of the application. Each party will bear her or its own costs of this appeal.

J.
G.M. CURRIE