

COURT FILE NUMBER QBG 2911/2018

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE REGINA

APPLICANTS JUNE LEDREW, ROBERT SCHMIDT,
[REDACTED] and DEVON HACK

RESPONDENT COUNCIL OF THE RURAL MUNICIPALITY OF
MCKILLOP NO. 220

**BRIEF OF LAW ON BEHALF OF THE APPLICANTS
(Re: Application to Quash the Tax Bylaws)**

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I. INTRODUCTION

1. The Council of the Rural Municipality of McKillop No. 220 ("Council") has improperly passed certain tax related bylaws which are illegal in both substance and form. Council has acknowledged that it did not follow the proper procedure and passed the bylaws in an improper manner, yet Council has refused to quash those bylaws. As such, the Applicants, who represent a small portion of a larger group of concerned ratepayers within the Rural Municipality of McKillop No. 220 (the "RM"), have brought this application seeking to have this Honourable Court use the discretion afforded to it under s. 358(1) of *The Municipalities Act*, SS 2005, c M-36.1, (the "Act") to quash the impugned bylaws.

2. Namely, the Applicants respectfully submit that those tax bylaws should be quashed on any or all of the following grounds:

- (a) Council did not follow the proper procedure in passing the tax bylaws;
- (b) Council passed the tax bylaw in an improper manner;
- (c) the tax bylaws are illegal in substance and form because:
 - (i) Council exercised bias in passing them;
 - (ii) Council wrongfully fettered its discretion in approving the tax increase;
 - (iii) Council misapplied *The Municipalities Act*;
 - (iv) Council passed the tax bylaws for an improper purpose; and
 - (v) the substance of the tax by laws are contrary to public policy.

II. FACTS

A. The Rural Municipality of McKillop No. 220

3. The RM runs North to South along the Eastern shore of Last Mountain Lake. The RM extends Eastward from the lakeshore, encompassing the Towns of Strasbourg and Bulyea.¹ The RM's position along Last Mountain Lake and its close proximity to Regina make it an ideal vacation destination for residents of Regina.² Many of the RM's ratepayers own or reside in seasonal vacation properties in the numerous hamlets within the RM which populate the shoreline. In total, there are

¹ The Affidavit of June LeDrew at para 3.

² The Affidavit of June LeDrew at para 5.

nine organized hamlets and 11 unorganized hamlets.³ Currently there are 793 permanent residents and approximately 2,000 ratepayers.⁴

4. The RM is divided into six divisions. Each division elects a representative who represents that division on the Council.⁵ The division boundaries have remained unchanged since 1910 and have not accounted for the influx of residential properties along the shores of Last Mountain Lake.⁶ As demographics have shifted in the RM, the population has disproportionately shifted to the divisions along Last Mountain Lake.

5. As it now stands, two divisions, which contain eight of the nine organized hamlets, represent 70% of the RM's voters/ratepayers.⁷ The remaining four divisions represent less than one third of the population. The majority of the land in those four divisions is classified as agricultural.⁸

6. The changing demographics in the RM has resulted in two thirds of the Council members representing one third of the voting population.⁹

7. The Reeve and Councillors who represent the four agricultural divisions hold agricultural land and not residential land.¹⁰

B. The Improper Passing of the Bylaws

8. On August 7, 2018, the Council was prepared to vote on the tax bylaws in the ordinary course of business. However, a closed meeting was held that morning.¹¹ When the closed meeting ended, Reeve Howard Arndt ("Reeve Arndt") announced that the budget and tax related items could not be voted on that day.¹² The reason he gave was that unforeseen circumstances had arisen and increased legal fees may affect the 2018 Operating Budget (the "Budget").¹³ He claimed the Budget required revision as a result of the unforeseen circumstances.¹⁴

³ The Affidavit of June LeDrew at para 5.

⁴ The Affidavit of June LeDrew at para 4.

⁵ The Affidavit of June LeDrew at para 6.

⁶ The Affidavit of June LeDrew at para 8.

⁷ The Affidavit of June LeDrew at para 8.

⁸ The Affidavit of June LeDrew at para 9.

⁹ The Affidavit of June LeDrew at para 10.

¹⁰ The Affidavit of Robert Schmidt at para 36.

¹¹ The Affidavit of Robert Schmidt at para 12.

¹² The Affidavit of Robert Schmidt at para 13.

¹³ The Affidavit of Robert Schmidt at para 14.

¹⁴ The Affidavit of Robert Schmidt at para 14.

9. The following day, the RM Administration posted three notices of Special Meetings, all of which were set for August 10.¹⁵ The Tax Bylaws were listed as the agenda items for two of the meetings. The approval of the Budget was absent from the agenda.¹⁶

10. The first of those Special Meetings, held on August 10 at 8:00 a.m., was closed to the public.¹⁷

11. The second was held at 1:00 p.m. and it was during this meeting where the following tax bylaws were given first and second reading:

- a) Bylaw No. 359/2018 – Property tax incentives and penalties;
- b) Bylaw No. 360/2018 – Mill rate factors;
- c) Bylaw No. 361/2018 – Minimum tax; and
- d) Bylaw No. 362/3018 – Base tax the ("Tax Bylaws").¹⁸

12. It has been the RM's practice to publish proposed bylaws on its website after the bylaw has received first reading. This practice is meant to enable interested members of the public engaging in the bylaw-making process. The RM provided no opportunity to publish the proposed Tax Bylaws or otherwise make them available to the public.¹⁹

13. The Tax Bylaws were put to third reading at the third Council meeting held that very same day at 2:30 p.m. The Council approved the Tax Bylaws and the meeting was closed by 2:45 p.m.²⁰

14. By having the first and second reading of the Tax Bylaws and passing the Tax Bylaws all in a single day – in a matter of a few hours, many ratepayers in the RM could not take part in the public meetings because of the large number of ratepayers whose primary residences are in Regina.²¹

15. The Council was presented with a document by the RM Administrator that purported to set out the options the Council had available to it when it set the tax rates for 2018.²² This document was prepared for the Council in preparation for the meetings held on August 10. The document claimed that there were only two legal options. The Council could either increase tax revenue 155% or 176%.

¹⁵ The Affidavit of Robert Schmidt at paras 15-17.

¹⁶ The Affidavit of Robert Schmidt at Exhibit "D".

¹⁷ The Affidavit of Robert Schmidt at para 15.

¹⁸ The Affidavit of [REDACTED] at para 14.

¹⁹ The Affidavit of [REDACTED] at para 15.

²⁰ The Affidavit of [REDACTED] at para 16.

²¹ The Affidavit of Robert Schmidt at para 33.

²² The Affidavit of Robert Schmidt at para 35.

The Council selected the larger of the two increases. As a result, the RM expects to collect a \$844,690 surplus for the 2018 tax year.²³

16. At a Council meeting on August 13 – after the Tax Bylaws had already been passed - Councillor Murray Wild presented the Budget for approval. Reeve Arndt stated the reasoning behind the Budget as being that:

- (a) Council has faced numerous appeals;
- (b) there was \$486,000 owing in back taxes;
- (c) prior councils had not enforced the RM's bylaws; and
- (d) Council had purchased a significant amount of gravel.²⁴

17. The Council voted to approve the Budget by a vote of five in favour and two opposed.²⁵

18. A significant number of ratepayers in the RM became concerned with the substantial tax increase and as a result of the fallout between the ratepayers and the Council, an Inspector was appointed by the Minister of Governmental Affairs.²⁶ Her report found that the financial situation of the RM was not as dire as reported by the Reeve and Council:

The RM **does not currently have massive debt**; they have the ability to borrow more as their debt is currently lower than the RM's debt limit.²⁷

[Emphasis added]

19. Furthermore, she did not find any documents that provided an explanation or basis for the decision to and manner in which the Council increased taxes:

During the high-level inspection **no documents were discovered that provided an explanation or basis for this decision** [to increase residential property taxes] by the RM.²⁸

[Emphasis added]

20. In discussing the shift in the Tax Policy of the RM, the Inspector stated:

²³ The Affidavit of Robert Schmidt at para 35.

²⁴ The Affidavit of [REDACTED] at para 18.

²⁵ The Affidavit of [REDACTED] at para 20.

²⁶ The Affidavit of Robert Schmidt at para 37.

²⁷ The Affidavit of Robert Schmidt at Exhibit "L" at 29.

²⁸ The Affidavit of Robert Schmidt at Exhibit "L" at 17.

In reviewing Table 5 it is apparent that not only is there a significant increase in the municipal taxes levied in 2018, the **tax policy has focused this increase on the residential tax class.**

It appears that council set their tax policy based on an **unsigned** report to council, which provided options to recover the \$488,013 deficit shown in the 2017 draft audited financial statements. However, statement 4 of the draft audit **shows the loss is made up of amortization and loss on disposal of tangible capital assets.**²⁹

[Emphasis added]

C. The Residential Tax Increase

21. Municipal property taxes are determined by a millage rate, commonly referred to as a mill rate. A mill rate is the dollar amount of taxes paid per \$1,000 of assessed property value.³⁰ Mill rates are varied between classes of property by Mill Rate Factors which are applied to the Uniform Mill Rate.³¹

22. The Uniform Mill Rate for 2018 is 8.6 mills.³² The Mill Rate Factors for each class of property are as follows:

- (a) Agricultural – 1.05
- (b) Residential – 1.15
- (c) Commercial – 0.8.³³

23. In 2017, the Uniform Mill Rate was 6.6 mills and the Mill Rate Factor for Residential property was 0.65. As a result, the actual mill rate applied to residential property was 4.29.³⁴

24. In 2018, the mill rate applied to residential property increased to 9.89 mills.³⁵

25. Residential property taxes were not only increased by doubling the mill rate. The Council also approved a base tax of \$850 which is only applied to residential property and not applied to agricultural property.³⁶

²⁹ The Affidavit of Robert Schmidt at Exhibit "L" at 19.

³⁰ The Affidavit of Robert Schmidt at para 8.

³¹ The Affidavit of Robert Schmidt at para 9.

³² The Affidavit of Robert Schmidt at para 23.

³³ The Affidavit of Robert Schmidt at para 23.

³⁴ The Affidavit of Robert Schmidt at para 24.

³⁵ The Affidavit of Robert Schmidt at para 25.

³⁶ The Affidavit of Robert Schmidt at para 27.

26. The final tax change was to implement a minimum tax, again only to residential property – not to agricultural property. While there had been minimum taxes in the past, they had been applied by parcel. This minimum tax was set per acre. Many of the lots in the RM are less than an acre and the result is that the minimum tax is borne by a smaller number of ratepayers.³⁷

D. The Hardship Faced by Ratepayers

27. The Tax Bylaws passed by the Council have resulted in a significant increase in taxes borne by residential property owners. Many residential property owners in the RM are on a fixed income.³⁸ As a result, the tax increase has imposed an undue hardship on many of the residential ratepayers in the RM.

28. For the individuals on a fixed income, they often have to budget their expenses every year to ensure they can meet their annual liabilities. The sudden, unexpected and onerous tax increase poses a serious hardship to many of these individuals. Some will have to take out loans to be able to pay their taxes.³⁹

29. Further, some individuals who have been seeking to sell their property have been unable to sell because of the tax increase and the uncertainty posed by the current circumstances within the RM.⁴⁰

30. The financial strain the Tax Bylaws have placed on some individuals has translated into mental stress that, for some, aggravates present physical ailments.⁴¹

E. The Unwillingness of Council to Work with Ratepayers

31. The Council has shown an unwillingness to cooperate with the RM's oppressed residential ratepayers – despite opportunities to work collaboratively to remedy the concerns with the tax.

32. On September 13, Counsel for the Applicants sent a letter to the Council, requesting that the Council reconsider the tax increase and explore alternatives.⁴² Legal counsel for the RM responded on behalf of the RM. The letter claimed that the Council wanted to do something but was unable to take any action because the tax notices had been released.⁴³

³⁷ The Affidavit of Robert Schmidt at para 30.

³⁸ The Affidavit of [REDACTED] at para 22.

³⁹ The Affidavit of [REDACTED] at Exhibit "F".

⁴⁰ The Affidavit of [REDACTED] at para 23.

⁴¹ The Affidavit of [REDACTED] at Exhibit "F".

⁴² The Affidavit of Robert Schmidt at para 56.

⁴³ The Affidavit of Robert Schmidt at para 57.

33. On September 27, Council was presented with a resolution by which the Council would consent to a prospective application to quash the bylaws. The Council rejected this resolution.⁴⁴

34. Finally, when faced with the present application, a resolution was put before the Council at its meeting on October 15. If the Council approved the resolution, they would consent to the present application. The Council again chose to reject that possibility.⁴⁵

35. Later in the same meeting, the Supervisor suggested to the Council that it should adjust its tax rates under section 286(3) because the Council **had not approved the Budget** prior to passing the Tax Bylaws.⁴⁶ The Council is aware that it has not followed the proper procedure in passing the Tax Bylaws.

36. The Council has chosen not to cooperate at any stage with the burdened ratepayers and has wholly refused to quash the admittedly improperly passed Tax Bylaws, which has necessitated the bringing of this application.

III. ISSUES

Should the Tax Bylaws be quashed on any or all of the following grounds:

- (a) Council did not follow the proper procedure in passing the Tax Bylaws;
- (b) Council passed the Tax Bylaws in an improper manner;
- (c) the Tax Bylaws are illegal in substance and form because:
 - (i) Council exercised bias in passing them;
 - (ii) Council wrongfully fettered its discretion in approving the tax increase;
 - (iii) Council misapplied The Municipalities Act;
 - (iv) Council passed the Tax Bylaws for an improper purpose; and
 - (v) the substance of the Tax Bylaws are contrary to public policy?

⁴⁴ The Affidavit of Robert Schmidt at para 58.

⁴⁵ The Supplementary Affidavit of Robert Schmidt at paras 3-4.

⁴⁶ The Supplementary Affidavit of Robert Schmidt at para 5.

IV. ARGUMENT

A. The Court has the Authority to Quash the Tax Bylaws

37. Section 358 of the Act provides the Court with the authority and discretion to quash municipal bylaws upon the application of owners or occupants of property within the municipality. Subsection (1) states the grounds on which a Court may quash bylaws:

358(1) Subject to subsections (2) and (3), any voter of a municipality, any owner or occupant of property or a business within the municipality, or the Minister, may apply to the Court to quash a bylaw or resolution in whole or in part on the basis that:

(a) the bylaw or resolution is illegal in substance or form;

(b) the proceedings before the passing of the bylaw or resolution do not comply with this or any other Act; or

(c) the manner of passing the bylaw or resolution does not comply with this or any other enactment.

38. This Court has proven willing, in the right circumstances, to exercise its discretion and quash illegal and improper bylaws (see, i.e.: *Baker v Sherwood No. 159 (Rural Municipality)*, 2015 SKQB 301, 483 Sask R 48; *Goodtrack v The Rural Municipality of Waverly No. 44*, 2012 SKQB 413, 408 Sask R 46; and *Barbour v Ituna (Town)*, 2018 SKQB 50).

39. While the decision of the Court to quash a municipality's bylaw is discretionary, the confluence of wrongs present in the passing of the Tax Bylaws and the substance and form of the Tax Bylaws strongly favours the exercise of that discretion in this case.

B. The Process and Manner of Passing the Bylaws Was Improper

40. The Court may quash a bylaw where "the proceedings before the passing of the bylaw or resolution do not comply with this or any other Act" pursuant to s. 358(1)(b). Furthermore, the Court may quash a bylaw where "the manner of passing the bylaw or resolution does not comply with this or any other enactment" pursuant to s. 358(1)(c). The Council **admits** it did not follow the proper proceedings and acted in an improper manner when it passed the Tax Bylaws. Therefore, the Tax Bylaws should be quashed.

41. As the Supreme Court stated in *Catalyst Paper Corp. v North Cowichan (District)*, 2012 SCC 2 at para 28, [2012] 1 SCR 5:

In determining whether a particular bylaw falls within the scope of the legislative scheme, factors such as failure to adhere to required processes and improper motives are relevant. **Municipal councils must adhere to appropriate processes and cannot act for improper purposes.**

42. Section 155(2) of the Act states that a municipal council **cannot** authorize a tax levy in accordance with section 283 without **first** adopting an operating and capital budget for that year:

155(2) No council shall authorize a tax levy in accordance with section 283 with respect to a financial year unless it has adopted the operating and capital budget for that year.

43. Section 283 of the Act requires municipal councils to authorize a universal tax levy that is sufficient to meet the estimated expenditures for the year as set out in the budget:

283(2) Each council shall authorize a levy on all taxable assessments in the municipality:

(a) of a uniform rate considered sufficient to raise the amount of taxes required to meet the estimated expenditures and transfers, having regard to estimated revenues from other sources, set out in the budget of the municipality

44. The purpose of the provisions above is clear – that the amount of tax collected within a municipality shall not be an arbitrarily determined amount. This policy flows naturally from the explicit requirements that estimated expenditures must be determined first, prior to developing a uniform rate sufficient to meet those expenditures. The approval of a uniform rate must have a foundation in the financial reality of the municipality.

45. The Council has clearly violated the above provisions by approving the Uniform Mill Rate at the Council meeting held on August 10 and subsequently approving the 2018 Budget on August 13. Not only has the Council clearly violated the *Act*, it is aware that it has acted contrary to the *Act* because the Supervisor drew it to their attention at the October 15 Council meeting.⁴⁷ Therefore, Resolution 297/2018 (the "Resolution") which established the Uniform Mill Rate for 2018 should be quashed, along with the corresponding Tax Bylaw (Bylaw No. 360/2018 which establishes the Mill Rate Factors).

46. In deciding whether the Court should exercise its discretion to quash the Resolution and corresponding Tax Bylaws, the Court must keep in mind the underlying purpose of these. The Legislature has chosen to constrain the decision-making power of municipalities with respect to the implementation of their tax bylaws. The uniform rate must be based the objective evidence of the municipality's estimated expenditures and cannot be an arbitrary determination.

47. Each year, the Council determines the Uniform Mill Rate and then passes a bylaw to create the Mill Rate Factors for that year. The Mill Rate Factors are determined based upon the Uniform Mill Rate for that particular year. The Mill Rate Factors are the next logical step from adopting the Uniform

⁴⁷ The Supplementary Affidavit of Robert Schmidt at para 5.

Mill Rate. If the Uniform Mill Rate is invalid, the Mill Rate Factors are also invalid. Therefore, if the Uniform Mill Rate is quashed the Mill Rate Factors must also be quashed.

48. When considering whether the manner in which the Tax Bylaws were passed, it is important to consider the principles and purposes of the *Act* as stated in section 3:

3(1) This Act recognizes that municipalities, as local governments:

(a) are a responsible and accountable level of government within their jurisdiction, being created and empowered by the Province of Saskatchewan; and

(b) are subject to provincial laws and to certain limits and restrictions in the provincial interest as set out in this and other Acts.

(2) Having regard to the principles mentioned in subsection (1), the purposes of this Act are the following:

(a) to provide the legal structure and framework within which municipalities must govern themselves and make the decisions that they consider appropriate and in the best interests of their residents;

(b) to provide municipalities with the powers, duties and functions necessary to fulfil their purposes;

(c) to provide municipalities with the flexibility **to respond to the existing and future needs of their residents in creative and innovative ways;**

(d) to ensure that, in achieving these objectives, municipalities are accountable to the people who elect them and **are responsible for encouraging and enabling public participation in the governance process.**

[Emphasis added]

49. One of the primary purposes of the Act, as set out above, is to encourage and engage public participation in the governance process. The manner in which the Council enacted the Tax Bylaws, namely having all the readings and passing the Tax Bylaws on the same day in a matter of a few hours, not only wholly failed to encourage public participation but was orchestrated to ensure that public engagement participation with limited. The prevention of public engagement was undertaken with respect to a decision which Council knew would have a significant impact on its ratepayers.

50. Furthermore, only two days' notice was given before the two meetings in which the Tax Bylaws were voted on by the Council. The majority of ratepayers in the RM are not permanent residents and are required to travel if they wish to attend council meetings. While procedurally only two days' notice is required, in the unique circumstances of the RM and the importance of the Tax Bylaws it was improper for the RM to act in this manner when one considers municipalities are explicitly responsible for encouraging and enabling public participation in governance.

51. The Tax Bylaws were then passed through three readings by the Council over the course of less than two hours. In the past, the RM's practice has been to publish prospective bylaws on its website after it has received first or second reading. No opportunity for such encouragement of public participation was afforded during the passing of the bylaws.

52. The manner of passing the Tax Bylaws is especially problematic in light of the finding by the Inspector that there were no documents that provided an explanation or basis for the decision to place the burden of the tax increase on the residential property class.⁴⁸

53. Ultimately, in addition to improperly passing the Tax Bylaws in contravention of s.155(2) of the Act (and admitting to that failure), the Tax Bylaws were also passed in contravention with the stated purposes of the Act, which is to encourage public participation and engagement. Given the foregoing it is respectfully submitted that this Honourable Court should exercise its discretion to quash the impugned Tax Bylaws. Respectfully, if this Honourable Court fails to quash the impugned Tax Bylaws this Honourable Court would be, in effect, endorsing Council's complete and utter disregard for the manner in which taxes bylaws are to be passed under the Act, along with Council's active discouragement of public participation and engagement, contrary to the stated purpose of the Act.

C. The Bylaws are Illegal in Substance and Form

54. Pursuant to s. 358(1)(a) the Court may quash a bylaw where "the bylaw is illegal in substance or form." There are numerous reasons that the Tax Bylaws are illegal in substance and form. Therefore, the Tax Bylaws should be quashed.

55. The Tax Bylaws are illegal for the following reasons: the Council was biased in making them, the Council misapplied the Act, the Council fettered its discretion, the Tax Bylaws were made for an improper purpose and the Tax Bylaws are contrary to the public interest.

56. The Supreme Court of Canada decision in *London (City) v RSJ Holdings Inc.*, 2007 SCC 29 at para 39, [2007] 2 SCR 588, dealt with a similar provision in Ontario's legislation which enables the Court to quash bylaws for illegality. In discussing the exercise of the Court's discretion in striking a bylaw for illegality, Justice Charron had this to say:

The power to quash a by-law for illegality contained in s. 273(1) of the *Municipal Act, 2001* is discretionary. Of course, in exercising its discretion, the court cannot act in an arbitrary manner. The discretion must be exercised judicially and in accordance with established principles of law. Hence, when there is a total absence of jurisdiction, a court acting judicially will quash the by-law. In other cases, **a number of factors may inform the court's exercise of discretion including, the nature of the by-law in**

⁴⁸ The Affidavit of Robert Schmidt at Exhibit "L" at 17.

question, the seriousness of the illegality committed, its consequences, delay, and mootness...

[Emphasis added]

57. The combination of factors present in this application require the Court's exercise of its discretion. Various and serious illegal actions have occurred and the nature of the Tax Bylaws is such that they have a very important impact on the ratepayers of the RM. While the consequences of exercising the Court's jurisdiction in quashing the Tax Bylaws and putting the RM back to square one this late in the year is serious, this consequence pales in comparison to the seriousness to the consequence of the Court failing to exercise its discretion.

58. There are two negative consequences that would arise from the failure of the Court to exercise its discretion to quash the bylaws. The first is that many ratepayers will be subjected to an onerous and arbitrary tax burden. The second is that municipal councils will not be dissuaded from acting illegally in enacting their bylaws and potential bad faith actions by municipal councils will continue to take place.

(i) *The Tax Bylaws are Tainted by Bias*

59. A decision made by a decision maker who is biased in making his or her decision is invalid. The Reeve and Council members who approved the Tax Bylaws did not exercise their decision making power fairly because they were biased.

60. The policy underlying a claim of bias is that justice must not only be done, but must be seen to be done (David P. Jones, Q.C. & Anne S. De Villars, Q.C., *Principles of Administrative Law*, 6th ed (Toronto: Thomson Reuters Canada Ltd., 2014) at 410 [*Principles of Admin Law*]). The rule against bias applies to all persons exercising public authority whose decisions are required to meet the standards of procedural fairness [*Principles of Admin Law* at 411]. This includes municipal councils.

61. The test for bias only requires that a reasonable apprehension of bias be made out, not actual bias (*Committee for Justice & Liberty v Canada (National Energy Board)* (1976), [1978] 1 SCR 369 [*Committee for Justice*]). The test as adopted from the minority decision in *Committee for Justice* is "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."

62. The authors Jones and De Villars identify five types of cases where a reasonable apprehension of bias can arise (Principles of Admin Law at 418.):

(a) where the decision-maker has a financial interest in the outcome of the matter being decided;

(b) where the decision-maker's impartiality is impaired by a personal relationship with one or more of the parties;

(c) where the decision-maker has knowledge of or been involved in the matter in some other capacity than his or her current decision-making capacity;

(d) where the words or behaviour of the decision-maker form the basis of a challenge to his or her impartiality; and

(e) where institutional arrangements give rise to an apprehension of bias.

[Emphasis added]

63. As noted, a reasonable apprehension of bias arises where the decision maker has a financial interest in the outcome of the matter being decided. The Reeve and Council members who voted in favour of the Tax Bylaws hold agricultural land and are not subject to the full weight of the tax increases.

64. An informed person, viewing the financial issues faced by the RM, would not conclude that the tax burden should be borne almost exclusively by the residential property class. Furthermore, that person would not then impose a significant base tax on top of that.

65. A reasonable apprehension of bias arises from the findings of the Inspector that there were no documents that explained or provided a basis for the decision to place the burden on residential property class.⁴⁹

66. Whether the Council acted consciously or unconsciously, it is clear that the members holding agricultural land would not act fairly and would protect their own interests in the face of raising taxes to deal with its own financial mismanagement.

67. The decision to impose the onerous tax increases on residential property is biased and, as such, the Tax Bylaws should be quashed.

(ii) *The Council Misapplied the Act*

68. The tax levy is illegal because it misapprehends the requirements contained in s. 283(2)(a) of the *Act*. This subsection of the *Act* requires that the municipality levy a uniform rate that would be sufficient to satisfy the budgeted expenses and transfers of the municipality, with regard for its estimated revenues.

⁴⁹ The Affidavit of Robert Schmidt at Exhibit "L" at 17.

69. The Council appears to have understood this provision to require that last year's deficit be included in calculating the uniform rate for this year. The provision does not say that past years' deficits must be included in this calculation. The Uniform Mill Rate does not comply with the requirements of s. 283(2)(a) for excessively over-estimating expenses.

(iii) *The Council Fettered its Discretion*

70. Fettering of discretion is an administrative law principle that prevents an administrative body from limiting the discretion it was conferred by statute. Generally, this principle applies to policies and guidelines developed by the administrative body. The underlying principle is that discretion, once conferred, may not be restricted in scope (Sara Blake, *Administrative Law in Canada*, 6th ed (Toronto: LexisNexis Canada Inc., 2017) at 108-110 [*Admin Law in Canada*]).

71. The Council wrongly limited its discretion by misapprehending the requirements contained in s. 283(2)(a) as discussed above. The document provided to the Council setting out prospective tax increase options only found the two options that paid off last years' deficit as being legal.⁵⁰ Again, as discussed above, it is not correct to interpret s. 283(2)(a) to require the payment of past deficits. Rather, the uniform rate merely needs to be sufficient to account for upcoming budgeted expenses.

(iv) *The Council Exercised its Discretion in Enacting the Tax Bylaws for an Improper Purpose*

72. Where a decision-maker is given a discretionary power, that discretion is not absolute. A decision maker must exercise its discretion within the policy and objects of the statute granting that discretionary power. A decision maker should consider all relevant factors in fulfilling the decision maker's duties and should exclude from consideration all irrelevant factors. An exercise of discretion should not be used to frustrate or thwart the intent of the statute. A discretionary power should not be used to achieve a purpose not contemplated by the statute (Blake, *Admin Law in Canada*, at 106).

73. While increasing taxes to cover expenses and deficits is clearly within the policy and objects of The Municipalities Act, the true purpose of the tax increase is to cover up the Council's negligent mismanagement of the RM's finances.

(v) *The Effect of the Tax Bylaws is Contrary to Public Interest*

74. The impact that the tax increase has had on many of the residential property holders within the RM is contrary to the public interest. Many residential property holders in the RM are on fixed incomes. By doubling the tax burdens on these individuals, the tax increase, should it stay in place,

⁵⁰ The Affidavit of Robert Schmidt at Exhibit "J".

will have a serious negative impact on their finances. Some individuals have had to obtain loans in order to pay their taxes.

75. Some individuals may also be forced to sell their properties. However, property values have been negatively affected by the tax increase and the market of willing buyers is greatly reduced.

76. The burden placed on these individuals is also causing mental distress.

D. The Council has Alternative Options Should the Bylaws be Quashed

77. If the Court exercises its discretion, the Council has options available to it in implementing a new tax bylaw. The *Act* does not require that the Council implement the same Tax Bylaws.

78. First, the Council implemented the Tax Bylaws without the benefit of a budget. Since the Budget has been approved, the Council can truly consider its options in implementing a tax levy.

79. Second, the Tax Bylaws will result in a nearly \$1 million surplus. Clearly, the Council can consider alternative options that will reduce the hardship borne by the residential ratepayers in the RM.

80. Third, the Council took into account a significant amount of depreciation in determining the RM's budget. The entire amount of that depreciation does not need to be made up this year.

81. If the Council reconsiders the Tax Bylaws in light of the above information, the Council will find that there are more options available than the significant increases it has imposed on the RM.

V. CONCLUSION AND COSTS

82. There can be no doubt that Council has improperly passed the Tax Bylaws which are illegal in both substance and form. Council has acknowledged that it did not follow the proper procedure and passed the Tax Bylaws in an improper manner, yet Council has refused to quash those Tax Bylaws. In addition to failing to follow the proper procedure in passing the Tax Bylaws, Council has acted with complete disregard of the stated purposes of the *Act*, which is to encourage public participation and engagement. Rather Council orchestrated its efforts to ensure that public participate and engagement was as limited as possible. Despite repeated efforts by the Applicants in this case to attempt resolve this matter amicably outside of this legal process, Council stubbornly continues to refuse to do what is appropriate in this case and quash the Tax Bylaws. As such, this application was necessary and, as further detailed below this Honourable Court should use its discretion to award costs on a solicitor and client basis against the Respondent.

83. The Court has a broad discretion to award costs in an application pursuant to *The Queen's Bench Rules* Rule 11-1(1):

11-1(1) Subject to the express provisions of any enactment and notwithstanding any other rule, the Court has discretion respecting the costs of and incidental to a proceeding or a step in a proceeding, and may make any direction or order respecting costs that it considers appropriate.

84. When the Court exercises its discretion to award costs, it may determine who will pay the costs to whom, the amount of the award and the time period in which costs are to be paid. Rule 11-1(2) states:

11-1(2) In exercising its discretion as to costs, the Court may determine:

- (a) by whom costs are to be paid, which may include a successful party;
- (b) to whom costs are to be paid;
- (c) the amount of costs;
- (d) the date by which costs are to be paid; and
- (e) the fund or estate or portion of the fund or estate out of which costs are to be paid.

85. Rule 11-1(3) provides a non-exhaustive list of options available to the Court in making an award of costs:

11-1(3) In awarding costs the Court may:

- (a) fix all or part of the costs with or without reference to the Tariff;**
- (b) award a lump sum instead of or in addition to any assessed costs;
- (c) award or refuse costs with respect to a particular issue or step in a proceeding;
- (d) award assessed costs up to or from a particular step in a proceeding;
- (e) award all or part of the costs to be assessed as a multiple or a proportion of any column of the Tariff;
- (f) award costs to one or more parties on one scale, and to another party or other parties on the same or another scale;
- (g) direct whether or not any costs are to be set off; and
- (h) make any other order it considers appropriate.**

86. Finally, Rule 11-1(4) sets out a non-exhaustive list of factors the Court can take into considerations in making an award of costs:

11(4) In exercising its discretion as to costs, the Court may consider:

(a) the result of the proceeding;

(b) the amounts claimed and the amounts recovered;

(c) the importance of the issues;

(d) the complexity of the proceedings;

(e) the apportionment of liability;

(f) any written offer to settle or any written offer to contribute;

(g) the conduct of any party that tended to shorten or to unnecessarily lengthen the proceeding;

(h) a party's denial of or refusal to admit anything that should have been admitted;

(i) whether any step in the proceeding was improper, vexatious or unnecessary;

(j) whether any step in the proceeding was taken through negligence, mistake or excessive caution;

(k) whether a party commenced separate proceedings for claims that should have been made in one proceeding or whether a party unnecessarily separated his or her defence from that of another party; and

(l) any other matter it considers relevant.

87. In the specific context of the Act, the Court may award costs against the municipality and may determine the scale of the costs pursuant to s. 358(5):

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

88. Richards C.J.S. set forth the basis for ordering solicitor-client costs in *Hope v Gourlay*, 2015 SKCA 27, 457 Sask R 43, stating:

[47] The exceptional nature of solicitor-client costs is well known. The framework principles which govern their award were outlined by this Court in *Siemens v Bawolin*, 2002 SKCA 84 (CanLII), [2002] 11 WWR 246. There, Jackson J.A. writing for the Court at para. 118, summarized those principles as follows:

...

1. solicitor and client costs are awarded in rare and exceptional cases only;

2. solicitor and client costs are awarded in cases where the conduct of the party against whom they are sought is described variously as scandalous, outrageous or reprehensible;

3. solicitor and client costs are not generally awarded as a reaction to the conduct giving rise to the litigation, but are intended to censure behaviour related to the litigation alone;

4. notwithstanding point 3, **solicitor and client costs may be awarded in exceptional cases to provide the other party complete indemnification for costs reasonably incurred.**

89. The Applicants have acted in the interest of all ratepayers in the RM to protect them from illegal, arbitrary and unreasonable Tax Bylaws imposed by the Council. Council has acted contrary to the purposes of the Act and has failed to quash the Tax Bylaws which they admit were improperly passed necessitating this application. As a result, the applicants should be awarded costs on a solicitor-client basis.

90. To summarize, the Applicants respectfully request the following relief from this Honourable Court:

- (a) An order quashing the Resolution 297/2018 adopting the Uniform Mill Rate for 2018;
- (b) An order quashing Bylaw No. 360/2018 - the bylaw amending the mill rate factors for The Rural Municipality of McKillop No. 220 (the "R.M. of McKillop");
- (c) An order quashing Bylaw No. 361/2018 – the bylaw applying minimum tax to the levies calculated for municipal tax purposes for all taxable land in the residential property class at a rate of \$300 per acre;
- (d) An order quashing Bylaw No. 362/2018 – the bylaw setting a base tax for residential properties for the R.M. of McKillop;
- (e) An order quashing Bylaw No. 324/2018 – the bylaw related to household garbage and refuse.;
- (f) An order voiding any and all tax notices issued as a result of the quashed Bylaws above and requiring the Respondent to retract the same;
- (g) An order requiring the 2018 taxes to return to the 2017 levels, or alternatively, an order requiring the Respondent, Council of The Rural Municipality of McKillop No. 220, shall consult with and engage in good faith and meaningful discussions and consultation with the Applicants and, more generally, the public within The Rural Municipality of McKillop No. 220, prior to passing any tax bylaws intended to replace the quashed Bylaws above;

- (h) An order requiring any bylaws intended to replace the quashed Bylaws above shall strictly follow the procedure prescribed by *The Municipalities Act*, SS 2005, c M-36.1 and shall have three separate readings on three separate dates;
- (i) An order providing the Applicants costs of this application on a solicitor-client basis;
- (j) Such other relief as counsel may advise and this Honourable Court may allow.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Regina, Saskatchewan, this 29th day of October, 2018.

MLT AIKINS LLP

Per: _____
Deron A. Kuski, Q.C., Counsel for the Applicants
June LeDrew, Robert Schmidt, _____
_____ and Devon Hack

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VI. LIST OF AUTHORITIES

Tab	Cases
1.	<i>Baker v Sherwood No. 159 (Rural Municipality)</i> , 2015 SKQB 3011
2.	<i>Barbour v Ituna (Town)</i> , 2018 SKQB 502
3.	<i>Catalyst Paper Corp. v North Cowichan (District)</i> , 2012 SCC 2
4.	<i>Committee for Justice & Liberty v Canada (National Energy Board)</i> (1976), [1978] 1 SCR 369
5.	<i>Goodtrack v The Rural Municipality of Waverly No. 44</i> , 2012 SKQB 413
6.	<i>Hope v Gourlay</i> , 2015 SKCA 27, 457 Sask R 43
7.	<i>London (City) v RSJ Holdings Inc.</i> , 2007 SCC 29
	Books
8.	David P. Jones, Q.C. & Anne S. De Villars, Q.C., <i>Principles of Administrative Law</i> , 6th ed (Toronto: Thomson Reuters Canada Ltd., 2014)
9.	Sara Blake, <i>Administrative Law in Canada</i> , 6th ed (Toronto: LexisNexis Canada Inc., 2017)
	Acts
10.	<i>The Municipalities Act</i> , SS 2005, c M-36.1