

QUEEN'S BENCH FOR SASKATCHEWAN

Citation: 2018 SKQB 292

Date: 2018 11 01
Docket: QBG 88 of 2018/ QB 84 of 2018
Judicial Centre: Moose Jaw

BETWEEN:

JERRY BARON KAISER

PLAINTIFF

- and -

R. M. OF BAILDON No. 131

DEFENDANT

Counsel:

Jerry Kaiser
Lauren Wihak and Jenna Sambrook, Student-at-law

self-represented
for the defendant

JUDGMENT
NOVEMBER 1, 2018

KALMAKOFF J.

INTRODUCTION

[1] This decision relates to applications brought by the Rural Municipality of Baidon [Baidon], pursuant to Rule 7-9(2) of *The Queen's Bench Rules*, to strike statements of claim filed by Jerry Kaiser in two actions, namely QBG 84 of 2016 and QBG 88 of 2018. Baidon argues that Mr. Kaiser's claims fail to disclose a reasonable cause of action, and that they are scandalous, frivolous, vexatious, and an abuse of the court's process. Baidon also seeks enhanced costs.

[2] In response to Baildon's applications, Mr. Kaiser has filed applications that seek to strike Baildon's applications, and allow his claims to proceed. Mr. Kaiser argues that there is a genuine issue requiring a trial, and that Baildon's applications to strike his claim are frivolous, vexatious, and an abuse of the process of the court.

[3] For reasons that follow, I have determined that Baildon's applications must succeed. Mr. Kaiser's claims will be struck.

FACTUAL BACKGROUND AND CHRONOLOGY

[4] Mr. Kaiser owns property in the hamlet of Baildon. The dispute in this case stems from what Mr. Kaiser does with his property and the structures upon it, namely (i) a car garage, (ii) a monument, and (iii) a former church hall building.

The Baildon Building Bylaw

[5] In December of 2014, Baildon passed Bylaw 07-2014 [*Building Bylaw*]. It requires individuals who wish to build or alter certain buildings within the R.M. to obtain a permit. In particular, s. 4 reads as follows:

4. (1) A permit is required whenever work regulated by the Act and Regulations is to be undertaken.
- (2) A building permit is required for a deck, sunroom, veranda, porch, shed or other non-farm building where the build is over one hundred (100) square feet in area.
- (3) A building permit is not needed for buildings on farms that are used exclusively for the storage of farm equipment, livestock, grain or other farm produce and farms hops. Excluded are farm residential buildings and building accessory to the farm residence such as attached and detached garages.
- (4) A building permit is not needed for cosmetic repairs and renovations which do not involve any structural alterations or additions to the superstructure or foundation.
- (5) No owner or owner's agent shall work or authorize work or allow work to proceed on a project for which a permit is required unless a valid permit exists for the work to be done.

(6) The granting of any permit that is authorized by this bylaw shall not:

- (a) entitled the grantee, his successor assigns, or anyone on his behalf to erect any building that fails to comply with the requirements of any building restriction agreement, bylaw, act and/or regulation affecting the site described in the permit, or
 - (b) make either the local authority or its authorized representative liable for damages or make otherwise by reason of the fact that a building, the construction, erection, placement, alteration, repair, renovation, demolition, relocation, removal, use or occupancy of which has been authorized by permit, does not comply with the requirements of any building restriction agreement, bylaw, act and/or regulation affecting the site described in the permit.
- (7) The building standards shall apply to all non-farm residences constructed, erected, placed, altered, repaired, renovated, relocated, used or occupied in the municipality.
- (8) Every owner is responsible to obtain all required permits and approvals prior to commencement of the work to which they relate. It shall be the responsibility of the applicant to arrange for all permits, inspections, and certifications required by the Act and its Regulations and by other applicable Acts and its respectable Regulations.

[6] The "Act" referred to in s. 4 of the *Building Bylaw* is *The Uniform Building and Accessibility Standards Act*, SS 1983-84, c U-1.2 [UBASA].

[7] Section 7 of *UBASA* governs building standards. It reads, in part, as follows:

7(1) Subject to subsections (2) and (3), the owner of each building in Saskatchewan shall ensure that the building is designed, constructed, erected, placed, altered, repaired, renovated, demolished, relocated, removed, used or occupied in accordance with the building standards.

(2) The building standards do not apply to:

...

(c) a farm building;

...

(3) Notwithstanding clause (2)(c) but subject to sections 23.1 and 24.2:

(a) if a rural municipality passes a bylaw declaring that the building standards apply to buildings in all or a part of the rural municipality, the building standards apply to the buildings

described in the bylaw; and

(b) if a city, town, village or resort village passes a bylaw declaring that the building standards apply to farm buildings in the municipality, the building standards apply to the farm buildings described in the bylaw.

[8] By virtue of ss. 7(2)(c) and 7(3) of *UBASA*, the building standards set out therein do not apply to farm buildings in a municipality unless the municipality passes a bylaw declaring that they do.

[9] The *Building Bylaw* is such a bylaw. It provides that certain farm buildings require a building permit, while others do not. In particular, s. 4(3) says that farm shops and farm buildings that are used exclusively for the storage of farm equipment, livestock, grain or other farm produce are exempt from the permit requirement. Other farm buildings, such as residences, while not exempt from the permit requirement, are exempt from the fee that generally must be paid when submitting an application for a permit (ss. 6(ii)). For all other building permit applications, the fee is \$100 (ss. 6(i)).

Mr. Kaiser Takes Issue with the *Building Bylaw*

[10] On his property, Mr. Kaiser built a garage. He painted an image of a cow on the side of it. He also constructed a monument that sits atop a concrete pad. He takes the position that these structures are “art installations”, and as such should be exempt from the operation of the *Building Bylaw*. He says the *Building Bylaw* unfairly discriminates against him as a small land holder in a way that violates his rights under s. 15 of the *Canadian Charter of Rights and Freedoms* [Charter], because farm buildings (presumably built by farmers who own larger tracts of land) are exempt from the permit requirements. Mr. Kaiser alleges that Baildon has engaged in a campaign of intimidation and harassment against him in its efforts to enforce the *Building Bylaw*. He also says the *Building Bylaw*, and the manner in which Baildon has enforced it against him,

have had the effect of violating his right to freedom of expression, as guaranteed by ss. 2(b) of the *Charter*.

[11] Mr. Kaiser also objects to the tax assessment of a building, namely a former church hall, in which he was residing.

The Garage

[12] On January 28, 2015, Mr. Kaiser applied for a building permit. In the application, he indicated that he intended to build a 24' x 30' "car garage" on his property. On the application form, he wrote that he would "not pay a fee, as this discriminates against small holdings." When Mr. Kaiser submitted his application, it was also missing certain necessary supporting documentation. Baildon denied Mr. Kaiser's application for a permit.

[13] On April 12, 2015, Mr. Kaiser wrote a letter to Baildon, in which he said that he viewed his garage as a farm structure, and thus exempt from permit requirements. Baildon's lawyer, Andrew Swenson, wrote back to Mr. Kaiser, saying that only certain farm buildings, as defined in the *Building Bylaw*, were exempt, and that Mr. Kaiser's building did not fit into that category. Mr. Swenson advised Mr. Kaiser that, if he constructed the planned building without a permit, Baildon may have to take action.

[14] On May 28, 2015, Christine Breitzkreuz, the Assistant Administrator for Baildon, attended to Mr. Kaiser's property, and observed what appeared to be a building under construction. She sent Mr. Kaiser a permit application, by mail. Mr. Kaiser responded by letter, and advised Baildon that he intended to continue construction without a permit, and that "this would be a good time for Council to seek a court order to stop my work."

[15] On June 23, 2015, Baildon issued a stop work order, under the authority of s. 242(4) of *The Planning and Development Act, 2007*, SS 2007, c P-13.2 [*PDA*], which directed Mr. Kaiser to either apply for the required permit, or remove the building under construction by July 8, 2015. Mr. Kaiser continued to build. Pursuant to s. 219 of *PDA*, he appealed the stop work order to the Development Appeal Board [DAB].

[16] Before the DAB, Mr. Kaiser argued three main points: (1) that he was capable of building a structurally sound and aesthetically pleasing building; (2) that the *Building Bylaw* was discriminatory; and (3) that the *Building Bylaw* violated his *Charter* right to equality. He also questioned the authority of the DAB to deal with the matter.

[17] On September 9, 2015, the DAB dismissed Mr. Kaiser's appeal. The DAB found that it was duly appointed by Baildon, in accordance with the applicable legislation, and as such had jurisdiction to determine the matter. The DAB also concluded (i) that Mr. Kaiser had provided no evidence of his construction qualifications; (ii) that Baildon acted in good faith toward Mr. Kaiser; and (iii) that Mr. Kaiser was aware of the need for a permit. The DAB dismissed Mr. Kaiser's appeal, and ordered him to "make application for all appropriate permits in full and with all required supporting documentation as well as with all fees as prescribed within 30 days." If the applications were deemed insufficient or incomplete, Baildon was to notify Mr. Kaiser of that, and give him an extra 30 days to rectify the situation. The DAB's order also provided that, if the permit applications were not made within 60 days from the date of the decision, Baildon could take "any legal means deemed necessary" to ensure that the building in question, or any other future developments made by Mr. Kaiser, adhere to all applicable bylaws, legislation and building codes.

[18] Mr. Kaiser did not apply for the necessary permits. On October 10, 2015, Baidon wrote to Mr. Kaiser, advising him that the 30 day period for him to comply had expired, and that they were giving him another 30 days, as required by the DAB's order, before taking further action. Mr. Kaiser then appealed the DAB's decision to the Saskatchewan Municipal Board, as permitted by the provisions of *PDA* and *The Municipal Board Act*, SS 1988-89, c M-23.2 [*MBA*]. In his appeal, Mr. Kaiser alleged that the DAB was biased, incompetent, and had a conflict of interest. He also alleged that the DAB improperly failed to consider the impact of the *Building Bylaw* on his rights under the *Charter*.

[19] On June 6, 2016, the Saskatchewan Municipal Board dismissed Mr. Kaiser's appeal, because he did not pursue it in a timely fashion.

The Church/Hall Building

[20] In June of 2016, Baidon became aware that Mr. Kaiser was planning to move into a building that was on his property. This building had originally been built as a church in 1924, and was later used as a municipal hall. Mr. Kaiser acquired the building in 2010, at a time when it was in a state of disrepair. He undertook a renovation of the building, and it reopened as a hall in 2012. In April or May of 2016, it appeared as though Mr. Kaiser had moved into the building, and was using it as a residence. Ms. Breitkreuz sent Mr. Kaiser a letter on June 7, 2016, reminding him of the requirements under *UBASA* and the *Building Bylaw* that were applicable if he planned to use the hall as a residence.

[21] On June 16, 2016, Mr. Kaiser responded by letter, saying that the building in question was in fact a church, and not a residence. He said he was the "deacon of a religious sect", and that he used the building for prayer

meetings and faith healing ceremonies. Any changes made to the building, said Mr. Kaiser, were made solely for the safety and convenience of his "parishioners". Mr. Kaiser also noted that, while the building was not a residence, the nature of his pastoral duties required him to be present late at night, and that, on occasion, he may "take respite in the altar". In his letter, Mr. Kaiser also indicated that his "cow barn/shed" was a work of satirical art, used only for "ironic farm equipment storage", and pointed out his displeasure with what he viewed as Baildon's attempts to harass and discriminate against him as a minority.

The First Claim – QBG 84 of 2016

[22] On June 29, 2016, Mr. Kaiser filed a statement of claim in action QBG 84 of 2016. In it, he asked the court to overrule Baildon's order requiring him to obtain a permit. At para. 6 of the claim, he said the garage was a farm building, and should be exempt from the permit requirement. He said the *Building Bylaw*, which required a minority of people (*i.e.* owners of small land holdings) to obtain permits, but exempted owners of farm land from that requirement, was discriminatory, and contrary to the *Charter*. He also claimed that the *Building Bylaw* was a form of censorship, contrary to the *Charter*, and that the "cease and desist" order issued by Baildon amounted to a form of "bureaucratic bullying". In the claim, Mr. Kaiser sought the following remedies:

- (1) That his installations be exempt, as farm buildings, under s. 7 of *UBASA*, and not subject to the requirements of s. 4(3) of the *Building Bylaw*;
- (2) Striking down Baildon Bylaw 02-2015 [*Amending Bylaw*], which amended the *Building Bylaw* as it related to the fees applicable to building permits, because it discriminates against small land

holders, and gives unequal benefit to farmers, contrary to the *Charter*, and

- (3) Unspecified relief to remedy the violation of his right to freedom of expression.

The Tax Assessment

[23] In 2017, the Saskatchewan Assessment Management Agency [SAMA] attended to Mr. Kaiser's property because Baildon was undergoing a revaluation for tax assessment purposes. The SAMA classified Mr. Kaiser's hall and detached garage as residential property, because he was using the hall as a residence, and valued them accordingly for tax assessment purposes.

The Monument

[24] In April of 2017, Mr. Kaiser built a concrete pad on his property, atop which he built a monument, apparently made of concrete and stone. This was built in the spirit of celebrating Canada's 150th anniversary. Mr. Kaiser intended it to be a symbol of female strength, and to honour female settlers who built the first church in Baildon.

Stop Work Orders re: the Hall and the Monument

[25] On April 20, 2017, Baildon also issued another stop work order under s. 242(4) of *PDA*, requiring Mr. Kaiser to acquire the necessary permits to continue to use the church/hall as a residence. In this stop work order, Baildon alleged that Mr. Kaiser was in contravention of s. 62(1) of *PDA*, and ss. 3.2(a) of Baildon Zoning Bylaw 08-2015 [*Zoning Bylaw*]. Baildon's position was that Mr. Kaiser's use of the church/hall as a residence violated the *Zoning Bylaw*, and that the change in use from commercial to residential required that the building comply with the provisions of *UBASA*.

[26] That same day, Baildon also issued a stop work order in relation to the concrete pad and monument, alleging violation of the same statutory and bylaw provisions. Baildon's position was that Mr. Kaiser constructed the concrete pad without obtaining a development permit.

[27] On June 8, 2017, Mr. Kaiser appealed both stop work orders to the DAB. In his written submissions, he raised the "religious sect" argument relating to the church/hall, and also alluded to what he saw as Baildon's campaign of institutional harassment against him. He did not attend the hearing before the DAB.

[28] Mr. Kaiser's appeals were dismissed. The DAB issued its decisions on August 10, 2017. It found that Mr. Kaiser had built the concrete pad and monument without the required permit, and also that the monument was not a permitted use under the *Zoning Bylaw*. The DAB ordered that Mr. Kaiser remove the monument, but allowed that the concrete pad could remain, if Mr. Kaiser obtained the necessary permit. The DAB also found that Mr. Kaiser was using the hall, at least in part, as a residence, as there was no evidence that the building was a church, or that Mr. Kaiser was the deacon of any recognized religious society.

[29] Mr. Kaiser appealed the DAB's decisions. With respect to the tax assessment aspect of the decision, he appealed to the Assessment Appeal Committee [AAC], pursuant to s. 16 of *MBA*, and s. 246 of *The Municipalities Act*, SS 2005, c M-36.1 arguing that both the church/hall and garage ought to be exempt from municipal taxation. He argued that the church/hall was a place of public worship, and as such was exempt from taxation under ss. 292(1)(e) of *The Municipalities Act*. He also argued that the garage was an art installation,

and as such, taxation of it violated his right to freedom of expression under ss. 2(b) of the *Charter*.

[30] The AAC dismissed Mr. Kaiser's appeal (Decision AAC 2017-0002) on April 9, 2018. At the hearing, Mr. Kaiser withdrew his appeal regarding the tax assessment of the church/hall, acknowledging that the building was not owned by a religious organization, and as such did not fall within the "place of public worship" exception in ss. 292(1)(e). The AAC rejected Mr. Kaiser's appeal regarding an exemption for the garage, finding that the garage was correctly characterized a "building" as defined in *The Municipalities Act*, and thus subject to tax assessment, as that Act contains no provisions exempting buildings that are art installations. The AAC did not specifically rule on Mr. Kaiser's argument relating to a *Charter* violation, because it concluded that it did not have the authority to do so. At paras. 13 and 29, the AAC wrote:

[13] The Committee found the Board is entitled to decide issues of tax exemption under section 296 of the *Act*. In a recent decision by the Court of Appeal for Saskatchewan (Court) in *Aquila Holdings Ltd. v Edenwold (Rural Municipality)*, 2017 SKCA 66, the Court reaffirmed that both boards of revision and the Committee have jurisdiction to decide appeals regarding tax exemptions. We determined the Board correctly identified it did not have jurisdiction to make decisions regarding the infringement of *Charter* rights.

[29] We listened to Mr. Kaiser's position regarding his infringement of rights. The Committee could not identify the specific way Mr. Kaiser's rights were breached. Section 1 of the *Charter* refers to the rights being subject to reasonable limits prescribed by law. The Committee has not been granted authority to decide on the infringement of rights included in the *Charter*.

[31] Mr. Kaiser applied for leave to appeal this decision to the Court of Appeal, but abandoned that application on August 3, 2018.

[32] As is related to the building permit aspect, Mr. Kaiser appealed the DAB's decisions to the Planning Appeals Committee [PAC] of the Saskatchewan Municipal Board, pursuant to s. 17 of *MBA*, and s. 226 of *PDA*.

[33] With respect to the DAB's decision regarding the concrete pad, Mr. Kaiser argued a number of technical grounds, including (i) that the R.M. had misidentified the lot in the stop work order; (ii) that the DAB had not properly notified him of the hearing; and (iii) that the DAB had committed an error by naming the R.M. of McKillop as the respondent. He also argued that the *Building Bylaw* and the stop work order infringed his right to freedom of expression, as guaranteed by the *Charter*.

[34] The PAC issued its decision on July 25, 2018 (PAC 2017-0017), dismissing Mr. Kaiser's appeal. The PAC said that allowing Mr. Kaiser's appeal would be inappropriate because permitting him exemption from the operation of the *Building Bylaw* would (a) give him a special privilege; and (b) defeat the intent of the *Building Bylaw*. The PAC also considered and dismissed Mr. Kaiser's *Charter* argument, finding that Mr. Kaiser had not established a violation of his rights under ss. 2(b). At paras. 17-18, the PAC wrote:

[17] Mr. Kaiser says the municipal bylaws infringe upon his "freedom of expression" as an artist, which is offensive to the *Charter* and are, therefore, of no force and effect and he is not bound by them. The difficulty with his submission is there is absolutely no evidence to show the municipal bylaws in any way infringe on Mr. Kaiser's artistic freedoms. Nothing in the record establishes the application for a Development Permit, which is free, could in any way constitute an infringement of Mr. Kaiser's *Charter* rights. There is no evidence in the record before us showing the municipal bylaws and their proper application would impinge on Mr. Kaiser's artistic expression in any way. There could be no evidence supporting the infringement of Mr. Kaiser's *Charter* rights as he absolutely refuses to participate in the municipal permit and development process. No argument has been advanced that the bylaws, on their face, infringe on Mr. Kaiser's artistic freedom.

[18] It is incumbent on Mr. Kaiser to show the application of the Bylaw infringes his *Charter* rights. More than Mr. Kaiser's saying so is required to establish this proposition.

[35] The PAC also heard Mr. Kaiser's appeal of the DAB's decision regarding the stop work order that related to the church/hall, and issued a decision on July 25, 2018 [PAC 2017-0018]. At that hearing, Mr. Kaiser argued that the building should be exempt from *UBASA* because it was built before that Act came into force. That argument was dismissed. He also alleged unequal enforcement of the bylaws by Baildon. The PAC dismissed that argument, because Mr. Kaiser had not provided any evidence to that effect, but also added, at para. 15 that, even if such an allegation were true, it would not relieve Mr. Kaiser from his obligations under the *Building Bylaw*. Mr. Kaiser also argued that the DAB's decision ought to have waited until the action he filed in QB 84 of 2016 had been resolved, because the *Charter* violations alleged in the lawsuit would have a direct impact on the decision regarding the applicability of the bylaws in question.

[36] The PAC, in PAC 2017-0018, dismissed Mr. Kaiser's appeal, again finding that exempting him from the operation of the *Building Bylaw* would result in a special privilege, and would defeat its intent. The PAC also declined to defer its ruling pending the resolution of Mr. Kaiser's claim in QBG 84 of 2016, saying, at para 20:

[20] Mr. Kaiser believed the Board decision had to wait until the lawsuit QB84MJ16 had been concluded. Mr. Kaiser did not file a copy of the lawsuit he referred to, and it forms no part of the record before us. The description of the lawsuit contained in Mr. Kaiser's submission relates to an alleged *Canadian Charter of Rights and Freedoms* [*Charter*] infringement of Mr. Kaiser's freedom of expression with regard to a work entitled "Don't have a cow." Mr. Kaiser claimed the RM of Baildon issued an Order requiring him to obtain a permit for the artwork. He disputes the requirement to have a permit for what he claims is artwork. The connection between the lawsuit and this appeal is the artwork is on the same lot as the building. Mr. Kaiser said a decision on the building would affect the suit already before the courts. It is difficult to assess how a ruling by this

Committee in regard to an appeal concerning a Stop Work Order based on a change of use could have any effect on a claim concerning *Charter* rights and Mr. Kaiser's freedom of expression.

[37] Mr. Kaiser has applied to the Court of Appeal for leave to appeal the decision in PAC 2017-0017. That application was heard on September 26, 2018, and remains under reserve.

The Second Claim – QBG 88 of 2018

[38] Before Mr. Kaiser's appeals were determined by the PAC, he filed another action against Baildon. QBG 88 of 2018 was filed on June 4, 2018.

[39] In this claim, Mr. Kaiser alleges that Baildon has "systematically denied" his rights under the *Charter*, using "harassment and intimidation". In particular, he alleges:

- that the *Building Bylaw* discriminates against people with small land holdings by forcing them to obtain inspections that farmers do not require (para. 4);
- That he built an art installation called "Don't Have a Cow", as a parody of a farm barn/shed, to express his opinion about the discriminatory nature of the *Building Bylaw*, and Baildon ordered that the installation be destroyed (paras. 5-6);
- That, as a result of Mr. Kaiser's calls for civil disobedience to protest the discriminatory nature of the *Building Bylaw*, Baildon issued a number of invalid orders, including the Stop Work Orders of April 20, 2017, in order to intimidate him (paras. 10 – 11);
- That, after Mr. Kaiser placed an ad in a weekly paper, alleging that Baildon's Reeve had on several occasions been incorrect, Baildon's council attempted to intimidate Mr. Kaiser by having its lawyer write to him threatening a "slander suit" (paras. 12-15);

- That Baidon “approved an unethical action to deceive” the Provincial Assessment Appeal Committee by submitting a falsified document or documents (para. 17); and
- That Baidon has attempted to suppress Mr. Kaiser’s rights under ss. 2(b) of the *Charter* through harassment and intimidation, in all of the ways outlined above (para. 18).

[40] Mr. Kaiser, in the claim, seeks a number of remedies, as laid out in para. 19;

19. REMEDY: PLAINTIFF ASKES (*sic*)

19.1 CENSURE AND PROSECUTE THOSE RESPONSIBLE FOR MAKING THE FALSIFIED DOCUMENT “McDOUGALL-GAULEY QUEEN’S BENCH HEARING” PURPORTING TO BE STATEMENTS MADE BY JUSTICE J. BROWN

19.2 DAMAGES OF \$50,000 UNDER SECTION 24 OF THE CHARTER OF RIGHTS AND FREEDOM (*sic*) OF CANADA FOR THE ATTEMPTED AND ONGOING EFFORTS OF R.M. BAILDON TO EXTINGUISH PLAINTIFFS FREEDOM OF EXPRESSION

19.3 ORDER R.M. BAILDON TO DROP ALL ORDERS AGAINST THE PLAINTIFF.

19.4 ORDER REPEAL OF THE 2014 BUILDING BYLAW.

POSITION OF THE PARTIES

[41] Baidon argues that Mr. Kaiser’s claims should be struck under Rule 7-9 because (i) they fail to disclose a reasonable cause of action; (ii) they are scandalous, frivolous or vexatious; and (iii) they are an abuse of the process of the court. Baidon asserts that this is the case because Mr. Kaiser’s claims have no basis in law, seek to mount a collateral attack on decisions made under the statutory framework governing appeals from municipal assessment and taxation decisions, and also seek to re-litigate matters that have already been decided by valid decision makers in other forums. It says Mr. Kaiser’s claims

have no prospect of success, and should be struck in their entirety, without leave to amend.

[42] Baildon also argues that Mr. Kaiser should be required to pay solicitor-client costs (or some other form of enhanced costs) because of the continuous and vexatious nature of his litigation conduct.

[43] Mr. Kaiser argues that the PAC's decisions relating to the church/hall were inconsistent, and that the court needs to "clear the confusion". He also argues that Baildon has demonstrated that it will go to great lengths to suppress his freedom of expression, and filing the claims is the only effective means of vindicating his position and ensuring that his rights are properly protected. He argues the claims, at their core, have validity and, if there are any deficiencies in the drafting of his claims, amendments should be permitted to rectify those deficiencies.

ANALYSIS

(1) *Should Mr. Kaiser's claims be struck in whole or in part, and if so, should Mr. Kaiser be given leave to amend the claims?*

Striking Pleadings: The General Principles

[44] Rule 7-9 governs applications to strike out pleadings. It reads as follows:

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).

[45] This rule is a codification of the court's power under its inherent jurisdiction to stay actions that are an abuse of process or that disclose no reasonable cause of action. The overarching purpose of this rule is to save the court and the parties the cost, time and inconvenience of dealing with seriously defective or unmeritorious pleadings, claims and defences: *RoyNat Inc. v Northland Properties Ltd.*, [1994] 2 WWR 43 (Sask QB); *Rubbert v Boxrud*, 2014 SKQB 221, 450 Sask R 147. Justice is not served by permitting actions that have no reasonable chance of success or that are an abuse of process to proceed to trial: *Craik v Little Pine First Nation*, 2000 SKQB 147.

[46] The test for striking out a claim that discloses no reasonable cause of action under Rule 7-9(2)(a) is a stringent one. As the Court of Appeal noted in *Sask Power Corp. v Swift Current (City)*, 2007 SKCA 27, [2007] 5 WWR 387 [*Swift Current (City)*], at para 18 (citing the decision of Gunn J. in *Collins v Saskatchewan Rural Legal Aid Commission*, 2002 SKQB 201):

18 ...

- (i) The claim should be struck where, assuming the plaintiff proves everything alleged in the claim there is no reasonable chance of success. (*Sagon v. Royal Bank of Canada et al.* (1992), 105 Sask. R. 133 at 140 (C.A.));
- (ii) The jurisdiction to strike a claim should only be exercised in plain and obvious cases where the matter is beyond doubt. (*Sagon*, at

140; *Milgaard v. Kujawa et al.* (1994), 123 Sask. R. 164 (Sask. C.A.);

(iii) The court may consider only the claim, particulars furnished pursuant to a demand and any document referred to in the claim upon which the plaintiff must rely to establish its case (*Sagon*, at p. 140);

(iv) The court can strike all, or a portion of the claim (Rule 173);

(v) The plaintiff must state sufficient facts to establish the requisite legal elements for a cause of action. (*Sandy Ridge Sawing Ltd. v. Norrish and Carson* (1996), 140 Sask. R. 146 (Q.B.)).

[47] In *Reisinger v J.C. Akin Architect Ltd.*, 2017 SKCA 11, [2017] 8 WWR 532 [*Reisinger*], Justice Caldwell cited *Swift Current (City)* with approval, adding:

20 One of the tasks of a judge reviewing a pleading under Rule 7-9 is to determine whether sufficient facts to establish the required legal elements of the cause of action have been pleaded. The reviewing judge in discharging this task must have regard to the statement of claim as a whole. Specifically, he or she must review any recitation of allegations that appear to be customary formulations of the elements of specific causes of action as may be found, for example, in such texts as *Bullen & Leake & Jacob's Canadian Precedents of Pleadings*, 2d ed (Toronto: Carswell, 2013). The reviewing judge must also have regard to the non-formulaic allegations of fact contained in the statement of claim. It is for him or her to determine whether the combined effect of any technical pleading, together with other facts, properly plead the essential elements of the cause of action.

[48] When considering an application to strike a claim under Rule 7-9 (2)(a), the court should be generous in its approach, and err on the side of permitting novel, but arguable claims to proceed to trial. The court must also proceed on the basis that the facts pled are true, unless they are manifestly incapable of being proven: *R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 SCR 45 [*Imperial Tobacco*]; *Filson v Canada (Attorney General)*, 2015 SKCA 80, 388 DLR (4th) 66. In *Venture Construction Inc. v Saskatchewan*

(*Ministry of Highways and Infrastructure*), 2015 SKQB 70, at para 11, [2015] 10 WWR 467, Justice Barrington-Foote noted that the threshold for a claim to survive is low, and it should not be struck under Rule 7-9(2)(a) unless it is hopeless, or contains a radical defect.

[49] Where an application is made to strike a claim alleging a *Charter* violation, the test to be applied is similar. The court must assume that the facts pled are true, and determine whether the plaintiff has a chance of proving that the action complained of has caused a violation or a threat of violation of rights under the *Charter*: *Energy Probe v Canada (Attorney General)* (1989), 68 OR (2d) 449 (Ont CA), leave to appeal refused, [1989] SCCA No 223.

[50] A claim must, at the very least, assert a recognized cause of action (even if it is novel), and plead the facts necessary to make out that cause of action. It must also raise issues that are within the subject-matter jurisdiction of the court, and seek relief or remedies that the court has the authority to grant.

[51] A plaintiff should not be denied his day in court simply because pleadings are poorly drafted. Subrule (2)(a) should not be used to strike out a claim merely because there is an imperfection in the pleading, if an amendment could result in a claim that discloses a proper case to be tried. Nor should a claim be struck simply because the pleadings are not precise: *Neufeld v United Food & Commercial Workers International, Local 1400* (1984), 32 Sask R 245 (Sask QB). Any doubt as to whether an amendment or further particulars might disclose a reasonable cause of action should be resolved, at this stage, in favour of the party whose pleadings are impugned: *R. Gordon Knight & Associates Ltd. v Riverside Hill Estates Ltd.* (1964), 48 WWR 356 (BCCA); *Kashuba v Smerchinski*, 1996 CarswellSask 236 (WL) (Sask QB).

[52] However, where a claim is so poorly drafted that it is impossible to discern what cause of action is being alleged, or impossible to distill the claim into a coherent set of pleadings that discloses the material facts giving rise to a specific cause or causes of action against the defendant, it may be proper to strike the claim: *Reisinger; Neyedley v Neyedley Estate*, 2004 SKQB 246, [2005] 3 WWR 669.

[53] Self-represented litigants may be permitted some latitude in drafting claims. Where pleadings prepared by a non-lawyer are somewhat difficult to understand or below the standard expected of a lawyer, courts will be reluctant to deprive persons of their day in court simply because the pleadings have deficiencies. But where pleadings are irreparably defective, they will be struck: *Canada (Attorney General) v Griffiths*, 2005 SKQB 170.

[54] Whether or not a litigant is represented by counsel, the court must remain in control of its own processes: *Saskatchewan Wheat Pool v Kieling* (1993), 117 Sask R 218 (Sask QB), aff'd (1994) 120 Sask R 239 (Sask CA). In that respect, applications under Rule 7-9 engage an important gatekeeping function. The power to strike out claims having no reasonable prospect of success is a valuable measure that is essential to effective and fair litigation. It promotes the dual goods of efficiency in litigation (by reducing time, expense and resources spent on claims that are hopeless) and correct results (by focusing evidence and arguments on the real issues in the case): *Imperial Tobacco*, at paras 19-20. Preventing claims that are clearly meritless, and without any chance of success, from proceeding to trial by weeding them out at an early stage is essential to the proper operation of the justice system: *Canada (Attorney General) v Lameman*, 2008 SCC 14 at para 10, [2008] 1 SCR 372.

[55] Rule 7-9(2)(b) permits the court to strike out claims that are scandalous, frivolous, or vexatious. Subrule 2(e) permits striking out claims that are otherwise an abuse of the court's process. There is overlap between these two subrules, because false, frivolous and vexatious actions are an abuse of the process of the court: *Ross v Eastbourne Investments Ltd.* (1994), 124 Sask R 97 (Sask QB).

[56] False allegations are scandalous: *Miller v Saskatoon (City)*, 2015 SKQB 234, 483 Sask R 257 as are pleadings that improperly cast a party in a derogatory light. A claim that is groundless, or not pursued for a proper purpose is frivolous: *C & J Hauling Ltd. v Mistik Management Ltd.*, 2010 SKQB 60, 351 Sask R 199 [*Mistik*]. Actions pursued for motives other than enforcing a true legal claim, those pursued maliciously and without probable cause, or those lacking in justification and brought merely to embarrass the defendant, are vexatious: *Tamarak Energy Inc. v IPSCO Inc.*, 1999 SKQB 125, 185 Sask R 161; *Saskatoon & Region Home Builders' Association Inc. v The Children's Wish Foundation of Canada*, 2014 SKQB 89, 440 Sask R 300; *Marciano v Landa*, 2005 SKQB 58, 1 BLR (4th) 281.

[57] Unlike subrule 2(a), where an application to strike a claim is based on the ground that it is scandalous, frivolous or vexatious, or otherwise an abuse of the court's process, the court is entitled to consider evidence other than the pleadings: *Bank of Montreal v Giesbrecht*, 2005 SKQB 18; *Mistik*, at para 17.

[58] The court has an inherent power to prevent abuses of its process. "Abuse of process of the court" is a term of great significance. It connotes that the process of the court must be carried out properly, honestly and in good faith. It means the court can, and in fact must, prevent its machinery from being used as a means of vexation or oppression in the course of litigation: *Sagon v Royal*

Bank of Canada (1992), 105 Sask R 133 (Sask CA). Vexatious litigation is virtually synonymous with abuse of process: *Re Lymer*, 2014 ABQB 696, 601 AR 165.

[59] Abuse of process can arise in many different contexts. In *Mistik*, Popescul J., as he then was, wrote:

16 The abuse of process ground, found in Rule 173(e) overlaps with the “scandalous, frivolous and vexatious” ground referred to in Rule 173(c). Substantially the same considerations apply to both grounds. See: *Ross v. Eastbourne Investments Ltd.* (1994), 124 Sask. R. 97 (Sask. Q.B.). Examples of circumstances where the Court has found an abuse of process include:

- commencing an action knowing no cause of action exists (see: *Gola v. Zaporanik* (1924), [1925] 1 D.L.R. 34 (Sask. C.A.));
- re-litigating issues already determined (see: *Caros Investments Ltd. v. Royal Bank* (1993), 111 Sask. R. 90 (Sask. Q.B.)); and
- commencing a civil action which is a collateral attack on an criminal court (see: *Ross v. Dueck*, 2002 SKQB 113, 220 Sask. R. 56 (Sask. Q.B.)).

[60] Seeking to re-litigate matters which have already been fully and properly determined in another forum is an abuse of process: *O’Hara v Chapman Estate* (1987), 46 DLR (4th) 504 (Sask CA); *Windrem v Couture*, 2008 SKQB 33, 309 Sask R 264; *Toronto (City) v Canadian Union of Public Employees, Local 79*, 2003 SCC 63, [2003] 3 SCR 77.

Application to this case

The Claim in QBG 84 of 2016

[61] Mr. Kaiser is not represented by counsel, and does not appear to have had the assistance of counsel in drafting his pleadings. I must read his pleadings generously. That applies to the nature of the relief he seeks as well.

When read in a fashion most generous to Mr. Kaiser, his first claim, in QBG 84 of 2016, appears to seek three forms of relief:

- (1) A ruling or declaration that the garage is a “farm building”, and thus exempt from the permit requirements of the *Building Bylaw*;
- (2) An order striking down the *Amending Bylaw* because it discriminates against persons who have small land holdings by giving unequal benefits to agricultural operations; and
- (3) A declaration that the bylaws violate his right to freedom of expression, as guaranteed by ss. 2(b) of the *Charter*.

[62] In my view, even on the most generous reading, Mr. Kaiser’s claim in this action either fails to disclose any reasonable cause of action, or amounts to an abuse of process and must be struck. I will explain.

[63] The first form of relief Mr. Kaiser seeks is a ruling or declaration that the “installation” on his property (the garage) be considered exempt from the permit requirement under s. 4(3) of the *Building Bylaw*, because it is a farm building as set out in s. 7 of *UBASA*.

[64] Subsection 7(3)(a) of *UBASA* says that building standards apply to farm buildings in situations where a rural municipality passes a bylaw to that effect. Baildon did that. Subsection 4(3) of the *Building Bylaw* clearly includes “farm residential buildings and building accessories ... such as attached and detached garages” in the permit scheme, and exempts only “building on farms that are used exclusively for the storage of farm equipment, livestock, grain or other farm produce and farm shops”.

[65] In paras. 3 through 6 of the claim, Mr. Kaiser describes the garage as a “farm barn/shed”, and argues that, as such, it fits within the exempt

category. In essence, he pleads a cause of action that could give rise to a form of declaratory relief. A declaratory judgment is a pronouncement on the existence or non-existence of a legal state of affairs, such as whether a certain type of building fits within the category of buildings exempt from the permit requirements of a bylaw. As provided in s. 11 of *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01, the Court has power to grant declaratory relief: *Potash Corp. of Saskatchewan Inc. v Mosaic Potash Esterhazy Limited Partnership*, 2010 SKQB 106, [2010] 12 WWR 491; *Procyk v Procyk*, 2015 SKQB 212, 478 Sask R 313.

[66] Clearly, then, even though they are not perfectly pled, paras. 3-6 of Mr. Kaiser's claim assert a reasonable cause of action, and seek relief which the court has authority to grant.

[67] However, the question of whether Mr. Kaiser's garage should be exempt from the permit requirement has already been decided by a statutory tribunal with authority to make such a determination. The stop work order relating to the garage was issued by Baildon under the authority of s. 242(4) of *PDA*. A person affected by such an order, like Mr. Kaiser, can appeal the order, under ss. 219(c), to the DAB (a tribunal created, pursuant to the provision of *PDA*, for the express purpose of resolving such matters). Mr. Kaiser appealed the stop work order to the DAB, and the DAB held a hearing and ruled on the matter. It determined that Mr. Kaiser's garage was not exempt from the permit requirement under the *Building Bylaw*.

[68] Section 226 of *PDA* permits an appeal of the DAB's decision to the Saskatchewan Municipal Board [SMB]. Appeals to the SMB are governed by ss. 219 – 226 of *PDA*. The SMB is established by the provisions of *MBA*. Section

33.1 of *MBA* provides that persons affected by determinations made by the SMB can appeal those determinations, with leave, to the Court of Appeal.

[69] Mr. Kaiser filed an appeal with the SMB, but it was dismissed because Mr. Kaiser failed to pursue it in a timely fashion. Mr. Kaiser did not seek leave to appeal the SMB's decision dismissing his appeal.

[70] Much of Mr. Kaiser's claim makes allegations about the impropriety of the DAB appeal process, and the fact that the DAB would not consider Mr. Kaiser's *Charter* arguments. This is referred to in paras. 10 – 15 of the claim. These are also matters that could properly have been grounds of appeal pursued before the SMB, had Mr. Kaiser chosen to pursue that appeal, or argued on an application for leave to appeal to the Court of Appeal. Mr. Kaiser did not avail himself of those avenues of challenge to the DAB's decision.

[71] As a result, I must conclude that the matter, at least as it relates to the portion of the claim contained in paras. 3-6 and 10-15, inclusive, has already been decided by another tribunal with the authority to make such a determination. Mr. Kaiser's claim amounts to a collateral attack on the DAB's decision. Allowing him to re-litigate the issue in this forum would amount to permitting an abuse of the court's process. The jurisprudence is clear that this is not something the court ought to permit. Those portions of the claim must be struck.

[72] At para. 7 of the claim, Mr. Kaiser asserts that the *Building Bylaw* discriminates against owners of small land holdings by requiring them to obtain building permits, but exempting certain farm owners from having to do the same. In substance, he is asserting that the *Building Bylaw* violates his right to equal protection and benefit of the law, as guaranteed by s. 15 of the *Charter*.

This ties into the second form of relief that he seeks. In my view, this portion of the claim must also be struck. Even if Mr. Kaiser were to succeed in proving what he sets out in para. 7, it would not give rise to a cause of action.

[73] I say that because, while s. 15 of the *Charter* protects against certain types of discrimination, that does not mean there is a violation in every instance where the law applies differently to some persons than to others. In that respect, s. 15(1) reads as follows:

Equality before and under law and equal protection and benefit of law

15(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[74] In order to establish a violation of a person's rights under s. 15(1) of the *Charter*, a claimant must establish (i) differential treatment under the law, (ii) on the basis of enumerated or analogous grounds, and (iii) that the differential treatment constitutes discrimination: *Anton (Guardian ad litem of) v British Columbia (Attorney General)*, 2004 SCC 78, [2004] 3 SCR 657; *Kahkewistahaw First Nation v Taypotat*, 2015 SCC 30, [2015] 2 SCR 548 [*Kahkewistahaw*]; *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497.

[75] "Small land holdings" is clearly not an enumerated ground in s. 15(1). Nor, in my view, is it an analogous ground. It is not one that touches on the essential worth or dignity of the individual. It is not founded on the personal immutable characteristics of any person or group of persons. It is not a ground that shares commonalities with other enumerated grounds: *Miron v Trudel*, [1995] 2 SCR 418. Having "small land holdings" is not a characteristic

which stands “as a constant marker of suspect decision making or potential discrimination.”: *Kahkewistahaw*, at para 19.

[76] Accordingly, even if Mr. Kaiser were able to establish that the *Building Bylaw* discriminates against him *vis-à-vis* other types of land holders, he has no chance of establishing that it does so in a way that violates s. 15 of the *Charter*. To put it another way, his claim in that regard has no chance of success, and that portion of it must be struck.

[77] In paras. 1-8 of the claim, Mr. Kaiser also appears to be asserting that the *Building Bylaw* has the effect of infringing upon his right to freedom of expression, as guaranteed by ss. 2(b) of the *Charter*, by making a building permit necessary when a structure that is actually an art installation also fits within the definition of “building” in s. 7 of *UBASA*, and s. 4(3) of the *Building Bylaw*. This ties in to the third form of relief he seeks.

[78] Mr. Kaiser says that “no portion of the bylaw governs art”. However, he does not plead any facts which, if proven, would demonstrate how the potential requirement of a building permit in situations where the structure in question is constructed as an art installation would amount to a violation of his rights under ss. 2(b). Simply put, even if he proved everything set out in this portion of the claim, his claim could not succeed. Accordingly, it must be struck.

[79] In my view, the whole of Mr. Kaiser’s claim in QBG 84 of 2016 must be struck for the reasons I have outlined in the foregoing paragraphs.

The Claim in QBG 88 of 2018

[80] In his claim in QBG 88 of 2018, Mr. Kaiser begins, at para. 1, by stating:

I. THE R.M. OF BAILDON HAS SYSTEMATICALLY DENIED THE PLAINTIFF OF HIS RIGHT UNDER THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS USING HARSSMENT AND INTIMIDATION.

[81] The essence of this claim is Mr. Kaiser's assertion that Baildon has infringed upon his rights to freedom of expression, as guaranteed by ss. 2(b) of the *Charter*, and his right to equal treatment and benefit of the law, as guaranteed by s. 15. These are the effects, he pleads, of the bylaws in question, the manner in which Baildon has chosen to enforce those bylaws, and the steps it has taken to quell his efforts to challenge them (which Mr. Kaiser says include submitting falsified documents to the AAC). As set out earlier, the relief Mr. Kaiser seeks in the claim include (1) censure and prosecution of certain persons; (2) damages under s. 24(1) of the *Charter*; (3) ordering Baildon to drop all orders against him; and (4) repeal of the *Building Bylaw*.

[82] For reasons that I will explain, I am satisfied that Mr. Kaiser's claim in this action must also be struck in its entirety.

[83] Paragraph 4 of the claim asserts that the *Building Bylaw* discriminates against persons with small land holdings. As I stated earlier (in paras. 75-76), "small land holdings" is not an enumerated or analogous ground in s. 15(1) of the *Charter*. A claim alleging discriminatory treatment, and seeking damages for a *Charter* violation on that basis has no chance of success. It must be struck.

[84] The matters Mr. Kaiser pleads at paras. 8-9 and 13-16, inclusive, are a combination of irrelevant, rambling and largely incoherent assertions about Christine Loos, the Reeve of the R.M. of Baildon. Even on a generous reading, nothing set out in these paragraphs even remotely describes a cause of

action against Baildon. These paragraphs may also properly be described as frivolous and vexatious. They must be struck.

[85] The relief Mr. Kaiser seeks at para. 19.1 - "censure and prosecute" - is not relief the court has jurisdiction to grant. That portion of the claim must be struck. Likewise, for the "drop all orders" plea in para. 19.3.

[86] The matters Mr. Kaiser sets out in paras. 5, 6, 11, 17 and 18, potentially give rise to an arguable cause of action. In these paragraphs, Mr. Kaiser asserts that, through the enactment of the *Building Bylaw*, and the actions taken to enforce it and deal with his challenges, Baildon has violated Mr. Kaiser's right to freedom of expression under ss. 2(b) of the *Charter*, by preventing him from creating and displaying artwork. The heads of relief related to those portions of the claim are remedies that the court would have jurisdiction to grant in response to finding a *Charter* violation. At para. 19.2, he seeks the remedy of damages. At para. 19.4, although he frames the relief sought as "repeal of the bylaw", it would appear from the balance of the claim that he is actually seeking a declaration that the *Building Bylaw* is constitutionally invalid, under s. 52 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11*.

[87] Damages may be awarded as a remedy for a *Charter* violation under s. 24(1) where such a remedy is appropriate and just, having regard to whether damages would fulfil one or more of the related functions of compensation, vindication of rights, or deterring future breaches: *Vancouver (City) v Ward*, 2010 SCC 27, [2010] 2 SCR 28.

[88] That said, actions seeking damages based on *Charter* violations occasioned by the operation of a law, rather than by the actions of state agents,

will not often be successful. In *Ernst v Alberta Energy Regulator*, 2017 SCC 1, [2017] 1 SCR 3, the court noted, at para. 26:

26 ... Not every bare allegation claiming *Charter* damages must proceed to an individualized, case-by-case consideration on its particular merits. *Ward* held that *Charter* damages will not be an appropriate and just remedy where there is an effective alternative remedy or where damages would be contrary to the demands of good governance. These considerations, taken together, support the conclusion that the proper balance would be struck by holding that damages are not an appropriate remedy.

[89] As a general rule of public law, absent conduct that is clearly wrong, in bad faith or an abuse of power, the courts will not award damages for the harm suffered as a result of the mere enactment or application of a law, even if that law is subsequently declared to be unconstitutional. However, governments and their representatives are required to exercise their powers in good faith. In the event of conduct that is clearly wrong, in bad faith or an abuse of power, damages may be awarded: *Mackin v New Brunswick (Minister of Finance)*; *Rice v New Brunswick*, 2002 SCC 13, [2002] 1 SCR 405. While appropriate and just remedies should be granted to rectify *Charter* breaches, courts must be careful not to extend their availability too far. Acts carried out in the interest of good governance must be given proper due: *Henry v British Columbia (Attorney General)*, 2015 SCC 24, [2015] 2 SCR 214.

[90] A *Charter* remedy can only be granted by a “court of competent jurisdiction”. This does not necessarily need to be a court, *per se*. Statutory tribunals may, in some cases, be courts of competent jurisdiction for the purpose of hearing and determining *Charter* relief. A tribunal will be a court of competent jurisdiction if its constituent legislation gives it power over the parties, the issues in litigation, and the power to grant the remedy sought under the *Charter*: *R v Mills*, [1986] 1 SCR 863; *Weber v Ontario Hydro*, [1995] 2 SCR 929.

[91] In the circumstances of this case, the DAB is established by *PDA*. Its authority to determine appeals is outlined by s. 221:

Determining an appeal

221 In determining an appeal, the board hearing the appeal:

- (a) is bound by any official community plan in effect;
- (b) must ensure that its decisions conform to the uses of land, intensity of use and density of development in the zoning bylaw;
- (c) must ensure that its decisions are consistent with any provincial land use policies and statements of provincial interest; and
- (d) may, subject to clauses (a) to (c), confirm, revoke or vary the approval, decision, any development standard or condition, or order imposed by the approving authority, the council or the development officer, as the case may be, or make or substitute any approval, decision or condition that it considers advisable if, in its opinion, the action would not:
 - (i) grant to the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district;
 - (ii) amount to a relaxation so as to defeat the intent of the zoning bylaw; or
 - (iii) injuriously affect the neighbouring properties.

[92] Section 226 provides that the DAB's decision can be appealed to the SMB. It reads:

Appeal from decision of board

226(1) The minister, the council, the appellant or any other person may, within 30 days after the date of receipt of a copy of the decision of the board, file with the Saskatchewan Municipal Board a notice of appeal, in the form and manner established by the Saskatchewan Municipal Board, setting out all the grounds of appeal.

(2) If a decision of the board is appealed pursuant to subsection (1), that decision has no effect pending determination of the appeal by the Saskatchewan Municipal Board.

(3) In determining an appeal pursuant to this section, the Saskatchewan Municipal Board may:

(a) dismiss the appeal; or

(b) make any decision with respect to the appeal that the board could have made.

(4) The terms and conditions set out in subsection 225(2) apply, with any necessary modification, to a decision of the Saskatchewan Municipal Board made pursuant to clause (3)(b).

[93] The SMB is established under the provisions of *MBA*. Section 20 of *MBA* describes the powers of the SMB. It reads, in part, as follows:

Determining matters of fact or law

20(1) The board has authority to hear and determine any question of fact or law as to matters within its jurisdiction.

[94] This section gives a PAC of the SMB authority to hear and determine all questions of fact and law as to matters within its jurisdiction. Its jurisdiction, in the context of the matter brought before it by Mr. Kaiser, is limited to determining whether stop work orders ought to be upheld. In that context, the determination of whether the bylaw which underlies the stop work order violates the *Charter* rights of a person affected by it is a relevant consideration. Accordingly, the Planning Appeals Committee, by virtue of its constituent legislation, has authority to make determinations as to whether *Charter* violations have occurred. It is, for that purpose, a court of competent jurisdiction.

[95] While there may be a question as to whether the PAC has the authority to grant the remedy of damages or to declare a bylaw unconstitutional in relation to a *Charter* violation, one does not get to the question of remedy if a breach is not established. In this case, the PAC clearly determined (in decision 2017-0017) that Mr. Kaiser failed to establish a violation of his rights under the *Charter*. Accordingly, I am satisfied that, by bringing the claim in this fashion, Mr. Kaiser is seeking to re-litigate matters that have already been decided in other appropriate forums and, as such the claim amounts to an abuse of the

court's process. His claim amounts to a collateral attack on the decisions of the DAB, the AAC and the PAC, and should not, as a result, be permitted to proceed.

[96] As I outlined earlier in these reasons, where an individual is affected by a stop work order based on a municipal bylaw related to zoning, planning and development, or the requirement for building permits, that individual can appeal the order to a DAB appointed under *PDA*. Pursuant to s. 226 of *PDA*, and the provisions of *MBA*, the DAB's decision can be appealed to a PAC of the SMB. Appeals of matters related to tax assessment can be pursued to statutory tribunals appointed under the provisions of *The Municipalities Act*.

[97] Mr. Kaiser utilized the appeal processes provided under those statutes. Decisions were rendered in relation to his matters, and he has pursued the relevant appeals. While the AAC held (in AAC 2017-0002) that it did not have the jurisdiction to deal with Mr. Kaiser's *Charter* argument, that decision dealt only with the tax assessment portion of Mr. Kaiser's dispute with Baildon. Subsequent decisions by the PAC (PAC 2017-0017 and 2017-0018) considered Mr. Kaiser's *Charter* argument in the context of his assertion that the *Building Bylaw* and the manner in which Baildon has enforced it violate his right to freedom of expression. In PAC 2017-0017, the PAC clearly dismissed Mr. Kaiser's claim in that respect.

[98] As a side note, I do not see any inconsistency in the PAC's determination that it had authority to rule on Mr. Kaiser's *Charter* argument, and the AAC's determination that it did not have authority to do so. The PAC and AAC are established by different legislation, and exist to determine disputes of a different nature. The AAC, which is established through the operation of s.

16 of *MBA*, operates in the context set out in ss. 240 - 256 of *The Municipalities Act*. Its jurisdiction is limited to matters relating to valuation and assessment of property for taxation purposes. The matter before it in Mr. Kaiser's case in AAC 2017-0002 would not be not impacted in any way by *Charter* considerations.

[99] Even if I had not decided to strike Mr. Kaiser's claims for the reasons I have outlined, they are claims that, when considered in light of the history between Mr. Kaiser and Baildon, would properly be struck because they are vexatious. They are the fourth and fifth claims Mr. Kaiser has filed against Baildon in the past five years. Two of the previous three claims were discontinued, and the other has not been advanced. Mr. Kaiser has raised the allegation that Baildon's bylaws and actions violate his *Charter* right to freedom of expression in at least one of the actions (QBG 54 of 2017), which he discontinued on November 10, 2017. In addition to that, he has made complaints to the Law Society of Saskatchewan about the actions of Baildon's legal counsel, and complaints to the Rural Municipalities Administrators' Association of Saskatchewan about the conduct of Baildon's officials, that have been summarily dismissed. He has continuously raised the same issues, without success. The repeated filing of hopeless proceedings, and seeking forms of relief that cannot be obtained is properly characterized as vexatious conduct: *Chutskoff v Bonora*, 2014 ABQB 389, 590 AR 288.

[100] Both of Mr. Kaiser's claims shall be struck, without leave to amend. The claims seek relief that is not within the Court's authority to grant, raise s. 15 *Charter* claims that have no chance of success, and mount collateral attacks on valid decisions of statutory tribunals from which there are available avenues of appeal. No reasonable amendment could salvage his claims without creating entirely new pleadings.

[101] In addition to that, Mr. Kaiser's claims are also vexatious, and an abuse of process. Leave to amend, in those circumstances, would not be appropriate.

(2) *Should costs be Awarded and, if so, on what basis?*

[102] Baildon has been successful its applications. An award of costs should follow. *The Queen's Bench Rules*, in Part 11, provide the court with discretion in assessing and ordering costs. That discretion includes determining whether costs are paid, and how they are assessed or calculated.

General principles regarding cost awards:

[103] In determining the amount of costs to be awarded, the factors listed in Rule 11-1(3) and (4) guide the analysis. They read, in part, as follows:

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;

...

(e) award all or part of the costs to be assessed as a multiple or a proportion of any column of the Tariff;

...

(h) make any other order it considers appropriate.

(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;

..

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

...

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

...

(l) any other matter it considers relevant.

[104] Generally, costs are awarded on a party-and-party basis, but the court has discretion to award solicitor-client costs in appropriate situations, when the conduct of one of the parties justifies it: *Eckdahl v Long*, 2012 SKQB 89, 347 DLR (4th) 556. Solicitor-client costs are not routinely awarded, as the Court of Appeal noted in *Hope v Gourlay*, 2015 SKCA 27, [2015] 6 WWR 317:

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 Bavolin*, 2002 SKCA 84, [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.

48 As explained in the companion appeal of *Hope v Pylypow*, 2015 SKCA 26 at para 48, solicitor-client costs should never be awarded without an explanation as to why they are being awarded and an

identification of the conduct which is said to warrant them. No such explanation was provided here.

[105] In *Siemens v Bawolin*, 2002 SKCA 84, [2002] 11 WWR 246, Jackson J.A., citing the decision of the Ontario Court of Appeal in *Gerula v Flores* (1995), 126 DLR (4th) 506 (Ont CA), said that solicitor-client costs may be justified in cases where the conduct of one party is (i) a deliberate attempt to frustrate the proceedings; (ii) calculated to harm the other party; or (iii) unreasonable to the point that it unnecessarily compounds the complexity of the proceedings.

[106] In some cases, even where the standard for an award of solicitor-client costs has not been met, it may be appropriate to fix costs in an amount higher than the tariff, or at a multiple of the relevant tariff. For instance, cases in which the party against whom costs are being awarded has filed prolix material, a multiplicity of proceedings, or applications of questionable merit: *Fyfe v Bigoraj*, 2011 SKQB 303, 381 Sask R 233. Or cases where the conduct of the party is clearly improper, but not reprehensible: *Werchola v KC 5 Amusement Holdings Ltd.*, 2002 SKQB 339, 224 Sask R 29. Or where the conduct of the responsible party is not reprehensible, but is without merit to the extent that the court must express its disapproval and provide a more significant measure of indemnity to the successful party: *Mayer Holdings Inc. v Mayer*, 2001 SKQB 322.

[107] In this case, Baidon argues that Mr. Kaiser's actions in the context of this litigation warrant an award of solicitor-client costs, for a number of reasons:

1. Mr. Kaiser launched multiple proceedings, all of which were without merit, and which were collateral attacks on the valid decisions of statutory decision makers;

2. He has acted unreasonably by filing unnecessary and groundless applications, such as the applications he brought to strike Baildon's applications to strike his pleadings;
3. He has made a number of spurious complaints to various bodies about Baildon's legal counsel and officials; and
4. His actions have resulted in significant unwarranted costs to Baildon, which are out of proportion to its size and budget as a municipality.

[108] In my view, while Mr. Kaiser's conduct has definitely been improper and relentless, it does not rise to the level of scandalous, outrageous or reprehensible so as to justify an award for solicitor-client costs.

[109] That said, there is no question that his conduct shows a disregard for his legal obligations and the authority of statutorily-appointed decision-makers. He has brought a number of meritless claims and pursued avenues of appeal on questionable, or even arguably frivolous bases. His actions have undoubtedly added to the complexity of the proceedings, and to the costs incurred by Baildon.

[110] While I am not satisfied that his conduct meets the threshold for an award of solicitor-client costs, it clearly calls for costs substantially above the tariff. Such an award is necessary to express the court's disapproval of his conduct, and to fairly indemnify Baildon. It would not be appropriate, in light of the history of the proceedings as a whole, to require Baildon to expend further time and resources on a taxation.

[111] Bearing in mind the factors outlined by Danyliuk J. in *1348623 Alberta Ltd. v Choubal*, 2016 SKQB 200 at para 31, 94 CPC (7th) 210, I am satisfied that this would be a case in which, if I were ordering costs to be

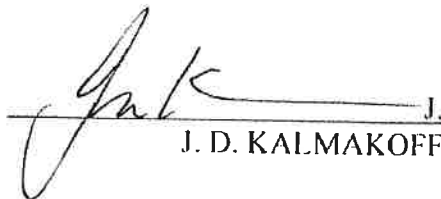
assessed against a particular Column of the Tariff, I would likely assess those costs to be taxed at Column III of the Tariff, or perhaps even a multiple of that. That said, based on the material submitted, I am also satisfied that this is a case in which it would be appropriate to fix costs, rather than order that they be assessed in accordance with the Tariff. Taking into account the nature of the proceedings, their complexity, and the nature of Mr. Kaiser's conduct, I am satisfied that it is appropriate, in the circumstances of this case, to fix costs at \$8,000.00, payable within 60 days.

CONCLUSION

[112] Baildon's applications are granted. The statements of claim in QBG 84 of 2016 and QBG 88 of 2018 are struck in their entirety, without leave to amend.

[113] Mr. Kaiser's applications to strike Baildon's applications are dismissed.

[114] Mr. Kaiser shall pay costs to Baildon in the amount of \$8,000.00, within 60 days.


J. D. KALMAKOFF